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September 28, 2017

VIA E-MAIL ONLY: regcomments@ncua.gov

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

Re: SW&M Comments on Emergency Mergers – Chartering and Field of Membership

Dear Mr. Poliquin:

We are writing to comment on the Notice of Proposed Rulemaking Regarding Emergency Mergers (the "Proposed Rule"), dated July 31, 2017. Our law firm has primarily represented credit unions for over 30 years, and we are involved in a large proportion of the mergers between credit unions, and the lawyers at our firm have worked on hundreds of mergers involving credit union clients.

The Proposed Rule modifies the "danger of insolvency" definition in Part 701,[1] extending the forecast horizons and fourth net worth category, with a proposed objective of protecting credit union members, institutions, and the Share Insurance Fund. The Proposed Rule also indicates that receipt of Section 208 assistance[2] appears to be a realistic, predictive indicator that a credit union will become insolvent. Through the Proposed Rule, the NCUA aims to conduct longer-term evaluations that assess the financial stability of larger credit unions and the context of emergency mergers.

We understand the NCUA's desire for flexibility in forecasting emergency mergers. In light of changes to protect the NCUSIF, we also believe the NCUA's administration of federal credit union charters creates a dual obligation to preserve and protect NCUSIF accounts and the federal credit union system. The NCUA's mission statement specifically states that the NCUA will "[p]rovide, through regulation and supervision, a safe and sound credit union system, which promotes confidence in the national system of cooperative credit."

Furthermore, it is critical to note that federal credit union charters are valuable, especially since it is well known that charters are decreasing. The NCUA and financial industry have an interest in

[1] *See* 12 CFR part 701, Appendix B.
[2] *See* 12 U.S.C. § 1788; the Federal Credit Union Act.

taking into account the value of each and every federal credit union charter. While looking to financial factors is important for determining the solvency of institutions, it should not, however, be a sole consideration. Accordingly, we recommend that the NCUA, in its capacity as a regulator, continue to contemplate non-financial considerations when evaluating emergency mergers. Such considerations include the additional elements of 1) an emergency requiring expeditious action exists, 2) where no other reasonable alternative is available, and 3) where the public interest would best be served by such an approval.[3] Although we do agree that a strong emphasis on finances is important in the context of emergency mergers, we ultimately believe a more holistic evaluation should be incorporated to preserve the value of federal credit union charters.

We also note that the Paperwork Reduction Act and Regulatory Flexibility Act discussion in the Proposed Rule describes its primary aims as regulating larger credit unions, and that the NCUA believes it should not impact a significant number of smaller credit unions, whose assets are less than $100 million. We caution the NCUA to review how the Proposed Rule will actually impact smaller credit unions. In particular, the NCUA should conduct research into whether or not the Proposed Rule affects these smaller credit unions through evaluation forecasts, prompt corrective action, and net worth restoration plans. The NCUA should explain and analyze whether subjective application of the Proposed Rule will disproportionately affect smaller credit unions with assets of $100 million or less, as examiners and analysts may be more likely to accept (or even push for) a forecast for small credit unions that reflects danger of insolvency.

While the Proposed Rule provides greater flexibility for evaluating the context of emergency mergers and promotes the efficacy of credit unions generally (an objective we support), we caution the NCUA to consider the impact the Proposed Rule will have on smaller credit unions with assets less than $100 million. The NCUA must emphasize and uphold the importance and viability of the credit union charter.

Sincerely,

STYSKAL, WIESE & MELCHIONE, LLP

William J. Adler

Timothy I. Oppelt

WJA/TIO

[3] *See* 12 U.S.C. 1785(h).