

CREDIT UNION COMMISSION MEETING MINUTES
Credit Union Department Building
914 East Anderson Lane, Austin, Texas
February 7, 2020

- I. CALL TO ORDER** -- Chair Yusuf Farran called the meeting to order at 9:01 a.m. in the conference room of the Credit Union Department Building, Austin, Texas, pursuant to Chapter 551 of the Government Code, and declared that a quorum was present. Other members present included, Liz Bayless, Karyn Brownlee, Steven “Steve” Gilman, Sherri Merket, Jim Minge, David Shurtz and Kay Swan. Assistant Attorney General Melissa Juarez was in attendance to serve as legal counsel. Representing the Department staff were John J. Kolhoff, Commissioner, Robert E. Etheridge, Deputy Commissioner, and Director of Information and Technology Joel Arevalo. Chair Farran appointed Isabel Velasquez as Recording Secretary. The Chair inquired and the Commissioner confirmed that the notice of the meeting was properly posted (**January 24, 2020, TRD#20290000542**). Chairman Farran recognized and welcomed Steven Ogle, Assistant Director of Reviews & General Counsel and Merrell Foote, Senior Policy Analyst from the Texas Sunset Advisory Commission.
- ❖ **RECEIVE REQUESTS AND MOTIONS FOR EXCUSED ABSENCES**
-- Chair Farran inquired if there were any requests or motions to excuse an absence. Mr. Minge moved to excuse Commission Member Beckie Cobb from the Commission meeting on February 7, 2020. Mrs. Merket seconded the motion, and the motion was unanimously adopted.
- ❖ **GENERAL PUBLIC COMMENT** -- Chair Farran invited public input on matters that were not scheduled items on the agenda for possible future consideration by the Commission. No public comments were received.

II. MINUTES OF PREVIOUS MEETING (November 1, 2019) -- The Chair referred the members to the draft minutes of the previous meeting included in the agenda packet and asked for any proposed edits. Hearing none the Chair asked for a motion to approve the minutes. Mr. Gilman moved for approval of the minutes of November 1, 2019 as presented. Mr. Shurtz seconded the motion, and the commission carried the motion unanimously.

III. DEPARTMENT'S FY 2020 FINANCIAL PERFORMANCE -- Commissioner Kolhoff indicated that at the end of the 1st quarter of FY 2020, total expenditures remains below budget totaling \$150,503 with approximately \$1,466,751 available to cover the 2nd quarter of FY 2020 expenses projected. The Commission approved appropriated funds of \$1,273,594 for the same timeframe. He reiterated that most bills are not paid until 30 days after the due date so some of the operating cost being reflected are only for a five-month period.

After a brief discussion, no formal action was taken by the Commission.

IV. STATUS OF THE STATE CREDIT UNION SYSTEM – Commissioner Kolhoff indicated there were a couple of errors on the second page of this report under Enforcement Issues - Determination Letters to “1” instead of “0”. Also noted an error in the designated year of 2018 should instead be 2019. Furthermore, Mr. Kolhoff reported that Texas credit unions are performing well and continue to realize positive loan growth, good asset quality trends, high earnings performance, and strengthening net worth positions.

V. SUNSET REVIEW STATUS UPDATE – Commissioner Kolhoff briefly highlighted that the Sunset team should be scheduling a meeting sometime in April for an introductory session. After the introductory meeting is complete, an exam will be conducted of our institutions and our agency on how we fulfill

our role and whether we are meeting the needs of the State of Texas in our current form. After the exam is completed the Sunset staff will submit their recommendations to the Sunset Commission.

After a brief discussion, the Commission took no formal action.

VI. RULEMAKING MATTERS

(a) Adoption of Amendments to 7 TAC Section 91.2000 Concerning Purpose and Scope. Commissioner Kolhoff indicated that at its November meeting, the Commission approved for publication and comment in the *Texas Register* the proposed amendments to 7 TAC Section 91.2000. The amended rule corrects reference to the Texas Tax Code relevant to the Tax Increment Financing Act or the Property Redevelopment and Tax Abatement Act.

After a short discussion, Mrs. Bayless moved that the Commission adopt the amendments to **7 TAC Section 91.2000** concerning purpose and scope. Mr. Shurtz seconded the motion and the commission carried the motion unanimously.

(b) Adoption of Amendments to 7 TAC Section 95.200 Concerning Liquidating Agent; Notice of Taking Possession; Appointment of Liquidating Agent; Subordination Rights. Commissioner Kolhoff noted that its November meeting, the Commission approved for publication and comment in the *Texas Register* the proposed amendments to 7 TAC Section 95.200. The amended rule would allow the Department to name a liquidating agent other than a deposit insurer as authorized under the Texas Finance Code.

After a brief discussion, Mr. Gilman moved that the Commission adopt the amendments to **7 TAC Section 95.200** concerning liquidating agent; notice of taking

possession; appointment of liquidating agent; subordination rights. Mrs. Brownlee seconded the motion, and the Commission carried the motion unanimously.

(c) **Adoption of the Rule Review of 7 TAC, Part 6, Chapter 91, Subchapter O (Relating to Trust Powers).** Commissioner Kolhoff reported that this review is part of our normal review plan required by Texas Government Code Section 2001.039. At its July 8, 2016 meeting, the Commission approved a plan which establishes a date for the required review for each of the affected rules. In accordance with that plan, staff reviewed 7 TAC, Part 6, Chapter 91, Subchapter O (Trust Powers) and believe certain revisions are appropriate and necessary and amendments to the noted chapters are being separately presented for proposal.

After a short discussion, Mrs. Merket moved that the Commission find that the reasons for adopting **7 TAC, Part 6, Chapter 91, Subchapter O** continue to exist and that the Commission readopt these rules. Mr. Minge seconded the motion and the Commission carried the motion unanimously.

(d) **Proposed Amendments to 7 TAC Section 91.6001 Concerning Fiduciary Duties.** Commissioner Kolhoff indicated that the purpose of the proposed amendments corrects minor grammar changes.

After a brief discussion, Mrs. Brownlee moved that the Commission approve for publication and comment the proposed amendments to **7 TAC Section 91.6001** concerning fiduciary duties. Mrs. Bayless seconded the motion and the motion was unanimously adopted.

(e) **Proposed Amendments to 7 TAC Section 91.6003 Concerning Notice Requirements.** Commissioner Kolhoff noted that the proposed amendment represents minor grammar changes and rescinds an originally established

notification phase-in of fiduciary activity prior to October 1, 2003 that is no longer necessary.

After a short discussion, Mr. Gilman moved that the Commission approve for publication and comment the proposed amendments to **7 TAC Section 91.6003** concerning notice requirements. Mr. Minge seconded the motion, and the Commission carried the motion unanimously.

(f) Proposed Amendments to 7 TAC Section 91.6004 Concerning Exercise of Fiduciary Powers. Commissioner Kolhoff reported that the proposed amendment represents a change in terminology to using a credit union's "net worth position", instead of the current term of "capital", as a factor the Commissioner considers in determining if a credit union's notice of its intent to exercise fiduciary powers is complete and accepted for filing.

After a brief discussion, Mr. Minge moved that the Commission approve for publication and comment the proposed amendments to **7 TAC Section 91.6004** concerning exercise of fiduciary powers. Mr. Gilman seconded the motion, and the commission carried the motion unanimously.

(g) Proposed Amendments to 7 TAC Section 91.6006 Concerning Policies and Procedures. Commissioner Kolhoff noted that the proposed amendments include minor grammar changes and require certain policies, when appropriate, based on types of trust activity.

After a short discussion, Mr. Shurtz moved that the Commission approve for publication and comment the proposed amendments to **7 TAC Section 91.6006** concerning policies and procedures. Mr. Gilman seconded the motion, and the Commission carried the motion unanimously.

(h) Proposed Amendments to 7 TAC Section 91.6010 Concerning Custody of Fiduciary Assets. Commissioner Kolhoff indicated that the proposed amendments include a minor grammar change.

After a brief discussion, Mrs. Bayless moved that the Commission approve for publication and comment the proposed amendments to **7 TAC Section 91.6010** concerning custody of fiduciary assets. Mrs. Merket seconded the motion, and the Commission carried the motion unanimously.

(i) Proposed Amendments to 7 TAC Section 91.6014 Concerning Errors and Omissions Insurance. Commissioner Kolhoff reported that the proposed amendments maintain the original \$500,000 bond coverage minimum requirement while requiring annual analysis of the appropriateness of the bond coverage relative to the trust activities undertaken.

After a short discussion, Mr. Gilman moved that the Commission approve for publication and comment the proposed amendments to **7 TAC Section 91.6014** concerning errors and omissions insurance. Mrs. Swan seconded the motion, and the Commission carried the motion unanimously.

(j) Proposed Amendments to 7 TAC Section 91.1003 Concerning Mergers/Consolidations. Commissioner Kolhoff noted that the proposed amendments would reference the Hart-Scott Rodino Act (HSRA) requirements of proposed mergers instead of repeating specific thresholds within the HSRA that change over time. The language is presented to refer institutions directly to the federal HSRA language and its specific requirements and thresholds instead of duplicating all, or part of the federal provision, within the state rule. Currently the rule refers to an outdated dollar threshold for measurement of HSRA applicability to a merger. This improves the current rule, which does not refer to all the tests used to determine if HSRA applies to a merger transaction.

After a brief discussion, Mr. Minge moved that the Commission approve for publication and comment the proposed amendments to **7 TAC Section 91.1003** concerning mergers/consolidations. Mr. Shurtz seconded the motion, and the Commission carried the motion unanimously.

(k) Adoption of the Rule Review of 7 TAC, Part 6, Chapter 91, Subchapter C (Relating to Members). Commissioner Kolhoff indicated that this part of our normal review required by Texas Government Code Section 2001.039. At its July 8, 2016 meeting, the Commission approved a plan which establishes a date for the required review for each of the affected rules. In accordance with that plan, staff reviewed 7 TAC, Part 6, Chapter 91, Subchapter C (Members) and is recommending that no changes be made.

After a short discussion, Mrs. Merket moved that the Commission find that the reasons for adopting **7 TAC, Part 6, Chapter 91, Subchapter C** continue to exist and that the commission readopt these rules. Mr. Gilman seconded the motion and the Commission carried the motion unanimously.

(l) Approve the Department's 2021-2024 Rule Review Plan as Required by Section 2001.039, Government Code. Commissioner Kolhoff reported that each state agency is required to develop a four-year plan under which the agency will review all its existing rules to comply with the provisions of the Texas Government Code Section 2001.039.

After a brief discussion, Mrs. Brownlee moved that the Commission approve the four-year plan as presented. Mr. Gilman seconded the motion and the Commission carried the motion unanimously.

VII. Approve and Authorize the Submission of the Department's Annual Risk Assessment Report for FY 2020 as Required by Section 2102.004 Government

Code. Commissioner Kolhoff noted that Texas Government Code Section 2102.013 requires certain state agencies to conduct a formal internal risk assessment each year and submit the assessment to the State Auditor's Office. He indicated that staff had completed the internal risk review for 2020 and had prepared a written assessment of the risks along with the controls the Department has in place to mitigate those risks.

After a short discussion, Mr. Gilman moved that the Commission approve the Department's Internal Risk Assessment Report for 2020 and authorize its submission to the State Auditor's Office. Mrs. Merket seconded the motion and the motion was unanimously adopted.

VIII. Approve Commission's Policies Manual, Annual Policy Review.

Commissioner Kolhoff indicated that in accordance with policy, the Commission is required to review its policies manual at least once each year. He noted that at this time, staff had no recommendation for changes to any of the policies contained in the manual. Unless the Commission members have suggested modifications to the policies, the record will reflect that the Commission has reviewed the manual and no modifications are necessary at this time.

IX. Adopt Resolutions Commemorating American Baptist Association Credit Union and Brazos Community Credit Union for their Contributions to the Citizens of Texas on the Respective Milestone Anniversary Dates of their Origin.

Commissioner Kolhoff noted that in accordance with provisions of the Commission's Policies Manual, the Commission may adopt resolutions honoring credit unions reaching certain milestones. In accordance with the criteria detailed in the policy, staff was presenting two resolutions for the Commission's consideration.

After a brief discussion, Mrs. Merket moved that the Commission adopt the Resolutions commemorating **American Baptist Association Credit Union and Brazos Community Credit Union** for their contributions to the citizens of Texas

on the respective anniversary of their origin and that a copy of the appropriate resolutions be mailed to the individual credit unions. Mr. Minge seconded the motion and the motion was unanimously adopted.

X. Future Commission Meetings: Agenda Items, Arrangement, and Dates.

Chair Farran reminded everyone that the next regular meeting of the Commission has been tentatively scheduled for May 8, 2020 at 9:00 a.m., in Austin.

Commissioner Kolhoff pointed the Commission to the new agenda format and welcomed any input. It was the consensus of the Commission that the new format was easier to follow and understand.

Commissioner Kolhoff brought up the topic of the Commission members interested in attending a luncheon together with the examination staff and Department staff where no business is planned but, on a day, that the Commission would meet at a separate business meeting. He further indicated that were significant challenges finding a place that would accommodate such meetings with recording equipment necessary for an earlier regular Commission meeting without being cost prohibitive.

❖ **Melodie Durst, Executive Director with the Credit Union Coalition,** questioned the source of funding of such an expenditure. She also questioned whether the Department could, or should, expend Department resources for such an event.

After a lengthy discussion, it was the consensus of the Commission to move the August 7th Commission meeting to July 30th due to schedule conflicts. Furthermore, Assistant Attorney General Melissa Juarez was tasked to research if there were legal concerns with the Commission members attending a luncheon together where no business is planned but on a day the Commission would separately

meet for business, and whether the Department may pay for staff lunches as part of a group luncheon?

ADJOURNMENT – There being no further business for the Credit Union Commission, Chair Farran adjourned the meeting at 10:20 a.m.

Yusuf E. Farran
Chairman

Isabel Velasquez
Recording Secretary

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