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AMERICA'S CREDIT UNIONS™

April 30, 2008

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

Re: Comments On Charter Changes And Share Insurance Terminations

Dear Ms. Rupp,

The Georgia Credit Union League (GCUL) appreciates the opportunity to comment on NCUA's Advance Notice of Proposed Rulemaking (ANPR) under Parts 708a and 708b of its regulations regarding mergers, conversions to another type of financial institution, and terminations of federal share insurance. As a matter of background, GCUL is the state trade association and one member of the network of state leagues that make up the Credit Union National Association (CUNA). GCUL serves approximately 179 credit unions that have over 1.7 million members. This letter reflects the views of our Regulatory Response Committee, which has been appointed by the GCUL Board to provide input into proposed regulations such as this.

Summary of GCUL's Position:

- With the ever-increasing regulatory burden placed on the credit union industry, coupled with the need for further regulatory relief, GCUL does not support the ANPR as presented.

- However, we do believe there is a separate concern in need of attention. GCUL believes strongly in the fundamental principle that members of the credit union own the capital (reserves and undivided earnings) of the credit union and are entitled to protection of it upon certain occurrences. It is this issue that is in need of attention.

- Regardless of the credit union to credit union merger type, change in insurance coverage of member accounts or terminations of federal insurance coverage, the remaining institution is still a credit union cooperative and member rights to reserves and undivided earnings continue to exist. In these cases, our opinion is that current rules as found in Part 708b of NCUA Regulations are sufficient.

- In cases of voluntary liquidation, members obtain access to reserves and undivided earnings. In these cases, although the credit union ceases its existence, the ownership interests of members provide for distribution of reserves and undivided earnings to those entitled to it…the members of the credit union. For these situations, we believe current rules found in Part 710 of NCUA Regulations are sufficient.

- A credit union conversion to a mutual savings bank, bank or merger with a bank occurs at the expense of the membership of the credit union. NCUA should consider the effects of these transactions on the membership and recommend alternative options with respect to members' rights to reserves and undivided earnings. Since members own the credit union, it is our view that members should be compensated for their share of the converting institution.

- Credit union directors would benefit from a set of uniform standard of care guidelines to ensure their fiduciary duties are performed.

- In light of recent occurrences, NCUA should implement rules regarding 'hostile takeover' attempts of credit unions.

GCUL Opposition to ANPR as Proposed

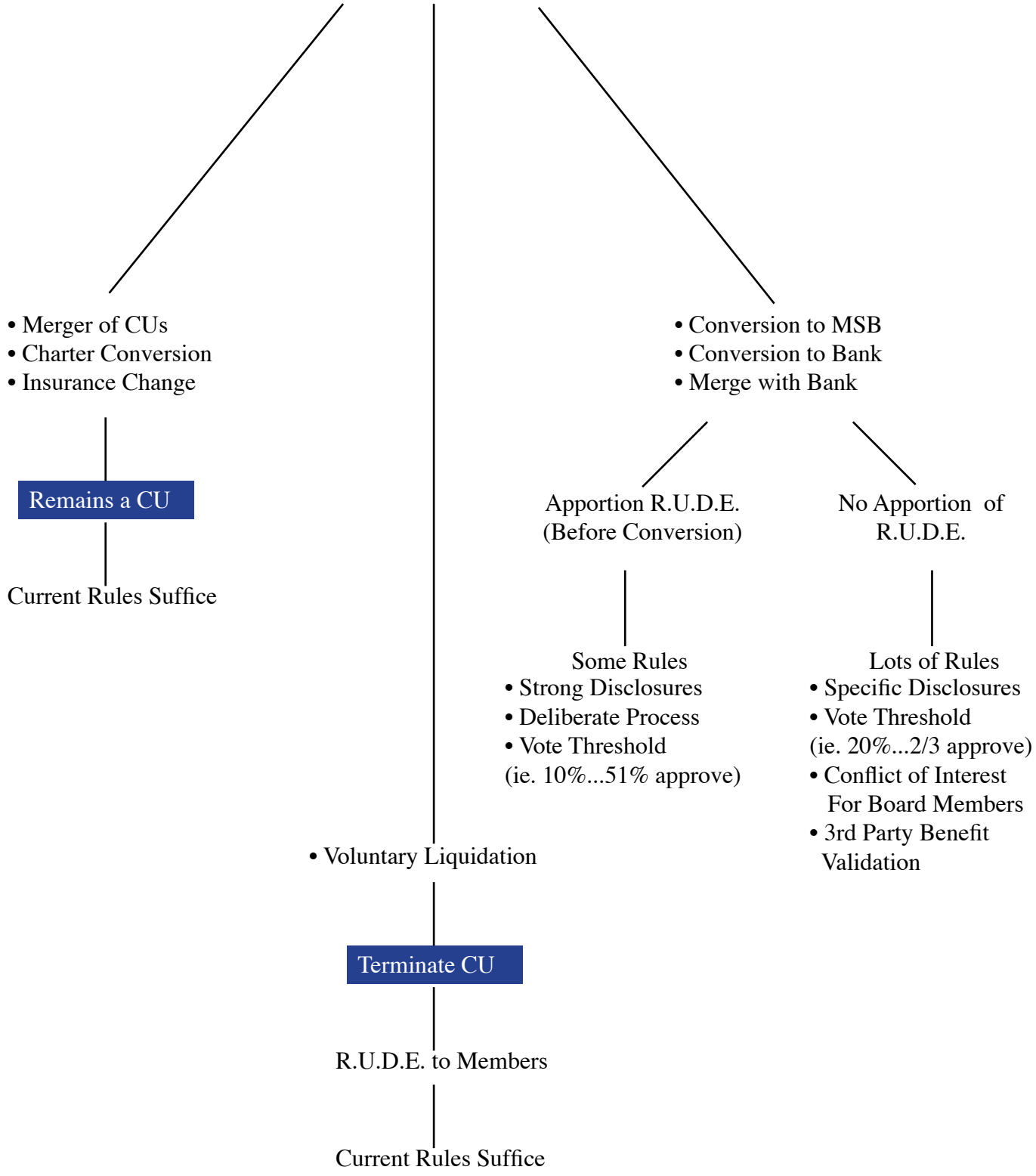
Credit unions continue to operate in a heavily regulated environment that induces strains on the operations of each credit union. A prime example is the Congressionally-required Bank Secrecy Act enforcement. Credit unions are spending increasingly large amounts of resources, both monetary and personnel, in efforts to comply with the burdens of the Act. Likewise, the recent enactment of the Fair and Accurate Credit Transactions Act has forced credit unions to review, modify or invent new processes and procedures to protect member data and ensure accurate disclosure of consumer credit reporting information.

While we can support the need for regulation in those circumstances that warrant attention, GCUL cannot support the proposed changes as outlined in the ANPR. The imposition of unnecessary and/or unwarranted regulation based on a couple of unique situations, in our view, only adds to the regulatory burden currently being shouldered by credit unions.

NCUA Should Focus on Members' Rights of Ownership

It is our position that rather than create additional regulatory requirements regarding mergers between credit unions, changes in insured status or conversions to institutions other than a credit union, members would be better served if NCUA would address the issue of capital and retained earnings and how a credit union's Board should treat those items when considering a merger or conversion. Those items are often the reason behind an initial merger or conversion solicitation from another credit union or outside entity. Credit unions with substantial capital and retained earnings are very attractive to those entities in need of capital infusion. And, since the ownership of a credit union includes those items, it is our belief that they are entitled to it and it is their interests that need to be protected and preserved.

Members Do Own The Capital



From the diagram above, you can see that we believe there are three primary choices a credit union's Board can be faced with when considering merger or conversions. Those choices, along with our prevailing concerns, are outlined below.

Merger of credit unions/insurance change/charter conversion.

When considering a merger with another credit union, a change in insured status (federally or privately insured) or charter conversion to a federal or state charter, the Board of Directors of a credit union is faced with several decisions. Those decisions center primarily on representation of the merging credit union on the surviving credit union Board, personnel allocation and employee retention, etc. In some cases, capital (in the form of reserves and undivided earnings) belonging to the members of the merging credit union may be distributed to the members prior to the merger or conversion completion. This is reflective of the fact that said capital is owned by the members. And as such, they are entitled to it. Regardless of the scenario, in this type of circumstance, the surviving entity is still a credit union and the cooperative structure remains intact…along with the ownership privileges of the members.

These types of events are currently regulated by Part 708b of NCUA Rules Regulations and it is our position that Part 708b regarding mergers, charter conversions and change in insured status are sufficient and are not in need of amendment.

Voluntary Liquidation.

A second possibility exists when considering the many choices Board's have when considering a credit union's future…voluntary liquidation.

While the liquidation of a credit union means that members no longer have the credit union to provide financial products and services to them, in the case of liquidation, the ownership of the credit union by the members entitles them to the retained earnings and capital of the credit union. By distributing the earnings to members upon liquidation, the ownership benefits come full circle and return to the owners.

For these cases, it is our position that the current rules, as outlined in Part 710 of NCUA Rules and Regulations, are sufficient.

Conversion to Mutual Savings Bank/Bank/Merger with a Bank.

Credit union Boards likewise face many decisions when considering the conversion to a mutual savings bank, bank or merger with a bank. However, unlike the scenario of merging with a credit union, in this case, the surviving institution is no longer a credit union, cooperative structure and ownership privileges are lost and the likely event of insider enrichment by members of the Board (at the expense of members) arises. Therefore, additional issues need to be considered.

First and foremost, we believe the ownership rights of the credit union members need to be addressed. For instance, what will happen to the reserves and undivided earnings? Will members be paid for their stake in the earnings of the credit union?

We believe there are two likely options.

Option 1: The Board could choose to apportion the retained earnings to the members of the credit before the conversion process. This process would (to some degree) provide credit union members

with a certain degree of severance and would likely prevent the opportunity for insider abuse by a few who would benefit at the expense of others.

The process for completing this form of conversion/merger should include rules regarding full and fair disclosures to the members detailing the ramifications of a change from a credit union charter and outline the intended benefits of the change. Likewise, members should be entitled to hear the Board's evaluation of the decision to change, and should be entitled to a very deliberate process that includes full understanding of the voting process. The vote should require a minimum of 10% member participation and result in at least a 51% approval of the change.

Option 2: The Board could choose no apportionment of retained earnings to the membership of the credit union before the conversion process. In this case, member ownership is fully diluted and ownership of the retained earnings clearly ignored and the opportunity for personal enrichment by the Board exists. In these cases, we believe a much more stringent and detailed process is warranted due to the primary concern that insiders stand to gain from the conversion…at the expense of the credit union's member/owners.

In addition to the disclosures outlined in option 1, we believe the process for completing this form of conversion/merger warrants special disclosures that detail the ramifications of the change, the potential for enrichment of a few. Likewise, the threshold for approving the change should be higher. At a minimum, we believe 20% of the members of the credit union should participate in the vote with at least 2/3 of those voting approving the change. We would also encourage a requirement that the Board of Directors sign and submit a Conflict of Interest statement demonstrating their commitment to doing what, in their eyes, is best for the membership as a whole. Lastly, we would encourage a requirement that a third party conduct a benefit validation.

A Uniform Standard of Care Is Warranted

Making decisions on behalf of the credit union's members is a primary and fundamental responsibility of a credit union's Board of Directors. Decisions can range from the simplest of issues such as rate changes or product and service expansion to the more complex issues involving merger or charter conversion. Whatever the issue, <u>all decisions made by the credit union's Board should be predicated on the fact that the members own the credit union</u> and the Board's fiduciary obligation is to the owners and should be paramount.

Currently, Boards must look to varying state laws to determine their fiduciary level of care. In some states, minimal actions meet the standards necessary to avoid liability issues at the Board level. An example of this would be the "Malice Standard." Under this standard, directors are only held accountable if they act recklessly or break the law on purpose. Contrarily, other states adhere to higher levels of expectation when it comes to director fiduciary duty. An example of this would be the "Trustee Standard." This standard requires a director to exercise such skill and care as is reasonable in the circumstances of the case, making allowance for his or her special knowledge, experience or professional status.

Because of the challenge with varying degrees of fiduciary accountability, we would encourage NCUA to develop a set of guidelines, not regulations, that would address the appropriate level of fiduciary duty by directors.

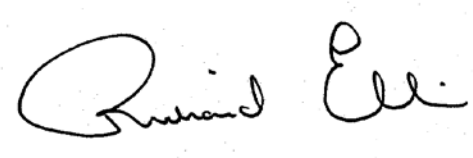
NCUA Should Consider "Hostile Takeover" Regulation

Recent events surrounding the attempted hostile takeover attempt of a credit union have brought to light the need for NCUA guidance regarding such transactions.

Direct communication with credit union members by an outside entity for the purpose of facilitating a merger not endorsed by the targeted credit union's Board is a slippery slope in need of solid footing. Without NCUA guidance, the opportunity exists for manipulation of the process by the pursuing entity…up to, and including, misrepresentation by the pursuing credit union of NCUA's approval of the proposed merger. For that reason, we would encourage NCUA to formulate a regulation stipulating the process for communicating with another credit union's membership for the purpose of soliciting merger approval.

Thank you for the opportunity to comment on the ANPR for Parts 708a and 708b regarding mergers, conversions to another type of financial institution, and terminations of federal share insurance. If you have questions about our comments, please contact Cindy Connelly or me at (770) 476-9625.

Respectfully submitted,



Richard Ellis
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