

January 19, 2005

Mr. Philip Lieberman
Linsco/Private Ledger
One Beacon Street, 22nd Floor
Boston, MA 02108

Re: Providing Investment Services to Nonmembers.

Dear Mr. Lieberman:

You have asked if a federal credit union (FCU) can provide investment services to nonmembers by using a shared employee with a broker-dealer. No, an FCU has no authority to provide investment services to nonmembers; using a dual employee does not change the limitation on FCU services to nonmembers. A shared employee, acting on behalf of the broker-dealer, could provide services to nonmembers but the FCU could not derive income from that activity. An FCU may invest in a credit union service organization (CUSO) that provides nonmembers investment services, or it may act as a finder of investment services to members under the incidental powers rule. 12 U.S.C. §1757, 12 C.F.R. §721.3(f). You have also asked if an FCU can provide broker-dealer services as a correspondent service to members of another credit union. No, an FCU may only provide correspondent services that fall under the express powers provisions of the Federal Credit Union Act (the Act). The Act does not authorize FCUs to engage in broker-dealer services. 12 U.S.C. §1757.

Linsco/Private Ledger provides broker-dealer services to HFCU Services, Inc., a CUSO wholly-owned by Hughes Federal Credit Union (Hughes FCU). The CUSO currently provides investment services to both members and nonmembers of Hughes FCU. Under NCUA regulations, a CUSO may also serve nonmembers, as long as it primarily serves credit unions, their membership or the membership of credit unions contracting with the CUSO. 12 C.F.R. §712.3(b). By using a CUSO to offer investment services to members, Hughes FCU may derive income from HFCU Services, Inc. for the investment services to nonmembers. The CUSO is interested in expanding its business to serve members of other credit unions. Linsco/Private Ledger believes that it may contract directly with the FCU, rather than the CUSO, to provide broker-dealer services to members and nonmembers of Hughes FCU.

As we understand it, Linsco/Private Ledger would like to continue to provide broker/dealer services to its HFCU Services customers and expand the customer base to include members of other credit unions, but it would like to contract directly with Hughes FCU rather than HFCU Services. You ask whether Linsco/Private Ledger could do so by sharing an employee with Hughes FCU under a third-party networking agreement that would comply with NCUA Letter to Credit Unions No. 150 (Letter 150) and all other applicable rules. Hughes FCU

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may not circumvent the prohibition against serving nonmembers by using a dual employee. It could not profit from, or be reimbursed its expenses for, a dual employee's services to nonmembers. You argue that this arrangement would be consistent with our legal opinion OGC 01-0742, dated August 31, 2001. We disagree. In OGC 01-0742, we considered the permissibility of an FCU employee selling nondeposit investment products *to members* on behalf of a CUSO or third party. *Id.* Our opinion in that case does not permit a shared FCU employee to provide broker-dealer services to nonmembers. Further, Letter 150 does not authorize FCUs to provide broker-dealer services to nonmembers, it merely offers FCUs guidelines for otherwise permissible sales of nondeposit investment products.

You also suggest that an FCU could provide broker-dealer services to customers who are members of other credit unions as a correspondent service to the other credit unions. An FCU may only engage in activities that the Act expressly authorizes or that fall within an FCU's incidental powers. Correspondent services are a category of incidental powers in which an FCU provides services to other credit unions that it is authorized to provide to its members or as part of its operation. 12 C.F.R. §721.3(b). Under the incidental powers rule, an FCU may earn income from incidental powers activities. 12 C.F.R. §721.6. As explained in the preamble to the most recent revision of the incidental powers rule, correspondent services are an exercise of an FCU's incidental powers because they are a convenient and useful way for a recipient credit union to carry out its *express* powers when it can not perform the service itself. 66 Fed. Reg. 40845, 40850 (August 6, 2001). Since an FCU has no express power to provide broker-dealer services itself, it may only do so under another category of the incidental powers rule; as a finder activity. 12 C.F.R. §721.3(f). Finder activities permit an FCU to introduce members to third-party vendors so that the member and vendor may consummate a transaction. *Id.* An FCU may only engage in finder activities on behalf of members. An FCU can not rely on the correspondent services category of incidental powers to provide a different category of services authorized by the incidental powers rule.

Sincerely,

/s/

Sheila A. Albin
Associate General Counsel