

April 11, 2014

Gerard Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: Comment to the Proposed Prompt Corrective
Action – Risk-Based Capital Regulation

Dear Mr. Poliquin:

AdvisX, LLC, formerly NB Risk Partners, LLC, is a CUSO that provides risk management tools and consulting services primarily to credit unions. On behalf of AdvisX, LLC, I would like to provide the following official comment letter regarding the NCUA's recently proposed risk-based capital rule.

We believe that the CUSO investment risk metric of 250% is excessive as compared to compared to other risk ratings. For example, delinquent consumer debt over sixty days as well as delinquent unsecured credit card debt is risk rated at 150% and delinquent first lien mortgage loans are risk rated at 100%. However, investments in CUSOs that have added millions to the bottom line of credit unions are arbitrarily deemed riskier. We do not understand this reasoning.

CUSOs provide a wide range of services. The one-size-fits-all CUSO risk rating does not take into consideration (a) the types of services are being provided, (b) whether the investment represents necessary operational expenses that would be otherwise incurred, (c) whether the amount invested is material, (d) whether the CUSO has a history of profitability, or (e) whether the investment amount has been fully recovered by the credit union through savings or income. Even if there is a risk assessment for the initial CUSO investment, there is no reason to continue to have a risk assessment if the amount of the investment has been fully offset by net income or cost savings for the credit union that was generated by the CUSO.

While there are some CUSOs that are designed to return a profit through dividends, many CUSOs provide a return to the credit union owners by the reduction of operating costs or fees paid directly to the credit unions in the form of networking fees and not dividends. Those credit unions that have elected to invest in AdvisX receive reduced consulting fees and price reductions

on our products, such as webinars and HMDA Analysis reports. NCUA's choice of equating a CUSO to a bank investing in an illiquid small business, misses the true risk and return factors. For example, when a credit union is deciding whether to pay the expenses for running an operational service through the credit union or its CUSO, money has to be expended by the credit union either way. If multiple credit unions pool their funds in a CUSO to provide an operational service, the money pooled is not an investment in the classic sense and should not be risk rated as such. If the credit unions choose a CUSO to provide an operational service, it is because each credit union will save money, and often receives greater expertise than they could afford on their own. Why must risk capital be reserved by the credit unions in order to save money and generate net income?

Our sister company, AffirmX, LLC, which provides compliance reviews and compliance assistance for credit unions recently entered into an agreement with a newly-formed back-office CUSO that has incorporated compliance into the CUSO's function. Because the six small credit unions involved in the CUSO will be centralizing their lending and other operational functions, we determined that we could provide our compliance review services to each of the CUSO members at a reduced cost from our standard market price. This enabled these six small credit unions to benefit from a level of compliance assistance and expertise they do not currently have at a cost that is affordable to them and which capitalizes on the efficiencies of scale built into the back-office CUSO model.

We have been advised that NCUA intends to apply the CUSO capital risk rating to both the cash investment made by the credit union *and upon the appreciated value in the CUSO*. We find it hard to fathom that NCUA would penalize the success of a CUSO by requiring that the credit union reach into its pocket and set aside additional capital on the profits earned by the CUSO.

Unlike the banking investment powers, the CUSO risk exposure is limited to an immaterial level. We understand that there are only 22 basis points of credit union assets invested in CUSOs industry-wide; less than the aggregate corporate assessments. Each federal credit union may only invest less than 1% of assets in CUSOs. Credit unions could lose all their CUSO investments and the loss would not be material yet the upside potential could be very significant. We believe that NCUA would be making a significant mistake by not recognizing the adverse policy implications of applying the inconsistent BASEL bank investment risk ratings to CUSO investments.

In addition to the above referenced concerns about the risk weighting of CUSO investments, we are also very troubled by proposed Section 702.105(c). Unlike under the existing statutory net worth rules known as Prompt Corrective Action (PCA) regulations, credit unions will no longer

have clear rules by which to run their credit union to avoid prompt corrective action by their regulatory agency. NCUA can “move the goalposts” any time they want. Why have any tables establishing risk ratings if the levels can be changed on a credit union by credit union basis?

This proposed section invites inconsistent and potentially arbitrary applications of rules. To provide the clarity of capital and net worth expectation that a credit union board and management team must have in order to make strategic business and fiduciary decisions, subjective standards must be eliminated. Therefore, in our view, Section 702.105(c) should be deleted in its entirety.

We know first-hand of the struggle credit unions have to generate net income in today’s economic climate. Interest rates are at record low levels. The operational costs, especially in areas of personnel costs, compliance and technology, are increasing exponentially. Coupled with the challenges most credit unions are experiencing in generating quality loans, the average net interest margin in the industry is very thin and in some credit unions the net interest margin is even negative.

It has been our observation and the experience of our principals that CUSOs have been extremely successful in helping credit unions generate net income and the very capital that NCUA seeks. We want to share those observations and experiences. Our CUSO is designed to leverage technology to deliver risk management consulting services in a manner that significantly reduces costs from the traditional ‘boots-on-the-ground’ delivery method, while ensuring high quality in the delivered product or service. Our clients benefit from the advice and assistance of our industry experts and former examiners that would not be affordable to many credit unions. For example, by using our technology-driven delivery platform and our unique operational design, AdvisX can deliver a detailed HMDA analysis to a credit union that identifies potential fair lending issues for a third of the cost of other providers.

This is a significant savings to our clients at a time when they are struggling to meet their compliance responsibilities. While we are a new CUSO, we are already providing our clients with consulting services in the areas of fair lending risk assessments and reviews, enterprise risk management, BSA validations and remediations, training, policy drafting, and loan file reviews, all at costs that are below what our clients have been or would be paying from other vendors. Although our prices are below the current market, our financial projections show that based on our unique and efficient use of technology we will be able to pay a 6% return to our CUSO investors in 2015 and a 10% return to our investors in 2016.

Lastly, we note that the proposed implementation date is eighteen months after final passage. This is an unreasonably short time period considering the long term and significant impact of this new rule on credit union strategic business decisions. Credit unions have very limited means to raise capital under present statute and regulation. It will necessarily take a considerable amount of time to make adjustments within the balance sheet when the rules are suddenly changed. We recommend that an implementation period of no less than three years from final passage is much more appropriate. Again, in the interest of comparability, this is much more consistent with the timeframes given the banking industry as their regulators have implemented the BASEL capital standards; even though they have more access to capital management and capital building options than credit unions.

The true risk is not the investment or loan to a CUSO, rather it is *not* investing in a CUSO to share risk, reduce costs and increase income. We encourage NCUA to implement regulations that encourage the use of CUSOs to generate net income and remove all regulatory impediments to CUSOs and collaboration. We recommend the removal of risk ratings for CUSO investments and loans as immaterial, inapplicable to CUSO investments and to encourage CUSO investment for policy reasons.

Thank you for the opportunity to comment.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Jane Pannier', written in a cursive style.

Jane Pannier, Esq.
Senior Vice President

cc. Deborah Matz, Chairman
Michael Fryzel, Board Member
Richard Metsger, Board Member