

February 5, 1993

James D. Holt, Esq.
Bruce & Davis
2121 West Maple
Wichita, Kansas 67213-3398

Re: Merger of Credit Union with Savings and Loan Association (Your October 28, 1992, Letter)

Dear Mr. Holt:

You have inquired as to the legal requirements for merging a state chartered credit union with a state chartered savings and loan association ("s&l"). Your letter indicates that the parties have not yet determined whether your client (the credit union) or the s&l will survive after the merger; at present the parties are exploring the procedures and options for both alternatives. You also state that you have con- tacted the Office of Thrift Supervision regarding the merger requirements for s&ls.

You do not specify whether the credit union is a federally insured credit union ("FICU"), insured by the state, or uninsured.

We note at the outset that, unless the credit union is feder- ally insured by the National Credit Union Share Insurance Fund ("NCUSIF"), neither the Federal Credit Union Act ("FCU Act") nor the NCUA Rules and Regulations ("Regulations") would govern the merger. In any event, since the credit union is state chartered, you should consult the state credit union regulator regarding any applicable laws, regulations or policies. If the credit union is to be the surviving entity, the merger would, at a minimum, have to comply with any state chartering and field of membership requirements.

The following is a general discussion of the provisions of the FCU Act and the Regulations relating to a merger involving a FICU.

Section 205(b)(1)(A) of the FCU Act, 12 U.S.C. 1785(b)(1)(A), provides that a FICU seeking to merge with a noninsured credit union or institution must obtain the prior written consent of the NCUA Board. For purposes of Section 205(b), "noninsured" means not insured by the NCUSIF. This is based on the definition contained in Section 101(7), 12 U.S.C. ~1751(7). Even if the other institution were a federally insured s&l, NCUA Board approval would still be required. Section 205(c) sets forth factors to be considered by the Board in determining whether to grant such approval. Note that any FICU merging with another credit union must obtain prior written approval from the Board, even if the second credit union is also insured by the NCUSIF. See, Section 708.101(b) of the Regulations. The merger of a FICU with an insured s&l (whether federally, state, or privately insured) would be subject to at least the same degree of scrutiny as the merger of two FICUs.

Part 708 of the Regulations, 12 C.F.R. Part 708, addresses mergers of FICUs, as well as termination of federal share in- surance or conversion from federal to nonfederal insurance with or without merger. The regulation specifically mentions only mergers into uninsured or nonfederally insured credit unions. However, the effect on credit union members' ac- counts -- that is, the loss of NCUSIF insurance -- is the same no matter what type of financial institution (other than another FICU) the credit union merges into. For that reason, NCUA would apply the regulation to mergers of FICUs into any insured, uninsured or nonfederally insured institutions, in- cluding s&ls.

The following sections of Part 708 will apply to your client's merger. Sections 708.103, 708.104 and

708.105 require that the credit union prepare a merger plan, submit the merger proposal to NCUA, and obtain NCUA approval of the merger. (You should review each of those sections carefully, as they include some subsections that would not apply.) After approval by NCUA and the state supervisory authority, the merger may be completed. Section 708.108(a). The credit union must certify completion of the merger to the NCUA Regional Director within 30 days of the merger's effective date, whereupon the NCUSIF insurance certificate of any merging FICU will be cancelled (except in the case of a merger into an uninsured institution, as discussed below). Section 708.108(b) & (c).

The following provisions of Part 708 may apply in the case of your client's proposed merger, depending upon how you decide to structure the merger. Section 708.201 requires a membership vote for termination of federal share insurance through merger into an uninsured institution. Section 708.202 sets forth notice requirements for such termination. Section 708.301(b) prescribes a form for the requisite notice of termination through merger. Section 708.203 requires a membership vote for conversion from federal to nonfederal insurance through merger. Section 708.204 lists notice requirements regarding such a conversion. Section 708.302(b) prescribes a form for conversion due to merger. Section 708.303 provides for modifications to the notice forms, upon approval of the NCUA Regional Director, and the state regulator in the case of a state chartered credit union. In the event that the s&l is to be the surviving entity after a merger with your client, NCUA would require that the notice form (whether for termination or conversion of insurance) be modified as appropriate.

If the s&l is the surviving entity, the credit union would be entitled to a return of its NCUSIF insurance deposit pursuant to Section 741.11(j) and Section 708.102(c) of the Regulations. If the s&l is nonfederally insured, NCUSIF insurance would cease on the effective date of the merger. Section 708.102(d). However, if the s&l is uninsured, NCUSIF insurance would continue for a period of one year after the merger, and the refund would only be made after the one year waiting period. Section 708.102(c) & (e). See, Section 206(d)(1) of the FCU Act (limitation of insurance coverage). If the credit union is the surviving entity, Section 741.11(i) and Section 708.102(a) would require that the credit union pay to the NCUSIF a prorated insurance premium and an additional one percent insurance deposit based upon the increase in insured share accounts resulting from the merger.

Details regarding the proposed merger and NCUA requirements should be worked out with the appropriate NCUA Regional Office. If your client is located in Kansas, NCUA's Region V Office would have jurisdiction. We suggest that, after you have determined which entity is to survive and resolved any other issues with your client and the s&l, you contact the Region V Office for additional guidance. The address and telephone number for that office are:

Regional Director
National Credit Union Administration
4807 Spicewood Springs Road
Suite 5200
Austin, Texas 78579
(512) 482-4500

Sincerely,

Hattie M. Ulan
Associate General Counsel

GC/MRS:sg
SSIC 6300

92-1107