August 23, 2011

Via E-Mail
regcomments@ncua.gov

Ms. Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

Re: Advance Notice of Proposed Rulemaking 3133-ADTO (76 FR 37030) - Financial Derivatives Transactions to Offset Interest Rate Risk

Dear Ms. Rupp:

The National Credit Union Administration ("NCUA") has requested comment on whether and how to modify its rule on investment and deposit activities to permit a natural person credit union to engage in the purchase and sale of financial derivatives for the purpose of offsetting interest rate risk ("IRR"). NCUA also has stated in the above-referenced Advance Notice of Proposed Rulemaking (the "ANPR") that it will not allow federal credit unions ("FCUs") to engage in derivatives activities unconditionally. Instead, NCUA is considering approval of derivative activity on the basis of a waiver of existing regulations and subject to compliance with appropriate conditions.

The Federal Credit Union Act ("FCUA") recognizes the purchase and sale of financial derivatives for the purpose of offsetting IRR as an "incidental power" granted to enable an FCU to carry on the business for which it was incorporated. See 12 U.S.C. 1757(17). NCUA's Rules and Regulations, 12 C.F.R. 703, prohibit certain investments to preserve the safety and soundness of credit unions, even though such investments are authorized by FCUA. The prohibited transactions include financial derivatives such as futures, options, interest rate swaps and forward rate agreements.

Since 1998 the NCUA, pursuant to an exemption from the prohibition against derivative transactions provided for in Part 703 of the NCUA Rules and Regulations, has approved a number of pilot programs which permit certain FCUs to participate in investment activities that are prohibited by Part 703 but permitted by FCUA. NCUA may also approve pilot programs for third parties that wish to engage in prohibited investment activities on behalf of FCU clients. If a third party's pilot program is approved, an FCU client generally does not need to obtain NCUA approval in order to participate.

This letter is submitted by the Board of Trustees of Trust for Credit Unions ("TCU"). TCU is an open-end diversified management investment company registered under the Investment Company Act of 1940 (the "1940 Act") and the Securities Act of 1933. The TCU portfolios are offered only to FCUs and state chartered credit unions. Shares of each of the TCU investment portfolios (the "TCU portfolios") are designed to qualify as eligible investments for FCUs pursuant to Sections 107(7), 107(8) and 107(15) of FCUA, Part 703 of the NCUA Rules and Regulations and NCUA Letter Number 155, and may or may not qualify as eligible investments for particular state chartered credit unions. Each investment practice and technique that may be used by the TCU portfolios is permitted by the 1940 Act but utilized only to the extent permitted by NCUA Rules and Regulations. Goldman Sachs Asset Management, L.P. ("GSAM") is the investment adviser for the TCU portfolios. Callahan Credit Union Financial Services, LLLP ("CUFSLP"), a Delaware limited liability limited partnership in which 38 credit unions are limited partners, acts as the administrator of the TCU portfolios. For twenty-three years TCU has helped its credit union shareholders invest excess member deposits and provide an investment alternative intended to enhance the credit unions' cash management. Section §703.14(c) provides that an FCU may invest in a registered investment company or collective investment fund, as long as the prospectus of the company or fund restricts the investment portfolio to investments and investment transactions that are permissible for FCUs.

The Board of Trustees of TCU submits this comment letter with respect to the questions set forth in Section II.D. of the ANPR, "Approval Standards for Derivatives Activities Through an Approved Third Party."

1. Question: Should the 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.

Comment: It is anticipated that TCU would be approved as a third party through which FCUs may engage in derivatives transactions. While it is reasonable for NCUA to state that an FCU should not engage in derivatives transactions unless management and all relevant personnel can understand and manage the risks associated with using derivatives to hedge IRR, we believe that a professionally managed registered investment company, such as TCU, may be a more prudent alternative to the extent that the investment company is managed by a professional SEC-registered investment advisor with expertise in the use of derivatives for this purpose. In addition, a registered investment company is subject to all of the restrictions and limitations contained in the 1940 Act and its regulations, such as a limitation on the amount of illiquid securities that an investment portfolio may hold (i.e. not more than 5% of net assets for a money market portfolio and not more than 15% of net assets for an equity or bond portfolio) and the requirement that derivatives transactions be "covered" (i.e. through asset segregation or other SEC-approved means). Registered investment companies also are subject to other requirements under the 1940 Act and other federal securities laws and related regulations, including (1) the requirement that a registered investment company appoint a Chief Compliance Officer and adopt compliance policies and procedures designed to prevent violations of the federal securities laws and (2) the requirement that a registered investment company file periodic reports with the Securities and Exchange Commission, including the filing of an annual report to shareholders containing audited financial statements. Most importantly, registered investment companies also are required to have a board of directors or trustees to oversee the operations of the investment company and generally at least a majority of the members of such board must consist of independent outside directors or trustees, technically referred to as persons who are not "interested persons" of the investment company (in the case of TCU, all of the members of the Board of Trustees are considered independent Trustees). The board of directors or trustees of a registered investment company receives reports at least quarterly from the investment company's investment advisor, Chief Compliance Officer and other service providers as to the operations of the investment company, including, if applicable, reports on derivatives holdings. For these reasons, we do not believe that it should be necessary for individual FCUs to obtain NCUA approval before investing in an investment company, such as TCU, that has been approved as a third party through which FCUs may engage in derivatives transactions. This is similar to the procedure currently in place for FCUs investing in derivatives through a third party pilot program.

2. Question: 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 that it has this expertise internally as a condition for approval? In either case explain why or why not.

Comment: We believe it is useful and cost effective for FCUs to rely on the expertise of a third party, such as TCU, to assess the effectiveness of using derivatives to hedge IRR on an ongoing and dynamic basis. In the case of TCU, GSAM serves as the registered investment advisor for the TCU portfolios. GSAM's Global Fixed Income & Liquidity Management team (the "Team") of over 195 professionals has been managing active fixed income portfolios since 1989 and has first-hand experience in managing bond portfolios where derivatives are employed as an integral part of the asset management process and fully integrated within the risk management framework governing the portfolio as a whole. The Team's experience and knowledge in the use of derivatives and GSAM's multi-layered approach to risk management positions the TCU portfolios as a sound third-party option for an FCU to invest in derivatives.

When derivatives are properly used for hedging purposes, they can provide effective IRR management. Financial derivatives such as interest rate futures and interest rate-swaps can present risk-reducing benefits in many cases and can be appropriate investments for FCUs, either as direct investments for those FCUs with investment expertise, established policies, and a rigorous risk management environment, or as indirect investments through an approved third party. The use of derivatives can also increase the management efficiency of an investment portfolio, which can result in greater liquidity, lower transaction costs, minimal portfolio disruption, flexibility across markets, and minimal required cash outlay.

Interest rate futures (i.e. a futures contract with an interest-bearing instrument as the underlying asset) are exchange-traded instruments that can be used to hedge interest rate exposure. They tend to be highly liquid, are most commonly cash-settled, and are highly regulated by the U.S. government through the Commodity Futures Trading Commission.

Interest rate swaps represent an agreement to exchange future cash flows for a set period of time. While interest rate swaps are traded over-the-counter (OTC), they can be used to hedge interest rate exposure – both overall and at different nodes along the yield curve. In addition, they tend to be more effective hedges for mortgages, and can be tailored to meet very specific investment needs.

3. Question: 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.

Comment: We believe that it is useful and cost effective for an FCU to rely on the expertise of a third party, such as TCU, to assess the credit quality of derivative counterparties. In the case of TCU which utilizes GSAM as investment advisor for the TCU portfolios, it is the goal of GSAM's counterparty risk management efforts to safeguard the TCU portfolios' assets in the event that a financial intermediary or other service provider becomes insolvent or defaults on its contractual obligations. GSAM's counterparty risk management strategies generally involve:

- Measuring and monitoring the level of exposure that an investment fund or separate account has to a specific counterparty

- Evaluating and monitoring the financial strength and credit-worthiness of current and potential counterparties

GSAM has a dedicated Credit Department that evaluates, approves and actively monitors counterparties used through the firm. The Credit Department is comprised of approximately 280 credit professionals worldwide, many of whom were formerly with rating agencies, commercial banks or national accounting firms and have expertise encompassing security structure, sovereign risk analysis as well as an in-depth knowledge of major industry sectors. Credit risk is managed on a global basis using an automated system for storing counterparty relevant information. The Credit Department's major responsibilities include:

- Dynamically assessing the credit and financial strength of the firm's trading counterparts to determine acceptable levels of credit exposure;

- Coordinating with the Sales & Trading, Legal, Operations and Compliance departments with respect to appropriate documentation and risk mitigants to help protect against the consequences of a counterparty default and minimize potential losses; and

- Monitoring, managing and reporting exposures at counterparty, product and portfolio levels together with GSAM's Central Funding and Risk teams.

For derivatives counterparties and prime brokers, the current minimum rating requirement for trading is A-/A3 senior debt ratings or better by Standard & Poor's Ratings Group and Moody's Investors Service, Inc., with exceptions requiring senior management and Credit Department approval. For settlement counterparties, risk is sized based on the broker's capitalization. Please note that these standards may change at any time and are cited primarily as an example of the techniques that a third party may use to assess the credit quality of potential counterparties on behalf of FCUs.

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As discussed earlier, derivatives can increase the management efficiency of a portfolio and, when used properly for hedging purposes, can provide effective IRR management. The use of derivatives, either as a direct investment or as an indirect investment through a registered investment company, such as TCU, could help FCUs more effectively manage balance sheet loan assets and investments. We believe this in turn could help enhance the safety and soundness of FCUs. Investment expertise in the use of derivatives to hedge IRR and a rigorous risk-management framework provided by a professional SEC-registered investment advisor, such as GSAM on behalf of TCU, is essential in helping to mitigate some of the risks associated with investing in derivative instruments.

Thank you for the opportunity to comment on the ANPR. If you have any questions concerning our letter, please feel free to contact me at 714-466-8100 or counsel to TCU, Mary Jo Reilly, at 215-988-1137.

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