

**STATE BOARD OF FINANCIAL INSTITUTIONS**  
**MINUTES**  
**July 9, 2014**  
**Columbia, South Carolina**

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Upon proper call and due notice to all of its members and after having given required public notice, the State Board of Financial Institutions assembled in a meeting this the 9th day of July 2014, with Chairman Loftis presiding. Members present were: Messrs. Anderson, Apple, Conley, Hart, Hassell, Pennington, Saunders, Williams, Wright, and Ms. Marcum. In attendance were Commissioner Louie Jacobs, Interim Commissioner Jim Copeland, Mr. Carl Jeffcoat, Assistant Commissioner, Consumer Finance Division, Ms. Kathy Bickham, Assistant Commissioner, Banking Division, Mr. Rick Green, Accounting Fiscal Manager, Banking Division, Ms. Amy Wright, Secretary to the Board, Ms. Clarissa Adams, Chief of Staff, State Treasurer's Office, Mr. Robin Johnson, General Counsel, State Treasurer's Office, Mr. Harrison Brant, Assistant General Counsel, State Treasurer's Office, Ms. Cynthia Dannels, Deputy State Treasurer, State Treasurer's Office, Mr. Daniel Brennan, Legislative Affairs Director, State Treasurer's Office, Ms. Karen Wicker, Sr. Assistant State Treasurer, State Treasurer's Office, Ms. Sara Fortson, Human Resource Division, State Treasurer's Office.

On motion of Mr. Anderson, duly seconded by Mr. Hassell and unanimously carried, the Board approved minutes from the June 4, 2014 meeting.

On motion of Mr. Hart, duly seconded by Mr. Anderson and unanimously carried, the Board accepted the following Notice Agenda Items (Blue Agenda) as information:

Consumer Finance Division

The following Supervised Consumer Finance Licensees have advised of change of address as follows: (a) TitleMax of South Carolina, Inc. dba TitleMax from 606 Bacons Bridge Road, to 100 Miles Road, Summerville; (b) World Finance Company of South Carolina, LLC dba World Acceptance Corporation from 112 Dreher Road to 1630 Airport Boulevard, West Columbia; (c) Pioneer Credit Company from 946 Orleans Road, B-6 to 1660 Sam Rittenberg Boulevard, Suite 8, Charleston; (d) AutoMoney, Inc. dba AutoMoney, Inc.- Anderson #2 from 2714 East Shockley Ferry Road, to 98 West Shockley Ferry Road, Anderson; (e) First Sentry Financial, Inc. from 514-A St. James Avenue to 118 Springhall Drive, Suite C, Goose Creek; (f) SN Servicing Corporation from 3050 Westford Drive to 13702 Coursey Boulevard, Building Two, Baton Rouge.

Notification has been received that the following Supervised Consumer Finance Licensees have been voluntarily surrendered for cancellation:

1. Republic Finance, LLC, 2371 Cherry Road, Rock Hill, South Carolina.

**EXAMINING DIVISION**

None.

**LEGISLATIVE AND OTHER UPDATES**

Mr. Brennan gave an update on related Legislative Provisos.

Mr. Hassell stated that the Budget, Policy and Planning Committee did meet this month and they discussed the budget and some guidelines as well as asking Commissioner Jacobs and Interim Commission Copeland to submit some information to the committee that will be passed on to the full Board. Mr. Hassell thanked Mr. Conley for all his work regarding the budget and the budget process.

**REGULAR SESSION**

**Consumer Finance Division**

On motion of Mr. Anderson duly seconded by Mr. Conley and unanimously carried, the Board approved the requests for Supervised Consumer Finance Licenses for In-State as follows:

1. Request of AutoMoney, Inc. dba AutoMoney, Inc. - Clinton to operate at 200 West Main Street, Clinton, South Carolina 29325. **(#active70)**
2. Request of AutoMoney, Inc. dba AutoMoney, Inc. - Landrum to operate at 1840 SC Highway 14 East, Landrum, South Carolina 29356. **(#active70)**
3. Request of AutoMoney, Inc. dba AutoMoney, Inc. - Laurens to operate at 923 East Main Street, Laurens, South Carolina 29360. **(#active70)**
4. Request of AutoMoney, Inc. dba AutoMoney, Inc. - Mauldin to operate at 507 North Main Street, Mauldin, South Carolina 29662. **(#active70)**
5. Request of AutoMoney, Inc. dba AutoMoney, Inc. – North Augusta to operate at 417 East Martintown Road, North Augusta, South Carolina 29841. **(#active70)**
6. Request of AutoMoney, Inc. dba AutoMoney, Inc. – St. Andrews to operate at 676 St. Andrews Road, Columbia, South Carolina 29210. **(#active70)**
7. Request of Carolina Financial Services, Inc. dba National Finance Company to operate at 2524 East Highway 76, Unit F, Marion, South Carolina 29571. **(#active39)**



8. Request of Checks America Payday Advances, Inc. dba 1<sup>st</sup> Capital Finance to operate at 1660 Highway 701 North, Loris, South Carolina 29569. (**#active9**)

On motion of Ms. Pennington duly seconded by Mr. Hassell and unanimously carried, the Board approved the requests for Supervised Consumer Finance Licenses for Out-of-State as follows:

9. Request of Brookwood Loans of South Carolina, LLC for a Supervised Consumer Finance License to perform certain lending operations in South Carolina from its location at 3440 Preston Ridge Road, Suite 100, Alpharetta, Georgia 30005. (**New**)
10. Request of Brookwood Loans of South Carolina, LLC for a Supervised Consumer Finance License to perform certain lending operations in South Carolina from its location at [www.brookwoodloans.com](http://www.brookwoodloans.com). (**New**)
11. Request of Manor Resources, LLC for a Supervised Consumer Finance License to perform certain lending operations in South Carolina from its location at 77 West 200 South, Suite 313, Salt Lake City, Utah 84101. (**New**)
12. Request of Manor Resources, LLC for a Supervised Consumer Finance License to perform certain lending operations in South Carolina from its location at [www.turbotitleloans.com](http://www.turbotitleloans.com). (**New**)
13. Request of Marlette Funding, LLC dba Best Egg for a Supervised Consumer Finance License to perform certain lending operations in South Carolina from its location at 1523 Concord Pike, Suite 302, Wilmington, DE 19803. (**New**)
14. Request of Marlette Funding, LLC for a Supervised Consumer Finance License to perform certain lending operations in South Carolina from its location at [www.mybestegg.com](http://www.mybestegg.com). (**New**)
15. Request of Springleaf Consumer Loan, Inc. for a Supervised Consumer Finance License to perform certain lending operations in South Carolina from its location at 1270 Northland Drive, Suite 200, Mendota Heights, Minnesota 55120. (**#active4**)
16. Request of Springleaf Financial Services of South Carolina, Inc. for a Supervised Consumer Finance License to perform certain lending operations in South Carolina from its location at 1270 Northland Drive, Suite 200, Mendota Heights, Minnesota 55120. (**#active40**)

17. Request of Springleaf Financial Services of South Carolina, Inc. for a Supervised Consumer Finance License to perform certain lending operations in South Carolina from its location at [www.springleaffinancial.com](http://www.springleaffinancial.com). **(#active40)**
18. Request of SunUp Financial, LLC dba BalanceCredit.com for a Supervised Consumer Finance License to perform certain lending operations in South Carolina from its location at 222 West Las Colinas Boulevard, Suite 1650, Irving, Texas 75039. **(New)**
19. Request of SunUp Financial, LLC for a Supervised Consumer Finance License to perform certain lending operations in South Carolina from its location at [www.balancecredit.com](http://www.balancecredit.com). **(New)**
20. Request of Viewtech Financial Services, Inc. for a Supervised Consumer Finance License to perform certain lending operations in South Carolina from its location at 4761 East Hunter Avenue, Anaheim, California 92807. **(New)**
21. Request of ZestCash, Inc. for a Supervised Consumer Finance License to perform certain lending operations in South Carolina from its location at 6636 Hollywood Boulevard, Los Angeles, California 90028. **(New)**
22. Request of ZestCash, Inc. for a Supervised Consumer Finance License to perform certain lending operations in South Carolina from its location at [www.zestcash.com](http://www.zestcash.com). **(New)**

On motion of Mr. Williams duly seconded by Mr. Wright and unanimously carried, the Board approved the request for Check Cashing Level II Services as follows:

1. Request of Krishna Aisha LLC dba Boneys for a license to provide Check Cashing Level II services at 356 Manning Avenue, Sumter, South Carolina 29150. **(New)**

Examining Division

None.

**EXECUTIVE SESSION**

On motion of Mr. Anderson duly seconded by Mr. Conley and unanimously carried, the Board voted to go into Executive Session to receive and discuss information pertaining to examinations of institutions required to be made by law, trade secrets, information regarding contractual arrangements, purchase of property, examination findings, personnel matters, and receive legal advice.



**RETURN TO REGULAR SESSION**

On motion of Mr. Saunders, duly seconded by Mr. Conley and unanimously carried, the Board returned to Regular Session. No other vote was taken in Executive Session.

The following actions were taken in Regular Session on items discussed in Executive Session:

Examining Division

On motion of Mr. Hassell duly seconded by Mr. Hart and unanimously carried, the Board approved the application of South Atlantic Bank, Myrtle Beach, South Carolina, to establish a branch at 1127 Queensborough Boulevard, Suite 105, Mount Pleasant, South Carolina.

On motion of Mr. Anderson duly seconded by Mr. Pennington and unanimously carried, the Board approved the application of First Community Bank, Lexington, to acquire certain assets and assume the liability to pay deposits and certain other liabilities of the Columbia branch of First South Bank, Spartanburg.

On motion of Mr. Hart duly seconded by Mr. Anderson and unanimously carried, the Board approved the application of First South Bank, Spartanburg, to sell to First Community Bank, Lexington, certain assets and liabilities of the Columbia branch of First South Bank, Spartanburg, located at 1333 Main Street, Suite 220, Columbia.

On motion of Mr. Anderson duly seconded by Mr. Pennington and unanimously carried, the Board approved the application of Farmers and Merchants Bank of South Carolina, Holly Hill, for approval to purchase property in Santee.

On motion of Mr. Conley duly seconded by Mr. Saunders and unanimously carried, the Board approved the application of Palmetto Health Credit Union, Columbia, to establish a branch at 100 Palmetto Health Parkway, Columbia.

On motion of Mr. Hassell duly seconded by Mr. Anderson and unanimously carried, the Board approved Commissioner Louie Jacobs' Evaluation.

On motion of Mr. Hassell duly seconded by Mr. Anderson and carried by majority vote, the Board approved the following resolution:

“WHEREAS, the State Board of Financial Institutions (the "Board") is currently structured as a single agency with two divisions, the Banking Division and the Consumer Finance Division, which are headed by the Commissioner of Banking and the Director of Consumer Finance, respectively;

MINUTES, St. Board of Fin. Inst., July 9, 2014

WHEREAS, the Board acknowledges it is the only agency in this State that does not have a single agency head or executive director, and that it is the only state agency of its kind in the nation that has a dual agency head structure;

WHEREAS, the Board has conducted considerable research regarding the restructuring of its current dual agency head structure to a single agency head structure;

WHEREAS, the Board finds the adoption of a single agency head structure is necessary to allow the Board to effectively carry out the duties with which it is charged by statute.

NOW, THEREFORE, BE IT RESOLVED, by adoption of the members of the State Board of Financial Institutions on this date, July 9, 2014:

- 1) The Board has determined that the adoption of a single agency head structure is prudent and necessary in order to effectively carry out the organization's mission.
- 2) Based on the foregoing, the Board hereby adopts a single agency head structure.
- 3) The single agency head shall be the Executive Director of the Board of Financial Institutions and shall also serve as the Commissioner of Banking. This combined position shall operate under the title of "Commissioner of Banking."
- 4) There shall be a Deputy Commissioner of Banking and a Deputy Commissioner of Consumer Finance (formerly known as the Director of Consumer Finance) that report to the Commissioner of Banking."

A roll call vote was requested and ordered for the adoption of the resolution. Those who voted in the affirmative are: Mr. Anderson, Mr. Apple, Mr. Conley, Mr. Hart, Mr. Hassell, Mr. Pennington, Mr. Saunders and Chairman Loftis. Those voted in the negative are: Ms. Marcum, Mr. Williams and Mr. Wright.

Disclosures pursuant to §8-13-700:

Mr. Hart and Mr. Williams were duly excused from and did not participate in any votes, deliberations, or other actions which involved a potential conflict of interest.

The Board, through consensus, scheduled its next meeting for **September 3, 2014**.



**THE HONORABLE CURTIS M. LOFTIS, JR.**  
State Treasurer

June 24, 2014

The Honorable Curtis M. Loftis, Jr.  
Chairman, Board of Financial Institutions  
Post Office Box 11778  
Columbia, South Carolina 29211

Dear Board Members,

In light of matters discussed at the last Board of Financial Institutions (the "Board" or "BOFI") meeting on June 4, 2014, Chairman Loftis requested a legal opinion on whether the Board has the authority to create an agency head position. For the reasons stated below, the Board has the implied authority to do so if it determines that a single agency head is necessary for it to fulfill or more effectively carry out its statutorily mandated duties.

As you are all probably aware, the issue has already been summarily addressed in a brief memorandum attributed to Ed Evans (former General Counsel for the Budget & Control Board). In Mr. Evans' memo, he expressed the belief the Board could create the agency head position and appoint someone to it who is neither the Commissioner of Banking (the "Commissioner") nor the Director of Consumer Finance (the "Director"). In support of this assertion, Mr. Evans noted, among other things, that neither the Commissioner nor the Director is required by law to serve as the agency head for the Board, and the Appropriations Act structures the Board as a single agency for budget purposes. I agree with Mr. Evan's assessment.

I would add to Mr. Evans' analysis that the powers of the Board are *generally* limited to those granted it by the Legislature. See, e.g., Bazzle v. Huff, 319 S.C. 443, 445 (1995) ("An administrative agency has only such powers as have been conferred by law and must act within the authority granted for that purpose"); Nucor Steel v. S.C. Public Service Comm'n. 310 S.C. 539, 543 (1992) ("the PSC is created by statute and its authority is limited to that granted by the legislature"). Our state appellate courts, however, have repeatedly advised that the powers of a state agency, board, or commission include *not only* those expressly set forth by statute, *but also* those implied powers necessary for any such entity to carry out its statutory duties. More specifically, our State Supreme Court has expressly noted:

As creatures of statute, regulatory bodies are possessed only of those powers which are specifically delineated. *By necessity, however, a*

*regulatory body possesses not only the powers expressly conferred on it but also those which must be inferred or implied for it to effectively carry out the duties with which it is charged.*

City of Columbia v. Bd. of Health & Env'tl. Control, 292 S.C. 199, 202, 355 S.E.2d 536, 538 (1987) (emphasis added). Thus, one must look to the Board's governing statutes to determine whether it has the express or implied authority to create an agency head position.

Unlike certain other state agencies, boards, and commissions operating under more recent and more carefully drafted legislation, the Board does not have express statutory authority to appoint an agency head. *See, e.g.*, S.C. Code § 7-3-20(A) ("The State Election Commission shall elect an executive director ..."); S.C. Code § 9-4-10(E) ("The members [of PEBA] ... shall select those other officers they determine necessary...."). Rather, the Board's express statutory authority with regards to appointing officers and employees is essentially limited to appointing the Commissioner, consenting to the Commissioner's appointment of his assistants, and appointing a Chief Administrative Officer/Director of Consumer Finance and other personnel. *See* S.C. Code § 34-1-80 ("The board shall set up an examining department, appointing a Commissioner of Banking in charge with assistants, to be appointed by him subject to the consent of the board ...."); S.C. Code § 34-29-200 ("The Board is authorized to designate or appoint a chief administrative officer [of Consumer Finance Division] and such other personnel as it deems necessary ....").

With the above in mind, the pertinent question is whether the Board has the inferred or implied authority to create a single agency head position. Stated another way by our Supreme Court, the Board may create a single agency head position if the power to do so is "necessarily implied for it to effectively fulfill the duties with which it is charged." Captain's Quarters Motors Inn, Inc. v. S.C. Coastal Council, 306 S.C. 488, 490, 413 S.E.2d 13, 14 (1991). The Board is in the best position to determine whether an agency head is necessary for it to more effectively carry out the numerous duties it is charged with by law (e.g., many Board members have expressed the belief that the addition of an agency head would improve administrative and strategic initiatives, thereby allowing the Board, and especially the Commissioner and Director, to focus more attention on their statutory and regulatory obligations). Consequently, if the Board makes such a determination, State law supports a finding that the Board has the implied authority to take such action.

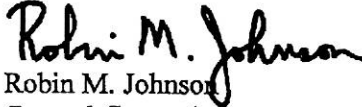
Regardless of whether the Board determines such action is necessary, a review of the Board's governing statutes reveals a somewhat confusing and disjointed organizational plan that may simply be the result of old legislation in need of updating. To be more specific, many of the Board's governing statutes have not been amended for several decades even though the financial industry has since significantly evolved, grown, and become more complex. The provisions of Chapter 29 of Title 34 concerning consumer finance, as well as various other statutes, still reference the "State Board of Bank Control" even though that entity has not existed since, at the very latest, 1976. *See, e.g.*, S.C. Code § 34-29-10(b) ("*Board*" shall mean the State Board of Bank Control and its duly authorized deputies"). Some of the laws concerning the Board are so antiquated that they have not been changed or amended since 1936. The absence of any statute expressly setting forth the Board's structure is such an anomaly in our Code of Laws that one



may reasonably assume the Legislature has, over time, simply overlooked the matter. With all of the above in mind, it would be prudent for the Board to seek legislative updates which, among other things, clearly establish the desired structure of the agency.

In conclusion, if the Board determines an agency head is needed to fulfill or more effectively carry out its statutory duties, State law supports a finding that the Board has the implied authority to take such action. Moreover, in light of the need for a legislative update of the Board's governing statutes, the Board should seek legislative revisions which, among other things, clearly establish the desired structure of the agency.

Sincerely,

  
Robin M. Johnson  
General Counsel

CC: Members, Board of Financial Institutions



STATE OF SOUTH CAROLINA  
STATE BOARD OF FINANCIAL INSTITUTIONS

A RESOLUTION

STATE BOARD OF FINANCIAL INSTITUTIONS

**WHEREAS**, the State Board of Financial Institutions (the "Board") is currently structured as a single agency with two divisions, the Banking Division and the Consumer Finance Division, which are headed by the Commissioner of Banking and the Director of Consumer Finance, respectively;

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- 4) There shall be a Deputy Commissioner of Banking and a Deputy Commissioner of Consumer Finance (formerly known as the Director of Consumer Finance) that report to the Commissioner of Banking.

Curtis M. Loftis, Jr., State Treasurer  
Chairman, State Board of Financial Institutions