MEMBERS®
Trust Company
Trust & Investment Services
for Credit Union Members

October 10, 2013

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

Re: Comments on Notice of Proposed Rulemaking on Parts 703 & 721

Dear Mr. Poliquin,

MEMBERS® Trust Company, FSB commends the National Credit Union Administration ("NCUA") for issuing the proposed Charitable Donation Account ("CDA") Rule, which is designed to encourage charitable contributions by federal credit unions. While the proposed rule would create an overall regulatory framework to permit CDAs, we urge the Board to include two revisions to improve credit union participation and to reduce the investment expense for those credit unions that select a national or federal savings bank to manage the funds in a CDA.

We have serious concerns about the requirement that, "a regulated trustee or other person who is authorized to make investment decisions for a CDA ("manager"), other than the FCU itself, must be registered with the SEC as an investment advisor," with respect to a national or federal savings bank (jointly, "bank") regulated by the Office of Comptroller of the Currency ("OCC"). Congress has exempted a bank engaged in trust and investment activities from registration as a Registered Investment Advisor with the SEC. We urge the Board to recognize that supervision by the OCC will ensure proper regulatory oversight and not require a bank acting as either a trustee or investment advisor for a CDA to register with SEC. Please find below more information on the status and regulatory oversight of a bank by the OCC as it engages in trust and investment activities.

The Financial Services Regulatory Relief Act of 2006 (the "Act"), providing Federal Savings Associations[1] the same exemptions as national banks from the Securities Exchange Act of 1933 and the Investment Advisers Act of 1940, was unanimously approved in both houses of Congress and signed into law by President Bush on October 13, 2006. The purpose of exemptions for banks and federal savings associations was to carve out certain types of entities from

[1] The term "federal savings association" refers to any federal savings association (aka federal thrift), or federal savings bank chartered under section 5 of the Home Owners' Loan Act [12 U.S.C. 1464]. See 12 U.S.C. 1813(b)(2). See also 12 U.S.C. 1462(5).

Investment Adviser Act registration because of parallel federal oversight while maintaining consistent consumer protections.

The OCC examines the investment activities and operations of the institutions it regulates. As with SEC registered entities, institutions under OCC's supervision are subject to ongoing oversight of their investment operations and controls including compliance with Regulation 9 and various state Prudent Investor Acts. Consequently, banks are required to comply with the same degree of regulatory oversight as those firms required to register with the SEC. The only difference in terms of regulatory compliance between a financial entity under the OCC and a SEC registered investment firm is that the former institutions have a different regulator - the OCC as opposed to the SEC for the latter.

To mandate that a bank acting as the trustee or investment manager for a CDA register with the SEC will discourage most banks from offering investment management for a CDA or increase the investment cost to pay for the redundant supervision or result in both outcomes. Congress' clear intent, as evidenced by its unanimous passage of the Act to exempt a bank from SEC registration, was to avoid the above situation, as it thwarts market competitiveness among investment providers. If banks do not offer investment services for the CDA, credit unions' choice of providers would be substantially reduced and the cost savings to credit unions inherent in a competitive marketplace may be lost, possibly reducing credit union participation in the CDA.

Further, it is not clear whether the exemption provided by section 401 of the Act would allow a bank like MEMBERS® Trust to register with the SEC. This could mean that a bank like MEMBERS Trust could be precluded from providing trust and investment advice to CDA accounts for credit unions.

In addition to the foregoing, MEMBERS® Trust is also concerned that the cap on contributions through a CDA is too limiting, since a number of credit unions will likely want to fund all of the charitable donations through a CDA.

In light of that concern, MEMBERS® Trust Company recommends increasing the maximum aggregate funding from three percent (3%) to five percent (5%) of net worth. This should be sufficiently high to enable a credit union to use a CDA to fund all of its charitable contributions without making a direct cash contribution. At the same time, a 5% cap will not

pose a material risk impact to a participating credit union's safety and soundness or to the National Credit Union Share Insurance Fund.

Thank you for the opportunity to comment on the proposal. We applaud the agency for moving forward with this rule to facilitate credit union charitable donations but urge the agency to make important changes in the rule as we recommend.

Sincerely,

Tom Walker, President and CEO
MEMBERS® Trust Company, FSB
(888) 727-9191 ext.700
Tom.Walker@memberstrust.com