

**REGULAR STATE BANKING BOARD MEETING
HELD BY CONFERENCE CALL
OFFICE OF THE COMMISSIONER
DEPARTMENT OF FINANCIAL INSTITUTIONS
2000 SCHAFFER STREET, SUITE G
BISMARCK, NORTH DAKOTA**

November 13, 2008

The regular meeting of the State Banking Board was held in the Office of the Commissioner, Department of Financial Institutions, 2000 Schafer Street, Suite G, Bismarck, North Dakota. Chairman Karsky called the meeting to order at 9:02 a.m., Thursday, November 13, 2008, by conference call.

MEMBERS PRESENT: Timothy J. Karsky, Chairman (*Office*)
Nancy Baerwald, Member (*Cando*)
Ron Braseth, Member (*Mayville*)
Bill Daniel, Member (*Bismarck*)
Lorren Henke, Member (*Wishek*)
Roger Monson, Member (*Finley*)
Anita Quale, Member (*Watford City*)

MEMBERS ABSENT: None

ALSO PRESENT: Robert J. Entringer, Secretary (*Office*)
Douglas D. Grenz, Chief Examiner – Banks (*Office*)
Aaron Webb, Assistant Attorney General (*Office*)
Josh Wiens, Eide Bailly (*Watford City*)
Toby Kommer, Bank Forward (*Fargo*)
Tom Stennes, Harwood State Bank (*Harwood*)

APPROVAL OF MINUTES

Chairman Karsky indicated the Board received copies of the minutes of the regular meeting held on September 11, 2008.

It was moved by Member Daniel, seconded by Member Quale, and unanimously carried to approve the minutes as presented.

ARTICLES OF AMENDMENT – SECURITY STATE BANK, WISHEK

Assistant Commissioner Entringer indicated on June 1, 1999, the City of Wishek changed the street address for the Security State Bank, Wishek, from 102 6th Street North to 102 Centennial Street North.

It was moved by Member Braseth, seconded by Member Baerwald, and unanimously carried to approve the address change for Security State Bank, Wishek, from 102 6th Street North to 102 Centennial Street North, Wishek.

CHANGE OF CONTROL APPLICATION – RANDALL E. STREIFEL TO ACQUIRE 100% OF LIBERTY BANCORPORATION, INC, POWERS LAKE, AND DIVIDEND REQUEST BY LIBERTY STATE BANK, POWERS LAKE

Assistant Commissioner Entringer indicated the Department received the application for change of control on September 22, 2008; the application was deemed complete on September 24, 2008; notice was published in the *Burke County Tribune*, Bowbells, on October 1, 2008; the comment period ended October 10, 2008; no comments were received; and no requests for copies of the application were received.

Assistant Commissioner Entringer referred to his Memorandum dated November 6, 2008, which outlines the requirements of Section 6-08-08.1(4) of the North Dakota Century Code for a change of control application.

Assistant Commissioner Entringer indicated the terms of the acquisition including the purchase price are discussed in the application under Confidential Exhibit 2, and Confidential Exhibit 9 details the principal shareholders, directors, and senior executive officers of the parent and subsidiary bank. Assistant Commissioner Entringer indicated the majority of the directors remain the same and the selling shareholder is replaced by two members of the acquiring shareholder's family. Assistant Commissioner Entringer indicated the only change regarding executive officers is the president's position, which will be assumed by

the current managing officer of the bank, Randall Streifel. Assistant Commissioner Entringer indicated funding of the proposed transaction is outlined in Confidential Exhibit 2, and Confidential Exhibit 7 details the financial projections for the parent and subsidiary bank. Assistant Commissioner Entringer indicated the projections indicate the subsidiary bank will remain well capitalized, and the bank is projected to exceed the minimum capital ratio as set by State Banking Board policy.

Chairman Karsky stated he believes Eide Bailly has been working on this application for quite awhile, and Assistant Commissioner Entringer added that Mr. Streifel has been managing the bank since the early to mid 1980s.

Member Monson stated he is glad Mr. Streifel was given the opportunity to buy. Chairman Karsky indicated this would be good for the community.

Assistant Commissioner Entringer indicated the Department recommends approval of the application by Mr. Streifel to acquire Liberty Bancorporation, Inc., Powers Lake.

It was moved by Member Monson, seconded by Member Braseth, and unanimously carried to approve the application by Randall Streifel to acquire 100% of Liberty Bancorporation, Inc., Powers Lake.

DIVIDEND REQUEST – LIBERTY STATE BANK, POWERS LAKE

Assistant Commissioner Entringer referred to the letter dated October 7, 2008, from Eide Bailly requesting a dividend by Liberty State Bank, Powers Lake, not to exceed \$3.5 million. Assistant Commissioner Entringer indicated the bank is projected to remain well capitalized after the dividend and will exceed the minimum capital ratio set forth in State Banking Board policy.

Assistant Commissioner Entringer pointed out that Mr. Streifel called the office to report the bank did have approximately \$175,000 in Fannie Mae preferred stock, which would essentially wipe out fourth quarter earnings. Assistant Commissioner Entringer indicated he asked Dana Ereth at Eide Bailly whether this would impact the dividend request; Mr. Ereth indicated it would not because part of the purchase price includes a portion of the earnings to go to the controlling stockholder which is going to be paid personally by Mr. Streifel.

Assistant Commissioner Entringer indicated the Department recommends approval of the dividend request by Liberty State Bank, Powers Lake, provided the bank remains well capitalized and above the 7% minimum capital ratio post dividend; and also that the amount of the dividend and resultant ratios must be reported to the Department and State Banking Board after payment.

It was moved by Member Henke and seconded by Member Baerwald to approve the request by Liberty State Bank, Powers Lake, to declare a dividend not to exceed \$3.5 million.

Chairman Karsky stated the bank will need approval for any future dividends during the next three years.

The motion was unanimously carried.

Mr. Wiens left the conference call at 9:10 a.m.

BANK FORWARD, HANNAFORD – REQUEST TO INVEST IN A SUBSIDIARY

Assistant Commissioner Entringer indicated the Department received a request from Bank Forward, Hannaford, for permission to invest in a wholly-owned subsidiary, which is an accounting firm that will provide through the subsidiary tax preparation, bookkeeping, and payroll services. Assistant Commissioner Entringer referred to Section 6-03-38 of the North Dakota Century Code which states in part that a bank may invest in subsidiary organizations when the activities are incidental or complimentary to the bank's activities with the specific approval of the State Banking Board for each such subsidiary, and further that the State Banking Board has the same power to make rules for the subsidiary organization and to examine the organization's records and affairs.

Assistant Commissioner Entringer indicated when reviewing the activities which are permissible for a national bank relating to tax related services, national banks may prepare tax returns directly or through subsidiaries for any type of customer but may not act as an expert tax consultant, as that authority comes from 12 USC 24 (Seventh) and 12 CFR 7.1008. Assistant Commissioner Entringer referred to an OCC Interpretative Letter dated August 15, 1983, which indicates national banks may offer credit, fleet management and tracking, inventory control,

and accounting services to trucking companies. Assistant Commissioner Entringer reiterated that the above mentioned sites clearly indicate a bank can prepare tax returns for a customer and also provide accounting services.

Member Baerwald asked if the bank plans to prepare its own taxes, and Mr. Kommer indicated Eide Bailly will prepare all of the bank's tax returns; this request is for small business and farm returns.

Assistant Commissioner Entringer indicated he also provided a copy of the OCC Conditional Approval No. 384 from May 2000 which refers to payroll processing for national banks.

Assistant Commissioner Entringer indicated the three services proposed to be offered through the subsidiary are tax preparation, bookkeeping, and payroll services. Assistant Commissioner Entringer added that based on research it appears these proposed services are all activities permissible for a national bank and, therefore, should be permitted for a North Dakota state-chartered bank. Assistant Commissioner Entringer concluded it is the Department's recommendation that the State Banking Board approve the investment in a wholly-owned subsidiary by Bank Forward, Hannaford, along with the proposed Order.

Member Quale asked how this will work if the bank prepares financial statements, etc. for a customer and also lends money to that customer. Chairman Karsky stated that does happen and it is the lender's responsibility to analyze the statements to make sure they are correct, and added he feels the State Banking Board should recognize the fact that this can be a conflict.

Mr. Kommer indicated under the North Dakota Guidelines for State Accounting Boards that the financial statements cannot be reviewed by a CPA firm that is owned by a corporation within the State of North Dakota; therefore, that would limit the bank as to what can be done on the financial statement side. He continued this entity would be preparing tax returns, along with bookkeeping and payroll functions; however, would not take part in compilation of financial statements.

Assistant Commissioner Entringer indicated the proposed Order is essentially a parity order under North Dakota Century Code Section 6-03-02.3, which allows any activity that is permissible by a national bank can be granted by approval of the State Banking Board to state-chartered banks. Further, under North

Dakota Century Code Section 6-03-38 the State Banking Board can authorize a bank to invest in subsidiary organizations when the activities are incidental or complimentary. In conclusion, a subsidiary can be granted the same approval as a state-chartered bank.

Assistant Commissioner Entringer asked Mr. Kommer what is the tentative consummation date and the amount the bank would be investing in the subsidiary. Mr. Kommer indicated the consummation date is December 1, 2008, and the total purchase price which will be spread over two years is \$345,000.

Member Henke asked how many people are on staff in the bookkeeping firm, and Mr. Kommer indicated there are five people, which are all licensed public accountants, not certified public accountants. Member Henke asked if these individuals can do compilations, and Mr. Kommer indicated they presently do but once the firm is purchased this will no longer be an option because a CPA firm cannot be owned by a corporation.

Member Braseth asked if this service will be available at all the bank's facilities or headquartered at one specific facility. Mr. Kommer indicated it will be headquartered at the Jamestown facility and service only the local Jamestown area.

It was moved by Member Monson to approve the request by Bank Forward, Hannaford, to invest in a wholly-owned subsidiary, with the purchase price not to exceed \$345,000, along with proposed Order. The motion was seconded by Member Braseth and unanimously carried.

Mr. Kommer left the conference call at 9:25 a.m.

PROPOSED MEETING DATES FOR 2009

Assistant Commissioner Entringer indicated the proposed meeting dates for 2009 are the second Thursday of every other month, which would be January 8, March 12, May 14, July 9, September 10, and November 12.

Assistant Commissioner Entringer informed the State Banking Board the Department has a pending application from Unison Bank, Jamestown, to acquire and merge a branch in Arizona, and the bank would like to consummate that transaction before yearend; therefore, there may be a special meeting in December.

It was suggested the special conference call be held December 5 or sometime during the week of December 15, 2008, and Assistant Commissioner Entringer asked that the Board members let him know what would work.

Assistant Commissioner Entringer also stated the comment period for the changes to the North Dakota Administrative Code ends December 1, 2008; however, Chairman Karsky indicated the Board members should be present so this will come before the Board at its regular January 2009 meeting. Assistant Commissioner Entringer indicated the public hearing is scheduled for November 19, 2008; however, the State Banking Board members do not have to attend the hearing, but can be included by conference call if so desired.

The proposed meeting dates were agreed upon by the Board.

Tom Stennes joined the conference call at 9:27 a.m.

HARWOOD STATE BANK, HARWOOD – REQUEST TO LEASE FORMER BANK BUILDING

Assistant Commissioner Entringer indicated the Department received a request from Harwood State Bank as to whether the former bank premises could be leased to the City of Harwood. Assistant Commissioner Entringer referred to his November 6, 2008, Memorandum, which states under the Leasing category of the OCC's 2007 Guidance on Activities Permissible for a National Bank that national banks may engage in personal property leasing activities under two separate authorities.

Assistant Commissioner Entringer stated state banks already have the authority to engage in personal property leases; however, the language he was looking at is that national banks may also engage in lease financing if the lease is the functional equivalent of a loan under Section 24 (Seventh), which means it must be a net full payout lease.

Assistant Commissioner Entringer indicated national banks may lease real property that is incidental to a permissible lease of personal property, e.g. land upon which a leased manufacturing facility stands, which is part of OCC Interpretative Letter No. 770.

Assistant Commissioner Entringer also referred to Section 6-03-02.3 of the North Dakota Century Code which is the parity statute, and further that the property would not comply with a CEBA Lease. Assistant Commissioner Entringer indicated banks have been allowed to sell other real estate on a contract for deed and provided to the bank an extension to the end of the contract, and further that the proposed lease from the City of Harwood is a full payout lease.

Assistant Commissioner Entringer stated he feels the five-year limitation on ownership of this property does not apply because it was not acquired as a debt previously contracted. Assistant Commissioner Entringer stated he does not know if national banking law needs to be looked at since a bank should be able to sell its former bank premises in whatever manner it deems appropriate. Assistant Commissioner Entringer added he understands this is a fully tax exempt lease.

Chairman Karsky indicated there is no law that prohibits this activity, and that the bank could have made a loan to the City to buy the building.

Mr. Stennes stated the City has indicated to him that in order to acquire the building by loan there would have to be a special election, which would be very costly. The City has notified all residents of its intent to purchase this building, and has received positive comments.

Member Braseth asked if the City plans on using this building for its business offices, and Mr. Stennes stated that is correct. Mr. Stennes continued that the vault is a plus for secure storage space, along with the night drop which can be used for water billings.

Assistant Commissioner Entringer stated the Department recommends the State Banking Board authorize Harwood State Bank to enter into a lease with the City of Harwood for the former bank premises provided the lease is a full payout lease.

It was moved by Member Baerwald, seconded by Member Monson, and unanimously carried to authorize Harwood State Bank, Harwood, to enter into a lease with the City of Harwood for the former bank premises provided the lease is a full payout lease.

Mr. Stennes left the conference call at 9:40.

The Board went into closed session at 9:40 a.m.

Timothy J. Karsky, Chairman

Robert J. Entringer, Secretary