April 9, 2024

Superintendent Adrienne Harris
New York State Department of Financial Services
1 State Street
New York, NY 10004-1511

Re: Application pursuant to Section 601 of the Banking Law, for the merger of Catskill Hudson Bank with and into Hudson Valley Credit Union

Dear Superintendent Harris:

On behalf of the members of the New York Bankers Association ("NYBA")[1] and the Independent Bankers Association of New York State ("IBANYS"),[2] we are writing to express our strong concern regarding the above referenced merger, marking the first time in history that a credit union has announced its intention to acquire a bank in New York and potentially setting a dangerous precedent that will lead to severe consequences for our customers and communities. We believe this acquisition warrants careful and transparent consideration and scrutiny due to recent significant shifts within the credit union industry, particularly their unchecked expansion and continued exemption from most taxes and the Community Reinvestment Act ("CRA").

First and foremost, we strongly object to the approval of an acquisition of a taxpaying and CRA subjected community bank, by a largely non tax-paying credit union that is also exempt from CRA. We believe that this acquisition, cloaked in the unverified promise of keeping branches open, will in fact reduce the combined institutions' commitment and accountability to making loans in Low and Moderate Income ("LMI") communities under CRA, reduce the level of qualifying community development lending and investment, and ultimately harm consumers by leaving them to deal with the loss of tax revenue in their communities.[3] Thus, it is a "double-hit" to the area served by the bank.

Credit unions were originally established with a mission to provide basic consumer financial services to those in need for a tight knit field of membership. However, the landscape has evolved dramatically since their inception. It seems there is now no bigger

[1] NYBA is comprised of the smaller community, mid-size regional, and large banks across every region of New York State. Together NYBA members employ nearly 200,000 New Yorkers, safeguard $2 trillion in deposits, and extend nearly $70 billion in home and small business loans. NYBA members also support their communities through an estimated $200 million in community donations and 500,000 employee volunteer hours.

[2] IBANYS represents the interest of independent community banks located throughout New York State. Community banks share a commitment to meeting the financial needs of their respective local communities.

[3] Indeed, New York's banks paid nearly $5 billion in income taxes to the local, state and federal authorities in 2022 to support their communities. Credit unions paid no income and other taxes on their nearly $120 billion dollars in assets in New York, a skyrocketing 44% increase in the last five years. *See* https://www.reformcreditunions.com/wp-content/uploads/2021/08/new-york.pdf

goal for the larger credit unions in New York than their own expansion. In defiance of their original mission and flush with cash due to their advantageous tax status, these large financial institutions choose to expand rather than lower the prices of loans, create more affordable housing, or increase services to current members.

In recent years, the largest credit unions in New York have already surpassed in size a significant number of banks across the state, aggressively expanding without notable additional oversight.[4] This tremendous credit union growth is far removed from their original, statutorily defined mission, which was, and to this day remains, to provide small-dollar loans to close-knit groups of people of modest means. In exchange for this, credit unions enjoy freedom from most taxes and an exemption from federal and State Community Reinvestment Act requirements. Now, it seems their only mission is simply their own expansion, buying their way into new fields of membership rather than truly championing their membership models and current members.

In this case, though there reportedly were other banks in the area that showed interest in the acquisition, it is obvious that this credit union's tax exemption, which was intended by Congress to facilitate its direct investment back into the community it serves, chose instead to leverage that tax advantage to make an unjustifiable offer on a small state chartered bank struggling under the weight of an increasingly difficult regulatory regime in order to finance its own expansion into a different community instead.[5] Only in this instance, the cost of financing the acquisition ultimately will be borne by the public, through foregone tax revenues.

Indeed, not even two months after this announcement was made, the credit union involved in this acquisition announced even further expansion with the additional acquisition of eight branches of another tax paying and CRA abiding bank, with nearly the same amount of assets and branches in this second acquisition. According to its own press releases, this will create a nearly $9 billion financial institution and a now total loss of approximately $1 billion in taxable assets for those communities, not to mention the loss of taxes on future lending, bond holding and other community building opportunities.[6] Again, promises to retain these physical branches are unverified. In effect, both deals are a taxpayer subsidized acquisition that must be scrutinized to protect consumers.

Further, this unchecked, taxpayer-subsidized growth into new markets does a disservice to local areas well beyond their significant loss of tax revenues. It deprives communities of the focused, hyper-local economic development resources extended by banks through

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[4] This is not a New York specific phenomenon. Nationwide, the largest credit unions with more than $1 billion in assets hold approximately 90% of credit union assets. *See generally* https://www.reformcreditunions.com/.

[5] The credit union's press release announcing this acquisition discloses with great fanfare a deal value for stockholders to receive twice the value of the stock of the bank at the time of the announcement and notes first and foremost its "growth story," its acceleration into the Capital Region and Sullivan County and the expansion of its business banking offering with an additional commercial book of business. There is little to no discussion of the impact on the community or the mission to serve it. *See* https://www.prnewswire.com/news-releases/hudson-valley-credit-union-to-acquire-catskill-hudson-bank-302031229.html

[6] *See* "Hudson Valley CU to Buy Eight Branches From Berkshire Bank", *CU Today*, April 8, 2024, *available at:* https://www.cutoday.info/Fresh-Today/Hudson-Valley-CU-To-Buy-Eight-Branches-From-Berkshire-Bank

their mandatory participation in CRA activities in those communities that need it most. While credit unions contend that their fields-of-membership and historical focus on LMI communities negate the need for them to comply with CRA, in fact, available data suggests tax-paying banks are doing a better job in these areas than credit unions. According to S&P Global Market Intelligence, banks devote more branches to distressed communities than credit unions- nearly 9 times the poverty distressed areas, 10 times the distressed, underserved, and middle- income branches, and more than 10 times the remote rural branches throughout the US.[7]

As one expert recently noted, "with… a field of membership that is extraordinarily broad or worded so as to be essentially nominal, then [the rationale to exempt credit unions from CRA] doesn't really make sense anymore. And there is some evidence, albeit dated, that credit unions lag behind banks in lending to low- and moderate-income borrowers — which would suggest that underserved communities might benefit from having credit unions get the same kick in the pants that their community bank peers will be subject to under the revamped CRA rules… it's starting to seem like the notion, codified in statute, that credit unions are ipso facto benevolent to our most vulnerable borrowers is in need of rethinking."[8]

Indeed, as noted by their own regulator, "there is a myth within the credit union system that because credit unions are owned by their members, they're always going to do right by their members."[9] Recent investigative reports have exposed issues such as discriminatory lending practices and questionable business activities within the credit union industry, prompting calls for congressional hearings.[10] It is evident that the landscape has changed significantly, and regulators have a responsibility to ensure that tax-exempt entities, including credit unions, fulfill their stated missions and serve the community effectively.

Simply put, a credit union's acquisition of a bank defies its original mission and structure to serve small groups of people of modest means. While credit union growth may appear positive on the surface, it must be accompanied by careful regulatory supervision and oversight to ensure it aligns with their stated missions. We therefore strongly urge that the Department scrutinize this acquisition with the same rigor it would a bank-to-bank

[7] *See* "S&P Global Market Intelligence Ranks the Best Performing Community Banks, Credit Unions and US Public Banks for 2022" *available at:* https://www.spglobal.com/marketintelligence/en/media-center/press-release/sp-global-market-intelligence-ranks-the-best-performing-community-banks-credit-unions-and-us-public-banks-for-2022

[8] *See* "Time to Call Credit Unions' Shield of Legitimacy into Question," *American Banker*, December 19, 2023, *available at:* https://www.americanbanker.com/opinion/time-to-call-credit-unions-shield-of-legitimacy-into-question

[9] *See "*A Conversation with National Credit Union Administration Chairman Todd M. Harper," Brookings Institution, February 6, 2024, *available at:* https://www.youtube.com/live/yC1BihKeDjY?si=RE0WdfrkR5HGnoYh

[10] *See e.g.* Bipartisan letter from Senators to U.S. Department of Housing and Urban Development and Consumer Financial Protection Bureau, January 11, 2024, *available at:* https://www.banking.senate.gov/imo/media/doc/letter_to_hud-cfpb.pdf, and Bipartisan Letter to House Financial Services Committee Chair, February 5, 2024, *available at:* 2.05.24_nfrd_ltr.pdf (house.gov)

acquisition, and with heightened regard for the potential loss of local tax, economic development and community investment benefits that may result. New Yorkers deserve accountability, and financial institutions awarded special tax and regulatory treatment should be held to higher standards. This oversight is essential to ensure transparency, accountability, and trust in the financial system.

This merger will create one of the largest financial institutions in the region and a tax revenue and required community investment loss to the same. Nothing could be further from the original intent of credit unions, for which Congress and the State Legislature provided these lucrative incentives, and a reassessment of these policies is long past due. In the meantime, it is up to DFS to lead the nation in providing a responsible and accountable process for evaluation of this and any other potential acquisition of a bank by a credit union. As yet, there has been no public disclosure as to the amount of the loss of tax revenue to relevant localities, nor plans for remediation of the same, no transparency as to the process by which this particularly historic merger came to be, and no analysis of the potential loss of CRA investment to communities affected.

Surely, there is another, more prudent way to protect and ensure the tax and community investment that would have been preserved through a bank-to-bank acquisition in this instance. New York's Banking Law states clearly that, in approving or disapproving a proposed merger there must be consideration of "primarily, the public interest."[11] The Department's mission is also laid out in the Banking Law's Declaration of Policy, which notes that the Department must "maintain public confidence in [the business of all banking organizations], and protect the public interests of depositors, creditors, shareholders and stockholders."[12] At this juncture, given the precedential nature of this potential acquisition, we strongly believe that it is in the public interest to pause this merger and fully analyze the potential unintended consequences of a credit union acquiring a bank for the first time in New York State.

Thank you for considering our perspective on this matter and we welcome the opportunity to meet with you to discuss this further.

Sincerely,

Clare Cusack

Clare M. Cusack
President & CEO
New York Bankers Association

John J Witkowski

John Witkowski
President & CEO
Independent Bankers of NYS

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[11] Banking Law, §601-B (1)(iv).
[12] Banking Law §10.