



**National Association of Federal Credit Unions**

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March 26, 2007

Nancy M. Morris  
Secretary  
Securities & Exchange Commission  
110 F Street, N.E.  
Washington, D.C. 20549-1090

RE: Comments on Proposed Rule on Definitions of Terms and Exemptions Relating to the “Broker” Exceptions for Banks

Dear Sir or Madame:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation’s federal credit unions (FCUs), I am responding to the request for public comment by the Securities & Exchange Commission (SEC) and the Board of Governors of the Federal Reserve System (Board) (collectively, the Agencies) on the proposed rule implementing exceptions to the definition of “broker” under the Securities Exchange Act (Exchange Act).

The proposed rule would implement certain exceptions for banks from the definition of the term “broker” under Section 3(a)(4) of the Exchange Act, as amended by the Gramm-Leach-Bliley Act (GBLA). It would define certain terms used in the statutory exceptions and include related exemptions. Specifically, the proposed rule would implement the broker exceptions for banks relating to third-party networking arrangements, trust and fiduciary activities, sweep activities, and safekeeping and custody activities.

NAFCU commends the SEC and the Board for issuing a well-drafted proposed rule in a timely fashion. NAFCU provides the specific comments below:

**Prior Rules and Regulations Proposed by the SEC**

The Agencies specifically request comment on the rules previously issued or proposed by the SEC. NAFCU would like to take this opportunity to not only acknowledge the agency’s previous efforts to promulgate related regulations, but to also express its appreciation for the SEC’s consideration of the diverse perspectives among different financial institutions. While similar regulations previously proposed did not result in a final rule, NAFCU is cognizant of the difficulties associated with promulgating a well-balanced and fair regulation that takes into account the interests of all affected parties.

### **Extension of the Proposed Exemptions to Federal Credit Unions**

The proposed rule would apply only to “banks,” as defined by the Financial Services Regulatory Relief Act of 2006 (Reg Relief Act). NAFCU urges the Agencies to amend the proposal such that the exemptions in the final rule will also apply to federal credit unions.

The Agencies should make appropriate changes so that the final rule applies to credit unions for a myriad of reasons, not the least important of which is the demand by credit union members for the services covered in the proposal. Credit unions offer investment services to their member-owners as authorized by law and under the regulatory oversight of the National Credit Union Administration (NCUA). Credit unions’ record in the provision of all financial services to their members has consistently been exceptional, as evidenced by the fact that credit union members have, time after time, expressed greater satisfaction with the services they obtain from their credit union than customers of other types of financial institutions. Excluding federal credit unions from the final rule will hamper the ability of credit union members to obtain securities-related services from the financial institution of their choice. The high level of services that credit unions provide to their members, coupled with the sound and effective regulatory oversight by the NCUA, merit the extension of the exemptions to FCUs.

The Reg Relief Act definition of “banks,” which specifies banks and savings associations insured by the Federal Deposit Insurance Corporation (FDIC), should not be an impediment to including credit unions in the final rule. The Act does not prohibit the SEC (or the Agencies together) from extending the proposed exemptions to credit unions. Indeed, the fact that credit unions are excluded from the definition in the Act is not determinative as to whether the Agencies can, or should, extend the exemptions to credit unions. Rather, by not including credit unions in the definition, it is more likely that Congress deferred to the expertise of the Agencies to determine whether any or all of the exemptions should be extended to credit unions.

In finalizing the rule, the Agencies should consider that federal credit unions are as capable as banks and savings associations to engage in the activities covered by the proposed rule. All federal credit unions are federally insured by the National Credit Union Share Insurance Fund (NCUSIF). Deposits that are insured by the NCUSIF, like those insured by the FDIC, have the strongest backing in the world – the “full faith and credit of the United States Government.” Thus, federal credit unions and their members should benefit from the wide range of regulatory relief that was provided by the Reg Relief Act.

For the reasons discussed above, NAFCU urges the Agencies to extend each of the “broker” exemptions in the proposed rule to credit unions.

### **Regulatory Uniformity and Parity**

As the Agencies may know, federal credit unions are permitted to engage in the securities-related activities addressed in the proposed rule under Section 107(17) of the Federal

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Credit Union Act and regulated by the NCUA. Part 724 of the NCUA Rules & Regulations authorizes FCUs to act as trustees and custodians of certain savings plans. Additionally, Part 712 allows for third party arrangements, whereby the third party, in whom credit unions can invest, is authorized to engage in securities brokerage activities. Without the same exemptions given to "banks," credit unions will be dissuaded from providing services which consumers demand, putting credit union members at a disadvantage.

Accordingly, NAFCU urges the Agencies to extend to credit unions each of the four proposed exemptions the Agencies propose to extend to banks and savings associations.

NAFCU appreciates this opportunity to share its comments on the proposed rule. Should you have any questions or require additional information please call me or Tessema Tefferi, NAFCU's Associate Director of Regulatory Affairs, at (703) 522-4770 or (800) 336-4644 ext. 268.

Sincerely,

A handwritten signature in cursive script, appearing to read "Fred R. Becker, Jr.", written in black ink.

Fred R. Becker, Jr.  
President/CEO

FRB/tt