

**STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES
OFFICE OF CREDIT UNIONS**

Before the Director of the Department of Insurance and Financial Services

In the matter of:

**Valley State Credit Union
Saginaw, Michigan
Charter No. 0460**

Enforcement No. 16-14543

ORDER APPOINTING CONSERVATOR

**Issued and entered
On *August 17*, 2016
By Patrick M. McPharlin
Director**

BACKGROUND AND APPLICABLE LAW

WHEREAS, the Director (“Director”) of the Department of Insurance and Financial Services (“DIFS”)¹ has determined, for the reasons set forth in this Order and based on the information contained in the confidential DIFS Staff Memorandum recommending the appointment of a conservator, that it is necessary to appoint a conservator for Valley State Credit Union (“VSCU”) in order to conserve the credit union’s assets for the benefit of its members, depositors and other creditors, pursuant to section 241(1) of the Michigan Credit Union Act (“MCUA”), MCL 490.241(1).

WHEREAS, the Director administers the laws of this state relating to credit unions transacting business in this state and exercises general supervision over domestic credit unions pursuant to section 201(1) of the MCUA, MCL 490.201(1).

¹ Pursuant to Executive Order 2013-1, effective March 18, 2013, the Office of Financial and Insurance Regulation (“OFIR”) was renamed the Department of Insurance and Financial Services, and all authority, powers, duties, functions and responsibilities of the former Commissioner of OFIR were transferred to the Director of DIFS.

WHEREAS, VSCU is a Michigan-chartered credit union, charter number 0460, authorized by the MCUA, MCL 490.101 *et seq.*, and subject to the provisions of the MCUA and the jurisdiction of the Director.

WHEREAS, pursuant to the Federal Credit Union Act, 12 U.S.C. § 1751 *et seq.*, the National Credit Union Administration Board (“NCUA Board”) is the federal agency that administers the National Credit Union Share Insurance Fund (“NCUSIF”), which among other things provides share (deposit) insurance to credit union member share (deposit) accounts. The NCUA Board has in place regulations that provide for the administration of the NCUSIF.

WHEREAS, section 387(1) of the MCUA, MCL 490.387(1), requires VSCU to maintain federal deposit insurance, and VSCU’s deposits are insured by the NCUA under insurance certificate number 60775, thereby subjecting VSCU to the NCUA’s regulations and conditions for deposit insurance.

WHEREAS, section 241 of the MCUA, MCL 490.241, authorizes the Director to appoint a conservator for VSCU if any of the specified grounds exist, providing as follows:

- (1) If any of the grounds under section 232 authorizing the appointment of a receiver exist or if the commissioner considers it necessary in order to conserve the assets of a domestic credit union for the benefit of the members and depositors and other creditors of the domestic credit union, the commissioner may appoint a conservator for the domestic credit union and require of the conservator a bond and security as determined by the commissioner.
- (2) The commissioner may appoint as conservator an employee of the office of financial and insurance services or any other competent and disinterested person. The conservator shall reimburse the office of insurance and financial services out of the assets of the conservatorship for all sums expended by it in connection with the conservatorship as administrative expenses. The conservator shall pay all administration expenses of the conservatorship out of the assets of the domestic credit union, upon the approval of the commissioner. The administrative expenses are a first charge on the assets of the domestic credit union and the conservator shall pay the administrative expenses in full before any final distribution or payment of dividends to creditors or members.

WHEREAS, section 242 of the MCUA, MCL 490.242, authorizes a conservator appointed by the Director to, *inter alia*, take possession of the books, records and assets of VSCU, take any action necessary to conserve the credit union's assets, and vests the conservator with all the rights, powers, and privileges of a receiver appointed under Article 2, Part 2 of the MCUA (MCL 490.231 – 490.235), except for the power to liquidate VSCU. Section 242 provides:

- (1) Under the direction of the commissioner, a conservator appointed under this part shall take possession of the books, records, and assets of the domestic credit union and take any action necessary to conserve the assets of the domestic credit union pending liquidation under part 2 of this article or further disposition of its business as provided by law. The conservator has all the rights, powers, and privileges of a receiver appointed under part 2 of this article, except the power to liquidate a domestic credit union, and is subject to those obligations and penalties to which a receiver is subject that are not inconsistent with this part with respect to conservators.
- (2) While a conservator remains in possession of the domestic credit union under this part, the rights of all parties with respect to the domestic credit union, subject to the other provisions of this part with respect to conservators, are the same as if a receiver had been appointed under part 2 of this article.
- (3) A conservator appointed under this part may execute the discharge of any real estate mortgage held as part of the assets of the domestic credit union.

WHEREAS, the other, uncited provisions of Article 2, Part 3 of the MCUA (MCL 490.241 – 490.245) additionally govern any conservatorship of a domestic credit union commenced by the Director.

WHEREAS, based on its supervisory review of VSCU, DIFS staff has determined that VSCU is operating in an unsafe and unsound condition and has recommended to the Director that the appointment of a conservator is necessary in order to conserve the assets of VSCU for the benefit of its members, depositors and other creditors; and

WHEREAS, all facts and information regarding VSCU obtained by the DIFS Director, deputies, agents and employees are confidential pursuant to section 205 of the MCUA, MCL

490.205. Moreover, because VSCU may continue to operate during the conservatorship, any public disclosure of the specific nature of the grounds supporting this Order could damage VSCU or otherwise hinder the ability of the conservator to maintain normal operations and protect the assets of VSCU, the NCUSIF, the interests of VSCU or the interests of other parties who may be impacted by the conservatorship (e.g., members and creditors).

DIRECTOR'S FINDINGS AND ORDER

Based on the supervisory review by DIFS staff, consultations with DIFS staff, and review of the confidential DIFS Staff Memorandum recommending the appointment of a conservator for VSCU, I find that VSCU is in an unsafe and unsound condition. I further find that the appointment of a conservator for VSCU is necessary in order to conserve the assets of VSCU for the benefit of its members, depositors and other creditors. Under MCL 490.241(1) and MCL 490.232(1), each of these findings supports and authorizes my appointment of a conservator for VSCU.

I further find that John J. Kolhoff, Director of the DIFS Office of Credit Unions, is an expressly qualified DIFS employee, as well as a competent and disinterested person, under section 241(2) of the MCUA, MCL 490.241(2). Accordingly, I find that Mr. Kolhoff is a qualified and appropriate choice to serve as conservator for VSCU.

I further find that it would not be in the public interest to disclose the specific nature of the grounds supporting this Order at this time, because this information is confidential pursuant section 205 of the MCUA, MCL 490.205, and because any public disclosure of this information could damage VSCU and other interested parties and/or impede the conservator in the performance of his duties.

NOW THEREFORE, IT IS HEREBY ORDERED that John J. Kolhoff is appointed as conservator for VSCU (hereinafter, the "Conservator") without any requirement of a bond or other security, pursuant to section 241(1) of the MCUA, MCL 490.241(1). The Conservator shall have all the rights, powers and privileges granted to a conservator under the MCUA, MCL 490.101 *et*

seq., including but not limited to the power to take possession of the books, records and assets of VSCU, the power to take any action necessary to conserve VSCU's assets, and the authority to exercise all rights, powers, and privileges of a receiver appointed under Article 2, Part 2 of the MCUA (MCL 490.231 – 490.235), except for the power to liquidate VSCU.

IT IS FURTHER ORDERED that pursuant to MCL 490.242(1), the Conservator or his duly designated agents, in their capacity as Conservator and under the direction of the Director, shall immediately take possession of the books, records, and assets of VSCU, and shall take any action as may be necessary to conserve the assets of VSCU pending further disposition of its business as provided by law.

IT IS FURTHER ORDERED that the specific nature of the grounds supporting this Order shall not be publicly disclosed or otherwise made public, unless: (1) disclosure of this information is required by law; (2) disclosure of this information is deemed necessary and authorized by the Conservator or his duly designated agents, in their capacity as Conservator; or (3) disclosure of this information is subsequently authorized or ordered by the Director.

IT IS FURTHER ORDERED that the Board of Directors of VSCU, its officers, employees and agents shall immediately turn over and release to the Conservator or his duly designated agents, in their capacity as Conservator, all books, records, accounts, data, information, documents, attorney-client privileged and/or attorney work product materials, assets and property (both real and personal), of every description, belonging or pertaining to VSCU.

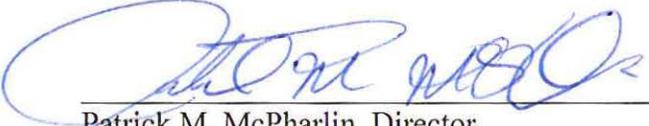
IT IS FURTHER ORDERED that VSCU, its Board of Directors, officers, employees and agents are hereby prohibited and restrained from the further transaction of VSCU's business and from the disposition of VSCU's assets and property (both real and personal) of every description whatsoever, whether located within the State of Michigan or elsewhere, except as directed by the Conservator or his duly designated agents, in their capacity as Conservator for VSCU, or as otherwise ordered by the Director.

IT IS FURTHER ORDERED that VSCU, its Board of Directors, officers, employees and agents shall cooperate with and facilitate the actions of the Conservator or his duly designated agents, in their capacity as Conservator, in carrying out their duties and responsibilities under the law.

IT IS FURTHER ORDERED that consistent with MCL 490.245(3), if the Director and/or Conservator subsequently determine that the liquidation of VSCU is in the public interest, the Director will terminate this conservatorship and apply for the appointment of a receiver for VSCU as provided in Article 2, Part 2 of the MCL (MCL 490.231 – 490.235).

The Director specifically retains jurisdiction over the matters contained in this Order and the authority to issue any further order or orders as he shall deem just, necessary and appropriate.

IT IS SO ORDERED.



Patrick M. McPharlin, Director
Department of Insurance and Financial Services