One Firm Worldwide℠

Shelf Charters and Blind Pools

FIG Partners' CEO Forum

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Chip MacDonald
Jones Day
404.581.8622
cmacdonald@jonesday.com

I. OPPORTUNITIES

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Selected Industry Data

June 30, 2011

Commercial Banks	6,413
Thrifts	1,100
Total	7,513

Problem Banks	June 30, 2011	March 31, 2011
Number	865	888
Assets	$372 bil.	$397 bil.

Est. Formal and Informal Actions at end of 2010 - 2,700

Enforcement actions flattening

Bank Failures & FDIC-Assisted Transactions

- Failure Rates

1991 – 2008	371 Failures (Avg. 20.6/yr.)
2008	25 Failures
2009	140 Failures
2010	157 Failures
2011 (through Sept. 9)	71 Failures
Total Current Cycle	393 Failures

- Highest number of IDI failures in a year was 1989 with 533 failures.

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2010 – 2011 Resolutions

	Through Sept. 16, 2011		**2010**
Failed Banks	71		157
Failed Bank Assets	$29.6 bil.		$82.4 bil.
Avg. Failed Bank Size	$416.5 mil. assets		$596.2 mil. assets
DIF's Avg. Cost/Assets	23.2%		22.7%
Leading States for Failures	Georgia	19	21
	Florida	11	29
	Illinois	7	16
	California	3	12
	Washington	3	11
	Colorado	5	--

2010 – 2011 Resolutions (cont'd)

	June 30, 2011	March 31, 2011
P&As with Loss Sharing	45 (66%)	129 (82.2%)
P&As without Loss Sharing	16 (23%)	2 (1%)
Partial P&As	8	10
No Bids	2	13
First Time Buyers	21 (46%)	--

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Opportunities from Failed Bank Acquisitions

- Interstate and geographic expansion
- In market consolidation / Greater market share permissible than open bank deals
  - Subject to FDIC requirements to continue serving each “trade area” for one year after the failed bank closed
- Cheap source of deposits
- Loans at a discount with a substantial reduction in risk-based capital weightings and low credit risk
- Gains may be possible with loss-sharing
- Lower risk than private transactions
- Fewer integration and social issues than in a private transaction
- Acquisitions may be rewarded in the capital markets
- Dilution reduced or eliminated
- Open bank and FDIC-assisted transactions should both be pursued

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Pitfalls of FDIC Loss Share Deals

- Valuation of assets and liabilities
- GAAP gain is conditional for up to one year, during which:
  - Gain may require additional capital in light of potential write-down of bargain purchase asset
  - Gain not included in calculating dividend paying capacity
  - Independent valuations and/or audits may be required
  - Gain may be excluded from legal lending limit calculation
- Variability of earnings related to loss share
- Systems, people and other resources required
- FDIC reporting and review
- Analysts may segment loss sharing and other business results
- Distraction from growing new business?
- FDIC restrictions on buyers, including:
  - Sale of loss share assets
  - Mergers and acquisitions
  - Sales of 9.9% or more of buyer's stock

II. CHARTERS FOR BUYERS

Charter Types

- Convenience – chartered in connection with one or more FDIC-assisted resolutions or a branch acquisition, usually by an existing bank holding company ("BHC").
  - Bank Midwest, N.A., OCC Conditional Approval 978 (new sub of NBH Holdings approved to acquire bank branches).
- Inflatable – a small bank that is acquired by new investors for purposes of growing through FDIC-assisted and non-assisted acquisitions. The charter is inflated by adding capital, data processing and management, and hopefully, acquisitions.
  - First National Bank of Cainesville, Cainesville, Missouri, Change in Bank Control Act Notice by J. Christopher Flowers, OCC Conditional Approval 872 (August 27, 2008).

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Charters to Facilitate Fail Bank and Other Acquisitions (cont'd)

- Rollup Charter – a charter whose business plan may include open and closed bank acquisitions.
  - Grandpoint Bank & Trust, N.A., OCC Conditional Approval 903 (May 7, 2009).
- Shelf Charters
  - A new charter that is conditionally approved by the OCC subject to winning the bid for a failed bank in a FDIC-assisted deal with a OCC-approved business plan
  - FDIC must approve deposit insurance
  - A holding company parent requires Federal Reserve approval
  - Most have been financed by $400 million or more of capital raised via "blind pool" offerings consistent with the *FDIC Statement of Policy on Qualifications for Failed Bank Acquisitions* (Sept. 2009).

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National Bank Shelf Charters

Name	Conditional Approval	First FDIC-Assisted Acquisition	Approximate Initial Capital
Ford Group Bank	Nov. 17, 2008	--	$700 mil.
Ford Group Bank II	--	--	--
Carlile Bank, N.A.	May 29, 2009	--	--
SJB National Bank	July 31, 2009	--	$1.1 bil.
New Bank, N.A.	Aug. 28, 2009	--	$1.0 bil. Sought
Bond Street Bank, N.A. (now Premier American Bank, N.A.)	Oct. 23, 2009	Premier American Bank Jan. 22, 2010	$700 mil. Multiple Offerings
NBH National Bank (now Hillcrest Bank, N.A.)	Feb. 24, 2010	Hillcrest Bank, N.A. October 22, 2010 – NBH Holdings chartered a separate bank, Bank Midwest, N.A., to acquire branches of Bank Midwest, Kansas City, MO, approved Oct. 7, 2010	

National Bank Shelf Charters (cont'd)

Name	Conditional Approval	First FDIC-Assisted Acquisition	Approximate Initial Capital
NAFH National Bank	Mar. 25, 2010	3 banks in FL and SC on July 16, 2010. 3 other open bank transactions since then	$1.15 bil.
CBC National Bank	Sept. 22, 2010	BHC parent acquired Cadance Bank, N.A., Starkville, MS, on Mar. 4, 2011 in an open bank transaction. Formed Superior Bank N.A. to acquire Superior Bank, FSB, Birmingham, AL from FDIC on Apr. 15, 2011	$900 mil.
Blue Ridge Bank, N.A. (now Certus bank, N.A.)	Oct. 19, 2010	Community South Bank & Trust, Easley, SC	$400 mil.

III. Bidder Qualifications

- Normal M&A Standards (FDI Act, Section 18(c))
  - No adverse, impermissible effects on competition, except for failed bank transactions that prevent failures
  - Capital adequacy
  - Management
  - Earnings (level and quality)
  - Disclosure to shareholders (non-failed bank transactions)
  - Convenience and need
  - CRA record
  - Consumer compliance
  - AML / BSA Compliance Record
  - Systemic risk

See *FDIC Statement of Policy on Bank Mergers.*

Other Criteria

- FDIC "Rules of Thumb" for Qualifying Bidders
  - Well-capitalized
  - CAMELS composite rating of 1 or 2
  - CAMELS Management component rating of 1 or 2
  - Compliance rating of 1 or 2
  - Federal Reserve Bank Holding Company RFI/C rating of 1 or 2
  - CRA rating of at least Satisfactory
  - Total assets at least double the core deposits of failing bank when the bidder is located in the same state
  - Total assets at least four times the core deposits of the failing bank when the bidder is located in a contiguous state
  - Total assets at least five times the core deposits of the failing bank when the bidder is located in noncontiguous states

Other Criteria (cont'd)

- OCC
  - Resulting bank should have 8%-10% Tier 1 capital and 12% total risk-based capital
- *Interagency Supervisory Guidance on Bargain Purchases and FDIC- and NCUA-Assisted Acquisitions* (June 7, 2010)

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IV. Regulatory Policies

- Applicable Regulatory Policies
  - *FDIC Policy on Qualifications for Failed Bank Acquisitions* (Aug. 26, 2009)
  - *Interagency Supervisory Guidance on Bargain Purchases and FDIC- and NCUA-Assisted Acquisitions* (June 7, 2010)
  - *Federal Reserve Policy Statement on Equity Investments in Banks and Bank Holding Companies* (Sept. 22, 2008)

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IV. Regulatory Policies (cont'd)

- *FDIC Policy on Qualifications for Failed Bank Acquisitions* (Aug. 26, 2009)
  - Applies to "Investors" who are:
    - Private investors in a company, including any company acquired to facilitate bidding on failed banks or thrifts that is proposing to, directly or indirectly, (including through a shelf charter) assume deposit liabilities, or such liabilities and assets, from the resolution of a failed insured depository institution; and
    - Applicants for insurance in the case of *de novo* charters issued in connection with the resolution of failed insured depository institutions (hereinafter "Investors").

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IV. Regulatory Policies (cont'd)

- Does Not Apply to:
  - Persons making investments in partnerships or similar ventures with bank or thrift holding companies or in such holding companies (excluding shell holding companies) where the holding company has:
    - (i) a strong majority interest in the resulting bank or thrift, and
    - (ii) an established record for successful operation of insured banks or thrifts. Such partnerships are strongly encouraged; or
  - Persons with 5% or less of the total voting power of an acquired depository institution or its bank or thrift holding company, *provided* there is no evidence of concerted action by these Investors.

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IV. Regulatory Policies (cont'd)

- Capital commitment
  - 10% Tier 1 common equity for at least 3 years after acquisition
  - If capital falls below that, the bank becomes undercapitalized for Prompt Corrective Action purposes
- "Undercapitalized" banks:
  - Cannot offer, rollover or renew brokered deposits
  - Cannot make capital distributions or redemptions of shares to their shareholders, including bank holding company parents, without prior regulatory approval
  - No management fees can be paid to any controlling person
  - Acquisitions and expansion activities are limited
  - A capital restoration plan ("Capital Plan") must be submitted to and approved by the regulators, and any bank holding company controlling the bank must guarantee that the bank will comply with the Capital Plan until the bank becomes "adequately capitalized" on average during each of 4 consecutive calendar quarters, otherwise provides appropriate assurances of performance.

IV. Regulatory Policies (cont'd)

- Cross Support
  - If one or more investors own 80% or more of 2 or more insured institutions, the stock in these institutions must be pledged to the FDIC to secure losses that may be incurred upon the failure of any of them.
  - This will limit the ability of an Investor to finance its investment.

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IV. Regulatory Policies (cont'd)

- Transactions with Affiliates
  - All extensions of credit to Investors, their investment funds if any, and any "affiliates" of either, by an acquired bank after acquisition, are prohibited.
  - Unlike Federal Reserve Reg. W, where affiliates include 25% or greater owners, an "affiliate" is any company in which the Investor owns, directly or indirectly, at least 10% of the equity of such company and has maintained such ownership for at least 30 days.
  - Investor(s) are to provide regular reports to the insured depository institution identifying all "affiliates" of such Investor(s).

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IV. Regulatory Policies (cont'd)

- Secrecy Law Jurisdictions
  - Investors utilizing entities that are domiciled in bank secrecy jurisdictions would not be eligible to own a direct or indirect interest in an insured depository institution, unless the Investors are subsidiaries of companies that are subject to comprehensive consolidated supervision ("CCS") as recognized by the Federal Reserve Board and they execute agreements to provide information to the primary federal regulator about the non-domestic Investors' operations and activities;
  - maintain their business books and records (or a duplicate) in the U.S.;
  - consent to the disclosure of information that might be covered by confidentiality or privacy laws and agree to cooperate with the FDIC, if necessary, in obtaining information maintained by foreign government entities;
  - consent to jurisdiction and designation of an agent for service of process; and
  - consent to be bound by the statutes and regulations administered by the appropriate U.S. federal banking agencies.

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IV. Regulatory Policies (cont'd)

- Continuity of Ownership
  - Investors, except open-end mutual funds, cannot sell or transfer their securities for 3 years following the acquisition without prior FDIC approval.
  - Transfers to affiliates will be permitted where the affiliate agrees to be bound by the FDIC Policy Statement.
- Prohibited Structures
  - Silo funds; and
  - Complex and functionally opaque ownership structures in which the beneficial ownership is difficult to ascertain with certainty, the persons responsible for making decisions are not clearly identified, and ownership and control are separated.

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IV. Regulatory Policies (cont'd)

- Special Owner Bid Limitations
  - Investors that directly or indirectly hold 10% or more of the equity of a bank or thrift in receivership will not be considered eligible to bid to become an investor in the deposit liabilities, or both such liabilities and assets, of that failed depository institution.

- Disclosure
  - Investors subject to this Policy Statement are expected to submit to the FDIC information about the Investors and all entities in the ownership chain, including such information as the size of the capital fund or funds, its diversification, the return profile, the marketing documents, the management team and the business model.
  - In addition, Investors and all entities in the ownership chain will be required to provide the FDIC such other information as the FDIC determines necessary to assure compliance with its Policy Statement.
  - Confidential business information submitted by Investors to the FDIC will be treated as confidential business information and will not be disclosed, except in accordance with law.

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IV. Regulatory Policies (cont'd)

- Other

  Nothing in the FDIC Policy Statement is intended to replace or substitute for any determination required:

  - By a relevant depository institution's primary federal regulator or a federal bank or thrift holding company regulator under any applicable regulation or statute, including, in particular, bank or thrift holding company statutes and the Bank Merger Act; or

  - With respect to determinations made and requirements that may be imposed in connection with the general character, fitness and expertise of the management being proposed by the Investors, the need for a thorough and reasonable business plan that addresses business lines and strategic initiatives and includes appropriate contingency planning elements, satisfactory corporate governance structure and representation, and any other supervisory matter.

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V. New FDIC De Novo Rules

- FIL-50-2009

  "Enhanced Supervisory Procedures for Newly Insured FDIC-Supervised Institutions" (August 28, 2009)

  - Special supervision and capital for *de novo* banks has been extended from 3 to 7 years
  - Capital for *de novo* banks must be at least 8% Tier 1 capital for 7 years
  - This will affect any FDIC-supervised banks, but may affect other banks, including national banks and federal thrifts

VI. The Future

- Raising blind pool capital is tougher than 2 years ago and may not be available
  - Inflatable charters and investments in $5 – 10 billion banks may be more productive
- Failed banks likely to be smaller in size
- Failed bank roll-ups require more successful deals to deploy capital and gain meaningful size, but are also more costly and time consuming
- FDIC limits the speed of failed bank roll-ups
- While a large number of banks are at risk of failing, especially in a double-dip recession, the number of attractive and meaningfully-sized targets may be less than in 2008-2010
- Various blind pools have not deployed significant amounts of capital and may return their investors' commitments
- A combination of open and closed transactions within a defined strategy and markets may work best through an investment in a $5-10 billion bank