



Office of the President

March 8, 2007

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

Re: File Number S7-22-06; Definitions of
Terms and Exemptions Relating to the
“Broker” Exceptions for Banks

Dear Ms. Morris:

Navy Federal Credit Union provides the following comments in response to the Securities and Exchange Commission’s (SEC) proposal to implement the bank broker exceptions under Section 3(a)(4) of the Exchange Act, as amended by the Financial Services Regulatory Relief Act of 2006. This section exempts banks and thrifts from the broker-dealer registration requirements in certain circumstances. Navy Federal is the nation’s largest natural person credit union with over \$28 billion in assets and nearly 3 million members.

Under this proposal, banks and thrifts would be exempt from registering as broker-dealers for the purpose of engaging in networking, sweep accounts, trust and fiduciary, and safekeeping and custody activities. Although credit unions were included under some of these exemptions as part of the SEC’s June 2004 proposal¹ on this issue, the current proposal supersedes the 2004 proposal and does not include credit unions. Federal credit unions are granted the authority to engage in these securities-related activities under Section 107(17) of the Federal Credit Union Act, and many state-chartered credit unions similarly are granted this authority under their respective state credit union acts.

By excluding credit unions, this proposal puts credit union members at a disadvantage because it could prevent them from using their financial institutions of choice to meet all of their financial needs. Credit union members should not be singled out among the universe of consumers for denial of selected services at their preferred financial institutions. Further, this proposal puts credit unions at a disadvantage when compared with other types of financial institutions without any apparent safety and soundness rationale for doing so. Federally-insured credit unions do not pose any greater risk than other types of financial institutions engaged in these types of securities-related transactions, and we see no reason why they should be excluded from this proposal.

Therefore, Navy Federal urges SEC to exempt federally-insured credit unions from the broker-dealer registration requirements for networking, sweep accounts, trust and fiduciary, and safekeeping and custody activities. We believe that including credit unions under these exemptions would further the public interest by providing consumers as many investment options as possible, regardless of whether they are credit union members or bank customers. Extending these exemptions to federally-insured credit unions would allow consumers to access these securities-related services at their credit unions under the same conditions available to them at other types of financial institutions.

We also believe that the Exchange Act itself exempts federally-insured credit unions from the broker-dealer registration requirements. To be statutorily exempt from the broker-dealer registration requirements for certain securities-related activities, a financial institution must fall within the definition of “bank” in Section 3(a)(6) of the Exchange Act. Section 3(a)(6) defines “bank” to mean

“(A) a banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, (C) any other banking institution, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the currency pursuant to section 92a of Title 12, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.”

It is our understanding that SEC historically has declined to interpret this definition of “bank” to include credit unions.ⁱⁱ While we appreciate that credit unions were not engaged in securities-related activities in 1934 when the Exchange Act originally became law, we believe the broad language of Section 3(a)(6) firmly supports including federally-insured credit unions in the definition today. Specifically, we strongly believe that subsections (A) and (C) of this definition should be interpreted to apply to credit unions as “banking institutions.” For example, Black’s Law Dictionary defines “banking” as follows:

“The business of banking, as defined by law and custom, consists in the issue of notes payable on demand intended to circulate as money when the banks are banks of issue; in receiving deposits payable on demand; in discounting commercial paper; making loans of money on collateral security; buying and selling bills of exchange; negotiating loans, and dealing in negotiable securities issued by the government, state and national, and municipal and other corporations.”ⁱⁱⁱ

By this definition, credit union activities clearly fall within the “business of banking” and would be considered “banking institutions” under Sections 3(a)(6)(A) and (C). Furthermore,

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most credit unions could clearly be considered “banks” under Section 3(a)(6)(B) as members of the Federal Reserve System. We urge SEC to consider federally-insured credit unions as “banks” for purposes of Section 3(a)(6) of the Exchange Act and include federally-insured credit unions under the proposed broker-dealer registration exemption rules.

In its 2004 proposal, SEC noted that many credit unions still do not engage in some of the securities-related activities covered by these exemptions. We do not believe that federally-insured credit unions should be precluded from engaging in these activities for the mere reason that many do not engage in them today. It is likely that these activities will become more desirable to more credit unions and their members in the future, and we believe that the exemptions from broker-dealer registration requirements should be readily available to them at that time.

We appreciate the opportunity to provide comments in response to the SEC’s proposed exemptions from the broker-dealer registration requirements.

Sincerely,



Cutler Dawson
President/CEO

CD/sb

ⁱ 69 FR 39682 (June 30, 2004).

ⁱⁱ SEC No-Action Letter, *IBM Interstate Employees Federal Credit Union* (June 3, 1988).

ⁱⁱⁱ Black, Henry Campbell, *Black’s Law Dictionary*, 6th ed., West Publishing Corporation, St. Paul, Minnesota, 1990, p. 146