

July 13, 2000

Richard S. Garabedian, Esq.
Silver, Freedman & Taff, L.L.P.
1100 New York Avenue, NW
Washington, DC 20005

Re: Merger or Conversion of a Federal Credit Union into a National Bank.

Dear Mr. Garabedian:

You have asked us to comment on whether the merger or conversion of a federal credit union (FCU) into a national bank is permissible under the Federal Credit Union Act (Act). While the Act does not expressly prohibit such a conversion, it would be subject to NCUA Board approval under particular statutory criteria. In addition, as you are aware, while the NCUA has regulatory procedures in place for conversion of insured credit unions to mutual savings banks or mutual savings associations, the NCUA Board has never adopted any regulations governing this type of transaction. Thus, in addition to the statutory criteria noted below, the Board would need to determine the membership vote required to approve such a transaction, the time frame for solicitation of member approval, the rights of dissenting members, and so forth. We also note below other potential issues regarding the permissibility of an FCU or its management undertaking an application to charter a federal bank.

In several letters and telephone conversations, you have described a merger or conversion of an FCU into a national bank, chartered specifically for this purpose. Although you have used "merger" and "conversion" interchangeably, you have indicated that the transaction would be accomplished by a purchase and assumption agreement, whereby the FCU would transfer all of its assets to the newly chartered bank and the bank would assume all of the FCU's liabilities pursuant to §205(b)(1)(C) of the Act. 12 U.S.C. §1785(b)(1)(C).

The Act generally provides that "no insured credit union shall, without the prior approval of the [NCUA] Board . . . transfer assets to any noninsured credit union or institution in consideration of the assumption of liabilities for any portion of the member accounts in such insured credit union" 12 U.S.C. §1785(b)(1)(C). The Act also provides a list of the broad factors the NCUA Board is to consider in granting or withholding approval of a transaction under §205(b). It states that the NCUA Board, in granting or withholding approval or consent, must consider:

- (1) the history, financial condition, and management policies of the credit union;
- (2) the adequacy of the credit union's reserves;
- (3) the economic advisability of the transaction;
- (4) the general character and fitness of the credit union's management;
- (5) the convenience and needs of the members to be served by the credit union; and
- (6) whether the credit union is a cooperative association organized for the purpose

of promoting thrift among its members and creating a source of credit for provident or productive purposes.

12 U.S.C. §1785(c). The Act does not, however, mandate specific administrative procedures. As you know, the NCUA does not have regulations providing administrative procedures for the conversion or merger of an FCU into a stock bank. The selection of appropriate procedures and criteria is a matter for the NCUA Board to determine.

You have mentioned that the FCU, or its management, would be involved in making the de novo bank charter application with the Office of the Comptroller of the Currency. We note that the Act does not permit FCUs to acquire control, directly or indirectly, of another financial institution. 12 U.S.C. §1757(7)(I). Additionally, participation in the application process by the FCU's management, in their official or individual capacities, could raise conflict of interest issues. In conclusion, while our view is that the Act does not prohibit the transaction, there are several issues that would require NCUA Board consideration.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/FSK:bhs
SSIC 3000
00-0360