CREDIT UNION ACT (EXCERPT)
Act 215 of 2003

PART 6
MERGER, CONSOLIDATION, CONVERSION

490.371 Credit unions; merger.

Sec. 371. (1) Two or more domestic credit unions may merge into 1 of the credit unions, or into a newly formed domestic credit union, if all of the following are met:

(a) The credit union board of each constituent credit union by majority vote adopts a plan of merger that includes all of the following:

(*i*) The name of each constituent credit union and the name of the surviving credit union.

(*ii*) The terms and conditions of the proposed merger, including the manner and basis of converting the member shares in each constituent credit union into member shares in the surviving credit union, or into cash or other property, or into a combination of shares, cash, or other property.

(*iii*) A statement of any amendment to the certificate of organization of the surviving credit union affected by the merger or a statement that no changes are to be made in the certificate of organization of the surviving credit union.

(*iv*) Any other provisions concerning the proposed merger that the constituent credit unions consider necessary or desirable.

(b) If the credit union board of each constituent credit union adopts the plan of merger, the constituent credit unions submit the plan of merger to the director. Each constituent credit union shall submit the time and place of the meeting of the credit union board at which it approved the plan, the vote of the board members on approving the plan, and a copy of the resolution of the credit union board approving the plan to the director with the plan of merger.

(c) Subject to subsection (6), the members of each constituent credit union except the surviving credit union approve the plan of merger, at a special membership meeting called for that purpose or by mail ballot. If the vote is held at a special membership meeting, the credit union board shall provide each member with written notice of the meeting that states the purpose of the meeting, at least 7 days and not more than 30 days before the meeting. The plan of merger is approved if a majority of the members of the constituent credit union that vote on the merger vote in favor of the merger.

(d) If the membership of a constituent credit union approves of a plan of merger under subdivision (c), the credit union shall notify the director that the plan of merger is approved, the vote by which the members approved the plan, and a copy of the meeting notice if the plan was approved at a special membership meeting or the ballot and mailing date and closing date if the plan was approved by mail ballot of the members.

(e) The director grants final approval of the plan of merger. The director shall grant final approval of the plan if all of the requirements of subdivisions (a) to (d) are met.

(2) One or more domestic credit unions may merge with 1 or more foreign credit unions if both of the following are satisfied:

(a) The merger is permitted by the law of the jurisdiction under whose law each foreign constituent credit union is organized and each foreign constituent credit union complies with that law in effecting the merger.

(b) Each domestic constituent credit union complies with subsection (1).

(3) If a plan of merger under subsection (1) or (2) is approved, each constituent credit union shall execute and file a certificate of merger with the director that contains all of the following:

(a) The statements required in subsection (1)(a)(*i*) and (*iii*).

(b) A statement that the plan of merger has been approved by the members of the constituent credit unions required to vote under subsection (1)(c).

(c) A statement of any assumed names the surviving credit union will use in this state if the director approves. The statement shall specify each new assumed name of the surviving credit union, each current assumed name the surviving entity retains, and each assumed name transferred to the surviving entity from another constituent credit union.

(d) The proposed effective date of the merger.

(4) When a merger takes effect, all of the following apply:

(a) Every other constituent credit union merges into the surviving credit union and the separate existence of every constituent credit union except the surviving credit union ceases.

(b) All property, debts, causes of action, and other interests of, belonging to, or due to each constituent credit union are vested in the surviving credit union without further act or deed and without reversion or impairment.

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(c) The surviving credit union has all of the liabilities of each constituent credit union.

(d) A proceeding pending against any constituent credit union may be continued as if the merger had not occurred or the surviving credit union may be substituted in the proceeding for the constituent credit union if the existence of the constituent credit union ceased.

(e) The certificate of organization of the surviving credit union is amended to the extent provided in the certificate of merger.

(f) The membership shares in each constituent credit union are converted into membership shares in the surviving credit union, cash, or other property as provided in the plan of merger. If a person is a member of more than 1 of the constituent credit unions, the person is entitled to only 1 membership in the surviving credit union.

(g) The surviving credit union is liable for, and is subject to service of process in a proceeding in this state for the enforcement of, any obligation of a domestic constituent credit union.

(5) If the surviving credit union in a merger under subsection (2) is a foreign credit union, and the surviving credit union transacts business in this state, it shall comply with the provisions of this act concerning foreign credit unions.

(6) The director may waive the membership vote described in subsection (1)(c) for a constituent credit union if he or she determines that it is in the best interests of the membership of the constituent credit union or that the constituent credit union is insolvent or in imminent danger of becoming insolvent.

(7) Credit unions with different fields of membership may merge under this section.

History: 2003, Act 215, Eff. June 1, 2004;—Am. 2004, Act 471, Imd. Eff. Dec. 28, 2004;—Am. 2016, Act 156, Eff. Sept. 7, 2016.

490.372 Conversion of domestic credit union into foreign credit union.

Sec. 372. (1) A domestic credit union may convert into a foreign credit union under this section if all of the following are met:

(a) At least 30 days before voting on a plan of conversion under subdivision (b), the credit union board gives written notice to the credit union's members that it is considering a conversion. The credit union board shall mail the notice to the credit union's members and shall not include any other mailing with the notice. The notice shall include all of the following:

(*i*) A brief statement of why the credit union board is considering the conversion.

(*ii*) A brief statement of the major positive and negative effects of the proposed conversion.

(*iii*) A request for members' written comments on the proposed conversion.

(b) The credit union board approves of a plan of conversion and files the plan of conversion with the commissioner. An affirmative vote of 2/3 of the entire credit union board is required to approve a plan of conversion. The plan of conversion shall meet all of the following:

(*i*) The conversion plan discloses to the members information concerning the advantages and disadvantages of the proposed conversion and contains a statement indicating any material differences in powers of the converted credit union.

(*ii*) The conversion is not intended to circumvent a pending supervisory action initiated by the commissioner or another regulatory agency because of a concern over the safety and soundness of the credit union.

(*iii*) The converted credit union is likely to be economically viable.

(c) The members of the credit union approve of the plan of conversion by a 2/3 vote of the members voting on the plan. Subject to subsection (2), a member may vote at a special meeting called to vote on the plan of conversion or by mail ballot. Before the vote, the credit union board shall call a special meeting of the members to provide information on the plan. At least 14 days before the meeting, the credit union board shall mail to each member a notice of the meeting and a ballot with a postage paid return envelope. The notice shall state the date, at least 15 days following the meeting, by which the member must return the ballot and the methods permitted for casting a vote, describe briefly the reasons for and the major positive and negative effects of the conversion, and state how members may obtain copies of the conversion plan. The credit union board shall count the votes cast by members upon the expiration of the time given to the members to return their ballots.

(d) The credit union files with the commissioner copies of member comments submitted to the credit union under subdivision (a)(*iii*) and certified copies of records of all proceedings held by the credit union board and members of the credit union.

(e) If required by the laws of the applicable jurisdiction, the credit union files with the commissioner a certified copy of the consent or approval of the appropriate regulatory authority with jurisdiction over foreign credit unions chartered by that authority.

(2) If the commissioner approves of the method before the vote, the credit union board may establish an

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alternative method for accepting votes from members of a converting domestic credit union on the plan of conversion under subsection (1)(c) if the alternative method is reasonably calculated to ensure each member has an opportunity to vote.

(3) If all of the conditions required by this section are met and the commissioner determines that any notices to members were accurate, timely, and not misleading, and that conduct of the vote on the conversion plan was fair and lawful, the commissioner shall approve the conversion and the conversion is effective.

History: 2003, Act 215, Eff. June 1, 2004.

490.373 Conversion of domestic credit union into mutual savings bank or mutual savings association.

Sec. 373. (1) A domestic credit union may convert into a mutual savings bank or mutual savings association if all of the following are met:

(a) At least 30 days before voting on a plan of conversion under subdivision (b), the credit union board gives written notice to the credit union's members that it is considering a conversion. The credit union board shall mail the notice to the credit union's members and shall not include any other mailing with the notice. The notice shall include all of the following:

(*i*) A brief statement of why the credit union board is considering the conversion.

(*ii*) A brief statement of the major positive and negative effects of the proposed conversion.

(*iii*) A request for members' written comments on the proposed conversion.

(b) The credit union board approves of a plan of conversion and files the plan of conversion with the commissioner. An affirmative vote of 2/3 of the entire credit union board is required to approve a plan of conversion. The plan of conversion shall meet all of the following:

(*i*) The conversion plan discloses to the members information concerning the advantages and disadvantages of the proposed conversion and contains a statement indicating any material differences in powers between a credit union and a mutual savings bank or mutual savings association.

(*ii*) The conversion is not intended to circumvent a pending supervisory action initiated by the commissioner or another regulatory agency because of a concern over the safety and soundness of the credit union.

(*iii*) The conversion plan does not provide any official of the converting credit union with any remuneration or other economic benefit in connection with the conversion.

(*iv*) After conversion, the mutual savings bank or mutual savings association is likely to be economically viable.

(c) The credit union board shall call a special meeting of the members to vote on the conversion plan and mail to each member notice of the meeting and proposed conversion 90 days before the date of the special meeting. The notice shall include all of the following:

(*i*) A summary of the positive and negative effects of the proposed conversion.

(*ii*) A statement that the officials will not receive any remuneration or other economic benefit in connection with the conversion of the domestic credit union.

(*iii*) A statement that any interested person may obtain more detailed information about the conversion from the domestic credit union at its principal place of business, or by any method approved in advance by the commissioner.

(*iv*) A statement that the credit union board may substantively amend the proposed plan of conversion before the special meeting based on comments from regulatory authorities or any other reason and that the credit union board may terminate the proposed plan of conversion.

(*v*) Instructions for obtaining a copy of the conversion plan.

(*vi*) The date of the special meeting and a statement that the vote on the conversion will close on that date.

(*vii*) Any other information required by the commissioner.

(d) At least 60 days before the special meeting described in subdivision (c), the credit union board posts a copy of the notice required in subdivision (c) in each branch, service center, or other location in this state where members may transact business with the credit union, in at least 12-point type, displayed prominently in an area visible to members before they transact business.

(e) At least 60 days before the special meeting described in subdivision (c), if the credit union conducts any member transactions through the use of an internet website, the credit union board displays the information included in the notice required in subdivision (c) in a conspicuous location on that website.

(f) Thirty days before the special meeting of the members, the credit union board mails a notice of the meeting and proposed conversion. The notice shall include all of the information described in subdivision (c) for the 90-day notice and shall include the date, time, and place of the special member meeting, a ballot and postage-paid return envelope, and a summary of the methods permitted for casting votes.

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(g) If the plan of conversion is substantively amended by the credit union board, at least 30 days before the vote of the members on the plan the credit union board shall mail a notice to each member. The notice shall contain the information concerning the amended plan of conversion described in subdivision (c) for a notice under that subdivision.

(h) At a special meeting of members, the members, by a 2/3 vote of members voting, approve of the conversion and the plan of conversion. A member may vote in person or by mail. With the prior approval of the commissioner, a domestic credit union may accept member votes by an alternative method that is reasonably calculated to ensure each member has an opportunity to vote.

(i) The domestic credit union files with the commissioner all of the following:

(*i*) Certified copies of records of all proceedings held by the credit union board and members of the domestic credit union.

(*ii*) Copies of member comments submitted to the domestic credit union under subdivision (a)(*iii*).

(*iii*) If that consent or approval is required, a certified copy of the consent or approval of any state or federal regulatory authority with jurisdiction over the mutual savings bank or mutual savings association after the conversion and, if a holding company is to be formed in connection with the conversion, the regulations of the federal reserve board of governors or of the office of thrift supervision applicable to holding companies.

(*iv*) Verification that deposits in the converted mutual savings bank or mutual savings association qualify for federal insurance.

(2) If the requirements of this section are met and the commissioner determines that the notices to members were accurate, timely, and not misleading, and that conduct of the vote on the conversion plan was fair and lawful, the commissioner shall approve the conversion and the conversion is effective.

(3) Except as otherwise required by the commissioner, this section does not apply to a domestic credit union that submitted to the commissioner a plan of conversion into a mutual savings bank or mutual savings association before the effective date of this act.

History: 2003, Act 215, Eff. June 1, 2004;—Am. 2004, Act 471, Imd. Eff. Dec. 28, 2004.

490.374 Conversion of domestic credit union into bank, stock savings bank, or stock savings and loan association.

Sec. 374. (1) A domestic credit union may convert into a bank, stock savings bank, or stock savings and loan association if all of the following are met:

(a) At least 30 days before voting on a plan of conversion under subdivision (b), the credit union board gives written notice to the credit union's members that it is considering a conversion. The credit union board shall mail the notice to the credit union's members and shall not include any other mailing with the notice. The notice shall include all of the following:

(*i*) A brief statement of why the credit union board is considering the conversion.

(*ii*) A brief statement of the major positive and negative effects of the proposed conversion.

(*iii*) A complete and accurate description of the differences between a credit union and a bank, stock savings bank, or stock savings and loan association, as appropriate.

(*iv*) A request for members' written comments on the proposed conversion.

(b) By an affirmative vote of 2/3 of the entire credit union board, the credit union board approves of a plan of conversion and files the plan of conversion with the commissioner. The conversion plan shall include all of the following:

(*i*) The member eligibility record date and the subscription offering priority established in connection with any proposed stock offering.

(*ii*) A business plan, including a detailed discussion of how the capital acquired in the conversion will be used, expected earnings for at least a 3-year period following the conversion, and a justification for any proposed stock repurchases.

(*iii*) A full appraisal report, prepared by an independent appraiser, of the value of the credit union and the pricing of the stock to be sold in the conversion transaction.

(*iv*) A legal opinion that any proposed stock offering complies with state and federal law.

(*v*) Copies of notices to be provided to members under subdivisions (d) and (e).

(c) The commissioner grants preliminary approval of the plan of conversion approved by the credit union board. The commissioner shall review the contents of the plan and member comments on the plan and grant preliminary approval of the plan if the commissioner is satisfied of all of the following:

(*i*) The conversion plan discloses to the members information concerning the advantages and disadvantages of the proposed conversion, contains a complete and accurate description of the differences between a credit union and a bank, stock savings bank, or stock savings and loan association, as appropriate, and contains a statement indicating any material differences in powers between a credit union and a bank,

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stock savings bank, or stock savings and loan association, as appropriate.

(*ii*) The conversion is not intended to circumvent a pending supervisory action initiated by the commissioner or another regulatory agency because of a concern over the safety and soundness of the credit union.

(*iii*) The conversion plan does not provide any official of the converting credit union with any remuneration or other economic benefit in connection with the conversion.

(*iv*) The conversion plan does not permit the converting credit union to loan funds or otherwise extend credit to any person to purchase the capital stock of the bank, stock savings bank, or stock savings and loan association.

(*v*) After conversion, the bank, stock savings bank, or stock savings and loan association is likely to be economically viable.

(d) If the commissioner grants preliminary approval under subdivision (c), the credit union board shall call a special meeting of the members to vote on the conversion plan and mail to each member notice of the meeting and proposed conversion 90 days before the date of the special meeting. The notice shall include all of the following:

(*i*) A summary of the positive and negative effects of the proposed conversion.

(*ii*) A statement that the officials will not receive any remuneration or other economic benefit in connection with the conversion of the domestic credit union.

(*iii*) A statement that any interested person may obtain more detailed information about the conversion from the domestic credit union at its principal place of business, or by any method approved in advance by the commissioner.

(*iv*) If the conversion plan includes a distribution of a portion of the credit union's net worth to members, a statement describing the amount of the distribution, the form of the distribution, and eligibility requirements to receive a distribution.

(*v*) The par value and approximate number of shares of capital stock to be issued and sold under the proposed plan of conversion.

(*vi*) A statement that savings and share account holders will continue to hold accounts in the converted bank, stock savings bank, or stock savings and loan association identical as to dollar amount and general terms, and that their accounts will continue to be insured.

(*vii*) A statement that borrowers' loans will be unaffected by conversion, and that the amount, rate, maturity, security, and other conditions will remain contractually fixed as they existed before conversion.

(*viii*) A statement that the credit union board may substantively amend the proposed plan of conversion before the special meeting based on comments from regulatory authorities or any other reason and that the credit union board may terminate the proposed plan of conversion.

(*ix*) Instructions for obtaining a copy of the conversion plan.

(*x*) The date of the special meeting and a statement that the vote on the conversion will close on that date.

(*xi*) Any other information required by the commissioner.

(e) At least 60 days before the special meeting described in subdivision (d), the credit union board posts a copy of the notice required in subdivision (d) in each branch, service center, or other location in this state where members may transact business with the credit union, in at least 12-point type, displayed prominently in an area visible to members before they transact business.

(f) At least 60 days before the special meeting described in subdivision (d), if the credit union conducts any member transactions through the use of an internet website, the credit union board displays the information included in the notice required in subdivision (d) in a conspicuous location on that website.

(g) Thirty days before the special meeting of the members, the credit union board mails a notice of the meeting and proposed conversion to the members. The notice shall include all of the information described in subdivision (d) for the 90-day notice and shall include the date, time, and place of the special member meeting, a ballot and postage-paid return envelope, and a summary of the methods permitted for casting votes.

(h) If the plan of conversion is substantively amended by the credit union board, at least 30 days before the vote of the members on the plan the credit union board shall mail a notice to each member. The notice shall contain the information concerning the amended plan of conversion described in subdivision (d) for a notice under that subdivision.

(i) At a special meeting of members, the members, by a 2/3 vote of members voting, approve of the conversion and the plan of conversion. A member may vote in person or by mail. With the prior approval of the commissioner, a domestic credit union may accept member votes by an alternative method that is reasonably calculated to ensure each member has an opportunity to vote.

(j) The domestic credit union files with the commissioner all of the following:

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(*i*) Certified copies of records of all proceedings held by the credit union board and members of the domestic credit union.

(*ii*) Copies of member comments submitted to the domestic credit union under subdivision (a)(*iii*).

(*iii*) If that consent or approval is required, a certified copy of the consent or approval of any state or federal regulatory authority with jurisdiction over the bank, stock savings bank, or stock savings and loan association after the conversion and, if a holding company is to be formed in connection with the conversion, the regulations of the federal reserve board of governors or of the office of thrift supervision applicable to holding companies.

(*iv*) Verification that deposits in the converted bank, stock savings bank, or stock savings and loan association qualify for federal insurance.

(2) If the requirements of this section and the regulations of the federal agency providing federal deposit insurance regarding mutual-to-stock conversions are met, and the commissioner determines that the notices to members were accurate, timely, and not misleading, and that conduct of the vote on the conversion plan was fair and lawful, the commissioner shall approve the conversion and the conversion is effective.

History: 2003, Act 215, Eff. June 1, 2004;—Am. 2004, Act 471, Imd. Eff. Dec. 28, 2004.

490.375 Rights, obligations, relationships, and trusts of converting credit union.

Sec. 375. (1) Except as provided in subsection (2), if a conversion becomes effective under section 372, 373, or 374, the converted entity is a continuation of the converting credit union and all the property and interests in property and every cause of action, right, privilege, interest, and asset of the converting credit union is immediately and without any conveyance, transfer, or other action vested in the converted organization. Every right, obligation, and relationship of the converting credit union to or in respect to any person, estate, creditor, member, depositor, trust, trustee, collective bargaining agreement, or beneficiary of any trust or fiduciary function continue unimpaired. The converted organization shall continue to hold all the rights, obligations, relationships, and trusts, and the duties and liabilities connected with them, and shall execute and perform each and every trust and relationship in the same manner as if the credit union had not converted. The conversion does not release the converted organization from its obligations to pay and discharge all the liabilities created by law or incurred by the converting credit union before the conversion, or any tax imposed by the laws of this state up to the day of the conversion in proportion to the time that has elapsed since the last preceding tax payment, or any assessment, penalty, or forfeiture imposed or incurred under the laws of this state before the date of the conversion.

(2) Within 1 year after the conversion, the commissioner may for good cause require a converting credit union to divest itself of an asset that does not conform to the legal requirements relative to assets acquired and held by the converted organization.

(3) If a converting credit union was appointed in a fiduciary capacity by a court or governmental tribunal, agency, or officer, the converted organization shall file an affidavit with the appointing authority setting forth the fact of conversion, the name and address of the converted organization, and the amount of its capital and surplus. A converted organization acting as a fiduciary by appointment of a court is subject to removal by a court of competent jurisdiction.

History: 2003, Act 215, Eff. June 1, 2004.

490.376 Conversion of foreign credit union into domestic credit union.

Sec. 376. (1) A foreign credit union may convert to a domestic credit union if all of the following are met:

(a) The foreign credit union complies with the applicable law under which it is chartered for a conversion under that law.

(b) The credit union board files a certificate of organization with the commissioner, approved and executed in triplicate by a majority of the credit union board.

(c) After executing the certificate of organization, a majority of the directors adopt bylaws for the governance of the credit union consistent with this act and execute any other agreements or documents and take any other action required to complete the conversion.

(d) After an examination of the credit union and the proceedings of the directors and members concerning the conversion, the commissioner approves of the certificate of organization filed under subdivision (b).

(e) If the commissioner approves the certificate of organization, the commissioner shall notify the applicants of the commissioner's decision and shall immediately issue a certificate of approval attached to the duplicate certificate of organization and return it to the credit union. The certificate shall indicate that the conversion complies with the laws of this state and that after conversion the credit union and all its members, officers, and employees have the same rights, powers, and privileges and are subject to the same duties, liabilities, and obligations that apply to domestic credit unions under this act.

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(2) The credit union shall pay the expenses of the examination described in subsection (1)(d), in an amount established by the commissioner. The amount paid for the examination is not refundable.

(3) If the commissioner approves a conversion, the credit union shall pay an operating fee determined under section 201, on a prorated basis for the operating fee period in which the conversion becomes effective. The date that the conversion becomes effective is the basis for calculating the proration.

(4) If a conversion becomes effective under this section, the converted domestic credit union is a continuation of the converting foreign credit union and all the property and interests in property and every cause of action, right, privilege, interest, and asset of the converting foreign credit union is immediately and without any conveyance, transfer, or other action vested in the converted domestic credit union. Every right, obligation, and relationship of the converting foreign credit union to or in respect to any person, estate, creditor, member, depositor, trust, trustee, collective bargaining agreement, or beneficiary of any trust or fiduciary function continue unimpaired. The converted domestic credit union shall continue to hold all the rights, obligations, relationships, and trusts, and the duties and liabilities connected with them, and shall execute and perform each and every trust and relationship in the same manner as if it had after the conversion assumed the trust or relationship and obligations and liabilities connected with the trust or relationship.

(5) Any directors of the foreign credit union converting to a domestic credit union under this section that meet the criteria described in section 341(8) may continue as directors of the domestic credit union.

History: 2003, Act 215, Eff. June 1, 2004.

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