

**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**

**March 14, 2008**

The regular meeting of the State Credit Union Board was called to order by Chairman Karsky in the Office of the Commissioner, Department of Financial Institutions, 2000 Schafer Street, Suite G, Bismarck, North Dakota, at 9:30 a.m., Friday, March 14, 2008.

MEMBERS PRESENT: Timothy J. Karsky, Chairman (*Office*)  
Paul Brucker, Member (*Office*)  
Melanie Stillwell, Member (*Williston*)  
Darlene Watne, Member (*Minot*)

MEMBERS ABSENT: Steven Tonneson, Member

ALSO PRESENT: Robert J. Entringer, Secretary (*Office*)  
Jim Laidlaw, Chief Examiner – Credit Unions (*Office*)  
Corey Krebs, Financial Institutions Examiner (*Office*)  
Todd Van Orman, Financial Institutions Examiner (*Office*)  
Char Ost, Knife River Credit Union (*Office*)  
Deb Gallagher, Capital Credit Union (*Office*)  
Greg Tschider, Bismarck (*Office*)  
Jill Bourgois, Union State Bank of Hazen (*Office*)  
Vance Reinbold, Capital Credit Union (*Office*)  
Steve Davis, Capital Credit Union (*Office*)  
Doreen Ottenmiller, Capital Credit Union (*Office*)  
Ken Geiger, Knife River Credit Union (*Office*)

**MINUTES PREVIOUSLY APPROVED BY MAIL**

Chairman Karsky indicated the Board had previously received and approved the minutes of the regular meeting held on December 7, 2007.

**APPLICATION TO MERGE KNIFE RIVER CREDIT UNION, HAZEN, INTO CAPITAL CREDIT UNION, BISMARCK; CAPITAL CREDIT UNION, BISMARCK, TO ESTABLISH BRANCHES AT 145 MAIN STREET EAST, HAZEN, AND 200 HIGHWAY 49 SOUTH, BEULAH; TO EXPAND FIELD OF MEMBERSHIP FOR CAPITAL CREDIT UNION, BISMARCK**

Chairman Karsky reviewed his Memorandum, noting that the applications were received January 22, 2008, as well as the fees. Chairman Karsky reviewed the procedure found in North Dakota Administrative Code Section 13-03-05-01 for the Board.

Chairman Karsky noted that the Resolution to approve the merger by Capital Credit Union was approved by the membership by a vote of 59 to 1, and for Knife River Credit Union by a vote of 35 to 21, noting that it only takes a simple majority to approve the merger.

Chairman Karsky noted we do not have a formal application for a merger but the credit unions have to file with the State Credit Union Board and follow the North Dakota Administrative Code, and all of those provisions have been complied with.

Chairman Karsky noted proper notification was published in the county papers for Golden Valley, Ward, Mountrail, and McKenzie, as well as notification in the Department's monthly Bulletin.

Chairman Karsky reviewed the considerations for approval found in North Dakota Administrative Code Section 13-03-05-04. Chairman Karsky noted the financial impact to Capital Credit Union is nominal as far as expenses associated with the merger.

Chairman Karsky reviewed the requirements to establish a branch found in North Dakota Administrative Code Section 13-03-15, noting that all of the provisions have been complied with.

Chairman Karsky stated he would briefly talk about the expansion of field of membership and discussed the change in the North Dakota Century Code from the 2005 Legislative Session, which states that if there is a merger and the surviving credit union wants the field of membership of the non-surviving credit union, it can apply and get that field of membership. Chairman Karsky noted that the

appropriate forms for the field of membership have been submitted to the Department.

Chairman Karsky asked if President Gallagher would like to discuss the merger and how the agreement came about.

President Gallagher indicated the Board started discussions regarding the opportunity and felt this was a great possibility to expand its field of membership into two very vibrant communities; in fact Capital Credit Union is already serving some of the members who live in those communities. President Gallagher indicated they approached the manager of Knife River Credit Union, Char Ost, who then began discussions with her Board of Directors. President Gallagher noted there are numerous benefits for the members of Knife River Credit Union, including a number of services as well as better pay and benefits to the back office support staff of Knife River Credit Union. President Gallagher stated after Knife River Credit Union reviewed the opportunities, there was discussion between both credit unions' Board of Directors, and it was agreed the merger should be pursued. President Gallagher indicated if the merger is approved Manager Ost has agreed to remain as the manager, which would benefit Capital Credit Union since she knows the community which is critical to the success of this acquisition. President Gallagher indicated they intend to keep both offices open and the Board of Directors of Capital Credit Union will amend its bylaws to protect a seat for representation of the Knife River Credit Union membership on Capital Credit Union's Board of Directors.

Chairman Karsky asked President Gallagher to enumerate some of the products or services Capital Credit Union offers that Knife River Credit Union does not. President Gallagher indicated they offer mortgage lending, as well as business services including agricultural lending, excess deposit insurance on the money market accounts, as well as VISA credit cards, and no charge bill paying.

Chairman Karsky asked Manager Ost to offer her perspective for the Knife River Credit Union membership. Manager Ost indicated she felt this was a good thing for the membership because of being able to offer products not currently available, as well as the back office support which mentioned by President Gallagher, which includes compliance as well as the day-to-day operations.

Member Brucker asked President Gallagher what she anticipated as far as the impact on existing staff, and President Gallagher indicated they intend to keep

all of the staff and possibly add additional staff to offset the effects when an employee is on leave.

Member Brucker asked whether an equity distribution was planned, and Board Member Ken Geiger indicated the Board has discussed this and are looking at different options and will make a decision this week.

Chairman Karsky asked how the equity distribution will be determined in order to avoid someone benefitting by placing deposits in the credit union. Board Member Geiger indicated they are looking at different options including giving some money to the community, but intend to take a snapshot at a point in time to avoid any issues.

Chairman Karsky indicated although Member Tonneson is absent, in previous applications which have included an equity distribution, Member Tonneson has indicated that he would have a problem if someone from the Board of Directors or an officer of the credit union would benefit from an equity distribution by depositing funds prior to the equity distribution date.

Member Brucker asked if there has been a minimum or maximum level of payout set, and Board Member Geiger indicated they have talked about some ranges but have not agreed on anything yet.

Chairman Karsky asked if Capital Credit Union would have to approve any decision on the equity distribution, and Board Member Geiger indicated no.

Chairman Karsky stated he is curious as to why the Knife River Credit Union membership vote was so close, adding that typically there are one or two members that are opposed, but this vote was fairly significant. Board Member Geiger indicated the major concern of those voting in opposition was that the credit union would be losing its individuality.

Mr. Tschider added that it is interesting to note the concepts that the members were concerned about, such as how long their signs will stay up, will their logo be maintained, can they still use their check blanks. Mr. Tschider added he felt the members were very concerned about the big city credit union taking over the little community credit union, which seemed to be more of the older people, adding that some of the younger people are members of both credit unions and they like the ability to use the services while they shop in Bismarck and Mandan. Mr. Tschider stated when visiting with people after the vote some did not

seem to have any particular heartburn even though they voted no, adding that he does not feel they lost many members because of the vote.

Manager Ost added that she did expect to have some people close their accounts; however, at this point no member that voted no has closed their account. She added one member that voted no has been in several times since the vote to talk about taking out a loan. Manager Ost continued that the unknown is always a scary situation for people and in particular the older members do not like change.

Chairman Karsky asked Chief Examiner Laidlaw if he had any feelings on the merger, and Chief Examiner Laidlaw indicated he felt it was a good fit, as the memberships have a lot of similarities, and agreed with Mr. Tschider's comment that a lot of the people from Knife River Credit Union do shop in Bismarck.

Chairman Karsky indicated this merger should help a small credit union remain profitable.

President Gallagher added that if the merger is approved the credit unions would probably not merge the computer records because Capital Credit Union is in the process of going through a major conversion and would likely wait until that time to pull in the data from Knife River Credit Union.

Board Member Geiger added that as a Board of Director member, the services Capital Credit Union can add for the Knife River Credit Union membership is a big item but that staff support is a much bigger issue as far as running the business.

Chairman Karsky agreed it is very difficult to stay on top of all the regulations in particular for a smaller credit union.

**It was moved by Member Brucker to approve the merger of Knife River Credit Union, Hazen, into Capital Credit Union, Bismarck, with the understanding that the Knife River Credit Union Board of Directors submits a detailed report to the State Credit Union Board and the Department on the methodology and how they derived the amounts of the equity payout, and that the expansion of field of membership be approved, as well the branch applications for 145 Main Street East, Hazen, and 200 Highway 49 South, Beulah.**

Chairman Karsky noted the proposed Order that was included with the Board agenda did not include the report on the equity distribution as moved by Member Brucker; therefore, Chairman Karsky proposed that the provisions on the equity distribution be added to the proposed Order and that he be authorized as Chairman to sign on behalf of the State Credit Union Board.

**Member Brucker agreed to amend his motion to include the amendment to the Order and to authorize Chairman Karsky to sign the Order on behalf of the State Credit Union Board. The motion was seconded by Member Watne.**

Chairman Karsky indicated the Department has reviewed the application and feels it is a good opportunity for the Knife River Credit Union, and that the Department would recommend approval.

**The motion was carried by a vote of 4 to 0, with Member Tonneson absent.**

All individuals representing Capital Credit Union and Knife River Credit Union, except Mr. Tschider, left the meeting at 9:55 a.m.

**ARTICLES OF AMENDMENT TO THE CERTIFICATE ORGANIZATION FOR AFFILIATED EMPLOYEES CREDIT UNION, FARGO, TO CHANGE ITS NAME TO NORIDIAN EMPLOYEES CREDIT UNION, FARGO**

**It was moved by Member Brucker and seconded by Member Watne to approve the Articles of Amendment for Affiliated Employees Credit Union, Fargo, to change its name to Noridian Employees Credit Union, Fargo.**

Member Watne questioned why the name change request was made, and Assistant Commissioner Entringer noted that is where the credit union is located and is the majority of the members.

**The motion carried by a vote of 4 to 0, with Member Tonneson absent.**

Darrell Olson and Michelle Peterson from Town and County Credit Union, Minot, were added to the conference call at 10:00 a.m.

## **REQUEST BY TOWN AND COUNTRY CREDIT UNION, MINOT, TO EXPAND ITS CREDIT UNION SERVICE ORGANIZATION TO INCLUDE ADDITIONAL SERVICES**

Assistant Commissioner Entringer reviewed the March 5, 2008, letter from Jay Landsiedel, Chief Financial Officer of Town and Country Credit Union, wherein the credit union is requesting to expand the CUSO services to include real estate brokerage services; management, development, sale or lease of fixed asset (including real estate); and appraisal services. Assistant Commissioner Entringer indicated that North Dakota Administrative Code Section 13-03-23-05(2) states that a credit union service organization may not initiate the following services and activities after December 1, 1992, without approval of the State Credit Union Board and subject to applicable state licensing requirements; included under that is real estate brokerage services. Assistant Commissioner Entringer indicated further that the management, development, sale or lease of fixed assets is found under permissible activities in Section 13-03-23-05(1)(j); however, the credit union is interpreting this Section to include farm management services. Assistant Commissioner Entringer indicated that in communication with NCUA he did not see where farm management was specifically identified under this particular item and questioned whether the credit union has the ability to do this.

Member Watne asked Mr. Tschider whether or not the company needed to be licensed for real estate brokerage, and Mr. Tschider stated what the credit union is asking for is the permission to add brokerage services. Mr. Tschider added that they will still have to apply for and obtain the real estate brokerage license, and all the State Credit Union Board is doing is approving the activities for the subsidiary.

Member Watne asked about licensing of the appraisers, and Mr. Tschider indicated that was correct, that they would have to be licensed.

Chairman Karsky reviewed the North Dakota Administrative Code noting that one part provides services in which CUSOs can engage, the second part is services in which a CUSO can request authorization from the Department, and the third part is that permission can be applied for to engage in any services not previously identified which is subject to NCUA approval.

Chairman Karsky indicated if the Board approves any activity that is not on our list, NCUA would also have to approve.

Assistant Commissioner Entringer indicated he felt the credit union needed to apply to NCUA, but also indicated he guessed that NCUA would respond by saying their rule does not apply to federally-insured state-chartered credit unions; and that he was basing this on a previous email from NCUA.

Member Brucker asked which service was not included, and Chairman Karsky indicated appraisal services are not on our list. Member Brucker asked if the other two items are, and Assistant Commissioner Entringer indicated they are if you make the determination as to whether farm management fits into the management sale development and sale or lease of fixed assets. Assistant Commissioner Entringer indicated he had contacted the NCUA Regional Office as to whether farm management would fall under this particular item and could find not support that it did. Assistant Commissioner Entringer indicated Mr. Landsiedel's letter refers to the fact that Alerus does engage in farm management, which is correct; however, it is done through its trust department. Assistant Commissioner Entringer indicated he went to NCUA to find out if there was any support for property management and NCUA indicated the only thing they would support is management of property owned by the CUSO or the credit union. Assistant Commissioner Entringer stated he then looked at Chapter 6-05 which deals with trust powers, and one of the powers for a trust company is to act as an agent and attorney-in-fact for another as a natural person could do. Assistant Commissioner Entringer stated he feels that indicates he could act as agent or power of attorney for someone as a natural person and you do not necessarily need trust powers to do this. Assistant Commissioner Entringer indicated this particular Section says the trust department or trust company can also do that. Assistant Commissioner Entringer stated his point is you do not necessarily need trust powers to do this, but Alerus and Bank of the West both engage in farm management but do it through their trust departments. Assistant Commissioner Entringer indicated he reads management development and sale or lease of fixed assets as being managing property for the CUSO or the credit union, and that is the response he got from NCUA. Assistant Commissioner Entringer indicated he discussed this issue with Assistant Attorney General Webb, who indicated the Board could (1) make a decision to fit it into this particular category of permissible activities; (2) direct the Department to go to the NCUA and ask general counsel what they would do in order to be consistent with NCUA; or (3) require trust powers.

Mr. Tschider indicated if you look under the authority and powers for real estate brokers in North Dakota, they have the right to lease property, and continued that brokers in North Dakota regularly lease property under their statutory

authority, which strikes him that these lease requests which the credit union has made would basically fall under the brokerage authority. Mr. Tschider continued that if the State Credit Union Board approves their right and opportunity to become real estate brokers, you automatically give them the right to handle leasing of real property. Mr. Tschider pointed out that Section 43-23-06.1(8)(d) and (h) both refer to the leasing of real property.

Chairman Karsky asked President Olson how much demand there was for this type of activity. President Olson indicated the credit union is involved in quite a bit of agricultural lending and noted they already had a couple of people ask them about putting their land up for sale or rent, and while checking around the state Alerus seems to keep popping up and he indicated he does not remember the numbers exactly but there are something like 60,000-100,000 acres under management. President Olson stated the credit union's thought is that the eastern part of the state is probably a generation ahead of this area, adding he feels the credit union will get more requests all the time because as the people age and the children move away, if they want to keep the land they will need someone to manage the property for them. President Olson indicated as these requests come in the credit union would negotiate the leases, sign the leases on behalf of the land owner, collect the rents, and remit the payments to the land owners.

Assistant Commissioner Entringer inquired if the credit union had discussed this activity with their bonding company for the CUSO, and President Olson indicated they have generally, but added if they could not get the bonding for this activity they would not pursue it.

Member Brucker asked if there was a different term that this could fall under because he felt it did not adequately describe farm management. Assistant Commissioner Entringer indicated this is exactly what Alerus does, and added that he did discuss this with a former employee that is a trust officer for a state-chartered bank, and added that the former employee did not feel farm management activity needed to be within a trust department because people are already doing it who do not have trust powers.

Chairman Karsky asked about the appraisal services and how that would work, and Member Brucker added that he wondered how this would interact with the credit union's ag lending.

President Olson indicated that residential real estate appraisals in Minot are fairly easy to get right now, but there are very few people who do agricultural and

commercial appraisals. President Olson indicated he thought that Farm Credit Services has one to three people on staff to do agricultural appraisals and there are probably two or three others in Minot that do them, adding that some of the agricultural appraisals that they have ordered have literally taken months to get. President Olson indicated as an aside, he had to have an individual from Fargo to come to Minot in order to get a commercial appraisal done within the one month timeframe he needed. President Olson indicated he felt if they got one or two appraisers qualified to do agricultural appraisals it would take the edge off and they would be accomplished on a timelier basis. President Olson indicated that Alerus also does appraisals and it seems to work well for them.

Chairman Karsky asked about conflicts of interest, stating he would have a real problem with an agricultural real estate loan from Town and Country Credit Union and then an appraiser employed by the credit union's CUSO doing the appraisal on the property.

Mr. Tschider indicated he would like to address that issue and directed the Board's attention to Section 722.5 of the NCUA Rules and Regulations that deals with staff appraisers, and that requirement recognizes that a staff appraiser can be on the staff; however, NCUA states that the appraiser must be independent of the lending and collection activities and not involved except as an appraiser in the federally-related transaction and have no direct or indirect interest, financial or otherwise, in the property. Mr. Tschider indicated NCUA does not see a particular problem and this staff appraiser will not truly be a staff appraiser because he/she will be employed by the CUSO as opposed to the credit union itself. Mr. Tschider stated that apparently NCUA has looked at the concept of having staff appraisers and it is acceptable if that is all they do and are not involved in any way in the transaction at the credit union. Mr. Tschider pointed out that Assistant Commissioner Entringer referred to Section B which has to do with fee appraisers; however, Mr. Tschider indicated to him this is a staff appraiser as opposed to a fee appraiser; a staff appraiser is a regular employee at the credit union; therefore, he disagrees with Assistant Commissioner Entringer as to the difference between a staff appraiser and a fee appraiser.

Chairman Karsky indicated he thought a staff appraiser does not get paid for the appraisal. Assistant Commissioner Entringer indicated he agrees that a staff appraiser can do a appraisal that is not required to be certified as long as they are independent of that transaction, but that if you have to get a certified appraisal and the credit union goes to their employee of the CUSO and hires them to do the appraisal, do they have an indirect financial interest because then what happens is

the customer pays the CUSO for the appraisal and so the credit union indirectly has a financial interest in the transaction. Assistant Commissioner Entringer summarized that his question is whether there is an indirect financial interest if this person works for the CUSO. Mr. Tschider stated you could say that of every employee that works at the credit union because many credit unions have bonus programs and so every transaction that enters that credit union, at least for management, directly impacts them.

Chairman Karsky indicated if a loan officer has a bonus riding on a loan transaction and he tries to influence the appraiser that raises the conflict level even higher. Chairman Karsky indicated he agrees with the financial interest, which was his first reaction to this request.

Member Brucker stated he feels there are two different issues: (1) that Town and Country Credit Union wants to get into appraisal services, which he feels is the issue for the State Credit Union Board; and (2) whether or not the credit union can do its own appraisals and how the Department would handle that.

Chairman Karsky indicated it becomes a federal issue because it is a federal law that we are discussing. Member Brucker indicated NCUA just issued some new guidance on the appraisal issue also. Member Brucker indicated he is assuming President Olson would like an answer of whether he can do his own appraisals before he goes into the business. President Olson indicated if the credit union is not granted approval to conduct the appraisals he is not sure it would work at all because it all falls hand-in-hand. President Olson added one thing to keep in mind is the largest competitor for farm ag loans is Farm Credit, and even though he realizes they are not under the same rules that they do have their own staff appraisers.

Chairman Karsky asked if the Board did approve real estate brokerage services and management development and sale or lease of fixed assets, would that create a problem, and Mr. Tschider indicated it would.

Chairman Karsky indicated he does have issues with the appraisals upfront. Chairman Karsky continued he does not have a problem with the real estate brokerage services and management sale or lease of fixed assets.

Mr. Tschider asked President Olson his opinion if the State Credit Union Board were to act on the real estate brokerage services and the farm management aspect and table the appraisal services until we find out what the facts are for appraisals which would give the Department some time to conduct some

investigation and also give the credit union some time to do some research. President Olson indicated he would be okay with that.

Member Stillwell asked if we were talking about appraisals mainly for the credit union or both, adding the point of a CUSO is to allow it to engage in activities that the credit union cannot which would benefit the credit union. Member Stillwell added she looks at this somewhat differently as far as independence and that is why a CUSO is set up as a separate legal entity with separate bonding and insurance, and still is a benefit to the credit union if they can have someone that is certified and licensed to do their appraisals.

Member Watne asked if the real estate brokerage services would be limited to customers of the credit union. Mr. Tschider indicated under North Dakota law, if this is approved, the credit union can provide services to members as well as non-members.

Mr. Tschider asked if Member Watne would be able to vote on this issue since she is engaged in the real estate business in Minot. Member Watne indicated she was pondering that and Chairman Karsky indicated if Assistant Attorney General Webb was present he would state if Member Watne is present for the meeting she is required to vote.

Member Watne stated she wonders if a credit union owning a real estate firm is ethical, adding she can see the need for farm management services as long as it is limited to that.

Mr. Tschider indicated the fact of the matter is that the law permits credit unions to do this and it is not an issue of whether or not you agree with the law; adding that the law is specific and the credit unions have the authority to have CUSOs which engage in insurance or real estate. Mr. Tschider stated he understands Member Watne's qualms about this issue, but it is part of the law that credit unions can own a real estate company.

Chairman Karsky stated the CUSO is a separate business and can sell to the general public, and you do not need to be a member of the credit union to do farm management business with the CUSO.

Mr. Tschider pointed out that the only credit union that has been very active with real estate is First Community Credit Union, Jamestown, which has operated its CUSO that has owned a real estate firm for 25 years.

Chairman Karsky stated he would like to see a motion that would approve the brokerage and farm management services, but table the appraisal services so it can be studied further.

**Member Brucker moved to approve the real estate brokerage services and the management, development, sale or lease of fixed assets (farm management), and to table the appraisal services request. The motion was seconded by Member Stillwell.**

Member Stillwell asked if the Department would start researching the appraisal in the interim, and Assistant Commissioner Entringer indicated he would start on it immediately.

**The motion was carried by a vote of 4 to 0, with Member Tonneson absent.**

#### **AMENDMENTS TO NORTH DAKOTA ADMINISTRATIVE CODE SECTIONS 13-03-02-03 AND 13-03-16-05**

Assistant Commissioner Entringer provided a copy of the written record of oral comments received at the hearing. There were written comments provided during the comment period, either before or after the hearing. Assistant Commissioner Entringer explained to the Board the process for the remainder of the rulemaking procedure. Assistant Commissioner Entringer informed the Board the rules should become effective July 1, 2008.

Chairman Karsky indicated there were no comments from the public at the hearing; and that Mr. Tschider represented the industry and testified in support of the changes, along with Steve Davis who testified on behalf of the Governmental Affairs Committee of the Mid America Credit Union League.

**It was moved by Member Brucker and seconded by Member Stillwell to approve the amendments to North Dakota Administrative Code Sections 13-03-02-03 and 13-03-16-05. The motion was carried by a vote of 4 to 0, with Member Tonneson absent.**

The Board went into closed session at 10:40 a.m.

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Timothy J. Karsky, Chairman

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Robert J. Entringer, Secretary