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# LEGAL UPDATES AND NEWS

## CROSS INDUSTRY MERGERS - WAIVE OF THE FUTURE?

Cross industry mergers may become a developing trend as community based institutions seek new expansion opportunities and economies of scale. Many credit unions and savings banks have similar balance sheets and philosophies of customer service and, therefore, a merger between such institutions may prove to be very attractive and provide many synergies to the merging institutions. Obviously, this type of transaction has political overtones in light of the tension between the credit union and banking industries over taxation and expanded powers for credit unions.

### NAFCU and 35th Annual Directors Conventions

During our recent participation at both the 2012 NAFCU Annual Convention and the 2012 Annual Directors Convention it became very clear that credit union executives are looking at credit union acquisitions of banks with considerable interest. Many executives who stopped by our booth found the novel transactions as something worth considering. In March of this year, our client Monadnock Community Bank, located in Peterborough, New Hampshire ("Monadnock") and GFA Federal Credit Union, located in Gardner, Massachusetts ("GFA"), entered into an agreement whereby GFA agreed to acquire through a purchase and assumption transaction substantially all the assets and assume substantially all the liabilities, including all deposits, of Monadnock and pay $6.4 million in cash to the shareholders of Monadnock Bancorp, Inc., the parent holding company of Monadnock.

The Monadnock transaction follows closely on the heels of the closing of United Federal Credit Union's acquisition of Griffith Savings, a mutual savings bank, in January of this year. With the addition of the Monadnock transaction, the bank and credit union regulators should become more comfortable with these types of transactions.

The Monadnock precedential transaction is currently proceeding through the regulatory process and when completed, will be the first acquisition of a stock bank by a credit union. We anticipate receiving all the regulatory approvals by the fourth quarter of this year and completing the transaction by year end.

### Credit Union Acquisitions of Banks

Acquisitions of banks by credit unions have been rare to date. This type of transaction raises a number of regulatory issues (e.g., asset compatibility, field of membership) even more so than an acquisition of a credit union by a bank. The acquisition of a bank provides a credit union with a number of benefits including potential commercial lending expertise, an expanded customer base, increased earnings potential, additional capital and an increased asset base to support increased member business lending. Since credit unions may only offer cash as merger consideration in the acquisition of a stock bank, the credit union would typically need to be larger than the bank. If the acquisition is of a mutual savings bank, no consideration would be exchanged and, therefore, the relative size of the institutions is less of a concern.

## Bank Acquisitions of Credit Unions

Somewhat more controversial is the acquisitions of credit unions by banks. Over the past ten years, there have been more of these types of transactions than credit union acquisitions of banks. In the case of a merger into a mutual savings bank, the credit union's members become members of the mutual savings bank and the net worth of the credit union is added to the capital of the savings bank, subject to purchase accounting adjustments. Under NCUA regulations adopted in 2010, the merging institutions will be required to make a determination if any of the credit union's net worth would be distributed to the members prior to the merger closing. The regulations set forth a detailed and lengthy process for this type of transaction.

Typically, the assets of the credit union are compatible with the savings bank's lending and investment authority. Certain activities of the credit union, such as participation in shared branching networks and no fee ATM networks, typically will not carry over due to restrictions imposed by such organizations and will have to be addressed through divestiture.

## Regulatory Approvals

A cross industry merger will require a number of approvals including the NCUA and any state regulator if a state credit union is involved. The approval of the bank regulator, whether the OCC in the case of a national bank or federal savings bank or a state regulator in the case of a state commercial or savings bank, will be necessary. The FDIC must also approve the transaction. In the case of the acquisition of a mutual savings bank by a credit union, the bank's members must also approve the transaction, but the credit union members do not. The acquisition of a stock bank also requires the approval of the bank's (or holding company's) shareholders.

## Conclusion

A cross industry merger opens up a new and broader range of merger partners for credit unions. In many cases, the operations and balance sheets of the institutions may be quite compatible. Although the regulatory process is more complex and may take more time than a intra-industry merger, the benefits may outweigh such burdens to the institutions.

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If you would like to learn more about cross-industry mergers, please contact one of the following attorneys of our firm. We are available to meet at your convenience and can provide management and the Board with the information necessary to make an informed decision and ensure that your Board's decision is consistent with its fiduciary duty to the members.

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