

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

November 15, 2013

A special meeting of the State Credit Union Board was called to order by Chairman Entringer in the Office of the Commissioner, Department of Financial Institutions, 2000 Schafer Street, Suite G, Bismarck, North Dakota, at 9:30 a.m., Friday, November 15, 2013.

MEMBERS PRESENT: Robert J. Entringer, Chairman (*Office*)
Paul Brucker, Member (*Office*)
Don Clark, Member (*Fargo*)
Steve Tonneson, Member (*Minot*)
Melanie Stillwell, Member (*Williston*)

MEMBERS ABSENT: None

ALSO PRESENT: Aaron Webb, Secretary (*Office*)
Janilyn Murtha, Assistant Attorney General (*Office*)
Corey Krebs, Chief Examiner – Credit Unions (*Office*)
Darwin Brokke, Citizens Community CU (*Devils Lake*)

**CITIZENS COMMUNITY CREDIT UNION, DEVILS LAKE –
APPLICATION TO ESTABLISH A BRANCH**

Assistant Commissioner Webb indicated on September 23, 2013, the Department received an application from Citizens Community Credit Union, Devils Lake (CCCU) to establish a branch at 428 Bygland Road SE, East Grand Forks, Minnesota.

Assistant Commissioner Webb indicated CCCU is an open charter credit union with a field of membership limited to those living in the Lake Region and a

40 mile radius of Bisbee, North Dakota, and a 40 mile radius of Larimore, North Dakota.

Assistant Commissioner Webb indicated the proposed branch in East Grand Forks falls within CCCU's current field of membership; therefore, an expansion of its field of membership is not necessary.

Assistant Commissioner Webb reviewed Chapter 13-03-15-04 of the North Dakota Administrative Code, which sets forth the criteria a credit union must follow when establishing a branch.

Assistant Commissioner Webb indicated CCCU's Board of Directors approved the branch application at its July 18, 2013, meeting.

Assistant Commissioner Webb indicated CCCU published notice of the application on October 2, 2013, in the *Exponent* (Polk County, MN); October 5, 2013, in the *Grand Forks Herald* (Grand Forks County, ND), *Traill County Tribune* (Traill County, ND), and the *Middle River Honker* (Marshall County, MN); and October 9, 2013, in the *Walsh County Record* (Walsh County, ND).

Assistant Commissioner Webb noted that CCCU has indicated its belief that this branch would not result in serious injury to any other state or federally-chartered credit union in North Dakota. Further, Assistant Commissioner Webb noted that a representative from CCCU was on the conference call to answer any additional questions relating to this criterion.

Assistant Commissioner Webb indicated while CCCU is projecting operating losses for the proposed branch for the first two years, it is projecting Net Operating Income of \$79,985 in the third year. Assistant Commissioner Webb added that the first two years of losses will have an impact on earnings, but the institution's overall ability to succeed is not an area of concern.

Assistant Commissioner Webb indicated CCCU intends to spend \$4,007,539 for the proposed branch at 32nd Avenue, Grand Forks, and an additional \$729,000 for this East Grand Forks branch. Assistant Commissioner Webb indicated the estimated fixed asset level following the construction of both branches is \$5,565,028 for a fixed asset ratio of 4.03%; adding that fixed assets should remain within the regulatory limit.

Assistant Commissioner Webb indicated while North Dakota law would allow the establishment of a branch office within CCCU's field of membership, Minnesota has a reciprocity provision under Minnesota Statutes section 52-03(2), providing in part: "...a credit union chartered in another state shall be permitted to do business in Minnesota if Minnesota credit unions are permitted to do business in that state...".

Assistant Commissioner Webb indicated as a result of an August 23, 2004, letter from then Chief Examiner Terry Meyer of the Minnesota Department of Commerce, the Board addressed reciprocity with Minnesota at a special meeting held on August 25, 2004. Assistant Commissioner Webb indicated in order to remove any question as to reciprocity the Board passed a motion authorizing reciprocity with Minnesota, holding that a Minnesota state-chartered credit union could branch into North Dakota as long as it was within the credit union's currently existing field of membership. Assistant Commissioner Webb indicated that based on the Board's Order the Minnesota Department of Commerce has allowed North Dakota state-chartered credit unions to branch in Minnesota; and to date the two States continued to operate under this understanding.

Assistant Commissioner Webb indicated in response to the current application, a request was made that the Office of the Attorney General for an opinion regarding the authority of the Board to grant reciprocity with Minnesota. Assistant Commissioner Webb indicated the Office of the Attorney General will issue a legal opinion, which will be provided to the Board as soon as it becomes available.

Assistant Commissioner Webb indicated on November 13, 2013, the Department received a letter of opposition from Marilyn Foss, General Counsel of the North Dakota Bankers Association (NDBA). Assistant Commissioner Webb explained NDBA is opposing the branch application on the basis of (1) whether the Board has the authority to authorize a North Dakota credit union to branch outside of the North Dakota border; (2) whether the Board has or had the authority to grant reciprocity with Minnesota, and (3) whether adequate notice of application was given.

Darwin Brokke, President of CCCU, indicated the proposed branch offers an opportunity for growth for CCCU.

Chief Examiner Krebs indicated he reviewed the application and has no concerns.

Chairman Entringer explained the Board can ask Assistant Attorney General Murtha questions regarding the process for an opinion from the Office of the Attorney General only.

Assistant Attorney General Murtha indicated she will decline to comment on any questions on the content or speculation regarding the conclusions of the Attorney General's Opinion.

Member Tonneson asked for clarification on the second proposed branch, and President Brokke explained this is an existing bank facility that CCCU will purchase.

Member Brucker questioned if there was a violation in the notification process as alluded to in the letter received from Ms. Foss.

Assistant Attorney General Murtha indicated according to the notice provided and rule requirements she believes there was not a violation of the notification process, and the notice was sufficient. Assistant Attorney General Murtha indicated if the proposed application is not acted upon today, another notice may be required. Assistant Attorney General Murtha continued that any reference questioning the legal basis for the Board to grant the application could be resolved by the Attorney General's Opinion. Assistant Attorney General Murtha concluded if the application is not acted upon today, any issues outlined in Ms. Foss's letter could be resolved at a later date.

When questioned by Member Brucker if today's process is to discuss the merits of the proposed branch application and wait for the Attorney General's Opinion on whether the Board has the authority to act, Chairman Entringer replied he recommends tabling any action on this application pending the Attorney General's Opinion. Chairman Entringer explained any action by the Board at this time could need to be reversed if the Attorney General's Opinion is adverse to action taken by the Board in 2004 regarding reciprocity.

When questioned by Chairman Entringer whether the sellers of the building have been informed of the situation as to whether the Board can approve this application, President Brokke stated he has had discussions with the seller regarding a potential purchase agreement extension. President Brokke continued the seller is disappointed in not being able to complete the transaction by the end of the year. President Brokke indicated he feels today's meeting is important so that he has an indication of the Board's thoughts regarding the proposed application

and possible extension to purchase the property in 2014. President Brokke indicated he is confident the seller will extend the purchase agreement.

Member Tonneson remarked that the Board approved a similar branch application in 2004, so it seems odd there may be an issue regarding that action nine years later. In answer to Member Tonneson's question, Chairman Entringer indicated an Attorney General's Opinion was not requested at that time, indicating that while Assistant Attorney General Scott Miller weighed in on the ability to branch into Minnesota, he did not address the motion to grant reciprocity. Chairman Entringer added that the NDBA commented on that application, but did not address the reciprocity issue.

Assistant Commissioner Webb addressed Member Tonneson's concerns by explaining that Minnesota regulators have limited discretion in reviewing matters involving reciprocity because Minnesota law states credit unions branching into their state will only be allowed if Minnesota credit unions can establish a branch in that state.

Chairman Entringer explained the State Banking Board recognizes reciprocity with Minnesota where the law states a bank that has existed less than five years cannot be acquired; therefore, North Dakota passed its own law stating if an age limitation exists in another state, the same limitation applies in North Dakota.

Chairman Entringer reiterated that the question before the Attorney General at this time is whether the Board overstepped its authority by passing a motion to grant reciprocity in 2004.

Chairman Entringer stated he believes the Board could indicate its general support of this application; however, not take action at this time, and Assistant Attorney General Murtha concurred. President Brokke commented he believes this would be beneficial in obtaining an extension on the purchase agreement.

Member Brucker asked whether there are staffing concerns for the proposed branch, and President Brokke indicated staffing is a better situation in Minnesota than Devils Lake.

Member Tonneson asked if a branch manager has been chosen, and President Brokke indicated a current staff member that has management and lending experience in Minnesota would fill that position.

Member Tonneson questioned whether it is realistic that the proposed branch will improve as fast as projected in the application, and President Brokke indicated he does feel comfortable with the projected numbers, and felt the branch could possibly do better.

Member Tonneson indicated he is comfortable with the proposed branch application and would be in favor of approving the application, pending receipt of the Attorney General's Opinion.

Member Brucker agreed he is comfortable with the proposed branch application; however, believes the Board should not take action until receiving the Attorney General's Opinion.

Member Clark and Member Stillwell agreed. Member Stillwell added she believes President Brokke has presented sufficient facts establishing that a substantial portion of his membership currently lives in the proposed branch area.

Chairman Entringer indicated he also agrees, but would like to wait until the Attorney General's Opinion is received to finalize the Board's action.

Chairman Entringer indicated the next step would be to wait until the Attorney General's Opinion is received and provided to the Board members, and then schedule a special Board meeting to make a final decision on the proposed branch application. At this point the Board could decide whether to order a hearing as requested by NDBA or proceed with a special meeting. Chairman Entringer explained notice of the branch application would be republished whether a hearing or special meeting is held.

Chairman Entringer stated his recommendation is to wait until the Attorney General's Opinion is received; make the decision whether a hearing is necessary based on the outcome of the Opinion; and either schedule a hearing or a special meeting.

In answering whether a hearing is required to be granted as requested by NDBA, Assistant Attorney General Murtha indicated the Board is required to follow the rules that have already been adopted for the State Banking Board for filing of a formal complaint, a formal protest, or a petition for intervention. Assistant Attorney General Murtha explained each have very specific requirements with regard to the format of the documents, how many copies are required, and how many days in advance formal request needs to be submitted to the Board for

consideration. Assistant Attorney General Murtha indicated the letter received from NDBA did not take the form of any of the three formal documents; therefore, it is her recommendation that this particular letter would be construed as an informal complaint; therefore, this issue can be resolved in any manner the Board sees fit. Assistant Attorney General Murtha reiterated the discretion rests with the Board whether or not a hearing should be held or NDBA should be allowed to participate.

It was moved by Member Clark, seconded by Member Brucker, and unanimously carried to table action on the application submitted by Citizens Community Credit Union, Devils Lake, to establish a branch at 428 Bygland Road SE, East Grand Forks, Minnesota, until the requested Attorney General's Opinion is received.

INVESTMENT IN MIDWEST BUSINESS SOLUTIONS CUSO

Chairman Entringer indicated identical requests to invest \$25,000 in Midwest Business Solutions CUSO have been received from Citizens Community Credit Union, Devils Lake; North Star Community Credit Union, Maddock (NSCCU); and First Community Credit Union, Jamestown (FCCU).

Chief Examiner Krebs indicated FCCU has already invested \$25,000 in this CUSO, as they were not aware Board approval was needed; therefore, FCCU is requesting post approval. Chief Examiner Krebs indicated the need for the investment stems from the discount on services provided by the CUSO including underwriting participations and long term real estate financing. Chief Examiner Krebs reviewed the regulations that apply to investments in CUSOs: investments in CUSOs must be approved the Board, and investments cannot exceed 10% of the credit union's net worth as defined by Section 13-03-23-06 of the North Dakota Administrative Code. Chief Examiner Krebs indicated based on the June 2013 Call Report data it appears the limit for FCCU is \$5.24 million; as of the application date FCCU had invested \$800,000 into a CUSO and was authorized to invest up to an additional \$1 million, for a total investment of \$1.8 million, which is well below the limit. Chief Examiner Krebs indicated the application appears within the bounds of regulation and the financial impact to FCCU would be minimal.

Chief Examiner Krebs indicated the fact circumstance is very similar for CCCU; the difference being their investment limit is \$1.62 million. Chief

Examiner Krebs explained CCCU has already invested \$75,000 into a CUSO, so the additional \$25,000 investment would be well within the limit, and the financial impact to CCCU would be minimal.

Chief Examiner Krebs indicated the different circumstance relating to NSCCU is their investment limit is \$1.85 million. Chief Examiner Krebs explained NSCCU has already invested \$23,000 into a CUSO, so the additional \$25,000 investment would be well below the regulatory maximum, and the financial impact to NSCCU would be minimal.

Chairman Entringer indicated one copy of the history of Midwest Business Solutions, LLC, was provided to the Board; however, is applicable to each of the three credit unions.

It was moved by Member Stillwell, seconded by Member Tonneson, and unanimously carried to approve the requests by First Community Credit Union, Jamestown; North Star Community Credit Union, Maddock; and Citizens Community Credit Union, Devils Lake, to invest \$25,000 in the Midwest Business Solutions CUSO.

The meeting adjourned at 10:05 a.m.

Robert J. Entringer, Chairman

Aaron K. Webb, Secretary