



National Association of State Credit Union Supervisors
NASCUS Credit Union Advisory Council
National Institute for State Credit Union Examination

March 23, 2007

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve
20th Street and Constitution Avenue, NW
Washington, DC 20551

Sent via email: regs.comments@federalreserve.gov

Re: Docket No. R-1274

The National Association of State Credit Union Supervisors (NASCUS)¹ submits comments to the Board of Governors of the Federal Reserve System (Board) on Docket No. R-1274, proposed rules that would implement certain exceptions for banks from the definition of the terms “broker” and “dealer” under Section 3(a)(4) of the Securities Exchange Act of 1934.

NASCUS members are state regulatory agencies which are organized as co-equal units of departments which supervise credit unions, banks, saving banks, savings and loan associations, trust companies and securities activities. All states have divisions that deal with securities on a day-to-day basis.

After review, our concern is that, unless state-chartered credit unions are afforded the same treatment by the Securities and Exchange Commission (SEC) as commercial banks and savings institutions, the powers granted credit unions by state legislatures and by state regulators will be unnecessarily preempted by SEC regulations or the rule will trigger redundant and costly examination and oversight.

NASCUS has previously written to the SEC about the definition of “broker” and “dealer” three times in the past—September 3, 2004, July 18, 2002 and July 17, 2001. Proposed Regulation R does not provide credit unions with the same exemption for these activities. This omission creates inconsistencies between credit unions and other financial service providers and may have a long-term negative effect on services credit unions may provide to consumer members.

Under current state laws, state-chartered credit unions are permitted to offer a variety of broker-related services such as third-party, brokerage arrangements, sweep accounts safekeeping and custodial arrangements. Moreover, competitive pressures and changes in the marketplace will encourage state-chartered credit unions to continue to offer additional broker-dealer related service to their members. Subject to appropriate state supervision and regulation, their goal is to offer such new services in an efficient and cost effective manner for the benefit of consumer members.

¹ NASCUS is the professional association of the 48 state and territorial credit union regulatory agencies that charter and supervise the nation's 3,400 state-chartered credit unions.

The jointly proposed rules by the Board and the Securities and Exchange Commission (SEC) to implement the exemptions for the terms "broker" and "dealer" for specific activities of banks under Section 3(a)(4) of the Securities Exchange Act of 1934 does not include language providing credit unions with the same exemptions as other financial institutions. The proposed rules for former Regulation B, now referred to as Regulation R, included language that provided credit unions with like exemptions for the definition of "broker" and "dealer" for specific activities. Credit unions need equivalent exemptions as proposed for other financial institutions from the SEC allowing for networking, sweep accounts and trust and fiduciary activities.

Credit unions need access to exemptions for investment and insurance sales activities

More than 11 percent of state-chartered credit unions offer investment and insurance sales activities; these credit unions serve more than 17 million consumer members. To provide these activities, credit unions require networking exemptions equivalent to those provided to other financial institutions in proposed Regulation R. Further, parity for credit unions is important; credit unions are as much a part of the banking system as the institutions that will benefit from the proposed Regulation R exemptions.

Currently, credit unions rely on the exemptions provided by the Chubb Letter written by the Division of Market Regulation of the SEC on November 24, 1993. Regulation R should include language that provides exemptions for credit unions or a separate formalized exemption needs to be promulgated to provide a uniform set of rules for credit unions. Uniform standards will offer a legal certainty for credit unions performing these activities. Credit unions and their consumer members will be better served if credit unions are granted these exemptions.

Additional costs and regulatory burden

If credit unions are not granted equivalent exemptions that allow for networking, sweep accounts and trust and fiduciary activities, they would have to register as a broker dealer. This adds additional regulations and costs of being a registered entity. It would also impose further regulatory layers onto the credit unions with the addition of oversight by the SEC and potentially a state securities department or division. It is likely that a credit union, facing additional regulatory burden and costs, would choose not to become a registered broker dealer and said services would no longer be offered to credit union members.

Safekeeping and custody exemption

SEC's June 30, 2004 proposal on Regulation B did not extend the safekeeping and custody exemption to credit unions. Our research indicates that 66 percent of state-chartered credit unions offer an Individual Retirement Account (IRA) or Keogh account and about one percent offer Health Savings Accounts. These activities may require safekeeping and custodial services. NASCUS strongly urges the SEC to extend this exemption to credit unions.

Exemptions should apply equally to all credit unions

In its 2004 request for comments, the SEC asked for comments about whether state-chartered, privately insured credit unions should be included within the scope of an exemption. NASCUS believes that exemptions should apply equally to all credit unions, regardless of their choice of charter type and insurance provider. Applying the exemptions equally will benefit all credit union members.

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State-chartered credit unions are examined and regulated by their state credit union regulator and subject to the same robust examination schedule as federal credit unions. In addition, in all but one state, state credit union regulators use the identical examination platform, AIREs, as their federal counterparts. In the one state not using AIREs, state credit union examiners use the Federal Deposit Insurance Corporation's (FDIC) examination platform. In fact, many NASCUS state agencies currently regulate both credit union activities, as well as securities. At the state level, the agencies that regulate credit union activities are almost always part of the same agency that regulates securities activities. No justifiable grounds exist for distinguishing between credit union charters for the purposes of determining the eligibility for exemption under any SEC proposal.

Further, the partnership between the state agencies and the National Credit Union Administration (NCUA), provided in Federal law, has resulted in the NCUA's reliance on state examination reports produced by state credit union supervisory agencies. As a result, state examination reports are used to determine the continued eligibility of state-chartered credit unions for the NCUA share insurance program, the credit union counterpart to the FDIC deposit insurance program. In fact, most federally insured state-chartered credit unions rarely are subjected to a safety and soundness examination by the federal agency.

Likewise, the exemptions should be granted to all credit unions regardless of their share insurance provider. There is no practical distinction between the quality and nature of state and federal supervision of credit unions in the nine (9) states where credit unions may choose an alternative share insurance provider. Further, there is no distinction between the examination and supervision for federally insured or privately insured credit unions. State examiners use the AIREs examination platform to examine all their institutions to the same extent. Identical standards of safety and soundness exist and are enforced in both federally and privately insured credit unions.

The common structure, governance, regulation and examination of state and federal credit unions, regardless of insurance or charter type, should outweigh distinguishing between credit unions for exemptions granted for the definition of "broker" and "dealer" for certain activities.

Further, limiting the exemption strictly to federal credit unions will unbalance the dual chartering system that has been fundamental to the credit union movement since 1934.

Thank you for the opportunity to comment on the proposed joint rules from the Board and the SEC to implement the proposed Regulation R. We would be pleased to discuss our thoughts in depth with the Board and assist in formalizing an exemption for credit unions. I am available at (703) 528-8354.

Respectfully,

A handwritten signature in cursive script that reads "Sandra J. Troutman". The signature is written in dark ink and is positioned above the printed name.

Sandra J. Troutman
Executive Vice President, Government Affairs