



New York State
Credit Union League, Inc.
and Affiliates

"Serving and supporting credit unions since 1917."

April 29, 2008

Mary Rupp, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

RE: RIN 3133-AD40
Mergers, Conversion From Credit Union Charter,
and Account Insurance Termination

Dear Secretary Rupp:

On behalf of the members of the New York State Credit Union League (NYSCUL), I would like to take this opportunity to comment on NCUA's Advanced Notice of Proposed Rulemaking (ANPR) seeking comment on whether NCUA should establish a regulatory framework for those credit unions seeking to convert to or merge with federally insured institutions other than mutual savings banks, such as stock issuing banks and whether it should promulgate additional regulation of all types of mergers and conversions.¹ There are some areas of the existing regulatory framework where additional regulation would be appropriate—most notably the conversion of a credit union directly into a stock issuing bank. In contrast, existing regulations already adequately address other types of mergers and conversions and there is simply no need for additional regulations in this area at this time.

OVERVIEW

One of the central questions raised by this ANPR is whether NCUA should issue rules governing credit union mergers or conversions into financial institutions other than mutual savings banks. While existing regulations such as 708a and 708b, as well as various state regulations establish an extensive framework of disclosures and timeframes required for conversions into mutual savings banks and mergers into other credit unions, existing regulations do not address the conversion of such institutions into institutions other than mutual savings banks.

NYSCUL has analyzed and adopted on behalf of the League, guidelines governing the conversion of credit unions into mutual savings banks. While these guidelines are intended to apply to the conversion of credit unions to mutual savings banks, many of the embodied principles are also relevant in the context of this proposal.

Our core principles are:

- We support the right of member/owners to exercise their democratic control of their credit unions.
- NYSCUL encourages credit unions that are considering conversions to make their decisions based solely on the best interest of their members.

¹ The ANPR focuses on six types of transactions: merger of a federally insured credit union into another (FICU to FICU); merger of a FICU into a privately insured credit union (FICU to PICU); conversion of a federally insured state credit union (FISCU) into a PICU; conversion of a FICU into a mutual savings bank; merger of a FICU into a financial institution other than an MSB and the conversion of a FICU into a financial institution other than an MSB.

- Full, plain language disclosures explaining the conversion are essential to preserving the democratic process.
- Credit union directors and managers have a fiduciary obligation to present objective and honest information to enable members to make an educated decision.
- We believe that the net worth of the credit union belongs to the members and should remain with the members.

Consistent with these principles, regulations in this area must be designed in a way that does not prevent such conversions but ensures that such conversions do in fact reflect the will of the members and the best interest of the credit unions.

However such regulations should be tailored to those transactions to which existing regulations do not speak. Since NCUA already has extensive requirements (some amended as recently as 2006) to regulating conversions of credit unions to mutual savings banks and the merger of federally insured credit unions and state law also speaks to these conversions, further extensive amendment of these regulations would at best be duplicative and add little to the safety and soundness of the industry. In contrast, if NCUA were to look at its existing experience with these regulations and consider imposing a regulatory framework to specifically address the conversion of credit unions to stock issuing banks, such a proposal would warrant serious consideration.

SHOULD THERE BE A UNIFORM FEDERAL STANDARD OF CARE WITH REGARD TO SUCH TRANSACTIONS AND IF SO WHAT FORM SHOULD IT TAKE?

In its ANPR, NCUA takes the position that a federal standard of fiduciary duty would be helpful to board members in considering mergers or conversions. NCUA believes that such a standard "may be useful in eliminating confusion from differences in state law and make it easy for credit union boards to fulfill their duties to members." While NYSCUL wholeheartedly agrees that the proper exercise of a board's fiduciary obligation is all the more crucial when it is considering a change in its corporate structure, it is doubtful that a uniform federal standard would in fact strengthen Board oversight in this area.

While it is true that the precise parameters of fiduciary obligations are traditionally established by state law and that such standards vary from state to state, it is also true that states have been analyzing issues regarding corporate standards of care for almost two centuries and that credit unions are well aware of those standards. Consequently, establishment of a national standard would not so much clarify existing obligations, but would simply preempt existing state law, which already clearly defines fiduciary obligations.

Furthermore, issues regarding fiduciary obligations are by their very nature fact sensitive. Such issues turn on the unique factual circumstance in which they arise and outcomes can and will vary widely, irrespective of whether the fiduciary standard is a federal or state one.

MEMBER RIGHT TO EQUITY

Another issue NCUA is considering dealing with in the ANPR is unequal net worth ratios among merging credit unions. For example, one approach would be to impose a merger dividend requirement under which credit unions could be required to provide a flat amount to all its members. A second approach would be to simply require that the appropriateness of merger dividends be considered as part of a board's due diligence when considering a proposal to merge. Such issues are already implicit in a

board's fiduciary obligation whenever it is considering any type of merger or conversion. Furthermore any type of formulaic requirement - such as always requiring a merger dividend -- would prove to be too inflexible. It is NYSCUL's strong belief that net worth should remain with a credit union's members. Consequently, if NCUA imposes a due diligence approach to the issue, such due diligence should explicitly require board members to demonstrate how member equity is being adequately protected in a merger where a credit union is to be converted directly into a stock issuing bank.

COMMUNICATIONS TO MEMBERS

NCUA is considering promulgating regulations that specifically prohibit communications from credit union officials that state or imply that NCUA has endorsed the specific charter transaction. Existing regulations already do more than enough to insure that information provided to members is accurate. For example 708a(4) already requires credit unions to send out material from credit union members both for and against a credit union conversion, provided such communication is not false or misleading. NCUA should analyze its experience with these requirements and consider mandating them only for those mergers or conversions that existing regulations do not address.

The discussion that NCUA is seeking to initiate with the issuance of this ANPR is an important one, given that mergers and conversions have become an increasingly common aspect of the credit union landscape. Against this backdrop, it is in everyone's interest to ensure that the regulatory framework clearly lays out for directors and members their rights, obligations and responsibilities. A promulgation of regulations that are consistent with NYSCUL's guidelines could eliminate potential legal ambiguity that exists in the current regulatory framework, but only if it is narrowly tailored to address those charter transactions not addressed under existing regulations.

Sincerely,



William J. Mellin
President/CEO