

June 3, 2011

Sharon R. Henderson, Esq.  
McGuire Woods LLP  
50 North Laura Street  
Suite 3300  
Jacksonville, FL 32202-3661

Re: Investment in Insurance Agency as Credit Union Service Organization (CUSO).

Dear Ms. Henderson:

You have asked if a federal credit union (FCU) would be permitted to purchase or invest in an existing insurance agency as a CUSO if the insurance agency would change its customer base to primarily serve credit union members. You also ask if the target insurance agency could maintain existing franchise agreements with other companies and offer new franchises once it became a CUSO. Under the agreements, franchisees would process applications exclusively for the CUSO, and, although the franchisees would serve non-credit union members, they would primarily serve members. Yes, an FCU may purchase or invest in an insurance agency as a CUSO, provided the CUSO meets the customer base requirement of NCUA's CUSO rule at the time of the investment and throughout the duration of the FCU's investment.

FCUs have the authority to invest up to 1% of their paid-in and unimpaired capital and surplus in CUSOs structured as a corporation, limited liability company, or limited partnership. 12 U.S.C. §1757(7)(I); 12 C.F.R. §§712.2(a), 712.3(a).<sup>1</sup> An FCU may invest in a CUSO by itself, with other credit unions or with non-credit union parties. 12 C.F.R. §712.2(c). NCUA's CUSO rule permits an FCU to invest in a CUSO only if the CUSO primarily serves credit unions, its membership, or the membership of credit unions contracting with the CUSO. 12 C.F.R. §712.3(b). In addition, the CUSO must be engaged in activities and services related to the routine daily operations of credit unions. 12 C.F.R. §712.5. Insurance brokerage or agency is a preapproved category of activities related to the daily operations of credit unions. 12 C.F.R. §712.5(h). The rule lists four permissible insurance-related services as examples: 1) agency for sale

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<sup>1</sup> We note the FCU Act expressly prohibits an FCU from investing in a CUSO whereby the FCU would have an investment in shares, stocks or obligations of an insurance company. 12 U.S.C. §1757(7)(I); 12 C.F.R. §712.6. You have represented the CUSO will not underwrite insurance.

of insurance; 2) vehicle warranty services; 3) group purchasing programs; and 4) real estate settlement services. Id.

Before making an investment, an FCU must determine whether a CUSO meets the customer base test referred to above, in that the CUSO primarily serves credit unions, the FCU's members, or the members of other credit unions contracting with the CUSO. While the CUSO rule does not establish a bright-line definition of "primarily serves," it has been NCUA's longstanding position that the determination as to whether a CUSO complies with the customer base requirement be made on "a case-by-case basis using a totality of the circumstances test." 63 Fed. Reg. 10743, 10747 (March 5, 1998). As such, an FCU should review several variables, including the number of affiliated members served; gross or net revenues derived from members; members' assets under management; the number of policies sold to members; the number of services sold to members; and, the availability or accessibility of services to members. See 63 Fed. Reg. 10746. The CUSO must meet the customer base requirement at the time an FCU invests in the CUSO; furthermore, the NCUA Board has determined the requirement is ongoing while the FCU maintains an investment in the CUSO.

The Board, as required by statute, must vigilantly reassess the customer base requirement on a constant basis. To do otherwise would permit a large loophole in the CUSO rule, allowing negligent or unscrupulous CUSOs to ignore the customer base requirements once fully funded from FCUs. This practice could easily lead to safety and soundness problems, and perhaps even threaten the *[National Credit Union Share Insurance Fund]* NCUSIF.

63 Fed. Reg. 10747.

In the facts you have presented, the target insurance agency currently serves the general public and would "convert" to an agency that primarily serves credit union members as required under Section 712.3(b). As discussed above, an FCU would not have the authority to invest in the agency unless it met the customer base requirement at the time of purchase or investment.

Finally, we believe the CUSO may enter into new franchise agreements to offer additional agents, as franchisees, the opportunity to sell permissible insurance services to members. You have stated the target insurance agency/franchisor and future CUSO enters into franchise agreements that permits franchisees to do business under the franchisor name and marketing. Franchisees sell insurance policies underwritten by carriers selected by the franchisor exclusively for the agent of record, the franchisor. All commissions for policies sold by franchisees are paid to the franchisor, which then compensates the franchisees. Again, we believe that if the CUSO continues to meet the customer base requirement, an

FCU is not prohibited from investing in an insurance agency CUSO that uses franchisees to sell its services.

If you have further questions, please feel free to contact Staff Attorney Chrisanthy Loizos or me.

Sincerely,

/S/

Hattie M. Ulan  
Associate General Counsel

GC/CJL:bhs  
11-0332