MBA Massachusetts Bankers Association

May 8, 2017

Gerald Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314–3428

RE: Advanced Notice of Proposed Rulemaking for Alternative Capital

Dear Mr. Poliquin:

On behalf of our 155 commercial, cooperative and savings banks and federal savings banks and savings and loan associations with more than 69,000 employees located throughout the Commonwealth and New England, the Massachusetts Bankers Association (MBA) appreciates the opportunity to comment on the National Credit Union Administration (NCUA) Board's Advanced Notice of Proposed Rulemaking (ANPR) regarding alternative capital for federally insured credit unions.

With more than 65 percent of Massachusetts banks organized in mutual form – not unlike credit unions, MBA has serious concerns with allowing credit unions to issue alternative capital. We strongly encourage the NCUA to take no further action on this proposal. Alternative capital is inconsistent with the purpose of the credit union charter and raises significant questions regarding the continued tax exemption of the credit union industry. In addition, we believe that the NCUA lacks the statutory authority to expand the alternative capital rules beyond the limited universe of low-income designated credit unions.

If there are federal credit unions that need access to additional capital or wish to gain additional powers, we believe NCUA should be encouraging and facilitating conversions of credit unions to mutual bank charters.

Alternative Capital Threatens Tax Exempt Status of Credit Union Industry

Under the Federal Credit Union Act (FCUA), federal credit unions are exempt from taxation by federal, state or local taxing authorities, with the exception of real and personal property taxes. Federally insured state chartered credit unions are exempt from federal income tax under §501(c)(14)(A) of the Internal Revenue Code (IRC). Section 501(c)(14)(A) of the IRC provides for exemption from federal income taxes for state credit unions without capital stock and organized and operated for mutual purposes without profit.

The ANPR recognizes that supplemental capital could have an impact on the entire credit union industry's tax exempt status. Specifically, the proposal states "that part of the basis for the credit union tax exemption was that Congress recognized most credit unions could not access the capital markets to raise capital." If the credit union industry gained the ability to access capital markets to raise capital, we believe it would call into question the entire industry's tax exempt status.

In addition, alternative capital places an even greater risk to the tax exempt status of federally insured state chartered credit unions whose tax exemption is tied to being "without capital stock" through the IRC. The Board acknowledges that in some states it is possible that alternative capital instruments issued by federally

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insured state chartered credit unions could have characteristics of capital stock, which would subject these credit unions to taxation.

NCUA Lacks the Legal Authority to Permit Issuance of Alternative Capital

The FCUA defines a credit union's capital level based on a net worth ratio requirement for all credit unions and a risk-based net worth ratio requirement for credit unions the Board defines as complex. The FCUA specifically limits net worth to a credit union's retained earnings. This restriction was intentional, designed to restrict a credit union's ability to access capital markets.

The definition was intended to carry throughout the FCUA and limits the discretion granted to NCUA in formulating the risk-based net worth requirement as well as the net worth ratio. The risk-based net worth requirement specifically contains the language "net worth." By allowing alternative capital to be counted towards the risk-based net worth requirements for complex credit unions, the Board is seeking to rewrite the FCUA to expand the numerator of the risk-based net worth ratio to include items that are not part of the statutory definition of net worth. In addition, this change could affect the safety and soundness of the credit union insurance fund.

We believe that if Congress intended to allow complex credit unions to issue alternative capital, it would have authorized secondary capital when it enacted Section 1790d(d) of the FCUA in 1998.

Facilitating Conversions to Mutual Savings Banks

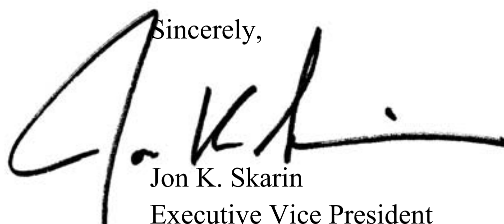
For the limited number of credit unions seeking alternative capital or unconventional growth strategies, there are other paths which would better serve their customers, better address safety and soundness concerns, and remain within the legal boundaries of the FCUA. For example, credit unions that have outgrown the charter should be encouraged to convert to a mutual bank charter. Such a charter allows the credit union to maintain its cooperative ownership and mutual structure, while expanding its abilities to support its local community.

Conclusion

As we stated above, MBA has serious concerns with the ANPR regarding alternative capital. The proposal raises a number of significant questions that could have a long-lasting impact on the credit union charter and the credit union industry. We strongly encourage the NCUA not to move forward with a further proposal unless Congress changes the credit union statutes to facilitate supplemental capital for credit unions that are not low-income designated

Thank you again for the opportunity to provide our views on the ANPR. If you have any questions or need additional information, please contact me at (617) 523-7595 or via email: jskarin@massbankers.org

Sincerely,



Jon K. Skarin
Executive Vice President