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Universal Charter Options: Providing a Competitive Advantage for State Financial Institutions

I. INTRODUCTION

The need for financial modernization has become accepted among banking industry members and related market participants due to the experiences of the last few decades.1 Increased competition from non-bank institutions in the 1970s, relaxed lending practices of the 1980s, and the mergers of the 1990s forced bankers and legislators to recognize the market's demand for change.2 Congress began addressing the cries for deregulation from the banking industry in 1980.3 Deregulation proceeded incrementally over the next two decades, including the passage of the Gramm-Leach-Bliley Act of 1999 (GLBA).4 Yet, some bankers, legislators, and scholars argue that deregulation does not address all the goals of financial modernization.5 This assertion suggests that while deregulation is a necessary part of financial modernization, more affirmative steps must be taken in order to achieve a level of financial modernization that corresponds to market demands.6 One such affirmative approach is the universal charter.7

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6. See id.; see also Note, The New American Universal Bank, 110 HARV. L. REV. 1310 (1997) (describing debates within the banking industry regarding the bank holding company (BHC) structure and the effects of artificial line-drawing between the function of banks and other financial services institutions, such as economic inefficiency). See generally Shaw & Rowlett, supra note 2 (comparing the American
This Note presents a bank charter option that offers depository institutions broader powers than they receive under traditional charters. The Note also considers how this new brand of charter, called a universal charter, advances the goal of regulatory reform. Part II of this Note provides a backdrop for understanding the context in which financial modernization is taking place. Part III discusses the traditional role of charters in the financial services industry with an emphasis on current changes. Part IV introduces the universal charter option, compares it with universal banking, and discusses examples of universal chartering systems in the United States. Part V considers the possibility of adopting a universal charter in North Carolina. Finally, the Note concludes that a universal charter is more than just an option; it is the future of organizing and regulating state-chartered depository institutions.

II. FINANCIAL MODERNIZATION

A. Changes in Financial Services

The U.S. financial services industry has changed significantly during the twentieth century. Despite the separation of commerce and banking in 1933, financial services have integrated across “geographical, functional, and sectoral” lines. However, the regulation of these services remains entrenched in banking system with systems abroad and arguing for elimination of the dual banking system, thereby enabling American banks to compete more effectively in the global economy).

7. See ANTHONY SAUNDERS & INGO WALTER, UNIVERSAL BANKING IN THE UNITED STATES: WHAT COULD WE GAIN? WHAT COULD WE LOSE? 74 (Oxford Univ. Press 1994). A “universal bank” permits a “high degree of integration” of commercial and investment activities. Id. The term, “universal charter” refers to the organizational documents under which a universal bank incorporates, or otherwise organizes, and receives its powers. See infra notes 78-154.

8. See infra notes 13-32 and accompanying text.

9. See infra notes 33-77 and accompanying text.

10. See infra notes 78-154 and accompanying text.

11. See infra notes 155-204 and accompanying text.

12. See infra notes 205-20 and accompanying text.


14. Id.
assumptions that have been disproved or that no longer apply. These industrial developments challenge the traditional regulatory framework and necessitate a new regulatory model that keeps pace with a changing marketplace. Financial modernization must, therefore, recognize the reality of the marketplace and modify the regulation of the financial services industry by reconciling this reality with the objectives of regulation.

B. Modernization in a Dual Banking System

Banking regulation in the United States is a complex and non-uniform system of overlapping regulation. Its structure derives from the existence of two competing sources of charters and regulation. In recent years, nationally chartered banks have received increasingly broad powers from the Office of the Comptroller of the Currency (OCC). As national charters gain advantages, the initial choice between state and national charters and the relative ease of converting a state charter to a national charter make improving the benefits of state charters critical. This expansion of permissible banking activities to include non-traditional activities challenged state legislatures to reevaluate their own banking codes.

The Conference of State Bank Supervisors (CSBS) considered the passage of GLBA an optimal time for state

15. See id. (suggesting modernization of bank regulation).
16. Id. at 798 (contending that the structure of the financial services industry is changing in such a way that requires regulatory adaptation).
17. See id. at 799-800.
19. Id. at 355.
20. See David Harrison, Despite Reform Worries, Federal Charter Dominates, AM. BANKER (June 1, 1999), at 1, 4 (noting that despite financial reform legislation the national bank charters have been the charter of choice among large banks and that more banks switch from state charters to "national charters than the other way around").
22. See Johnson, supra note 18, at 353.
The CSBS and the State Bankers Association crafted a comprehensive report that explained GLBA’s effect on state banking and proposed a state modernization initiative. The group released the report, describing GLBA as a “new beginning for the nation’s banking industry,” with a CSBS statement at the June 1999 annual meeting that, “it was crucial that states take charge of their own destiny, rather than wait for Congress to act.” According to the CSBS report, states have been the primary source of product and financial service innovation and have developed their own systems of functional regulation. The report asserted that GLBA would alter the competitive environment dramatically, giving states an incentive to modernize state banking laws so that state-chartered banks can provide the financial services their customers need.

The group agreed that the strength of the state banking system is its diversity and its ability to meet the specific needs of their customers. A “one size fits all” approach would undermine the state system’s competitive advantage. Therefore, the group offered guiding principles by which state bankers and legislators can evaluate their state banking laws and apply to state charter modernization. These affirmative steps, however, ultimately

24. Id.
25. Id. at 8 (quoting an excerpt from the CSBS report).
26. Id. (asserting that GLBA was made possible by the expansion of powers given by states to state-chartered institutions). GLBA adheres to functional regulation, as opposed to entity regulation. See infra notes 92, 148 and accompanying text.
27. CSBS supra note 23, at 8 (pointing out that, although GLBA addressed the activities of nationally chartered banks and BHCs and did not require changes in state banking laws, the Act interacts with state laws and provides “opportunities for the state system to remain on the cutting edge of modernization”).
28. Id.
30. Id. The CSBS identified four key questions for bankers and policymakers to ask of their state banking laws:

(1) Can financial institutions provide all the services they would like to offer their customers? (2) Can financial institutions serve their customers wherever their customers are? (3) Does the new financial structure encourage new providers of credit to enter the
depend on the evaluations states make of their own banking systems and what they determine as appropriate responses. A universal charter presents one strategy for modernizing the state charter by focusing on the expansion of banking powers and regulatory reform.

III. CHARTERS

A. Generally

Depository institutions are chartered rather than incorporated. Charters mainly fall into three categories: commercial banks, savings associations, and credit unions. Acquiring a charter for a depository institution involves a distinct process and subjects the institution to a considerable amount of supervision by the charter issuer. The type of charter offers a range of permissible activities that prospective organizers consider when seeking to charter a depository institution. The various charters also impose different initial capital requirements and other conditions for approval of the charter application.

Traditionally, each category of depository institutions falls under the supervision and examination of a regulator created

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31. Id. (considering that, from state to state, different services and products will be desirable or politically feasible).

32. Id. (describing the Maine universal charter law that "created a wholesale financial institution charter and granted all" commercial banks, savings banks, and thrifts a uniform range of powers as the best example of states developing and enacting modernization strategies); see infra note 86 and accompanying text.


35. Id.

36. Id.

37. Id.
specifically for that type of chartered institution. Therefore, within the banking system, regulation is administered by several entities. Typically, one of three state regulatory authorities and a primary federal regulator regulate state-chartered institutions. Such an arrangement for organizing, operating, and regulating state-chartered depository institutions imposes burdens and costs that disadvantage the state system.

B. Charters in a Dual Banking System

As a result of the dual banking system, organizers must also choose between a state and federal charter. Charter requirements of the various regulators may be different, according to whether state or federal laws apply. One distinction in requirements is that nationally chartered banks must be members of the Federal Reserve System, but state-chartered banks may join voluntarily. State and national charters may also differ in the

38. Id.
40. Id. at 125. Commercial banks, savings institutions, and credit unions are each regulated by a particular regulatory agency. Id. at 1. In the national system, the OCC, the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) are the state regulatory agency counterparts, respectively. Id. at 125; see Taylor, supra note 13, at 795.
41. See Broome & Markham, supra note 39, at 183.
42. See id. at 181-83 (describing the differences between charters as statutorily based and discussing the placement of chartering authorities in competition with respect to the bank chartering process).
scope of incidental non-banking powers.\textsuperscript{45} For example, nationally chartered banks generally may not conduct insurance activities, but state-banking statutes may permit such activity.\textsuperscript{46} These are significant factors when deciding whether a state or federal charter best allows organizers to accomplish their objectives and expectations.\textsuperscript{47}

C. Fading Competition for Charters

The choices among charters and between state and federal regulators imply that competition exists in the banking market for chartering.\textsuperscript{48} Organizers ultimately exercise business judgment in determining which type of charter and which primary regulator meet their goals.\textsuperscript{49} Therefore, a chartering authority competing for charter applications has an interest in offering a charter that maximizes the power of an institution to engage the market, while still ensuring safety and soundness.\textsuperscript{50} The ideal charter and regulator grant powers to depository institutions liberally and exercise discretion only to the extent that safety and soundness require.\textsuperscript{51}

\textsuperscript{45} 12 U.S.C. § 24(seventh) (2000). Traditional non-banking business activities permitted for national banks have been determined to be those considered incidental to the "business of banking." \textit{Id.}


\textsuperscript{47} See Malloy, \textit{supra} note 34.

\textsuperscript{48} See Kenneth E. Scott, The Dual Banking System: A Model of Competition in Regulation, 30 STAN. L. REV. 1, 12 (1977) (positing that the ability of banks to choose and to convert charters creates healthy competition among regulators).

\textsuperscript{49} See Malloy, \textit{supra} note 34.

\textsuperscript{50} See Butler & Macey, \textit{supra} note 33, at 677-79. The currently accepted competitive theory follows the corporate charter model of competition, which is aimed at maximizing profitability while maintaining a prudent business operation to ensure the longevity of profit making. \textit{See id.} However, federal preemption and uniformity may be more descriptive of the American banking system, thus undermining the theory of charter and regulatory competition. \textit{Id.} Competition has taken the form of anticompetitive entry restriction into the banking industry instead of the "regulatory forbearance" that a competitive environment would predict. \textit{Id.}; see also Helen A. Garten, Devolution and Deregulation: The Paradox of Financial Reform, 14 YALE L. & POL'Y REV. 65, 66-68 (1996) (discussing the "race to the bottom").

\textsuperscript{51} See Garten, \textit{supra} note 50, at 67.
Charters have traditionally provided the separation of financial services that distinguishes the banking industry. The calls of the marketplace, however, induced changes, such as the increased powers given to savings associations by the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA) and the Garn-St. Germain Depository Institutions Act of 1982 (Garn-St. Germain). These Acts permitted thrifts to offer transaction accounts and to expand their lending activities beyond home mortgage loans. The expansion of powers blurred the distinction among financial institutions and reflected the market pressure on institutions to offer broader financial services.

In addition to the blurring distinctions among charter types, the differences between state and federal charters have diminished considerably. The preemptive power of federal banking laws has undermined the competition between state and federal charters. The DIDMCA, which gave thrifts expanded powers, also made state banks subject to the reserve requirements imposed by the Federal Reserve System (Fed). That requirement eliminated the advantage of state non-members banks in maintaining lower

52. See Causey, supra note 33, at 1.


54. See BROOME & MARKHAM, supra note 39, at 106.

55. See Causey, supra note 33, at 3 (predicting that the nomenclature of financial services providers will disappear because consumers do not care what the charter calls the entity, rather consumers are concerned with what products and services are available and whether they are insured); Markham, supra note 2, at 240-45. Banks and savings associations suffered from regulatory restraints and disintermediation throughout the 1970s, which left these institutions unable to compete amongst each other and with non-bank institutions that held an advantage by not being subject to the scrutiny of bank regulators. Id.

56. See BROOME & MARKHAM, supra note 39, at 1, 181-83, 212.

57. See Butler & Macey, supra note 33, at 693-94.

58. See First Bank and Trust Co. v. Bd. of Governors of Fed. Reserve Sys., 605 F. Supp. 555, 558 (E.D. Ky. 1984) (reviewing the legislative history of the DIDMCA and finding that a principle purpose was to equalize reserve requirements between member banks and non-member banks due to “bank flight” from the Reserve System).
reserves. The Competitive Equality Banking Act of 1987 (CEBA) undercut competition further by applying sections 20 and 32 of the Glass-Steagall Act to state non-member banks. Although GLBA repealed those sections, the ability of federal banking laws to preempt state banking laws remains intact. For example, the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) limited the activities of state-chartered banks as principals to those permitted for nationally chartered banks.

Taken together, CEBA and FDICIA elucidate the predicament of banking institutions trying to maximize earning power by choosing the most permissive regulator. The choice between a state charter and national charter is no longer significantly determined by the powers that one charter grants over the other because the powers will generally be the same. The principle that the dual banking system depends on a meaningful choice between charters has induced state banking systems to look at modernizing their banking laws. Since the advantage of offering broader banking power has been undermined, their charters must offer something else to attract depository institutions. Many states have decided to offer an

59. Id.
61. See Banking Act of 1933, Ch. 89, § 20, 48 Stat. 188, repealed by Gramm-Leach-Bliley Act § 101. GLBA repealed sections 20 and 32 of the Banking Act of 1933. Id.
62. Federal Deposit Insurance Corporation Improvement Act, Pub. L. No. 102-242, 105 Stat. 2236. However, state-chartered banks may still engage in agency activities permitted by respective state laws, as well as obtain permission by the Federal Depository Insurance Corporation (FDIC) to exercise powers beyond those permissible to national banks if the FDIC deems the institutions well-capitalized and finds that the activity for which the bank applied does not threaten the federal deposit insurance fund. 12 U.S.C. § 1831a(a)(1) (2000).
63. See BROOME & MARKHAM, supra note 39, at 183. See generally Butler & Macey, supra note 33 (arguing against the theory of competition within the dual banking system and questioning the underlying premise of maintaining such a system).
64. See BROOME & MARKHAM, supra note 39, at 183.
65. See Johnson supra note 18, at 361.
66. See id. at 362 (discussing the role that the state banking system has played in the dual banking system by developing new services, innovating products, allowing
innovative form of competitive equality and regulatory simplification.\textsuperscript{67}

\textbf{D. Parity Statutes}

A parity statute is one method of accomplishing competitive equality with national banks.\textsuperscript{68} As the OCC granted nationally chartered banks more powers, a disparity between state-chartered banks and national banks occurred.\textsuperscript{69} The potential for a continually growing disparity in banking powers between state and national charters threatened the state system.\textsuperscript{70} States needed to develop the ability for state-chartered banks to remain competitive with the nationally chartered banks without the delay of the legislative process.\textsuperscript{71} Consequently, at least forty-seven states have passed statutes that provide for parity in order to compete with nationally chartered banks.\textsuperscript{72}

Generally, a parity statute is passed by state legislatures to offer competitive equality between state and federal charters, although they are not typically self-executing.\textsuperscript{73} A "super parity" statute takes an additional step by permitting state banks to

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{67} See id.
\item \textsuperscript{68} Id. at 361.
\item \textsuperscript{69} See id. at 356-58.
\item \textsuperscript{70} Id. at 366. Parity statutes are written to grant the same powers to state banks that national banks have. Id. However, parity statutes may also be written to grant parity between banks and other financial institutions in that state, between a state and other state systems, or among depository institutions within a state. See id. at 370-72.
\item \textsuperscript{71} See Johnson, supra note 18, at 366.
\item \textsuperscript{73} Id. at 370. These statutes may be written to grant competitive equality with federal thrifts, as well. See Profile, supra note 72, at 204-06.
\end{enumerate}
\end{footnotesize}
conduct the same activities as state banks in other states.\textsuperscript{74} Parity statutes can be written in various forms; they may take effect immediately or may require some affirmative action by banks or the state legislature.\textsuperscript{75} However, parity statutes do not address regulatory structure.\textsuperscript{76} Some parity statutes may also present difficulties in their application, but these are generally matters of drafting and interpretation.\textsuperscript{77} Therefore, states may prefer to consider alternatives.

IV. The Universal Charter

A. Generally

The universal charter presents another possibility for modernizing the state banking system. A universal charter is a plan for organizational structure that reconciles the differences among the traditional charters for depository institutions.\textsuperscript{78} Under

\textsuperscript{74} See, e.g., 1961 Ill. Laws 2361 (codified as amended at ILL. COMP. STAT. ANN. ch. 205, § 5/5 (25) (West Supp. 1999). A "super parity" statute offers competitive equality among state institutions by authorizing a state's permissible banking activities to expand with another state's expansion of banking activities. See CSBS, supra note 23, at 8. This may prove burdensome, confusing, and uncertain because in order to effectuate this type of statute, state banks and the state regulator of those banks must know what the permissible activities of the rest of the state systems are. See generally Johnson, supra note 18 (describing various problems with parity statutes).

\textsuperscript{75} See CSBS, supra note 23, at 8. The CSBS recommends state policymakers and bankers review parity statutes closely to ensure conformance with GLBA provisions. Id. States may also consider whether parity statutes best address the financial needs of local consumers. Id. Expansion assumes responsibility for the continued integrity of the banking system. Id. Some powers may not be appropriate for state-chartered banks. Id. Parity statutes pose the problem of potentially contradictory and unclear applicability of laws. Id. Expressly written state banking laws provide clarity and explicitness of state bank powers that parity statutes do not. Id.

\textsuperscript{76} See Butler & Macey, supra note 33, at 706 (arguing that parity statutes reduce the incentives to lobby legislatures for "regulatory forbearance" and give states a "free ride on the lobbying efforts of national bank competitors").

\textsuperscript{77} See Johnson, supra note 18, at 372, 402-04 (discussing interpretive problems and proposing a model parity statute designed to increase utility by addressing the interpretive problems legislatures have experienced since the enactment of these laws).

a universal charter, financial institutions receive broad uniform powers to deliver financial services, including powers previously held by other financial institutions under specific charters. These financial institutions, called universal banks, are an amalgamation of the powers of commercial banks, savings banks, and savings associations. In addition to combining traditionally distinct charter powers, the universal charter may expand the business of banking and thus move the financial services industry towards integrated universal banking.

The universal charter, although related, is not the same financial services scheme as universal banking. Universal banking is an institutional arrangement of financial services within an economy that range from deposit-taking and lending, trading of financial instruments and foreign exchange, underwriting, brokerage, investment management, and insurance. It is a method of providing financial services that is practiced in some form in most major economies. Universal banking typically imposes few restrictions on the business of banking and investing, either through an integrated model or a subsidiary model. The United States has implemented its version of universal banking through the bank holding company (BHC) and the financial holding company (FHC) models.

80. Id. See generally infra notes 104-31 (describing Maine's universal charter).
81. See infra notes 87-92 and accompanying text.
83. BROOME & MARKHAM, supra note 7, at 84.
84. Id. at vi. Although universal banking was a term originally meant to distinguish the German banks that provided commercial and investment banking services from the "specialist" banks that offered only one type of service, today it takes different forms. Id. at 86.
85. Id. at 84. The major forms are the integrated systems, such as the one in Germany that permits a full range of financial activities to be performed by different departments of the same universal bank, the subsidiary form, like the U.K. model that allows for a broad range of activities performed through separate bank affiliates, and the American model that requires holding companies and separately capitalized subsidiaries. Id.
86. Id. The repeal of section 20 by GLBA moved the U.S. banking system towards the U.K. model. See id. at 235.
B. Universal Banking Under a Charter

Integrated universal banking and universal charters have been considered and rejected in the federal system. If However, every state charters and regulates depository institutions that organize under state banking laws. Therefore, individual states can revise banking laws to permit universal banking. They may design charters that offer broader powers than those granted under any of the traditional charters by expanding the scope of activities that state regulators may approve. While this form of charter allows institutions to respond to the changing demands of the market, the objectives of safety and soundness and federal preemption constrain the functionality of universal banking in the current dual system. In order to reconcile a state's universal banking system with the national banking system and other state banking systems, that system must address the fundamental concepts of the American financial services industry that are believed to promote safety and soundness.


88. See Malloy, supra note 34 and accompanying text.


91. SAUNDERS & WALTER, supra note 7, at 4. Reform efforts and consideration of universal banking has been rejected on the grounds that safety and soundness is not protected as adequately as the current strategy of separating commerce and banking. See id. at 4-5. In fact, "financial reform" has become considered by some to be an "oxymoron." Id. at 4.

92. See generally Rep. James A. Leach, Introduction: Modernization of Financial Services, 25 J. CORP. L. 681, 684-89 (2000) (setting forth the premises upon which GLBA is based: (1) solidification of community reinvestment obligations; (2) expansion of competition in finance by increasing consumer access to a wider range of products at affordable prices; (3) separation of commerce and banking; (4) protection of privacy; (5) functional regulation; and (6) strengthening of international competitiveness of American firms).
C. Safety and Soundness of Universal Banking

Universal banking posits that the ability of financial institutions to diversify among products and services contributes to safety and soundness pursuant to the portfolio theory.\(^93\) The counterargument suggests that non-bank activity expansions expose the entire financial institution and its assets to risks that are not congruent with the objective of ensuring safety and soundness.\(^94\) Since both arguments rely on an amount of speculation as to what the market will do, the analysis of the safety and soundness of universal banking must include how it will be regulated and what safety nets will prevent crises.\(^95\)

Universal banking follows the rationale that within a free market, competition provides the incentive to exercise sound business judgments.\(^96\) In the pursuit of maximizing profits and ensuring the long-term operation of the business entity, business decisions require numerous considerations, such as efficiency, risk reduction, and product expansion.\(^97\) "Market discipline" makes customers, with their demands, and the institutional decision-makers and managers, who will determine the prudence of any activity, the strongest regulators of financial institutions in the

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93. See Note, supra note 6, at 1322-23. Portfolio theory holds that diversification of stocks (investments) prevents huge losses due to systemic risks. See William L. Horton, Jr., The Perils of Universal Banking in Central and Eastern Europe, 35 VA. J. INT'L L. 683, 686 (1995). Some argue that universal banks stabilize in the same way. Id. at 686-87. If so, when traditional banking is less profitable, its other financial ventures would sustain its bottom line. See id. at 687. Critics argue that ensuring safety and soundness through diversification either is not possible or not likely due to the co-varying nature of financial lines of business and management's increased risk taking. Id. However, diversified assets and income may be less risky as a whole even if the non-traditional bank activities are themselves riskier. Id. at 390.

94. See Note, supra note 6, at 1322-23.

95. See SAUNDERS & WALTER, supra note 7, at 208. The three predominant safety net features in the American banking system are deposit insurance, the discount window, and payment system guarantees. Id. at 209-13. While these features exist in other countries with universal banking, the muscle of universal banking systems' safety nets is in capital requirements and early closure rules. Id. at 216-20.

96. Mark E. Van Der Weide & Satish M. Kini, Subordinated Debt: A Capital Markets Approach to Bank Regulation, 41 B.C. L. REV. 195, 211-12 (2000). Fiduciary duties conferred on directors and officers by states potentially offer private regulation of banking activities. Id. at 213. Because banks are privately held, duties, such as business judgment, are imposed on the boards of banks. Id. at 213-14.

97. Id. at 211-12.
universal banking system. In the event that business judgments fail to provide adequate safety and soundness, the safety nets become critical.

Maine, which did not adopt universal banking per se, implements a safety net feature by giving the superintendent of financial institutions discretion to determine what is advantageous to the public. This discretion may be exercised in cases of emergency, throughout the existence of a financial entity, in order to ensure the public interest in financial strength and stability, including the early or partial closure of an institution. Such discretion provides a safety net against excessively risky business judgments. Other safety nets include capital requirements, deposit insurance, and the discount window.

98. *Id.* "Market discipline" is the ability of private providers of banking capital to affect bank behavior, including excessive risk taking. *Id.* The key to safeguarding universal banking systems is the interest banks have in keeping their diverse ventures healthy. See Markham, *supra* note 2, at 282-83. The fear that universal banks put profit ahead of security (to security's detriment) may be irrational. See Saunders & Walter, *supra* note 7, at 128-29. The same factors that create profit, efficiency, stability, and diversification, also create security. *See id.* The American banking experience demonstrates that its protectionist-banking scheme is not foolproof. See *id.* Risk inherently pervades economic structure. See *id.* The market rewards efficient businesses, which is precisely the benefit of allowing banks to operate like other commercial enterprises. See Markham, *supra* note 2, at 282-83. In this way, market forces promote a self-regulating mechanism that mitigates risk. See Saunders & Walter, *supra* note 7, at 129 n.3.


100. *See infra* note 130 and accompanying text.


103. See Saunders & Walter, *supra* note 7, at 214-16. Capital requirements refer to ratios of bank capital to its liabilities. See Broome & Markham, *supra* note 39, at 518. How well a bank is capitalized determines whether it is operating under minimum standards consistent with the risks of its activities. See, e.g., 12 U.S.C. § 1843(i)(1) (2000) (requiring BHCs to be well-capitalized in order to qualify as financial holding companies); 12 U.S.C. § 24(a)(2)(C) (requiring banks to be well-capitalized in order to exercise the expanded powers available under GLBA).
D. Maine’s Universal Bank Charter

The State of Maine provides a model of a universal chartering system.104 In response to nationwide interstate banking and branching for federally chartered banks that would create competition for Maine’s community banks, the Legislature substantially revised the Maine Banking Code in 1997,105 creating the Universal Bank Charter.106 A group of industry representatives, Maine’s Bureau of Financial Institutions107 staff, and members of the legal community studied Maine’s Banking Code and universal banking.108 The six-month study produced legislation that offered broad, uniform powers to all state-chartered commercial banks, saving banks, and savings and loan associations, renamed universal banks.109 The distinctions among each institution’s separate charter were eliminated for universal banks so that these institutions may exercise any of the existing powers belonging to a commercial bank, savings bank, or thrift.110 Also, the scope of activities that the regulators may approve now includes what is, “convenient and useful,” to the business of banking.111 The superintendent of the Bureau of Financial

104. See supra note 100 and accompanying text (noting that Maine did not adopt universal banking per se).
105. ME. REV. STAT. ANN. tit. 9-B.
106. See id. § 131.47 (defining a “universal bank” as an investor-owned or a mutual financial institution, including trust companies, savings banks, and specially chartered thrifts, authorized by its organizational documents to exercise enumerated activities within Part 4 of the statute).
107. See id. § 121 (changing the “Bureau of Banking” to the “Bureau of Financial Institutions,” as of Jan. 1, 2002).
109. Id.
110. Id. Credit unions were not affected by the universal bank charter law. de Senerpont Domis, supra note 90, at 3.
111. ME. REV. STAT. ANN. tit. 9-B, § 131.6-A. The “convenient and useful” activities are those that are “reasonably related to the operation of a financial institution or are financial in nature.” Id. The section lists activities that are per se reasonably related to the operation of a financial institution, such as real estate-related services, tax planning and preparation, insurance related services, securities brokerage, and consumer services. Id. Activities permitted under the Bank Holding Company Act (BHCA) are per se closely related and permissible. Id. The list may be expanded by the superintendent. Id.
Institutions explained, "'[w]e needed to control the safety-and-soundness side, not to manage the bank.'"\textsuperscript{112}

The rationale behind Maine's adoption of a universal bank charter emphasized that commercial banks, savings banks, and thrifts are in the same business.\textsuperscript{113} The Legislature considered a universal charter an appropriate mechanism for providing state-chartered financial institutions "the powers and flexibility to meet changing market demands and utilize new technology for delivery of financial services," which would make Maine an attractive place for establishing financial institutions.\textsuperscript{114} Maine's universal charter expanded organizational options to include limited partnerships, limited liability partnerships, and limited liability companies.\textsuperscript{115} It eliminated statutory restrictions on the days and hours of operations.\textsuperscript{116} Furthermore, it broadened lending and deposit authority, thus eliminating restrictions on savings banks and thrifts, such as the prohibition against paying interest on demand deposits.\textsuperscript{117} Also, the universal charter eliminated limitations on commercial and industrial firms acting as financial holding companies.\textsuperscript{118} A streamlined notification process makes it possible for well-capitalized and well-managed institutions to establish branches or operating subsidiaries.\textsuperscript{119} The universal charter also

\textsuperscript{112} de Senerpont Domis, \textit{supra} note 90, at 3 (quoting Donald DeMatteis, who further stated that, "'[t]his law takes the best of existing powers and makes them available for everybody'"). \textit{Id.}

\textsuperscript{113} \textit{See} Press Release, Maine Bureau of Banking, \textit{supra} note 108. Traditionally, they offer transaction accounts and financial intermediation. \textit{See generally} BROOME \& MARKHAM, \textit{supra} note 39, at 141 (explaining the difference between banks and other financial institutions).

\textsuperscript{114} \textit{See} Press Release, Maine Bureau of Banking, \textit{supra} note 108.

\textsuperscript{115} \textit{See} ME. REV. STAT. ANN. tit. 9-B, § 311.

\textsuperscript{116} \textit{Id.} §§ 145.2 (repealed 1997).

\textsuperscript{117} \textit{Id.} §§ 521-526 (repealed 1997).

\textsuperscript{118} ME. REV. STAT. ANN. tit. 9, §§ 2341-2345 (repealed 1997).

\textsuperscript{119} ME. REV. STAT. ANN. tit. 9-B, § 446-A. This Section authorizes financial institutions to engage in activities, directly or indirectly, unless the superintendent determines that a subsidiary's independent legal structure is necessary to ensure the safety and soundness of the institution. \textit{Id.} The application is made pursuant to section 252 procedures for conducting closely related activities. \textit{Id.} § 446-A.1 Waiver of application applies when an institution is well-capitalized and well-managed. \textit{Id.} § 446-A.1.A.-B(1), (2). The superintendent determines whether the institution is well capitalized. \textit{Id.} § 446-A.1.A Well-managed means that the Bureau of Financial Institutions gave a composite rating of at least one or two (pursuant to the Bureau's uniform rating system) in the last examination and that the institution is at least satisfactorily managed. \textit{Id.} § 446-A.1.A.-B(1), (2).
allows for limited purpose banks, including merchant banks, non-depository trust companies, and holding companies of uninsured banks.

A unique function of universal charter is that it expressly anticipates permissible banking activities of the future. When Maine adopted universal charter, federal law banned or strictly limited certain provisions, such as unlimited securities underwriting, ownership of banks by commercial companies, payment of interest on business checking accounts, and the establishment of wholesale financial institutions. These provisions may not take effect unless and until Congress permits them. Thus, Maine's financial institutions will be primed to take advantage of changes in federal law without delay, while other depository institutions chartered under other states' laws may be unable to engage in an expansion of permissible activities at the federal level unless and until a state statute specifically authorizes it. This approach promotes parity with nationally chartered banks and with other state banks permitted under respective state law.

Such expansive powers raise the question of whether safety and soundness are sufficiently protected. Maine's declaration
of policy requires that the Bureau of Financial Institutions supervise all financial institutions, "in a manner to ensure the strength, stability, ... efficiency ... [and] reasonable and orderly competition, thereby encouraging the development and expansion of financial services advantageous to the public welfare; and to maintain close cooperation with other supervisory authorities."

Decision-making regarding applications for transactions involving financial institutions belongs to the superintendent, but requires that certain criteria be considered in order to ensure that the proposed transaction, "contributes to the financial strength and success of the financial institution or institutions concerned, and promotes the convenience and advantage of the public." The new charter also grants emergency power to the superintendent.

E. Universal Bank Charters in Other States

Other states have considered universal charter legislation as a mechanism to modernize financial services regulation. The reconciling banking and commerce. Id. at 684. Bankers and policymakers appear to be considering the possibility of safety and soundness achievable while joining commerce and banking. See id. at 683. See generally John S. Barry, Creating a Financial Services Industry for the 21st Century Part I: Tear Down the Walls, HERITAGE FOUND. REP., Jul. 5, 1996, at 1, 4-5, LEXIS, News Library, ALLNWS File (arguing that studies have shown that integrated banking and commerce in a free market economy is safer, and less prone to failure, and that the BHC structure has not proven to be any safer than the integration of banking and commerce).


129. Id. at § 253.2. The superintendent shall also consider factors such as: (1) "character, ability, and overall efficiency of the management," id. § 253.2.A; (2) "adequacy of capital and financial resources," id. § 253.2.B; (3) "competitive abilities and future prospects," id. § 253.2.C; (4) "convenience and needs of the market area," id. at § 253.2.E; and (5) "competitive effect of the proposed transaction, and "likely impact of the proposed transaction on other financial institutions," id. at § 253.2.F.

130. Id. at § 253.1.A. The superintendent must weigh the benefits, such as increased competition or efficiency, against the possible costs, such as "unsafe and unsound practices." Id. at § 253.1.B (emphasis added).

131. Id. § 152.1. If the Governor declares a banking emergency pursuant to section 151, then the superintendent, during the period of the banking emergency, may restrict banking transactions, including early or partial closure. Id. The statute calls for cooperation between the governor and the superintendent in determining when to resume normal banking transactions. Id.

132. See infra notes 133-146 and accompanying text. Wisconsin has repeatedly attempted to pass a universal charter bill. See, e.g., A.B. 563, 2000 Leg., 93rd Sess. (Wis. 2000).
Wisconsin Assembly is expected to enact a "universal certification option" in the 2001-2002 legislative session. In recognition of the fading distinctions among depository institutions, the bill attempts to level the playing field between banks and savings associations by creating parity among the charters of state-chartered financial institutions. According to the Administrator of the Division of Banking, the bill contains three main components and objectives of the bill:

As its first objective, the bill establishes parity between all state-chartered financial institutions. The second objective is to expedite the "parity power" review process. Although Wisconsin has a "parity" statute for state-chartered banks, the requirements of the statute dictate a time consuming and burdensome rule making procedure to access the additional banking powers. Furthermore, the lengthy rule making procedure can be a significant competitive disadvantage for state-chartered banks seeking parity with their national bank counterparts. The new bill will allow institutions that opt for universal certification to apply for increased powers using an emergency hearing, thereby, increasing the responsiveness of the Division of Banking and giving state-chartered institutions the opportunity to effectively compete with national banks. The third component of the bill concerns the expansion of enumerated

133. Telephone Interview with Michael J. Mach, Banking Administrator, Wis. Dept. of Financial Institutions (Jan. 9, 2002) [hereinafter Mach Interview]; see A.B. 299, 2002 Leg., 95th Sess. (Wis. 2002). A controversial wage-lien law that puts lenders ahead of former employees in a company's bankruptcy distribution was attached to the bill, which resulted in derailment of the bill at the last minute. Paul Gores, Wisconsin Legislators, Finance Leaders Support Regulator, MILWAUKEE J. SENTINEL, Jan. 29, 2001, LEXIS, News Library, BANNWS File. The Legislature is expected to work on a compromise in order to pass the bill. Id.

134. See generally Laura Pavlenko Lutton, Eye on the States: Wisconsin Banks and Thrifts Seek a Uniform State Charter, AM. BANKER, Mar. 20, 1998, at 6 (considering the universal charter as a necessary step in competing with national banks' expansion of powers because of the perceived threat to Wisconsin's financial services industry (banks and thrifts, especially) and the dual banking industry, in general).
Wisconsin’s universal certification option modifies the approach taken in Maine by creating “hybrid state-chartered institutions.” The certification is not mandatory and the institutions that opt for the certification do not have to change their corporate governance to receive benefits under universal certification. However, the purposes reflected the same goal of maintaining a safe and sound system of financial services while offering parity and competitiveness. The executive vice president and CEO of the Wisconsin Bankers Association expressed the heightened interest in matching the powers of nationally chartered institutions after the passage of GLBA by stating, “‘[t]rue reform cannot be achieved unless the Wisconsin Legislature passes legislation that gives state-chartered institutions parity.’”

Like Wisconsin, recent reforms in Michigan indicate that universal banking is in its future. In 1993, the banking commissioner determined to make Michigan a bank-friendly state. Since then, exam fees were lowered, branching restrictions for well-capitalized banks were eliminated, and thrifts were granted parity with their nationally chartered counterparts. The reforms induced several institutions to switch to Michigan’s state charter. Following the charter-flips, institutions

135. Mach Interview, supra note 133.
136. See Douglas Armstrong, State Bankers Pushing Bill for ‘Parity,’ MILWAUKEE J. SENTINEL, Nov. 12, 1999 (describing these “hybrids” as the incorporation of the features from commercial banks, savings banks, and thrifts, which is distinguishable from re-chartering under a universal charter), available at http://www.jsonline.com/bym/News/nov99/bank/12111199.asp (last visited Feb. 25, 2002).
137. Mach Interview, supra note 133.
138. See Anderson Testimony, supra note 78.
139. Armstrong, supra note 136.
141. Id.
143. Lutton, supra note 140, at 4. An Indiana-based CNB Bancshares switched charters it owned in Indiana, Kentucky, Tennessee, and Illinois to one Michigan
experienced savings in taxes, in exam fees, and on regulatory costs without sacrificing their financial services powers.\textsuperscript{144}

In 1999, the commissioner planned to take more affirmative steps in modernizing Michigan's financial services industry, including a proposal for universal banking legislation that would grant uniform, broad powers to depository institutions.\textsuperscript{145} The commissioner's resignation in mid-1999 may have delayed universal banking in Michigan, but it appears likely that Michigan's financial modernization is heading towards universal banking.\textsuperscript{146}

Michigan's example draws attention to another feature of the universal charter, which is its effect on bank regulation. Blurred distinctions among charters implicate the regulation of those institutions significantly because of the fact that regulation was designed specifically for and developed around a particular type of charter.\textsuperscript{147} Also, in terms of functional regulation, determining who is the appropriate regulating entity may become increasingly difficult as charter differences fade.\textsuperscript{148}

In their attempts to offer \textit{something else}, states must look at the regulatory structure for state-chartered banks.\textsuperscript{149}

\textsuperscript{144} Id. The banks expected to save annually \$1.9 million in taxes and regulatory fees, as well as expand its insurance business. Id. Between 1995 and 1998, at least twenty-four new banks chose a Michigan charter. Id.

\textsuperscript{145} Id. CFSB Bancorp, an \$850 million-asset company, saved \$80,000.00 in exam fees in the first year after switching its national thrift charter to a Michigan charter. Id.

\textsuperscript{146} See Mich. Banking Commissioner Leaving for Greener Pastures, supra note 142, at 4.

\textsuperscript{147} See Taylor, supra note 13, at 795-96.

\textsuperscript{148} See generally Markham, supra note 2 (discussing functional regulation in the context of the current financial services environment). Functional regulation is the regulation of activities by the same regulator regardless of the entity engaging in those activities. Id. at 277. Professor Jerry W. Markham suggests reconsidering the functional, product-based regulatory model because financial services are being offered across traditionally functional and institutional lines. Id. at 279-80, 285.

\textsuperscript{149} See Taylor, supra note 13, at 797. The traditional "regulatory paradigm" must be restructured to take into account the transformation the financial services industry has undergone during the twentieth century and the implications for the future. Id. at 797-78. The theory proposes that the underlying structure of an industry "define[s] the context in which the regulatory agencies have operated." Id. at 797 (quoting Pulitzer Prize winner, Thomas McGraw). The logical flow of this argument is that the regulation of an industry should change with change in the regulated
Regulation reform inherently involves consideration of agency consolidation.\textsuperscript{150} By combining the powers of depository institutions, a universal charter could consolidate the different regulatory agencies into one.\textsuperscript{151} A single agency could perform uniform and broad supervision, examination, and discretion over all depository institutions.\textsuperscript{152} The unification of resources and experiences should lower regulatory costs, making regulation of depository institutions more cost effective and less burdensome.\textsuperscript{153} This presents an especially attractive feature in light of the expense of operating under a federal charter.\textsuperscript{154}

V. SHOULD NORTH CAROLINA CONSIDER A UNIVERSAL CHARTER?

A. Competitive Advantage

North Carolina’s banking laws historically offer competitive banking powers, making the state a dominant force in the banking industry.\textsuperscript{155} The State has accomplished its place in industry because the industry itself determines “regulatory opportunities and constraints.” \textit{Id.} at 798.

\textsuperscript{150} Michele Heller, \textit{Why This Try at Agency Reform Just Might Fly}, \textit{A.M. Banker}, Nov. 26, 2001, at 1. According to president of the Independent Community Bankers of America, Kenneth A. Guenther, “If you’re raising questions about the whole structure, and you’re asking the industry to work with you to come up with a better structure, you’re opening up the whole issue of rationalization. . . . It could lead to the merging of regulatory agencies.” \textit{Id.} (quoting Kenneth A. Guenther).

\textsuperscript{151} Taylor, supra note 13, at 801-02. This regulatory reform should take into account any differences that still exist among product lines and whatever institutional boundaries impact regulation. \textit{Id.} Organizational restructuring should not be the sole aspect of financial modernization; rather, regulation itself must address the changing marketplace and its impact on depository institutions. \textit{See id.}

\textsuperscript{152} See generally Martin E. Lyebecker, \textit{The “South Dakota” Experience and the Bush Task Group’s Report: Reconciling Perceived Overlaps in the Dual Regulation of Banking}, 53 \textit{Brook. L. Rev.} 71, 84-88 (1987) (discussing the recommendations of the Bush Task Group set forth in 1984, which were to enhance state power and achieve regulatory efficiency by consolidating the federal regulation of national commercial banks into one regulator and by transferring state regulation of state banks to the states if the state regulatory agency provided comparable regulation to federal regulatory counterparts).


\textsuperscript{155} In Terms of Regional Banking in the Southeast, Florida’s Loss Has Been
the banking industry without enacting a parity statute. In its place are broad statutes authorizing banks to engage in a variety of financial activities, at the banking commissioner's discretion.

While this approach has worked well, the future of banking will require more certainty and responsiveness due to high-tech banking and the need to service customers where they are when they need it. Experience shows that if the pace of business, or other consumer needs, exceeds the ability of North Carolina's banks to provide the demanded services and other institutions offer such services, the market will cause state-chartered institutions to lose customers.

A universal charter offers North Carolina an opportunity to address the disparity between national and state banks without passing a parity statute. The charter may expand institutional powers to include activities traditionally assigned to particular institutions under specific charters and enumerate new powers available to all institutions under the charter. The charter may also be written so that permissible financial activities are determined by the broader set of powers, whether the broader set is national or state law. The powers not explicitly authorized by the state may be subjected to a legislative review process or to the commissioner's discretionary review. The review process could be designed with the Wisconsin "emergency hearing" procedure in

_North Carolina's Gain_, AM. BANKER, Oct. 9, 1985, at 24. North Carolina's friendly banking climate, branching powers, and "hands off" bank expansion policy made the State a predominant player in the Southeast and laid the foundation for North Carolina's role in nationwide branching. _Id._ The strategy was to establish super-regional banks that could compete with national banks when nationwide branching became allowed. See _id._

156. See _Id._ Instead, the State has enacted liberal banking powers and approached banking as an industry that must offer attractive features, rather than merely offering competitive equality with other systems. See _id._

157. See generally PROFILE, _supra_ note 72 (listing for comparison state banking laws among the fifty states)


159. See _id._

160. See generally _supra_ notes 78-154 (describing the ability to draft state charters in a permissive way).

161. See Johnson, _supra_ note 18, at 371-72.

162. See _supra_ notes 128-30 and accompanying text.
mind, which is the result of Wisconsin’s own experience with a parity statute that proved inadequately responsive. 163

In fact, the universal charter may go beyond parity and offer powers that may be desirable to an institution, even if currently prohibited. 164 A universal bank may not be able to conduct all of the activities permitted by the universal charter. 165 However, it could anticipate and prepare for immediate expansion once its charter powers become permissible. 166 This feature offers the advantage of responsiveness in the age of high technology, which is an area where North Carolina’s banks lead. 167

B. Changes in the Market for Separate Charters

As the distinctions among institutional powers blur and fade, the charters lose their significance as meaningful indicators of what to expect from the institution. 168 The thrift industry, for example, was designed to foster housing finance availability. 169 However, the decline of the thrift industry’s role in supporting and developing the housing market reflects the market’s changing nature. 170 Since 1996, the number of savings institutions in North Carolina has dropped from sixty-one to forty-one, which is indicative of the diminished role these institutions have in the State’s economy. 171 At the same time, “fringe banking,” a less

163. See supra note 133 and accompanying text.
164. See de Senerpont Domis, supra note 90, at 3.
165. Id.
166. Id.
167. See Michael A. Stegman, Banking the Unbanked: Untapped Market Opportunities for North Carolina’s Financial Institutions, 5 N.C. BANKING INST. 23, 28 (2001) (citing Top 50 Bank Holding Companies in Automated Teller Machines, AM. BANKER, Dec. 6, 1999, at 12A). The American Banker reported that five of North Carolina’s banks are in the top fifty of BHCs in ATM ownership and four are in the nation’s top 100 banks for web influence. Id.
168. See supra note 55 and accompanying text.
170. Id.
171. State Banking Performance Summary, Q. BANKING PROFILE (Sept. 30, 2001), http://www.fdic.gov/index.html (clicking on Quarterly Banking Profiles) (last visited Feb. 25, 2002). Total assets and total deposits have decreased for both nationally and state-chartered savings associations, indicating that the reduction in the number of
regulated, parallel financial services industry, is booming. This trend indicates potential for growth in the mainstream financial services market. A universal charter could reconcile the reduced need for thrifts and the increased demand for a parallel system of financial services. The flexible charter would allow financial institutions to adjust to market forces without regard to traditional charter limitations. It may also encourage banks to tap the "unbanked" market by making such undertaking profitable, and thus extend the protection of mainstream industry regulation to lower-income communities.

C. Regulatory Efficiency

The small number of savings institutions in North Carolina makes their regulation less cost effective. In 1995, the outgoing banking commissioner recommended the consolidation of bank, thrift, and credit union regulation. In 2001, the General

savings associations is not the result of consolidation within the industry through mergers and acquisitions. Id. 172. Stegman, supra note 167, at 28.

173. Id. Fringe banking primarily serves lower-income communities through a national network of check cashing centers and payday lenders. Id. Although such services are banned in nineteen states, North Carolina has been fertile ground for fringe banking. Id. at 28-29. One check cashing outlet or payday lender exists for every two FDIC-insured banking offices. Id. at 29.

174. See supra note 55 and accompanying text; infra note 188 and accompanying text.

175. See supra note 55 and accompanying text.

176. See Stegman, supra note 167, at 45-46. The suggestion that some banks and thrifts cannot profitably serve the financial needs of lower-income customers could be mitigated by a universal system that employs economies of scale and scope that reduce operating costs and permits broader financial service powers. Id.; see also SAUNDERS & WALTER, supra note 7, at 20-21.

177. Cf. William L. Horton, Jr., The Perils of Universal Banking in Central and Eastern Europe, 35 VA. J. INT'L L. 683, 688 (1995). Lower regulation costs and increased efficiency would result from one set of rules enforced by one regulating agency. Id. Although the argument refers to a dual banking system, the analogy applies to combining agencies within one part of a dual banking system, such as a state's system. Id. The agency could reduce the time and uncertainty associated with different charters that are blurring in their distinctions from one another. Id.

178. Banking Commissioner Says Three Agencies Should Merge, WILMINGTON MORNING STAR, Feb. 7, 1995, at 5C (quoting William Graham). Consolidating credit union regulation into regulation of banks and savings associations may prove more difficult considering the political clout credit unions hold if they remain separate entities, especially in North Carolina where the North Carolina State Employees'
Assembly took a step in this direction by merging the regulation of savings institutions into the banking commission. According to America's Community Bankers (ACB), however, "regulatory restructuring should be part of a broader effort . . . to create a more modern charter for depository institutions by combining the best features of banking and thrift charters." The merger of the Savings and Loan Division into the Banking Commission does not, however, involve harmonization of the different charters. This presents a question for maintaining the supervisory focus of savings associations as the regulatory environment of commercial banks absorbs them. Savings associations' traditional business is substantially different from commercial banks' and the regulation of their businesses has


179. 2001 N.C. Adv. Legis. Serv. 193. The Governor of North Carolina, on June 12, 2001, authorized changes to section 53-93.1 of the North Carolina General Statutes that merge the Savings and Loan Division into the Banking Commission. Id. The commissioner will report to the governor on behalf of both entities and has appointment power of new deputy commissioners for the Savings and Loan Division. Id. Section 19 mandates a study of charter and regulatory options for North Carolina's state-chartered banks and savings institutions; it states:

The Commissioner of Banks shall study the issue of regulation of state-chartered banks and savings institutions and develop a plan to regulate those banks and savings institutions in the most effective, efficient, and equitable manner. The study shall include a consideration of various financial charter options and the feasibility and advisability of reorganizing the bank and savings institutions regulatory agency to a cabinet level status. After the State Banking Commission has approved the plan, the Commission shall report the plan and any legislative recommendations or proposals to implement the plan to the General Assembly on or before May 1, 2002.

Id.


181. Id.

182. Id.
developed out of their specialized functions. Therefore, without charter reform, this approach to regulatory reform must consider the diversity of its institutions by maintaining a staff that has the, "historical knowledge and expertise of the respective . . . agencies."  

D. Diversity

The universal charter does not seek to homogenize banking institutions. Diversity strengthens the dual banking structure by allowing community institutions to provide the services local customers need, as well as by preventing excessive concentration within the banking sector. The universal charter permits institutions to engage in activities once exclusively under the traditional charters. A universal bank, however, need not engage in activities that are not profitable or prudent for that particular bank. Therefore, a universal charter promotes diversity by allowing for a wider range of financial service combinations.

The diverse options available under the universal charter are potentially most advantageous to community banking. Community banks reflect the diverse needs of customers. Their success depends on, "the ability to embrace change, the marriage of high-touch and high-tech, and incentive compensation for sales

183. Id.
184. Id.
186. Id.
187. See supra notes 78-81 and accompanying text.
188. See supra notes 90, 97, 98 and accompanying text.
189. See supra note 93 and accompanying text.
190. See Community Banks Face Their Future, A.B.A. BANKING J., Apr. 1997, at 55. The ABA Community Bankers Council and the A.B.A. Banking Journal conducted a survey of bankers nationwide that identified key factors in bank competitiveness. Id. The survey found that the most important element of competition is service, even above technological capabilities, ATMs, and financial efficiency. Id.
E. **Drawbacks**

The drawback of unifying charters and expanding the powers mainly involves two criticisms. First, there is an argument against unifying charters is that the market should determine when the charter is obsolete. Unifying the charters may impede the ability of individual institutions to determine their future organization and remain in what has been a profitable endeavor for that particular institution.

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192. *See supra* note 190, at 55.

193. *See supra* notes 68-77.

194. *See John Reosti, N.C. Deal Intended to Secd a Sup.: Community Bank, A.M. BANKER, June 5, 2001, at 6.* The article discusses the merger between two North Carolina banks, Catawba Valley Bancshares and First Gaston Bank of North Carolina. *Id.* The president and CEO of Catawba Valley, R. Steve Aaron considered the merger the groundwork for creating a “super community banking company” (a community based holding company) in North Carolina.” *Id.* Mr. Aaron considered North Carolina a good place for building super community banks because of the State’s large number of young banks: forty-five banks were founded in 1996 or later. *Id.* According to the executive vice president of the North Carolina Bankers Association, Paul Stock, more than half of the State’s sixty-six state-chartered banks are less than three years old. *Id.*

195. *See supra* note 190, at 55 (discussing the need for community banks to build a “sales culture” so that, as the product line expands, cross-selling would provide sales success for banks).

196. *Id.* The ABA Community Bankers Council and the ABA Banking Journal conducted a survey of bankers nationwide that identified key factors in bank competitiveness. *Id.* The survey found that the most important element of competition is service, even above technological capabilities, ATMs, and financial efficiency. *Id.*


198. *Id.*
Traditional banking structure provides the second impediment to adopting a universal charter—maintaining the status quo.199 Several interests are staked on the current structure of financial services.200 Restructuring implies changes that may affect chartered institutions’ grip on certain areas of the market.201 Special interests may serve as obstacles in achieving shared powers.202 However, if the financial service industry places its customers first, it will make changes that provide better service with the assurance that such service is safe and sound.203 Those changes may mean losses for some service providers and gains for others, but the customers should benefit from such organizational and regulatory decisions.204

VI. CONCLUSION

Financial modernization in the national system provides the impetus for states to compare their financial institutions statutes with their national counterparts.205 Expanded powers for nationally chartered banks create a competitive advantage for those institutions in states that do not permit their state-chartered banks to offer the same services.206 Therefore, a state must empower its banks to offer competitive services to their customers where the customers are and when their customers need them.207 A state should also limit its restraints on banking activities to those

199. Id.
200. Id.; see SAUNDERS & WALTER, supra note 7, at 229, 236.
201. See Senator Phil Gramm, Speech at the SMU School of Law (Sept. 24, 1999), in The New Banking Legislation: The Financial Modernization for the Twenty-First Century, 53 SMU L. Rev. 371, 371 (2000). The three pillars of the financial services industry have been maintained because of the interests each sector has in keeping out competition. Id. The competition has been inefficient and costly, which has resulted in an American economy that resembles, “thin slices of Swiss Cheese.” Id. (quoting Sen. Phil Gramm).
202. Id.
203. See SAUNDERS & WALTER, supra note 7, at 228-29. The need for financial services reform should include economic considerations instead of political concerns. Special interests have protected themselves rather than developing a financial services industry that serves the nation’s interests as a whole. Id.
204. Id.
205. See PROFILE, supra note 23, at 8.
206. See id.; Johnson, supra note 18, at 361-62.
207. See The Year 2000 in the USA: Re-defining the Goalposts, supra note 158, at 8.
that are necessary to protect customers' assets.\textsuperscript{208} Such limitations should ease regulatory burdens and costs.\textsuperscript{209}

A universal charter offers two observable advantages for a state banking system. First, a universal charter can be designed to provide competitive equality, but without the application problems some states have experienced with parity statutes.\textsuperscript{210} The second obvious advantage that a universal charter offers is the potential for simplifying the regulatory structure within a state so that one set of regulations applies to all depository institutions.\textsuperscript{211} One regulator through uniform supervision and examination could enforce that set of regulations.\textsuperscript{212} The result would be expanded powers for all depository institutions included under the charter and reduced regulatory costs for those institutions because of greater regulatory efficiency.\textsuperscript{213}

A universal charter also offers not-so-obvious advantages. The ground must be fertile for growth, which in business terms means that opportunities to meet market demands must be available.\textsuperscript{214} The financial services industry constantly eyes the future, trying to anticipate the market so that it can respond to new demands.\textsuperscript{215} But, the regulation of the industry makes it uncertain whether depository institutions will be permitted to take advantage of those opportunities.\textsuperscript{216}

Providing depository institutions with the knowledge that opportunities exist in the future proved beneficial in the past. For example, North Carolina's lenient branching laws have been credited as the reason for the State's flagship status in the Southeast and as a dominant banking power in the nation.\textsuperscript{217} Once

\begin{itemize}
\item \textsuperscript{208} See Garten, supra note 50, at 67.
\item \textsuperscript{209} See id.
\item \textsuperscript{210} See supra notes 75-77 and accompanying text.
\item \textsuperscript{211} See Horton, supra note 177, at 688.
\item \textsuperscript{212} Id.
\item \textsuperscript{213} Id.
\item \textsuperscript{214} See generally Markham, supra note 2, at 282 (proposing that banks should be regulated by the market just as commercial business entities).
\item \textsuperscript{215} See In Terms of Regional Banking in the Southeast, Florida's Loss Has Been North Carolina's Gain, supra note 155, at 24; supra notes 93-98 and accompanying text.
\item \textsuperscript{216} See supra notes 93-98, 215 and accompanying text; infra notes 217-19 and accompanying text.
\item \textsuperscript{217} See In Terms of Regional Banking in the Southeast, Florida's Loss Has Been North Carolina's Gain, supra note 155, at 24.
\end{itemize}
interstate branching and nationwide branching became permissible, North Carolina was in prime position.\textsuperscript{218} Now, the future of the financial services industry depends on how well the dual system deals with expanded powers delivered by virtually indistinguishable institutions.\textsuperscript{219}

A state that offers its depository institutions a method of organization that allows for expansive powers, for parity with national banks, for diversity in the dual banking system, and for regulatory efficiency contributes to the durability of the states’ role in the financial services industry. A universal charter features all of these competitive tools. Therefore, it is a prime contender in strategies to consider for empowering a state system to deal realistically with the future of the financial services industry. As a leader in the nation’s banking industry, the universal charter option provides one approach worth evaluating. This option offers North Carolina a financial services industry that is responsive, competitive, and profitable.\textsuperscript{220}

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\textsuperscript{218} See id. 

\textsuperscript{219} See generally Causey, \textit{supra} note 33 (considering the future of indistinguishable charters). 

\textsuperscript{220} See SAUNDERS \& WALTER, \textit{supra} note 7, at 230. The authors argue that the American banking system functions below its potential, stating, "[a] first-rate economic power needs a first-rate financial system." \textit{Id.} at 236.