COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, AUGUST 3, 2022

VIRGINIA BANKERS ASSOCIATION,
FARMERS BANK,
AMERICAN NATIONAL BANK & TRUST COMPANY,
FIRST BANK & TRUST COMPANY,
FIRST NATIONAL BANK,
CHESAPEAKE BANK,
THE BANK OF CHARLOTTE COUNTY,
and
BLUE RIDGE BANK, N.A.,
Petitioners,

v.

CASE NO. BFI-2019-00049

VIRGINIA CREDIT UNION, INC.,
and
COMMISSIONER OF FINANCIAL
INSTITUTIONS, E. JOSEPH FACE, JR.,
Respondents.

FINAL ORDER

Sections 6.2-1327 and 6.2-1328 of the Code of Virginia ("Code") require the State Corporation Commission ("Commission") to make certain findings attendant to credit union field of membership expansions. As permitted by Code §§ 12.1-13 and 12.1-16, the Commission has previously "delegated to the Commissioner of Financial Institutions the authority to exercise its powers and to act for it in the following matters: ... To make such findings as are required by §§ 6.2-1327 and 6.2-1328 of the Code of Virginia relating to fields of membership of credit unions and the expansion of such fields of membership."[1] Such delegation, however, is not absolute. Rather, "[a]ll actions taken by the Commissioner of Financial Institutions pursuant to

[1] 10 VAC 5-10-10(A)(22).

the authority granted here are subject to review by the commission in accordance with the Rules of Practice and Procedure of the State Corporation Commission."[2]

Virginia Credit Union, Inc. ("VACU") sought an expansion of its field of membership, under Code §§ 6.2-1327 and 6.2-1328, to include The Medical Society of Virginia ("MSV"). After the Commissioner of Financial Institutions exercised the delegated authority noted above, the Virginia Bankers Association and seven banks from across the Commonwealth (collectively, "Petitioners") sought the Commission's review in accordance with 10 VAC 5-10-10(C) and the Commission's Rules of Practice and Procedure.[3]

The Commission directed its Office of Hearing Examiners to convene full evidentiary proceedings wherein VACU shall have the burden to prove compliance with the applicable legal standards in this matter.[4] At the conclusion of such proceedings, the Commission's Chief Hearing Examiner issued a Report in this matter ("Report"). Comments to the Report were timely filed by the following parties to this case: VACU; Petitioners; MSV; Virginia Credit Union League ("League"); and Virginia Association of Community Banks.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that VACU's request to expand its field of membership to include MSV is denied.[5]

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[2] 10 VAC 5-10-10(C).

[3] As noted above, the Commission has delegated to the Commissioner of Financial Institutions its authority to make findings under Code §§ 6.2-1327 and 6.2-1328. In addition, Code § 6.2-1323 requires the Commissioner of Financial Institutions to approve or disapprove, within 60 days, proposed changes to VACU's bylaws that include an amendment to expand the field of membership. This authority, however, does not supplant the Commission's explicit authority to make findings under Code §§ 6.2-1327 and 6.2-1328. As set forth in 10 VAC 5-10-10(C), all actions taken by the Commissioner of Financial Institutions pursuant to delegated authority are subject to the Commission's review.

[4] *See* Dec. 29, 2020, *Order Remanding* in the instant docket.

[5] The Commission denies the Petitioners' outstanding motions to strike. Considering the items the Petitioners want stricken does not change the Commission's findings in this proceeding.

As an initial matter, VACU and Petitioners agree that it is VACU's burden to prove compliance with the applicable legal standards.[6] The Commission finds, as set forth below, that VACU has not met that burden.

The Commission acts through the authority granted to it under the laws of the Commonwealth, and this case is no exception. The General Assembly has long expressed a clear directive when it states, in the very first sentence of Code § 6.2-1328, that: "When practicable and consistent with reasonable safety-and-soundness standards, the Commission shall encourage the formation of a separately chartered credit union instead of adding a new group to the field of membership of an existing credit union."[7]

Code § 6.2-1328 then prescribes: "If the Commission finds that the formation of a separate credit union by a group desiring such services is not practicable, or is not consistent with reasonable safety-and-soundness standards, it may authorize the group to be included in the field of membership of a state credit union[.]"[8] Thus, VACU must first establish that "the formation of a separate credit union by [MSV] is not practicable, or is not consistent with reasonable safety-and-soundness standards" before the Commission "may" authorize MSV to be included in VACU's field of membership.

The Commission finds that VACU has not met its burden to show that "the formation of a separate credit union by [MSV] is not practicable, or is not consistent with reasonable

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[6] *See, e.g.,* VACU Post Hearing Brief at 2, 4; Petitioners' Post Hearing Brief at 1.

[7] This language has remained unchanged since 1999.

[8] In addition, Code § 6.2-1328 requires the Commission to make a series of findings about the credit union proposed to be expanded prior to authorizing a new group to be included in its field of membership.

safety-and-soundness standards[.]" This finding is supported by evidence regarding a variety of factors specific to this case, each of which is addressed in turn.[9]

MSV Assets & Inherent Value

Petitioners' witness, Dr. Christine Chmura, prepared the only economic analysis of MSV's ability to form its own credit union in the record. Dr. Chmura's conclusion that MSV could establish a $35 million credit union based on the National Credit Union Administration's projections, with $3.51 million in start-up capital, was uncontested.[10] Also uncontested was Dr. Chmura's finding in support of this conclusion that more than 2,900, or 29%, of MSV members would likely join an MSV start-up credit union within the first five years, building assets slightly over $35 million.[11]

VACU did not establish that MSV's assets and inherent value are insufficient, such that formation of a new MSV credit union "is not practicable, or is not consistent with reasonable safety-and-soundness standards[.]" The record reflects that MSV has at least three sources of assets from which to fund the formation of a new MSV credit union. For example:

- MSV has more than $3.52 million in securities that could help fund a new MSV credit union.[12]

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[9] The Commission has fully considered the evidence and arguments in the record. *See also Board of Supervisors of Loudoun County v. State Corp. Comm'n*, 292 Va. 444, 454 n.10 (2016) ("We note that even in the absence of this representation by the Commission, pursuant to our governing standard of review, the Commission's decision comes to us with a presumption that it considered all of the evidence of record.") (citation omitted).

[10] *See, e.g.*, DN-55 (Dr. Chmura's "Economic Research Related to VBA Petition" March 18, 2020) at 28; Petitioners' Comments at 20.

[11] *See, e.g.*, DN-55 (Dr. Chmura's "Economic Research Related to VBA Petition" March 18, 2020) at 28; Petitioners' Post Hearing Brief at 19-20, 39-40; Petitioners' Comments at 12.

[12] *See, e.g.*, Petitioners' Post Hearing Brief at 9; DN-17 (Davis Direct) at 10; Tr. 677-678. In addition, while MSV claimed it needs investment to generate annual income to contribute to MSV programs to make up for operating losses and for a rainy-day fund, the record does not sufficiently quantify how much MSV currently needs for such items. *See, e.g.*, Report at 44.

- Based on county property tax assessments, MSV has over $1 million in equity in its MSV Building, which could also be leveraged to help fund a new MSV credit union.[13]

- MSV receives rental income from the MSV Building, a portion of which could potentially fund a new MSV credit union.[14]

While the total value of these assets alone surpasses the uncontested $3.51 million in estimated capital costs necessary to form a MSV credit union, the record reflects that MSV could also benefit from additional sources of value from within its own organization. For example:

- MSV and MSV Insurance Agency benefit from shared resources.[15] Using the MSV Building, the MSV Insurance Agency customer base, office equipment and IT infrastructure for the MSV credit union could decrease the start-up contribution costs necessary to form a MSV credit union.[16]

- MSV has its own marketing team.[17] The same dedicated marketing services could be deployed on behalf of a newly formed MSV credit union.[18]

- Melina Davis, MSV's Chief Executive Officer, could provide valuable expertise to a MSV credit union.[19] Ms. Davis has experience in credit union operations from her service on the VACU Board of Directors.[20]

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[13] *See, e.g.*, Petitioners' Post Hearing Brief at 10-11 *citing* DN-17 (Davis Direct) at 12.

[14] *See, e.g.*, Petitioners' Comments at 10-11.

[15] *See, e.g.*, *id.* at 10-12.

[16] *See, e.g.*, *id.* at 11, 37.

[17] *See, e.g.*, DN-38 (Whitehurst Direct) at Exhibit B, PE-7 (Excerpts from MSV Insurance Agency Website).

[18] *See, e.g.*, Petitioners' Post Hearing Brief at 15 *citing* DN-36 (Whitehurst Direct) at Exhibit B, PE-7 (Excerpts from MSV Insurance Agency Website).

[19] *See, e.g.*, Tr. 676; Petitioners' Post Hearing Brief at 14-15.

[20] *See, e.g.*, DN-56 (Chmura Rebuttal) at 4; Petitioners' Comments at 38.

Sponsorship

VACU further did not establish that, should MSV's assets and inherent value prove insufficient, MSV would be precluded from seeking sponsorship to form its own credit union. For example, MSV conducted no survey to determine the extent of potential additional financial support that MSV could achieve through a capital campaign, nor did MSV claim a well-run capital campaign would be ineffective.[21] MSV likewise made no effort to raise money from the 90 hospitals in Virginia and six medical and osteopathic schools, nor did MSV conduct any survey of such institutions or otherwise demonstrate that they would be unwilling to contribute to a capital campaign.[22] MSV acknowledged that "we haven't pursued forming a credit union and we haven't asked anybody to donate to such an endeavor."[23]

Management

VACU did not establish that a new MSV credit union would be unable to hire competent staff.[24] The evidence in the record reflects that:

- The funds required to bring the experienced and dedicated management team necessary to create a MSV credit union on board are included in the MSV credit union start-up costs of $3.51 million.[25]

[21] *See, e.g.*, Petitioners' Post Hearing Brief at 24; Petitioners' Comments at 9-10, 36.

[22] *See, e.g.*, Petitioners' Comments at 35-36, 41-42, 51-52.

[23] Tr. 692.

[24] *See, e.g.*, Report at 45-46; *see also* Petitioners' Comments at 38-40.

[25] Petitioners' Post Hearing Brief at 26-27 *citing* DN-36 (Whitehurst Direct) Exhibit B, PE-8 (May 2, 2019 letter from VACU to BFI) at 4.

- The Richmond area, where MSV is, and a new MSV credit union would be headquartered, constitutes a "finance cluster" where ample education and training for workers exists.[26]

- MSV has a track record of successfully organizing and operating a non-medical business of interest to physicians, the MSV Insurance Agency. While there are differences in the two types of businesses, the fact that MSV has already organized and operated a non-medical business successfully, is an indication that it could do so again.[27]

- MSV could draw on its long history of attracting a diverse group of individuals to serve on the board of its insurance agency to assemble a group of qualified individuals to serve on the board of a MSV credit union.[28]

- While VACU showed that MSV is likely to need to engage outside expertise to assist with the process of chartering a new credit union, MSV did not survey its members to determine their interest in a credit union.[29]

<u>Size</u>

An anticipated $35.1 million MSV credit union would be smaller than VACU. While the record contains evidence that smaller credit unions may not benefit from the economies of scale of larger credit unions such as VACU, we agree with Petitioners: whether formation of a separate credit union is practicable or consistent with reasonable safety-and-soundness standards is not determined only by size. For example:

- The League cites the "2020 Virginia Credit Union Profile" which reported that over two thirds (71.8%) of credit unions with less than $20 million in assets are profitable.[30]

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[26] *See, e.g.*, Petitioners' Post Hearing Brief at 27 *citing* DN-54 (Chmura Direct) at 3.

[27] *See, e.g.*, Petitioners' Post-Hearing Brief at 13-14; DN-36 (Whitehurst Direct) at Exhibit B, PE-7 (Excerpts from MSV Insurance Agency Website).

[28] *See, e.g.*, DN-56 (Chmura Rebuttal) at 5-6; Petitioners' Post Hearing Brief at 12-13.

[29] *See, e.g.*, Petitioners' Post Hearing Brief at 25.

[30] DN-41 (Miles Direct) at 19 *citing* 3rd Quarter of the 2020 Virginia Credit Union Profile; *see also* DN-42 (Miles Direct Exhibits) at Exhibit 21 (2019 Virginia Credit Union Profile).

- It is uncontested that a MSV credit union is estimated to have $35 million in assets after five years, nearly twice the size of these small credit unions.[31]

- Several state-chartered credit unions that had less than $50 million in assets in 2010 grew organically (*i.e.*, without a merger) over the last decade - both in terms of assets and equity.[32]

- When the two top CAMEL scores (which rate risks) - Ratings 1 and 2 - are added together, 72.9% of credit unions with assets under $50 million have very positive CAMEL ratings.[33]

In addition, the evidence showed that shared service opportunities exist for Virginia's smaller credit unions:

- Any credit union can participate in the Shared Branching Network. A credit union does not have to become a shareholder of the service corporation to participate.[34]

- VACU provided no cost figures establishing that the Shared Branching would be cost prohibitive.[35]

- Small credit unions in Virginia already take advantage of the Shared Branching Network.[36]

- Credit unions typically outsource many facets of their operations to credit union service organizations, which may provide a wide range of services, including, but not limited to, those listed under 10 VAC5-40-60(G)(1)-(17).[37]

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[31] *See, e.g.,* Petitioners' Post Hearing Brief at 1, 37.

[32] Petitioners' Comments at 14-15 *citing* DN-45 (2010, 2014, 2019, 2020 BFI Annual Reports, "Selected Data for Virginia State Chartered Credit Unions").

[33] *See, e.g.,* Petitioners' Comments at 13.

[34] Petitioners' Post Hearing Brief at 31 *citing* Tr. 353, DN-5 (VACU Shared Branching) at 8.

[35] *See, e.g.*, Petitioners' Post Hearing Brief at 31.

[36] Petitioners' Comments at 19 *citing* DN-10 (CO-OP Shared Branching for Credit Unions –Virginia).

[37] Petitioners' Post-Hearing Brief at 32; Petitioners' Comments at 19-20 *citing* Tr. 829-833.

Conclusion

Based on the foregoing, we find VACU has not established that "formation of a separate credit union by [MSV] is not practicable, or is not consistent with reasonable safety-and-soundness standards[.]" As such, pursuant to Code § 6.2-1328, we do not authorize MSV to join VACU's field of membership.[38] VACU's request is denied.

Accordingly, IT IS SO ORDERED, and this matter is DISMISSED.

A copy of this Order shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219.

[38] Having found that VACU has not met its burden under Code § 6.2-1328, the Commission need not address the separate field of membership limitations encompassed within Code § 6.2-1327.