regulations in this area, there is potential for abuse.

The NCUA Board believes that basic regulatory standards applicable to all NCUSIF insured credit unions are necessary to safeguard the integrity of the process and to ensure that issues of safety and soundness and fiduciary duty are properly addressed. The Board has attempted, however, to balance these concerns with a deference to the important role of the state supervisors. As it is NCUA's intention to work with the state supervisor in cases involving federally-insured state credit unions, the Board has crafted a final rule that would allow FISCUs to merge or convert if they have the state's authority to do so. In those instances, the FISCU may file a written request with the NCUA Board for a waiver of compliance with the procedural portions of part 708a and instead follow the applicable state regulation. The request would have to demonstrate that the waiver would not be detrimental to the safety and soundness of the credit union, that there is no possibility of self-dealing or other breach of fiduciary duty by the credit union's management or others involved in the transaction, and that the members' interests are adequately protected.

2. Insider Preferences

The proposed rule asked whether directors and management officials involved in the conversion process should be allowed to receive any personal financial benefit from the transaction, other than that available to ordinary members. The ten commenters responding to this question agreed that directors and management should not be allowed to receive any compensation in excess of that available to other members. Several commenters suggested NCUA enact strong regulations in this area. As well as limiting the compensation available to insiders, one commenter suggested individuals should not be guaranteed employment at the continuing institution, noting that this would remove the incentive for insiders encouraging a merger that is not in the best interest of the members.

A related issue is that of what postmerger or post-conversion controls are needed to protect against improper insider preferences after the transaction is completed. Some of the suggestions of the five commenters who commented on this issue were that NCUA should prohibit stock acquisition by insiders for a period of five years and that both preand post-merger or conversion controls are necessary to prevent insider abuse. One of the trade groups suggested a way to avoid the problem would be to condition approval of the transaction "on a return of equal shares of equity to all members before the execution of the charter change."

The recommendations of the commenters have been modified and incorporated into the final rule as follows: For a period of two years after the transaction, directors may not receive any benefits not otherwise equally available to other members, and directors and senior management officials may not acquire stock in the continuing institution or its successor on terms not available to the other members of the credit union. These prohibitions on directors and senior management officials must remain in effect for at least two years following the merger. In order to enable NCUA to ensure compliance with these prohibitions, the affected individuals will be required to enter into written agreements with NCUA. The NCUA Board decided not to require a distribution of reserves and undivided earnings to members, as such a requirement would have the practical effect of prohibiting the transactions covered by the rule. Among the disclosures required to be provided to the members, however, is a clear explanation of the change in the nature of their ownership interest in reserves and undivided earnings that will result from the transaction.

3. Majority Approval

NCUA requested comment on whether a majority of eligible voting members should be required to approve the transaction. Comment was further requested on whether majority should be defined as a simple majority or a super majority, and, if a super majority, how it should be defined. The six commenters that addressed the issue all agreed that a majority of the voting members should be required for approval. Two defined majority as over 50%, two defined it as 60% to 631/3%, one defined it as 70% to 80% and the other commenter did not define it.

Recognizing the importance of a clear mandate on an issue of such significance to the members, the final rule requires that a majority of all eligible voters approve any transaction covered by the rule.

4. Appraisal

In those cases the Board is aware of where credit unions have considered conversions or mergers to non credit union charters, the first step of the transaction would be to move from a credit union charter to a mutual savings bank charter. In cases where the

ultimate goal is to become a stock institution, conversion from mutual to stock would be proposed as a second, but virtually simultaneous step.

For those cases involving this second step, the Board specifically asked for comment on how to properly appraise the value of the credit union for purposes of issuing stock. This issue is important to the members, who, as noted above, are entitled to acquire stock on the same terms and conditions as directors and senior management officials. Seven commenters had suggestions on this issue. One recommended that a professional appraisal be performed, three recommended that the value of the stock include accumulated capital and one suggested the new regulator determine the value of the stock. One trade group suggested it be handled as a liquidation and payout and another suggested NCUA turn to state law for guidance.

After considering the comments and reviewing the other agencies' rules in this area, the Board has determined to simply require that an appraisal be performed and included in the application. The Board will review the appraisal as part of its review of the application.

5. Uniform Member Notice

The proposal requested comment on whether the rule should include a uniform member notice. Nine of the ten commenters responding to this issue supported a uniform notice. Commenters suggested that a uniform notice would provide clear and consistent guidelines for merging institutions, ensure that important information is not withheld from the members and require less individual review. The Board agrees with these goals, but believes they can be accomplished more effectively through a listing of the information that must be included in the notice to members, rather than a form which may become outdated or not apply to all transactions.

Overview of Final Rule

The final rule adopts with minor modifications the interim rule and expands upon it to impose substantive and procedural requirements that the Board has determined are necessary to ensure an informed membership vote, to safeguard against potential safety and soundness problems and to prevent breaches of fiduciary duty. The final rule, part 708a, tracks in large part the current part 708b. Its key provisions are as follows: NCUA Board approval is required in advance of any transaction whereby a federally insured credit union transfers all or any part of its