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State Treasurer



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HOWARD H. WRIGHT, JR. | *Rock Hill*
K. WAYNE WICKER | *Myrtle Beach*
J. BARRY HAM | *Manning*
JOHN F. WINDLEY | *Columbia*
CHARLES H. STUART | *Mount Pleasant*
BILLY D. BYRD, II | *Hartsville*

SOUTH CAROLINA
STATE BOARD OF FINANCIAL INSTITUTIONS

MINUTES

Wednesday, August 7, 2019

10:00 A.M.

**1200 Senate Street, Wade Hampton Office Building
Governor's Conference Room
Columbia, South Carolina**

Upon proper call and due notice to all its members and after having given required public notice, the State Board of Financial Institutions met on the 7th of August 2019, with Chairman Loftis presiding.

Members present: Messrs. Loftis (Chairman), Wicker, Ham, Windley, Wright, Pennington, Stuart, Strickland (via phone), Walters (via phone), and Conley (via phone).

Mr. Byrd could not attend.

In attendance from the Banking Division were Commissioner Rick Green, Deputy Commissioner Kathy Bickham, Senior Review Examiner Renee Dzek and Senior Review Examiner Janeen Hughes.

In attendance from the Consumer Finance Division were Commissioner Ron Bodvake, Deputy Commissioner Carl Jeffcoat, Deputy Commissioner Phyllis Wicker, and Review Examiner Quinton Creed.

In attendance from the State Treasurer's Office were Chief of Staff Clarissa Adams, Deputy General Counsel Bill Condon, Counsel Shawn Eubanks, Communications Director Karen Owens, Procurement & Finance Specialist Cameron Larkin and Assistant to the Chairman Alicia Sharpe.

Visitors in attendance: Steve Gilbert (Senate Banking and Insurance Committee) and Derial Ogburn (Ogburn and Associates, Inc.).

The Agenda for this meeting was approved by General Consent.

The June 5, 2019 Board Minutes were approved by General Consent.

Board Member Recusal or Conflicts of Interest

Mr. Windley submitted a written statement recusing himself from all matters regarding South State Bank, Columbia, South Carolina because a business with whom he is associated has an economic interest in the decision to be made by the Board.

The Chairman asked if any other member had a conflict with an item on the agenda. No other member identified a conflict of interest.

The Budget and Operations Committee Update was provided by Don Pennington. He asked if the Commissioners would provide a high-level review of their presentations to the Committee during the July 25th meeting.

Commissioner Green reviewed the FY21 BOFI Budget Request.

The Budget and Operations Committee recommended to the full Board approval of the FY21 BOFI Budget Request.

The motion was seconded by Mr. Wicker and unanimously carried.

Commissioner Bodvake reviewed the FY19 Accountability Report.

The Budget and Operations Committee recommended to the full Board approval of the FY19 Accountability Report.

The motion was seconded by Mr. Wicker and unanimously carried.

Commissioner Bodvake presented the Consumer Finance Division's proposal to increase certain FY20 Fees and to require certain licensees to use NMLS for application, renewal and other filings. The presentation included the costs incurred to regulate check cashing, deferred presentment, and supervised lending applicants/licensees, increasing the exam fees for Deferred Presentment licensees, increasing the renewal fee for Supervised Lender licensees for FY 20, and adopting NMLS for application-filing purposes. A great deal of discussion ensued. Mr. Wright asked whether the Board has the statutory authority to require applicants/licensees for Deferred Presentment, Check Cashing and Supervised Lending to use NMLS. Commissioner Bodvake answered affirmatively referencing language in the respective statutes and a legal opinion obtained. Mr. Wright asked that that legal opinion be made part of these minutes because the Board relied upon it. The memo containing that legal opinion is attached and is part of these minutes.

The Budget and Operations Committee recommended to the full Board approval of an increase in the Examination Fees from \$150 to \$500 for Deferred Presentment licensees.

The motion was seconded by Mr. Wicker and unanimously carried.

Mr. Pennington stated that the Committee had a broader discussion on the supervised lender renewal fees presented by Commissioner Bodvake.

The Chairman asked if there was further discussion.

On motion of Mr. Wicker seconded by Mr. Windley and unanimously carried, the Board voted to approve the increase in the Supervised Lender renewal fees from \$400 to \$600 for FY20 as presented by Commissioner Bodvake.

The Chairman asked if there was any further discussion on NMLS.

On motion of Mr. Windley seconded by Mr. Pennington and unanimously carried, the Board voted to approve the use of the NMLS system as presented by Commissioner Bodvake.

Commissioner Green reviewed FY20 Banking Division Fees.

The Budget and Operations Committee recommended to the full Board approval of the FY20 Supervisory Fees as presented by Commissioner Green.

The motion was seconded Mr. Ham and unanimously carried.

Mr. Pennington informed the Board that the Committee is scheduled to meet again August 22, 2019.

Commissioner Reports

Commissioner of Banking, Rick Green provided the Board with an update on the following:

Industry Engagement

- Commissioner Green attended the CSBS New Commissioner Briefing, Washington, D.C.
- Commissioner Green had introductory meetings with:
 - Jelena McWilliams, Chairman of the FDIC
 - Jennifer Burns, Deputy Director of Supervision and Regulation for the Federal Reserve Board of Governors
 - Michael Dean, FDIC Atlanta Regional Director
 - John Henrie, FDIC Atlanta Deputy Regional Director of the Division of Risk Management
 - Phyllis Patton, FDIC Atlanta Deputy Regional Director of the Division of Depositor and Consumer Protection
 - Charmion Haley, FDIC Atlanta Regional Ombudsman
 - Rodney Hood, Chairman of the NCUA
- Commissioner Green conducted outreach meetings with two banks
- Chief Examiner Remonia Felix joined the CSBS State Examiner Review Team
- Senior Examiner Mike Brandyburg joined the CSBS IT Advisory Team
- IT Manager Gary Trammell joined the CSBS Technology Committee

- Senior Examiner Rudy Baumann joined the CSBS Risk ID Team
- Examiner III Aaron Fleming joined the CSBS Risk ID Team

Emergency Preparedness

- Commissioner Green and Senior Review Examiner Janeen Hughes met with SC Emergency Management Director Kim Stenson
- Invited to join Emergency Support Function (ESF)-24 - Business and Industry
- Access to the State Emergency Operations Center and other state leaders prior to, during, and after an emergency.
- Participating in an emergency preparedness table top exercise with US Treasury, NASCUS, CSBS, and Homeland Security on 8/7/19.

Risk Identification Committee

- Formation of Risk ID Committee in order to:
 - Identify current risk levels, trends, and emerging risks
 - Identify data needs and sources
 - Develop supervisory strategies
 - Develop communications to staff and industry

Education/Training

- Examiner I Kyle Williams – Asset Liability Management School
- Associate Examiner Kaylee Bryant – Financial Institutions Analysis School
- Associate Examiner Lilasha Dervin – Asset Liability Management School
- Examiner III Mickey Jolly – Real Estate Appraisal Review School
- Examiner I John Hammond – Loan Analysis School

Staffing update

- John Hammond promoted to Examiner I (7/2019)
- Kyle Williams promoted to Examiner I (7/2019)
- Eddie Causey hired as a Loan Review Specialist (7/2019)
- Walter Taylor hired as a Loan Review Specialist (7/2019)
- Examiner I Kyle Williams resigned (7/26/2019)

Commissioner of Consumer Finance, Ron Bodvake, provided the Board with a report on the following:

- *Meetings and Conferences*
 - August – ACUCCS Conference - Charleston, SC
 - August – Veritec Conference - Detroit, MI
- *Certified Public Manager Program*
 - Quinton Creed and Phyllis Wicker graduated on May 16th
 - 300 hours of coursework, 2 overnight retreats, 2 group projects, 1 individual project and final exam

Consumer Finance Division Board Approvals

The Consumer Finance Division was advised of a Change of Name and reviewed the applications for in-state and out-of-state Supervised Consumer Finance Licenses, applications for Deferred Presentment Licenses and applications for Level II Check Cashing Services listed on the agenda. The Consumer Finance Division determined that each respective applicant/licensee meets the licensing or other requirements defined in the applicable statutes. ***On motion of Mr. Wicker, seconded by Mr. Windley and unanimously carried, the Board adopted a motion to approve the following items:***

Consumer Finance Division Board Approvals

Supervised Consumer Finance Licensees who have advised of change of name:

ACE Cash Express, Inc. changed name from ACE Cash Express, Inc. to Populus Financial Group, Inc.

Applications for Supervised Consumer Finance Licenses to perform certain lending operations for which the Division has determined that the licensing requirements under Section 37-3-503(1), (2) have been met:

In-State Applications:

1. CLOSC Inc. dba Check Loans at 127 North Pearl Street, Pageland, South Carolina 29728. (New)
2. Local Finance Co. of North Charleston, LLC dba Local Finance at 4365 Dorchester Road, Suite 102, North Charleston, South Carolina 29405. (New)
3. Pettit and Associates LLC dba Main Street Loans at 14B South Main Street, Inman, South Carolina 29349 (New)

Out of State Applications:

1. AmeriCredit Financial Services, Inc. dba Mode by GM Financial at 3801 South Collins Street, Arlington, Texas 76014. (#Active1)
2. AmeriCredit Financial Services, Inc. dba Mode by GM Financial at 4000 Embarcadero Drive, Arlington, Texas 76014. (#Active1)
3. AmeriCredit Financial Services, Inc. dba Mode by GM Financial at 4001 Embarcadero Drive, Arlington, Texas 76014. (#Active1)
4. AmeriCredit Financial Services, Inc. dba Mode by GM Financial at 4100 Embarcadero Drive, Arlington, Texas 76014. (Active1)
5. AmeriCredit Financial Services, Inc. dba Mode by GM Financial at 1975 South Price Road, Chandler, Arizona 85286. (#Active1)
6. AmeriCredit Financial Services, Inc. dba Mode by GM Financial at 801 Cherry Street, Suite 3600, Fort Worth, Texas 76102. (#Active1)
7. AmeriCredit Financial Services, Inc. dba Mode by GM Financial at 220 East Las Colinas Boulevard, Suite 500, Irving, Texas 75039. (#Active1)
8. AmeriCredit Financial Services, Inc. dba GM Financial at 3801 South Collins Street, Arlington, Texas 76014. (#Active1)
9. AmeriCredit Financial Services, Inc. dba GM Financial at 4000 Embarcadero Drive, Arlington, Texas 76014. (#Active1)

10. AmeriCredit Financial Services, Inc. dba GM Financial at 4100 Embarcadero Drive, Arlington, Texas 76014. (#Active1)
11. AmeriCredit Financial Services, Inc. dba GM Financial at 1975 South Price Road, Chandler, Arizona. (#Active1)
12. AmeriCredit Financial Services, Inc. dba GM Financial at 801 Cherry Street, Suite 3600, Fort Worth, Texas 76102. (#Active1)
13. AmeriCredit Financial Services, Inc. dba GM Financial at 220 East Las Colinas Boulevard, Suite 500, Irving, Texas 75039. (#Active1)
14. AmeriCredit Financial Services, Inc. dba www.gmfinancial.com. (#Active1)
15. Constant Energy Capital Management, Inc. at 225 Commercial Street, Suite 500, Portland, Maine 04101. (New)
16. Constant Energy Capital Management, Inc. at www.constantenergy.com
17. Ironsides, L.L.C. at 327 West 4th. Avenue, Suite 103, Hutchinson, Kansas 67501. (New)
18. Kwikcash, Inc. dba Kwikcash, Inc. of SC at 9150 Irvine Center Drive, Irvine, California 92618. (New)
19. Kwikcash, Inc. at www.kwikcashionline.com. (New)
20. Leap Credit of South Carolina, LLC at 3348 Peachtree Road Northeast, Suite 150, Atlanta, Georgia 30326. (New)
21. Leap Credit of South Carolina, LLC at www.leapcredit.com. (New)
22. Speedee Cash of South Carolina, Inc. dba Speedee Cash at 300 East Jackson Street, Dublin, Georgia 31021. (#Active1)

Applications for Deferred Presentment Licenses for which the Division has determined that the licensing requirements under Section 34-39-160 have been met:

Ironsides, LLC. at 327 West 4th. Avenue, Suite 103, Hutchinson, Kansas 67501. (New)

Applications for Level II Check Cashing Services Licenses for which the Division has determined that the licensing requirements under Sections 34-41-40, 34-41-42, and 34-41-50 have been met:

s10 Enterprises, LLC at 211 Ascauga Lake Road, Graniteville, South Carolina 29829. (New)

Executive Session

The Board voted unanimously to adjourn into Executive Session.

Deputy General Counsel Bill Condon stated the reasons the Board entered Executive Session: to discuss applications to establish bank branches, a request to issue common stock, a request to relocate a branch, other personal information of regulated persons, and to receive legal advice as needed.

When appropriate Mr. Windley left the room and did not participate when the matter for which he had a conflict of interest was discussed in Executive Session.

The Board voted unanimously to end Executive Session.

Actions following Executive Session

Voting on Items Discussed in Executive Session

Mr. Windley had a conflict of interest on matters pertaining to South State Bank and left the room during its discussion and vote.

On motion of Mr. Pennington, seconded by Mr. Wicker and unanimously carried, the Board voted to approve the application of South State Bank, Columbia, South Carolina, to establish a branch at 4901 Glenwood Avenue, Raleigh, North Carolina.

On motion of Mr. Ham, seconded by Mr. Windley and unanimously carried, the Board voted to approve the application of SPC Credit Union, Hartsville, South Carolina, to establish a branch at 124 North Fifth Street, Hartsville, South Carolina.

On motion of Mr. Windley, seconded by Mr. Pennington and unanimously carried, the Board voted to approve the application of the Bank of the Lowcountry, Walterboro, South Carolina, to establish a branch at 767 Johnnie Dodds Boulevard, Mount Pleasant, South Carolina.

On motion of Mr. Wicker, seconded by Mr. Stuart and unanimously carried, the Board voted to approve the application of Blue Ridge Bank, Walhalla, South Carolina, to establish a branch at 836 Powdersville Road, Suite A, Easley, South Carolina.

On motion of Mr. Windley, seconded by Mr. Pennington and unanimously carried, the Board voted to approve the application of First Palmetto Bank, Camden, South Carolina, to establish a branch at 2530 Devine Street, Columbia, South Carolina.

On motion of Mr. Windley, seconded by Mr. Ham and unanimously carried, the Board voted to approve the request of Beacon Community Bank, Charleston, South Carolina, to issue 200,000 shares of common stock.

On motion of Mr. Wicker, seconded by Mr. Windley and unanimously carried, the Board voted to approve the request of CresCom Bank, Charleston, South Carolina, to relocate its Conway branch from 1230 16th Avenue, to 310 Wright Boulevard, Conway, South Carolina.

Announcements:

The next board meeting is scheduled for Wednesday September 4, 2019.

There being no objection, the meeting adjourned at 11:38 AM.

MEMORANDUM

To: Ron Bodvake, Commissioner of Consumer Finance

From: Shawn D. Eubanks, Counsel, State Treasurer's Office

Date: August 5, 2019

Re: Paper vs. Electronic Applications for Licenses

You have asked our office whether the applications to the Board of Financial Institutions ("BOFI"), Office of Consumer Finance may be legally transitioned from paper to electronic format for supervised lending, deferred presentment, and check cashing licenses. In our opinion, as more fully explained below, South Carolina law generally does not prohibit BOFI from accepting electronic applications for these licenses, so long as they include the required information; however, for supervised lender applicants the signature page must be notarized.

As we understand it, BOFI recently gained the capacity to accept some or all of its licensure submissions electronically through a program called the Nationwide Multistate Licensing System and Registry ("NMLS"). NMLS has many functions, one of which is that applications for licenses or license renewals may be filled out and submitted electronically online by the applicant. To that end, NMLS has standard forms for all companies regardless of jurisdiction, and also allows additional information to be gathered, as may be uniquely required by each State.

Presently, BOFI accepts only paper applications to conduct supervised lending, deferred presentment, and check cashing transactions, and does not use NMLS for these industries. BOFI's Consumer Finance Division has asked our office to opine on whether the present statutes governing these industries would allow the use of NMLS.

Though each of the license types for supervised lending, deferred presentment, and check cashing licenses have separate statutes setting forth the requirements for applications, the format requirements of each is substantially the same: "under oath;" and in or on a "form prescribed by the Board." See S.C. Code §§ 34-41-41(A) (check cashing); and 34-39-150 (deferred presentment); S.C. Code Regs. 28-8(D) (supervised lending).

I. Applications must be made "in writing" and in or on "a form prescribed by the Board"

First, the statutes and regulation governing these licenses require that the applications for check cashing and deferred presentment licenses to be made "in writing," and, along with supervised lender applications, must be in/on a "form prescribed by the Board." Id.

The Uniform Electronic Transactions Act ("UETA") gives each State agency the ability to determine "if, and the extent to which, it will send and accept electronic records and electronic signatures." S.C. Code § 26-6-180(A). If the agency, in consultation with the South Carolina Department of Administration, determines that it will accept certain records electronically, the "record or signature must not be denied legal effect or enforceability solely because it is in electronic form." S.C. Code § 26-6-70(A). An electronic record "satisfies a law requiring a record

to be in writing,” and an electronic signature “satisfies a law requiring a signature.” S.C. Code § 26-6-70(C and D).

Regarding the deferred presentment, check cashing, and supervised lending applications, the UETA suggests that terms such as “in writing” and “in a form” or “on a form” do not limit the application format to a paper submission. Thus, an online or electronic application format would be sufficient to fulfill the requirements set forth in the law regarding applications for all three types of licenses.

Accordingly, the statute generally allows the Board to transition these applications to the NMLS electronic system, so long as all of the informational requirements of the statute and regulations can be fulfilled through the NMLS system.

II. Applications must be made “under oath” or “notarized”

In addition to the aforementioned requirements, deferred presentment and check cashing license applications are required to be made “under oath,” while supervised lending applications similarly must be “notarized.” See S.C. Code §§ 34-39-150(A) (deferred presentment); 34-41-41(A) (check cashing); and S.C. Code Regs. 28-8(D) (supervised lending).

a. Deferred presentment and check cashing

Application for license to conduct deferred presentment and check cashing transactions must be made “under oath.” S.C. Code § 34-39-150(A); S.C. Code § 34-41-41(A).

Oath is defined in Black’s Law Dictionary as “[a] solemn declaration, accompanied by a swearing to God or a revered person or thing, that one’s statement is true or that one will be bound to a promise. The person making the oath implicitly invites punishment if the statement is untrue or the promise is broken. The legal effect of an oath is to subject the person to penalties for perjury if the testimony is false.” (11th ed. 2019).

One manner in which an oath is administered is by a notary public. Notaries public are authorized by law to take in-person oaths. See S.C. Code § 26-1-5 *et seq.* Presently in South Carolina, individuals must appear in person before a notary; as such, notaries public may not attest or acknowledge an oath electronically or remotely. Nevertheless, unless a notarial act is explicitly required, a legally binding oath may be made without a notary public.

South Carolina’s perjury law makes it unlawful “for a person to willfully give false, misleading, or incomplete information on a document, record, report, or form required by the laws of this state.” S.C. Code 16-9-10(A)(2). In State v. Stanley, this statute was used to find that a defendant had committed perjury by admittedly giving a false written statement to a police officer, which was included in a police report. 365 S.C. 24 (Ct. App. 2005). The statement included the language “I volunteer the following information of my own free will, for whatever purpose it may serve. I certify that the facts contained herein are true and correct.” *Id.* at fn. 1. The defendant argued that his statement was not made under oath; however, the Court of Appeals held that the defendant’s statement was in fact made under oath because the statement was made to a police officer gathering information for a police report. *Id.*

Based on this interpretation of the statute, any verbal or written information provided on a form required by South Carolina law may be considered to have been given “under oath.” This may be particularly true when the individual providing the information certifies its truth and acknowledges that he or she is subject to penalties for perjury if the testimony is false.

Specifically regarding deferred presentment and check cashing applications, although the forms currently used for applications require notarization, there are no regulations which clarify that either of these applications must be notarized. Further, the UETA explicitly provides that “a law requiring a signature or record to be... made under oath is satisfied if the electronic signature of the person... is attached or logically associated with the signature or record.” S.C. Code § 26-6-110.

Accordingly, a person providing information through NMLS would likely be doing so under oath, as a matter of law, thus fulfilling the requirements for deferred presentment and check cashing license applications.¹

b. Supervised lending

Applications for licenses to make supervised loans specify that the application shall contain “the signature of the applicant which must be notarized.” S.C. Code Regs. 28-8(D)(14).²

A notarial acknowledgment requires that, at a single place and time, an individual known to the notary or having proved his identity to the notary, appeared in person before the notary, and signed a record in the notary’s presence. S.C. Code § 26-1-5(1). The record must contain a certification that these requirements were fulfilled, and must contain the words “acknowledged before me.” S.C. Code § 26-3-50(3). The notary must indicate the date of expiration of his commission below his signature, and affix his seal of office to the record; however, “the absence of the seal of office or date of expiration does not render his notarial acts invalid if his official title is affixed to it.” S.C. Code § 26-1-60.

Though acknowledgements are typically done through “wet signing” in person, on paper, the UETA provides that electronic acknowledgment by notaries public are acceptable so long as they are submitted “together with all other information required to be included by other applicable law,” and “attached to or logically associated with the signature or record.” See S.C. Code § 26-6-110. This provision, however, does not negate the requirements discussed above.

In the present matter, it is our understanding that fulfillment of these requirements may not be available at this time through the NMLS interface. Nevertheless, a sufficient workaround may be to allow the applicant to fill out the entire electronic application, and complete the application by

¹ Though perhaps not required, we recommend including language in the NMLS application stating that the signor of the application is certifying “under penalty of perjury” that the information he or she is providing is true, accurate, and complete.

² It is our understanding from the BOFI Commissioner of Consumer Finance that, due to market changes over the years, there are currently only four remaining “restricted” lenders governed by S.C. Code § 34-29-30, and that the Consumer Finance Division does not receive any applications for lenders under this section, as the provisions of S.C. Code 37-3-503 are the preferred route of licensure for supervised lenders, currently. Accordingly, restricted lending applications are not discussed in this memorandum.

submitting a paper or electronic scan of the notarized signature page certifying the truth of the information submitted in the online application, including the statutory certification language.

In conclusion, a transition to electronic format for the applications of these industries would not be inconsistent with any provision of statute or regulation, so long as the informational requirements are fulfilled and, in the case of supervised lenders, a notary page is submitted and made a part of the electronic application.