



May 11, 2021

Mr. Michael J. Hsu  
Acting Comptroller of the Currency  
Office of the Comptroller of the Currency  
400 7<sup>th</sup> Street SW  
Washington, DC 20219

Dear Acting Comptroller Hsu:

The Independent Community Bankers of America and America's Mutual Banks are concerned with the recently announced acquisition of Brainerd Savings and Loan Association F.A. (Brainerd), a federally chartered savings association, by Wings Financial Credit Union (Wings). We urge the Office of the Comptroller of the Currency (OCC) to weigh the negative implications associated with the combination of these two entities. Without careful consideration by the OCC of the pending transaction, which is expected to close by May 31, this transaction would have extremely negative consequences for the future of all federally chartered mutual banking organizations, their depositors, and the communities they serve.

Moreover, the improper assertion by the applicant of an exemption from disclosure of key documents under the Freedom of Information Act frustrates public participation in the consideration of this policy making action on an informed basis impossible. At a minimum, we are asking the OCC to immediately pause regulatory consideration of this transaction until the disposition of pending FOIA requests. Only with such action can the public submit its views and the OCC adequately assess the proposed transaction for its compliance with legal requirements and its impact on the public interest. We believe that upon further review the OCC will realize that Brainerd should not be liquidated, and a suitable mutual partner can be identified.

Because Brainerd and Wings cannot legally enter into a merger agreement, the transaction is being structured as a branch sale of Brainerd's sole office, with a purchase and assumption of assets and liabilities, a voluntary liquidation of Brainerd, followed by a distribution of any residual assets to Brainerd's members. Interestingly, the Branch sale application filed with the FDIC states that the transaction is being structured to closely resemble a merger. We question whether a full review of facts shielded from public view will reveal that the transaction is the functional equivalent of a merger and cannot be legally consummated.

Pursuant to 12 CFR 5.48 and OCC policy, before such a transaction can be approved, the OCC must (1) conclude that the voluntary liquidation of Brainerd is the most viable option for depositors, creditors, and customers, (2) no alternatives to liquidation can be identified, and (3) the impact of liquidation will not

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have a pronounced effect on the stakeholders of Brainerd. Without a strict application of this policy, mutual institutions would become targets for credit union acquisitions modeled after the instant case.

Indeed, the fundamental distinction between mutual and stock institutions is that mutuals are publically chartered to serve the public interest unless an institution's future is no longer viable. They are not for sale and cannot be liquidated without a compelling public purpose. The loosening of these principles would accelerate a trend already underway in credit union acquisitions of bank assets. As the average mutual institution's asset size is between \$250 million and \$300 million, they commonly serve the well-being of underserved and rural communities. Therefore, approval of the instant transaction suggests that the OCC will entertain similar applications that could eventually involve a significant portion of the mutual banking industry. Mutual institutions, their depositors, and the communities they serve cannot help but wonder why regulators would facilitate a policy evolution that could lead to the elimination of an entire class of financial institutions that serve the underserved including minority, rural, and inner ring urban communities. It is also puzzling why the OCC would adopt a policy that would encourage the transfer of taxpaying earning assets to tax exempt status.

As an alternative to the voluntary liquidation of a viable institution not eligible for a supervisory conversion, the OCC should insist that Brainerd retain a qualified investment banking firm to diligently solicit indications of interest by other mutual banks regardless of geography. Failing that, the OCC should immediately and actively seek a partner for Brainerd with a mutual banking institution. This course of action should always be the first response to any credit union's attempt to combine with or acquire a mutual institution and is consistent with current regulation requiring the OCC to assess the impact of a liquidation on stakeholders. That Brainerd is considered a well-capitalized institution by the OCC should further strengthen the case that Brainerd's transaction with Wings is not consistent with preserving the federal mutual bank charter since well-capitalized mutual institutions should continue as mutual banks and not as credit unions.

In addition to the adverse impact on the mutual banking industry, the nature of the transaction raises troubling precedents regarding depositor rights in the distribution of a mutual institution's residual assets. The OCC administers a complex and systematic regulatory scheme to regulate the treatment of member rights in mutuals. Its regulations cover every aspect of a mutual's lifespan from the corporate cradle to the corporate grave. Conversions to stock, merger conversions and voluntary liquidation are transactions which receive special scrutiny in order to prohibit depositor windfalls or insider advantage. The absence of public information supporting the proposition that the proposed transaction involving a viable mutual is consistent with this regulatory scheme raises concerns about whether longstanding precedents involving the treatment of member rights will be complied with. For example, are the branch deposits and liabilities being transferred to the credit union for fair consideration? If not why not? Will there be a distribution of residual assets to members and what will be distributed? If an otherwise viable mutual can be liquidated with a distribution of residual assets to the members what is the legal distinction between this type of transaction and an acquisition with a premium to be paid out to members of the acquired mutual?

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We believe that the facts of this application strongly suggest that it does not meet longstanding regulation and policy precedents adopted by the OCC and originally held by its predecessor agency the OTS. Moreover, the attempt by the applicant to improperly shield material documents from public view compels the suspension of further processing until the full details of this application are revealed. We respectfully request that processing of the application be suspended or the OCC consider denial.

Respectfully,



Thomas J. Fraser  
Chairman  
Mutual Council  
Independent Community Bankers of America



Leonard Stekol  
Chairman  
America's Mutual Banks