White Paper

Putting Members' Interests First

How Change-in-Control Agreements Ensure a Neutral View in Credit Union Merger Discussions

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Introduction

The steady consolidation in the credit union industry in recent decades offers myriad examples of the advantages of mergers—for members in the form of access to better service, more financial products, and favorable rates and for the industry in terms of membership and market share gains and an improved competitive position. On a case-by-case basis, however, a merger might not be in the best interests of the credit unions at the negotiating table and their members. C-suite executives must carefully and objectively weigh the pros and cons of a merger offer in identifying which path to recommend to their board of directors.

That complex and multifaceted decision process can be even more difficult if it is clouded by concerns about what a merger might mean for credit union leaders personally, professionally, and financially. Is it possible, even likely, that by recommending a merger, a CEO may be taking the first steps toward a step back in authority and responsibilities, or even the end of his/her career? Could it be that the merger will result in valued members of the executive and management team assuming diminished roles in the continuing organization or finding that their positions have been eliminated? Executives have a fiduciary responsibility to lead their organization in directions that are most conducive to the credit union's financial success and to the best interests of members. They are duty-bound to focus on maintaining high levels of member and employee satisfaction throughout the transition stages of a merger, even if they will not remain with the continuing credit union. But human nature dictates that it is difficult to get past the question, "What will this mean for me and the people who rely on me?"

This quandary is not unique to credit union executives. Across industry sectors, business leaders must make decisions and recommendations intended to move their organizations forward even if those new directions do not benefit them personally. Change-in-control (CIC) agreements are designed to support impartiality in evaluating merger and acquisition proposals and to offer high-performing executives certain guarantees in the event of major changes that might affect their positions or compensation arrangements.

This white paper examines the purpose and structure of change-in-control agreements for credit unions and their CEOs and other top executives, especially as those provisions apply in mergers. It offers key considerations for executives and directors in exploring whether and how these agreements might benefit their organizations and presents an overview of developing and maintaining CIC provisions.

Recent Trends in CIC Arrangements and the Credit Union Landscape

Change-in-control agreements are commonplace across business sectors. According to a study of the top 200 publicly traded U.S. companies by the firm Alvarez & Marsal Taxand, 63 percent of those business entities have individual agreements in place with top executives that specify severance pay and other payments to cover salary and annual bonuses, long-term incentives, and retirement benefits in the event of a change in control.

CIC provisions for CEOs and other executives are less commonplace in the credit union industry. According to the 2017 CUES Executive Compensation Survey, less than half (46.2 percent) of participating credit unions have negotiated an employment contract with their chief executives; 59.4 percent of those contracts include CIC provisions. Employment contracts and CIC agreements are likely less common in smaller credit unions, those with less than $100 million in assets.

At the same time, the pace of consolidation in the credit union industry shows little sign of slowing down. A 2016 analysis by CEO Advisory Group predicts that over the next 10 years, the number of American credit unions could decline to around 4,470, with an average asset size over $750 million; by 2036, the average size of the projected remaining 3,320 credit unions could top $2.5 billion. That consolidation will be driven by a variety of forces that make it increasingly difficult for smaller financial institutions to thrive.

"Among smaller credit unions, the regulatory burden can be especially onerous," says Maria Kell, Senior Executive Compensation Consultant with Business Compensation Consulting, Plano, Texas (https://BCC-Business.com). "With the increased costs of technology and providing the services their members expect, it's really difficult for a small credit union to be able to compete. And those challenges are compounded if they serve SEGs or sponsors in sectors that are also having a hard time economically."

Kell's observations are evident in credit union consolidation and industry performance data reported by the NCUA: Over the decade ending Dec. 31, 2017, the number of federally insured credit unions declined from 8,101 to 5,573. On average, the financial health of those continuing credit unions remains strong. Total assets held by federally insured credit unions rose 6.7 percent to $1.38 trillion in 2017, and membership grew by 4.5 million to a total 111.3 million. Growth in both total assets and membership—which stood at $753 billion and 86.8 million, respectively, at year-end 2007—demonstrates that the credit union industry not only survived the Great Recession but rebounded well from the financial crises. However, those gains are not shared equally across asset size, as the accompanying chart shows.

Credit Union Performance by Asset Size (based on year-end 2017 NCUA data)

	Share of total CU assets	Total # year-end 2017	Total # year-end 2016	Change in loan volume	Change in membership	Change in net worth
$1 billion+	64%	287	272	+ 13.7%	+ 9.0%	+ 11.4%
$500 mil-$1 bil	13%	244	229	+ 10.1%	+ 6.3%	+ 6.4%
$100 mil-$499 mil	17%	1026	1050	+ 1.0%	- 3.8%	- 0.9%
$50 mil-$99 mil	4%	709	724	- 0.1%	- 4.3%	- 0.7%
$10 mil-$49 mil	3%	1774	1851	- 0.9%	- 5.8%	- 2.8%
Less than $10 mil	1%	1533	1659	- 5.5%	- 8.8%	- 5.0%

In her work consulting with credit union boards, Kell finds that discussions of a merger as one way to overcome those challenges confronting smaller financial cooperatives and offer members the services they want within the credit union model are becoming more commonplace. Putting a CIC agreement in place can help to ensure that those discussions proceed in a productive and objective manner.

CIC Basics

Change-in-control agreements are commonplace across business sectors. According to a study of the top 200 publicly traded U.S. companies by the firm Alvarez & Marsal Taxand, 63 percent of those business entities have individual agreements in place with top executives that specify severance pay and other payments to cover salary and annual bonuses, long-term incentives, and retirement benefits in the event of a change in control.

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Successful mergers often benefit members of the merging credit union by expanding their access across delivery channels to a broader range of financial products and services. Especially in the case of mergers of significant size, the continuing credit union should realize greater economies of scale and operating efficiencies that can be passed on to members in the form of more favorable loan and deposit rates. The operative word here is successful. To achieve these ends, a merger requires strong leadership through the stages of due diligence, systems and facility conversions, management and staff reorganizations, and communications with members and the wider community. Consistent and cohesive leadership is essential in maintaining member and employee loyalty throughout the stages of a merger.

CIC agreements can help keep both merging and continuing credit unions on track through uncertain times by removing executives' self-interest to facilitate clear and impartial evaluations of merger proposals and by incenting key leaders to remain in charge throughout these transitions. It is not uncommon for talented executives to receive lucrative job offers once the word is out that a merger is in the works. These agreements also help prevent unwelcome surprises during merger talks and activity by defining compensation for various merger and acquisition scenarios.

A CIC agreement offers an effective means for the board to execute its governance responsibilities by maintaining experienced leadership throughout merger negotiations and execution. The board has a duty to act in members' best interests and to create strategic alignment to achieve the goals of the credit union. The incentive compensation set out in CIC provisions is a useful tool for achieving alignment with organizational goals.

Typical forms and components of a CIC agreement

Several factors may account for whether a credit union currently has a change-in-control agreement in place with its CEO and other executives, including the size and financial strength of the organization, the likelihood of a merger or other major change, and the importance of retaining the services of the chief executive and other senior managers through periods when significant transitions are under consideration or in process.

As with other compensation agreements, a CIC arrangement can be highly individualized to the needs of an organization and its leaders. An agreement can apply to the CEO or encompass several members of the executive team. It can be structured as part of a wider employment contract or developed as a separate, specific agreement. CIC provisions are also included in documents setting out the terms of nonqualified deferred compensation arrangements, such as 457(f) programs for credit union executives, and supplemental executive retirement plans (SERPs) to specify whether and how vesting in those plans would be handled in the event of a change in control.

CIC agreements address two basic elements: (1) the definition of what constitutes change in control and (2) the specific circumstances, in terms of severance pay and/or the acceleration of vesting in existing nonqualified executive compensation plans and retirement benefits, that result when an event that meets the definition occurs. Those elements are typically addressed in the following provisions.

Single or double trigger

CIC provisions can take effect as the result of a single event, such as a change of control brought about by a merger or a significant change in the composition of the board of directors to whom the executive team reports. Alternatively, these provisions may be structured to result in the payout of specified compensation only when a change in control results in an executive losing his/her job or undergoing a significant change in level of authority and responsibility. Across business sectors, reliance on the former, or ***single-trigger agreements***, is on the decline, as shareholders have pressured boards for provisions for ***double-trigger vesting*** in which equity is paid out if the executive is dismissed or his/her role is diminished, in accordance with circumstances spelled out in the agreement, and the agreed-upon compensation is not assumed or replaced by the acquiring company.

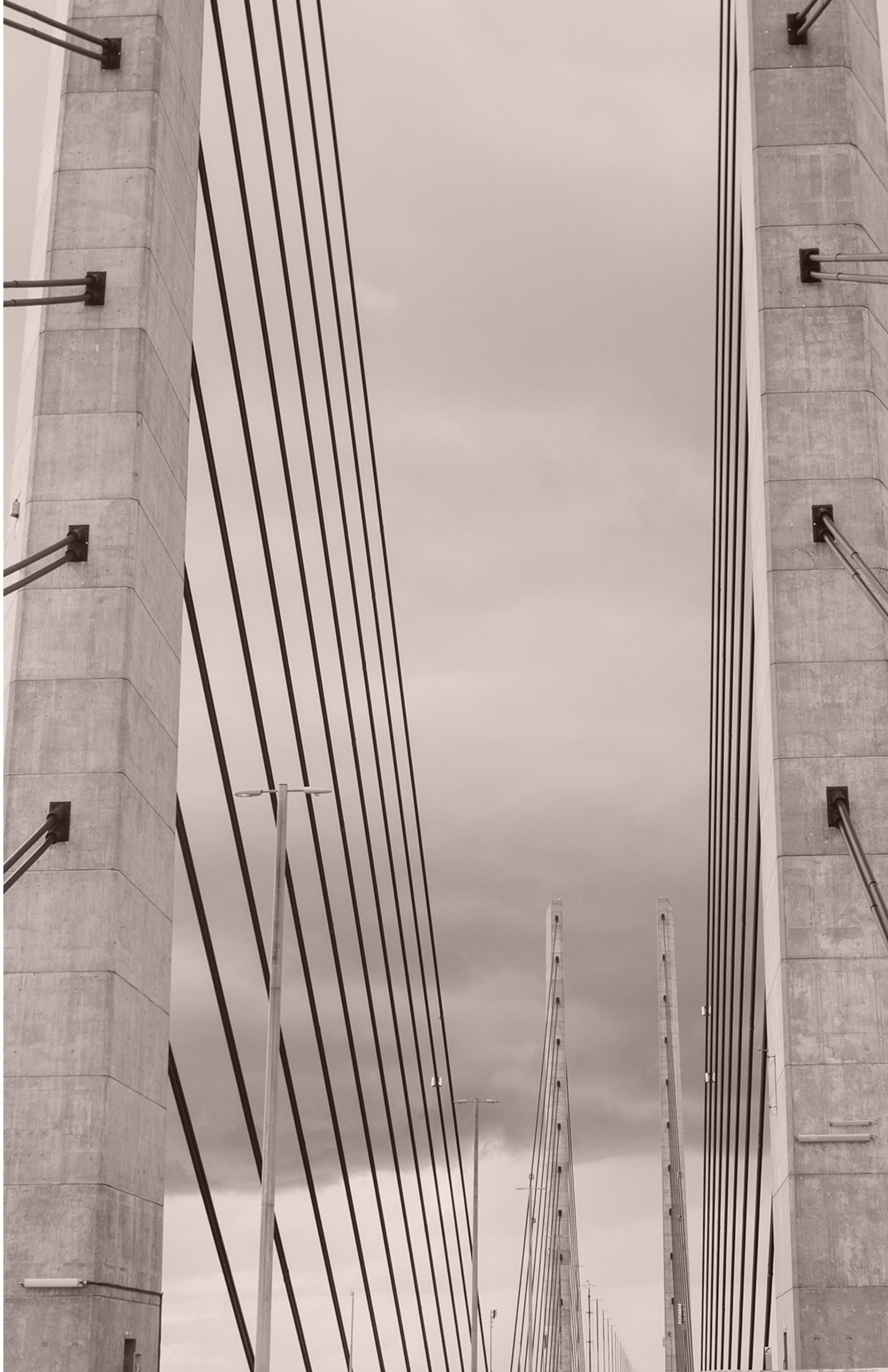
While credit unions don't have shareholders or compensate executives through stock shares or other forms of equity, CIC agreements developed for executives leading financial cooperatives must still specify how their compensation will be handled in the event of a merger. The aim must be to clearly define for the executives and credit unions involved in a potential merger when the CIC provisions would take effect and what amount of compensation would be paid. In some cases, the agreement may proffer some discretion on the part of the executive on whether and when to invoke the CIC protections. For example, the agreement might allow the executive to decide whether to accept a position in the continuing organization that would entail a geographic move or a different title with less authority or to leave the credit union when the merger is complete and accept the CIC compensation.

In negotiating for a single-trigger or double-trigger arrangement, executives typically favor the former while boards may push for the latter so that compensation is paid out only in the event of a change in control that results in termination of employment, termination for good cause, or the offer of a lesser position in the continuing credit union, Kell says.

Another consideration may be the impact of these clauses on merger negotiations, as potential acquirers may prefer a double-trigger arrangement. If the CIC arrangement is not automatically invoked by the completion of a merger, the continuing credit union has the option to negotiate a new arrangement to keep the executive on board.

Aim and amount of compensation

The compensation offered in a CIC agreement may be structured as a retention incentive and/or as severance pay in recognition of an executive's prior service to the credit union. The board must negotiate compensation set out in this agreement based on its goals and understanding of the executive talent market and as a reflection of the strategic value of a likely merger. In the former case, the aim is to keep a valued executive on board through a



specified period of transition through a merger. The compensation offered must be adequate to counter offers the executive might receive from other financial institutions to lure him/her away. Thus, the prospect of competitive bidding will set the market for executive payments.

In the case of severance, the compensation typically offered to executives in CIC provisions differs significantly from the standard severance pay familiar to many people. According to a 2014 WorldatWork survey, more than 90 percent of businesses that have a severance pay policy for employees across the board calculate those payments based on additional weekly pay corresponding to years of service. In contrast, severance compensation for executives set out in CIC agreements is often specified as a multiple of yearly pay, which typically includes both salary and annual bonus.

The ratio of CIC compensation to total annual compensation (the average of the most recent five years of salary and bonus pay reported as annual W-2 compensation) in this example illustrates the board's strategy to keep the agreed-upon payments below a multiple of 3, which is an IRS-imposed limitation in for-profit business sectors. Bank executives who receive severance compensation above that limit would be assessed a 20 percent excise tax on the amount above the limit, which is considered an "excess parachute payment."

The following table provides an example from the banking industry, disclosed in the proxy statement of a West Coast bank with $1.7 billion in assets:

	Annual Base Pay	Annual Total Comp	CIC Total Pay	CIC/Base	CIC/Total
CEO	318,270	676,297	1,983,455	6.23	2.93
CFO	209,000	358,848	930,898	4.45	2.59
EVP	216,300	371,733	1,104,898	5.11	2.97
EVP	188,500	331,913	920,898	4.89	2.77
CCO	190,600	316,936	803,532	4.22	2.54
TOTAL	**1,122,670**	**2,055,727**	**5,743,681**	**5.12**	**2.79**

Previously, this taxable limit did not apply to credit unions. However, writing for the Aronson Nonprofit Report, Craig Stevens notes that:

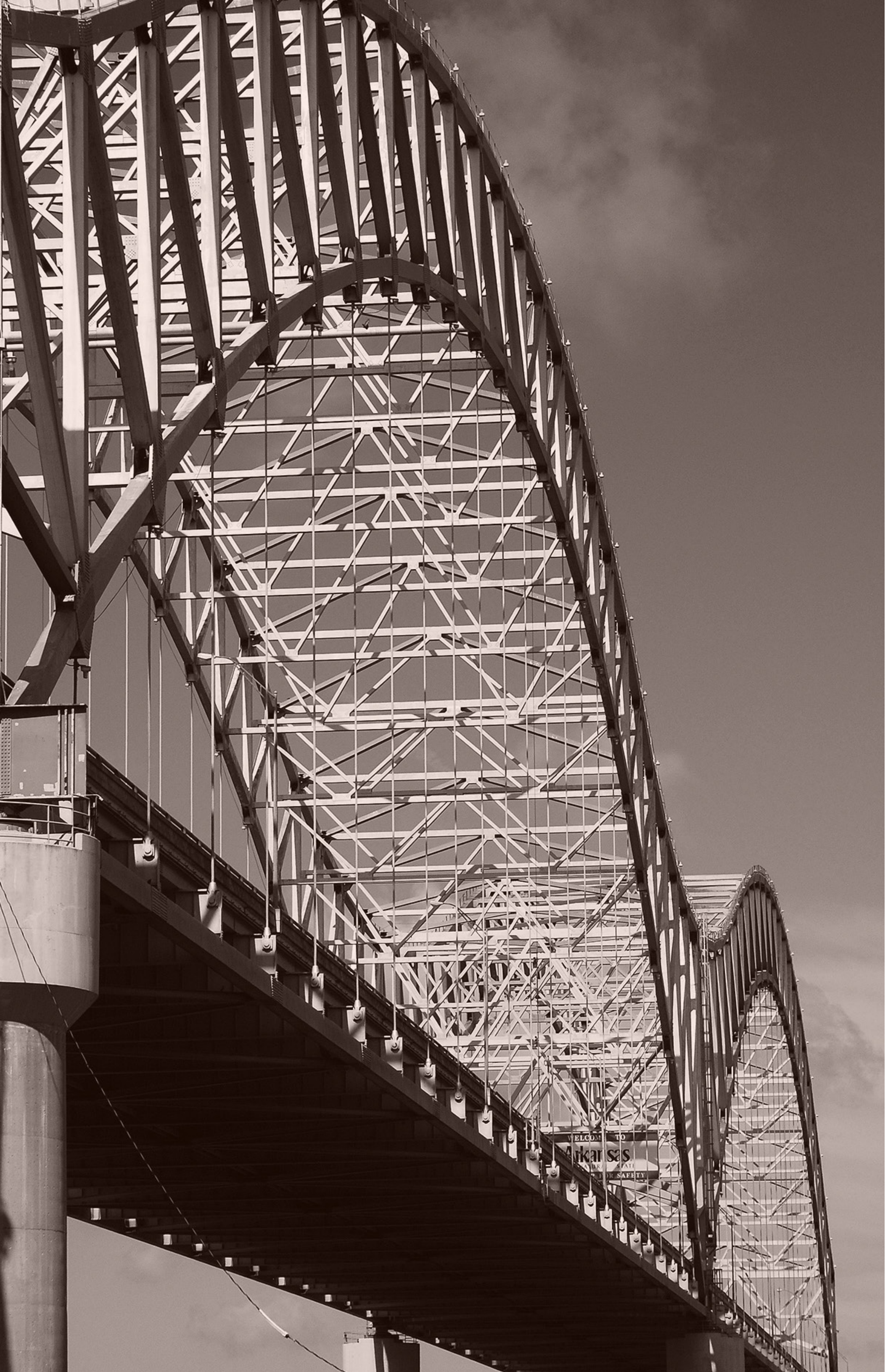
The new tax bill signed by President Trump on December 22, 2017 includes—for the first time—a specific excise tax on “Excess Tax Exempt Organization Executive Compensation” under new Internal Revenue Code Section 4960. The bill adds a new excise tax provision to Chapter 42 to parallel the $1 million deductibility limitation under IRC § 162(m) for executive compensation paid by publicly traded companies. New IRC § 4960 would impose a 21% excise tax on compensation of more than $1 million paid by Exempt Organizations (EOs) to any “covered employee,” plus any excess parachute payment paid to a covered employee.

The excise tax would be applied to the excess over $1 million paid in any tax year, says Roger Jones, CPA, Partner in Hauser Jones & Sas, Bellevue, Wash. (www.hauserjonesandsas.com). “Since many executives receive a retirement or CIC payment upon sale, it is very likely that such payments will put the credit union over this limit, especially when combined with the executives’ normal base pay and yearly incentive bonuses. In the future, such payments will need to take different forms or be scheduled out over longer time periods if the credit union wishes to avoid the excise tax. Alternatively, the credit union will need to accrue the excise tax on any expected severance or CIC payments in the tax year in which such CIC payments are made.”

Several strategies may be employed to avoid or offset the impact of the excise tax on executive compensation set out in a CIC arrangement. One best practice is to stagger the payments over two or more tax years, Jones says. The retiring executive could also continue working in a reduced capacity, perhaps in a service or advisory role, for three to five years to trigger future-dated income tax recognition. This strategy is especially appropriate for executives nearing the end of their careers as their credit unions consider merger offers.

Alternatively, a credit union could offer what amounts to “tax protection” to an executive facing steep personal tax bills by “grossing up” the amount of the CIC payments so that the net after-tax benefit reflects his/her retirement funding goals, he adds. Credit unions should be on the lookout for further clarifications from the Treasury Department regarding the impact of these recent tax code changes.

Keep in mind that the fiduciary responsibilities of credit union boards impose a requirement that compensation offered to executives fall within reasonable and appropriate limits (e.g.,



reflecting the executives' tenure and level of experience, the size and financial standing of the organization, and competitive compensation practices in the industry). In addition, the NCUA has imposed regulations prohibiting "golden parachutes" on severance compensation to executives of credit unions considered to be financially troubled.

Credit union boards and executives should rely on compensation experts to develop CIC arrangements that comply with evolving NCUA and IRS regulations and avoid unpleasant surprises in the form of an unexpectedly large tax bill when compensation is paid, Kell advises. When a deferred compensation plan vests, the executive is liable for taxes in that year. The plan can be structured carefully to cover some of that tax liability without pushing past regulatory limits that could result in further penalties for the executive and credit union.

Timing of compensation related to a CIC event

Regulations regarding compensation may become less flexible as a change in control nears, Kell cautions. For example, in the case of a community bank facing a 2.99 multiple of annual pay limit on compensation awarded because of a change in control, accelerated vesting in deferred compensation plans within 12 months of the event may count toward that limit and trigger the excise tax. As a result, the bank board may opt to accelerate vesting in advance of entertaining a merger offer to avoid that ticking clock. Again, credit unions adhere to differing regulations, but it pays to work with compensation specialists to explore how varying and ever-changing rules apply to potential mergers and to plan accordingly.

"You never go wrong bringing clarity to a situation proactively," Kell says. "In any kind of financial transaction, the extent to which you can provide clarity around situations that may arise helps support better decision making. Proactively identify and plan for potential problems *before* emotions enter the equation."

Accelerated vesting in long-term compensation:

CIC provisions may also address the acceleration of vesting so that executives departing the credit union during or following a merger receive all or some of the benefits set aside in 457(f) or other nonqualified deferred compensation plans and SERPs for executives. For example, let's say a credit union has a 457(f) plan in place for its CEO that sets aside $100,000 annually over seven years, with the full $700,000 plus accumulated earnings fully vested and paid out at the end of year seven. If the credit union is involved in a merger in year five of that plan, the chief executive's CIC agreement may call for accelerated vesting so that the full compensation award is paid six months after the formal date of the merger.

Taxation and timing of benefits payments:

The timing of payouts of compensation set out in a CIC agreement may be determined by several factors, ranging from an executive's performance of milestones in the merger process to tax considerations. Depending on how benefits are structured, the disbursement of compensation under a CIC agreement may trigger taxable events for the executive, so payments may be timed to manage and mitigate those tax consequences.

Non-compete and non-solicitation clauses

A CIC agreement may include provisions that affect the executive's future career moves. In signing a ***non-compete clause***, an executive agrees not to take a similar position with another financial institution that could be considered a competitor of the credit union for a set period of time. Along the same lines, a ***non-solicitation clause*** prohibits an executive from attempting to recruit employees or members on behalf of another financial institution.

A non-compete clause serves as a counterbalance for the credit union to the protections provided to a CEO in a CIC arrangement. At the same time, in agreeing to a non-compete restriction, an executive commits to limitations on future career options for a set period of time and thus may negotiate for compensation that covers that period when his/her ability to accept job offers may be restricted. As a result, compensation related to a non-compete clause is not considered in the assessment of what might constitute an excessive parachute payment, Jones notes.

Senior management retention

CEOs typically have authority over compensation for senior staff subject to the budget. As part of CIC negotiations, a CEO might seek similar protections for other members of the executive team. As previously noted, credit union boards have the option to create CIC plans that apply to several executives in addition to the CEO. A CIC plan may even be developed to cover provisions for severance pay for all departing staff as the result of a merger.

Required disclosures

CIC arrangements are disclosed to the NCUA in the merger application submitted to the regulatory agency. It is possible that the NCUA could raise concerns about a CIC agreement or other payment if regulators felt the payment was excessive or could affect the safety and soundness of the surviving credit union, says Richard Garabedian, a financial institutions attorney with Hunton & Williams, LLP, Washington, D.C. (www.hunton.com).

In addition, a proposed NCUA regulation published in June 2017 aims to increase transparency regarding executive compensation linked to a merger and to facilitate member-to-member communication preceding the membership's vote on the merger plan. The compensation disclosure proposal is based on SEC rules for publicly held companies, and the member-to-member communication plan is patterned after existing rules related to credit union-to-bank conversions, Garabedian notes.

As originally proposed, the rules would apply to federally chartered credit unions, but the NCUA sought input on whether the rules should cover mergers involving all federally insured credit unions. The disclosure regulation would apply to compensation offered to the CEO, the four other most highly paid employees of the merging credit union, and any member of the board of directors or supervisory committee. Under the NCUA Rules and Regulations, volunteers of a federally chartered credit union may not be compensated, but there are some very minor exceptions, such as insurance. The proposed disclosure would apply to federally insured credit unions in those states that permit board compensation, including Washington, Texas, and Rhode Island.

"Is it appropriate to require disclosure of executive compensation in this situation? It probably is, because it affects members' ownership interests," Garabedian says. Members' financial interests in a merger may not be as significant as those of stockholders in a bank or other public company, but the NCUA views a credit union's depositors as its owners, and their ownership interests would be impacted by a merger.

At the 2017 Governmental Affairs Conference, NCUA Board Chair J. Mark McWatters called for greater transparency in the disclosure of CIC provisions, proposing that the NCUA "should require all merger solicitation documents to provide, without limitation, a discussion of any change-in-control payments and other management compensation awards and agreements, and that such disclosures are written in plain language and delivered to voting members in a reasonable time prior to the scheduled merger vote."

The proposed regulations are not without controversy, Garabedian adds. A common concern is how the NCUA would "police" member communications to ensure that they are not false or misleading and not in support of some agenda unrelated to the merger.

Anticipating All Possible Outcomes

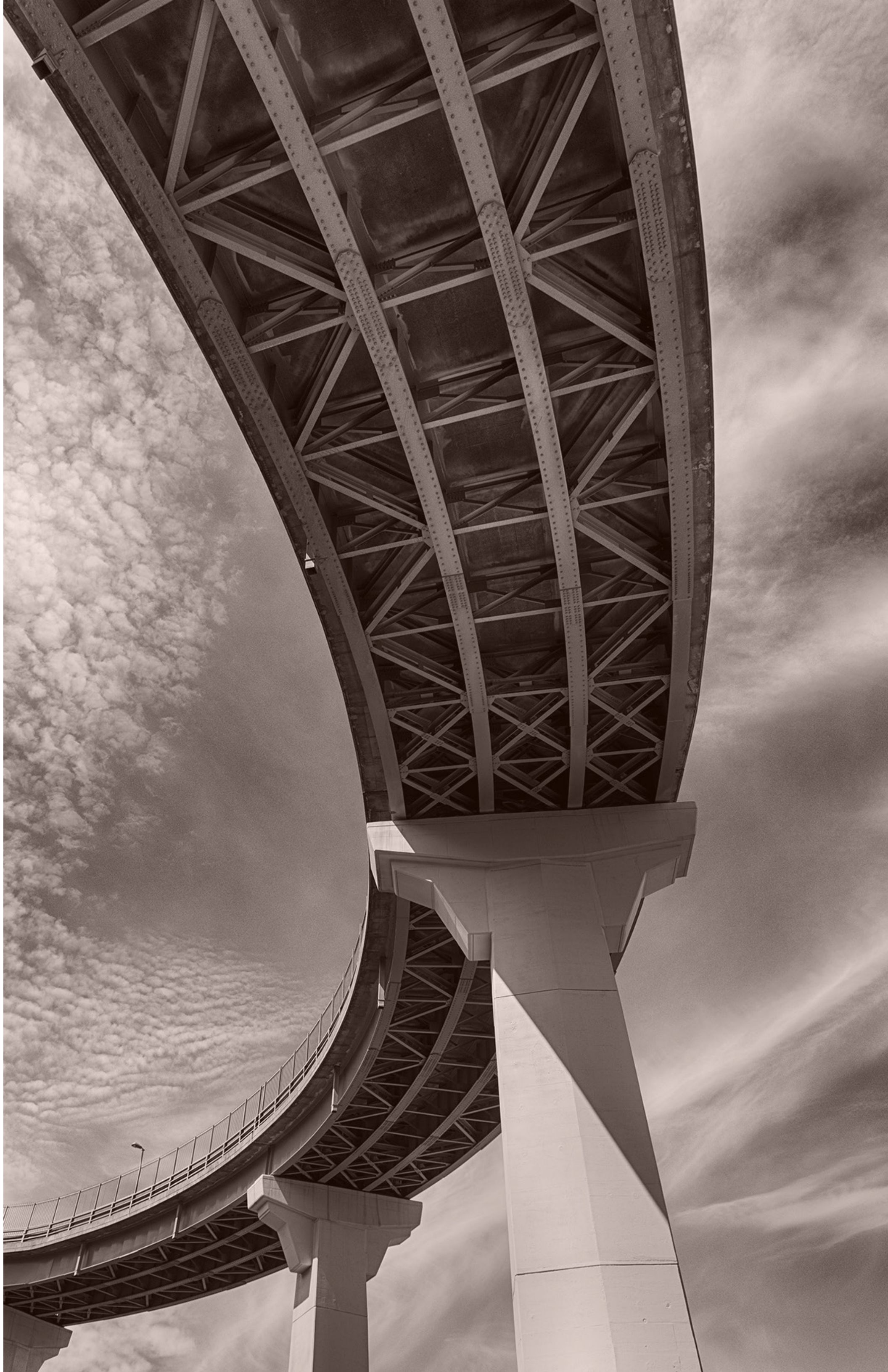
CIC arrangements should be designed to address a full range of eventualities that may result in the negotiation and implementation of mergers. No two mergers are the same, and the outcome of a merger for the continuing and merging credit unions and their staffs may be very different than initial expectations. As just one example, a CIC agreement should spell out what happens when the CEO of a merging credit union continues his/her career with the continuing organization. In some situations, the chief executive of the merging financial cooperative may be chosen to lead or co-lead the continuing credit union or be hired in another ongoing executive capacity.

This range of possibilities may be addressed through a clause specifying that the CEO would not be eligible for CIC compensation unless his or her position is terminated within a certain time frame. The arrangement would take effect if (1) the executive is terminated without cause within that period; (2) the executive resigns with good reason, as specified in the agreement; or (3) the executive's responsibilities are changed within a specified period of time of the merger. The contract would typically specify a period from one to two years of a trigger date for the merger, which might be regulatory approval, public announcement of the merger, or its closing date. Severance payments might be contingent on the executive signing non-compete and non-solicitation agreements.

Ideally, CIC agreements are put in place in advance of merger discussions by the CEO's own board of directors. However, in some cases when the CEOs of merging credit unions do not have CIC provisions in place, the acquiring credit union, as part of merger negotiations, may offer the chief executive of the merging organization a retirement or severance package. That compensation may be structured as a retention bonus that is more lucrative than the pay and benefits arrangement the executive currently has in effect. This type of agreement can be written into the supplemental merger agreement or a separate employment or severance agreement.

There may be negotiations between the continuing and merging credit unions about CIC agreements, Kell notes. For the most part, the credit union employing the executive covered by the CIC arrangement is responsible for any compensation due as a result of those provisions. But in some mergers, the acquiring credit union may be willing to discuss footing some of those costs as a step toward retaining the executive on the team of the continuing organization.

Even a signed CIC agreement is not set in stone. Changing circumstances may result in a credit union executive or board seeking to renegotiate the terms of such an agreement. For example, if a financially troubled credit union is seeking a merger, the board and executive may need to revisit CIC provisions to ensure that the payout set out in the agreement does not violate regulations prohibiting what might be considered excessive compensation. Conversely, the CEO of a high-performing, well-capitalized credit union might seek to renegotiate a CIC arrangement in advance of seeking merger partners so that the compensation award reflects his/her effective leadership, perhaps by expanding the multiple of annual pay and bonus the agreement offers.



Addressing a Potential Retirement Gap

Credit unions compete in the same marketplace as banks, but mechanisms for long-term compensation of their leaders are limited by regulatory and business model differences. As not-for-profit financial cooperatives, credit unions do not issue ownership shares and thus cannot offer stock options or other forms of equity to executives as a form of compensation. In addition, credit unions and banks must adhere to differing tax regulations regarding the structure of executive retirement benefits and other long-term compensation. As a result of these limitations and the relatively small size of their organizations, the CEOs of many smaller credit unions have traditionally been at a disadvantage in being able to accumulate retirement benefits in comparison to their peers at larger credit unions and community banks. These executives have dedicated their careers to building and sustaining their credit unions with little personal reward.

Returning to one of the primary reasons for developing a CIC arrangement—ensuring that the CEO can objectively consider the merits of a merger proposal—let's consider a not-uncommon situation involving the fictional ABC Credit Union, a financially stable $45 million institution. ABC CU has been approached by a larger organization about the possibility of a merger. The credit union has been holding its own in its market, but its board and executive team recognize that it has become increasingly difficult to keep pace with technology and members' expectations for mobile and online access, with regulatory requirements, and with increasing competition. At the same time, the CEO, who has been with the credit union for the entirety of her career, calculates that she is still five years from being able to retire, and she is realistic about the likelihood of finding a similar position with another credit union or other financial institution at this stage in her career. She recognizes her responsibility to act in members' best interests in evaluating the merger proposal but is understandably concerned about her own future and opportunities for other executives on her team.

In recognition of the CEO's quandary, the ABC CU board commits to develop a change-in-control agreement that would reward the CEO for her years of service in the event of a merger that occurs before she is ready to retire. In addition, the agreement spells out compensation for other key senior managers who do not receive offers of continued employment with the continuing credit union in line with their current compensation and levels of responsibility. The board works with third parties with expertise in executive compensation and contract law to negotiate with the CEO and other named executives and their attorneys to structure a CIC plan that benefits all parties. With that agreement in place, ABC CU's executive team can truly apply a neutral view to merger proposals and make the best possible recommendation to its board.

Additional Best Practices

Plan regular reviews of employment agreements and CIC arrangements.

Many top executives have been with their credit unions for decades, but when they signed their employment agreements—some as long as 15 or 20 years ago—"the possibility of a merger wasn't even on the radar," Kell notes. A longstanding contract may address severance issues but not specifically compensation in the event of a change in control or the treatment of nonqualified deferred compensation plans in such an event.

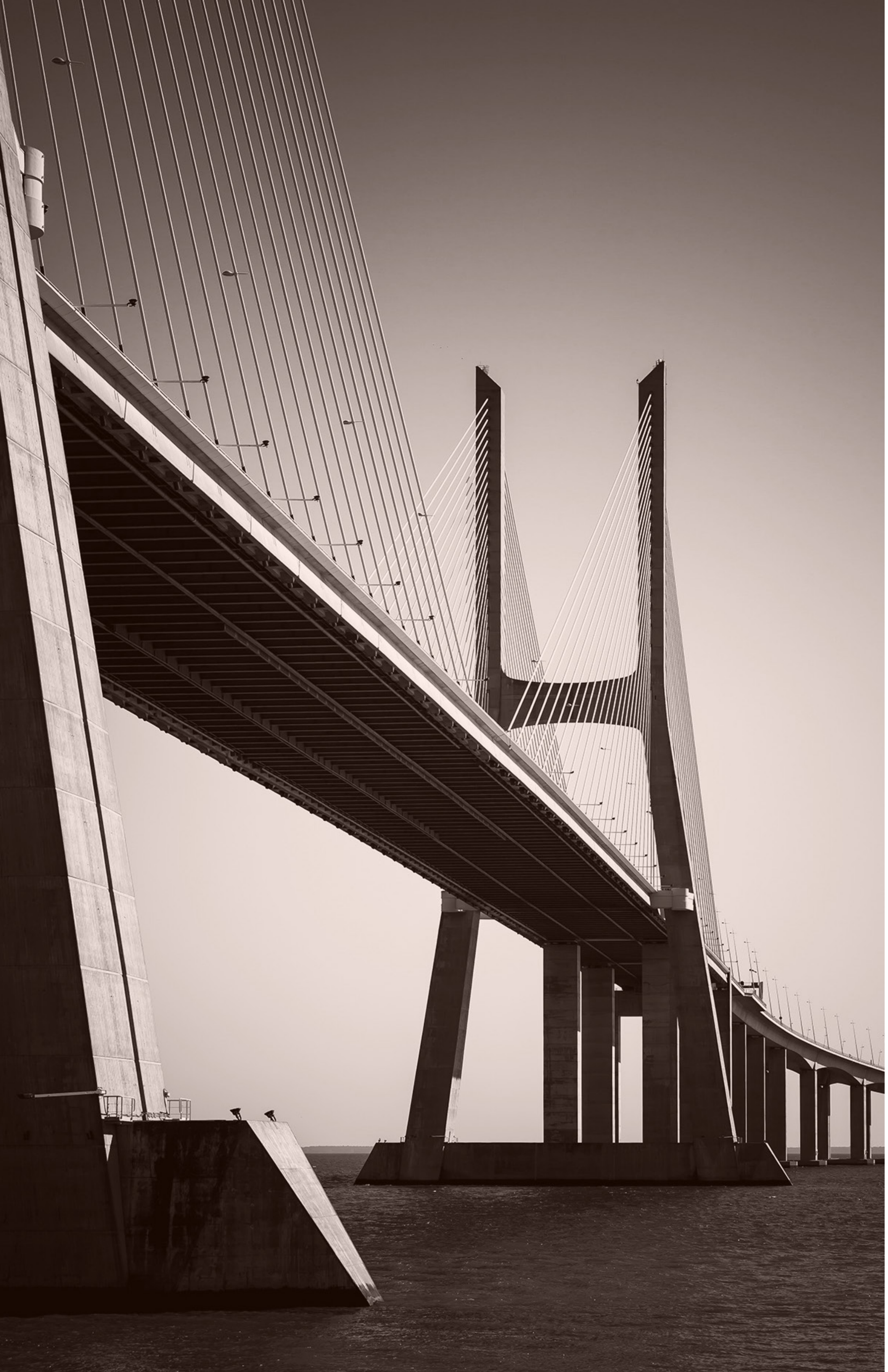
Executive employment agreements are often written for specific terms of three or five years, for example, and then automatically renew annually thereafter. Regular reviews ensure that the terms of the contract are updated to address changes in the organization and industry. Even if these reviews are not scheduled periodically, discussions about the possibility of a merger should nudge the board and CEO to review contract terms in advance of any serious discussions.

Beyond the possibility of a merger, the CEO may also advocate for an update of the employment agreement and CIC terms if significant changes in board composition—and perhaps the strategic direction of the credit union—may be imminent, Kell adds.

For example, it is not unusual for credit union boards to be dominated by a majority of directors who have served together for decades. "The CEO recognizes that the board that will be in place as these directors begin to retire could be vastly different from the board in place today," she notes. "And the new board could be looking for a different approach, philosophy, and expectations of the executive team."

Aim for consistency across agreements.

In addition to employment contracts and separate agreements with CIC provisions, the legal documents that set out deferred compensation and SERP arrangements also must address these eventualities. Especially if they are drawn up separately and without taking care to ensure consistency, these contracts may specify conflicting outcomes for when, how, and how much compensation is paid in the event of a change in control. Or, the documents, when executed simultaneously, may have unintended—and expensive—consequences. A comprehensive review of these documents must be conducted to ensure that they are complementary, apply the same terms and language, and reflect the goals of the board and named executives, Kell recommends.



Consider CIC plans to cover multiple executives.

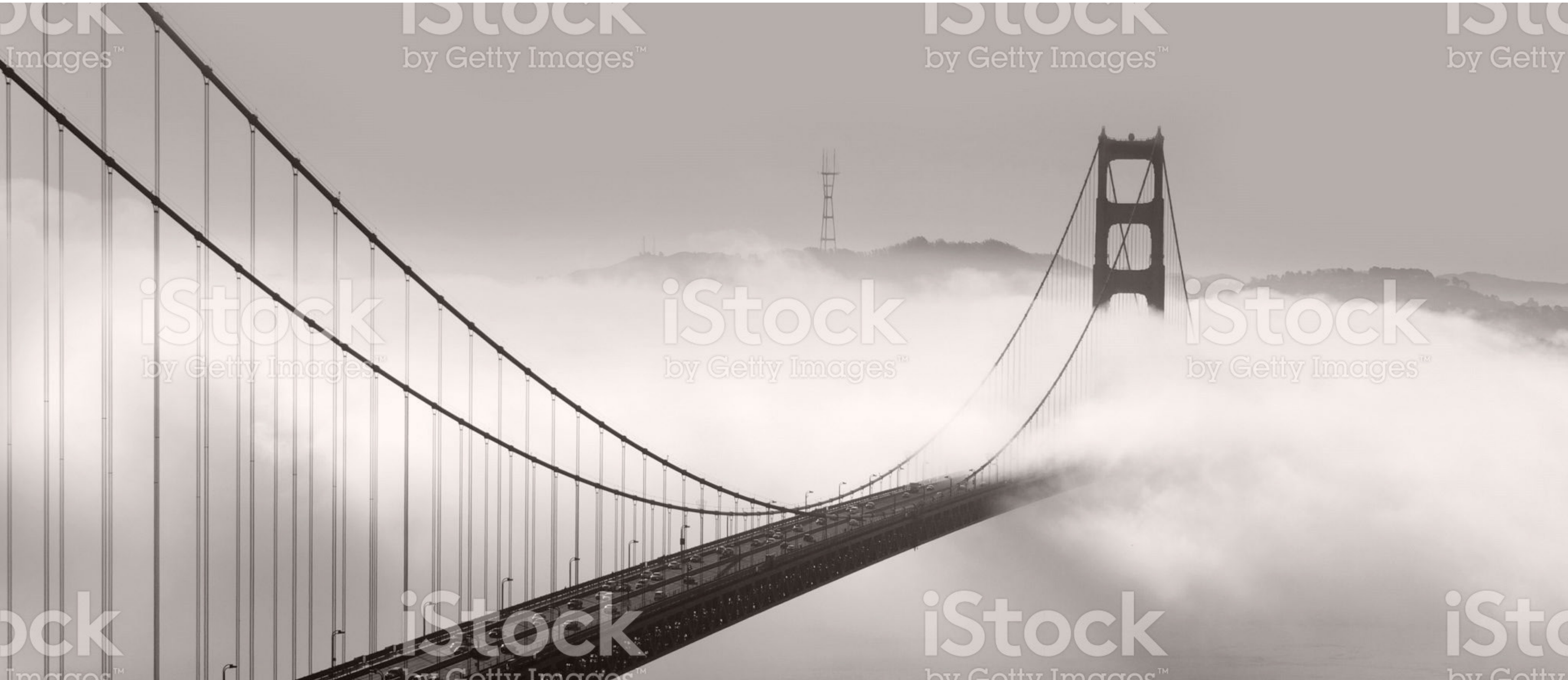
According to Meredith and Rodda, plans that cover several executives in the event of change of control, in contrast to contracts that cover only the CEO, are becoming more commonplace in the financial services industry.

Keep pace with regulatory changes.

As previously noted, the tax code changes signed into law in late 2017 impose new regulations on compensation for credit union executives, and the NCUA has proposed new requirements for disclosing CIC agreements to members. As with other areas of credit union regulation, rules related to executive compensation and mergers should be viewed as a continual work in progress.

Conclusion

There is a strong argument to be made that consolidation has strengthened the credit union movement and the value proposition for members. This dynamic will continue to fuel merger discussions in the years to come, ensuring that the ability to evaluate such opportunities through a strategic, impartial lens will be a valued core competency among credit union executives. A carefully crafted change-in-control agreement can help the CEO maintain a neutral, members-first view of a merger's potential and incent valued leaders to remain on the job through the sensitive stages of transition. A CIC agreement is an effective tool for the board to manage the credit union's most important asset—its leaders and staff.



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