

August 31, 2001

Fred M. Haden, General Counsel
Navy Federal Credit Union
P.O. Box 3000
Merrifield, VA 22119-3000

Claude J. Kazanski, Assistant V. P. and Associate General Counsel
CUNA Mutual Group
P.O. Box 391
Madison, Wisconsin 53701-0391

Re: Sale of Nondeposit Investment Products by Dual Employees.

Dear Messrs. Haden and Kazanski:

In separate correspondence, each of you has asked if a federal credit union's (FCU's) employees may represent and perform work for a credit union service organization (CUSO) or other third party selling nondeposit investment products to the FCU's members. You also have asked if these investments may be sold on FCU premises too small to permit the physical separation of the investment sales from the FCU's deposit taking activities. The answer to both questions is a qualified yes.

You have indicated that CUNA Mutual Group (CUNA Mutual) has developed a program to sell nondeposit investment products to FCU members on the FCU's premises. The program contemplates having some FCU employees represent and work for CUNA Mutual or a CUSO as a shared employee on a part time, as-needed basis. You have stated that only properly trained and licensed employees will serve as shared employees.

You have also indicated that the program is structured to comply with the guidelines in the attached NCUA Letter to Credit Unions No. 150 (Letter 150) regarding the sale of nondeposit investment products. Letter 150 provides, among other things, that FCU employees may not offer investment advice. Accordingly, you have explained that the program is designed to make clear that when a shared employee is selling nondeposit investment products or providing investment advice, he will be doing so exclusively on behalf and under the control of the CUSO or CUNA Mutual and not in his capacity as an employee of the FCU. Neither the CUSO nor CUNA Mutual will pay the employee for his services; rather, they will compensate the FCU for the employee's time. Among other purposes, this will minimize the potential for conflicts of interest. We have no objection to this shared employee arrangement, provided the guidelines of Letter 150 are followed.

Letter 150 also provides that the sale of nondeposit investment products should be physically separated from the FCU's deposit taking activities to minimize member confusion as to the nature and risks of nondeposit investment products. Physical

separation of these activities helps emphasize that significant differences exist between them, such as degree of risk and insurability. NCUA recognizes, however, that not all FCU offices are large enough to afford physically distinct office space in which to conduct these activities separately. We do not believe that this lack of space should preclude FCU members from enjoying the benefits of expanded member services if an FCU ensures that members receive appropriate disclosures.

Investment sales and deposit taking activities may be conducted in close proximity to each other where limited office space makes physical separation impractical, if appropriate disclosures are made when selling, advertising or marketing nondeposit investments. This includes disclosing in writing that nondeposit investment products: 1) are not federally-insured; 2) are not obligations of the FCU; 3) are not guaranteed by the FCU; 4) involve investment risk; and 5) if applicable, are being offered by an employee who accepts deposits on behalf of the FCU and also sells nondeposit investment products on behalf of the CUSO or other third party. These disclosures should be made in a location and type size that are clear and conspicuous to the member. These disclosures should also be made orally as part of any oral sales presentation.

You have indicated that the investment program is designed to physically separate deposit taking and investment sales activities wherever practical. Where that is not practical, you have indicated that the program will meet Letter 150's disclosure guidelines enumerated above. In addition to the specific issues addressed above, you have indicated that the investment program will comply with all other guidelines in Letter 150.

Sincerely,

Sheila A. Albin
Associate General Counsel

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