



September 29, 2008

Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

RE: Post-Merger Net Worth; Minimum Capital Ratio

Dear Ms. Rupp:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions (FCUs), I am responding to the request for comments by the National Credit Union Administration (NCUA) regarding its Notice of Proposed Rulemaking (proposed rule) to amend its regulations to address accounting matters related to mergers of natural person credit unions as well as mergers of corporate credit union.

NAFCU strongly supports the proposed rule. We believe the proposed rule appropriately and adequately addresses the accounting and regulatory challenges posed by the replacement of the pooling method of accounting in mergers in favor of the acquisition method by the Financial Accounting Standards Board (FASB). The proposed rule is also a sound implementation of the statutory definition of "net worth" in the Federal Credit Union Act as amended by the Financial Services Regulatory Relief Act of 2006. NAFCU provides the following specific comments generally supporting the proposed rule, but also requesting certain modifications.

Post-merger Net-Worth Calculation for Natural Person Credit Unions

The proposed rule would implement the statutory definition of "net worth" under the Federal Credit Union Act, as amended by the Financial Services Regulatory Relief Act of 2006. Under the statutory definition, net worth includes "any amounts that were previously retained earnings of any other credit union with which [it] has combined." 12 U.S.C. 1790d(o)(2)(A). As the preamble to the proposed rule correctly indicates, the statutory definition of "net worth" was amended in response to changes made to Generally Accepted Accounting Principles (GAAP) by FASB relative to the accounting method to be used for financial reporting of credit union mergers.

NAFCU supports the proposed rule to revise the regulatory definition of net worth and provide a method by which credit unions would be able to accurately calculate their post-merger net worth for PCA purposes. As we have strongly advocated in the past, the changes made by FASB relative to post-merger accounting require statutory and regulatory actions so that credit unions are not hindered from meeting regulatory capital standards.

While we support the proposed amendments to the post-merger net worth calculation, we are concerned that the definition of “mutual combination” contains language that is unnecessary, creates uncertainties, and outside the scope of the purpose of determination of net worth for PCA purposes. The proposed definition of mutual combination is as follows:

“a transaction in which a credit union acquires another credit union, or acquires an integrated set of activities and assets that is capable of being conducted and managed as a credit union for the purpose of providing a return in the form of economic benefits directly to owner members.”

NAFCU strongly encourages the NCUA to remove the following language: “providing a return in the form of economic benefits directly to owner members.” The language introduces a standard in the NCUA regulations that currently does not exist and should not now be added. We believe that the “best interest of the members” standard that is currently employed by the NCUA in reviewing a merger proposal is not only sufficient but also provides credit unions the flexibility they need to consider the interests of their members in a broad sense. To limit this flexibility by adding the proposed language unnecessarily restricts credit unions’ ability to consider all factors, economic and otherwise, that would benefit their members. Moreover, we do not believe that the current rulemaking proceeding, the purpose of which is to amend NCUA’s post-merger accounting methods, is the appropriate proceeding for adding the standard.

In addition, NAFCU recommends that the definition of mutual combination be revised so that the resulting credit union, not the credit unions that are combining, meets the requirement of “capable of being conducted and managed as a credit union.” Under the proposed definition, it is not clear whether the credit unions involved in the merger or the resulting credit union must meet the requirement. To avoid unnecessary confusion, we recommend that NCUA add the phrase “upon combination” after the “activities and assets.”

NAFCU would also like to take this opportunity to request that NCUA modify its 5300 Call Report consistent with the proposed changes to post merger net worth calculations. Specifically, NCUA should include on the “PCA Net Worth Calculation Worksheet” (page 13 of the 5300 Call Report) the retained earnings of an acquired credit union as the numerator for calculating total net worth. We believe a simple line item in this section of the Call Report would suffice to update the worksheet and provide greater accounting consistency.

Corporate Credit Unions and Minimum Capital Ratio

Similar to the proposed amendments regarding post-merger net worth calculation for natural person credit unions, the proposed rule would amend the calculations of a corporate

credit union's minimum capital ratio. The proposed rule would amend Part 704 of NCUA's rules and regulations by modifying the definitions of the terms "capital," "core capital" and "retained earnings ratio." These terms would be changed so that a corporate credit union that acquires another by merger can include "the retained earnings of the acquired credit union, or an integrated set of activities and assets, at the point of acquisition."

As NCUA recognizes, there are fewer statutory constraints on the agency to establish regulatory accounting requirements. Consistency with GAAP would create efficiencies for users and help address uncertainties in the marketplace. With this in mind, changes to Part 704's accounting provisions should be consistent with GAAP. Accordingly, we strongly urge NCUA to make necessary amendments to its rules to achieve this goal.

The proposed changes would enable corporate credit unions to comply with FASB's standards for financial reporting purposes while resolving the regulatory accounting dilemma that would arise in mergers as a result of FASB's changes. Like the proposed amendments related to post-merger net worth calculations for natural person credit unions, the proposed modifications to include retained earnings of the acquired entity to capital, core capital and retained earnings ratio of the acquiring entity, would provide corporate credit unions a wider range of management options with reduced concern over violating regulatory minimum capital ratio.

The proposed rule would also define "mutual combination" as follows:

"A transaction or event in which a corporate credit union acquires another credit union, or acquires an integrated set of activities and assets that is capable of being conducted and managed as a credit union for the purpose of providing a return in the form of economic benefits directly to owner members."

As proposed, the definition would establish an "economic benefits directly to owner members" standard. We are not convinced that this standard is either necessary or would ultimately serve the best interests of owner members. NCUA would create a standard that would be difficult to define and difficult to meet. While owner members should directly benefit from a merger, we believe a less restrictive standard would prove to be more beneficial to owner members while also making the transaction less daunting for corporate credit unions. Accordingly, we recommend that NCUA remove the following clause: "for the purpose of providing a return in the form of economic benefits directly to owner members."

In addition, we believe the proposed definition should be revised to make clear that "capable of being conducted and managed as a credit union" is referring to the resulting entity and not the acquirer or the entity being acquired. Thus, we recommend that NCUA add the phrase "upon combination" after the "activities and assets."

NAFCU appreciates this opportunity to share its comments on the proposed rule. Should you have any questions or require additional information please call me or Tessema Tefferi,

Ms. Mary Rupp
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NAFCU's Associate Director of Regulatory Affairs, at (703) 522-4770 or (800) 336-4644 ext. 268.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Dan Berger". The signature is stylized and somewhat cursive, with a large initial "B" and a long, sweeping underline.

B. Dan Berger
Senior Vice President of Government Affairs
BDB/tt