

August 31, 2004

Jonathan G. Katz, Secretary
Securities and Exchange Commission
450 5th Street, NW
Washington, DC 20549

Re: Comments on Proposed Regulation B, File No. S7-26-04.

Dear Mr. Katz:

The National Credit Union Administration (NCUA) appreciates this opportunity to comment on the proposed Regulation B and its effects on credit unions. The NCUA is an independent agency in the executive branch of the federal government that charters and supervises federal credit unions (FCUs) and insures accounts at FCUs and most state-chartered credit unions upon their application.

The NCUA submitted a comment letter to the Securities and Exchange Commission (the Commission), dated July 17, 2001, to address the issue of exceptions for credit unions from the definitions of “broker” and “dealer” under the Securities and Exchange Act of 1934.¹ In that comment letter, NCUA stated its position that credit unions should be excepted from these definitions on the same terms and conditions that banks and thrifts are excepted. The recently proposed Regulation B does not give credit unions all of the exceptions available to banks and thrifts, but does except credit unions from the definition of “broker” for certain networking and sweep account arrangements and “dealer” for certain investment, trustee, and fiduciary transactions.

The Commission’s release accompanying the proposed Regulation B cites several reasons in support of extending these particular exceptions to credit unions. The Commission noted particularly that these exceptions do not raise investor protection concerns and will place financial institutions offering similar services on an equal footing.² While we appreciate the Commission’s extending the aforementioned exceptions to credit unions, we continue to support, and believe the Commission’s reasoning would support, extending to credit unions all the exceptions from the definitions of broker and dealer that are available to banks and thrifts.

Jonathan G. Katz

¹ Comment on the Commission’s Interim Final Rules for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities and Exchange Act of 1934, 66 Fed. Reg. 27760 (May 18, 2001).

² Proposed Regulation B, 69 Fed. Reg. 39682, 39721 (June 30, 2004).

Page Two

In response to a specific request for comment in the proposed Regulation B, NCUA wishes to state its strong support for extending the exception for safekeeping and custody activities that banks and thrifts enjoy to credit unions.³ As stated in our 2001 comment letter, FCUs are authorized to engage in certain securities-related safekeeping and custody activities. For example, §724.2 of our rules authorizes FCUs to serve as custodians of self-directed individual retirement accounts (IRAs) and Keogh accounts that contain securities.⁴

One portion of the safekeeping and custody exception available to banks specifically covers “a custodian . . . to any individual retirement account . . . or other similar benefit plan.”⁵ Based on its understanding of credit union operations and the relationship of credit unions with their members, NCUA firmly believes credit union custodianship of self-directed IRA/Keogh accounts does not raise investor protection concerns. This is a financial service that credit unions are able to provide safely and soundly and an investment alternative for retirement planning that credit union members should be able to obtain from their chosen financial institution. Accordingly, NCUA urges the Commission to extend this exception to credit unions.

The release accompanying Regulation B recognizes that credit unions have safekeeping and custody authority, but states that:

The Commission staff has no evidence that credit unions engage in the activities included in the safekeeping and custody exception. For this reason, we are not proposing to give credit unions a custody exemption. We invite comment on the extent to which credit unions utilize their authority Because we have no evidence that credit unions require additional exemptions for the safekeeping and custody of customer funds . . . [w]e are not proposing additional exemptions at this time.⁶

NCUA understands from this that Commission staff wants to know, before relief is granted, that credit unions not only have the authority to engage in securities-
Jonathan G. Katz

Page Three

³ Banks also have a safekeeping and custody exception from the definition of “broker.” 15 U.S.C. §78c(a)(4)(B)(vii). By regulation, the Commission has extended the same exception to thrifts. Interim Final Rules for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities and Exchange Act of 1934, 66 Fed. Reg. 27760 (May 18, 2001).

⁴ 12 C.F.R. §724.2.

⁵ 15 U.S.C. §78c(a)(4)(B)(vii)(I)(ee).

⁶ Proposed Regulation B, 69 Fed. Reg. 39682, 39722 (June 30, 2004).

related custodian and safekeeping activities but also that credit unions are currently exercising this authority.

NCUA asks that the Commission reconsider this position. Credit unions, like banks, are subject to a regulatory framework that conflicts with the regulatory requirements that the Commission places on registrants, and, thus, it is impracticable for credit unions to register as brokers or dealers.⁷ Accordingly, the Commission staff's position places credit unions in the awkward situation of demonstrating, *before* the Commission will except them from a broker/dealer activity requiring registration, that they are *currently* engaged in that activity in violation of the Commission's registration requirement.⁸ Instead, NCUA asks that the Commission employ the same standard of review for the safekeeping and custody exception as it does for the other credit union exceptions approved in proposed Regulation B. As stated above, the NCUA believes that credit union custodianship of self-directed IRA and Keogh accounts does not raise investor protection concerns and that granting this exception for credit unions would place them on an equal footing with other financial institutions.

Thank you for considering our comments. Please feel free to contact me or NCUA staff if you have any questions or would like any additional information.

Sincerely,

/s/
JoAnn Johnson
Chairman

OGC/PMP:bhs
04-0742

⁷ This is discussed in the Commission's Interim Final Rule, Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange. 66 Fed. Reg. 27760, 27791 n. 288 (May 18, 2001).

⁸ Many credit unions currently serve as custodians for IRA/Keogh accounts but limit account assets to shares (deposits). Our understanding is that few, if any, credit unions currently authorize securities as IRA/Keogh account assets.