



Credit Union National Association

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VIA E-MAIL – rule-comments@sec.gov
regs.comments@federalreserve.gov

March 27, 2007

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th St. and Constitution Ave, NW
Washington, DC 20551

RE: SEC File No. S7-22-06 and Federal Reserve Docket No. R-1274 –
Exemptions from Broker-Dealer Requirements

Dear Ms. Morris and Johnson:

The Credit Union National Association (CUNA) appreciates the opportunity to comment on the proposed rule jointly issued by the Securities and Exchange Commission (SEC) and the Federal Reserve Board (Fed) regarding the exceptions for banks and savings institutions from the broker-dealer requirements under the Securities and Exchange Act of 1934 (SEC Act). CUNA represents approximately 90 percent of our nation's 8,700 state and federal credit unions, which serve nearly 87 million members.

Summary of CUNA's Position

- The SEC should, at a minimum, provide credit unions with exceptions to the broker-dealer requirements for those activities in which credit unions are now engaged. These should include networking arrangements with broker-dealers, sweep accounts, and investments undertaken for the credit union's own account or as a trustee or fiduciary, all of which were included in the SEC's 2004 proposal that would have provided these exceptions for credit unions.
- We also urge the SEC to grant an additional exception for safekeeping and custodian activities, as well as to provide a process in which exceptions could be granted for additional securities activities, as the need may arise in the future.



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Discussion

Until the GLB Act was enacted in 1999, banks were not covered under the broker-dealer definitions and were, therefore, not required to register with the SEC. The GLB Act removed this exemption and replaced it with a number of functional exceptions for certain bank securities activities. In 2001, the SEC issued an interim final rule to clarify these functional exceptions, and in 2004 the SEC issued a proposed rule to extend a number of these exceptions to credit unions.

The Financial Services Regulatory Relief Act of 2006 (Reg Relief) that was enacted late last year required the SEC to work with the Fed to jointly issue another proposal to clarify these exceptions, which is to replace the interim final rule that was issued in 2001. This provision of Reg Relief also extended these exceptions to thrifts. Prior to the GLB Act, credit unions and thrifts were not covered under the general exemption that was provided for banks.

As part of this regulatory process, the SEC should provide exceptions to credit unions for at least those activities that credit unions are now engaged. The current significant activities include third-party brokerage arrangements, sweep accounts, investments undertaken for the credit union's own account or as a trustee or fiduciary, and safekeeping and custodian activities. All except for the safekeeping and custodian activities were the subject of a 2004 SEC proposed rule that would have provided the exceptions for these credit union activities. We urge the SEC to reissue and revise the 2004 proposed rule, which should also include the exception for safekeeping and custodian activities. The safeguarding and custodian activities would not raise safety and soundness concerns and would be an appropriate exception for credit unions.

Credit unions are member-owned, not-for-profit cooperatives, and although this operational structure differs from the for-profit structure of banks and thrift institutions, credit unions are subject to a regulatory framework and examination standards that are at least as rigorous as those that apply to both banks and thrifts. For example, credit unions, similar to banks and thrifts, are subject to periodic examinations, prompt corrective action, and regulations governing the respective insurance funds.

Because credit unions are not-for-profit cooperatives, their incentive is to offer new products and services that their members need, and not to maximize profits. The financial needs of credit union members are very similar to the financial needs of bank and thrift customers and include an increasing emphasis on securities products and services. The not-for-profit motive of credit unions also reduces the incentives of their management to take excessive risks. This philosophy and the credit union structure should reduce any concerns with regard to investor protection that exists with for-profit entities. For example, the boards of directors of credit unions are generally

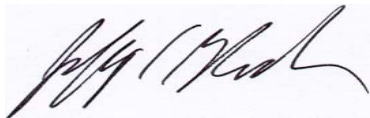
uncompensated, which eliminates possible financial incentives that may be derived from questionable practices. Sound economic, business and policy grounds exist, therefore, for the SEC to extend at least certain of these exceptions to credit unions, such as those outlined in the 2004 proposed rule.

Section 23(a)(2) of the SEC Act prohibits the SEC from adopting a rule that will impose a burden on competition that is not necessary or appropriate in furthering the purpose of the SEC Act. To comply with this requirement, the SEC should provide credit unions with at least the exceptions outlined in the 2004 proposal in order to mitigate possible anti-competitive effects that may result if credit unions do not receive these exceptions. Otherwise, credit unions will incur cost burdens that will result from complying with the SEC's broker-dealer registration requirements. This will place credit unions at a significant competitive disadvantage, as compared to banks and thrifts, which we believe would violate Section 23(a)(2) of the SEC Act.

CUNA would also welcome the opportunity to work with both the National Credit Union Administration and the SEC staff to develop a process under which exceptions could be granted for additional securities activities, as the need may arise in the future. We realize most credit unions do not engage in many of the activities that are outlined in the proposed rule. However, credit unions will likely need the regulatory flexibility to provide these products and services in the future in order to meet the evolving needs of credit union members. For this reason, it would be optimal if a process were developed now in order to ensure that these needs will be addressed.

We are deeply grateful for the time and consideration that the SEC staff has provided over the past several years with regard to these possible exceptions for credit unions and appreciate this additional opportunity to comment on the proposed rule regarding the exceptions for banks and thrifts from the broker-dealer registration requirements under the SEC Act. If you or agency staff have questions about our comments, please give Senior Vice President and Deputy General Counsel Mary Dunn or me a call at (202) 638-5777.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey Bloch", is written over a light blue rectangular background.

Jeffrey Bloch
Senior Assistant General Counsel