

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

March 14, 2014

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 Entringer called the meeting to order at 9:00 a.m., Friday, March 14, 2014, by conference call.

MEMBERS PRESENT: Robert J. Entringer, Chairman (*Office*)
Nancy Baerwald, Member (*Cando*)
Linda Beall, Member (*Velva*)
Bill Daniel, Member (*Bismarck*)
Kim Larson, Member (*Casselton*)
Anita Quale, Member (*Watford City*)
Tom Stennes, Member (*Harwood*)

MEMBERS ABSENT: None

ALSO PRESENT: Aaron K. Webb, Secretary (*Office*)
Suzette Richardson, Administrative Staff Officer (*Office*)
Jan Murtha, Assistant Attorney General (*Office*)

APPROVAL OF MINUTES

Chairman Entringer indicated the Board received copies of the minutes of the regular meeting held on January 9, 2014.

It was moved by Member Baerwald, seconded by Member Beall, and unanimously carried, to approve the minutes of the regular meeting held January 9, 2014, as presented.

MERGER APPLICATION – FARMERS & MERCHANTS STATE BANK OF TOLNA, TOLNA, TO MERGE MCVILLE STATE BANK, MCVILLE, INTO FARMERS & MERCHANTS STATE BANK OF TOLNA, TOLNA, AND CHANGE ITS NAME TO FARMERS & MERCHANTS BANK OF NORTH DAKOTA, TOLNA

Assistant Commissioner Webb reviewed his Memorandum dated January 31, 2014, indicating the Department received the Interagency Bank Merger Act Application on December 30, 2013, for Farmers & Merchants State Bank of Tolna, Tolna (Tolna) to merge McVile State Bank, McVile (McVile), into Tolna.

Assistant Commissioner Webb indicated Notice of the application was published pursuant to the joint state and federal requirements in the Lakota American on January 1, 15, and 22, 2014. Assistant Commissioner Webb stated the public comment period ended January 31, 2014, and no comments were received nor were there any requests for copies of the application.

Assistant Commissioner Webb reviewed Section 6-03-11 of the North Dakota Century Code and Chapter 13-02-13 of the North Dakota Administrative Code which sets forth the requirements for banks to follow when merging banks or holding companies.

Assistant Commissioner Webb indicated the original Articles of Merger and Plan of Merger are included in the application materials, as well as the revised Articles of Merger.

Assistant Commissioner Webb indicated two Waiver of Notices from Tolna Bancorp, Inc. (as sole shareholder of both Tolna and McVile) are included with the application wherein Tolna Bancorp, Inc. waives the need for notice of a meeting of the shareholders.

Assistant Commissioner Webb indicated a Written Action of Sole Shareholder submitted by Tolna Bancorp Inc. (as sole shareholder of both Tolna and McVile), and Written Action of the Board of Directors from both Tolna and McVile are included with the application which ratify, confirm, and approve the Merger Agreement and Amendments, and authorize any officers and directors of the banks to take all further actions and execute any additional documents necessary to effectuate the Merger.

Assistant Commissioner Webb indicated upon approval of the merger application, the Binford facility of McVille will be closed; however, since Tolna already operates a branch in Binford, no adverse changes caused by the closure are anticipated.

Assistant Commissioner Webb indicated pursuant to Section 13-02-13-04 of the North Dakota Administrative Code the projected capital of the resultant bank as of September 30, 2013, is 9.68% Tier 1 Leverage, 12.86% Tier 1 Risk-based, and 13.29% Total Risk-based; and as of September 30, 2014, the above respective ratios are projected at 9.87%, 13.70%, and 13.70%. Assistant Commissioner Webb indicated the resultant bank is projecting to remain in the “Well Capitalized” capital category.

Assistant Commissioner Webb indicated the resultant bank has expressed its intent to continue to meet the convenience and needs of the communities it serves, as well as continue to provide the products and services in a manner which will meet and exceed the expectations of the CRA regulation.

Assistant Commissioner Webb indicated the proposed officers of the resultant bank are qualified, experienced, and financially responsible.

Assistant Commissioner Webb indicated Tolna intends to continue operations in the former main office of McVille which is located at 201 South Main Street, McVille, North Dakota, as well as at the former facility of McVille located at 321 Highway 15, Northwood, North Dakota.

Assistant Commissioner Webb provided that as part of the merger transaction Tolna has included Articles of Amendment to change the name of the surviving institution from Farmers & Merchants State Bank of Tolna to Farmers & Merchants Bank of North Dakota.

Chairman Entringer indicated that Tolna received approval from the Farmers and Merchants State Bank, Langdon, for the proposed name change as required by the Secretary of State’s Office.

Chairman Entringer indicated the State Banking Board previously approved the change of control application whereby Tolna Bancorp, Inc., acquired McVille Financial Services, Inc., and McVille.

Chairman Entringer added that the Federal Deposit Insurance Corporation approved the merger application on February 10, 2014.

Chairman Entringer indicated that Dan Rorvig, Bob Fossum, and Troy Olson will remain as employees of Tolna.

Chairman Entringer reviewed the conditions of the proposed Order with the Board.

Assistant Commissioner Webb indicated the Department believes the assumptions used and projections provided in the application is accurate; therefore, recommends the merger application and name change be approved, and that the Board authorizes Chairman Entringer to sign the Order on behalf of the Board.

It was moved Member Quale, seconded by Member Larson, and unanimously carried to approve the application by Farmers & Merchants State Bank of Tolna, Tolna, to merge McVile State Bank, McVile, into Farmers & Merchants State Bank of Tolna, Tolna; to change the name of the resultant bank to Farmers & Merchants Bank of North Dakota, Tolna; and to authorize Chairman Entringer to sign the Order on behalf of the Board.

CHANGE OF CONTROL – GORDON H. HOFFNER 2011 IRREVOCABLE FAMILY TRUST AND WAYNE G. HOFFNER, INDIVIDUALLY AND AS TRUSTEE OF THE GORDON H. HOFFNER 2011 IRREVOCABLE FAMILY TRUST

Chairman Entringer indicated the change of control application by Gordon H. Hoffner 2011 Irrevocable Family Trust (Trust) and Wayne G. Hoffner (Hoffner), Individually and as Trustee of the Gordon H. Hoffner 2011 Irrevocable Family Trust to retain 61.4% of the voting shares of Union Holding Company, Halliday, is a retroactive change of control.

Chairman Entringer reviewed his Memorandum dated February 27, 2014, indicating the Department received the change of control application on February 4, 2014, and the application was deemed complete on February 27, 2014.

Chairman Entringer indicated notice of the application was published jointly with the Federal Reserve Bank of Minneapolis in the Beulah Beacon, Beulah, North Dakota, on February 6, 2014, and as of the date of this Memorandum no comments were received nor requests for copies of the application.

Chairman Entringer indicated separate applications for the Trust and Hoffner were received. Chairman Entringer indicated the Trust exceeded 25% ownership of the Union Holding Company when Gordon Hoffner gifted 59% of the voting stock to the Trust in 2011, and as a result Hoffner as trustee of Trust acquired control since he now has the power to vote 25% or more of the voting stock of Union Holding Company.

Chairman Entringer reiterated this is a retroactive application for a change in control because the transfers actually occurred in 2011.

Chairman Entringer indicated the Federal Reserve Bank of Minneapolis also required an application from Lynette Bjornson, Gordon Hoffner's daughter, since she owns 2.37% of the voting shares of the Union Holding Company. Chairman Entringer explained the Federal Reserve considers the Hoffner Family Group to collectively control the Union Holding Company; however, the Department's interpretation is that Hoffner, as trustee of the Trust, and individually, controls the company with 61.4% of the voting shares.

Chairman Entringer indicated the Department recommends approval of the retroactive change of control for Wayne G. Hoffner Individually and as Trustee of the Gordon H. Hoffner 2011 Irrevocable Family Trust to retain control of the Union Holding Company.

It was moved by Member Beall, seconded by Member Daniel, and unanimously carried to approve the retroactive change of control application by Gordon H. Hoffner 2011 Irrevocable Family Trust and Wayne G. Hoffner, Individually and as Trustee of the Gordon H. Hoffner 2011 Irrevocable Family Trust to retain 61.4% of the voting shares of Union Holding Company, Halliday.

HORIZON FINANCIAL BANK, MUNICH – PURCHASE OF EMPLOYEE RESIDENCE

Chairman Entringer reviewed his Memorandum dated March 3, 2014, which indicates John Vollmer, President of Horizon Financial Bank, Munich, has requested approval for the bank to purchase an employee residence to facilitate relocation. Chairman Entringer explained President Vollmer is requesting that the bank be allowed to purchase his home in Devils Lake in order to facilitate his relocation to Bismarck in order to manage the facility being constructed in Bismarck.

Chairman Entringer indicated North Dakota law does not expressly allow a bank to purchase an employee's home; however, there are circumstances in which the Federal law permits this activity. Chairman Entringer indicated 12 C.F.R. 7.1000(d)(2) provides "to facilitate the efficient use of bank personnel, a national bank may purchase the residence of an employee who has been transferred to another area in order to spare the employee a loss in the prevailing real estate market, and the bank must arrange for early divestment of title to such property".

Chairman Entringer indicated Section 6-03-02.3 of the North Dakota Century Code ("the parity power") provides that "subject to authorization by the state banking board, acting by order or rule, a state bank has the same powers as a national bank and may engage directly or indirectly in any activity in which a bank could engage if the state bank were nationally chartered".

Chairman Entringer indicated the question is whether the Board wants to allow the purchase of an employee's residence as permitted under federal law; adding that the Board has the right to adopt the same standard, deny the request, or adopt a more restrictive standard.

Chairman Entringer referred to Interpretive Ruling 7.5230 from the OCC to a national bank which served as the basis for 12 C.F.R. 7.1000(d)(2). Chairman Entringer explained while the underlying facts in the case were quite different than the proposal before the Board, he believes it highlights the OCC's relatively strict interpretation of the law, which is that a bank may purchase the residence of an employee who has been transferred in order to spare the employee a loss in the prevailing real estate market.

Chairman Entringer indicated he has drafted a Proposed Parity Order for the Board's consideration which requires documentary evidence that the bank is purchasing the home in order to spare the loss to the employee, and to maintain documentation showing that they are attempting to divest themselves of the property promptly.

Chairman Entringer indicated if the Board grants the request by President Vollmer, the Department recommends the Administrative Code be amended to formally adopt the Board's standard for the purchase of an employee's residence.

Chairman Entringer stated he questioned whether Horizon Financial Bank is going to purchase President Vollmer's home in order to prevent a loss.

Member Baerwald stated the real estate market in Devils Lake is currently brisk, with homes hard to get and selling fast, and questioned whether the real estate market was adequately represented by President Vollmer. Chairman Entringer indicated he knows there is a buyer for the house; therefore, he does not believe the bank would own the house long. Chairman Entringer continued that he feels if President Vollmer will not incur a loss in the sale of his house and that there are options available other than the bank purchasing the house.

Member Beall stated she feels the Parity Order would be beneficial in a situation where a bank employee purchased a home at the height of the market and was transferred for employment purposes at the time the housing market declined significantly. Member Beall continued since the market is strong in Devils Lake she does not see the point of President Vollmer's request. Chairman Entringer agreed, adding he believes that the example provided by Member Beall was the type of situation contemplated by the OCC law.

Chairman Entringer indicated he does not have a problem adopting the Parity Order, but does not believe it should be applicable under these circumstances. Member Stennes agreed, adding he feels the Board has to be careful not to set a precedent going forward.

Members Baerwald, Beall, Larson, Quale, and Stennes agreed with the need for the Parity Order proposed by Chairman Entringer. Member Daniel indicated he would abstain from voting on this issue as his company sold the real estate property to Horizon Financial Bank and is currently marketing the extra lease space in the

building. Chairman Entringer informed Member Daniel he can abstain from voting; however, his vote will be cast with the majority.

It was moved by Member Quale and seconded by Member Larson to approve the Parity Order as presented, and that Chairman Entringer is authorized to sign the Order on behalf of the Board. Member Daniel abstained, however his vote was cast with the majority. The motion carried by a vote of 7 to 0.

BANK BUDGET UPDATE

The January 31, 2014, Organizational Status Report by Summary Account for the bank division was included with the agenda for the Board's review.

Chairman Entringer informed the Board the Department presently has one vacancy in the bank division.

DAY WITH THE COMMISSIONER

Chairman Entringer indicated the Day with the Commissioner has been scheduled for May 7, 2014, which is the day before the FDIC Director College. Chairman Entringer indicated the Day with the Commissioner will be held in the Bismarck Civic Center Exhibition Hall and the agenda should be mailed out by March 30, 2014. Chairman Entringer indicated he would like to include a town hall meeting on community banking as the last item of the agenda.

Member Larson commented he appreciates the coordination of dates for these events.

The Board went into closed session at 9:20 a.m. to review the Supervisory Reports of Examination pursuant to North Dakota Century Code 6-01-07.1, and to discuss any confidential records pursuant to North Dakota Century Code 44-04-19.2.

The Board reconvened to open session at 9:40 a.m.

STRATEGIC PLAN

Chairman Entringer indicated an update to the Strategic Plan will be on the agenda for the May 8, 2014, meeting.

RESCHEDULE MEETING

Chairman Entringer indicated the May 8, 2014, meeting is the same date of the FDIC Director's College; therefore, Assistant Commissioner Webb will contact each member to schedule an alternative date.

The meeting adjourned at 9:42 a.m.

Robert J. Entringer, Chairman

Aaron K. Webb, Secretary