

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

September 11, 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., Thursday, September 11, 2014, by conference call.

MEMBERS PRESENT: Robert J. Entringer, Chairman (*Nashville*)
Nancy Baerwald, Member (*Cando*)
Linda Beall, Member (*Velva*)
Kim Larson, Member (*Casselton*)
John Schmid, Member (*Carson*)
Tom Stennes, Member (*Harwood*)
Cheryl Thompson, Member (*Fargo*)

MEMBERS ABSENT: None

ALSO PRESENT: Aaron Webb, Secretary (*Office*)
Suzette Richardson, Administrative Staff Officer (*Office*)
Jan Murtha, Assistant Attorney General (*Office*)
Lise Kruse, Chief Examiner – Banks (*Fargo*)

APPROVAL OF MINUTES

Chairman Entringer indicated the Board received copies of the minutes of the regular meeting held on July 10, 2014, and the special meetings held July 17, August 14, and August 28, 2014.

It was noted the number of shares First Western Bank & Trust, Minot, will purchase should be corrected to “5” instead of “6” in the motion on page 9 of the July 10, 2014, minutes.

It was moved by Member Schmid, seconded by Member Baerwald, and unanimously carried, to approve the minutes of the regular meeting held July 10, 2014, as amended, and the minutes of the special meetings held July 17, August 14, and August 28, 2014, as presented.

ITEMS TO BE NOTED

Chairman Entringer indicated that on July 29, 2014, he approved, as Commissioner, the request by Choice Financial Group, Grafton, to establish a facility at 324 N 3rd St, Bismarck.

Chairman Entringer indicated on July 30, 2014, the Department received a copy of the application Bremer Bank, National Association, South St. Paul, MN, filed with the Office of the Comptroller of the Currency requesting approval to merge with the following locations: Alexandria, MN; Brainerd, MN; Fargo, ND; Grand, ND; International Falls, MN; Menomonie, WI; St. Cloud, MN; and Willmar, MN.

BANK BUDGET UPDATE

Chairman Entringer reviewed the July 31, 2014, Organizational Status Report by Summary Account for the bank division.

LEGISLATION

Chairman Entringer indicated a Memorandum dated September 10, 2014, was emailed for the Board’s review regarding proposed legislative amendments for the 2015 session. Chairman Entringer indicated he will be meeting with representatives of the North Dakota Bankers Association (NDBA) on November 13, 2014, to review these proposals, and will also schedule a meeting to review them with representatives of the Independent Community Banks of North Dakota (ICBND).

Bill 1 – Bank Holding Company

Chairman Entringer explained during the 2014 CSBS Accreditation the review team noted the Department routinely conducts reviews of bank holding companies based on its authority to request holding company information from a bank being examined. Chairman Entringer indicated the review team noted the Department currently has no enforcement powers over bank holding companies or other bank affiliates; therefore, even though the review team recognized the Department has previously attempted to acquire such authority and was denied at the legislative level, they recommended that the Department continue to pursue attainment of such authority.

Chairman Entringer indicated based on this recommendation, the Department is in the process of drafting a bill that would amend Chapter 6-01 of the North Dakota Century Code to extend the regulatory powers currently existing for banks, credit unions, and other non-depository entities to bank holding companies.

Chairman Entringer indicated that Sections 6-01-01, 6-01-02(17), and 6-01-09 would be affected, and the Department would obtain specific examination authority; the ability to assess limited civil money penalties; removal authority; and ability to issue Orders regarding holding companies.

Assistant Commissioner Webb added the proposed bill would incorporate bank holding companies into the same statutory sections as financial institutions.

Chairman Entringer indicated the Department proposed legislation in the 1990's which was amended to allow the Department the ability to request records from a holding company, but did not allow specific examination authority.

Chairman Entringer added the bill would specifically refer to a holding company that owns a North Dakota state-chartered institution.

Member Schmid commented this would be an additional regulatory issue for banks to deal with, and suggested any Department authority be limited to holding companies under an enforcement action. Member Schmid indicated holding companies are regulated by the Federal Reserve which has the authority to examine. Member Schmid concluded he did not believe this legislation would be welcomed by the banks or associations.

Chairman Entringer indicated if the Board does not support this Bill it will not be presented as proposed legislation.

Chairman Entringer indicated there are a number of states that do have specific examination and enforcement authority over bank holding companies. Chairman Entringer explained he will include the Board's decision on this proposed legislation in the annual accreditation report the Department submits to CSBS.

Chairman Entringer added that this recommendation by the accreditation review team did have a minor effect on the Department's overall accreditation results. Chairman Entringer indicated the Department received its highest score during this accreditation review, and believes reaccreditation will not be jeopardized if this legislation is not pursued.

Member Beall stated she would agree with this proposal if the Department would regulate bank holding companies in lieu of federal regulators. Member Beall agreed this proposed legislation would not be welcomed by the banks or associations.

In response to Member Larson, Chairman Entringer indicated the Department cannot take any action against bank holding companies without legislative authority. Chairman Entringer indicated the Department is aware of activities of bank holding companies even though it cannot participate in any actions with the Federal Reserve. Chairman Entringer concluded this does not create a hindrance to conducting business, as the Department's authority over banks allows the restriction of dividends to a holding company.

In response to Member Schmid, Chairman Entringer indicated the Department can review the possibility of proposed legislation authorizing the Department to take a part in any Federal Reserve actions regarding bank holding companies.

After addressing confidentiality with Assistant Attorney General Murtha, Member Larson referred to a bank that has a repeat violation of not reporting on a timely basis which resulted in a civil money penalty, and questioned whether the state has this authority or if action is referred to the federal regulator. Chairman Entringer responded that the Department is limited in the ability to assess civil

money penalties, in that it has to be a violation of a specific statute identified a specific section or has to be proven as an unsafe or unsound banking practice.

In response to Member Stennes, Chairman Entringer indicated if the Board opposes this proposed legislation it will not be presented to NDBA or ICBND.

Chairman Entringer reiterated he is seeking direction from the Board on whether or not to proceed with this proposed legislation.

Member Stennes agreed that neither NDBA nor ICBND would support this proposed legislation.

Chief Examiner Kruse explained that CSBS pointed out this could be a potential issue for the Department. For example, if a North Dakota bank has one individual causing problems the Department can recommend removal of this person from the bank; however, the bank can then move that person to the holding company allowing them continued influence over bank management and operation.

In response to Member Beall, Chairman Entringer stated proposed legislation could be drafted authorizing the Department control in the example presented by Chief Examiner Kruse.

Chairman Entringer explained the Department's proposal is to change the definition of a financial institution to include a bank holding company; however, could instead amend the civil money penalty or removal section by adding bank holding companies. Chairman Entringer indicated this would give the Department more authority than present and may appease the CSBS accreditation review team.

Member Beall agreed and stressed this would eliminate over regulating.

Assistant Commissioner Webb indicated the Department has legislation in the consumer division that provides if an employee of a licensee is removed, that employee cannot relocate to another company which holds a charter or license with the Department.

It was the consensus of the Board that the Department proposes an amendment to the civil money penalty or removal section by adding bank holding companies.

Chairman Entringer indicated the Department will report back to the Board after proposing this to the NDBA and ICBND.

Bill 2 – General Banking Bill

Chairman Entringer explained this bill would include various amendments designed to address issues noted during the previous biennium. Chairman Entringer indicated the following Sections would be affected:

6-01-04.4 – updating the prompt corrective action section to account for subsequent changes in the federal law (12 CFR Part 325, Section 103).

6-01-09 – expanding supervision and examination by commissioner section to include authority over third party IT service providers (recommendation of the CSBS Accreditation Review Team).

Member Schmid commented he does not believe it would be a problem to expand supervision and examination over third party providers, adding that initially the FDIC or Federal Reserve would alternate with the state on examinations.

6-03-11 – amending the conversion, consolidation, or merger section removing the requirement for shareholder ratification and confirmation when the purchase of assets and the assumption of liabilities represent less than (a percentage to be determined) of the total assets of the selling institution.

Chairman Entringer explained the Department's goal is to develop a percentage that allows a bank selling a facility that is nominal in relation to the overall size of the bank to avoid asking their shareholders for ratification for the sale. Member Beall indicated she feels the issue to sell would have been addressed with the shareholders during an annual meeting; therefore, she agrees this proposal would speed up the transaction process.

6-03-13.1 – reviewing whether to provide a facility application exemption for 1 or 2 rated institutions, instead only requiring notification (recommendation of the CSBS Accreditation Review Team).

Chairman Entringer indicated he has requested comparable state statutes from CSBS to review. Chairman Entringer explained a fee is currently charged to

establish a facility; therefore, if an in-depth analysis is not performed it would have to be determined if the “1” or “2” rated bank would still be charged a fee to establish a facility. In response to Member Beall, Chairman Entringer indicated these banks would still have to submit a facility application to the FDIC. Member Beall added she feels this would speed up the transaction process and eliminate unnecessary costs.

6-03-47.2 – amending the investments of state banks section to replace “unimpaired capital and surplus” with “Tier 1 Capital” (the Department is reviewing the potential effect of such a change).

Chairman Entringer explained the reasoning for the amendment; adding that the Department has not made a firm decision on whether to submit this amendment. Chairman Entringer added if the corporate bond limit is raised it would give a bank its legal lending limit for investment purposes.

Member Schmid indicated this would increase exposure to certain corporate transactions; however, questioned whether that was a significant issue. Chairman Entringer agreed, adding he does not believe many North Dakota state-chartered banks invest in corporate bonds. Member Schmid indicated with the change to underwriting municipals, he did not believe this issue would be a factor.

6-08-08.1 – amend the change of control section to mirror the current federal law which (1) only addresses the purchase or acquisition of control of a banking institution (not sale or disposition), and (2) provides specific exemptions from prior notice of a change of control application (for example: gift, inheritance or satisfaction of debts previously contracted in good faith).

Chairman Entringer explained this statute refers to the sale or disposition of an association or bank holding company. Chairman Entringer indicated current interpretations require a change of control application when ownership of a bank or holding company fell below 25%. Chairman Entringer indicated this is not a required under federal regulations; therefore, the suggestion is to amend the statute to mirror federal requirements, as well as including federal exemptions such as inheritance, gifts, and DPC. Member Beall indicated she felt this was a very good idea. Assistant Commissioner Webb added the current interpretation was not clear, as an application was not always required by the seller. Assistant Commissioner

Webb added that if ownership falls below 25% and at some later point goes above 25%, an application would be required.

Chairman Entringer concluded that upon completion of the 2015 session, the Department plans on introducing numerous changes to the North Dakota Administrative Code.

The Board went into closed session at 9:38 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 10:19 a.m.

PLEDGING OF PUBLIC DEPOSITS

In response to Member Schmid, Chairman Entringer indicated pledging of public deposits is a common bank violation; however, explained it is not because banks do not have the ability to pledge, instead it is because a large unexpected deposit was made and when an examination is conducted the bank is informed it is under pledged. Chairman Entringer indicated the Department is not overly concerned with this issue, but view it as a depositor protection approach. Chairman Entringer added this could become an issue because banks are running out of securities to pledge, and having to turn to letters of credit from the Federal Home Loan Bank or the Bank of North Dakota.

There was discussion as to whether the Department should discuss this issue legislatively, and Chairman Entringer indicated this will be discussed with the NDBA and ICBND.

SPECIAL MEETING

Chairman Entringer indicated a special meeting will be held to review a change of control application the Department received.

The meeting adjourned at 10:26 a.m.

Robert J. Entringer, Chairman

Aaron Webb, Secretary