



May 24, 2011

The Credit Union Commissioners  
The Credit Union Department of the State of Texas  
914 East Anderson Lane  
Austin, TX 78752-1699

Re: Proposed Revisions to Section 91.801 –  
Investments in Credit Union Service  
Organizations

Dear Commissioners:

I am submitting this comment on the behalf of the National Association of Credit Union Service Organizations (“NACUSO”). NACUSO is the national trade association for CUSOs and credit unions working with CUSOs. The mission of NACUSO is to strengthen credit unions through collaboration. Without collaboration, it is our view that the traditional credit union model will be less viable in the long run for many credit unions. Net interest income has for a number of years been supplemented by growing non-interest income, and it remains obvious that this trend will likely continue as net interest income is not sufficient to sustain many credit unions long term, especially during a time of weak loan demand, due to the economy.

Therefore, as credit unions are looking to reduce operational costs and to increase their non-interest income, collaboration has become the primary driver of these efforts. For example, credit unions are collaborating on back office operations to lower costs through scale. Credit unions are also finding opportunities to earn fee income with non-traditional financial products in partnership with broker/dealers and insurance brokers. CUSOs are the means credit unions use to implement and house most of the collaborations used to reduce costs and increase income.

The culture of CUSOs has historically been more entrepreneurial and innovative than that at many credit unions because CUSOs are not subject to many of the regulatory restrictions faced by credit unions themselves. Credit unions need CUSOs to be on the cutting edge of change as innovation is critical to the sustainability of the credit union industry – an industry of smaller financial institutions in comparison to most of their competitors.

CUSOs drive much of the innovation in the credit union industry. History has shown that innovation is often hampered by excessive regulation. Therefore, it is the belief of NACUSO that, if CUSOs become regulated and supervised in the same manner as credit unions, the value of CUSOs to credit unions as crucibles for innovation could well

disappear. This could put credit unions at a competitive disadvantage as the financial industry is rapidly changing, competitors are becoming larger and credit unions need the additional products and services that CUSOs can provide so that they can continue to respond in this challenging marketplace.

For example, there are CUSOs providing services to facilitate person-to-person payment transactions through devices such as cell phones. Most credit unions would have a difficult time developing this technology on their own, concerned about the supervisory issues that could be involved with the investment itself. Thus, the collaboration of credit unions through a CUSO helps them be in a position to innovate in this technological arena and to retain some of the transactional market they otherwise might have lost.

Another example worthy of note is that CUSOs often serve as product incubators. Newer and more innovative products and services can be vetted by CUSOs, and the best can be implemented to better serve credit unions and their members. This is not activity that is normally permitted to a credit union, nor an investment the normal credit union would likely make because of regulatory constraints or supervisory concerns. Sharing the costs of innovation through CUSOs makes more sense than individual credit unions having to shoulder the burden of keeping up with new technology, new products and delivery channels on their own. The cost of obtaining the necessary expertise alone can be prohibitively expensive for an individual credit union, and yet affordable when shared with several credit unions through a CUSO.

Therefore, based upon this background, NACUSO is deeply concerned about the recent proposal by the Texas Credit Union Commission in Subsection (g) “All legal limitations imposed on a credit union by Texas Finance Code, Title 3, Subtitle D and any rules adopted under that Subtitle, apply equally to CUSO activities.” It is our belief that this would not be good public policy for the State of Texas.

We are uncertain of the full implications of the proposal. Will CUSOs have the same powers and limitations of credit unions? What is meant by the term “limitations”? If the intent is to subject CUSOs to the same regulatory restrictions and supervisory authority as those facing credit unions, this is a serious departure from the current powers in every other state that regulates credit unions and the federal authority of the National Credit Union Administration (NCUA). There is no jurisdiction in the United States that restricts CUSOs to those permissible activities only credit unions are permitted to perform. NCUA does not have regulatory authority over CUSOs but has expressed a desire to petition Congress for that authority. Even NCUA does not seek to have CUSOs confined to permitted credit union activities.

What is the value of CUSOs if they become mere shadows of credit unions? There would be little need for CUSOs as the risk, presently being often shared through collaboration via a CUSO, would now be taken back within the credit union seeking to innovate or offer an expanded service. Frankly, it would not be an overstatement to characterize the proposed action in Texas as a radical departure from the norm.

CUSOs currently may provide non-traditional financial services to members, including investment and insurance services. Has any thought been given as to how these CUSOs and the government agencies that regulate them will respond to limiting CUSOs to the powers of credit unions? The CUSOs will be instantly out of compliance and unable to function, causing the loss of member services and the investments by the credit union owners. Will Texas credit unions be prohibited from investing in CUSOs that provide investment and insurance services because credit unions cannot be broker/dealers or insurance agencies? There are credit unions in Texas that receive ownership dividends and commission sharing from these types of CUSOs, and provide valuable services to their members. Why would cutting off this income stream and services be in the best interest of credit unions and their members?

We understand that the Commission may be addressing the aftermath of the poor lending practices of some credit unions with significant investments in its CUSOs. If this proposal is a reaction to poor management decisions involving a single CUSO or a small number of CUSOs, we respectfully suggest that it is an over-reaction. The proposal will only serve to severely restrict the value of the vast majority of CUSOs to the long term viability, safety and soundness of Texas credit unions. This is a classic example, in our view, of throwing the baby out with the bath water. If the proposed revision is approved in its current form, we believe that the value of a Texas state-chartered credit union will be greatly diminished, both in its ability to innovate, and collaborate in that innovation, and also in comparison to its authorities were it to be a federal chartered credit union.

The proposed revision already contains a much more extensive fact gathering protocol than the current regulation. While we recognize that this will provide additional paperwork burden on CUSOs, it is our belief that the Commission, with the enhanced information that will come from CUSOs under this provision, will already be in a better position to know about any disturbing trends which may arise on occasion in a CUSO with sufficient time to take supervisory action on the credit union(s) that have ownership interest in the CUSO.

The Commission has the ability to inspect the books and records of CUSOs. If a CUSO poses a safety and soundness concern to any credit union, the Commission has all the power it needs over the owner credit unions to compel a course of action that is in the best interest of the credit unions, including issuing a cease and desist order to prevent credit unions from using the services of the CUSO and/or requiring the owner credit unions to divest their investment in the CUSO. There is no need to add to this authority a draconian restriction on the ability of CUSOs to innovate as they offer products and services in a competitive marketplace.

The risk to the credit union for a CUSO investment is designed to be limited through the regulatory investment and loan limitations. This risk can be effectively managed by the credit union, with the Commission's oversight as enhanced with additional data gathered about CUSOs through this regulation. While we remain concerned that extensive data collection can within itself become a deterrent to CUSO development, we submit that there is much greater risk to credit unions if the Commission handcuffs CUSOs to a point

that they will be ineffective to facilitate the needed innovation and collaboration. Therefore, although we have concerns about the data collection aspect of this proposal, we are much more concerned about its restrictions on CUSO authorities that could well sound an unnecessary ‘two minute warning’ for Texas state-chartered credit unions to get out of the CUSO business or review their charter options.

We also have some concern that the limitation to 15% of net worth could be a problem for some credit unions and potentially important CUSO investments. By statute and rule, investment limitations in any one CUSO of no more than the lesser of 5% of assets or its reserves and undivided earnings and of an aggregate of investments and loans to all CUSOs not being able to exceed 10% of unconsolidated assets seem sufficient without additional limitations which might result in some CUSOs being stalemated for investment dollars and/or borrowing authorization. This could have more than a chilling effect on new CUSO investment; it could actually make some existing CUSOs unable to continue to maintain their viability and remove a positive income stream for the credit unions investing in them.

We are not clear on what the Commission may intend by having a twenty day notice if the CUSO makes a material change in its organizational structure or performs a new activity. More clarity is needed to understand what is meant by those terms. Would adding new owners be a material change? Would adding another insurance product or loan product be a new activity if the CUSO already offers insurance and loan products? Would the Commissioner have to consent to the notice subject matter or may the CUSO proceed without consent, assuming it is a permitted service?

We respectfully encourage the Commission to revisit this proposal. If our interpretation of the proposed revision is correct, the results could be devastating for credit union innovation, risk sharing, collaboration incentive and the value of the state credit union charter in Texas. We at NACUSO are willing to work with the Commission in support of any reasonable initiative to help ensure that CUSOs remain as safe and sound as their credit union owners, as this serves our organizational goals as well. Yet, we believe that this can be accomplished without the restrictions on CUSO authority that are contained in this proposal.

Thank you for your consideration of our concerns and thoughts on this important issue.

Sincerely,



Jack M. Antonini  
President & CEO  
NACUSO