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April 22, 2004

Jonathan G. Katz, Secretary  
Securities and Exchange Commission  
450 Fifth Street, NW  
Washington, DC 20549-0609

**RE: File No. SR-NASD-2003-131 – National Do-Not-Call Registry**

Dear Secretary Katz:

This letter is submitted on behalf of CUNA Brokerage Services, Inc. in response to a request for comment by the Securities and Exchange Commission (“Commission”) on a proposed rule change to amend NASD Rules 2211 and 3110(g) (File No. SR-NASD-2003-131-National Do-Not-Call Registry). We appreciate the opportunity to provide our comments on this important matter.

CUNA Brokerage Services, Inc. is a registered broker/dealer principally serving the investment needs of credit union customers through third-party brokerage (“networking”) arrangements. As you know, in these arrangements, registered persons, who may also be employees of a credit union (“dual employees”), provide customers with financial management products and services.<sup>1</sup> One of the many important roles the registered person serves is to educate investors about the variety of financial products and services available to them beyond deposit products and services available from the financial institution. We believe our customers appreciate learning about products and services that help them meet their financial goals.

We are greatly concerned that investors will no longer have these opportunities because the proposed definition of an “established business relationship” is particularly confusing when read in the context of a networking arrangement. In networking arrangements, customers reasonably expect that their business relationships provide opportunities to learn about and obtain depository or nondepository investment products made available through the dual employee. Nonetheless,

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<sup>1</sup> The role of the dual employee is further described in a No-Action Letter issued to Chubb Securities Corporation, dated November 24, 1993, and the rules the NASD has promulgated therefrom. The networking arrangement described herein would comply with all applicable securities regulations, NASD rules and regulatory guidelines. We also assume that the networking arrangement complies with the obligations arising under SEC Part 248-Regulation S-P: Privacy of Consumer Financial Information.

we believe the ambiguity of the proposed rule will have a chilling affect on these communications. For these reasons, we request that the Commission clarify or modify the proposed definition of “established business relationship.”

Pursuant to proposed Rule 2211(g)(1)(A), customer interactions need to satisfy certain requirements in order to qualify as an “established business relationship.” The relationship must be “established” by way of a transaction or product or service inquiry. The first must occur within 18 months and the second within 3 months preceding an unsolicited call. Given the broad regulatory oversight the NASD has established over a dual employee’s conduct, a reasonable interpretation of the definition suggests that any transaction or inquiry involving the dual employee would satisfy these elements.

However, the second part of the definition, found in proposed Rule 2111(g)(1)(B), raises questions about what existing business relationships a dual employee may rely upon. We do not believe that the customer’s reasonable expectation turns on whether the communication or transaction is with or from an affiliated or nonaffiliated entity but rather, whether it is reasonable to receive the communication in light of the underlying business relationship. In our experience, customers in networking arrangements would indeed expect that their relationship with a dual employee would constitute an “established business relationship.”

In light of the importance of the rule to the conduct of the dual employee and the regulatory risk that might be created by the uncertainty noted above, we respectfully request that the proposed rule be modified to address this ambiguity. We recognize that proposed Rule 2111 has been tailored to address requirements adopted by the Federal Trade Commission and the Federal Communications Commission. We are concerned, however, that if the proposed rule is not clarified to acknowledge the existence of networking arrangements, the delivery of services to numerous customers that comprise a significant portion of the broker/dealer industry will be negatively impacted.

We believe that the proposed rule could be clarified with respect to networking arrangements by the addition of a reference to such arrangements in paragraph (g)(1)(B), as follows (underlined text indicates changes to the current proposed language):

(B) A person’s established business relationship with a member does not extend to the member’s networking or affiliated entities unless the person would reasonably expect them to be included. Similarly, a person’s established business relationship with a member’s networking entity or affiliate does not extend to the member unless the person would reasonably expect the member to be included.

At minimum, we believe this matter deserves clarification before the rules are finalized. Thank you for considering this request and the opportunity to provide you our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Thompson", with a long horizontal flourish extending to the right.

Kevin S. Thompson  
Vice President, Deputy General Counsel