

June 22, 2007

Ms. Linda Jekel  
Director of Credit Unions  
Department of Financial Institutions  
P.O. Box 41200  
Olympia, WA 98504-1200

Re: Alternative Share Insurance Draft Regulations – Commentary on June Draft

Dear Ms. Jekel:

We have reviewed the June 15 draft of the Division of Credit Union's ("DCU") Credit Union Alternative Share Insurance rules (the "[June Draft](#)"). As you are aware, we represent the Washington Bankers Association and the Washington Independent Community Bankers Association and provide these comments on their behalf. We are SAD (shocked, appalled, and dismayed) by the lack of a deliberative process to date.

We have provided you with three detailed commentaries on the rules. These three commentaries are:

- [Commentary dated March 15, 2007](#)
- [Commentary dated April 19, 2007](#)
- [Commentary dated May 25, 2007](#)

We had anticipated this process to be deliberative. We had expected this process to be a fair exchange of ideas. It has been neither. It appears that extending the process has provided no added value. We see little reason to continue to participate in a process that rings hollow unless there are material process improvements. Please respond to our issues in a thoughtful and deliberative manner. We have afforded you that courtesy, we expect the same.

**Shocked.** Our last commentary expressed concern about the "contagion of fear" that was the down-fall of the Rhode Island Share Insurance Fund as articulated in the report "[Carved in Sand](#)." Our commentary drew from this real world experience to point out that the rules should require a private fund to have a source of funds beyond assessments that could be immediately drawn upon to avoid bank runs. We were **shocked** when our commentary during the *informal* hearing of May 30, 2007 ([link](#)) was interrupted by the Director of the Division of Credit Unions questioning the relevancy of Rhode Island's report to this rulemaking process. It is self-evident that the failure of a private deposit insurance system is relevant to the approval process for private deposit insurance. Those who fail to learn from history are doomed to repeat it.

**Appalled.** Even though "Carved in Sand" makes a strong public policy argument for the need for a source of funds beyond industry assessments, DCU has apparently elected to take quite the opposite approach. Paragraph -100(13) as proposed in the June Draft eliminates a requirement that, among other things, would require the insurer to impose a special assessment in the event that the equity ratio falls below certain minimum standards as determined by the Director of the Washington State Department of Financial Institutions. We are **appalled** that DCU would adopt American Share Insurance's ("ASI") commentary dated May 30, 2007 ([link](#)) that this requirement be dropped from the rules in order to blindly accept what the state of Ohio determines to be adequate.

**Dismayed.** We have learned from this process that an extended process is not necessarily a more deliberative process. Much to our **dismay** few of our articulated suggestions have been adopted. Further, even though DCU has articulated *how* the changes have been made from draft to draft, a process that only requires literacy; *why* DCU has proposed the rules it has and *why* it has made the amendments it has made remains a mystery to us.

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It appears to us that this process is designed to promulgate rules to *legitimize* rather than to *evaluate* ASI's anticipated application to DFI. The proposed rules require the submission of information and in random places articulate an ever vanishing set of standards in which the DCU will evaluate an application. We suggest that the final draft add a new section devoted exclusively to the manner in which the application will be evaluated. The section should provide for clearly articulated and objective standards consistent with legislative intent, especially addressing objective tests for geographic diversity and standards for other sources of funds beyond assessments.

As drafted, we think the rules fall precipitously short of legislative intent. Absent material revisions to the final CR-102 draft consistent with our commentaries, we are prepared to make our case before the [Joint Administrative Rules Review Committee](#) of the Washington State Legislature.

Should DCU continue to, among other things, ignore the need for any private deposit insurance system to have a credible source of funds beyond industry assessments and approve private deposit insurance absent such feature, we believe the state's general fund and the Washington state taxpayer are at unnecessary risk. We think the legislature should consider legislation that will protect the integrity of the state's general fund by requiring special assessments on all state chartered credit unions to the extent necessary to cover any member insured losses prior to the use of any other special assessments or general tax funds. If the state chartered credit unions desire "a choice," as articulated by commentary of the Washington Credit Union League dated May 25, 2007, ([link](#)) then it is reasonable that the beneficiaries of that choice bear the risk, in its entirety.

Thank you for the opportunity to comment.

Very truly yours  
John L. Bley of Foster Pepper  
On behalf of the WBA and the WICBA