February 2, 2018

<u>Sent via email</u>
Mark Carney
Chair
Financial Stability Board
Bank for International Settlements
CH-4002
Basel, Switzerland
fsb@fsb.org

Re: Consultative Document: *Principles on Bail-in Execution*

Dear Chair Carney:

World Council of Credit Unions (World Council) appreciates the opportunity to comment on the Financial Stability Board's (FSB) consultative document *Principles on Bail-in Execution*.[1] Credit unions are cooperative depository institutions and World Council is the leading trade association and development organization for the international credit union movement. 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.[2]

World Council's members are community-based cooperative depository institutions that are not systemically important on a global or domestic level. National authorities, however, in some cases apply FSB standards designed for Global-Systemically Important Banks (G-SIBs) to financial cooperatives that are considered large compared to other credit unions in that jurisdiction even if they are neither G-SIBs nor Domestic-Systemically Important Banks (D-SIBs).

1. Do the principles in the draft guidance address all relevant aspects of a bail-in transaction, including cross-border aspects? What other aspects, if any, should be considered?

World Council urges the FSB not to require cooperative depository institutions to demutualize as part of a "bail-in," and also urges the FSB to limit the requirement for institutions to issue "bail-in instruments"—such as contingent convertible bonds—to G-SIBs and D-SIBs.

Cooperative depository institutions are owned by their members, who are also their depositors, and follow one-member-one-vote voting principles. Even if the value of the

[1] Financial Stability Board, Consultative Document: *Principles on Bail-in Execution* (Nov. 2017), *available at* http://www.fsb.org/2017/11/principles-on-bail-in-execution/.
[2] World Council of Credit Unions, *2015 Statistical Report* (2016), *available at* https://www.woccu.org/documents/2015_Statistical_Report_WOCCU.

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members' shares are written down on an accounting basis because of losses, the members still retain the legal voting rights conferred by those shares.

We believe that a "bail-in" of a cooperative depository institution can be achieved without demutualizing the institution by exchanging impaired Additional Tier 1 or Tier 2 capital instruments issued by the cooperative for Common Equity Tier 1 instruments of a lesser face value. The legal authority for bailing-in cooperative depository institutions in this manner without changing the institution's cooperative corporate structure already exists in a number of jurisdictions including the European Union, Australia and Canada. These bail-in legal authorities for cooperative depository institutions are discussed in greater depth in World Council's comments on FSB's Question 7, below.

World Council urges the FSB not to require cooperative depository institutions to demutualize as part of a "bail-in," and also urges the FSB to limit the requirement for institutions to issue "bail-in instruments"—such as contingent convertible bonds—to G-SIBs and D-SIBs, which by definition are well-known banking concerns with deep and liquid markets for their securities.

3. Do you agree with the information and disclosure requirements on the scope of bail-in as identified in principles three and four, respectively? Is the provision or disclosure of certain information likely to present any challenges for firms?

World Council urges the FSB to revise proposed Principle 4 to limit the application of this standard to systemically important firms by inserting "systemically important" between "other" and "firms" as follows (in underline):

> "Authorities should require G-SIBs and where relevant other systemically important firms for which bail-in is the preferred resolution strategy to provide ex ante disclosures to market participants regarding the amount, maturity and composition of instruments and liabilities that could be subject to bail-in. Disclosures for G-SIBs should meet the requirements established under the TLAC standard."

We recognize that the FSB's remit is to establish standards for systemically important institutions, and World Council supports the FSB's efforts to establish bail-in mechanisms for G-SIBs and D-SIBs so as better to promote financial stability.

We believe that it is highly questionable, however, whether there would be a market for bail-in capital instruments issued by community-based cooperative depository institutions. Further, World Council is concerned that national supervisors may choose to apply this standard to community-based cooperative depository institutions even though that does not appear to be the FSB's intent

Stress testing of community-based financial cooperatives is one example of a standard originally designed for the world's largest, most complex banks that is applied in some jurisdictions to credit unions as small as USD 200 million in total assets. These community-based institutions can be stress tested even though they do not operate on a cross-border basis, are non-complex, and are subject to stringent portfolio-shaping rules that limit their investments primarily to loans to their members, deposits in banks and other credit unions, and government-guaranteed debt instruments.

We believe that stress testing non-complex institutions of this size is not a proportional regulatory approach because it imposes unreasonable technology costs on the institution, makes significant claims on the time of the institution's management, and also uses up often limited supervisory resources that could be better allocated towards the supervision of more complex, higher-risk institutions.

We are concerned that the FSB's bail-in rules designed for systemically important institutions may, like stress testing, ultimately be applied to community-based financial cooperatives even though the regulatory burdens associated with community-based institutions issuing bail-in-able instruments would not be consistent with the principle of proportional regulation. In addition, there would likely be practical problems associated with community-based institutions trying to sell bail-in-able instruments to investors at yields that make economic sense for the issuing community-based institution.

While a G-SIB or D-SIB would generally be a well-known banking concern with a large market capitalization and a liquid market for its securities, a community-based cooperative would have none of these advantages in terms of marketing its capital instruments to investors or establishing a trading market for them. Bail-in-able instruments issued by community-based cooperative depository institutions therefore may not be able to find investors, and, even if initial investors could be found, there would not likely be a liquid market for trading of those instruments.

In addition, the cooperative corporate structure would not allow the investors of bail-in-able instruments to assume control of the institution in the event of a bail-in, unless the cooperative is demutualized as part of this process. We strongly oppose requiring cooperatives to demutualize when other supervisory resolution options—such as the troubled institution merging with another financial cooperative, or exchanging the troubled financial cooperative's impaired Additional Tier 1 or Tier 2 capital for Common Equity Tier 1 capital—are available.

World Council is concerned that the combination of small size and cooperative corporate structure would frustrate the ability of community-based financial cooperatives to successfully market bail-in-able instruments. Even if investors can be found, we are also concerned that investors in cooperatives' bail-in-able instruments may demand unreasonably high returns on bail-in-able instruments as a condition for investing.

We urge the FSB to limit the application of this bail-in standard to G-SIBs and D-SIBs.

4. Do you agree with the approach for valuations in resolution set out in principles five to eight, including with respect to (i) the valuation process and type of valuations that are necessary to inform a bail-in; and (ii) the methodology and assumptions for the valuations?

The Option to Use More than One Valuer Should be Permitted

While we agree that a single valuation of a financial institution or group should be established that is consistent with applicable accounting rules such as International Financial Reporting Standards (IFRS) or US GAAP, we urge the FSB to allow supervisors and institutions the option to have more than one valuer contribute their opinions as part of this valuation process.

Specifically, World Council does not support the proposed requirement in the commentary to Principle 5 that “authorities should seek to appoint, where possible, a single valuer who has the capacity to produce the group-wide evaluations.”

While we agree that appointing valuers with the capacity to provide group-wide evaluations is desirable when possible, we believe that having the option to consider second and/or third opinions concerning asset values would provide more accurate valuation information to the financial institution’s supervisors, equity-holders and creditors.

We believe that the option to seek multiple valuation opinions is especially essential during financial crises and other periods of market dislocation vis-à-vis the valuation of complex financial instruments such as asset-backed securities. Although loan and bond asset price values are typically set by accounting rules such as IFRS 9 or US GAAP’s Current Expected Credit Losses (CECL), professional opinions play a significant role in asset-price valuations and these professional opinions can differ materially from one-another.

During the recent Global Financial Crisis, for example, valuation opinions concerning private-label mortgage-backed securities (MBS) varied wildly. The need to seek multiple valuation opinions regarding private-label MBS was especially important during the early days of the crisis, when mark-to-market accounting rules required depository institutions to take write-downs on MBS that significantly undervalued senior and super-senior private-label MBS tranches compared to their economic value in terms of future cash flows.

Although few credit unions failed during the Global Financial Crisis, the resolution of a wholesale credit union called United States Central Federal Credit Union (US Central) during this period illustrates the importance of having the option to obtain multiple valuations during periods of asset price dislocation. US Central was a wholesale “credit union for credit unions” that provided payment, settlement, liquidity and investment services to its member credit unions.

US Central had invested primarily in AAA-rated senior and super-senior tranches of private-label MBS in order to help provide a competitive return for its member credit unions on their excess liquidity deposited with US Central. Retail-level credit unions in the USA did not generally invest in private-label MBS because of regulatory portfolio shaping restrictions that required them to invest primarily in loans to their members, deposits in banks and other credit unions, and government-guaranteed debt instruments.

US Central had followed this business model of investing in AAA-rated senior and super-senior tranches of private-label MBS for decades without problems, however, the actual credit quality of AAA-rated private-label MBS declined in the mid-2000s. In most cases the AAA ratings for mid-2000s private-label MBS vintages were achieved through a combination of overcollateralization of the MBS and insurance from "monoline" bond insurers. The loss assumptions underlying these AAA-rated MBS ultimately proved to be overly optimistic, the intended overcollateralization of the MBS dissipated as home prices fell, and many "monoline" bond insurers became insolvent because claims exceeded their reserves. Without these credit enhancements, cash flows stopped on many private-label MBS equity, mezzanine and senior-mezzanine tranches, and cash flows on senior and super-senior tranches were sometimes partially disrupted as well. Once US Central and other holders of senior and super-senior private-label MBS trances stopped receiving cash flows as agreed, they were required to re-value these investments.

During 2008 and early 2009, US Central's management engaged three different valuation firms to value its positions of senior and super-senior MBS tranches. The valuations received from the three valuation firms regarding specific MBS positions varied from one-another by as much as 400%.

In March 2009, the US National Credit Union Administration (NCUA) placed US Central into a form of government administration known as "conservatorship"[3] where the NCUA typically replaces the conserved institution's board of directors with agency personnel and also appoints new senior management who may or may not be NCUA staff (in this case the credit union's General Counsel was appointed as its Chief Executive Officer by the agency). The NCUA operated US Central until its liquidity, payments and settlement operations could be wound-up in an orderly fashion and assumed by other wholesale credit unions in the United States.

During the US Central conservatorship, the NCUA retained at least one of the three valuers originally retained by US Central's management, Clayton IPS, but NCUA also

[3] *See* US National Credit Union Administration, "Corporate Stabilization Program – Conservatorship of U.S. Central FCU and Western Corporate FCU," Letter to Credit Unions No. 09-CU-06 (Mar. 2009), *available at* https://www.ncua.gov/regulation-supervision/Pages/policy-compliance/communications/letters-to-credit-unions/2009/06.aspx.

engaged the Pacific Investment Management Company (PIMCO) for a second opinion on MBS valuation during this process.

It is unlikely that the NCUA would have engaged two valuation firms if it did not view multiple valuation opinions as helpful in terms of achieving its resolution objectives. In effect, the agency received two opinions that helped it arrive at a more accurate single valuation of the institution than if it had used only a single valuer.

We believe that the option to consider second and/or third opinions concerning asset values would provide more accurate valuation information to the financial institution's supervisors, equity-holders and creditors. We urge the FSB not to prohibit supervisors and/or institutions from having the option to engage more than one valuer to assist in establishing a single valuation of a financial institution or group.

Highly Granular Management Information Systems Should Not Be Required for Community-Based Depository Institutions

While we support the FSB's proposal that G-SIBs should have computer information systems that can provide highly granular data on their financial position, World Council believes that extending these information technology requirements to non-complex, community-based depository institutions would present unreasonable regulatory burdens and would not be consistent with the principle of proportionality in regulation.

Technological costs and regulatory compliance costs that are miniscule for a G-SIB or D-SIB with hundreds of billions or trillions of US Dollars in assets are relatively much more expensive for credit unions and other community-based cooperative depository institutions that have much smaller economies of scale and much less complex balance sheets.

Unlike a G-SIB or D-SIB, a non-complex, community-based financial cooperative does not present a systemic risk to the financial system and can be resolved without a "bail-in" for that reason. Community-based depository institutions, because of their smaller economies of scale, are also less able to bear the technology and compliance costs associated with the management information systems that the FSB envisions for G-SIBs.

We believe that the technological costs necessary to provide highly granular data on a community-based depository institution's financial position are not a proportional regulatory approach for non-complex, community-based institutions even though highly granular management information systems may be essential for the supervision of G-SIBs or D-SIBs.

Transparency in the Valuation Process Should Not Cause Runs on the Problem Institution or on Healthy Institutions with Similar Charter Types

World Council supports proposed Principle 8 on "Transparency of the valuation process." We agree with FSB's proposal that the rulebook on the overall valuation framework and procedures established by supervisory authorities should be disclosed in advance, especially through a public consultative process that establishes market expectations for how a "bail-in" process will work in advance of any actual "bail-in" occurring.

World Council strongly supports the FSB's proposed statement in Principle 8 that: "Ex post information should not be disclosed if it risks jeopardizing resolution objectives." We urge the FSB to finalize this sentence as proposed.

We believe that supervisory information about the financial condition of a cooperative depository institution should not be publicly disclosed if the disclosure could possibly trigger a run on the institution and/or if the disclosure could cause a loss of public confidence in or runs on other, similarly situated cooperative depository institutions. Negative publicity concerning one single credit union or mutual bank can significantly reduce public confidence in all other institutions with a similar name or charter type.

Credit unions and mutual banks are not publicly traded and are owned by their members, who are also its customers (since one must generally be a member of a credit union or mutual bank to do business with it, unlike some European cooperative banks). The information disclosed publicly about a cooperative depository institution should therefore focus on maintaining the confidence of the institution's members, who are its depositors, to help better prevent a liquidity event precipitated by a run on the institution that could threaten the supervisor's resolution objectives.

Reputational contagion affecting well-capitalized cooperative depository institutions has occurred in the past when some cooperative depository institutions in a jurisdiction, but not others, have suffered financial problems.

World Council strongly supports the FSB's proposed statement in Principle 8 that "[e]x post information should not be disclosed if it risks jeopardizing resolution objectives" and we urge the FSB to finalize this statement as proposed.

5. Does principle 10 identify all relevant challenges to the development of a bail-in exchange mechanic? What other challenges, if any, do you see?

Shares and other capital instruments issued by cooperative depository institutions are not usually publicly traded; rather, the institutions are privately held by their members. In some cases, credit unions and other financial cooperatives operate internal trading markets where one member can sell their capital shares to another member, however, these shares are not listed on an exchange.

While we support the FSB's proposed ex ante disclosures to investors about the risks associated with these instruments, the principles concerning the suspension of trading of the institution's securities, or de-listing thereof, would not likely apply to a financial cooperative's shares or other capital instruments (except in the case of an internal trading market operated by the financial cooperative itself).

The exchange of instruments, and so forth, would likely need to occur by investors tendering their impaired instruments directly to the financial cooperative, which would then replace those instruments with new ones. This would presumably be similar for any privately held banking institution, including a joint-stock community bank.

6. Do you agree with the approach to meeting securities law and disclosure requirements set out in principles 11 to 14? Are there other aspects of securities law or securities exchange requirements that should be considered by resolution authorities as part of resolution planning?

World Council supports providing investors with disclosures regarding the risks of investments in capital instruments issued by financial cooperatives as required by applicable securities laws. Although jurisdictions can sometimes exempt cooperative shares from some securities law requirements,[4] the compliance costs associated with applicable securities laws and disclosures can be prohibitively expensive for a community-based financial cooperative, especially when the institution may need to comply with the securities laws of several different provinces or states.

We urge the FSB to limit the application of this "bail-in" standard to G-SIBs and D-SIBs because the costs of securities laws compliance for issuing bail-in-able instruments can be prohibitively expensive for community-based cooperative depository institutions.

7. Do principles 15 and 17 adequately describe the actions that the home resolution authorities should carry out regarding (i) the management and control of the firm during the bail-in period and (ii) the transfer of control to new owners and management?

World Council strongly opposes proposed Principle 17's requirement that the ownership of the "bailed-in" firm be transferred to "new ownership" who would have

[4] For example, cooperative shares issued by federally insured credit unions in the USA are exempt from registration under the Securities Act of 1933 but can be subject to the Securities Exchange Act of 1934. *See* Regulation D Revisions, 53 Fed. Reg. 7866, 7866 at n.10 (Mar. 10, 1988) ("The [US Securities and Exchange] Commission's staff interprets the 'similar institution' language in section 3(a)(5)(A) of the Securities Act to encompass credit unions whose accounts are insured by the National Credit Union Administration."); *see also Reves v. Earnst & Young*, 494 U.S. 56, 66-67 (1990) (establishing a four-part weighing factor "family resemblance test" for determining whether an investment is a "security" within the meaning of the Securities Exchange Act of 1934); *Marine Bank v. Weaver*, 455 U.S. 551, 558-59 (1982) (holding that uninsured certificates of deposit were not "securities"); *Tcherepnin v. Knight*, 389 U.S. 332, 332-37, 344-46 (1967) (holding that capital shares issued by a savings bank were "securities").

"control" of the institution. We do not believe that a change in control or ownership is necessary or appropriate for a "bail-in" of a cooperative because it would not be consistent with the cooperative corporate structure of the institution.

We urge the FSB not to require a change in control in the case of a cooperative depository institution bail-in because this would likely require demutualization of the cooperative—i.e. turning the cooperative into a joint-stock commercial bank—and would likely strip its members of their ownership interests in the institution unnecessarily. In addition, the limited voting rights allowed under the cooperative governance structure are typically disclosed to the investors in capital instruments issued by cooperatives, meaning that investors in these instruments are fully aware that they will not likely receive "control" of the cooperative depository institution even if a non-viability "bail-in" event occurs.

Cooperative depository institutions are owned by their members, who are also its depositors, and—pursuant to cooperative principles—each of whom has one vote in elections (such as to elect board members or to approve a voluntary merger) regardless of the number of shares he or she holds in the cooperative. In some cases, such as a "conservatorship"[5] where a credit union is placed under government control, it is standard to replace the credit union's board of directors and senior managers, usually with the staff from the credit union's prudential supervisory agency. The object of a "conservatorship," however, is usually to return control of the credit union to its members or, alternatively, to merge the troubled credit union with another, better capitalized credit union where the acquired credit union's members will also be member-owners of the continuing credit union.

[5] *See, e.g.*, 12 U.S.C. § 1786(h), *available at* https://www.law.cornell.edu/uscode/text/12/1786 ("The [US National Credit Union Administration (NCUA)] Board may, ex parte without notice, appoint itself or another (including, in the case of a State-chartered insured credit union, the State official having jurisdiction over the credit union) as conservator and immediately take possession and control of the business and assets of any insured credit union in any case in which—
(A) the [NCUA] Board determines that such action is necessary to conserve the assets of any insured credit union or to protect the Fund or the interests of the members of such insured credit union;
(B) an insured credit union, by a resolution of its board of directors, consents to such an action by the [NCUA] Board;
(C) the Attorney General notifies the [NCUA] Board in writing that an insured credit union has been found guilty of a criminal offense under section 1956 or 1957 of title 18 or section 5322 or 5324 of title 31 [of the United States Code];
(D) there is a willful violation of a cease-and-desist order which has become final;
(E) there is concealment of books, papers, records, or assets of the credit union or refusal to submit books, papers, records, or affairs of the credit union for inspection to any examiner or to any lawful agent of the [NCUA] Board;
(F) the credit union is significantly undercapitalized, as defined in section 1790d of this title 31 [of the United States Code], and has no reasonable prospect of becoming adequately capitalized, as defined in section 1790d of this title; or
(G) the credit union is critically undercapitalized, as defined in section 1790d of this title.").

Current standards from the Basel Committee on Banking Supervision and regulations issued by cooperative depository institution supervisors in jurisdictions such as the European Union, Australia and Canada allow cooperatives' contingent capital instruments to be converted to Common Equity Tier 1 (CET1) capital at a point of non-viability without changing the control of the institution or its voting structure.

The Basel Committee has recognized in two standards that cooperatives and other mutuals can issue CET1 capital instruments, both directly and to replace non-viable Additional Tier 1 (AT1) and Tier 2 capital instruments, and the Committee has given supervisors a degree of national discretion in this area regarding capital definitions. [6]

The European Union's Capital Requirements Regulation and European Commission delegated acts interpreting the Regulation permit cooperatives to issue AT1 and Tier 2 capital instruments that, if impaired, would be replaced at the point of non-viability by CET1 capital instruments with a lesser face value.[7] The voting structure of the cooperative bank, however, would not generally be affected by this exchange of CET1 capital for AT1 or Tier 2 capital, meaning that "control" of the institution would not be changed. These limited voting rights are disclosed to the investors in these institutions' AT1 and Tier 2 capital instruments. In addition, the European Union's Bank Recovery and Resolution Directive does <u>not</u> require supervisors to change the legal form of a financial cooperative in a bail-in scenario.[8]

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[6] *See* Basel Committee on Banking Supervision, *Guidance on the application of the Core Principles for Effective Banking Supervision to the regulation and supervision of institutions relevant to financial inclusion*, at 22 n. 55 (Sep. 2016), *available at* https://www.bis.org/bcbs/publ/d383.htm ("Member shares issued by mutual and cooperative banks could be treated as common equity for regulatory purposes provided that they meet the permanence and loss absorption criteria, as per BCBS (2011). This issue is under discussion in conjunction with the evolution of international capital standards. <u>National regulators are encouraged to use their discretion to adjust their capital definitions and other elements of regulatory capital requirements to align with emerging guidance and sound practices</u>.") [emphasis added]; Basel Committee on Banking Supervision*, Basel III: A global regulatory framework for more resilient banks and banking systems*, at 14 n.12 (June 2011), *available at* https://www.bis.org/publ/bcbs189.htm ("The [Common Equity Tier 1 capital] criteria also apply to non-joint stock companies, such as mutuals, cooperatives or savings institutions, taking into account their specific constitution and legal structure. The application of the criteria should preserve the quality of the instruments by requiring that they are deemed fully equivalent to common shares in terms of their capital quality as regards loss absorption and do not possess features which could cause the condition of the bank to be weakened as a going concern during periods of market stress. Supervisors will exchange information on how they apply the criteria to non-joint stock companies in order to ensure consistent implementation.")

[7] *See 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. (L74) 8, *available at* http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32014R0241; *see also 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*, Arts. 26-29, 2013 O.J. (L176) 1, 37-40, *available at* http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013R0575.

[8] *See Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC,*

In Australia, the Australian Prudential Regulation Authority (APRA) has issued APRA Prudential Standard 111 (APS 111) that allows impaired AT1 and Tier 2 instruments issued by mutual banks, mutual building societies and credit unions to be replaced with CET1 instruments at a point of non-viability.[9]

Although the CET1 holders may have an ownership interest as members of the institution, they have the same voting rights as all other members of the cooperative: i.e. one vote per member regardless of shareholdings. The non-viability rules applicable to these instruments, as well as their limited voting rights, are disclosed to investors.

In Canada, the Office of the Superintendent of Financial Institutions' (OSFI) Capital Adequacy Requirements (CAR) Guideline similarly allows impaired AT1 or Tier 2 instruments issued by Canadian federal credit unions to be replaced by CET1 shares at a point of non-viability.[10] The conversion of an impaired AT1 or Tier 2 instrument to a CET1 instrument may affect the holder's ownership interest in the cooperative, however, it would not entitle them to more than one vote per member. The non-viability rules applicable to these instruments, as well as their limited voting rights, are disclosed to investors.

World Council strongly opposes proposed Principle 17's requirement that the ownership of the "bailed-in" firm be transferred to "new ownership" who would have "control" of the institution because this approach would require the cooperative to demutualize.

We urge the FSB to clarify that a change in control or ownership is unnecessary for a "bail in" of a cooperative financial institution when the cooperative's one-member-one-vote voting principles are disclosed ex ante to investors in a AT1, Tier 2 or other bail-in-able instruments issued by a financial cooperative.

8. Does principle 21 adequately identify all relevant types of information that the home resolution authority should communicate at the point of entry into

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2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, Art. 43(4), 2014 O.J. (L173) 190, 267, *available at* http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0059 ("Member States shall ensure that resolution authorities may apply the bail-in tool to all institutions or entities … while respecting in each case the legal form of the institution or entity concerned or may change the legal form.")

[9] Australian Prudential Regulation Authority (APRA), *Prudential Standard APS 111: Measurement of Capital*, at 58-63 (Nov. 2017), *available at* https://www.legislation.gov.au/Details/F2017L01591/Html/Text#_Toc499554591.

[10] Office of the Superintendent of Financial Institutions (OSFI) of Canada, *Capital Adequacy Requirement (CAR) Guideline*, §§ 2.1.1.1(5), 2.1.2, 2.2 (Dec. 2016), *available at* http://www.osfi-bsif.gc.ca/Eng/fi-if/rg-ro/gdn-ort/gl-ld/Pages/CAR17_chpt2.aspx.

resolution? What other information might creditors and/or market stakeholders require?

We believe that supervisory information about the financial condition of cooperative depository institutions and other privately held depository institutions should not be publicly disclosed if the disclosure could possibly trigger a run on the institution and/or if the disclosure could cause a loss of public confidence in or runs on other, similarly situated cooperative depository institutions.

Credit unions and mutual banks are not publicly traded and are owned by their members, who are also its customers, meaning that providing information to the "market" is generally not necessary or desirable. To the extent that information concerning the bail-in must be provided to investors, the information disclosed publicly about a cooperative depository institution should focus on maintaining the confidence of the institution's members, who are its depositors and shareholders, to help prevent a run on the institution that could threaten the supervisor's resolution objectives.

Negative publicity concerning a single credit union or mutual bank can significantly reduce public confidence in all other institutions with a similar name or charter type. Reputational contagion affecting well-capitalized cooperative depository institutions has occurred in the past when some cooperative depository institutions in a jurisdiction, but not others, have suffered financial problems.

For example, until the early 1990s, the Rhode Island Share and Deposit Indemnity Corporation (RISDIC) provided deposit insurance to some banks and credit unions in the US State of Rhode Island; these institutions did not have a federal savings guarantee and were regulated by the Government of Rhode Island.[11] There were many other credit unions in Rhode Island, however, that were regulated and insured by the US National Credit Union Administration (NCUA), a federal government agency with a savings guarantee backed by the full faith and credit of the US Government.

Due to large internal frauds at two RISDIC-insured banks, the Jefferson Loan and Investment Company and the Heritage Loan & Investment Bank, and a subsequent run on the Heritage Loan & Investment Bank, the RISDIC became insolvent in late 1991.[12]

The Governor of Rhode Island soon after announced publicly that he was immediately closing the RISDIC and 45 RISDIC-insured institutions in January 1992 (since the Rhode Island-chartered banks and credit unions were not legally allowed to operate without a government savings guarantee of some form), except that formerly RISDIC-

[11] *See* Thomas E. Pulkkinen & Eric S. Rosengren, "Lessons from the Rhode Island Banking Crisis," *New England Economic Review*, May/June 1993, at 3-12, *available at* https://www.bostonfed.org/publications/new-england-economic-review/1993-issues/issue-may-june-1993/lessons-from-the-rhode-island-banking-crisis.aspx.

[12] *Id. at 5.*

insured credit unions could reopen if NCUA approved their applications for a federal savings guarantee.[13]

This bank holiday resulted in approximately 300,000 depositors losing access to deposits then valued at approximately USD 1.7 billion[14] (or about USD 3 billion in 2018 dollars) as well as much negative publicity for credit unions even though the RISDIC failure had been precipitated primarily because of problems at RISDIC-insured joint-stock banks.

The negative publicity of the RISDIC failure and the closure of RISDIC-insured banks and credit unions nevertheless caused a run on many NCUA-insured credit unions in Rhode Island. With limited understanding of the nuances of federal versus state savings guarantees, many concerned consumers simply wanted to withdraw their money to avoid the perceived threat of losing their savings even though their savings at these NCUA-insured credit unions were guaranteed by the US Government.

The runs on the NCUA-insured credit unions in Rhode Island reportedly only abated once the NCUA sent armored cars full of cash to park outside of the NCUA-insured credit unions. Once the credit unions' members hoping to withdraw their savings saw that there was plenty of cash being delivered, runs on the NCUA-insured credit unions stopped.

Mishandled communications concerning institutional viability, such as the poorly communicated bank holiday in the RISDIC example, risk triggering widespread runs and financial panic. We believe that supervisory information about the financial condition of cooperative depository institutions and other institutions that are not publicly traded should focus on maintaining depositors' confidence in the bailed-in institution as well as on maintaining public confidence in similarly situated institutions.

World Council appreciates the opportunity to comment on the Financial Stability Board's *Principles on Bail-in Execution* consultative document. 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

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[13] *Id.*

[14] Keith Bradsher, "45 Credit Unions and Banks Shut by Rhode Island," *New York Times*, Jan. 2, 1991, *available at* http://www.nytimes.com/1991/01/02/business/45-credit-unions-and-banks-shut-by-rhode-island.html.