



March 10, 2021

Via E-Mail  
[regulations@dfpi.ca.gov](mailto:regulations@dfpi.ca.gov)

Department of Financial Protection and Innovation (“DFPI”)  
Attn: Regulations Coordinator, Legal Division  
1515 K Street, Suite 200  
Sacramento, CA 95814

**Re: Comments on Proposed Amendments to Regulations (PRO 09-17 –ISOR)**

To whom it may concern:

In its initial notice of proposed rulemaking published on June 26, 2020 (PRO 09-17 - NOTICE) (the “Proposed Rule”), the Commissioner of Financial Protection and Innovation proposed to amend California Code of Regulations, title 10, section 30.300 (“Section 30.300”), relating to investments allowed to be made by California state credit unions under Financial Code section 14653.5<sup>1</sup>. On February 24, 2021, the DFPI issued a notice of modification of the Proposed Rule (as modified, the “Modified Proposal”). This letter is submitted by Trust for Credit Unions (“TCU”) in response to the DFPI’s request for comments on the Modified Proposal. We believe the DFPI has taken positive steps in the Modified Proposal to clarify the Proposed Rule, and support the intent, to allow credit unions greater flexibility in their choice of investments and to reduce redundant paperwork requirements for approval of routine investments, of the DFPI’s amendments to Section 30.300.

About TCU

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<sup>1</sup> Financial Code section 14653.5 authorizes a credit union to make any investment authorized by regulation or in writing by the Commissioner of Business Oversight.

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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. Mutual funds advised by TCU (the “TCU portfolios”) are offered only to federal credit unions (“FCUs”) and state chartered credit unions. Shares of each TCU portfolio are designed to qualify as eligible investments for FCUs pursuant to Sections 107(7), 107(8) and 107(15) of the Federal Credit Union Act (“FCUA”), Part 703 of 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. Callahan Credit Union Financial Services, LLLP (“CUFSLP”), a Delaware limited liability limited partnership in which 37 credit unions are limited partners, acts as the administrator of the TCU portfolios. For over 30 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) of the NCUA Rules and Regulations 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.

#### Treatment of Mutual Fund Investments Under the Current Rule

Financial Code section 14653.5 authorizes a credit union to make any investment authorized by regulation or in writing by the Commissioner of the DFPI. California Code of Regulations, title 10, section 30.300, subdivisions (b)(1)-(6) provides a list of authorized investments for California state credit unions. Section 30.300, subdivision (b)(6) currently authorizes credit unions to invest in an investment company, or mutual fund, provided all investments and investment practices of the investment company would be permissible if made directly by the credit union or an FCU. California state credit unions may currently invest in the TCU portfolios pursuant to Section 30.300, subdivision (b)(6).

#### Treatment of Mutual Fund Investments Under the Modified Proposal

The Modified Proposal provide the clarification that we requested in our comment letter on the Proposed Rule. The Modified Proposal clarifies that a California state-chartered credit union “is authorized to invest in the securities issued by any person, as that term is defined in Section 14001.1 of the Financial Code,<sup>2</sup> subject to the limitation

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<sup>2</sup> Section 14001.1 states that, for purposes of the California Financial Code applicable to Credit Unions, the division is applicable to any person, other than a federal credit union, engaging in the business of a credit

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that the credit union's total investments in the securities issued by any one person shall not exceed 10 percent of the credit union's equity capital, as that term is defined in Section 14400 of the Financial Code." Further, under the Modified Proposal "Investments in an 'investment company' (commonly known as a 'mutual fund') as defined in the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.) or trusts provided all investments and investment practices of the investment company or trust would be permissible if made directly by the credit union or federal credit unions are not subject to this limit."<sup>3</sup> Finally, Section 30.102(a)(4)(H) would exempt assets in a mutual fund or trust authorized under Section 30.300(b) from the definition of a credit union's "risk" asset so long as the asset is either carried at the lower of cost or market, or is marked to market value monthly.<sup>4</sup>

### Discussion

Under the Modified Proposal, California credit unions will be permitted to invest assets in mutual funds on an equal basis with FCUs. Mutual funds provide an important investment option for credit unions that need to invest excess balances, and allow credit unions of all sizes to gain access to professional asset management services. We support the revisions made in the Modified Proposal, as they clarify the questions that we posed in our letter of August 10, 2020. The revision to Section 30.300(b) in the Modified Proposal would allow a California credit union to invest in a mutual fund without limit so long as the mutual fund limits its investments either to instruments that are permissible if made directly by the California credit union or if made directly by FCUs ("permissible investments").

The revised definition of "Risk assets" in the Modified Proposal will also continue the treatment of mutual funds offered to credit unions that limit their holdings to permissible investments. The Modified Proposal correctly continues to exempt these funds from the definition of "Risk assets."

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union in the State of California. CA Fin Code §14001.1. Under the Financial Code, a person includes a corporation as well as a natural person, and includes "any association, business corporation, company, corporation sole, domestic corporation, estate, foreign corporation, foreign business corporation, individual, joint stock company, joint venture, mutual benefit corporation, public benefit corporation, religious corporation, partnership, government or political subdivision, agency or instrumentality of a government." Cal. Corp. Code §5065. *See also* Cal. Corp. Code §18.

<sup>3</sup> Proposed Section 30.300(b).

<sup>4</sup> Proposed Section 30.102(a)(4)(H).

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Conclusion

The Modified Proposal responds to TCU's concerns about the Proposed Rule and moves California credit union regulation toward the beneficial goal of allowing credit unions greater flexibility in their choice of investment and reducing redundant paperwork required for routine investments. The Modified Proposal also maintains the status of mutual funds that limit their investments to instruments permissible for California credit unions or FCUs as permissible investments for California credit unions. Mutual funds are professionally-managed investment vehicles that provide access to an experienced investment adviser's skill in managing a portfolio of investments designed for credit unions.

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Thank you for the opportunity to comment on the Proposed Rule and the Modified Proposal. Please do not hesitate to contact me at [REDACTED] or counsel to TCU, Andrew Seaberg, at [REDACTED].

TRUST FOR CREDIT UNIONS

By: [REDACTED]  
Jay Johnson, President and Treasurer

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