

## OFFICE OF THRIFT SUPERVISION

### **Certification of Member Vote by a State-Chartered Credit Union Converting to a Federally Chartered Mutual Savings Bank**

**Order No.:** 2005-24  
**Date:** July 20, 2005  
**Re:** OTS No. 17995

OmniAmerican Credit Union, Fort Worth, Texas (Credit Union), on July 13, 2005, requested that the Office of Thrift Supervision (OTS) verify the Credit Union's members' vote, held on July 11, 2005, to approve the Credit Union's conversion from a Texas-chartered credit union to a federal mutual savings bank. The Credit Union's members approved the proposed charter conversion, with 16,589 members voting in favor of the charter conversion, representing 76.2 percent of the members who voted, and 5,179 members voting against the charter conversion, representing 23.8 percent of the members who voted. The Credit Union submitted its request pursuant to 12 U.S.C. § 1785(b)(2)(G) and 12 C.F.R. § 708a.8, which provide that OTS, as the federal agency with jurisdiction over the Credit Union after conversion, must verify the vote of the Credit Union's members, and may disapprove the methods by which the member vote was taken or the procedures applicable to the membership vote.

OTS approved the Credit Union's application to convert to a federal mutual savings bank on July 7, 2005.<sup>1</sup> The Federal Deposit Insurance Corporation approved the proposed federal mutual savings bank's application for federal deposit insurance on June 6, 2005.

In evaluating the Credit Union's request, OTS has considered the following information:

1. The July 13, 2005, certification by the Board of Directors of the Credit Union as to this vote;
2. The July 12, 2005, certificate and report of the Inspector of Election of the Credit Union as to this vote;
3. An affidavit of mailing attesting to the fact that notice of the members' meeting was duly mailed to the membership, on three separate occasions, as required under applicable statutes and regulations;
4. Voting and ballot counting procedures used by the Credit Union;
5. A copy of Rules of Procedures and Conduct of the Special Meeting;
6. The minutes of the Special Meeting;

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<sup>1</sup> OTS Order No. 2005-22 (July 7, 2005).

7. A letter from the National Credit Union Administration (NCUA) dated March 31, 2005, preliminarily approving the methods and procedures applicable to the membership vote;
8. A non-objection letter from the Texas Credit Union Department (TCUD), dated March 22, 2005, applicable to disclosure materials used in connection with the membership vote;
9. Copies of the notices and disclosure materials, and a copy of the ballot provided to the Credit Union's members;
10. The Plan of Charter Conversion, which was voted on by the members at the Special Meeting of Members;
11. The current charter and bylaws of the Credit Union;
12. Letters from the NCUA, dated May 25, 2005, and June 28, 2005, to the Credit Union stating the NCUA's intentions to disapprove of the methods and procedures applicable to the membership vote, and the Credit Union's June 8, 2005, response to the NCUA's May 25, 2005, letter;
13. The request itself and the attachments thereto, including but not limited to a July 13, 2005, legal opinion to OTS from counsel to the Credit Union concluding that the charter conversion was duly approved by the membership of the Credit Union at a duly called and held Special Meeting of Members, and that such approval was in accordance with all applicable laws and regulations; and
14. A letter dated July 14, 2005, to OTS from counsel to the Credit Union, which includes, as an attachment, vote tally information.

OTS has reviewed the foregoing materials and, for the reasons set forth below, concludes that the Credit Union followed appropriate methods and procedures with respect to: (i) the distribution of notices regarding the members' vote, and the disclosures set forth in the materials it distributed; (ii) the conduct of the July 11, 2005, special meeting; and (iii) the counting of the ballots.

#### **Notice Procedure and Disclosure**

OTS has reviewed the text of all disclosure documents used to solicit the votes of the Credit Union members. OTS has determined that the notices: (i) complied with the requirements of 12 U.S.C. § 1785(b)(2); (ii) furnished information to each Credit Union member that was neither false nor misleading; and (iii) provided sufficient information to enable the Credit Union's members to make informed decisions on the merits of the proposed charter conversion.

We have considered the objections posited in the May 25, 2005 letter from the NCUA. The disclosures mandated by 12 C.F.R. § 708a.4(e) were made in the form required by that regulation, including the use of a border around the disclosure, a large font, capitalization and bolded type. Moreover, the mandated disclosures were placed in a prominent position in the disclosure materials by being placed on one side of a single sheet of paper. While the Credit Union included additional information on the reverse side of that paper, it clearly referred the reader to the other side, in the first sentence of the additional information.

The NCUA raised no objection to the additional information that the Credit Union placed on the reverse side of the single sheet of paper, and, in fact, preliminarily cleared the Credit Union's disclosures, including the disclosures placed on the reverse side of the boxed disclosures. Similarly, the TCUD preliminarily cleared the same disclosures.

OTS concludes that there is no reason to object to the Credit Union's addition of the information set forth on the reverse side of the boxed disclosures, because the additional information mitigates potentially misleading statements included in the NCUA's required disclosures.<sup>2</sup> For example, the third required disclosure implies that members will have no subsequent vote with respect to any conversion of the institution to the stock form of ownership and that, if there is a conversion to the stock form of ownership, the Credit Union's executives will profit by obtaining stock far in excess of that available to the institution's members. In fact, even if the management of a credit union that converts to a mutual savings bank charter ultimately proposes to convert the institution to the stock form of ownership, the members must approve that conversion under a more rigorous vote requirement than that pertaining to the conversion to a federal mutual savings bank.<sup>3</sup> Also, OTS' regulations strictly limit the amount of stock any executive may purchase in a conversion.<sup>4</sup> In addition, executives cannot purchase any more stock in the conversion than any other member.<sup>5</sup>

Furthermore, the first required disclosure states that after a conversion to a mutual savings bank, account holders with larger balances usually will have greater control of the institution than members with smaller account balances. While it is true that the standard federal mutual charter provides for one vote for each \$100 (or portion thereof) of deposits up to a maximum of 1000 votes, it is extremely unlikely that even a depositor with 1000 votes will have any semblance of "control" of the institution. This is particularly true in the case of an institution such as the Credit Union, which has over \$700 million of deposits, where (under any meaningful assumptions) a single account holder would have an insignificant portion of the institution's voting power.

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<sup>2</sup> Because the Credit Union included the additional information, and placed it appropriately, it is unnecessary for OTS to determine whether the disclosures mandated by the NCUA's regulation would by themselves be so misleading that they would taint the vote of a credit union's members.

<sup>3</sup> 12 C.F.R. § 563b.225 (2005).

<sup>4</sup> 12 C.F.R. §§ 563b.355, 563b.360, and 563b.385 (2005).

<sup>5</sup> See, e.g., 12 C.F.R. §§ 563b.320 and 563b.375 (2005).

In addition, we conclude that it is irrelevant whether the members saw the boxed disclosures or the Credit Union's supplemental disclosures first when they reviewed the materials sent to them. The boxed disclosures were prominently placed on a sheet of paper that was separately placed in the disclosure package. The Credit Union's curative statements clearly referenced the boxed disclosures on the other side of the sheet. Further, no one can ever say with authority which document the members of the Credit Union looked at first, second or third and there is no way to ensure that they would look at particular pages in any particular order.

In addition, OTS has reviewed the detailed voting data compiled by the Inspector of Election in connection with its periodic tally of the votes on the Credit Union's proposed charter conversion. That information indicates that: (a) between the first mailing of the disclosure information on April 12, 2005, and the second mailing on May 12, 2005, approximately 86.4 percent of the votes ultimately cast were received, with 77.9 percent in favor and 22.1 percent against; (b) between the second mailing of disclosure information on May 12, 2005, and the third mailing on June 11, 2005, approximately 9.1 percent of the votes ultimately cast were received, with 69.2 percent in favor and 30.8 percent against; and (c) after the third mailing on June 11, 2005, approximately 4.5 percent of the votes were received, with 57.5 percent in favor and 42.5 percent against.

While the percentage of votes for the conversion declined after the third mailing, this change cannot reasonably be attributed to the change in the presentation of the NCUA boxed disclosures for several reasons.<sup>6</sup> First, the percentage of votes for the conversion decreased by 8.7 percent, from 77.9 percent before the second mailing to 69.2 percent after the second mailing but before the third mailing, when there was no change in the presentation of the boxed disclosures. That percentage change is almost as great as the 11.7 percent decline, from 69.2 percent to 57.5 percent in favor of the conversion, that occurred after the third mailing. Second, there may have been other factors that caused this decrease in the percentage of the vote for the conversion, such as certain negative news articles.<sup>7</sup> Third, it is impossible to determine when or even whether members voting after the third mailing read the NCUA boxed disclosures and whether the information contained in those disclosures was the deciding factor in how they voted. Thus, there is no reasonable basis to conclude that the change in the presentation of the NCUA's boxed disclosures for the third mailing had any significant influence on the members' votes. Accordingly, we conclude that the manner in which all of the information was presented was adequate to inform the members.

### **Conduct of the Special Meeting**

OTS has reviewed the rules and procedures for conducting the special meeting. The procedures recognize the unique voting procedures mandated by NCUA regulations, which do not allow voting by proxies, but employ mail ballots. In addition, the Credit

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<sup>6</sup> In the third mailing, the paper on which the NCUA's boxed disclosures were printed was folded in a different manner from the way it had been folded in the first two mailings.

<sup>7</sup> See, e.g., "3 Tarrant CU's Won't Change," Fort Worth Star-Telegram, June 25, 2005, at C-1.

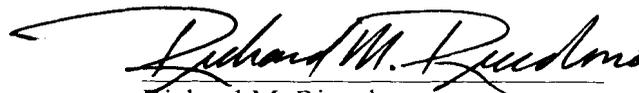
Union's method of conducting the balloting, which provided that ballots may not be changed or revoked after being sent, was consistent with NCUA regulations. The Credit Union's rules and procedures for the special meeting prohibited motions to delay, table, postpone or amend the vote. The prohibition of these motions protected members who had previously voted, and could not change or revoke their vote, from being disenfranchised by having the business of the special meeting altered when they are no longer able to participate. OTS, in light of its extensive experience overseeing regular and special meetings of mutual and stock savings associations, finds that the prohibition on these motions was a reasonable measure to protect the interests of the members who had previously voted.

### Counting of the Ballots

OTS has reviewed the Credit Union's voting and ballot counting procedures, the Report of the Inspector of Election and the board of directors' certification of the vote. The Inspector of Election determined that at the July 11, 2005 special meeting, a quorum of members was present. In addition, the Inspector of Election represented that he collected, examined and tallied the ballots received in connection with the vote at the special meeting and by mail. Furthermore, the Inspector of Election attested to the accuracy of the counting of the ballots.

Based on the facts and certifications in the above listed documents submitted by the Credit Union to OTS and our independent review of the disclosures, methods and procedures used in connection with the Credit Union's membership vote on the charter conversion, OTS hereby verifies the Credit Union's member vote of July 11, 2005, to approve the Credit Union's conversion from a state-chartered credit union charter to a federal mutual savings bank. In addition, OTS hereby determines not to disapprove of the methods by which the membership vote was taken or the procedures applicable to the Credit Union's membership vote on the charter conversion.

By order of the Director of the Office of Thrift Supervision, or his designee,  
effective July 20, 2005.



Richard M. Riccobono  
Acting Director  
Office of Thrift Supervision