

May 24, 2002

Guy A. Messick, Esquire  
Lastowska & Messick P.C.  
The Madison Building  
108 Chesley Drive  
Media, PA 19063-1712

Re: Registration of CUSOs Involved in Third-Party Brokerage Arrangements.

Dear Mr. Messick:

You have asked about the effect of the revision last year of our incidental powers activities rule on the need for credit union service organizations (CUSOs) to register as broker-dealers with the Securities and Exchange Commission (SEC) when they are involved in third-party brokerage arrangements for the sale of investments. 12 C.F.R. Part 721. As part of the revisions in that regulation, federal credit unions (FCUs) may now earn income from finder activities, such as third-party brokerage arrangements, which previously they could not do. 12 C.F.R. §721.6. Our understanding is that credit unions will continue to be exempt from registration but that the SEC is currently considering whether CUSOs will be exempt from registration because of the change in the incidental powers activities rule.

In 1993, the SEC issued a letter that authorized banks, thrifts, and credit unions to enter into third-party brokerage arrangements under certain conditions without the financial institution having to register. Letter from Catherine McGuire, Chief Counsel, SEC Division of Market Regulation, to Ian Celicia, Chubb Securities Corporation, November 24, 1993 (Chubb letter). The Chubb letter also said a "required service corporation" involved in such arrangements did not have to register.

NCUA Letter to Credit Unions No. 150 (Letter 150), issued in December 1993, provides guidance to credit unions about credit union related sales of nondeposit investment products and services, including third-party brokerage arrangements. It specifically recognizes that CUSOs may participate with a credit union and a broker in such arrangements. Letter 150 does not specifically address the necessity of registration with the SEC but states generally that credit unions must comply with all laws and regulations applicable to the activity.

We understand that various CUSOs engaged in third-party brokerage arrangements have considered themselves to be "required service corporations" and have relied on the Chubb letter to avoid SEC registration. The basis for the conclusion was that a CUSO was "required" in order for a credit union to earn income from the arrangement because of the previous limitation on compensation in Part 721. Our understanding is that SEC staff also held this view.

We have consulted with SEC staff about the elimination of the compensation limit in

Part 721. SEC staff now questions whether CUSOs are still required service corporations, as that phrase is used in the Chubb letter, and whether CUSOs may continue to rely on the Chubb letter to avoid registration. As of the date of this letter, the SEC is still considering this issue. SEC staff has suggested that unregistered CUSOs should not form new, third-party brokerage arrangements pending an SEC decision on the matter. In addition, because the change in Part 721 only applies to FCUs, SEC staff is also considering whether there should be a distinction between FCUs and state-chartered credit unions because CUSOs of the latter may still be required in some states for a credit union to derive full monetary benefit from a third-party brokerage arrangement.

Credit unions may continue to engage in third-party brokerage activities and, except for the change on compensation for FCUs resulting from the change in Part 721, may continue to rely on Letter 150 as guidance. In addition, SEC staff informs us that, regardless of how the SEC determines the question of whether CUSOs must register, credit unions are and will continue to be exempt from registration if following the conditions of the Chubb letter. Credit unions and CUSOs involved in third-party brokerage arrangements where the CUSO is not registered should be considering what actions they will need to take if the SEC concludes the exemption in the Chubb letter no longer applies to CUSOs.

Sincerely,

Sheila A. Albin  
Associate General Counsel

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