

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

January 16, 2003

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 Karsky called the meeting to order at 9:05 a.m., Thursday, January 16, 2003, by conference call arrangement.

MEMBERS PRESENT: Timothy J. Karsky, Chairman (*Office*)
Ron Braseth, Member (*Mayville*)
Bill Daniel, Member (*Office*)
Launa Moldenhauer, Member (*Bismarck*)
Roger Monson, Member (*Finley*)

MEMBERS ABSENT: Gary Petersen, Member
Terry Zeltinger, Member

ALSO PRESENT: Robert J. Entringer, Assistant Commissioner (*Office*)
Jeff Jungman, Chief Examiner – Banks (*Office*)

APPROVAL OF MINUTES

Chairman Karsky indicated the Board received copies of the minutes of the regular meeting held on November 14, 2002, and special conference call meetings held on November 27, 2002, and December 19, 2002. **It was moved by Member Braseth, seconded by Member Moldenhauer, and carried by voice vote to dispense with the reading of the minutes and approve the minutes as published.**

FINAL APPROVAL – NORTH DAKOTA ADMINISTRATIVE CODE CHAPTER 13-02-14, LIFE INSURANCE

Chairman Karsky reminded the Board that the hearing on the proposal to amend the administrative rules was held at the November 14, 2002, regular meeting and had to wait an additional 30 days after that hearing for additional comments. Chairman Karsky asked Assistant Commissioner Entringer to review the comments received subsequent to the hearing.

Assistant Commissioner Entringer indicated the comment letter received from Albert A. Wolf summarized his initial appearance at the hearing, a copy of which should have been provided to the Board. Chairman Karsky indicated he had spoken with Mr. Wolf on January 15, 2003, indicating Mr. Wolf is happy with the process if the Board approves the rule as is, since the Board will be able to use the waiver provision to grandfather everybody that needs to be grandfathered from the past, and most of his concerns for the investment going forward have been taken care of. Chairman Karsky indicated one thing Mr. Wolf is worried about is that the next Commissioner might not grant waivers or take things to the Board, which they are somewhat concerned about. Chairman Karsky indicated all of the old problems and/or violations should be taken care of or will be taken care of in the near future, and the Board will be able to answer any future waiver requests. Chairman Karsky indicated the Board should also have a copy of the letter from Assistant Attorney General Scott Miller indicating his position as to why, if the Board took into consideration Mr. Wolf's and Mr. Miller's request for a grandfather provision, the Board would be required to republish, wait another 30 days, have a hearing, and wait an additional 30 days. Chairman Karsky indicated he feels Mr. Wolf's concerns have been handled and we do not need to restart the process.

Assistant Commissioner Entringer added if amendments are proposed to another Section of the North Dakota Administrative Code in the future, this grandfather provision can be added at that time.

Chairman Karsky indicated he does not believe it will be a problem because the Board can handle any waiver request, and either grant or deny those waivers.

Assistant Commissioner Entringer indicated the other comment letter received was from Marilyn Foss, General Counsel for the North Dakota Bankers Association, which indicated the North Dakota Bankers Association would like to commend the Board on its efforts to update and clarify the rules for bank-owned

life insurance. The letter further stated that the North Dakota Bankers Association regards this as a valuable tool for protecting a bank when it is used appropriately, and that the proposed rules accommodate this purpose.

Assistant Commissioner Entringer indicated these were the only post-hearing comments received, and that he had left a message for Rick Miller, Clark Bardes Consulting, this morning to see if he wanted to be included on this conference call; however, Mr. Miller was not available at the time.

It was moved by Member Monson and seconded by Member Daniel to approve the amendments to North Dakota Administrative Code Chapter 13-02-14, Life Insurance, as amended.

Member Monson asked for a point of clarification in that even though we did not address the concerns that Mr. Wolf had, the general language of the amendment to the waiver provision will allow the Board to issue waivers. Chairman Karsky stated that is correct. Member Monson asked if we feel the Board can deal with these issues as they arise. Assistant Commissioner Entringer indicated he felt the waiver provision was much broader than the current waiver provision, as it only allows the Commissioner or the State Banking Board to waive any provisions which were preexisting to the current rule. Assistant Commissioner Entringer indicated he spoke with Assistant Attorney General Miller who concurred that the waiver provision was very broad. Chairman Karsky indicated if the rule is approved, the rule and comment letters will be forwarded to the Attorney General for approval, and if approval is obtained, the rule and comment letters will be forwarded to the Legislative Council for final publication. At this time the amendments would be effective.

There being no further discussion, **the motion was approved by a vote of 5 to 0, with Members Petersen and Zeltinger absent.**

ITEMS TO BE NOTED

Department of Financial Institutions

On 1-3-03, the Federal Reserve Bank of Minneapolis approved the application by Dacotah Bank-Valley City, Valley City, for membership in the Federal Reserve System.

Comptroller of the Currency

Effective 9-27-02, Community First National Bank, Fargo, closed branch at 100 Main Street, Hokah, MN.

Effective 12-4-02, Wells Fargo Bank North Dakota, National Association, Fargo, open branch at 1401 13th Avenue East, West Fargo.

NODAK STATE TRUST COMPANY

Chairman Karsky indicated the Etalon application was denied and at the special meeting held December 19, 2002, the Board had received a fax request for a hearing before the full Board. Chairman Karsky indicated Etalon needed to request that hearing within 20 days after receipt of the notice of disapproval. Chairman Karsky indicated after the November 27, 2002, meeting at which the Board did consider the Etalon request for change of control, a letter was faxed and sent by Federal Express to Etalon notifying them of the Board's denial of their change of control request. Chairman Karsky indicated after receiving the fax we waited until receiving the original to see what the postmark on the envelope was, and that also indicated the deadline had been missed for requesting a hearing. Chairman Karsky indicated Assistant Attorney General Miller then sent Etalon a letter again by fax and Federal Express telling them that the decision of the State Banking Board was final based on an untimely request for a hearing.

Chairman Karsky indicated Etalon could potentially take us to District Court, but at this point have not heard anything from Etalon. Chairman Karsky indicated we are now dealing with Jane Kirby, the individual that had been trying to sell the NoDak State Trust Company to Etalon. Chairman Karsky indicated there is a court date set for April to deal with the fact that Ms. Kirby had never filed a change of control application with the State Banking Board to acquire

NoDak State Trust Company, and at this point we do have a Stipulation Agreement which we are asking them to enter into with the Department. If the Stipulation Agreement is signed, we can avoid the court hearing. One of the items in the Stipulation Agreement is that Ms. Kirby has to come up with a new group to acquire and manage NoDak State Trust Company, although Chairman Karsky indicated he has told Assistant Attorney General Doug Anderson that Ms. Kirby cannot sell something she does not really own. Chairman Karsky stated if an application is submitted it must be for retroactive approval for Ms. Kirby, that she has the funds to capitalize the trust company, the management capabilities to operate the trust company herself instead of doing an application similar to what we were presented with by Etalon.

Chairman Karsky indicated he told Assistant Attorney General Anderson if the Stipulation Agreement is not signed, he does want to stick to the court date in April and resolve this issue.

LEGISLATION

Chairman Karsky indicated the Department has had several bills up for hearing, and he feels they have gone fairly well overall. He stated the budget hearing is scheduled for tomorrow, January 17, 2003, at 9:45 a.m. Chairman Karsky stated if there are problems with the budget, he will ask the Board to take action. Member Moldenhauer asked why Chairman Karsky does not expect any opposition, and Chairman Karsky indicated everyone else was required to come in with a 95% budget; however, the Department is submitting the recommended budget from OMB. This does not include everything the Department asked for, but we are still a special fund agency and whatever savings we achieve really does not accrue to the general fund. Chairman Karsky indicated we have asked for one full-time position on the credit union side, which could be a problem as it is very tough to get additional full-time equivalent employees.

Chairman Karsky indicated he is meeting with Karen Tyler, Securities Commissioner, and Marilyn Foss, General Counsel for the North Dakota Bankers Association, as to whether banks need to register as a broker/dealer if they want to conduct securities transactions as authorized under Gramm-Leach-Bliley. Chairman Karsky indicated there are some privacy bills that have surfaced in the last few days, one of which deals with if an individual comes into the bank and is denied credit he could request a copy of his credit report from the bank, if you base

part of the decision on the credit report. This bill seems to provide some duplication, as if you are currently denied credit based on your credit report or items contained in your credit report, you could go to the credit reporting agency and request a free copy of your credit report and discuss any errors with the credit reporting agency.

Member Braseth indicated banks would certainly have no control as to how others are reporting items on an individual's credit report, and Chairman Karsky concurred.

Chairman Karsky indicated the agency consolidation bill has not been introduced at this time.

The Board went into closed session at 9:23 a.m.

Timothy J. Karsky, Chairman

Robert J. Entringer, Secretary