

NEW BANK CHARTERS

The Commissioner of Banks believes that honest, rational, vigorous competition in banking contributes to the health and vitality of North Carolina's banking system, and best serves the convenience and needs of the banking public and the strength of the State's economy.

We believe our statutory role is to assure that entrants to the banking industry are qualified as to character, ability and intent to conduct the business of banking in a safe, sound, responsible manner, and that new banks will have a reasonable probability of success.

For applicants meeting these qualifications, we act in a collaborative manner to facilitate their entry to the marketplace in accordance with law and best practices. The Commissioner of Banks shares the same goals and objectives as the organizers of new banks; the establishment of safe, sound, profitable banks that serve the legitimate banking needs of their communities, reflect favorably on the reputation of the industry, and provide reasonable returns to their investors.

OVERVIEW

Anyone wishing to establish a commercial bank in North Carolina must first obtain a charter, either from the Commissioner of Banks, for a State Charter, or from the Office of the Comptroller of the Currency, for a National Charter. To obtain a State Charter, application must be made to the Commissioner of Banks and either the Federal Deposit Insurance Corporation ("FDIC") in the case of a proposed State Non-Member Bank, or the Federal Reserve Bank in the case of a proposed State Member Bank. All State Banks are required to have their deposits insured by the Federal Deposit Insurance Corporation. National Charters for North Carolina require that application be made to the Office of the Comptroller of the Currency's Southern District, Dallas, Texas.

The granting of charters for State Banks is governed by Sections 53-2 through 53-9 of the North Carolina General Statutes ("NCGS") and implementing regulations of the North Carolina Administrative Code ("NCAC"). NCGS 53-4 establishes six basic conditions prerequisite to the granting of a charter for a State Bank. The Commissioner of Banks **shall approve** a charter application unless, upon examination, he finds that:

- (1) The proposed corporation is formed for any other than legitimate banking business; or
- (2) The character, general fitness, and responsibility of the persons proposed as stockholders, directors, officers and other managerial officials of the bank are not such as to command the confidence of the community in which the said bank is proposed to be located; or
- (3) The probable volume of business and reasonable public demand in such community are not sufficient to assure and maintain the solvency of the new bank and of the then existing bank or banks in said community; or

Office of the Commissioner of Banks; Policy Manual: Applications to establish banks

- (4) The name of the proposed corporation is likely to mislead the public as to its character or purpose; or
- (5) The proposed name is the same as the one already adopted or appropriated by an existing bank in this State, or so similar thereto as to be likely to mislead the public.
- (6) Finally, the Commissioner must ascertain "...that the establishment of the new bank will meet the needs and promote the convenience of the community to be served by the bank."

The statute further provides for review of the Commissioner's action with respect to a charter application by the State Banking Commission, giving the Commission authority to approve, modify or disapprove any action taken or recommended by the Commissioner with respect to the application. However, in exercising its authority in this regard, the Banking Commission is limited to review and action under the same six tests as the Commissioner (*NCGS 53-92.1*).

Preliminary Meeting of Commissioner of Banks with Organizers of Proposed New Bank

The chartering process generally begins with a meeting between the Commissioner of Banks and/or his staff, and representatives of the organizers. At this meeting, the organizers outline their proposal, including the community to be served by the bank, the proposed chief executive officer, directors, principal shareholders, and other identified management officials, the market niche the bank is expected to serve, and other matters pertinent to organization of the bank. The organizers, in turn, are made aware of the requirements, procedures and timeline considerations for filing and processing of a new bank application, and are apprised of regulatory concerns relative to the establishment of a new bank. Depending upon the level of preparedness of the organizers, a follow-up meeting may be scheduled.

A key consideration for any organizing group is the level of capital the Commissioner will require as a condition of opening their proposed bank. In order to obtain a capital requirement, the organizers are required to furnish an executive summary of their business plan, including at least three years of balance sheet and profit and loss projections with underlying assumptions, and information about facilities plans, including branching plans and estimated capitalized costs or lease expenses of the main office and any branch facilities expected to be incurred during the projection period.

An executive summary of a feasibility study, highlighting key economic and demographic trends in the target market and describing current and expected market competition, is also to be provided. Ideally, this information should be furnished the Commissioner for review at least a few business days prior to the meeting.

The proposed name of a bank must be approved by the Commissioner of Banks before it will be accepted for filing by the Secretary of State (*NCGS 53-4(4) and (5)*). The name must not be the

Office of the Commissioner of Banks; Policy Manual: Applications to establish banks

same as one already used or reserved by another bank, and must not be such as to cause public confusion over the nature of the company. With the advent of widespread interstate banking, it has also become important to avoid names that are similar to or the same as banks in other states, particularly contiguous states, and to run trademark searches to identify potential conflicts. While the name does not need to be presented at the preliminary meeting, it should be decided upon and approved by the Commissioner early in the proposed bank's organizational stage. As nearly all banks will have an internet website, the organizers should register a URL, or several URLs, for internet use as soon as a name is selected.

Following the preliminary meeting, the organizers are usually given a tentative opinion about the advisability of pursuing a State bank charter. In this event, and assuming sufficient information has been provided, the Commissioner's office will generally assign a minimum capital requirement for establishment of the bank (*NCGS 53-2*).

Management

The Commissioner of Banks will not entertain an application for a bank charter where proposed senior management officials or directors have been culpably involved in troubled or failed financial institutions, have been convicted of or are under indictment for criminal offenses, have been involved with bad debts resulting in losses to other depository financial institutions, or whose reputations would otherwise reflect negatively upon the proposed bank. Organizers should carefully scrutinize each individual to be involved with the bank prior to meeting with the Commissioner, as any adverse findings revealed through the application investigation process, including credit checks and criminal background checks, would impede the bank's organization and could result in denial of the application. Moreover, the ultimate responsibility for ensuring integrity of the proposed management and directors **rests with the organizers**.

Capital

The preliminary opinion of the Commissioner of Banks as to required initial capitalization of the proposed bank may be modified at any time prior to final approval by the State Banking Commission, should the Commissioner's evaluation or other circumstances warrant. Although the statutory minimum capital for a bank, as provided by G.S. 53-2(4), is \$3,000,000, the statute gives the Commissioner discretionary authority to raise or lower this amount on the basis of established criteria. As a practical matter, the Commissioner of Banks will generally not recommend organizers pursue a state bank charter with less than \$6,000,000 in net opening capital, and the amount is most often greater. Net opening capital is defined as common capital plus permanent surplus plus any unexpended organizational expense funds at the date of opening.

Office of the Commissioner of Banks; Policy Manual: Applications to establish banks

On the basis of growth projections the Commissioner believes reasonable, the requirement will generally be driven by a target Tier 1 leverage capital ratio of 10% at the end of the third full year of operation for a typical community bank model.

Filing an Application

After the preliminary meeting with organizers, an application is filed with the Commissioner of Banks, together with a nonrefundable filing fee of \$8,000. If the proposed new bank is to be a member of the Federal Reserve, application is also made to the Federal Reserve Bank in Richmond, Virginia. For proposed State non-member banks, application is made to the Commissioner of Banks and, usually concurrently, to the FDIC. The application process and regulatory concerns of the federal agencies are quite similar to those of the Commissioner of Banks. FDIC policy with respect to deposit insurance for new banks is explained in Section 6 of the Federal Deposit Insurance Act and in the FDIC's Policy Statement, "Applications for Deposit Insurance," available on their website at www.FDIC.gov. Applicants are urged to become familiar with this policy statement.

As a rule, the Commissioner of Banks will process a properly completed application in time for a scheduled hearing of the Banking Commission if submitted not less than 60 days in advance of that meeting. However, availability of staff, workload, delays in obtaining corrections or information pertinent to the application, and other circumstances may cause exceptions to this timetable. In addition, an application will not be heard before the Banking Commission unless and until the applicant has received paid subscriptions for not less than 50% of its required minimum capital.

The stock sale may begin at any time following the Commissioner's setting of the required minimum capital, either before or after filing of an application for charter, in accordance with applicable federal and state securities laws and regulations. It is highly recommended that the organizers have their attorney submit a draft of their proposed stock offering circular or private placement memorandum for review prior to commencing the sale.

Stock may be sold directly by the organizers, or the organizers may engage the services of a licensed broker or brokers for assistance in selling all or a part of the offering. If broker services are utilized, prior approval of the engagement contract or letter of intent with each such broker must be obtained from the Commissioner (*4NCAC 3C.0110(b)*). Because of the requirements of that Rule that a proposed bank's organizational expenses must be paid from the organizational expense fund, and only from that fund, and because the use of paid brokers to sell stock is a costly approach, it is imperative the organizers consider and budget for that expense well before commencing the stock sale, even if it is only a contingent plan. While actual brokerage fees may vary from broker to broker and with differing levels of assistance, the fees typically average

Office of the Commissioner of Banks; Policy Manual: Applications to establish banks

around 5% of gross funds raised, plus expenses incurred by the brokers in connection with their sales efforts, and often an up-front engagement fee.

Supporting Information

Along with the application, supporting information must be submitted, including proposed articles of incorporation, draft of the stock offering circular, feasibility study, business plan and financial and biographical information forms for each of the proposed directors, key management officials, and principal shareholders. The business plan and personal financial and biographical information are considered confidential; most of the remainder of the information is considered part of the public record, unless specific exceptions are granted by the Commissioner at the request of the applicant.

Processing the Application

Processing of the application consists of review of the application and supporting documentation for completeness, accuracy, reasonableness of projections as to deposit growth and earnings performance, quality, character, reputation and competency of directors and management, and compliance with legal requirements for the establishment of a new bank. Particular emphasis is placed on the quality of proposed management and adequacy of capital and its sufficiency to absorb reasonably foreseeable early losses and support growth through at least the first three years of operation of the bank..

Evaluation of Bank Management and Directors

Bank management is evaluated on the basis of experience and education in bank administration, particularly in the areas of credit administration, operations, funds management, and demonstrated record of performance. Proposed directors are evaluated on the basis of their business and other pertinent experience, knowledge of the economy and financial needs of the community the bank is to serve, their reputation in that community, involvement in local civic activities, and financial substance. Both management and directors are expected to meet rigorous standards of professional and personal integrity.

Field Investigation

When the application and supporting materials have been thoroughly reviewed and are deemed satisfactory, a field investigation of the application is scheduled to be conducted by an examiner of the Commissioner of Banks. This investigation includes a meeting of organizers and management of the proposed bank and the examiner(s) conducting the investigation. Where staff availability permits, this meeting will be conducted jointly with an examiner from the FDIC in the case of proposed State non-member Banks. If scheduling does not permit this, the FDIC may

Office of the Commissioner of Banks; Policy Manual: Applications to establish banks

conduct a separate meeting with the organizers. Except under the most extenuating circumstances, the Chief Executive Officer and any other key management officials and all directors and principal shareholders, (those intending to subscribe to 5% or more of the proposed bank's initial stock offering) must attend this meeting. The meeting with organizers may, at the election of the Commissioner, be conducted at the office of the Commissioner of Banks in Raleigh or at a designated place in or near the community in which the proposed bank is to be located. The Commissioner or his Chief Deputy normally attends such meetings.

Meeting with organizers; Agenda

The meeting will consist of a brief presentation by the examiner(s) outlining the remaining chartering process, regulatory concerns, expectations of and involvement with the bank, responsibilities and liability of directors, and presentation of certain materials to management and directors. A question and answer session will follow the presentation, after which confidential individual interviews will be held with each of the management officials and organizers. These interviews are conducted to further assess the character, motivation, vision and abilities of the organizers and management, and to gain a better understanding of the community and the nature of the proposed new bank. Normally, the meeting with organizers will last for approximately two-and-a-half hours, and individual director interviews approximately 25-30 minutes each.

Tour of Proposed Bank's Trade Area

The examiner(s) may tour the proposed bank's trade area, examine and evaluate the proposed bank location, and may conduct interviews with people in the community to assess the probable level of support for the proposed bank, as well as the reputation of its management and organizers. Examiners will meet with a representative number of executives of existing financial institutions in the community to conduct confidential interviews, soliciting information regarding conditions and trends in the local economy, the nature and extent of banking competition in the community, and information about the organizers pertinent to their personal and professional character, reputation, and involvement in the community, as well as the handling of any accounts they may have or have had with those institutions.

Appearance Before State Banking Commission

Upon completion of the Commissioner's investigation of the application, and assuming that all statutory conditions for the formation of a new state chartered bank have been met, the Commissioner will prepare an order recommending approval of the application to the State Banking Commission, which meets in regular session every other month. At this hearing, the organizers present their arguments for approval of the proposed bank and respond under oath to any questions put to them by members of the Commission. The Commission has the statutory authority to modify, approve or reject the recommendation of the Commissioner with respect to

Office of the Commissioner of Banks; Policy Manual: Applications to establish banks

the application. The Commission will vote on the application, normally at the meeting at which it is presented. From the date of Banking Commission approval the proposed bank has one year to open for business, though the Commissioner may extend that period for cause.

Should the Commissioner intend to recommend disapproval of the charter application, the organizers will be informed in advance, and may elect either to withdraw the application, or to appeal the Commissioner's decision to the Banking Commission. In the latter case, the Commissioner proceeds with a written order recommending disapproval, and the application is heard as any other, the Banking Commission again having authority to approve, modify or disapprove the Commissioner's recommendation. The decision of the Banking Commission itself is the final agency decision, but may in turn be appealed to the Superior Court of Wake County.

Completion of Application Process

Upon receiving final approval of the Banking Commission, the organizers complete the organizational affairs of the bank, including but not limited to, staffing, training, policy development, facilities arrangements, design, planning, and testing of operations, establishment of correspondent banking relationships, legal filings, and sale of stock. Along with a letter formally notifying the organizers of the final approval of their charter, a list of steps required to complete organization of the bank will be provided by the Commissioner. With regard to the latter, it should be noted that efforts to sell the proposed bank's stock may begin at any time prior to or during the application process, although clearly the sale may not begin until after the preliminary meeting with the Commissioner of Banks, when the required minimum capital is established.

As previously indicated, as a general rule, the Commissioner will not submit an application to the Banking Commission for consideration unless and until paid subscriptions have been received for a minimum of 50% of the required initial capital stock. Sales of an organizing bank's stock are the clearest single indication of public confidence in and likely sufficient volume of business for an organizing bank, both of which are statutory conditions for approval. Early completion of the initial stock offering also substantially reduces the time required to open the bank, thereby minimizing organizational expenses and preserving capital.

After the proposed bank has been approved by the Banking Commission, raised the minimum required capital, filed its Articles of Incorporation with the Secretary of State (through the Office of the Commissioner of Banks) and completed or nearly completed the remaining steps necessary to open the bank, including approval for deposit insurance by the FDIC, the organizers must contact the Office of the Commissioner of Banks and request scheduling for a preopening visitation.

Office of the Commissioner of Banks; Policy Manual: Applications to establish banks

A pre-opening examination of the bank will be conducted by an examiner or examiners from the Commissioner's office to ensure the bank has made all necessary preparations to open for business. Any significant problems noted by the visiting examiner(s) will be disclosed to management and must be corrected before the bank will receive authorization to open. Upon fulfillment of all pre-opening requirements and conditions of approval and satisfactory completion of the preopening visitation, the Commissioner will provide the proposed bank with a certificate authorizing it to commence business.

Affairs of the bank will be under the supervisory jurisdiction of the Commissioner of Banks and the FDIC, in the case of State Non-member banks, and the Commissioner of Banks and the Federal Reserve Board, in the case of State Member Banks. Periodic examination of the bank will be conducted by these agencies, either jointly or independently, on an alternating basis. These examinations will culminate in written Reports of Examination addressed to the Board of Directors.

An initial visitation of the new bank will usually be conducted within the first 90 days of opening. This visitation will be directed at evaluating overall operations of the bank, adherence to sound principles of internal routine and controls, compliance with state and federal laws, regulations, work flow, and organizational structure, to see that the bank is progressing satisfactorily. Findings will be presented to management at the conclusion of the visitation, and a formal written report to the Board of Directors will only be issued if significant problems are noted. Further visitations may be scheduled as appropriate or necessary.

APPLICATION PROCEDURE

This section presents detailed procedures for the processing of an application to establish a new commercial bank in the format of a normal chronology of events. Each event in the application process is preceded by either "Applicant," indicating the step is initiated or performed by or on behalf of the organizers, "Commissioner," meaning the step is initiated or performed by the Commissioner of Banks or his representative(s), or "Banking Commission," indicating the step is performed by the Banking Commission. Where a step is governed by specific state statute or regulation, the statute or regulation is cited in parentheses.

Contact information: Questions regarding bank charter applications should be directed to:

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Events preliminary to formal application for charter:

(Applicant)

Preliminary inquiry is made by prospective bank organizers, usually by telephone. This is an informal step in which questions regarding the formation of de novo banks are responded to by the Commissioner's staff.

(Commissioner)

In response to a chartering inquiry and request, a **new bank application** is mailed to Applicant, together with transmittal letter and other supporting information and material. This agency accepts the "Interagency Charter and Federal Deposit Insurance Application," the same form as that filed with the FDIC to obtain deposit insurance (**Exhibit 1**).

(Applicant)

Preliminary meeting is scheduled between Applicant and Commissioner to discuss the proposed new bank. Normally, the Applicant will be represented by one or more organizing principals of the proposed bank, the chief executive officer, if identified, and legal counsel, if retained. Other executive management officials are also urged to attend. This is a confidential meeting, and the policy of the Commissioner is to neither confirm nor deny that the meeting has taken place, and to divulge nothing discussed at the meeting, until and unless a paid application is filed by Applicants.

(Applicant/Commissioner)

At the **Preliminary meeting**; Applicants should be prepared to present their proposal for a new bank to the Commissioner and his staff, and respond to their questions and comments. Executive summaries of the proposed business plan and feasibility study should be provided to the Commissioner several days in advance of this meeting, though it is not required that either the business plan or the feasibility study be complete at this point.

Requisite information for this meeting includes a description of the proposed geographic and demographic target market(s) of the bank, the niche the bank plans to serve and how it plans to address that niche, *pro forma* balance sheets and income and expense statements for at least the first three years of operation,

Office of the Commissioner of Banks; Policy Manual: Applications to establish banks

including estimated capitalized costs or lease expenses of facilities, furniture and equipment for the main office and any branches expected to be established during the projection period, and a description of the likely competition for the bank.

By the conclusion of this meeting, or shortly afterward, and assuming sufficient information has been provided, Applicant will be advised whether the Commissioner recommends the group pursue a State charter and what minimum capitalization will be required to establish the bank.

(Applicant)

Name of proposed bank: Applicant selects a name and submits to the Commissioner for approval. This may be done by letter, e-mail or telephone call to Director of Bank Applications.

(Commissioner)

Name approval: Commissioner approves name subject to requirements of *N.C.G.S. 53-4(4) and (5)*, and notifies Applicants or their attorney, usually by e-mail or telephone.

(Applicant)

Filing of application: (*NCGS 53-4, 4 NCAC 3C .0101*).

Application for Bank Charter is filed, together with supporting documentation, including proposed Articles of Incorporation, the State Historical Preservation Section (“SHPO”) clearance form, feasibility study and/or market analysis, offering circular, business plan and such other information and materials as Applicant wishes or has been asked to submit in support of the application. These materials may be submitted for preliminary review for accuracy, completeness and reasonableness, without formal filing. If this is done, no public announcement is made at this point, and the application is not regarded as having been filed. Once any necessary corrections have been made, the application is officially filed. Filing with the appropriate Federal agency for deposit insurance should be done concurrently or nearly concurrently, if feasible.

An Interagency Biographical and Financial Report (“IBFR”) must be completed and signed by every senior management official, proposed director and principal shareholder. (**Exhibit 2**). Principal shareholders are defined as any investor who intends to own 5% or more of the shares sold pursuant to the proposed bank’s initial stock offering. One original (or conformed copy) and one copy of each IBFR must be submitted with the charter application. In addition, a signed original Background Records Check form (**Exhibit 3**) must be submitted by each

Office of the Commissioner of Banks; Policy Manual: Applications to establish banks

individual for whom an IBFR is submitted. This form is simply the Commissioner's authorization to conduct a credit and criminal background check.

The business plan and the IBFRs are considered confidential and not a part of the public record. The rest of the application is considered public, unless the Applicant requests confidential treatment of certain materials, with valid reasons for such treatment. The Commissioner may or may not agree to hold certain items in confidence, in his discretion, but will inform the Applicant if the request for confidential treatment is denied.

To be accepted for formal filing, an Application for Bank Charter must be accompanied by a check on good funds for \$8,000 payable to the Commissioner of Banks. One original (or conformed copy) of the application, and one copy, must be filed with the Commissioner.

The State Banking Commission generally meets on the third Wednesday of every other month. To be heard before a particular meeting of the Commission, an application **must be filed not less than 60 days preceding** the meeting of the Banking Commission at which it is to be heard. For example, to be heard before the meeting of May 15, 20xx, an application would have to be filed by the preceding March 15, 200xx. In addition, the applicant must have received paid subscriptions for at least 50% of their minimum required capital before the Commissioner will bring the application to the Commission for hearing.

(Commissioner)

Acknowledge receipt of application by letter to the applicant, with copy to the appropriate federal regulator (FDIC, if the bank is to be a nonmember bank, FRB if to be a member bank). The letter acknowledgement will include the docket number assigned to the application, and the tentative hearing date. **(Exhibit 4).**

Prepare and mail a memorandum of application filing, and send to the other federal regulators and to the chief executive officer of each bank having a branch in the community(ies) to be served by the proposed bank. **(Exhibit 5).**

Set the application up on the database.

Establish a file for the application.

(Applicant)

Notify State Historic Preservation Office ("SHPO") of location of proposed bank, and transmit SHPO clearance form and supporting materials to state historic

Office of the Commissioner of Banks; Policy Manual: Applications to establish banks

preservation officer. **(Exhibit 6)**. (Note: This is a requirement of the FDIC, in compliance with the Historic Preservation Act of 1966, a federal law with which state nonmember banks must comply. It is not a requirement for Member banks of the Federal Reserve System.)

(Historic Preservation Officer)

Notify Applicant, Commissioner of Banks and FDIC Regional Director of SHPO opinions regarding proposed site, and any conditions of approval.

(Commissioner)

Examine application: (NCGS 53-4, 4 NCAC 3C .0102):

For arithmetic accuracy: Foot and cross-foot schedules to verify totals and derivatives, as necessary.

For completeness: Make certain all pertinent questions are fully answered, that all schedules and pages are completed, and that all supporting materials have been furnished and are adequate. (NCGS 53-2, 4 NCAC 3C .0101). Required documentation includes:

Completed application (One signed original and one copy).

Articles of Incorporation (draft, with one copy)

Biographical and Financial Information forms (FDIC 6200/06(11-84), one with original signatures and one copy, for the proposed chief executive officer, each director, each key management individual, and any individual subscribing to 5% or more of the total minimum shares of the proposed bank's stock to be offered.

Feasibility study or market analysis for the proposed bank's Primary Service Area ("PSA").

Business Plan (Confidential). A comprehensive business plan describing both the geographic PSA and the specific niche within that PSA. The business plan should discuss the types of customers the bank will solicit, the specific products and services that will be marketed to those customers, the nature and extent of competition, if any, already serving those customers, and the means by which the bank will differentiate itself from competing institutions sufficiently to obtain a viable share, of the target market.

Office of the Commissioner of Banks; Policy Manual: Applications to establish banks

“Applicability of the National Historic Preservation Act of 1966” (SHPO Clearance) Form, original and two copies, photographs of building to be occupied by proposed bank, if existing structure, or photo of existing building(s) presently on lot scheduled to be razed, or photo of vacant lot on which bank is to be constructed, and map clearly identifying the proposed bank’s location. Photos should be taken from several different perspectives, and labeled as such. It is recommended applicants obtain clearance directly from the SHPO. In such instances, applicant need only provide the FDIC with evidence that the clearance has been obtained.

For reasonableness: Determine that deposit projections are attainable based on an analysis of total deposits of existing financial institutions in the proposed bank’s PSA, growth of total deposits in the PSA over the past several years, performance of other new banks in similar markets in recent years, and the financial strength and probable deposit business to be brought to the bank by incorporating directors of the proposed bank. Check deposit distribution projections, i.e., interest-bearing deposits as a percent of total deposits projected, for consistency with the type of bank proposed, with statewide averages from available reports, and/or with deposit distributions of existing banks in the PSA.

Check for distribution of loans, including concentrations by type, such as commercial real estate loans. Loan distribution should be consistent with applicant’s business plan and likely demand in the PSA, as well as in conformity with supervisory guidelines for risk diversification.

Examine earnings projections, making certain estimates of expenses are reasonable and consistent with projected growth and prevailing averages in existing banks. Check projected interest expense and yields on loans and investments. Projected rates should be reasonably consistent with those generally prevailing in the industry at the time the application is filed. Applicant should be asked to explain and support significant deviations, if not already satisfactorily accounted for in the business plan.

Compare salary and employee benefit breakdowns from the application to salary expenses in projections for consistency, and determine that salaries are realistic in light of current market conditions and the bank’s needs as determined by the business plan. Check to see that the number and expertise of employees scheduled will provide for an adequate staff. Estimated employee benefits should be commensurate with those typical of banks in the PSA, usually at least 20% to 25% of gross annual salary expense.

Office of the Commissioner of Banks; Policy Manual: Applications to establish banks

Examine draft Articles of Incorporation, making certain that powers conveyed by the draft articles of incorporation are consistent with those provided by Chapter 53 of the North Carolina General Statutes, especially *N.C.G.S. 53-43, et seq.*, and by Chapter 55, where not in conflict with Chapter 53. Also check to see that the total amount of authorized stock is sufficient to allow for future stock sales without amending the Articles of Incorporation.

Where plans to offer qualified incentive stock option plans to officers and employees, or nonqualified stock option plans for directors, are disclosed, determine that such plans are consistent with State law and the FDIC Statement of Policy on Applications for Deposit Insurance.

Examine Financial and Biographical Information forms. Make certain that supporting schedules on pages 2 provide necessary detail and balance to Page 1 balance sheet totals. Where a substantial portion (10% or more of total assets) of an individual's net worth consists of stock or investment in closely held corporations or partnership equity, current financial data, i.e., balance sheet and profit and loss statements, should be filed with the IBFR form to support the individual's valuation of the investment.

Where financial information reflects property held jointly with spouse, both the filing individual and the spouse must sign the form. Married individuals choosing to file independent statements where only their share of equity in jointly held property is shown must clearly indicate that on the form.

Forms should be reviewed to aid in assessing the extent to which each management official, director and, if applicable, principal shareholder, will contribute to the bank's sound management, financial solvency, and public image. A finding must be made that management, directors and shareholders of the proposed bank demonstrate such character, general fitness and responsibility as to command the confidence of the community in which the bank is to be located. Accordingly, it is important that management officials have a demonstrated record of success in banking or closely related endeavors, that directors be leaders in business and civic affairs in their community, and that the personal integrity of all key individuals connected with the proposal be beyond reproach. (*NCGS 53-4*)

(Commissioner/Applicant)

Schedule meeting with incorporators of proposed bank. Meeting will require attendance of chief executive officer and any other key senior management officials, all directors, and any subscribers to 5% or more of the minimum total shares pursuant to the initial stock offering. Meetings will be held at The Office

Office of the Commissioner of Banks; Policy Manual: Applications to establish banks

of Commissioner of Banks in Raleigh, or at a designated place in or near the proposed bank's market area, at the election of the Commissioner.

(Commissioner)

Conduct field investigation of application:

Field investigation usually begins with a meeting between an examiner from the Banking Commission and the chief executive officer, directors and principal shareholders of the proposed bank; most often attended by the Commissioner or Chief Deputy Commissioner. To avoid duplication of efforts and foster close communication, every reasonable effort should be made to conduct this meeting, as well as field due diligence, jointly with the appropriate Federal supervisory authority, usually the FDIC. The meeting is intended to enable examiners to further their assessment of the proposed bank's management and to explain the nature of the relationship between chartering and insuring supervisory authorities and bank management and directors in a highly regulated industry.

The meeting with organizers is an extremely important part of the application process, as it is a matter of first impressions that should be used to lay the groundwork for future relations between the supervisory authorities and the Board of Directors and senior management of the proposed bank. These meetings will generally take between two and two-and-a-half hours to conduct, and may be held at a facility arranged by the applicants in the community in which the bank is to be located, or, at the option of the Commissioner, may be held at the Commissioner's office in Raleigh. At a minimum, the meeting will address:

- a. Brief introductions of all attendees. Directors should each identify themselves and speak briefly about where they live, what they do for a living, and why they think they are part of the proposed board.
- b. A brief overview of the proper relationship between the board of directors and State and federal supervisory authorities, including a discussion of common goals and objectives, and the need to maintain clear, open lines of communication.
- c. Regulatory expectations of bank directors (character, integrity, duty of loyalty, building business for the bank, *etc.*);
- d. Introduction and encouragement to attend directors' college;
- e. Responsibilities and liabilities of directors;

Office of the Commissioner of Banks; Policy Manual: Applications to establish banks

- f. Explanation of regulatory involvement with bank, from the application stage through opening, and ongoing examination and reporting functions;
- g. Discussion of the need for absolute confidentiality of information accessed by virtue of insider relationships with bank;
- h. Explanation of requirements and expectations regarding directors' financial relationships with the bank, particularly Regulation O;
- i. Corporate governance matters, including discussion about the distinction between "directing" and "micromanagement";
- j. Discussion of current issues, both regulatory and economic, confronting the industry;
- k. Discussion of problems that can lead to bank failures;
- l. Brief presentation by FDIC consumer compliance examiner regarding CRA and other consumer compliance matters;
- m. Details regarding the remaining charter and deposit insurance process, hearing before the Banking Commission, and pre-opening visitation; and
- n. Question and answer session. The meeting should not conclude until it is clear directors have no further questions.

Following the group presentation, the examiner meets privately for confidential **interviews with each director**, key management official, and principal shareholder. Interviews are conducted by the State examiner(s) conducting the due diligence, and the appropriate federal examiner(s), if due diligence is jointly done. The purpose of these interviews is to develop further information about the character, ability, experience, reputation, and motivation of each of the proponents of the new bank, to obtain their candid opinions regarding one another and their ability to work as a cohesive, purposeful team, to gain better understanding of the proposal itself, and to determine why the incorporators feel the community needs and will support a new bank.

Upon completion of the individual interviews, the examiner may meet privately with the chief executive officer, if necessary, to discuss the application, obtaining clarification, amplification, additional information or correction as needed. Following this meeting, the examiner may tour the proposed bank's PSA, usually

Office of the Commissioner of Banks; Policy Manual: Applications to establish banks

accompanied and guided by the chief executive officer, to become more familiar with economic and demographic characteristics and trends, the bank site and its relationship to traffic patterns and the PSA, and the potential of the community's infrastructure to attract and sustain economic growth. Conducting this tour with the chief executive officer may afford the examiner an opportunity, through questioning and observation, to further assess the CEO's familiarity with the proposed bank's market.

Following the PSA tour, the examiner conducts an independent investigation in the community. However, to facilitate scheduling needs, this part of the due diligence may be conducted in advance of the meeting with applicant's board of directors. This field work generally consists of confidential interviews with chief executive officers, city executives, or other senior management officials of banks and thrifts operating in the proposed bank's PSA. Assurance is given that there will be no attribution of comments made during these interviews, and that the content of discussions will be held in strictest confidence.

Banker interviews should begin with some brief questioning to determine how long the banker has served in the market, and in his or her present capacity, or with other banks in the same market. This questioning is intended to establish the bankers' likely depth and breadth of knowledge about the community and proponents of the new bank.

The examiner will elicit the bankers' thoughts and comments about the economic conditions prevalent in the market, the nature and extent of competition, the likelihood of success for a new bank, and the possible impact establishment of that bank might have on existing banks in the market.

The name of each key management official, director, and principal shareholder, will be given to the interviewee, and candid comments regarding each obtained. The level of the interviewee's knowledge of each individual should be ascertained; i.e., does the banker know the individual from prior business relationships, social interaction, current banking relationships, or by reputation only. The length of time the banker has resided in the community and served in his or her present capacity should also be determined, and his or her comments weighed accordingly. The examiner's evaluation of comments made with respect to each new bank proponent should be tempered by an understanding of the relationship, if any, the interviewee has or has had with each individual, and the level of knowledge the interviewee holds. Objective, factual information is clearly most reliable and credible. For example, interviewees should be asked if each proponent has or has had an account relationship with their financial institution.

Office of the Commissioner of Banks; Policy Manual: Applications to establish banks

If so, the examiner should determine how the account was or is being handled.

To facilitate the discussions, the examiner may reveal to the banker only those facts and information presented in the public section of the application, or known to be public knowledge by virtue of press coverage or other disclosure.

Where derogatory comments are heard, it is important to seek corroborating information, looking for a consensus of opinion regarding an individual, rather than an isolated adverse comment. Should a recurring pattern of adverse comments regarding a proponent of the new bank emerge, and depending upon the nature of these comments, the examiner may elect either to confront the individual with the information, without disclosing its specific source, and offer a chance for rebuttal, or to confront the chief executive officer or chairman of the board with the information. Such information will be reported to Commissioner of Banks.

Where it appears derogatory information regarding a key management official, director, or principal shareholder of the proposed bank is serious and not readily controvertible, removal of the individual from any association with the proposed bank may be appropriate.

(Commissioner)

Place application on the agenda for hearing before the Banking Commission upon completion of processing of the application, including field due diligence, and a determination that the applicant has sold, or will be certain to have sold, at least 50% of its minimum capital requirement prior to the scheduled meeting.

(Commissioner)

Report to Banking Commission:

Upon completion of the field investigation, the examiner will complete drafting of a Report of the Commissioner of Banks to the Banking Commission with respect to the application (*4 NCAC 3C .0103*). This report summarizes the findings of the Commissioner's examination of the application and presents his decision for approval or disapproval, with any recommended conditions or contingencies for approval.

(Commissioner)

Notice of public hearing of the application before the Banking Commission is published at least 10 days in advance of the hearing in a newspaper of general circulation in the community or county where the bank is proposed to be located.

Office of the Commissioner of Banks; Policy Manual: Applications to establish banks

The Commissioner's Report of Examination into the application, together with the public section of the application, feasibility study, offering circular and draft Articles of Incorporation, are incorporated in the Banking Commission Agenda and sent to each member of the Banking Commission for study in advance of the scheduled hearing.

(Applicant/Commission/Commissioner)

Hearing of application before the Banking Commission:

The Commission Agenda determines at which point in the proceedings the application will be heard. Where more than one bank application is to be heard at a meeting of the Commission, order of hearing is normally done in filing date sequence.

When recognized by the Chairman of the Commission (State Treasurer is ex officio Chairman), the applicant's spokesperson presents and summarizes the proposal. Applicant may have several individuals speak on behalf of the proposed bank, including legal counsel, proposed officers or directors, community leaders, economic consultants, or others, provided that each speaker will be required to present testimony under oath, and may be called upon by members of the Commission to answer questions.

At the conclusion of applicant's presentation, members of the Banking Commission may ask questions of those speaking on behalf of the proposed bank, and may discuss pertinent issues among themselves. Matters of a confidential nature may be discussed in "Executive Session," from which the applicants and the public are excluded. The use of executive session is limited by law to certain matters held to be of a confidential or sensitive nature.

When all questions and discussion are concluded, and upon motion by a member of the Commission, the Commission will vote on the application. A simple majority of voting members is required to carry the motion. By law (*NCGS 53-4*), they are empowered to approve, modify, or disapprove the decision made by the Commissioner with respect to the application. Their decision, however, must be based upon the same statutory criteria as was the Commissioner's (*NCGS 53-92.1*).

The decision of the Banking Commission is final unless appealed to Superior Court by a party to the action within 20 days of the Commission's action (*NCGS 53-92*). The proposed bank must open for business within one year from the date of the Commission's final approval, unless this period is extended for cause by the Commissioner of Banks.

Office of the Commissioner of Banks; Policy Manual: Applications to establish banks

(Commissioner)

Applicant is formally notified in writing of the Commission's action, and furnished instructions regarding the remainder of the chartering process. (**Exhibit 7**). These requirements are largely enumerated in *NCGS 53-5* through *53-8*.

At this time, the Chief Examiner who will be responsible for supervision of the new bank is provided a copy of the Commissioner's order by which the bank is approved, and any unusual conditions of approval or aspects of the proposed bank are discussed by the Director of Applications with the Chief Examiner.

(Applicant)

Sale of Stock:

Complete stock offering, if not already completed. The stock offering may be initiated before or after the application is filed, or at any time while it is being processed, although it is not prudent to begin sales until after preliminary consultation with the Commissioner of Banks. As sales of the bank's stock in the community to be served by the bank clearly demonstrates community support for the proposed bank, it is generally desirable to have sold a large portion of the required capital prior to hearing of the application before the Commission. While the percentage of the required minimum stock that must be sold prior to appearing before the Banking Commission is at the discretion of the Commissioner, a general rule is that at least 50% must first be subscribed and verified.

It is also generally desirable, though not required, that the proposed bank's stock be as widely distributed in the community as possible, since the shareholders of the bank have a vested interest in doing business with the bank. Moreover, in the case of community banks whose stock is sold by the organizing directors and management on a best-efforts basis, shareholders' expectations in purchasing the stock may be shaped by the organizers, and will likely tend to differ from those of the speculative investor purchasing stock primarily for short-term return on investment in the form of dividends or lucrative buy-outs.

Distribution of equity should be determined in part by the business plan of each bank. As previously discussed, it is a good idea to seek broad distribution of stock in the market in which a traditional community bank is to operate. However, a "business bank," one where the principal focus is on commercial lending, with little consumer or retail emphasis, may do well with more limited stock ownership. There is no limit in North Carolina Banking Law on the percentage ownership any one individual may hold in a bank's stock, although the implications of controlling interest, and the character, reputation and intent of

Office of the Commissioner of Banks; Policy Manual: Applications to establish banks

those holding or intending to hold controlling interest in a new bank are a legitimate concern of the Commissioner.

Most initial stock offerings in North Carolina State Banks have been conducted by management and organizing directors of the bank, as was until fairly recently required by law. This method is cost-effective and offers the added advantage of clearly demonstrating the confidence the public has in the ability and integrity of the organizers of the bank. However, an organizing bank may retain the services of a registered securities broker to assist in the sale of new bank stock, in exchange for commission or fees. (NCGS 53-6) Any such arrangement must be discussed with and approved by the Commissioner of Banks before finalizing a contract. Excessive payment of fees and commissions for consultants and other professional assistance in organizing a new bank may reflect adversely on the quality of management.

(Applicant)

Call of Stock Subscribers:

At any time after the minimum required amount of capital has been described, stock subscriptions may be “called,” subject to satisfaction of the conditions of escrow set forth in the offering circular and escrow agreement. Only cash may be accepted in payment of the bank’s capital stock. (NCGS 53-6, 53-7). Once the initial call has been made, escrow is broken and funds are invested in high-quality short-term securities or deposited in approved depository institutions. Funds may not be loaned at this time, as this is considered a banking activity, and as such is prohibited by NCGS 53-9. Organizational expenses **must continue to be paid from the separate organizational expense fund** established in accordance with 4 NCAC 3C .0110.

It is important to note that, if permitted by the terms of the proposed bank’s offering circular, unsold shares remaining in the initial offering may continue to be sold after the call, and even after opening of the bank, until all shares of the initial offering have been subscribed.

(Applicant)

Filing of Articles of Incorporation:

At this point the organizing bank may file its Articles of Incorporation with the Secretary of State. Filing requires a letter of certification from the Commissioner of Banks, which will be furnished upon request, satisfaction of all requirements, payment of a filing fee and organization tax, and a certified copy of the list of shareholders.

Office of the Commissioner of Banks; Policy Manual: Applications to establish banks

Timing of the filing of Articles of Incorporation is an important consideration, since the bank has six months in which to open for business after filing, unless for good cause the Commissioner of Banks extends this period. (NCGS 53-5)

(Applicant)

Opening for Business: (NCGS 53-6, 53-7, 53-8)

When all organizational requirements and arrangements have been made, and at least 45 days before the planned opening of the bank, Applicant is to furnish the Commissioner of Banks the following:

- a. Certified statement under oath by the president and cashier of the bank that the capital stock of the bank has been fully paid, in cash, indicating the number of shares, total amount of capital and surplus paid in.
- b. Statement under oath by the president and cashier containing the names of all directors and officers of the bank, with the date of their election or appointment, term of office, residence and post office address of each, amount of the bank's stock each owns, and the amount of money paid for the stock.
- c. Such other information and materials as are enumerated in the standard pre-opening letter from the Commissioner of Banks.
- d. Request that a preopening visitation be performed. The preopening visitation, typically conducted by one experienced examiner familiar with new bank chartering and opening requirements, is conducted using the "Examiner's Guideline for Conducting a Pre-Opening Visitation."
(Exhibit 8). A copy of this checklist is provided to the chief executive officer of the proposed new bank with the letter notification of approval of the bank.

(Commissioner)

Authorization to begin business: NCGS 53-8, 4 NCAC 3C .0107.

Upon receipt of the information and materials described above, the Commissioner performs a final examination, known as to determine that all requirements to commence the business of banking have been satisfied, including the granting of Federal deposit insurance. Upon making these findings, a "Bank Certificate" is issued by the Commissioner, authorizing the proposed bank to commence business as of a specified date.

Office of the Commissioner of Banks; Policy Manual: Applications to establish banks

(Applicant)

Close-out of organizational expenses: 4 NCAC 3C .0110.

Upon opening the bank, any unexpended portion of the organizational expense fund is to be transferred to the bank's permanent surplus.

(Applicant)

Provide notice of the date and time of opening for business.