September 5, 2016

Filed electronically
International Accounting Standards Board
IFRS Foundation
30 Cannon Street
London, EC4M 6XH
United Kingdom

Re: Information Request—Developing Accounting Policies by Reference to the *Conceptual Framework*

Dear Sir or Madam:

World Council of Credit Unions (World Council) appreciates the opportunity to comment in response to the International Accounting Standards Board's (IASB) "Information Request—Developing Accounting Policies by Reference to the *Conceptual Framework*." World Council is the leading trade association and development organization for the international credit union movement. Credit unions are cooperative depository institutions that operate to promote thrift and to provide their members with loans and other financial services at fair rates. Worldwide, there are over 60,000 credit unions in 109 countries with USD 1.8 trillion in total assets serving 223 million physical person members.[1]

Question 1: Has your company used the Conceptual Framework as a guide in developing accounting policies?

The *Conceptual Framework* has had a significant impact on credit union regulatory capital standards developed by credit union prudential regulatory agencies. This is because many credit union regulatory capital standards require that a capital instrument qualify as "equity" on an accounting basis in addition to meeting other criteria set by the Basel Committee on Banking Supervision in the Basel III capital accord.[2] Standards requiring capital instruments to qualify as equity on an accounting basis include Basel III Common Equity Tier 1 (CET1)—which is the most desirable form of regulatory capital under Basel III—as well as for many jurisdictions' requirements for Basel III Additional Tier 1 (AT1) capital instruments.

Credit unions are cooperative organizations that issue shares and/or other types of capital instruments to their members and sometimes to non-members. In many jurisdictions, the credit union shares are non-redeemable or only redeemable under limited circumstances. In general, these classes of shares or similar instruments with no or limited redemption features qualify as equity and as regulatory capital under current rules because they are sufficiently permanent to absorb losses incurred by the credit union that exceed retained earnings.

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[1] World Council of Credit Unions, *2015 Statistical Report* (2016), *available at* http://www.woccu.org/publications/statreport.
[2] Basel Committee on Banking Supervision, *Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems* at 12-19 & n.13 (2011), *available at* http://www.bis.org/bcbs/basel3.htm.

A few credit union systems, however—including Great Britain, Ireland, and the United States of America—also have classes of shares that are withdrawable or redeemable on demand and are liabilities because they are the functional equivalent of deposits. These products use parallel nomenclature to bank deposit products, such as "share draft account" as an equivalent term for current accounts, and "share certificate" as an equivalent term for certificates of deposits.[3] These shares can represent the members' ownership interest in the credit union as a form of legal equity whether or not the shares are equity or liabilities on an accounting basis.[4]

World Council urges the IASB to give detailed consideration to the issue of cooperative regulatory capital instruments qualifying as equity. Capital instruments issued by credit unions and other mutuals typically have no or limited redemption features, and these capital instruments therefore usually qualify as equity under the current *Conceptual Framework*. World Council urges the Board to continue to classify cooperative capital instruments with no or limited redemption features as equity under the updated *Conceptual Framework*.

The IASB Staff Paper *Financial Instruments with Characteristics of Equity research project: Classification and presentation*[5] presented in June 2016 only considered the scenario of shares redeemable on demand, and this Staff Paper concluded that such shares would be liabilities under both the current and the proposed *Conceptual Framework*.

The scenario considered in this Staff Paper does not get to the heart of the matter concerning credit union capital shares, which are rarely redeemable on demand. We urge the IASB to research scenarios that are more relevant to the credit union shares as equity regulatory capital issue, such as scenarios involving cooperative shares with no redemption rights or limited rights of redemption. We have included examples of standards for credit union capital instruments that qualify as equity under the current *Conceptual Framework*, below, in response to Question 2(a).

Question 2(a): Please describe the accounting policies that have been developed by reference to the Conceptual Framework

Cooperative shares that qualify as regulatory capital form an important part of credit unions' capital positions in many jurisdictions, and these shares have successfully absorbed billions of dollars in losses in the past. This comment letter discusses the shares as regulatory capital standards developed under the current *Conceptual Framework* for cooperative shares and similar instrument issued by other types of mutual depository institutions in:

(i) Australia;

(ii) Canada;

[3] *See, e.g.*, 12 U.S.C. § 1757(6) ("[T]o receive from its members . . . (A) shares which may be issued at varying dividend rates; (B) share certificates which may be issued at varying dividend rates and maturities; and (C) share draft accounts . . ."), *available at* https://www.law.cornell.edu/uscode/text/12/1757.
[4] *See, e.g.*, *id.* (defining shares issued by federal credit unions as "representing equity" as a legal matter).
[5] International Accounting Standards Board, *Staff Paper: Financial Instruments with Characteristics of Equity Research Project* (June 2016), *available at* http://www.ifrs.org/Meetings/MeetingDocs/Other%20Meeting/2016/AP5-Financial-Instruments-with-Characteristics-of-Equity-CMAC-GPF.pdf.

(iii) the European Union's Capital Requirements Directive (CRD IV) Package;

(iv) Great Britain; and

(v) the United States of America.

i. Australia

In Australia, credit unions, as well as mutual banks and mutual building societies, may issue instruments that qualify as CET1 capital called "Mutual Equity Interests" if another type of capital instrument—such as Basel III Additional Tier 1 (AT1) or Tier 2 capital instruments—become impaired by losses.

The Australian Prudential Regulation Authority (APRA) in 2014 promulgated the regulatory authority for Mutual Equity Interests in "Attachment B" and "Attachment K" of APRA Prudential Standard (APS) 111.[6]

The below list combines the relevant aspects of APRA's Attachment B and Attachment K of APS 111 to provide the required terms and conditions for Mutual Equity Interests comprehensively:

- the instrument represents the most subordinated claim in liquidation of the issuer;
- the principal amount of the instrument is perpetual (i.e. it has no maturity date) and is never repaid outside of liquidation (other than discretionary repurchases subject to APRA approval);
- the issuer, and any other member of a group to which the issuer belongs, does nothing to create an expectation at issuance that the instrument will be bought back, redeemed or cancelled and the statutory or contractual terms of the instrument do not include any feature that might give rise to such an expectation;
- there are no circumstances under which the distributions are obligatory. Non-payment of a distribution does not trigger any restrictions on the issuer or any other member of the group to which the issuer belongs. Any waived distributions are non-cumulative (i.e. they are not required to be made up by the issuer at a later date). Non-payment of distributions must not be an event of default of the issuer or of any other member of the group to which the issuer belongs;
- distributions are paid only after all legal and contractual obligations have been met and payments on more senior capital instruments have been made. There are no preferential distributions, including in respect of other elements classified as Common Equity Tier 1 Capital;
- the instruments take the first and proportionately greatest share of any losses as they occur. Within Common Equity Tier 1 Capital, each instrument absorbs losses on a going concern basis proportionately, and *pari passu*, with all the other instruments included in Common Equity Tier 1 Capital;
- only the paid-up amount of the instrument, irrevocably received by the issuer, is recognised as equity capital (i.e. it is not recognised as a liability) for determining balance sheet insolvency;

[6] Australian Prudential Regulation Authority, APS 111, *Capital Adequacy: Measurement of Capital* (April 2014), *available at* http://www.apra.gov.au/adi/Documents/20140408-APS-111-(April-2014)-revised-mutual-equity-interests.pdf .

- the paid-up amount of the instrument is classified as equity under relevant accounting standards;

- the instrument is directly issued by the issuer, and, except where otherwise permitted in this Prudential Standard, the issuer, any other member of a group to which the issuer belongs, or any related entity, cannot have purchased or directly or indirectly funded the purchase of the instrument;

- the paid-up amount of the instrument, or any future payments related to the instrument, is neither secured nor covered by a guarantee of the issuer or a related entity, or subject to any other arrangement that legally or economically enhances the seniority of the claim. The instrument may not be subject to netting or offset claims on behalf of the holder or the issuer of the instrument;

- the instrument is only issued with the approval of the owners of the issuer, either given directly by the owners or, if permitted by applicable law, given by the Board or by other persons duly authorised by the owners;

- the instrument is clearly and separately disclosed on the issuer's financial statements and, in any consolidated financial statements. Disclosure must be in line with the frequency with which an owned [Authorised Deposit-taking Institution], or group of which it is a member, publishes its financial results.

- The holder of mutual equity interests is entitled to a claim on residual assets that is proportional to its share of the sum of (i) the aggregate notional subscription price paid for all mutual equity interests, and (ii) the aggregate subscription price paid for all other members' interests (whether or not forming part of the issuer's Common Equity Tier 1 Capital), subject to:

    a. all senior claims having been repaid and satisfied in full in the wind-up or liquidation of the issuer;

    b. a cap equal to the aggregate nominal dollar value of the Additional Tier 1 and Tier 2 Capital instruments prior to their conversion into the mutual equity interests held by that holder.

  If the cap specified in sub-paragraph (b) is reached, the holder of mutual equity interests has no further claim on the remaining residual assets, which are to be distributed to the holders of other members' interests (whether or not forming part of the issuer's Common Equity Tier 1 Capital) in accordance with their respective entitlements.

- The items described in paragraphs 19(c)_(retained earnings) and (d) (undistributed current year earnings) of this Prudential Standard do not constitute members' interests for the purposes of this Attachment, notwithstanding that they form part of the issuer's Common Equity Tier 1 Capital. Withdrawable or redeemable members' interests do not form part of an issuer's Common Equity Tier 1 Capital. Members' interests would include, however, any issued investor shares (as referred to in Australian Securities and Investments Commission (ASIC) *Regulatory Guide 147 Mutuality – Financial Institutions* (RG 147, or any replacement regulatory guide issued by ASIC) where such shares satisfied the requirements of Attachment B.

- Distributions on mutual equity interests must be paid out of distributable items (including retained earnings) of the issuer and the issue terms of mutual equity interests must not provide for payment to holders other than in the form of a cash payment. The level of distributions must not be tied or linked in the terms of issue, or otherwise by declaration of the issuer, to the amount paid up at issuance of mutual equity interests, or the value of the Additional Tier 1 or Tier 2 Capital instruments that were converted, or to the credit standing of the issuer.

- The issue terms of mutual equity interests must provide that the amount of any distributions paid on all mutual equity interests, and any investor shares issued (as referred to in RG 147, or any replacement regulatory guide released by ASIC) cannot, in aggregate, exceed 50 per cent of the issuer's net profit after tax for the annual period in which the distribution is made and dividends must be payable only out of that period's profits.

- An issuer must obtain any necessary member' approvals of the way the issuer calculates any dividends payable on mutual equity interests, and when such dividends might be paid under the issue terms of the mutual equity interests. Initial approvals must be obtained before the relevant Additional Tier 1 Capital or Tier 2 Capital instruments are issued. Subsequent changes, if any, to the calculation or timing of the payment of dividends under the issue terms of mutual equity interests must be approved by members before payments are made pursuant to those changes. A mutually owned [Authorised Deposit-taking Institution] must ensure that any method of calculating dividend payments, and the timing of payments, do not give rise to any breaches of requirements in this Prudential Standard.

ii. ***Canada***

In Canada, the federal Office of Supervision of Financial Institutions (OSFI) will publish a proposed regulation on September 6, 2016 that, when finalized, will allow Canadian federally chartered credit unions to issue shares that qualify as CET1 capital instruments.

In Canada, both CET1 instruments and Additional Tier 1 (AT1) instruments—other than preferred shares—"must be classified as equity for accounting purposes" under OSFI's Capital Adequacy Regulation. The OSFI requirements for equity AT1 instruments are set out below, following the discussion of OSFI's proposed CET1 capital share requirements for federally chartered Canadian credit unions.

The proposed terms and conditions of these CET1 capital shares are set forth in Section 2.1.1.1 ("Common shares issued by the institution directly") in Paragraph 4 and proposed Paragraph 4A of OSFI's Capital Adequacy Regulation, as follows:

2.1.1.1 *Common shares issued by the institution directly*

4. For an instrument to be included in Common Equity Tier 1 capital, it must meet all of the following criteria and, in the case of instruments issued by a federal credit union, any modifications or additional specifications set out in paragraph 4a:

1) Represents the most subordinated claim in liquidation of the institution.

2) The investor is entitled to a claim on the residual assets that is proportional with its share of issued capital, after all senior claims have been paid in liquidation (i.e. has an unlimited and variable claim, not a fixed or capped claim).

3) The principal is perpetual and never repaid outside of liquidation (setting aside discretionary repurchases or other means of effectively reducing capital in a discretionary manner that is allowable under relevant law and subject to the prior approval of the Superintendent).

4) The institution does not, in the sale or marketing of the instrument, create an expectation at issuance that the instrument will be bought back, redeemed or cancelled, nor do the statutory or contractual terms provide any feature which might give rise to such expectation.

5) Distributions are paid out of distributable items, including retained earnings. The level of distributions is not in any way tied or linked to the amount paid in at issuance and is not subject to a contractual cap (except

to the extent that an institution is unable to pay distributions that exceed the level of distributable items or to the extent that distributions on senior ranking capital must be paid first).

6) There are no circumstances under which the distributions are obligatory. Non-payment is, therefore, not an event of default.

7) Distributions are paid only after all legal and contractual obligations have been met and payments on more senior capital instruments have been made. This means that there are no preferential distributions, including in respect of other elements classified as the highest quality issued capital.

8) It is in the form of issued capital that takes the first and proportionately greatest share of any losses as they occur. Within the highest quality of capital, each instrument absorbs losses on a going concern basis proportionately and *pari passu* with all the others.

9) The paid-in amount is recognized as equity capital (i.e. not recognized as a liability) for determining balance sheet solvency.

10) It is directly issued and paid-in6 and the institution cannot directly or indirectly fund the purchase of the instrument. Where the consideration for the shares is other than cash, the issuance of the common shares is subject to the prior approval of the Superintendent.

11) The paid-in amount is neither secured nor covered by a guarantee of the issuer or related entity or subject to any other arrangement that legally or economically enhances the seniority of the claim.

12) It is only issued with the approval of the owners of the issuing institution, either given directly by the owners or, if permitted by applicable law, given by the Board of Directors or by other persons duly authorized by the owners.

13) It is clearly and separately disclosed as equity on the institution's balance sheet, prepared in accordance with the relevant accounting standards.

Common Equity Tier 1 instruments issued by a federal credit union

4a. For an instrument to be included in Common Equity Tier 1 capital of a federal credit union, it must meet all of the criteria in paragraph 4 along with any modifications or additional specifications set out in this paragraph:

- For instruments other than membership shares, the instrument need not meet CET1 criteria 1), 2), and 8). Investors entitled to claims under such instruments must rank *pari passu* with membership shares until a predetermined amount of gross CET1 capital which must be reset monthly according to the institution's last consolidated balance sheet. Any assets remaining after the amount is reached would be distributed exclusively to the federal credit union's members.

- Distributions may be subject to a contractual cap.

- The purchase or redemption of membership shares may be granted at the sole discretion of the federal credit union. As part of this discretion, the federal credit union must have the unconditional right to refuse, limit or delay redemption of membership shares and such refusal or limitation would not constitute an event of default of the federal credit union.

- A federal credit union may, with the prior consent of the Superintendent, purchase or redeem membership shares provided there are no reasonable grounds to believe that the payment would cause the institution to be in contravention of capital adequacy or liquidity requirements.

OSFI's regulations for Additional Tier 1 (AT1) capital instruments issued by federally chartered Canadian credit unions also require the AT1 instruments qualify as equity on an accounting basis (except for preferred shares).

OSFI's requirements for AT1 instruments set forth in its Capital Adequacy Regulation are as follows:

2.1.2.1 Additional Tier 1 instruments issued by the institution directly
11. The following is the minimum set of criteria for an instrument issued by the institution to meet or exceed in order for it to be included in Additional Tier 1 capital:

1) Issued and paid-in in cash or, subject to the prior approval of the Superintendent, in property.

2) Subordinated to depositors, general creditors, and subordinated debt holders of the institution.

3) Is neither secured nor covered by a guarantee of the issuer or related entity or other arrangement that legally or economically enhances the seniority of the claim vis-à-vis the institution's depositors and/or creditors14.

4) Is perpetual, i.e. there is no maturity date and there are no step-ups15 or other incentives to redeem16.

5) May be callable at the initiative of the issuer only after a minimum of five years:

a. To exercise a call option an institution must receive the prior approval of the Superintendent; and

b. An institution's actions and the terms of the instrument must not create an expectation that the call will be exercised; and

c. An institution must not exercise the call unless:

- It replaces the called instrument with capital of the same or better quality, including through an increase in retained earnings, and the replacement of this capital is done at conditions which are sustainable for the income capacity of the institution17; or
- The institution demonstrates that its capital position is well above the minimum capital requirements after the call option is exercised.

6) Any repayment of principal (e.g. through repurchase or redemption) must require Superintendent approval and institutions should not assume or create market expectations that such approval will be given.

7) Dividend/coupon discretion:

the institution must have full discretion at all times to cancel distributions/payments

- cancellation of discretionary payments must not be an event of default or credit event
- institutions must have full access to cancelled payments to meet obligations as they fall due
- cancellation of distributions/payments must not impose restrictions on the institution except in relation to distributions to common shareholders.

8) Dividends/coupons must be paid out of distributable items

9) The instrument cannot have a credit sensitive dividend feature, that is a dividend/coupon that is reset periodically based in whole or in part on the institution or organization's credit standing

10) The instrument cannot contribute to liabilities exceeding assets if such a balance sheet test forms part of national insolvency law.

11) Other than preferred shares, instruments included in Additional Tier 1 capital must be classified as equity for accounting purposes.

12) Neither the institution nor a related party over which the institution exercises control or significant influence can have purchased the instrument, nor can the institution directly or indirectly have funded the purchase of the instrument.

13) The instruments cannot have any features that hinder recapitalization, such as provisions that require the issuer to compensate investors if a new instrument is issued at a lower price during a specified time frame.

14) If the instrument is not issued out of an operating entity or the holding company in the consolidated group (e.g. it is issued out of a special purpose vehicle – "SPV"), proceeds must be immediately available without limitation to an operating entity or the holding company in the consolidated group in a form which meets or exceeds all of the other criteria for inclusion in Additional Tier 1 capital. For greater certainty, the only assets the SPV may hold are intercompany instruments issued by the institution or a related entity with terms and conditions that meet or exceed the Additional Tier 1 criteria. Put differently, instruments issued to the SPV have to fully meet or exceed all of the eligibility criteria for Additional Tier 1 capital as if the SPV itself was an end investor – i.e. the institution cannot issue a lower quality capital or senior debt instrument to an SPV and have the SPV issue higher quality capital instruments to third-party investors so as to receive recognition as Additional Tier 1 capital.

15) The contractual terms and conditions of the instrument must include a clause requiring the full and permanent conversion of the instrument into common shares at the point of non-viability as described under OSFI's non-viability contingent capital (NVCC) requirements as specified under section 2.2. Where an instrument is issued by an SPV according to criterion #14 above, the conversion of instruments issued by the SPV to end investors should mirror the conversion of the capital issued by the institution to the SPV.

iii. ***European Union's Capital Requirements Directive (CRD IV) Package***

Although credit unions in the European Union (EU) are generally exempt from the EU's capital requirements directive (CRD IV), the CRD IV's Capital Requirements Regulation and standards promulgated under those rules by the European Commission permit cooperative banks to issue cooperative shares that qualify as CET1 regulatory capital. Cooperative bank capital shares are a form of cooperative capital share that is similar to credit union capital shares for most intents and purposes.

The CRD IV Package Capital Requirements Regulation Article 29 provides cooperative banks in the EU with authority to issue cooperative shares as CET1 instruments:[7]

Article 29

Capital instruments issued by mutuals, cooperative societies, savings institutions and similar institutions

[7] *Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012*, 2013 O.J. (L 176) 1, 39-40, *available at* http://eur-lex.europa.eu/legal-content/en/TXT/?uri=OJ:L:2013:176:TOC.

1. Capital instruments issued by mutuals, cooperative societies, savings institutions and similar institutions shall qualify as Common Equity Tier 1 instruments only if the conditions laid down in Article 28 with modifications resulting from the application of this Article are met.

2. The following conditions shall be met as regards redemption of the capital instruments:

> (a) except where prohibited under applicable national law, the institution shall be able to refuse the redemption of the instruments;
>
> (b) where the refusal by the institution of the redemption of instruments is prohibited under applicable national law, the provisions governing the instruments shall give the institution the ability to limit their redemption;
>
> (c) refusal to redeem the instruments, or the limitation of the redemption of the instruments where applicable, may not constitute an event of default of the institution.

3. The capital instruments may include a cap or restriction on the maximum level of distributions only where that cap or restriction is set out under applicable national law or the statute of the institution.

4. Where the capital instruments provide the owner with rights to the reserves of the institution in the event of insolvency or liquidation that are limited to the nominal value of the instruments, such a limitation shall apply to the same degree to the holders of all other Common Equity Tier 1 instruments issued by that institution.

The condition laid down in the first subparagraph is without prejudice to the possibility for a mutual, cooperative society, savings institution or a similar institution to recognize within Common Equity Tier 1 instruments that do not afford voting rights to the holder and that meet all the following conditions:

> (a) the claim of the holders of the non-voting instruments in the insolvency or liquidation of the institution is proportionate to the share of the total Common Equity Tier 1 instruments that those non-voting instruments represent;
>
> (b) the instruments otherwise qualify as Common Equity Tier 1 instruments.

5. Where the capital instruments entitle their owners to a claim on the assets of the institution in the event of its insolvency or liquidation that is fixed or subject to a cap, such a limitation shall apply to the same degree to all holders of all Common Equity Tier 1 instruments issued by the institution.

6. EBA shall develop draft regulatory technical standards to specify the nature of the limitations on redemption necessary where the refusal by the institution of the redemption of own funds instruments is prohibited under applicable national law.

EBA shall submit those draft regulatory technical standards to the Commission by 1 February 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

The European Commission, in collaboration with the European Banking Authority, in 2014 issued additional rules to clarify these statutory requirements, as required by Article 29(6). This Commission delegated act is entitled *Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions*.[8]

[8] European Commission, *Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions*, 2014 O.J. (L 74) 8, 17-18, *available at* http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32014R0241.

Articles 10 and 11 of this European Commission delegated regulation include the following mandatory terms and conditions for CET1 capital instruments issued by cooperatives:[9]

Article 10

Limitations on redemption of capital instruments issued by mutuals, savings institutions, cooperative societies and similar institutions for the purposes of Article 29(2)(b) of Regulation (EU) No 575/2013 and Article 78(3) of Regulation (EU) No 575/2013

1. An institution may issue Common Equity Tier 1 instruments with a possibility to redeem only where such possibility is foreseen by the applicable national law.

2. The ability of the institution to limit the redemption under the provisions governing capital instruments as referred to in Article 29(2)(b) and 78(3) of Regulation (EU) No 575/2013, shall encompass both the right to defer the redemption and the right to limit the amount to be redeemed. The institution shall be able to defer the redemption or limit the amount to be redeemed for an unlimited period of time pursuant to paragraph 3.

3. The extent of the limitations on redemption included in the provisions governing the instruments shall be determined by the institution on the basis of the prudential situation of the institution at any time, having regard to in particular, but not limited to:

(a) the overall financial, liquidity and solvency situation of the institution;

(b) the amount of Common Equity Tier 1 capital, Tier 1 and total capital compared to the total risk exposure amount calculated in accordance with the requirements laid down in point (a) of Article 92(1) of Regulation (EU) No 575/2013, the specific own funds requirements referred to in Article 104(1)(a) of Directive 2013/36/EU and the combined buffer requirement as defined in point (6) of Article 128 of that Directive.

Article 11

Limitations on redemption of capital instruments issued by mutuals, savings institutions, cooperative societies and similar institutions for the purposes of Article 29(2)(b) of Regulation (EU) No 575/2013 and Article 78(3) of Regulation (EU) No 575/2013

1. The limitations on redemption included in the contractual or legal provisions governing the instruments shall not prevent the competent authority from limiting further the redemption on the instruments on an appropriate basis as foreseen by Article 78 of Regulation (EU) No 575/2013.

2. Competent authorities shall assess the bases of limitations on redemption included in the contractual and legal provisions governing the instrument. They shall require institutions to modify the corresponding contractual provisions where they are not satisfied that the bases of limitations are appropriate. Where the instruments are governed by the national law in the absence of contractual provisions, the legislation shall enable the institution to limit redemption as referred to in paragraphs 1 to 3 of Article 10 in order for the instruments to qualify as Common Equity Tier 1.

3. Any decision to limit redemption shall be documented internally and reported in writing by the institution to the competent authority, including the reasons why, in view of the criteria set out in paragraph 3, a redemption has been partially or fully refused or deferred.

[9] *Id.*

4. Where several decisions to limit redemption are taking place in the same period of time, institutions may document these decisions in a single set of documents.

iv. *Great Britain*

In Great Britain, credit unions can issue "deferred shares" that qualify as regulatory capital. The Legislative Reform (Industrial & Provident Societies and Credit Unions) Order 2011 created the legal authority for credit union deferred shares in Section 31A of the Credit Unions Act 1979.

These credit union deferred shares are based on deferred shares in the United Kingdom's building society sector. They are perpetual and loss-absorbing (ranking below ordinary shares) and it is these features which allow them to be classified equivalent to equity in the capital reserves of the credit union.

The requirements of deferred shares as set forth by Section 31A are as follows:[10]

Section 31A.—

(1) In this Act, references to deferred shares are to a class of shares where—

(a)the rights and obligations of the credit union and the member in respect of those shares are set out in a single document, or in a series of documents ("the issue documents");

(b)each of the issue documents is provided to every applicant for the shares;

(c)one of the issue documents contains a prominent statement to the effect that the shares are deferred shares for the purposes of this Act;

(d)each of the issue documents contains a prominent statement stating whether the shares are, or are not, an investment covered by the Financial Services Compensation Scheme (see section 213 of the Financial Services and Markets Act 2000);

(e)any document evidencing title to the shares contains the statements required by paragraphs (c) and (d) above;

(f)one of the issue documents contains a term which prohibits the repayment of any principal to the shareholder except in Case A or Case B.

(2) Case A is the winding up or dissolution of the credit union in circumstances where all sums due from the credit union to creditors claiming in the winding up or dissolution are paid in full.

(3) Case B is where—

[10] Her Majesty's Treasury, *The Legislative Reform (Industrial and Provident Societies and Credit Unions) Order 2011*, Statutory Instruments 2011 No. 2687, §17 (2011), *available at* http://www.legislation.gov.uk/uksi/2011/2687/article/17/made.

(a)the credit union applies to the Authority for consent to repay principal to the shareholder,

(b)the credit union so applies otherwise than in consequence of a provision in any of the issue documents which requires it to apply, grants it any benefit for applying or imposes a sanction against failure to apply, and

(c)the Authority grants consent.

(4) "Creditors" in subsection (2) above includes members holding shares, other than deferred shares, in the credit union, as regards the principal of those shares and any interest or dividend due on them.

(5) On any modification of the definition of "deferred shares" in the Building Societies Act 1986 or an instrument made under that Act, the Treasury may, by order, modify the meaning of deferred shares in this section so as to assimilate it to the modified definition."

v. *United States of America*

In the USA, "corporate credit unions" (which are wholesale financial institutions that serve retail-level credit unions, and are also called "central credit unions") issue a type of capital share called Perpetual Contributed Capital shares. Perpetual Contributed Capital shares qualify as equity under US Generally Accepted Accounting Principles (US GAAP) that are similar to the current IFRS *Conceptual Framework* in most respects.

As the name Perpetual Contributed Capital suggests, these shares are perpetual contributions to the corporate credit union's capital positions and cannot be redeemed at the option of the investor. The issuing corporate credit union, however, has the option to "call," or buy back, Perpetual Contributed Capital shares it has issued, but only with permission from its prudential regulator and only if the corporate credit union remains well capitalized after it has bought back the Perpetual Contributed Capital shares in question.

Section 704.3(c) of the US National Credit Union Administration's (NCUA) regulations sets forth the regulatory requirements for credit union Perpetual Contributed Capital (PCC) shares as follows[11]:

(c) Requirements for perpetual contributed capital (PCC) -

(1) Disclosure. The terms and conditions of any perpetual contributed capital instrument must be disclosed to the recorded owner of the instrument at the time the instrument is created and must be signed by either all of the directors of the member credit union or, if authorized by board resolution, the chair and secretary of the board.

(2) Release. Perpetual contributed capital may not be released due solely to the merger, charter conversion or liquidation of a member credit union. In the event of a merger, the perpetual contributed capital transfers to the continuing credit union. In the event of a charter conversion, the perpetual contributed capital transfers to the new institution. In the event of liquidation, the perpetual contributed capital may be released to facilitate the payout of shares with NCUA's prior written approval.

[11] 12 C.F.R. § 704.3(c), *available at* https://www.law.cornell.edu/cfr/text/12/704.3.

(3) Callability. A corporate credit union may call PCC instruments only if it meets its minimum required capital and net economic value ratios after the funds are called and only with the prior approval of the NCUA and, for state chartered corporate credit unions, the applicable state regulator. PCC accounts are callable on a pro-rata basis across an issuance class.

(4) Perpetual contributed capital. A corporate credit union may issue perpetual contributed capital to both members and nonmembers.

(5) The holder of a PCC instrument may transfer its interests in the instrument to another member or to a nonmember (other than a natural person). At least 14 days before consummating such a transfer, the member must notify the corporate credit union of the pending transfer. The corporate credit union must, within 10 days of such notice, provide the member and the potential transferee all financial information about the corporate credit union that is available to the public or that the corporate credit union has provided to its members, including any call report data submitted by the corporate credit union to NCUA but not yet posted on NCUA's Web site.

(6) A corporate credit union is permitted to condition membership, services, or prices for services on a member's ownership of PCC, provided the corporate credit union gives existing members at least six months written notice of:

(i) The requirement to purchase PCC, including specific amounts; and

(ii) The effects of a failure to purchase the requisite PCC on the pricing of services or on the member's access to membership or services.

Question 2 (b): specify which concepts in the Conceptual Framework (eg definitions of elements of the financial statements, recognition criteria, measurement etc.) have been used to develop those accounting policies.

The *Conceptual Framework*'s categorization of equity interests versus liabilities is the relevant concept in the context of cooperative shares as regulatory capital. For cooperative shares, IFRIC Interpretation 2 *Members' Shares in Co-operative Entities and Similar Instruments*,[12] which is an interpretation of the currently applicable *Conceptual Framework*, is the most specific accounting guidance on the cooperative share equity versus liabilities concept. Credit union regulators looked to IFRIC Interpretation No. 2 (or, in the case of NCUA, the equivalent standard under US GAAP) when developing the credit union capital instrument rules discussed in this comment letter, above.

We thank the IASB for considering our comments in response to its "Information Request—Developing Accounting Policies by Reference to the *Conceptual Framework*." If you have questions about our comments, please feel free to contact me at medwards@woccu.org or +1-202-508-6755.

Sincerely,

Michael S. Edwards
VP and General Counsel
World Council of Credit Unions, Inc.

[12] IFRS Interpretations Committee, IFRIC Interpretation 2, *Members' Shares in Co-operative Entities and Similar Instruments* (Nov. 2004, as amended).