



Credit Union National Association

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cuna.org

February 4, 2011

Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090  
[rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Re: Exception to Mandatory Clearing of Security-Based Swaps;  
File No. S7-43-10

Dear Ms. Murphy:

The Credit Union National Association (CUNA) appreciates the opportunity to comment on the Security and Exchange Commission's (Commission's) proposed Rule 3Cg-1, which implements exceptions to the mandatory clearing of security-based swaps authorized by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. By way of background, CUNA is the largest credit union advocacy organization in the country, representing approximately 90 percent of our nation's nearly 7,600 state and federal credit unions, which serve approximately 93 million members.

CUNA supports the Commission's "Additional Rule Text" in subsections (b) and (c) of the proposal, which would exempt credit unions and other end-user depository institutions with fewer than \$10 billion in assets from the proposal's mandatory swaps clearing requirements. Federal credit unions are allowed to enter into some types of over-the-counter agreements, which would meet the definition of "security-based swaps," and some state credit unions have this authority as well. Credit unions would therefore be disadvantaged if the end-user exemption is not expanded to include credit unions.

We believe that the \$10-billion asset threshold for the exemption should not be lowered. We would prefer it to be higher. However, we recognize that under the Exchange Act the Commission cannot adopt a higher threshold. Nevertheless, we question whether coverage under the Dodd-Frank Act's provisions on mandatory clearing of securities-based swaps should be based on asset size alone. We think credit unions should be covered only if they have at least \$10 billion in assets **and** transact significant volumes of securities-based swaps, with "significant volume" to be defined by the Commission consistently with the Exchange Act and other relevant regulations.

Credit unions use limited authorities available under National Credit Union Administration (NCUA) Board rules to mitigate business risks that may be directly



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related to the operations of financial institutions. These investments rarely present safety and soundness concerns because of the comprehensive nature of existing NCUA derivatives rules. Federal credit unions are generally prohibited from investing in derivatives except for certain options used to hedge risk on bonds and retail products tied to an equity index, and to hedge interest rate risk.<sup>1</sup>

Federal credit unions that are well-capitalized and meet other stringent safety and soundness criteria can also employ a wider range of derivatives if approved by NCUA to participate in an investment pilot program on a case-by-case basis.<sup>2</sup> Some federally-insured state credit unions have somewhat broader investment powers than federal credit unions; however, any federally-insured state credit union with investments—including derivatives—that do not conform to those permitted for federal credit unions must establish special reserves to control for associated risk.<sup>3</sup>

Given the broad definition of “security-based swaps” under federal law, it is likely that credit unions’ ability to hedge securities investment risks inherent in the business of financial institutions would be negatively impacted unless the Commission adopts the “Additional Rule Text” exempting credit unions proposed as subsections (b) and (c) of Rule 3Cg-1. We believe that there are no safety and soundness or public policy justifications for the SEC not to exclude from the clearing requirements credit unions, which are subject to comprehensive safety and soundness rules and supervision.

Thank you for the opportunity to comment on the Commission’s proposed rule on the exception from mandatory clearing of security-based swaps. If additional information about CUNA’s views on the proposal would be useful, please do not hesitate to contact me at 202-508-6705.

Sincerely,



Michael S. Edwards  
Senior Assistant General Counsel

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<sup>1</sup> See 12 C.F.R. §§ 701.21(i); 703.14(g); 703.16(a).

<sup>2</sup> See 12 C.F.R. § 703.19.

<sup>3</sup> See 12 C.F.R. § 741.3(a)(2).