August 1, 2017

Mr. Gerard Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314
(Sent by email)

Dear Mr. Poliquin,

Thank you for the opportunity to provide comment on the proposed rule changes for "Voluntary Mergers of Federally Insured Credit Unions." Included in my work experience, is time at public companies that have both merged and made acquisitions. It is with this perspective that I am generally supportive of the proposed changes to increase transparency, and improve disclosures to CU members considering a merger vote. However, I have concerns about the application of merger payment disclosures, and major concerns about the member-to-member communication I have shared with you below.

In terms of application, it is our position that the NCUA's proposed Rule on Voluntary Mergers applies **only** to federally regulated credit unions (FCU), and not be applicable to state regulated federally insured credit unions (FICU). 1) It is not a natural extension that regulating such activities fall into the purview of an insurer to regulate; and 2) Business practices (therefore merger practices) vary significantly state-to-state — making state regulators best positioned to supervise merger activities.

That being said, in reviewing the proposal I am left with concerns for our federally regulated brethren.

Disclosure of merger related compensation:

This is an obvious common sense requirement to reduce the potential for executive self-dealing and misuse of credit union resources. However, caution must be taken in how such a disclosure requirement is implemented. The NCUA should take steps to develop a disclosure regimen that does not create a disincentive for senior management to consider a merger (when in the best interest of the membership), or prevent the retention of key employees of the merged credit union before integration is complete.

The NCUA has developed a workable definition of covered persons to include all volunteers and the top five corporate officers. Compensation paid to covered individuals from the continuing credit union should be disclosed regardless of amount. However, the NCUA and the industry in general, will need to be careful not to stigmatize (or discourage) payments to corporate officers losing their positions as a result of a merger transaction. Traditional financial service providers such as credit unions and banks are consolidating, and high level jobs are becoming scarcer. Without compensation to covered officers of a comparable nature to that received at banks and other public companies (during mergers), credit union management has little incentive to consider, let alone actively seek a merger. In the aggregate, this inclination has the potential to put the NCUSIF at risk, as weak or struggling credit unions (or credit unions without a succession plan) left in isolation will have a higher propensity to fail — versus those that seek a merger solution under the same circumstance.

Any compensation paid to covered officers should be fair to the individual and the credit union, and be commensurate to the size, complexity and circumstance of similar financial institution mergers in their market. Reviewing prior years' compensation serves no relevant purpose and only adds to the already daunting administrative burden of a merger. The appropriateness of payments to management can be properly vetted as part of a third-party due diligence exercise and at a relatively low cost.

The success of a merger is often dependent on key personnel in IT, accounting and operations to transition systems and knowledge to the continuing credit union. This is in addition to certain market facing and credit administration employees to maintain relevance in the marketplace, along with maintaining service and credit risk management during a merger. It is prudent to offer these key employees retention bonuses to be paid once certain milestones are met.

The NCUA is considering disclosing merger related compensation to all employees. This would be a mistake as no other industry (public or mutual) exposes all employees' compensation to disclosure. As long as the aggregate merger related compensation paid to non-covered individuals is not in excess of 1% of capital (as defined in PCA or the proposed RBC), no public disclosure should be required. In the event that merger related compensation to non-covered individuals exceeds 1% of capital, only the aggregate amount of compensation being paid should be publicly disclosed. It is customary in the public sector, and for credit unions subject to IRS form 990 to disclose the compensation of top officers individually. Provided merger related compensation payments follow the concepts described in the two paragraphs above, the payments should not be discouraged or stigmatized.

Member-to-member communication:

The NCUA is considering requiring a member-to-member communication mechanism for mergers, similar to the one required in charter change votes. This well intended consideration is unprecedented and unsupported by any other business practice in the public or mutual sectors, and carries with it the potential of dire consequences to the NCUSIF. The SEC, which provides oversight for all registered securities of publicly "owned" companies in the United States, has no such communication requirement. The Treasury Department, OCC and the Supreme Court all agree that ownership in a mutually held organization such as a credit union or mutual savings bank, is of a lesser ownership claim than that of an individual that owns stock in a publically traded company. In fact, they went so far as to say ownership in a mutual savings bank (the identical structure of a credit union), is more like that of a bank depositor, as opposed to an equity stockholder. There are numerous cases and briefs filed by federal regulators linked to these cases that support the notion that mutual ownership is a lesser ownership claim — thereby carrying fewer rights than stock ownership.[1] How does the NCUA justify providing depositors

[1] Chase v. First Federal Bank of Kansas City, Society for Savings v. Bowers, Ordower v. Office of Thrift Supervision, York v. Home Loan Bank Board

with insured risk-free funds greater rights than is conveyed to owners of public stock (true equity claims)? It would be very informative if the NCUA would cite the legal authorization and precedent that would support its ability to require such a communication rule — given that all other federal regulatory agencies, state regulators and the SEC do not deem such a requirement appropriate.

Moreover, it seems credit union members agree with the Treasury Department and the courts. Their funds are insured, they can find a new service provider any time they are dissatisfied without hindrance, and a merger proposal passing or failing has absolutely no impact on their personal net worth. No wonder merger vote participation levels are so low; members don't feel like equity owners the same way they do with personal investments or 401k accounts. The NCUA makes the observation that disapproval rates are much higher at special meetings than they are by mail-in vote. While the observation is accurate, the relationship is not causal. "No" votes are not higher because of the discussion at the meetings, they are higher because most attendees are disgruntled about the change. They are not disgruntled because they fear anticipated financial harm (that's not possible), instead they have a deep affection for the merging credit union. Perhaps they were a charter member and feel they will lose a personal connection, or they are concerned about their favorite teller. Maybe they just don't want the name to change. Whatever the reason, it's not a financial reason. It's not a safety and soundness reason. It's an emotional reason.

If nothing else, merger decisions are about safety and soundness, or about the expectation the newly constituted combined entity will be stronger and better for members than they could have been individually — or it's about both points. It has to be a financial and business decision devoid of emotion. The individuals best positioned, best trained, with the most experience and most specific industry knowledge to make those decisions are the respective Board of Directors of each credit union. It is ill-advised to introduce communications from far less informed individuals that may have private undisclosed agendas, no financial risk and according to the courts, no equity claim into a merger decision. Such a rule allows anyone to say anything and provides license to then bombard the vast majority of other members who are otherwise ambivalent to the outcome. Such a process would be unfair to the membership at large, and would only serve to provide chaos to Directors at a time when they need to focus on facts. The NCUSIF is best served to remove any potential for emotional bias from merger decisions and keep merger decisions as the sole prevue of the respective Board of Directors — as every other industry does.

Thank you for the opportunity to share my thoughts on the proposed rule. I truly appreciate the NCUA Board's interest in considering the thoughts and concerns of credit unions' on such matters. If you wish to discuss in more detail, I would be delighted to engage in further discussion.

Respectfully,

Todd Harris

President & CEO, Technology Credit Union.