

COLORADO STATE BANKING BOARD

Record of Proceedings - Regular Session

July 15, 2010

The Colorado State Banking Board (Board) was called to order by Chairman Stephen A. Sherlock (Chairman Sherlock) at 10:00 a.m., July 15, 2010, at 1560 Broadway, Suite 975, Division of Banking (Division) Conference Room, Denver, Colorado. Attending in person were Chairman Sherlock, Tom Goding, and Mary Reisher, with Board members Joseph Cachey III, Dan Ford, and Dennis Reece participating via teleconference. Board members Adam Coyle and Scott Pearson were absent. A quorum was declared; 10:02 a.m.

Also in attendance were State Bank Commissioner Steven Strunk (Commissioner Strunk), Director of Examinations Mary Stanfield (M. Stanfield), Assistant Attorney General Cathern Smith (AAG Smith), Manager of Applications Antoinette "Toni" Clair (T. Clair), Financial Credit Examiner Jennifer Kim, and Board Secretary Diana Gutierrez (Board Secretary).

➤Record of Proceedings Approval

Chairman Sherlock called for a motion to approve the June 17, 2010 minutes. The Board Secretary briefed the Board on a few minor revisions requested by AAG Smith. Discussion. Motion by Tom Goding to approve the June 17, 2010, Record of Proceedings, Regular Session, as revised. Second by Dan Ford. Motion carried; 10:04 a.m.

A determination was made by Commissioner Strunk and Chairman Sherlock that it was unnecessary to convene in an Executive Session prior to hearing the application and moved directly to the application hearing.

➤Application Hearings

Eastern Colorado Bank, Cheyenne Wells, CO – Bank Acquisition/Merger Application, Branch Acquisition/Merger Application, and Sale of Assets Application

T. Clair presented an application from Eastern Colorado Bank (ECB-CO) for approval of three interrelated applications to establish an interstate branch in Kansas. Present at the meeting for the involved parties were Messrs. Brett Legg and Greg Weed for ECB-CO, and Mr. Tennyson Grebenar, legal counsel for First National Bank, Goodland, Kansas (FNB-KS).

The three interrelated applications involved were:

- 1) Bank Acquisition/Merger – the acquisition and merger of Home State Bank, Erie, Kansas (HSB-KS) with and into ECB-CO, resulting in a Kansas branch for a moment in time;
- 2) Branch Acquisition/Merger – the purchase of most of the assets and assumption of liabilities of the FNB-KS Sharon Springs Kansas branch, converting it to an out-of-state branch of ECB-CO; and
- 3) Sale of Assets – the selling of the assets and liabilities of the ECB-CO branch formed in the first transaction to Bank of Commerce, Chanute, Kansas (BOC-KS) an affiliate of HSB-KS.

As of March 31, 2010, ECB-CO reported total assets of \$193.5 million, total deposits of \$144 million, total liabilities of \$170.5 million, and equity capital of \$23 million, including year-to-date net income of \$380,000. For the same time period, HSB-KS reported total assets of \$26 million, total deposits of \$23.5 million, total liabilities of \$24 million, and equity capital of \$1.9 million, including year-to-date net income before dividends of \$48,000. FNB-KS reported first quarter 2010 total assets of \$275 million, total deposits of \$244 million, total liabilities of \$257.6 million, and equity capital of \$16.6 million, including a negative year-to-date net income of \$1 million.

On June 18, 2010, the FDIC approved the ECB-CO applications to merge with HSB-KS and to purchase assets and assume liabilities of the Sharon Springs, Kansas branch of FNB-KS. At no point will ECB-CO operate HSB-KS as a separate bank.

Questions were posed to both Mr. Legg and Mr. Weed; after which, the Board discussed the application.

At the completion of the Board discussion, the Division recommended approval of the three interrelated applications from Eastern Colorado Bank (ECB-CO) for:

- 1) Bank Acquisition/Merger – the acquisition and merger of Home State Bank, Erie, Kansas (HSB-KS) with and into ECB-CO, resulting in a Kansas branch of ECB-CO for a moment in time;
- 2) Branch Acquisition/Merger – the purchase of most of the assets and assumption of liabilities of the FNB-KS Sharon Springs Kansas branch, converting it to an out-of-state branch of ECB-CO; and
- 3) Sale of Assets – the selling of the assets and liabilities of the ECB-CO branch formed in the first transaction to Bank of Commerce, Chanute, Kansas (BOC-KS) an affiliate of HSB-KS.

Motion by Mary Reisher to approve all the applications as stated in the Division's recommendation. Second by Tom Goding. Discussion. Motion carried; 10:13 a.m.

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

1) Update – Beal Bank Nevada, Las Vegas, NV – Certification of Interstate Acquisition. T. Clair provided an update on the Beal Bank application (Application), which was tabled at the June meeting. T. Clair stated that upon further review, the Application does not fall under the purview of the Board and recommended a letter of no objection be sent to the applicant. Commissioner Strunk stated that since the Division did not have legal authority to act on the Application, it should never have come before the Board. At this point in the meeting, AAG Smith advised the Board that since the discussion was not noticed on the agenda, as required by the Open Meetings Law, and hence the public was not afforded an opportunity to comment on the Application, a discussion should not be held at this meeting. Discussion ensued between the Board, AAG Smith and Commissioner Strunk, with AAG Smith advising the Board that to meet the APA requirements, the Application should be noticed on the August agenda to ratify that no Board action was required. After more discussion, Commissioner Strunk stated that since the Application should never have been presented to the Board, no ratification was necessary; the Application would not be included on the August agenda; and that the Application was being presented under the Commissioner's Report as an informational update only, and not for Board action. More discussion ensued; after which, Chairman Sherlock asked if the Board would be agreeable to the Division addressing the application disposition. The Board agreed and the discussion ended.

2) Production Report. Commissioner Strunk briefed the Board on the Production Report, stating that the current number of exams is less than in the past due to the ongoing deterioration of credit quality, which requires more time to complete bank examinations.

3) Delegated Authority Report. Four transactions were approved during June.

4) Activities Report. Commissioner Strunk provided the Board a synopsis of the topics covered at the New Commissioner Training, put on by the Conference of State Bank Supervisors (CSBS), in Washington D.C., held on June 22-24, 2010. He mentioned that he had been elected to the CSBS Board for 2010-2011; and additionally, Chairman Sherlock had been elected to the CSBS Bank Advisory Board. Commissioner Strunk stated he had submitted two items to DORA for possible consideration during the next legislative session, one of which was recommending a state-managed Consumer Protection Program. Commissioner Strunk mentioned that on June 29, the Division was audited by FinCEN for BSA compliance and passed.

5) Completed Examinations for Fiscal Year 2009/2010. M. Stanfield presented the Board with information on the completed examinations, briefly reviewed the exceptions, and stated that for fiscal year 2009/10, the Division exceeded the number of mandated examinations. M. Stanfield responded to questions from the Board regarding how the totals were tallied, the color coding of certain items, and the comments section of the report. The Board discussed the comments section of the report and whether it

needed to be included, as it contained sensitive information. AAG Smith commented on the legal requirement for confidentiality and after much discussion, the Board decided that on future reports, the comment section would be omitted.

6) Proposed Examinations for Fiscal Year 2010/2011. M. Stanfield presented the Board with the proposed examinations for the new fiscal year, stating the mandated number of examinations was set at 223. Commissioner Strunk stated that “We (Division) have inadequate staff and monies for salaries to conduct all the mandated exams” and will fall short. He proceeded to update the Board on the current number of examiners on staff and the disparity of salaries between the State and Federal agencies, pointing out that the State could not compete. Commissioner Strunk further stated that with the current number of examiners, it was highly unlikely all the mandated exams would be completed. M. Stanfield stated that in order to complete all the mandated exams, the Division would need 32 examiners; and currently, there are 22 examiners on staff.

7) FDIC Regulations – Risk Based Capital. Commissioner Strunk distributed, for discussion with the Board, copies of the FDIC regulations regarding risk based capital. Additionally, he distributed copies of UBPR information on Colorado state banks. AAG Smith advised Commissioner Strunk and the Board that these items had not been properly noticed for the public and that the discussion should be held over to next month’s meeting. M. Reisher stated that she would prefer to have time to read over the materials prior to any Board discussion and agreed that the public should be provided ample notice. J. Cachey stated that while he appreciated Commissioner Strunk’s attempt to increase the knowledge base for the newer members of the Board, he felt it was best if the discussion was held over for next month and all distributed materials be sent out in the August meeting Board packet. After considering the Board’s concerns, Commissioner Strunk agreed to hold off on the risk based capital discussion for next month. Additionally, he retrieved the UBPR materials, stating he would present this information at a future date.

Chairman Sherlock called for a motion to convene in Executive Session to discuss (a) aggregate statistical data regarding examinations and enforcement actions, and (b) 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 stating that such matters must be kept confidential as required by the as required by the Colorado Banking Board, Sections 11-102-103(8), 11-102-305, and 11-102-306; and (c) recent developments in litigation related to a dispute that is the subject of pending litigation. Specifically, to discuss In the Matter of the Involuntary Liquidation of American Intercapital Holding LLC d/b/a/ AIDT, Denver District Court Case No. 2007CV11222, including the consolidated actions against accountant Stephen Shuster and the former

Board of Managers. 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 Mary Reisher to convene the Executive Session. Second by Dennis Reece. Motion carried; 11:16 a.m.

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

Chairman Sherlock reconvened the Regular Session of the July 15, 2010, Banking Board meeting; 11:55 a.m.

➤Other Items for Discussion

1) Special Action Banks Report. It was requested by the Division that the history included in the report be shortened from one year to six months. Discussion. The Board agreed to six months, with the option to increase or decrease that number at any time in the future.

2) Banking Board Christmas Party. Mary Reisher mentioned that she had made the reservation for the party in December and asked if the Board wished to continue having the party. The Board agreed to have the party, and as in the past, each person would pay for their meal and drinks.

3) Survey - Bank Accounts for Medical Marijuana. Mary Reisher requested further information on a survey FirstBank was recently asked to complete with regard to bank accounts for companies dispensing medical marijuana. Commissioner Strunk responded that Senator Romer had contacted him, asking that the Commissioner give him feedback from the industry on the subject. A blind survey was conducted by the Division to gather this information.

4) Special Lending Limits. The Board inquired on the status of the Special Lending Limits update, which was briefly discussed at the June meeting and was to be completed at this meeting. Commissioner Strunk advised the Board that the information was still being gathered and that the update would be presented at the August meeting.

5) Shelf Charters. T. Clair mentioned that the Division will probably be seeing more requests in the future for Shelf Charters from private family trusts.

Motion by Tom Goding to adjourn the July 15, 2010 Regular Session. Second by Mary Reisher. Motion carried; 12:08 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