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August 7, 2017

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

Re: Notice of Proposed Rulemaking on Voluntary Mergers of Federally Insured Credit Unions; RIN 3133-AE73

Dear Mr. Poliquin:

On behalf of Andigo Credit Union (Andigo), I would like to thank you for the opportunity to offer the following comments on the NCUA's recent proposal on voluntary merger documentation, disclosures and process. Due to what we believe to be unnecessary requirements and restrictions, we are concerned that some of the details offered may inadvertently cause credit unions to forego merger opportunities altogether despite them being in the best interests of the merging credit union's membership.

The Changes Should Not Be Made Applicable to FISCUs

- A merger and the required disclosures for a merging credit union is clearly a regulatory function. Since NCUA is not the regulator of state chartered credit unions, Andigo does not believe that this rule should be made applicable to federally insured, state-chartered credit unions (FISCUs) when they choose to voluntarily merge. It appears as though the rulemaking adversely impacts the viability of the dual chartering system. FISCUs that are merging with or into another credit union should continue to follow merger-related state law requirements established by their regulator and the existing NCUA Rule 708b provisions that apply to them. Any additional standards are an unnecessary encroachment on the supervision provided by the state regulator.

The Changes to Rule 708B Removes NCUA from a Merger Impartiality Role

- It is our contention that NCUA has historically and appropriately played the role of the impartial referee on voluntary mergers. They have recognized merger decisions as market-based to be initiated by fiduciaries of merging credit unions and approved in a fair vote with reasonable disclosures that reported pertinent information regarding the impact of the merger on the member. The NCUA should not act as an advocate for or against a voluntary merger. This rule places the NCUA into an advocate's role through the merger disclosure process as it requires potentially negative disclosures, including salary and benefit increases that might be misconstrued by a member. The rule seemingly ignores the potentially positive impacts on members of much more direct issues such as the payment of merger dividends or improved products and services.

Expansion of the Scope of Employees Is Unreasonable and Cumbersome; Raises Privacy Concerns

- The current rule requires the executive salaries of any senior management official to be disclosed if an increase of 15% or over $15,000 in income or benefits is to come to any of those individuals as a part of a voluntary merger. We believe the current materiality requirement is sufficient and should be retained to exclude those payments or financial benefits that are relatively small and unlikely to cause any potential conflict of interest. In fact, the current rule

itself can be clarified to state that any increase of 15% or $15,000 in salary or benefits should be calculated on whether it is that percentage or amount above what the corresponding position would normally pay at the continuing credit union in a merger

- While the proposed rulemaking acknowledges that in very large credit unions the number of employees who may be able to influence the merger deliberation process may be higher than four, Andigo feels that the expansion of coverage to ten (or all) employees for all mergers is unwarranted For many smaller credit unions, disclosing the top ten highest paid employees would be the entire staff of the credit union. Most merging credit unions are smaller than the continuing credit union and, therefore, have fewer resources for salaries and benefits. It is perfectly reasonable to expect that an executive or employee would receive a salary or benefits higher when he or she moves to a corresponding position at a larger institution.

- In a non-merging situation, an executive from a merging credit union coming in off the street, applying for and ultimately selected for a position at the continuing credit union with a set salary and benefit package that was 15% or $15,000 above what the executive currently makes at a smaller institution, would not need to be disclosed. It doesn't seem logical to us that a merger situation be treated differently.

- Andigo believes that due to privacy concerns, no disclosure requirements should be put in place for any executive or senior management official below the highest five paid in any credit union as of the commitments made in the merger agreements.

- We believe that it is important to note that transparency is important, but so is privacy. In the case of a state-chartered credit union, the amount of salary or benefit increases in a merging credit union that are disclosed in the merger notifications should not go beyond the executives required to submit 990 Forms to the IRS. These salaries are already in the public domain. The NCUA rule should not take action to require disclosures beyond this IRS designated level for any merging credit union - federal or state chartered.

- True transparency cannot take place in mergers unless any dividend changes, including special merger dividends that will be paid to members if the merger is approved, are included in the disclosures. If the written forum provision is maintained in the final rule, the notice of special merger dividends should be disclosed to members before the deadline for the written comments to be submitted so that members can also comment on the dividend issue as it relates to the merger.

- Also important to note is that the two year requirement, both before and after a merger, for disclosing any salary or benefit increases is cumbersome, burdensome, and unworkable and extends beyond the scope of a regulatory requirement It seems inappropriate that the NCUA move into an operational and management role.

Voluntary Mergers, Although Far Superior to Involuntary Ones, Will Likely Be Reduced

- We believe the new regulation will have a negative effect on the willingness of fiduciaries of two credit unions to consider a voluntary merger and could stifle some voluntary mergers. The result

ultimately would be a potential emergency or involuntary merger with potential NCUSIF ramifications.

- Voluntary mergers are always preferable to involuntary mergers. To wait until a credit union is troubled before allowing an emergency or supervisory merger (which would come under NCUA direction and without any disclosures or member vote of any form involved) rather than allowing the credit union to negotiate a workable and satisfactory set of merger terms between the fiduciaries of two solidly capitalized credit unions, is not acting in the best interests of the credit unions involved Neither is it in the best interests of their members or the share insurance fund that might have to cover some losses in a troubled credit union involuntary merger.

- Involuntary mergers of conserved credit unions have no member vote or disclosure requirements. It is in the best interest of NCUA as administrator of the NCUSIF to allow well-planned voluntary mergers to take place without taking sides in a way that favors opposition to a merger. To create more involuntary mergers without member votes and disclosures by making member votes more controversial with one-sided disclosures is not transparency, but rather regulatory short-sightedness.

Marketplace Should Decide Merger Viability

- We feel strongly that the marketplace should dictate whether or not a merger of two fiduciaries should take place. The regulator should be concerned with the safety and soundness of credit unions, not determine their future strategic direction. Management and boards of directors are charged with this fiduciary responsibility. This rulemaking appears to us as an example of regulatory over-reach.

Member to Member Changes May Harm the NCUAs Reputation, Lead to Unwanted Litigation

- Andigo believes that this rulemaking will allow merger opponents to have access to the disclosure process, at the credit union's expense, and would give the regulator's blessing to the possibility of considerable reputation risk. It would be very difficult to balance pro-merger comments and anti-merger comments with sufficient notice to provide both, and the manner in which they are displayed could not be managed fairly, making it easy for those opposed to the merger to say whatever they wish about a merger. The consequences will lead to reputational repercussions long after the merger vote is completed, whether the vote is successful or not. To provide a written forum for any disgruntled member who had a car repossessed or a loan application denied to take his or her frustrations out on the credit union during a member vote on a merger is beyond the bounds of reason.

- It is our opinion that if the rule is enacted, lawsuits will be generated that credit unions and NCUA will spend much time in litigation and depositions to answer. Whichever way a merger vote goes, those on the other side will blame the disclosures, the credit union that drafted them, and the agency that approved them for the results.

- Since the regulation includes a provision for outside parties to have access to providing written comment for the disclosures, the potential is great for abuse by members or competitors with an agenda. Possible consequences include lack of clarity in the statements included, lack of time to participate for those who feel left out, lack of fairness in presenting both sides equally, the

necessity of editing inappropriate comments, and the order in which comments are included and printed Any one of those factors could be used by a losing party in the member vote to seek a legal remedy.

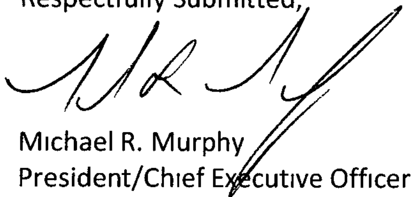
The Majority Vote Required to Approve Merger Should Remain a Majority of Members Who Vote, Not a Majority of the Entire Credit Union Membership.

- We strongly oppose requiring a majority vote of the membership of the merging credit union to approve the merger, instead of the current requirement of the majority of the members voting on the merger. The credit union cannot control voter turnout for a merger vote and should not be penalized if a majority of the membership does not vote to approve a merger.

In summary, we support NCUA's efforts to create more precision in the process by which the membership of a merging credit union votes to approve a proposed merger. However, we do not support requirements that would place an undue burden on credit unions in the merger approval process or generate disclosure of immaterial or irrelevant information to the merging credit union membership. We thank you for your time and consideration.

Thank you again for the opportunity to comment on this proposed regulation, very important to Andigo and the credit union industry. Please do not hesitate to contact us if we can provide additional information or perspective on this matter.

Respectfully Submitted,



Michael R. Murphy
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