



BULLETIN

Colorado Division of Financial Services

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Issued to: State-Chartered Credit Unions

Subject: Non-Deposit Investment Products and Services

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A question has been posed to the Division of Financial Services (“Division”) as to the permissibility of a state-chartered credit union, directly rather than through a credit union service organization (“CUSO”), offering its members certain non-deposit investment products and services.

The non-deposit investment products and services, including investment advice, would be offered by a credit union through a third party agreement with a licensed securities broker-dealer/investment advisory firm. This activity would be conducted in accordance with the guidelines set forth in the no-action letter issued on November 24, 1993 by the Securities and Exchange Commission to the Chubb Securities Corporation (“the Chubb letter”) as well as National Credit Union Administration (“NCUA”) Letter No. 150 issued in December 1993. Copies of these letters are available from this office upon request.

It is the Division’s opinion that the above described activity constitutes the exercise of an incidental power necessary to enable a state-chartered credit union to carry on effectively the business for which it is incorporated, pursuant to §11-30-104(1)(i), C.R.S. In accordance with §11-30-101(1)(a), C.R.S., a state-chartered credit union is incorporated “for the twofold purpose of promoting thrift among its members and creating a source of credit for them at fair and reasonable rates of interest”. Under this constant statutory purpose, state credit union laws have evolved to allow state-chartered credit unions to serve more fully as financial services providers. Examples of expanded powers over the years include share draft accounts, loan participations, individual retirement accounts, insurance sales, and activities authorized for federal credit unions. Through the regulatory implementation of the latter statutory authority, state-chartered credit unions have been able to invest in CUSOs, which in turn allow credit unions to offer a broad array of additional financial products and services to their members.

The credit union activity of offering its members non-deposit investment products and services through an outside vendor is commonly known as a finder activity. In such an activity, the credit union introduces or otherwise brings together outside vendors with its members for the negotiation and consummation of transactions. It should be noted that finder activities are explicitly authorized as incidental powers of federal credit unions in Part 721 of the NCUA Rules and Regulations, which became effective on September 5, 2001.

As to the state law status of the finder activity of offering members non-deposit investment products and services through an outside vendor, the Division views the activity as necessary to enable state-chartered credit unions to carry on effectively the business for which they are chartered. Promoting thrift means more than it did in 1931, when the state credit union laws were enacted. In the modern, competitive financial services marketplace, it is reasonable and consistent with the evolution of Colorado law to permit state-chartered credit unions to offer non-deposit investment products and services as well as traditional savings share and deposit accounts. This can enhance member service to the state’s citizens as well as promote the

stability of credit unions by giving them greater opportunity to be their members' primary financial institution.

Therefore, the Division will not object to this activity being conducted either through a state-chartered credit union or a CUSO, provided that the following conditions are met:

1. A credit union shall conduct the activity of offering its members certain non-deposit investment products and services in compliance with the guidelines set forth in the Chubb letter. This is particularly important since it is the Division's understanding that credit unions do not enjoy an exemption from licensure as a broker/dealer or investment advisor under applicable securities laws.
2. A credit union shall conduct this activity in compliance with the requirements of NCUA Letter No. 150, except that the Division will not object to an employee of a state-chartered credit union offering investment advice if said employee is performing as a dual employee in full compliance with the requirements of the Chubb letter.

It also should be noted that the NCUA's adoption of new Part 721 of its Rules and Regulations removes the compensation restrictions on finder activities contained in "paragraph f" of Letter No. 150. Therefore, a credit union may now profit from such activities.

State-chartered credit unions should carry adequate professional liability insurance coverage and/or take other steps to prudently limit their risk exposure from conducting this activity. Credit unions are encouraged to obtain an opinion of legal counsel regarding the potential liability related to the conduct of this activity under the structure they propose.

Please feel free to contact this office if you have questions.