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So, do you *still* want to be a bank in 2024?

September 2024

Center *for*
Regulatory Strategy
US

Executive summary

Entering the banking system

As the banking industry continues to consolidate, the distinct advantages of banks (e.g., access to payments systems, insured deposits, ability to issue credit and debit cards, and interstate lending) make bank charters an invaluable asset. The key considerations (see figure 1) for new entrants looking for a banking charter also remain the same.

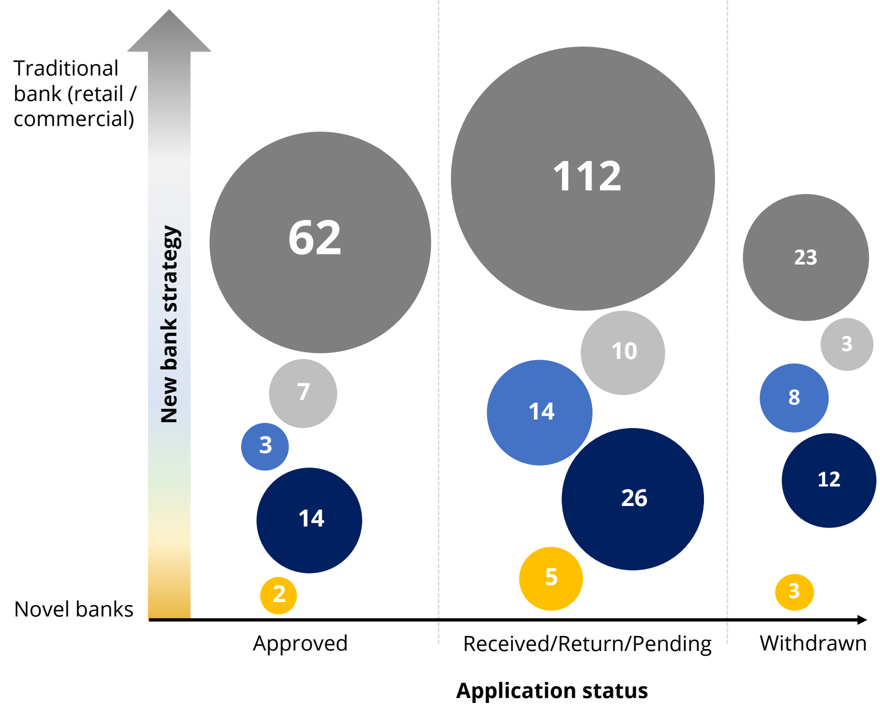
Figure 1: Some questions to ask

1. Does our current business model involve a strategic dependency on a bank?
2. Is access to low-cost, insured deposits critical to our ability to grow profitably going forward?
3. Would a stable funding base of insured deposits and access to the discount window materially improve our ability to weather times of stress?
4. Is direct access to the payment system important to our profitability and competitive position?
5. Is the ability to operate across state lines in a consistent manner critical to our ability to scale profitably in the future?
6. Can we still thrive in the future if our competitors are able to achieve profit, scale rapidly, and achieve certain regulatory advantages by entering the banking system?
7. Would more traditional banking deposit and lending products complement our set of existing products and services?

As the political landscape unfolds through 2024, it is prudent to consider the potential implications of election outcomes on federal banking agencies, senior personnel appointments, and considerations regarding policy. For instance, a change in leadership at the Federal Deposit Insurance Corporation (FDIC) could potentially open approval pathways for industrial banks and industrial loan companies (ILCs). Similarly, a new Comptroller of the Currency could potentially lead to an uptick in permitted national bank stablecoin and digital asset activity.

The stakes are high. Companies are making varying charter and licensing moves depending on business objectives and needs (e.g., Federal Reserve Bank payments system access, FDIC deposit insurance, broader lending capabilities). Being nimble, having the right people and the right business model in place, and determining the right time to unlock a charter or license asset may be essential for a company's strategic objectives and growth prospects in the United States.

The Landscape:
Figure 2: US banking charter application status by applicant type (2018–2024)[1]



Key:
Retail/Commercial · Non-depository trusts* · ILC · Digital Bank and Fintech · Digital Assets

*All non-depository trusts are national charters

Since 2018, 88 new FDIC-insured banking charter[2] applications have been approved: 78% of which were community or commercial banks, and 22% were institutions that have more novel business strategies (figure 2). In 2018, 17 applications were approved; in 2019, 10 applications were approved. Shortly after a relatively high-water mark of 19 FDIC and OCC approved insured depository applications in 2020, the number of approvals for new banks dropped to 13 in 2021, 15 in 2022, eight in 2023, and three in the first half of 2024.[3]

As reflected in the low approval numbers and rates, obtaining a new banking charter has become increasingly challenging in recent years due to lower approval rates, extended timelines, and heightened scrutiny from regulators. The result has been a decrease in the number of applications being received by the federal agencies. Notable changes in the past five years that have driven this change include:

- A philosophical shift in leadership positions within federal banking agencies.
- Several significant and well-publicized banking failures in 2023.[4]
- Increased banking agency enforcement actions, including against large banks and banking-as-a-service (BaaS) banks.
- Fundamental shifts in what needs to be demonstrated to enable charter approval (e.g., franchise value).
- Agency focus on a broad range of proposed rule changes, including proposals such as Basel III Endgame, resolution planning, brokered deposits, mergers and acquisitions (M&A), and industrial loan companies (ILCs)—many of which have been met with significant opposition and have distracted, and drained, agency resources.[5]

These changes, in addition to other factors that we will discuss in this updated point of view, have created barriers to entry for new applicants, with some affected more than others; for example, more novel or non-traditional banking applications may be disfavored and face greater headwinds. While some firms are rethinking their need for a bank charter due to the current lengthy application process and an anticipated "higher bar" for eligibility, other firms are continuing down this journey to realize the potential benefits. Applicants willing to adapt to different regulatory and political cycles over longer time horizons are likely to be rewarded.

There have been some lessons learned since our last update in 2018,[6] which we review below, together with related considerations.

The route to banking matters

After defining why you are pursuing a banking license and answering the fundamental questions in figure 1, you should determine the optimal path for your way forward. The chosen path can depend on factors including where you are located and what you want to do; however, there are also political and regulatory considerations to weigh (e.g., license versus charter; state versus federal bank), ease of approval, and other dynamics that may influence your decision (figure 4).

Figure 3: Banking perimeter and charter types available

Figure 4 presents a high-level overview of the products that can be offered with these different charter options.

Figure 4: Products offered with the charters[7]

This is not intended to be a complete and exhaustive legal analysis of permissibility, but a directional view of product eligibility

	Saving deposits	Checking account	Loans	Payments	Digital assets	OTC derivatives	Card issuance	Custody of assets
National bank/state bank charters National banks are **chartered and supervised by OCC (primary) and FDIC (secondary)** and are subject to federal but not state banking laws regarding their permitted "banking" activities. State banking institutions are **chartered and supervised by their home state regulator and FDIC or FRB (if a "member")** and generally have "parity" provisions that allow them to engage in any activity permitted for national banks. The holding company of both national banks and state banks **must register with FRB as a BHC** and be subject to consolidated supervision and regulation.								
Branch (foreign branch) federal or state licenses **Federal branch is licensed and supervised by OCC, and state branch is licensed by host state and supervised by state and FRB. Cannot obtain FDIC insurance.** Foreign banks' presence in the US can be through a branch, representative office, or agency. Licensing for US bank subsidiary of a foreign bank entity can be federal or state.		Not FDIC insured; subject to limitations						
National or state chartered trust company **Trusts companies can be chartered and supervised by state regulators or OCC.** National and state trust companies exercise only trust powers and do not accept FDIC-insured deposits. *(See row 1-- FDIC-insured banks may also exercise custody and trust powers. This row is specific to limited purpose trust companies that do not have FDIC insurance.)*								
Special Purpose Depository Institution **Chartered and supervised by state regulators.** Uninsured state charted depository institutions may accept non-retail deposits subject to limitations. Federal Reserve account access determined on case-by-case basis.	May be permissible in some cases							May be permissible in some cases
Money transmitters **Licensed by state regulators.** State laws govern money transmitter activities by nonbanks and their license requirements. FinCEN also acts as a federal regulator for all money transmitters								
Finance/other entity **Licensed by state regulators.** State licenses required to engage in originating, servicing and collecting on lending activities. License depends on activity and regulations of state.								

Permissible activity

Our perspective

Before pursuing a bank charter, potential applicants looking to build, buy, or partner to enter the US banking system should keep in mind that within the past five years, there have seen substantial changes in the application process:[8]

1. **Novel business strategies facing challenges:** Nontraditional or novel business strategies are facing a particularly lengthy application processes and low approval rates.
2. **Evolution of approval factors:** The application "goalposts" have moved, and not in a direction favorable to applicants.

As reflected in figure 5, a number of banks with more novel business strategies are facing supervisory pressures, and the same is true for applicants with similar proposed business models. A recent speech by Acting OCC Comptroller Michael J. Hsu highlights what fintech applicants face:

"We don't chase. If a fintech wants a national bank charter, we welcome that and will review the application on its merits. Several fintechs have filed charter applications and received OCC approval. We will not, however, lower our standards, create a special regime, or take an overly expansive view of banking to entice new entrants or in the hope of bringing a particular activity into the bank regulatory perimeter."[9]

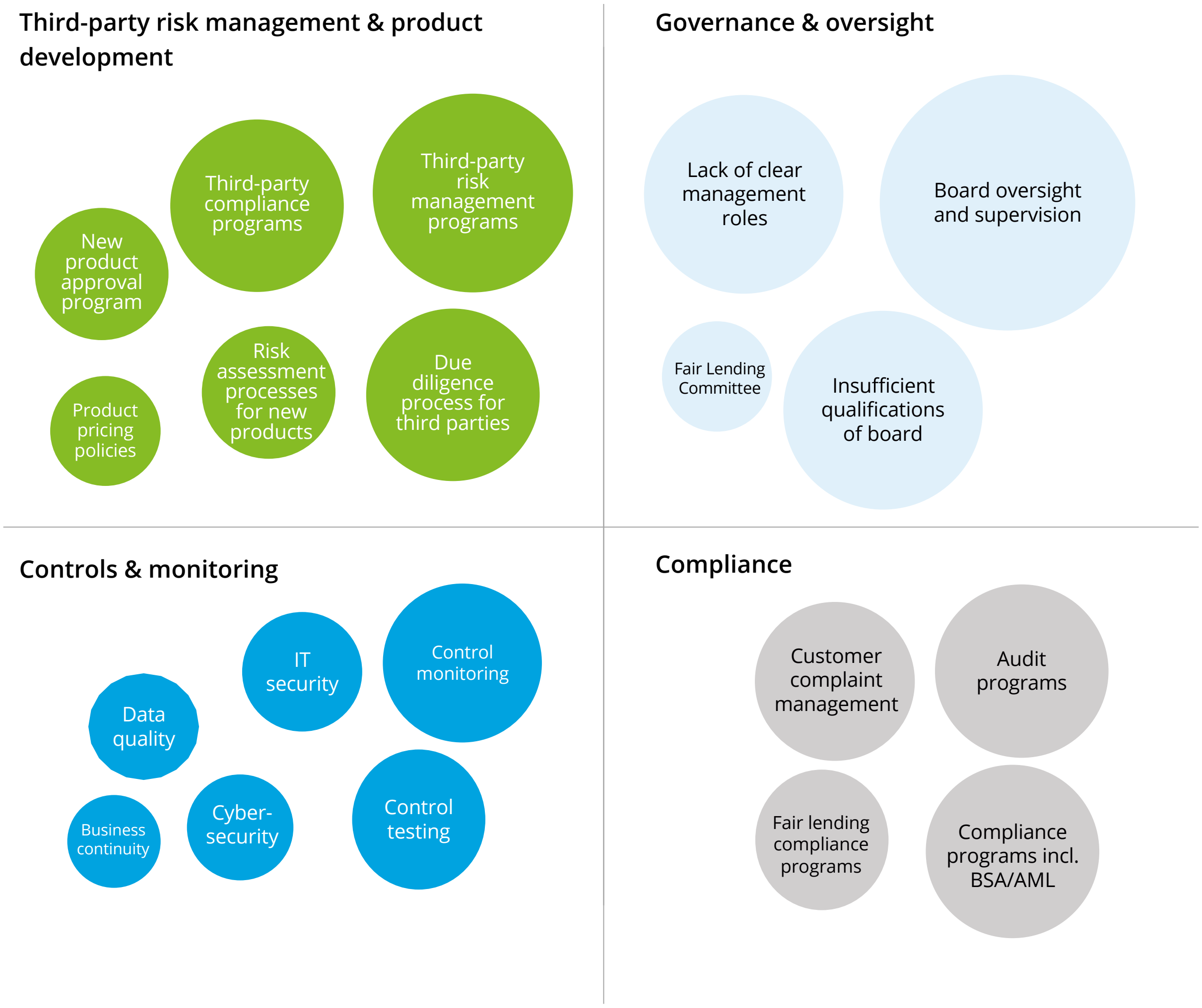
Strategies for entrance

For institutions considering a banking charter (e.g., FDIC-insured charter or trust charter), there are three strategies that an institution can execute upon to enter the banking system:

- Acquiring an existing bank,
- Partnering with a bank, or
- Developing banking capabilities in-house (i.e., de novo bank).

Partnering has become an increasingly challenging route, as the US banking regulators are closely scrutinizing BaaS arrangements, holding BaaS nonbank partners to standards of a similar manner to the sponsor bank, and holding the sponsor banks accountable when the partner's performance does not meet those standards.[10] This close scrutiny has resulted in various banking agency consent orders against BaaS partner banks on items including unsafe or unsound banking practices, governance and oversight, third-party risk management (TPRM), new product approval process, Bank Secrecy Act (BSA)/anti-money laundering (AML) and customer due diligence, IT control programs and IT risk management programs, and consumer protection failures (including deceptive acts and practices) as described in figure 5.

Figure 5: Regulatory feedback from consent orders includes deficiencies across common themes



Size of the bubble is proportionate to the number of consent orders topics that were highlighted in past years

Source: Deloitte analysis of public enforcement actions by Federal Reserve Board, FDIC, OCC, and NCUA from 2022 to May 2024[11]

The application process

When applying for a banking charter in the United States, it is critical to have certain "ingredients" gathered before you spend too much time and financial resources. These include a clear business model, the expertise needed to manage the operations, and the ability to define with clarity the required components of the business plan.

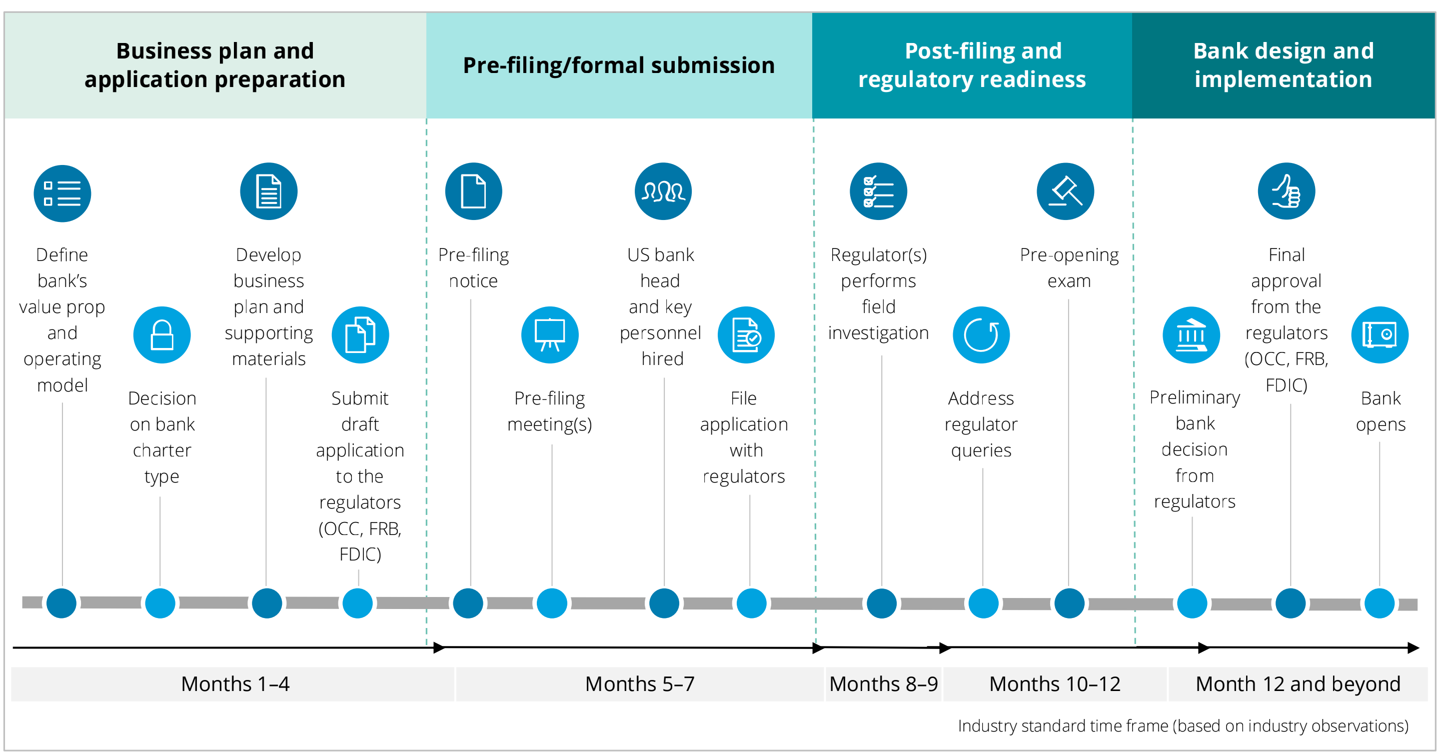
Regulators continue to prefer applicants engaging in pre-filing meetings and processes with the agencies; however, they have remained quite opaque on the business plan approval process.[12] Once the application is submitted, you can expect an examination-like process where the quality and credibility of the response matters. The level of scrutiny depends greatly on the charter type. Regulators have typically provided feedback and asked for more clarification on areas including the core business model and strategy, evidence of risk management and compliance capabilities (e.g., BSA/AML), TPRM oversight, clarity on profitability, independent governance structure, and the soundness of the pro forma assumptions. You should be prepared for a discussion on each domain area of the business plan and be ready to provide greater specificity where requested (and yes, you may receive multiple requests).

While the potential timeline and drivers for applications have evolved (figure 6), the foundational elements a firm needs to demonstrate have not changed, including:

- Strong risk management and governance.
- BSA/AML/sanctions and compliance capabilities.
- An operating model that is positioned to support the new entity.
- Financial history and condition.
- Capital adequacy.
- Future earnings prospects.
- General character and fitness of the management, convenience, and needs of the community to be served.
- A clear vision regarding the target state, clients, and products.

The application process and timeline can vary ***tremendously*** depending on your upfront analysis (e.g., value proposition, business strategy, and operating model); the level of engagement from stakeholders and senior leaders; the timing of regulatory responses; and the additional requests from the regulators.

Figure 6: Illustrative application process and timeline



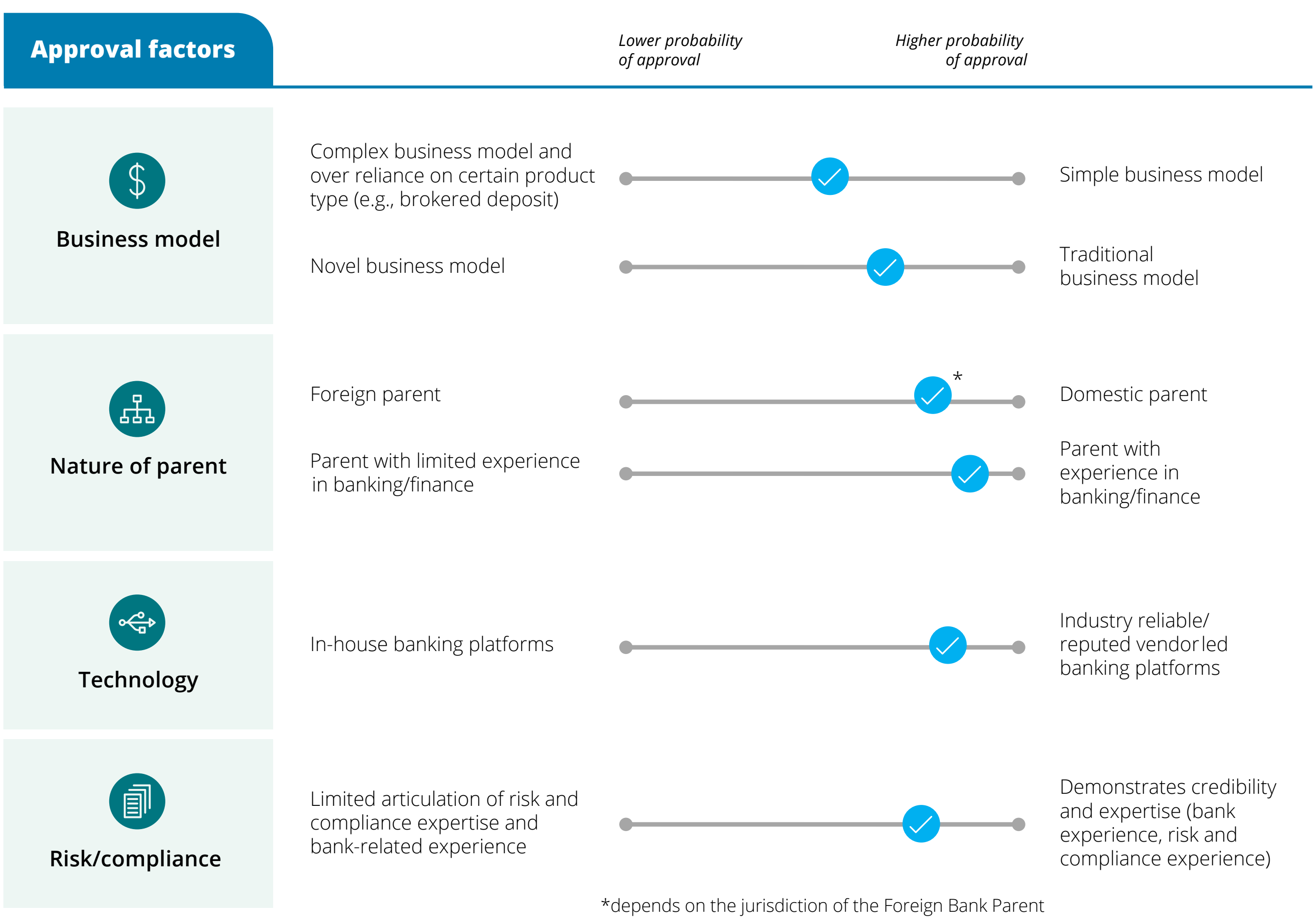
Factors affecting the approval process

The success of a banking application is still about demonstrating that the agency's statutory approval requirements are met and that the business plan and application components are addressed. That said, there are certain implicit expectations that have emerged based on lessons learned in our experience assisting a broad range of client and application types. Today, it is clear that not all charter options are created equal, with certain choices in business strategy receiving more favorable regulatory feedback than others.

Factors influencing approval have evolved and are being affected by (i) the nature of the parent entity (be it financial, technological, or consumer-oriented) and (ii) the legal entity structure that determines control. Liquidity management, BSA/AML, and TPRM are emerging as pivotal elements in the approval process, given recent learnings from technology service provider examinations, regulatory changes, and recent enforcement actions. Both the parent firm's ability to support a bank under stress and reliance on the parent firm (or other third party) for business and support services to the point it affects the bank's ability to stand on its own continue to increase in importance as success factors.

In our experience, the factors in figure 7—some of which are more within the control of the applicant than others—can be trade-offs

Figure 7: Approval factors and considerations for probability of approval



Source: Deloitte analysis of US banking charter applications approved as of July 2024

While certain aspects of the process are changing, some foundational statutory factors remain the same including:

- **Robust management team:** Assemble bank management that has deep US banking experience overseen by a proposed board (where required) with a diverse and relevant set of competencies. The credibility of the initial key roles (and whether those roles have actually been filed) at time of submission can change the speed and trajectory of an application. Not all roles are created equal; the bank or branch president, the chief risk officer (CRO), the chief financial officer (CFO), and—in some cases—the BSA/AML officer become essential starting points.
- **Sufficient capital, funding, and liquidity measures:** Ensure the capital structure and levels aligns with the complexity and risk level of the business model. Funding sources and their potential volatility should be considered. Deposit structures that have no link to the bank, such as brokered deposits (even where fully FDIC-insured), can be viewed as unfavorable given they provide limited franchise value to the bank. Capital and liquidity levels should be well above regulatory minimums and risk appetite limits after significant stress testing conducted in the pro forma.
- **Embedding safety and soundness capabilities within the applicant's business model:** Focus on demonstrating that you have assessed your risk management and compliance capabilities, including a specific focus on regulatory focus areas such as interest rate risk (e.g., hedges if high-quality liquid assets) and TPRM (e.g., robust reliance on technology service providers), and have policies and processes in place to systematically address emerging risks and issues.
- **Sound business model:** Have a clear, executable value proposition and business plan that addresses both new and foundational factors. This may include providing additional details beyond the written requirements (e.g., developing policies and procedures) during the initial application filing. Focus on a product and business model with potential synergies to the existing ecosystem for the initial business plan. Focus on the overall marketing and advertising strategy, including marketing channels and mediums for new products, and reliance on data insights to showcase the assumptions are realistic. The greater degree deposit and loan customers are linked, the more likely the business model will be viewed favorably. Ensure your product set includes sufficient diversification to mitigate concentration risk.
- **Demonstrated profitability:** Demonstrate profitability and the ability to maintain it through economic cycles, especially for business models that include untested or newer activities, such as digital assets banking or BaaS.
- **Parent industry:** If the proposed parent firm's industry is not in financial services, understand there may be lower regulatory appetite, potential limitations to the entity or license type, and higher hurdles to approve applications. The ability to demonstrate a history of profitability through economic cycles by the parent may increase chances of the parent being viewed favorably. A larger parent relative to the bank size is generally viewed positively.
- **Parent supervisory regime:** If the parent's supervisory regime and/or geographical location presents greater risk to the US financial market (e.g., AML risk), there may also be lower regulatory appetite to approve.
- **Credibility of pro forma financials:** Demonstrate reasonably strong prospect for success; realistic and comparable profitability and returns; and an understanding of the challenges, including downside risks; and show that the strategic vision is grounded in reasonable assumptions.

Payments system access

Many bank applications are intended to eventually facilitate access to the US payments system. Institutions that intend to obtain access to Federal Reserve Bank accounts and financial services are evaluated on a three-tiered review framework:[13]

- Tier 1 consists of eligible institutions that are federally insured. These institutions would generally be subject to a less intensive and more streamlined review.
- Tier 2 consists of eligible institutions that are not federally insured but (i) are subject (by statute) to prudential supervision by a federal banking agency; and (ii) any holding company of which would be subject to Federal Reserve Board oversight (by statute or by commitments). These institutions would generally receive an intermediate level of review.
- Tier 3 consists of eligible institutions that are not federally insured and not subject to prudential supervision by a federal banking agency at the institution or holding company level. These institutions would generally receive the strictest level of review.

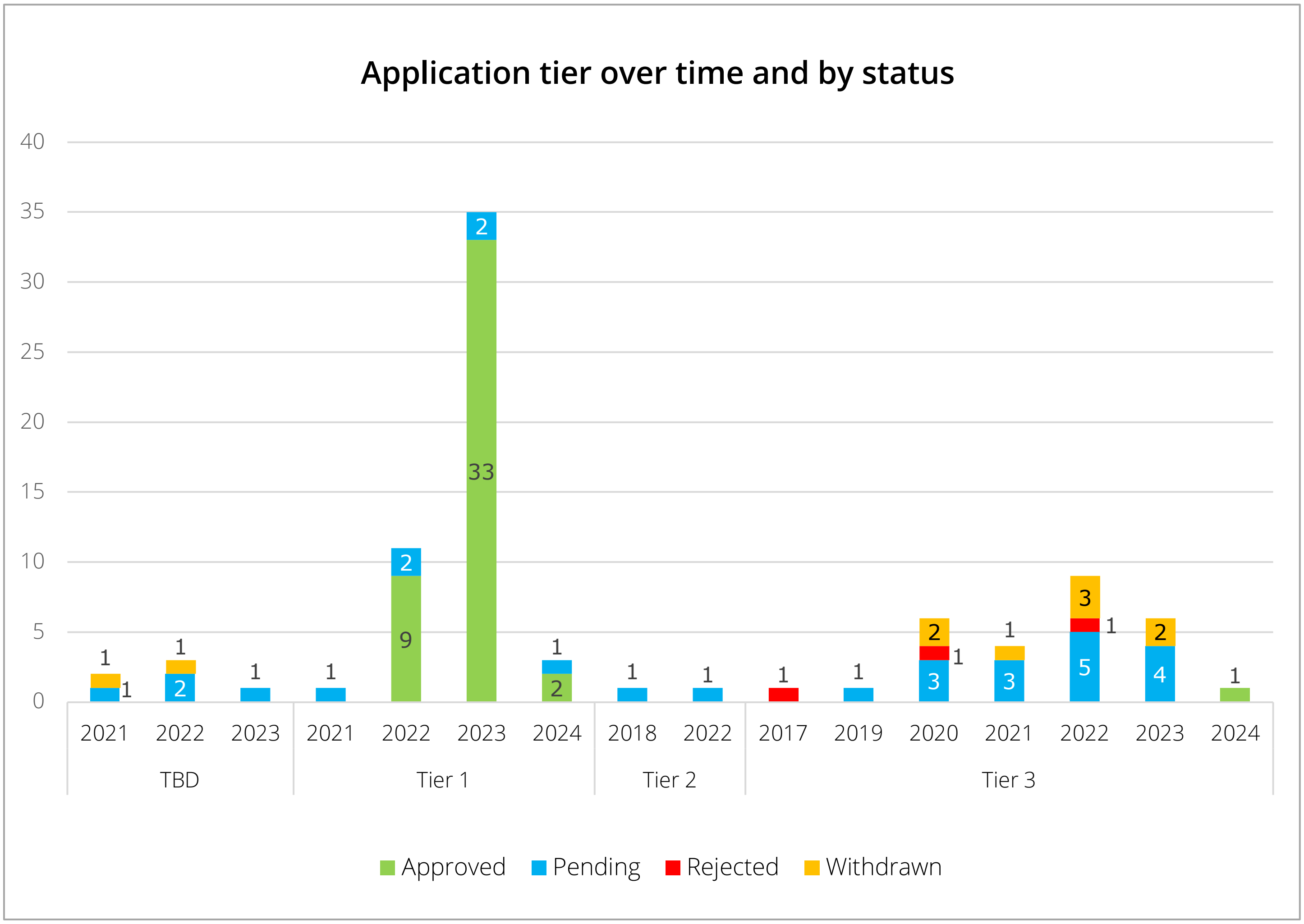
Many Tier 3 applicants have taken different routes to try to obtain payments system access. Two notable paths:

1. Wyoming SPDI Charters[14] – The Wyoming Special Purpose Depository Institution (SPDI) Charter is designed to allow institutions to provide traditional banking services, such as accepting deposits greater than FDIC insurance limits or facilitating wire transfers for digital assets (e.g., blockchain and cryptocurrencies). There are requirements in place to mitigate these higher risk activities, including minimum capital levels and restrictions against lending customer deposits.

2. Connecticut Uninsured State Charter[15] – The Connecticut Uninsured State Charter establishes a bank charter that does not accept retail deposits, as defined by state law, and for which federal deposit insurance is not required. There are requirements in place to mitigate the related risks, such as minimum capital levels. These banks cannot accept retail deposits and do not need to comply with community reinvestment laws.

As an example, Numisma Bank was granted a Connecticut de novo special purpose charter focused on bank note distribution. As a Tier 3 entity under the FRB account access guidelines, the bank was granted conditional approval of a Federal Reserve Bank master account (i.e., Federal Reserve Bank payments system access), giving the small bank access to the Federal Reserve's liquidity facilities.[16] This approval raises several questions, as one of the major reasons the FRB has denied other Tier 3 banks the status is they were state regulated and their deposits were not insured by the FDIC. Therefore, Numisma's conditional approval makes it an outlier in recent years. This move on the part of the FRB indicates that satisfying foundational approval factors is not enough—prospective banks have to demonstrate compliance with implicit expectations.

Figure 8: Application by tier over time and by status[17]



Implications for applicant

Given the time and effort it takes to work through some of the application process and how the process has evolved, the following types of work are required.

- **Strategy and option analysis:** Developing and articulating a business strategy and value proposition while facilitating the process to achieve alignment on the preferred licensing option.
- **Capability assessment:** Performing a detailed current-state assessment against risk management, compliance, and infrastructural requirements.
- **Operating model:** Defining what the target state will look like across management and the board, technology architecture, and core processes.
- **Business case:** Developing an end-to-end business case to support options analysis, including financial and qualitative analysis.
- **Business plan and application development:** Drafting the business plan and other supporting artifacts, including policies, frameworks, and the financial pro forma, aligned to the client's strategic objectives.
- **Application filing and execution:** Coordinating with external counsel on developing and filing the application to the regulators, and driving regulatory engagement strategy and pre-opening exam diagnostics.
- **Bank readiness and implementation:** Design, implementation, and integration of banking organization and capabilities in line with regulatory expectations.

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Endnotes

1. Federal Deposit Insurance Corporation (FDIC), "Bank Application Actions," June 14, 2024; Office of the Comptroller of the Currency (OCC), "Corporate Applications Search (CAS)," accessed July 10, 2024.
2. Includes FDIC-insured charters and trust charters (OCC and FDIC).
3. FDIC, "Bank Application Actions"; OCC, "Corporate Applications Search (CAS)."
4. FDIC, "Failed Bank List," last updated April 26, 2024.
5. Board of Governors of the Federal Reserve System (FRB), FDIC, and OCC, "Agencies request comment on proposed rules to strengthen capital requirements for large banks," press release, July 27, 2023; FDIC, "FDIC Board of Directors Approves Final Revised Rule to Strengthen Resolution Planning for Large Banks," press release, June 20, 2024; FDIC, "FDIC Board Approves Proposed Rule to Revise Brokered Deposit Regulations," press release, July 30, 2024; FDIC, "FDIC Seeks Public Comment on Proposed Revisions to its Statement of Policy on Bank Merger Transactions," press release, March 21, 2024; FDIC, "FDIC Board Approves Proposed Rule to Amend the Agency's Regulations Governing Parent Companies of Industrial Banks and Industrial Loan Companies," press release, July 30, 2024.
   - *See also* Deloitte, "US Basel III Endgame: Key changes, impacts and where to begin," August 2023; Deloitte, "FDIC approves final guidance to enhance resolution planning at large banks," August 2024; Deloitte, "FDIC issues proposal on brokered deposit restrictions," August 2024; Deloitte, "FDIC proposes agency guidance requiring more scrutiny on bank mergers," March 2024; Deloitte, "FDIC proposes rules limiting integrated business models of IBs and their parent companies," August 2024.
6. Deloitte, "So, you want to be a bank?," November 2018.
7. This table provides a directional view of key underlying federal and state authorities. It is not intended to be a legal analysis.
   - Guidance regarding national bank powers can be found at https://www.occ.gov/publications-and-resources/publications/banker-education/files/pub-activities-permissible-for-nat-banks-fed-saving.pdf and https://occ.gov/news-issuances/news-releases/2020/nr-occ-2020-158.html.
   - Guidance regarding state-chartered banks, trust companies, licensed money service businesses, and licensed lenders is not uniform and should be reviewed on a state-by-state basis. Entities should review their specific situations—which may differ based on the product, client, and type of available legal entities (bank and nonbank)—with counsel.
8. FDIC, "Bank Application Actions"; OCC, "Corporate Applications Search (CAS)"; Governor Michelle W. Bowman, "Banking Mergers and Acquisitions, and De Novo Bank Formation: Implications for the Future of the Banking System" speech at the Future of Banking event hosted by the Federal Reserve Bank of Kansas City, April 2, 2024.
9. Acting Comptroller of the Currency Michael J. Hsu, "Preventing the Next Great Blurring" speech at Vanderbilt University, February 21, 2024.
10. Ibid.
11. FRB, "Enforcement Actions," last updated July 28, 2023 FDIC, "FDIC Enforcement Decisions and Orders (ED&O)," accessed August 2024; OCC, "Enforcement Actions," accessed August 2024National Credit Union Administration (NCUA), "Administrative Orders," accessed August 2024.
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16. FRB, "Master Account and Services Database Existing Access," accessed July 10, 2024.
17. Ibid.

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