

COLORADO STATE BANKING BOARD

Record of Proceedings - Regular Session

August 19, 2010

The Colorado State Banking Board (Board) was called to order by Chairman Stephen A. Sherlock (Chairman Sherlock) at 10:04 a.m., August 19, 2010, at 1560 Broadway, Suite 975, Division of Banking (Division) Conference Room, Denver, Colorado. Attending in person were Chairman Sherlock and Board members Adam Coyle, Tom Goding, Scott Pearson, and Mary Reisher, with Board members Dan Ford and Dennis Reece participating via teleconference. Board member Joseph Cachey III, was absent. A quorum was declared; 10:05 a.m.

Also in attendance were State Bank Commissioner Steven Strunk (Commissioner Strunk), Assistant Attorney General Cathern Smith (AAG Smith), Supervising Examiners Terry Breckenridge (T. Breckenridge) and Morris Augusta, Manager of Applications Antoinette "Toni" Clair (T. Clair), Financial Credit Examiner Jennifer Kim, and Board Secretary Diana Gutierrez (Board Secretary).

Chairman Sherlock called for a motion that the Board convene in Executive Session to discuss confidential biographical information, financial information of individuals and business entities, proprietary information, examination, and supervisory information of the following financial institutions and financial service providers and affiliated entities with applications on the agenda for today's meeting of the Colorado Banking Board:

- (a) FirstBank Holding Company, FirstBank of Colorado, and the 24 affiliated FirstBanks,
- (b) Capital Bancorp Limited, Fort Collins Commerce Bank, Larimer Bank of Commerce, and Loveland Bank of Commerce; and,
- (c) Omega Capital Corp., and Front Range Bank; and
- (d) Whether or not there are grounds under 11-102-505 to remove a director, officer, or other person or grounds under 11-102-506 to suspend a director, officer, or other person of a Colorado regulated bank

stating that such matters must be kept confidential as required by the Colorado Banking Code, sections 11-102-103(8), 11-102-305, and 11-102-306. Authorization for the Executive Session is in the Open Meetings Law, Section 24-6-402 (3) (a) (III), C.R.S.

Motion by Adam Coyle to convene in Executive Session. Second by Mary Reisher. Motion carried unanimously. The Board went into Executive Session; 10:12 a.m.

Director of Examinations Mary Stanfield (M. Stanfield) joined the meeting; 10:42 a.m.

Chairman Sherlock reconvened the Regular Session; 11:20 a.m. and called for a ten-minute break.

The Regular Session reconvened at 11:28 a.m.

To accommodate the needs of the attendees present, the meeting proceeded directly to the hearing of applications.

➤ **Application Hearings**

FirstBank Holding Company, Lakewood, CO – Bank Merger Application-Affiliate/Corporate Reorganization; and FirstBank of Colorado, Lakewood, CO – Notice of Intent to Establish Branch Banking Facilities and Amendment to Articles of Incorporation to Change the Bank’s Name

Board member Mary Reisher recused herself for this application. Present on behalf of the applicant were Mr. John Ikard and Ms. Tammy Keffeler. T. Clair presented an application from FirstBank Holding Company (FBHC), on behalf of First Bank of Colorado (FBCO) and its twenty-four Colorado bank subsidiaries requesting approval of an affiliate/corporate reorganization that would consolidate all the FirstBank affiliates into one state-chartered bank, FBCO. Additionally, FBCO requested approval to amend its Articles of Incorporation to change its name to FirstBank, upon consummation of the merger.

The purpose of the merger is to streamline operations into one financial institution. Upon completion of the merger, the twenty-four banks will cease to exist, with all of them being merged into FBCO, including all existing branches.

Based upon March 31, 2010 financial information, upon consummation of the merger, it is projected that FBCO will have \$10.3 billion in total assets, \$9.3 billion in total deposits, and \$769 million in total equity capital.

The directors and senior executive officers of FBCO are known to the Division and the transaction has met all regulatory requirements. At the conclusion of T. Clair’s presentation, Mr. Ikard addressed the Board and responded to questions. The Board discussed the application and posed questions to Mr. Ikard with regard to the Arizona FirstBank office.

The Division recommended approval of the merger application from FirstBank Holding Company, on behalf of First Bank of Colorado and its twenty-four Colorado bank subsidiaries, to consolidate all the FirstBank affiliates into one state-chartered bank, First Bank of Colorado. Additionally, to approve the First Bank of Colorado request to amend its Articles of Incorporation to change its name to FirstBank, upon consummation of the merger.

Motion by Tom Goding to approve the application as stated in the Division’s recommendation. Second by Scott Pearson. Board discussion. Motion carried unanimously; 11:35 a.m.

FRB Investments, Inc., Denver, CO – Change of Control Application to acquire Front Range Bank, Lakewood, CO

T. Clair presented an application from FRB Investments, Inc., Denver, CO (FRBI) to acquire 100 percent of the outstanding shares of Omega Capital Corp., Centennial, CO (Omega), to include its wholly owned subsidiary, Front Range Bank, Lakewood, CO (Front Range), a state-chartered bank.

Present at the meeting for this application were Messrs. Chris Luce and Brian Soeldner of Front Range Bank and Mr. Scott Shwayder of FRB Investments. Also present were legal counsel for the applicants, Tennyson Grebenar and Nina Ward.

Under an Agreement and Plan of Merger dated April 15, 2010, FRBI will acquire all the authorized and outstanding shares of Omega. FRBI is currently in the process of applying with the Federal Reserve Bank for approval to become a registered bank holding company. Pending the approvals, the transaction is scheduled to be consummated on or before October 31, 2010. Front Range will continue to operate as a state-chartered bank under its current name and at its current location.

As of March 31, 2010, Front Range reported total assets of \$132MM; total deposits of \$97MM, with \$12MM in brokered deposits; FHLB borrowings of \$24MM; and total equity capital of \$10.8MM, including a year-to-date negative net income of \$659,000.

The existing directors of Front Range will be replaced, entering into Employment Agreements, Non-Compete, Non-Solicitation, and Confidentiality Agreements. Background checks, interviews, and a review of biographical and financial reports disclosed no material concerns.

Messrs. Luce and Soeldner addressed the Board and responded to questions. The Board then discussed the application at length.

The Division recommended that, subject to regulatory approval from the Federal Deposit Insurance Corporation and Federal Reserve Bank, approve the request from FRB Investments, Inc. to acquire 100 percent of the outstanding share of Omega Capital Corp., to include its wholly owned subsidiary, Front Range Bank, which will continue to operate as a state-chartered commercial bank, under its current name and at its current location.

Motion by Mary Reisher to approve the application as stated in the Division's recommendation. Second by Adam Coyle. Board discussion. Motion carried unanimously; 11:47 a.m.

Verus Acquisition Group, Inc., Fort Collins, CO – Change of Control Application to acquire Fort Collins Commerce Bank, Larimer Bank of Commerce, and Loveland Bank of Commerce

T. Clair presented an application from Verus Acquisition Group, Inc., Fort Collins, CO (Verus) to acquire 51 percent of the outstanding shares that Capitol Bancorp Ltd., Lansing, MI (Capitol) owns in three subsidiary Colorado state-chartered banks – Fort Collins Commerce Bank (Ft. Collins) and Larimer Bank of Commerce (Larimer), Fort Collins, CO and Loveland Bank of Commerce (Loveland), Loveland,

CO. Present for this application were Messrs. Gerard Nalezny, and Dennis Santisteven of Fort Collins Commerce Bank, and Mark Kross of Larimer Bank of Commerce.

Verus is currently in the process of applying to the Federal Reserve Bank for approval to become a registered bank holding company and will acquire approximately 51 percent of the issued and outstanding stock of Ft. Collins, Larimer, and Loveland for a total purchase price of \$14.5MM. Consummation of the transaction is projected to occur no later than October 31, 2010. Verus plans to consolidate the three banks into one to improve efficiencies.

As of June 30, 2010, the three banks reported the following financial information. Ft. Collins reported total assets of \$100MM; total deposits of \$82MM, with \$3.6MM in brokered deposits; FHLB borrowings of \$8MM; and total equity capital of \$10MM, including a year-to-date net income of \$166M. Larimer reported total assets of \$94MM; total deposits of \$80MM, with \$19MM in brokered deposits; FHLB borrowings of \$5.6MM; and total equity capital of \$8MM, including a year-to-date net income of \$354M. Loveland reported total assets of \$40MM; total deposits of \$34MM, with \$6.5MM in brokered deposits; no FHLB borrowings; and total equity capital of \$6MM, including a year-to-date net income of \$127M.

Background checks and a review of biographical and financial reports on the proposed directors and executive officers disclosed no material concerns and the Division believes the principals are qualified to operate the banks in a legal and proper manner.

Mr. Nalezny addressed the Board and responded to questions; at the conclusion of which, the Board discussed the application at length.

The Division recommended that subject to regulatory approval by the Federal Deposit Insurance Corporation and Federal Reserve Bank, approval of the application from Verus Acquisition Group, Inc. to acquire 51 percent of the outstanding share that Capitol Bancorp, Ltd., owns in Fort Collins Commerce Bank, Larimer Bank of Commerce, and Loveland Bank of Commerce. Each bank will remain a state-chartered bank, operating under its current charter and at its current location.

Motion by Adam Coyle to approve the application as stated in the Division's recommendation. Second by Mary Reisher. Board discussion. Motion carried unanimously; 12:02 p.m.

At the conclusion of the hearing of applications, all visitors present for the applications departed the conference room and the Board proceeded to the approval of the minutes.

➤ **Record of Proceedings Approval**

Chairman Sherlock called for a motion to approve the July 15, 2010 minutes. Discussion. Motion by Mary Reisher to approve the July 15, 2010, Record of Proceedings, Regular Session. Second by Tom Goding. Motion carried unanimously; 12:03 p.m.

➤ **Rulemaking Hearing**

Amendment of Banking Board Rule MO3 – Records

Chairman Sherlock stated that the rule would be presented, after which, any public comments would be heard. If there were no comments, the Board would proceed to discussion. If there were comments, the Board Secretary would go over the guidelines and then the floor would be open.

T. Breckenridge briefed the Board on why the passage and implementation of HB10-1114, which occurred during the 2010 Legislative Session, necessitated the amendment of Rule MO3 to meet the bill's requirements, and that currently, emergency Rule MO3 was in effect. He further stated that no public comments or protests regarding the amendment were received by the Division in response to the Notice of Rulemaking Hearing. Board Secretary stated that the amendment to Rule MO3 would go into effect on October 15, 2010. T. Breckenridge had no further comments. The Board discussed the rule amendment.

Motion by Mary Reisher to approve the amendment of Banking Board Rule MO3-Records. Second by Tom Goding. Board discussion. Motion carried unanimously; 12:10 p.m.

➤ **Division of Banking Commissioner's Report**

1) Production Report. Commissioner Strunk stated that complaints were taking an average of twenty-one (21) days to resolve and that safety and soundness exams were taking two times longer to complete due to the additional work required for examining problem institutions.

2) Delegated Authority Report. One transaction, establishment of a branch, was approved during July.

3) Activities Report. Commissioner Strunk briefed the Board on his July 21 meeting with the Foundation Trustees of the Graduate School of Banking at Colorado stating that the primary focus of the discussion was the Dodd-Frank Act. Commissioner Strunk also mentioned that he had become a member of the CSBS Chief Information Officer Working Group, which discusses how to more effectively communicate with the media. The Board posed questions to Commissioner Strunk about his July 23, 2010 meeting with Mr. Don Childears, Executive Director of the Colorado Bankers Association on the subject of consumer compliance with regard to the federal government requirements. The Board and Commissioner Strunk briefly discussed how consumer compliance would affect bank exams.

4) MO8 Rule Update. T. Breckenridge presented the Board with a brief explanation of how the implementation of HB10-1081 affected HB10-1114, which led to the removal of permanent rule MO8 from the agenda, so that the rule could undergo further revisions. A revised Emergency Rule MO8, and the accompanying form, will be created to incorporate the changes outlined in HB10-1081 and presented

to the Board for approval. The Board discussed the timeline of the existing and proposed emergency rules. The Board Secretary advised that an Emergency Rulemaking hearing would need to be held to approve the revised emergency rule and also grant approval to once again begin the formal rulemaking procedure for permanent Rule MO8, as the original filing deadline had expired. Board Secretary will contact all Board members to schedule the emergency meeting.

5) Beal Bank Update. T. Clair informed the Board that Beal Bank had withdrawn their application and the Division would send Beal Bank a letter of no objection.

6) Shelf Charters. T. Clair informed the Board that she has received several inquiries on shelf (pre-approved) charters and is seeking guidance from the Board. Currently, there are no forms or a fee listed for shelf charters. T. Clair modified and combined the de novo charter and change of control applications to create mock-ups forms for the Board to review. A lengthy discussion followed, which included, but was not limited to, the following topics: life span of the charter, the application, the application process, the fee, approval of the bank name, and creation of rules specific to shelf charters. AAG Smith provided legal guidance during the discussion. Also discussed was what action was immediately necessary with regard to processing any currently pending or known to be upcoming shelf charter requests. The Board determined that rules must be promulgated and instructed the Division to begin the process; additionally, the Board discussed the fee and set an amount.

Motion by Adam Coyle to set the fee for a shelf charter at \$12,000 and to utilize the application forms as presented to the Board. Second by Mary Reisher. Motion carried unanimously; 1:00 p.m.

7) Dodd-Frank Act. T. Clair briefed the Board on the Dodd-Frank Act and its effect on future interstate applications. Attorney Tennyson Grebenar, of Rothgerber, Johnson & Lyons, was present to answer any questions from the Board. Mr. Grebenar briefly addressed the Board. The Board was advised that applications filed by out-of-state institutions will no longer require first obtaining an existing Colorado branch. T. Clair stated that one main concern is the bank name and the need to protect the names of Colorado banks. The Board discussed the matter at length, including, but not limited to protecting names, type of notification required, and PDPA. T. Clair stated that the Division was expecting to receive several interstate applications within the next 30 days.

8) Proposed Amendment of CB101.64 and IB64, Lending Limits. Commissioner Strunk presented the Board with information regarding the proposed amending of the special lending and nonconforming provisions of CB101.64 and IB64. He is proposing the rules be amended to delete Sections (E) Special Lending Authority and (F) Application Process in their entirety, and Amend Section (I)(3) to add additional wording that would require approval of requests to be made by the Banking Board; presently, approval or denial of requests is delegated to the Commissioner.

Commissioner Strunk stated that the existence of Special Lending Limits is a major contributing factor to the problems banks are currently experiencing. The Board expressed concern as to whether such a dramatic change was necessary and that the change might negatively impact local economies. The Board also questioned what might be the impact on all banks, not just the ones currently rated a 3, 4, or 5. After an extensive discussion, the Board stated that additional information would need to be provided before it would grant permission to begin the formal rulemaking process to amend CB101.64 and IB64.

The Board requested Commissioner Strunk provide the number of banks, regardless of rating, that currently have loans in excess of the set limits. Additionally, the Board is interested in knowing how the neighboring states are addressing the lending limit situation and requested Commissioner Strunk to provide this information as well. The proposed amending of CB101.64 and IB64 was tabled.

9) Capital Adequacy / Risk Based Capital. Commissioner Strunk presented for the Board's consideration, information he had gathered with regard to capital levels, CAMELS ratings, and problem institutions. He expressed his concern with the current point at which capital is considered inadequate and would like the Board to consider requiring a higher level. The Board reviewed the materials presented by Commissioner Strunk and discussed several topics, which included, but was not limited to: definition of adequate capital, acceptable minimum capital level, penalties, time limits for improvement, the federal acceptable capital level, and remedies. The Board agreed that each situation was unique and the institution's current status and business model had to be taken into consideration when making a decision involving a bank's capital adequacy or lack thereof. More discussion ensued, ending with the Board asking Commissioner Strunk to provide additional information on the current capital levels for all Colorado banks at the September meeting.

Board member Scott Pearson departed the meeting; 2:10 p.m. The Board still had a quorum and took a twenty (20) minute break at this time.

Chairman Sherlock called for a motion to convene in Executive Session to discuss aggregate statistical data regarding examinations and enforcement actions; the composite CAMELS ratings, capital ratios and capital adequacy of Colorado state-chartered banks; and institutions and financial service providers that are or may be the subject to formal or informal enforcement action or have recently been examined, including the receivership of American Intercapital Depository & Trust; and legal advice pertaining to the interpretation of the confidentiality provisions of the Banking Code Sections 11-102-305 and 306 with the Board's attorney, stating that such matters must be kept confidential as required by the Colorado Banking Code, Sections 11-102-103(8), 11-102-305, and 11-102-306. Authorization for the Executive Session is in the Open Meetings Law, Section 24-6-402(3)(a) (II) and (III), C.R.S.

Motion by Tom Goding to reconvene the Executive Session. Second by Mary Reisher. Motion carried unanimously; 2:39 p.m.

The Board retired to Executive Session, which was tape recorded only.

The Board adjourned from Executive Session; 3:08 p.m. Board member Dan Ford departed the meeting during the Executive Session; 3:07 p.m. The Board still had a quorum and took a break at this time.

Chairman Sherlock called for a motion that the Banking Board convene in Executive Session to discuss whether extraordinary circumstances exist that require immediate action to protect the integrity and financial assets of a bank and to immediately suspend a director and officer of a bank from any participation in the affairs of the bank pursuant to Section 11-102-506(2) C.R.S.

Motion by Tom Goding. Second by Adam Coyle. Motion carried unanimously, 3:32 p.m.

Chairman Sherlock reconvened the Executive Session, which was tape recorded only.

The Board recessed for a ten-minute (10) break; 3:48 p.m.

Chairman Sherlock reconvened the Executive Session; 4:02 p.m.

Chairman Sherlock reconvened the Regular Session of the August 19, 2010, Banking Board meeting; 4:06 p.m.

Motion by Tom Goding to approve the Board decision as discussed in Executive Session that extraordinary circumstances exist that require immediate action to protect the integrity and financial assets of a bank and to immediately suspend a director and officer of said bank from any participation in the affairs of the bank. Second by Adam Coyle. Motion carried unanimously; 4:07 p.m.

➤Other Items for Discussion

There were no other items for discussion.

Motion by Adam Coyle to adjourn the August 19, 2010 Regular Session. Second by Tom Goding. Motion carried unanimously; 4:08 p.m.

I certify that the foregoing information substantially reflects the substance of the discussions as transcribed from my handwritten notes.



Diana S. Gutierrez, Secretary
Colorado State Banking Board