

May 9, 2017

Mr. Gerald Poliquin  
Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314-3428

Re: Comments on Advanced Notice of Proposed Rulemaking for Alternative Capital

Dear Mr. Poliquin:

Thank you for the opportunity to comment on the advanced notice of proposed rulemaking ("ANPR") on Alternative Capital. For your information, Eastern Corporate Federal Credit Union (EasCorp) is a federally-chartered and insured corporate credit union that provides various correspondent, liquidity and ALM Services to more than 250 credit unions.

We commend the NCUA Board ("Board") for taking action on alternative forms of capital, which federally insured credit unions could use in meeting capital standards required by statute and regulation. The Board is considering whether to authorize credit unions to issue supplemental capital instruments that could be used solely in the calculation of risk-based net worth for the purpose of satisfying the risk-based net worth requirement. We support this authorization and believe that it is a very good first step. We understand that also including supplemental capital in the calculation of net worth would require legislative action (in the future), and we will encourage all parts of the credit union system to pursue this additional step. Supplemental capital will enhance the safety and soundness of the industry as a whole, while providing additional protection to the National Credit Union Share Insurance Fund.

We would like to provide additional comments on the topics of potential tax implications, mutual ownership, borrowing authority, securities law applicability and investor approval of voluntary merger.

With respect to tax, specifically with reference to the credit union federal income tax exemption, concern has been raised about the connection between tax exemption and the credit union industry's inability to access capital markets. To reiterate; credit unions would issue supplemental capital in the form of subordinated debt only. As subordinated debt, supplemental capital would be categorized as borrowings and subject to applicable statutory borrowing limits. Credit unions presently have the ability to issue subordinated

debt through existing rules and regulations. This would not change and therefore supplemental capital should have no effect on the income tax exemption.



Regarding mutual ownership structure, supplemental capital would similarly have no effect on ownership. Subordinated debt does not constitute ownership. Investors in subordinated debt will be creditors of the credit union, leaving all ownership rights with credit union members.

We agree that clarity and certainty regarding a federal credit union's borrowing authority is important to the sale of supplemental capital. It must be certain to potential investors that federal credit unions have the authority to borrow from other than natural persons. Some may interpret that the Federal Credit Union Act and the NCUA Rules and Regulations restrict federal credit unions to borrowing from natural persons only. Although the Board's interpretation is different, clarity and certainty should be paramount. Therefore, a more comprehensive borrowing rule should be established, enabling a federally insured credit union to borrow from any source.

The Board believes that supplemental capital would be considered securities for purposes of state and federal securities laws and therefore may require registration. We believe that credit union supplemental capital should only be available to "accredited investors," thereby falling under Rule 506, Regulation D, under the Securities Act as exempt from registration. Although exempt from registration, supplemental capital offerings need to comply with the Securities Exchange Commission's (SEC) anti-fraud regulations. Capital should be offered as a private placement deal. Private placement memorandums should contain appropriate disclosures and be offered through measures that do not breach anti-fraud provisions.

The Board should not require investor (subordinated debt/supplemental capital holder) approval in the case of a voluntary merger. The investor is a creditor of the credit union, not an equity holder. As a result, he/she/it has no ownership or voting rights. Approval is not necessary or required.

In closing, thank you for the opportunity to comment on the Advanced Notice of Proposed Rulemaking for Alternative Capital.

Sincerely,

  
Jane C. Melchionda  
President/CEO