

**REGULAR 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**

December 1, 2017

The regular meeting of the State Credit Union Board was called to order by Chair Kruse in the Office of the Commissioner, Department of Financial Institutions, 2000 Schafer Street, Suite G, Bismarck, North Dakota, at 9:02 a.m., Friday, December 1, 2017, by conference call.

MEMBERS PRESENT: Lise Kruse, Chair (*Office*)
Paul Brucker, Member (*Office*)
George Economon, Member (*Office*)
Deb Gallagher, Member (*Office*)
Melanie Stillwell, Member (*Williston*)

MEMBERS ABSENT: None

ALSO PRESENT: Aaron Webb, Secretary (*Office*)
Suzette Richardson, Administrative Staff Officer (*Office*)
Jan Murtha, Assistant Attorney General (*Office*)
Corey Krebs, Chief Examiner – Credit Unions (*Office*)
Sara Sauter, Financial Institutions Examiner (*Office*)
Heidi LaBree, Financial Institutions Examiner (*Office*)
Dave Hatton, Financial Institutions Examiner (*Detroit Lakes*)
Steve Schmitz, First Community CU (*Jamestown*)
Fred Wolff, First Community CU (*Jamestown*)

COMMISSIONER LISE KRUSE

Chair Kruse introduced herself to the State Credit Union Board and stated she is excited about serving the Board, the state-chartered credit unions and their members. Chair Kruse indicated the Department's goal is that the communities in

North Dakota continue to be served. Chair Kruse stated she is originally from Norway, has lived in Fargo for 20+ years, started with the Department in 2004 as a Financial Institutions Examiner for banks, and for the last seven years has served as the Chief Examiner – Banks.

APPROVAL OF MINUTES

Chair Kruse indicated the Board received copies of the minutes of the regular meeting held on September 8, 2017.

It was moved by Member Brucker, seconded by Member Economon, and unanimously carried, to approve the minutes of the regular meeting held September 8, 2017, as presented.

CAPITAL CREDIT UNION, BISMARCK – REQUEST FOR ADDITIONAL INVESTMENT IN CCU FINANCIAL SERVICES LLC

Assistant Commissioner Webb reviewed his Memorandum dated October 11, 2017, indicating the Department received a letter dated October 2, 2017, from Capital Credit Union requesting approval to invest up to an additional \$1.5 million into CCU Financial Services LLC, for a total investment of \$1.7 million.

Assistant Commissioner Webb noted that Capital Credit Union received authorization from the State Credit Union Board to invest \$150,000 in this CUSO on December 17, 2004; the Board authorized an additional \$50,000 investment in this CUSO on September 23, 2011; and currently has authorization to invest up to \$200,000 in the CUSO.

Assistant Commissioner Webb indicated that Chief Examiner Krebs reviewed the request and outlined requirements for investments in CUSOs found under North Dakota Administrative Code Section 13-03-23-06.

Assistant Commissioner Webb indicated the Department recommends approval of the request and that Chair Kruse be authorized to sign the Second Amended Order on behalf of the State Credit Union Board.

It was moved by Member Brucker, seconded by Member Economon, and unanimously carried by a vote of 5 to 0, with Member Gallagher abstaining, to

approve the request by Capital Credit Union, Bismarck, to invest up to an additional \$1.5 million into CCU Financial Services LLC, for a total investment of \$1.7 million. Assistant Attorney General Murtha explained that Member Gallagher's abstention was cast in favor of the majority vote of the State Credit Union Board.

FIRST COMMUNITY CREDIT UNION, JAMESTOWN – APPLICATION TO MERGE AGASSIZ FEDERAL CREDIT UNION, CROOKSTON, MN, INTO FIRST COMMUNITY CREDIT UNION, JAMESTOWN

Chair Kruse noted the Department received a letter from the North Dakota Bankers Association (NDBA) objecting to the proposed application by First Community Credit Union (FCCU) to merge Agassiz Federal Credit Union, Crookston, MN (Agassiz) into FCCU. Chair Kruse explained NDBA first argues the merger application is incomplete and questions redaction of the second primary reason of Agassiz's desire to merge; however, added the Department addressed this issue with NDBA by explaining confidential examination information had been redacted.

Chair Kruse indicated NDBA also questions the statutory authority for the State Credit Union Board to authorize an interstate merger and branch for a state-chartered credit union, as well as union to operate an interstate branch. Chair Kruse added that NDBA also questions the field of membership as a result of this proposed merger, as Agassiz's field of membership is not in North Dakota. Chair Kruse referred to an Attorney General's Opinion Letter (AG Opinion) issued in 2014 which addresses a related issue; however, refers to interstate branching within a current field of membership.

Chair Kruse indicated the State Credit Union Board has never addressed an application of this nature; therefore, the Department feels it is imperative this is addressed correctly. Chair Kruse suggested being proactive rather than be defensive regarding this application.

Chair Kruse indicated her preference is that a current AG Opinion be obtained to guide the State Credit Union Board regarding the proposed merger.

Assistant Attorney General Murtha explained that while there is an argument in North Dakota law for the Board to rely on, there is a decision to be made on where to spend resources. Thus, the Board would need to decide whether to go forward

knowing there could be a potential legal action on this application or a future application, or take an additional period of time upfront to obtain a legal opinion that would provide the force and effect of. Assistant Attorney General Murtha indicated she and Department staff concluded it would be a better allocation of Department resources to take the time to request an AG Opinion before acting on the proposed application.

In response to Member Gallagher, Assistant Attorney General Murtha indicated an AG Opinion could be obtained prior to the State Credit Union Board's March 2018 meeting. Assistant Commissioner Webb added with the departure of Assistant Attorney General Murtha the process could take longer.

Member Gallagher indicated her concern is that FCCU hopes to go forward with its merger application request; therefore, a delay will be detrimental for both FCCU and Agassiz.

In response to Member Brucker, Chief Examiner Krebs indicated action by the State Credit Union Board was delayed in 2012 regarding an application by Citizens Community Credit Union, Devils Lake, to establish an interstate branch in East Grand Forks, MN, so that an AG Opinion could be obtained. Assistant Attorney General Murtha explained this AG Opinion addressed and confirmed prior action by the State Credit Union Board being challenged that would have had an impact on action to be taken by the Board at that time. Assistant Attorney General Murtha indicated in that action it was noted there was a grant of power that authorized branching, and in order to authorize branching, it was held the Board needed to be able to permit a level of reciprocity. Assistant Attorney General Murtha indicated that AG Opinion was very conservative; relying on an argument of implied power necessary to effectuate a specific power.

Assistant Attorney General Murtha indicated NDBA is challenging there is no statutory authority for the State Credit Union Board to approve mergers that result in an interstate credit union. Assistant Attorney General Murtha indicated she feels there is a very strong assertion in the statute allowing the State Credit Union Board to approve the proposed merger application; however, added when banks proceeded with interstate mergers/branching federal action was taken, which resulted in a specific state law being drafted and becoming effective. Assistant Attorney General Murtha pointed this type of law does not exist for the credit union division which creates an exposure; therefore, there is a possibility of NDBA and its member banks taking a stronger stance on the proposed application by filing a complaint which would also result in a delay of action on the proposed merger application. Assistant

Commissioner Webb added a legal challenge would result in a longer delay to act on the proposed merger application.

Member Economon stated if this type of merger application will be submitted in the future, the State Credit Union Board should request an AG Opinion at this time.

President Schmitz stated he discussed this proposed merger with Chief Examiner Krebs in May 2017 and he understood the Department felt the State Credit Union Board had the authority to act on this application, otherwise an AG Opinion would have been requested in June or July 2017. Chair Kruse explained that since the Department did not receive NDBA's opposition letter until November 21, 2017, the issue of delaying action on the proposed application and requesting an AG Opinion is now being considered.

President Schmitz reiterated until NDBA questioned the State Credit Union Board's authority, it was his understanding the Department felt the Board had the authority to act on the proposed merger application. Assistant Commissioner Webb indicated the Department did not initially address the ambiguity issue raised in the by NDBA letter.

In response to President Schmitz, Assistant Attorney General Murtha stated her legal opinion is the merger statute language appears very strong regarding what is permitted; however, the AG's office or court may disagree. Assistant Attorney General Murtha continued NDBA does have an argument that the state-chartered banks adopted a specific law relating to interstate banking, which credit unions do not.

In response to Member Gallagher, Chief Examiner Krebs indicated NCUA has reviewed the proposed merger application; however, did not consider the resulting field of membership since their role is as insurer of the continuing credit union, not as agent of chartering authority.

Member Brucker expressed concern in delaying action on the proposed merger application; pointed out that President Schmitz contacted the Department in May, the application was received in August, concluding it is now almost a year without any action being taken.

It was moved by Member Gallagher and seconded by Member Economon to table action on the application by First Community Credit Union, Jamestown,

to merge Agassiz Federal Credit Union, Crookston, MN, into First Community Credit Union, Jamestown, and request an Attorney General's Opinion regarding this application.

In response to Member Brucker, Chair Kruse stated the Department will do its best to expedite the request for an Attorney General's Opinion, as well as scheduling a special State Credit Union Board meeting to act on the proposed application once the Opinion is received.

The previous motion was unanimously carried.

President Schmitz and Mr. Wolff left the conference call at 9:40 a.m.

CREDIT UNION BUDGET

Chair Kruse indicated the Board received the Organizational Status by Summary Account and Source for the month ending September 2017.

CAMEL RATING SYSTEM CHANGES

Chief Examiner Krebs reviewed his Memorandum dated October 30, 2017, outlining potential changes to the Camel Rating System; noting the changes will not likely effect how credit unions are examined or risk assessed. Chief Examiner Krebs stated he would like input from the Board regarding these proposed changes before the credit unions are notified. Chief Examiner Krebs added the proposed change was discussed at the Day with the Commissioner held May 15, 2017.

Chief Examiner Krebs explained the CAMEL Rating System currently used for credit unions is different from other financial institution regulatory agencies and the banking division of this Department where liquidity risk is combined with sensitivity to market risk. The proposed change would incorporate a separate S component (sensitivity to market risk, also known as interest rate risk). Chief Examiner Krebs stated the Department feels the CAMELS Rating System will ensure risks in each category are clearer, and proposes to begin using this system in January 2018. Chief Examiner Krebs indicated at least 16 states are now using the CAMELS Rating System, and NCUA has committed to this change but has not established an effective date.

Chair Kruse indicated the bank division implemented the CAMELS Rating System 15-20 years ago. She explained an advantage of this system is the earnings rating can remain stronger even with lower interest rates the last few years since the sensitivity rate is separate.

Member Brucker indicated he believes the proposed CAMELS Rating System is a good idea; however, questioned if this would create issues in determining the overall composite rating. Chief Examiner Krebs indicated the overall composite rate is not a function of straight averages.

Chief Examiner Krebs explained within joint examinations with NCUA, uploading the rating into the software according to the lower of the two will be continued.

PROPOSED MEETING DATES FOR 2018

The Board went into closed session at 9:51 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, and returned to open session at 10:15 a.m.

APPROVAL OF EXECUTIVE SESSION MINUTES

It was moved by Member Economon, seconded by Member Gallagher, and unanimously carried, to approve the executive session minutes of the regular meeting held September 8, 2017, as presented.

STATE CREDIT UNION BOARD RESOLUTIONS

Chair Kruse reviewed State Credit Union Board Resolutions for Bob Entringer who retired as of November 30, 2017, Suzette Richardson who is retiring December 31, 2017, and Jan Murtha who will no longer be Assistant Attorney General for the Department.

The meeting adjourned at 10:21 a.m.

Lise Kruse, Chair

Aaron Webb, Secretary