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Member FINRA/SIPC

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Mary Rupp
Secretary of the Board
National Credit Union Administration

Subject: Comments on Part 703 ANPR, Financial Derivatives Transactions to Offset Interest Rate Risk

Interest rate derivatives are a valuable risk management tool and should be an option for credit unions in a managed environment. The types of derivatives available through NCUA's Investment Pilot Program (both independent and third party) are simple and effective when used correctly. Interest rate swaps are one of the cheapest and most capital efficient ways for a credit union to extend liability duration to hedge interest rate risk. Instead of borrowing for term, which can have a material negative effect on a credit union's capital ratio, swaps can convert existing floating rate liabilities into longer term fixed rate liabilities with very little capital ratio impact. While we recognize that derivatives do not solve all risk management problems for everyone, they can play a vital role for those that have the knowledge and understanding to employ them in situations where they make sense. NCUA's Third Party Derivative Program is a fundamentally sound process giving credit unions of all sizes access to the derivatives market in a safe, monitored format. It is important to realize that the future will continue to bring strong focus on a "best practices" approach to ALM. We believe that derivatives as a hedging tool should be part of that approach and as such would encourage NCUA to convert the Investment Pilot Program relating to derivatives into a permanent program. As such, Balance Sheet Solutions would like to offer the following in response to NCUA's Derivative ANPR.

A. <u>Existing Pilot Programs</u>

Question 1: Should existing Pilot Programs for FCUs to engage in derivatives for IRR management be permitted to continue? Explain why or why not.

Answer: We believe that the most important issue at hand is that credit unions SHOULD be able to use derivatives to hedge balance sheet risk under some form of managed process. Access to any program, third party or independent, should be reserved for credit unions that demonstrate the knowledge, skill, expertise and infrastructure to engage in the safe, efficient use of derivatives. Previous existing pilot programs that have operated safely and proven valuable should be allowed to continue and new providers should be permitted to attain Pilot Program status until a longer term solution is put into place. It is our belief that the existing third party model should be the basis for a permanent, managed process (third party and independent) that brings derivatives as an interest rate risk management tool to credit unions.

Question2: Should such Pilot Programs for FCUs be permitted to continue by "grandfathering" the previous approvals into Part 703? Explain why or why not.

Answer: Yes. Credit unions already approved into existing Pilot Programs have spent a great deal of time and effort in the meeting the requirements and operating standards set forth to implement these programs. These credit unions have responsibly used derivatives according to the guidelines set forth and should not be required to spend additional time and/or effort in re-doing or demonstrating the completion of these steps. Their participation in an existing or new third party provider system should be grandfathered.

Question 3: If FCUs seek an end-user exception from mandatory clearing as contemplated by the CFTCs proposed rule, they would need to provide items of information to a registered swap repository. In view of this requirement, should NCUA permit FCUs to seek an end-user exception? Explain why or why not.

Answer: While it is difficult to answer this question without finalization of the proposed guidelines surrounding the issue, we believe that credit unions credit unions should have the option to seek an end user exception. Many credit unions may find it prohibitively expensive to use a clearinghouse structure for the amount of activity they do. If the option exists, then credit unions should have the choice.

B. <u>Third Party Derivative Authorization</u>

Question 1: These third party standards would require replacement of credit quality references by functional equivalents. With this change, are the third party operating standards required in NCUA's Pilot Program generally appropriate to govern the use of derivatives by an FCU approved to engage in these activities through a third party? Explain why or why not.

Answer: As a result of changes in the financial industry, specifically with respect to credit quality, we believe that some adjustments should be made to the existing third party standards. It is important to realize that these standards apply to third party providers and may not be sufficient for credit unions seeking to create a direct relationship:

a) Financial Condition – limiting hedging to credit unions with a net worth ratio of 7 percent and stable positive earnings for 12 months preceding may prohibit credit unions from hedging when they might need it most. Banks and other financial entities are not prohibited from hedging based on earnings, capital levels and balance sheet make-up and neither should credit unions. The 7% net worth ratio should be reduced to 6% (adequately capitalized) and applications should be evaluated and NCUA-approved exceptions should be made on a case by case basis for credit unions that fall below this level. In addition, the guideline requiring 12 months of stable positive earnings should be removed, as it makes a risk management decision a function of financial strength. It is not logical that a credit union that may happen to experience 1 quarter of negative earnings be prohibited from using a risk management tool. Effective risk management tools should not be limited based on financial condition as long as both parties to the contract have the ability to fulfill their obligations under the respective contract.

b) Counterparty Credit Quality - we believe that the credit quality requirement of third party providers should be changed to language that requires EITHER; a public rating of AA- or better, AND/OR a bilateral collateral agreement as well as a maintenance margin designed to eliminate credit exposure. We would suggest the following: (1) FHLB counterparties should be allowed as long as their ratings are AA- or better without a bilateral collateral agreement in place. (2) All bank counterparties (regardless of rating) must have a bilateral collateral agreement in place that 100% collateralizes market exposure when their public rating falls below AA-, with NCUA-approved exceptions made on a case by case basis. This would account for any change in market conditions. (3) Non-rated entities such as Balance Sheet Solutions and/or any Corporate Credit Union or CUSO should be required to post collateral and maintenance margins that protect credit unions from the outset of the trades. Our rationale for each is as follows: historically, FHLB's have not agreed to the use of bilateral collateral agreements with credit unions and will likely continue to do so. FHLB's are sometimes an important resource for credit unions and while it is likely that many (if not all of them) will NOT offer hedging services in the future, the rules should be designed to easily allow their use. Banks should be required to uniformly post collateral to mitigate exposure and maintenance margins (designed to protect against rapid and/or large short-term adverse changes in the value of the hedge positions) should be mandatory if a bank were to fall below an A+ rating. It is highly unlikely that any existing or future corporate credit union entity or credit union CUSO would be able to obtain a public credit rating from the rating agencies. These participants should be required to post collateral and maintenance margins at all times to eliminate any/all counterparty credit exposure. Collateralized exposure is most important, not credit rating.
c) Hedge Transactions – we believe the existing guidelines surrounding hedge transactions to be sufficient and continued enforcement of existing guidelines is all that is necessary.
d) Modeling – we believe existing third party provider guidelines relating to modeling are sufficient and continued enforcement of existing guidelines is all that is necessary.
e) Internal Controls – we believe existing third party provider guidelines relating to internal controls are sufficient and continued enforcement of existing guidelines is all that is necessary.
f) Legal Issues – we believe existing third party provider guidelines relating to legality are sufficient and continued enforcement of existing guidelines is all that is necessary.
g) Transaction Termination – we suggest changing the guidelines to read that in the event the hedge fails the limits of effectiveness testing the credit union will seek to restore the effectiveness relationship through the de-designation/re-designation process within a timely basis, have the option to choose to continue to carry the hedge if the credit union can prove the value of the hedge as a risk management tool on the balance sheet, or terminate the trade when it is practical to do so. A hedge position that fails an effectiveness test may still be a valuable risk mitigation tool on the balance sheet, and as such we believe the concept of mandatory termination is not in the best interest of risk management. A process should be

established to review this type of scenario. Also, language specifying mandatory termination based on a ratings downgrade should be removed and replaced with language that states that a termination is not necessary as long as the counterparty complies with the proposed bilateral collateral and maintenance margin agreement guidelines designed to eliminate counterparty risk.

Question 2: If FCUs lacking prior experience with derivatives were required to spend a period of time within a third party Pilot Program, what period of time and/or number of transactions is reasonable to safe and sound understanding of derivatives? In your answer, explain why this is sufficient minimum time or number of transactions.

Answer: We believe the ability to attain a safe and sound level of derivative understanding is a function of many factors and should not necessarily be governed by arbitrary time and volume guidelines. Credit unions using a third party Pilot Program to gain expertise should have to demonstrate the ability to comply with all regulations and guidelines completely independent of such a provider prior to seeking independent status. Third party Pilot Programs were designed to provide an expert partner for credit unions in order to provide safe and effective use of derivatives as a risk management tool. Guidelines to judge expertise and understanding should be a function of expertise and understanding, and not numeric targets.

C. <u>Independent Derivatives Authorization</u>

Question 1: Should the NCUA Board consider allowing credit unions to engage in derivatives activity independently? Explain why or why not.

Answer: Yes. We believe credit unions possessing the expertise and knowledge to engage in independent activity should be allowed to do so under the explicit constraint that derivatives be used for risk mitigation purposes. This should be limited to credit unions that have demonstrated the ability and expertise through the use of an existing third party provider over time and/or by demonstrating the knowledge and expertise independent of any outside provider. Not all third party users may qualify for independent activity, but should have the chance to demonstrate the ability to operate independently.

Question2: What are the attendant criteria, such as, asset size, capital adequacy, the balance sheet composition of a credit union, or risk exposure with and without derivatives that NCUA should take into consideration in evaluating an FCU's request for approval to engage in derivatives independently? Specify and explain any criteria that are essential.

Answer: Credit union participation should be a function of strong knowledge, understanding and depth of expertise rather than be based on a numerical attribute of the balance sheet. Factors such as size, balance sheet composition, and risk-exposure should not be the determining basis of those allowed to have independent powers. The cost of added infrastructure, expertise and organizational depth will already place a natural constraint. A credit union seeking independent powers should have to demonstrate not only the expertise required under the third party provider model, but additional skills such as trade execution and contract pricing using current market data to ensure cost effective execution.

Question 3: Are there specific actions a FCU should expect to take in preparation for applying to engage in derivatives activities independently? Specify and explain any actions which are needed.

Answer: Yes. We believe that any credit union seeking independent derivative authority should have to satisfy any and all guidelines established for independent operation. We believe this process should look and function similar to the 3rd party provider program with some additional qualifications to ensure a higher standard than a 3rd party provider operation. This includes being able to independently; value and risk shock trades on the "in-house" ALM model, demonstrate why/how the hedge benefits the risk position, calculate mark to market values for valuation and recording purposes, calculate payments to be made and received under any executed transaction, and understand and comply with appropriate accounting rules related to any transaction. In addition, credit unions seeking independent authorization should be required to demonstrate the ability to "live price" contemplated trades independently using live market data (using an "in-house" system, Bloomberg, or relationship resource) in order to prevent egregious dealer market. In addition, credit unions should have to demonstrate the ability to consistently value executed trades on a daily basis using "in-house" systems (or comparable such as Bloomberg) for collateral purposes. Inability to do so may put a credit union at risk of being over-collateralized. It is not advisable to leave the collateral "call process" to a dealer, as a dealer is quick to ask for additional collateral but slow to return it unless prompted to do so. (Bilateral collateral agreements don't force dealers to send collateral when applicable, they require them to when prompted).

D. <u>Approval Standards for Derivative Activities Through an Approved Third Party.</u>

Question 1: Should NCUA require an FCU to state a balance sheet management plan to hedge IRR based on risk management objectives as a condition for approval? Explain why or why not.

Answer: No. The existing guidelines for third party providers require credit unions to examine both their current risk situation and the overall effects of any contemplated hedge prior to execution. Requiring credit unions to submit balance sheet management plans as condition of approval adds a redundant, unnecessary step that is already addressed in current 3rd party and independent guidelines.

Question 2: Is it useful for an FCU to rely on the expertise of a third party to assess the effectiveness of derivatives to hedge IRR on an ongoing and dynamic basis or should the FCU be required to demonstrate it has this expertise internally as a condition for approval? In either case explain why or why not.

Answer: Yes. We believe third party programs successfully allow credit unions to lever industry skills and resources in order to gain access to the knowledge and expertise that allows them to safely use derivatives as a hedging tool. The continued safe and managed use of derivatives is a benefit for the industry as a whole in that it helps mitigate interest rate risk and exposure within the system. Only the largest of institutions could potentially add the individual resources necessary to begin the use of derivatives outside of a third party system. Providing permanent or initial access in a safe and managed format is a good thing.

Question 3: Is it useful for an FCU to rely on the expertise of a third party to assess the credit quality of derivative counterparties? Explain why or why not.

Answer: In a system where the third party is the counterparty, and uniform bilateral collateral agreements and maintenance margins (which is what we believe the standard should be) are in place in order to eliminate credit exposure, the question becomes irrelevant. If the credit union were to rely on the third party without these agreements in place, then the answer is no, as there may be a conflict of interest. In a system where the third party provider merely brokers the transaction, we would argue that those same uniform bilateral collateral and maintenance margin agreements would have to be in place, or the provider would have to be held to an extremely high standard in its fiduciary role as an agent of the credit union. Providing the credit union with a counterparty that the third party feels is sufficient is not, in our view, meeting the proper standard of protecting the credit union against credit exposure. A level playing field requiring uniform bilateral collateral and maintenance margin agreements is the proper way to remove the credit component from the equation.

E. <u>Approval to Engage Independently.</u>

Question 1: Should approval of an FCU to engage in derivatives activities be in the form of additional authorization similar to the expanded authority available under Appendix B to Part 704 – Expanded Authorities and Requirements? Explain why or why not.

Answer: Yes. Credit unions wishing to engage in derivative activity independently should have the ability to do so and at a minimum, should be held to a similar requisite standard as a third party provider with respect to hedging activities. Since third party standards were not intended to specifically govern a credit union's independent hedging needs, these standards may have to be modified/tweaked to specifically address this issue. We would be willing to offer additional and more detailed guidelines on the structure and content of any independent authority authorization process.

Question 2: Should an FCU demonstrate enhanced credit functionality in terms of the experience of the FCU's personnel, credit analysis and reporting infrastructure in order to evaluate the creditworthiness of derivative counterparties? Explain why or why not.

Answer: It depends. If credit unions and providers adopt a risk mitigation system that fully collateralizes exposure with additional margins to guard against large/fast adverse changes in value until such a time that collateral can be replenished, then there would be no need for enhanced credit functionality. In a system where a swap provider is only willing to post collateral on a sliding scale to an independent (for example AA- rating allows $500K unsecured but a downgrade to A+ requires 100% collateral), enhanced functionalities may be necessary in order to track and quantify potential risk of loss to a single or multitude of counterparties. In addition, in a system in which a swap provider is willing to provide collateral to cover current mark to market exposure, but no additional margins to guard against rapid changes in the mark to market, the same answer would apply. We believe this applies to both independent and the third party provider systems alike. We feel strongly that a fully collateralized exposure with additional maintenance margins is the best way to guard against loss and eliminate the need for any expanded credit functionality.

Question 3: Should an FCU demonstrate enhanced hedging expertise based on the experience of FCU's personnel or on additional derivatives management infrastructure? Explain why or why not, and describe any minimum expectation.

Answer: Yes. Credit unions wishing to engage in derivative activity independently will need to have additional expertise and infrastructure not required in a third party system. In a third party system, trade execution is largely handled by the third party. Direct trade execution at the credit union level may require more technical expertise than might currently exist at a credit union. In addition, a credit union would have to demonstrate access to a "live" pricing system or resource (internal system, Bloomberg, outside relationship) that would allow it to check the accuracy or fairness of indicated prices. Additionally a credit union would have to independently be able to calculate the risk attributes and balance sheet effects of any contemplated or executed positions.

Question 4: Is one year a sufficient amount of time for an FCU to fully prepare a self-assessment and application for approval to independently engage in derivatives to offset IRR? Explain why it is sufficient or why more time may be required.

Answer: Time should not be the independent variable by which ability should be measured. Instead, skill level and experience of staff, management and senior management as well as the capability of existing infrastructure should be the benchmark. Arbitrary time guidelines are not the best measure of ability, knowledge, expertise, and infrastructure.

Thank you for your time and consideration in this matter. Balance Sheet Solutions would be glad to offer our services as a resource for the next phase of this process. If you have any questions or comments, please do not hesitate to contact us. Thank you again.

Sincerely

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Executive Director