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National Association of Federally-Insured Credit Unions

July 27, 2020

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

RE: Corporate Credit Unions (RIN: 3133-AF13)

Dear Mr. Poliquin:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing to express our general support for the proposed amendments to corporate credit union rules that will provide greater flexibility with respect to investments in natural person credit union service organizations (CUSOs) and matters of internal governance. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 120 million consumers with personal and small business financial service products. While NAFCU believes that some elements of the proposal should be modified to avoid unintended restrictions on corporate credit unions and their capacity to support the credit union industry as whole, we support the overall objective of easing regulatory burden. We also encourage the NCUA to explore a framework for all federally insured credit unions that advances the same, fundamental objective of the CUSO-related amendments in the proposal; namely, making engagement with fintech companies easier to sustain continued innovation in the credit union industry.

NAFCU supports a vibrant corporate credit union system and regulatory improvements to ensure its continued strength, but we are also cognizant of the lessons learned from the past financial crisis. Given present uncertainty about the extent and duration of economic disruption caused by the COVID-19 pandemic, changes to corporate rules, both inside and outside the immediate scope of this proposal, should be evaluated through the lens of how regulatory relief can best serve the interests of the entire credit union system.

Additionally, as the NCUA considers narrowly tailored amendments to corporate rules, it should take this opportunity to reflect on the unilateral policy choices made in the aftermath of the corporate crisis. In particular, the agency should consider ways in which it can wind down the NCUA guaranteed notes (NGN) program so that credit unions that paid into the Temporary Corporate Credit Union Stabilization Fund and invested in certain corporates are made whole. The NCUA's determination that the AMEs of the various failed corporates must remain distinct means that recoveries from one estate cannot be comingled to pay obligations of other estates; however, the agency still has time to reconsider this position and invite comments from credit unions who might bear a greater loss if the NCUA proceeds along its present course.

General Comments

NAFCU believes the proposed amendments aimed at facilitating non-triggering, corporate investments in natural person CUSOs will support greater collaboration within the credit union system. For natural person credit unions, particularly those that already own or have invested in CUSOs, a corresponding benefit exists insofar as corporate credit unions can join as investors without subjecting the CUSO to certain corporate-specific rules in Part 704 of the NCUA's regulations. More generally, the ability to more easily direct small investments into ventures tailored to credit union needs is necessary to ensure long term competitive viability of the credit union industry. While the proposed amendments serve to modestly advance this interest, the NCUA should consider additional relief aimed at leveraging the strength of corporate credit unions to support the continued growth and stability of the credit union industry.

1. Corporate CUSOs

Under current § 704.11, a corporate CUSO is defined as an entity that is at least partly owned by a corporate credit union. Based on this definition, any corporate credit union equity interest in a CUSO, regardless of size, is sufficient to designate the CUSO as a corporate CUSO and subject it to additional requirements under Part 704. NAFCU supports relaxing this standard by adopting de minimis threshold measured as 25 percent or more of the CUSO's contributed equity, stock, or membership interests.

NAFCU does not agree with proposed changes to the definitions used through part 704 that alter the existing distinction between a natural person CUSO and corporate CUSO. By defining a "CUSO" to mean either a natural person or corporate CUSO, the amendments operate to limit the aggregate amount of loans that could otherwise be made to natural person CUSOs. Measuring equity investments and loans to *both* corporate and natural person CUSOs in the calculation of the aggregate limit set forth in 704.11(b) undercuts one of the core objectives of the proposal, which is to improve federally-insured credit unions ability to "compete effectively in today's technology-based financial service market." Moreover, such a change would amount to a significant departure from the existing rule. While aggregate limits on investments in natural person and corporate CUSOs is appropriate, NAFCU asks that the agency remove from the calculation loans to natural person CUSOs to preserve the level of funding allowed under the current rule.

2. Board Representation

NAFCU also supports proposed amendments that would permit greater flexibility when determining the composition of a corporate credit union's board. Under current § 704.14, eligible corporate board members must hold a senior position with the title of chief executive officer, chief financial officer, chief operating officer, or treasurer/manager at a member credit union. The proposal would no longer expressly limit the corporate credit union board to these stated positions and instead would include any person in a senior staff position at a member credit union.

3. Enterprise Risk Management

The NCUA notes in the preamble of the proposal that “[m]any corporate credit unions have integrated their enterprise risk management function into their business decision making, and at many corporate credit unions, internal corporate staff possess the skills and experience to capably manage the enterprise risk management program.” To the extent that this evolution in enterprise risk management has resulted in a superior pool of talent within corporate credit unions, NAFCU does not disagree that greater flexibility in current § 704.21 is warranted. Relaxing prescriptive requirements in current § 704.21(d) for the independent risk management expert serving on an enterprise risk management committee (ERMC) is appropriate if it enables the selection of a more capable staff member.

4. Subordinated Debt

NAFCU supports amendments to facilitate future investments in subordinated debt, as contemplated in the NCUA Board’s January 2020 rulemaking. As NAFCU has separately commented, authorizing complex and new natural person credit unions to issue subordinated debt (in addition to low income designated credit unions) can help improve the industry’s capital resiliency, ability to manage asset growth, and competitive posture relative to banks. NAFCU agrees with the proposed clarification that corporate credit unions may purchase subordinated debt instruments of natural person credit unions under a corporate credit union’s lending authority.

5. Codification of Permissible Activities for Corporate CUSOs

Current § 704.11 requires that a corporate CUSO must agree that it will limit its services to brokerage services, investment advisory services, and other categories of services as preapproved by NCUA and published on NCUA’s Website. The proposal replaces the permissible activities list from the NCUA Website with a new appendix to Part 704 (Appendix D). NAFCU does not see any advantage in codifying the list of approved activities, which would require the NCUA to amend the list through individual rulemakings. Given the pace of technological change and dynamism of fintech, NAFCU does not believe that a formal rulemaking process will provide an efficient mechanism for sustaining corporate CUSO innovation now or in the future. Accordingly, NAFCU opposes this change.

Other Opportunities for Relief

While NAFCU supports the proposal’s modest improvements to existing corporate credit union rules, NAFCU invites the agency to consider other ways to leverage the strength of the corporate system in support of the credit union industry as a whole, particularly as the nation recovers from the devastating economic impact of the COVID-19 impact.

WAL

Under current rules, the WAL of a corporate credit union's financial assets, consisting of cash, investments, and loans, but excluding derivative contracts and equity investments, may not exceed 2 years. While NAFCU understands the reason for this limit and generally agrees that corporates should focus on their role as liquidity providers, it may be appropriate to consider whether changes

to the limit could enhance corporates' ability to serve their credit union members. Specifically, the NCUA might consider whether additional flexibility to manage a longer WAL based on the corporate credit union's retained earnings and leverage ratio is one way to better leverage the strength of the corporate system. To the extent that such additional flexibility requires heightened supervision, corresponding enhancements to the agency's evaluation of corporate liquidity policies could be a reasonable tradeoff to ensure the continued safety and soundness of the credit union system.

Non-Liquidity Borrowings

A critical tool offered by corporate credit unions to help their members manage balance sheet risk comes in the form of term borrowings. However, the capacity to provide this risk management option is limited. This is because corporate credit unions face their own restrictions in terms of the maximum term of secured borrowings and the calculation of the limit for secured non-liquidity borrowings. To improve corporate credit unions' ability to meet the liquidity demands of their members and mitigate risk during these particularly uncertain times, the NCUA might consider improvements to corporate secured borrowing limits.

One option could involve extending the maximum term of secured borrowings for liquidity purposes from 180 days to 1 year. Another might involve reconsideration of the limit for non-liquidity borrowings. Currently, the limit for secured non-liquidity borrowings is the amount of Tier 1 capital in excess of five percent of moving DANA. This limit introduces inherent volatility. The unexpected movement of the DANA can rapidly constrain a corporate credit union's borrowing capacity, potentially at inopportune times. Events such as the current pandemic illustrate how the DANA creates additional pressure as corporate credit unions look to help their members manage liquidity needs in an uncertain environment. The NCUA could examine whether expressing the limit in an alternative form that is less volatile (potentially as a measure of total capital) might give corporate credit unions greater certainty, better accommodate asset growth driven by the pandemic, and reflect the growing strength of corporate balance sheets over time.

CUSO Flexibility for Federally-Insured Credit Unions

NAFCU asks that the NCUA consider development of a regulatory framework that makes it easier for all federally insured credit unions to invest and participate in an emerging market of fintech products and services, including partnerships with companies that are at the forefront of innovation in financial services. Recent surveys of NAFCU members reveal that a majority view nonbank fintech companies as their greatest source of competition in the next 2-3 years. Enhancing the ability of credit unions to meaningfully engage with new fintech companies and direct development of credit union specific products and services at an early stage could greatly strengthen the industry's competitive footing in the future. More importantly, it would help credit unions avoid stagnation under the status quo. As NCUA Chairman Rodney Hood has remarked, "the fintech sector is growing and sending a clear message to the financial industry that 'business

as usual' may not always be a viable business model."¹ Providing additional CUSO flexibility for natural person credit unions, whether by supporting new activities or better tailoring certain regulatory requirements, could help pave the way for a more dynamic market of credit union products and services.

Conclusion

NAFCU appreciates the opportunity to comment on the NCUA's corporate credit union proposal. Should you have any questions or require additional information, please do not hesitate to contact me at (703) 842-2266 or amorris@nafcu.org.

Sincerely,

A handwritten signature in black ink that reads "Andrew Morris". The signature is written in a cursive, slightly slanted style.

Andrew Morris
Senior Counsel for Research and Policy

¹ NCUA Chairman Rodney E. Hood Remarks - African-American Credit Union Coalition 21st Annual Conference (August 13, 2019) available at <https://www.ncua.gov/newsroom/speech/2019/ncua-chairman-rodney-e-hood-remarks-african-american-credit-union-coalition-21st-annual-conference>.