

June 26, 2007

Michael S. Sadow, Esq.
Silver, Freedman & Taff, L.L.P.
3299 K Street, N.W., Suite 100
Washington, D.C. 20007-4444

Re: Member Agreement to Accept Electronic Communications Regarding
Conversions.

Dear Mr. Sadow:

You have asked for guidance on the requirement in NCUA's rule on the Conversion of Insured Credit Unions to Mutual Savings Banks (MSBs) that a converting credit union state "how many members have agreed to accept communications from the credit union in electronic form" in its 90-day notice. 12 C.F.R. §708a.4(b)(3), (f)(2). Generally, if a member has provided an e-mail address to a credit union, a credit union must assume the member has consented to receive conversion-related member-to-member communications electronically from the credit union.

When NCUA revised its MSB conversion rule in December 2006, one purpose of the revision was to improve the flow of information between members on a pending conversion proposal and associated member vote. Toward that end, the rule includes a procedure to facilitate communications between members, through the credit union, as the members prepare to vote. 12 C.F.R. §708a.4(f). A member who desires to communicate with other members about the conversion may request the credit union send the communication by regular mail to all voting members or by e-mail to those members "who have agreed to accept communications electronically from the credit union." 12 C.F.R. §708a.4(f)(2). A member must pay for these communications, and so the credit union must let all members know, as part of its 90-day notice of conversion, how many voting members there are and how many have agreed to accept communications in electronic form. 12 C.F.R. §708a.4(b)(3).

Our view is, if a member has provided his or her e-mail address to the credit union for any purpose, the credit union must assume the member has agreed to accept conversion-related communications electronically unless the credit union has specific evidence a member does not want to receive conversion-related communications electronically. This view facilitates the member-to-member contact intended by the rule.

While members may choose between regular mail and e-mail as a means of sending conversion-related communications, e-mail has certain advantages over

Michael S. Sadow, Esq.

Page 2

regular mail. E-mail is less expensive to prepare and send and arrives quicker than regular mail. Cost and speed are important considerations given that the conversion process has time constraints and the credit union may need to prepare and send the communication to thousands of voting members.

In your request for opinion, you mentioned a provision in NCUA's Truth-in-Savings rule that discusses member consent to receive electronic transactions subject to that rule. 12 C.F.R. §707.10. The electronic member-to-member communications contemplated in the MSB conversion rule are neither savings-related nor transaction-related and are not subject to the consent requirements of §707.10. Section 707.10 also contains a cross-reference to the E-Sign Act. Again, electronic MSB conversion-related member-to-member communications are not subject to the consent requirements of the E-Sign Act.

Finally, we caution credit unions not to impose additional procedures in order to hamper member-to-member communications or engage in any activity encouraging members to restrict their communications with other members under the MSB conversion rule. For example, credit unions should not amend current, standard consent agreements or forms that expressly allow certain electronic communications with the credit union so as to restrict conversion-related member-to-member communications.

Please contact Staff Attorney Paul Peterson or me with any additional questions.

Sincerely,

/S/

Sheila A. Albin
Associate General Counsel

GC/PMP:bhs
07-0627