



*Don A. Childears
CBA Chief Executive Officer*

Creating a stronger economy and helping Coloradans realize dreams by building better banks.

January 13, 2020

Colorado State Banking Board
c/o State Bank Commissioner Ken Boldt
1560 Broadway, Suite 975
Denver, Colorado 80203

Re: Cache Bank & Trust authorization request

Dear Colorado State Banking Board:

The Colorado Bankers Association (CBA) appreciates the thoughtful and deliberate way that you are considering this issue. We write in opposition to Banking Board approval of Cache Bank & Trust's request for authorization you will consider January 16.

Since the fall announcement of the proposed purchase of the bank by Elevations Credit Union, we have received comments of concern about, or opposition to the purchase, from a variety of banks – large and small, in the Greeley market and elsewhere. That is understandable since banks regard larger credit unions as unfair subsidized competition due to their tax exemption and lax regulation. We regard this proposed purchase as an effort to expand the credit union's activities beyond what was contemplated in law and by a process to avoid the clear limitations and intent of Colorado statutes. But we are clear: we object to any purchaser not authorized by statute, any buyer that is a nonbank.

We have no quarrel with Cache Bank & Trust, but we object on principle to any unauthorized purchaser, in essence any nonbank, in such a transaction. This includes a tax-advantaged credit union, buying a tax-paying bank. We believe in a free market, but one in which all competing businesses play by the same rules. That isn't the case here.

Legal restriction – It is clear that Cache is not utilizing §11-103-709, CRS, as authority for the sale of its assets. In fact, this appears to be an effort to avoid that restriction, which is clearly stated in Colorado law. Section 11-103-709 governs the sale of assets of a bank and provides that a state bank may sell all or substantially all of its assets to **another bank**. The statute doesn't reference any other purchaser of such assets, which we believe clarifies that a bank may only sell the bulk of its assets to another bank. The plain meaning of this statute – despite requirements for Banking Board and shareholder approval – is that the comprehensive sale of a bank's assets may be only to another bank. Cache is attempting a detour around the law to produce its desired result. Both on general principal and in this instance, CBA objects to the use of a complex method in an indirect way to avoid the law when the direct path to the same objective is restricted by §11-103-709.

Banking activity – The revised approach being employed by Cache relies on §11-102-104(5) and its pertinent part states, "The banking board has the power to authorize such banks to **engage in any banking activity** (emphasis added) in which state banks could engage were they operating as national banks at the time such authority is granted, **so long as** such activity is not prohibited elsewhere in this code..." First, sale of assets for liquidation purposes is not a banking activity. Self-liquidation is not confined to banking institutions and banks almost never engage in it. Liquidation is not engaging in a banking activity as required by the statute, but is disengaging from all banking activity. CBA has significant history with the creation and amendment of §11-102-104(5) and we are confident that liquidation was not intended as a banking activity.

Additionally, “engage” is an operative word. It means that the statute contemplates that a bank will actively participate in such activities permitted for national banks on an ongoing basis. These are actual operating activities conducted on a continuing basis. Engaging contemplates ongoing operations and not liquidation, which is withdrawing from all engagement.

Otherwise precluded – Additionally, the “so long as” provision of §11-102-104(5) blocks use of the statute as a legal avenue for this transaction since §11-103-709 provides that a state bank may sell all or substantially all of its assets to another bank, without reference to any other potential purchaser of such assets. It is the very reason that Cache is attempting to rely on §11-102-104(5), and in fact is a specific prohibition that frustrates use of §11-102-104(5) since the “so long as” restriction can’t be satisfied. Without knowing the conclusion of the Attorney General’s opinion on this matter, we believe the statute’s plain meaning is apparent: near complete sale of a bank’s assets is restricted to another bank and thus frustrates use of the wildcard statute.

Consumer protection – CBA’s extensive role in creating and modifying §11-103-709 over the years has centered on protecting customers of a state bank. With the many protections that state bank status provides to customers, those consumers should not have their deposit or loan business sold to a nonbanking entity that doesn’t provide the same protections. When this statute was written, there was a vibrant S&L industry which federal law allowed to provide services that did not meet the same standards as banks. The State of Colorado had and maintains an interest in protecting such customers, which is the basis for this section.

Ineligible purchaser – A state-chartered credit union’s activities are restricted by §11-30-104 which reads in part, “Sell all or any portion of its assets and **purchase** all or any portion of the assets of **another credit union** and assume the liabilities of the selling credit union and its **field of membership**, subject to the approval of the commissioner (Financial Services Commissioner).” While it is not the Banking Board’s job to supervise activities of a credit union, it is the clear intent of this language that a credit union may purchase assets only from another credit union. No other selling entities were contemplated as eligible for purchase by a Colorado credit union. You are being asked to approve a sale to an ineligible buyer. We oppose allowing an ineligible purchaser – a nonbank, a credit union or otherwise – under state law to acquire a bank.

Credit union’s field of membership – The specific reference to assumption of a credit union’s field of membership demonstrates legislative intent that purchases only be from another credit union and suggests the Legislature’s reasoning for restricting purchases only from another credit union. Of course a field of membership is inapplicable to a bank.

Future ramifications – The State of Colorado has an obligation to protect the consumer. If this proposal is approved, the State would not have the ability to regulate the acquirer after the transaction closes, yet there is a State interest in protecting customers’ deposits and other banking transactions by assuring safe and sound banking. If the purchaser was another bank, you as the regulator would vet the acquirer to ensure that the purchaser had good management, was adequately capitalized, controlled risks, has adequate liquidity... In this instance there is no Division of Banking ability to ensure that the acquirer has the requisite expertise to conduct activities in a safe and sound manner. Using the *parity with national banks* statute to permit acquisitions by nonbanks opens the door for activities clearly not permitted under Colorado statutes and may limit the Banking Board on future applications, even if the Banking Board has serious concerns about a nonbank acquirer. This is a bad precedent.

Bank disadvantage – If this transaction is approved, other banks that may be interested in acquiring banks such as Cache would be at a competitive disadvantage because the result of the credit union tax advantage means an acquiring credit union has a huge competitive advantage over

a potential acquiring bank. In short, the tax advantage allows the credit union to out-bid a bank interested in buying a bank. The tax inequity thus creates an uneven competitive field in the purchase of banks.

Industry/state impact – CBA is proud that the State, through the State Banking Board, provides solid regulation of banks. We would hate to see a precedent that may ultimately lead to the deterioration of the viability of state banks and perhaps their regulator.

Wrong forum – A clear avenue to establish good public policy is advocacy for a bill in the Colorado Legislature where pros and cons can be debated. It is not the prerogative of a regulatory entity to deviate from the plain meaning of the statute.

Conclusion – We believe it is clear that:

- 1) a nonbank (credit union or other nonbank) purchase of a bank was not contemplated by the statutes and it is not permissible under Colorado law
- 2) Colorado law provides that:
 - a) a bank may only sell the bulk of its assets to another bank
 - b) a credit union may only buy assets from another credit union
 - c) in short, any nonbank is an ineligible purchaser of substantially all of a bank's assets
- 3) the proponents are attempting a detour around the law by use of the wildcard statute
- 4) the wildcard approach is not permissible since liquidation is not a "banking activity" and the bank won't be "engaging" in it
- 5) use of the wildcard statute also in fact is precluded by the "so long as" requirement since another provision of the banking code restricts sale of assets only to another bank
- 6) other arguments around consumer protection and credit union field of membership issues also constrain the transaction
- 7) a precedent such as this may hurt state banks and possibly their regulator in the long run, and
- 8) the obvious forum for a change in public policy is the Legislature, not via a stretched regulatory interpretation.

We appreciate the work the Banking Board does to implement Colorado law regarding banks. Thank you in advance for your attention to this issue.

Respectfully,

THE COLORADO BANKERS ASSOCIATION



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CC: CBA Board of Directors and Government Affairs Committee
CBA member banks

The Colorado Bankers Association represents more than 95 percent of the assets, offices and employees in the 131 regulated, traditional banks in Colorado (76 chartered in Colorado, 55 out-of-state banks operating here), which have \$160 billion in assets, 1,445 branches, and 21,000 proud professionals. CBA advocates for Colorado banks of all sizes and charter types before governmental bodies and the public to continually promote and improve the banking industry amid challenge and a changing environment. CBA proactively seeks to increase benefits for bank customers, improve value for shareholders, and grow a stronger business climate for banks and our local economies. CBA focuses on creating a stronger economy and helping Coloradans realize dreams by building better banks.