



State of Washington
DEPARTMENT OF FINANCIAL INSTITUTIONS
Division of Credit Unions

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DCU Opinion Number 02-3

Date: April 8, 2002

From: Parker Cann, Director of Credit Unions

Subject: Credit Unions Possess Authority To Enter Into Arrangements with Third Parties To Sell Investment and Insurance Products To Members, Subject To Compliance With Applicable Regulatory Pronouncements

Issue

The question has arisen:

- Whether a Washington State-chartered credit union (WASCU) may enter into an arrangement with a third party to sell various investment and insurance products to the members of the credit union (Investment/Insurance Arrangement); and
- What regulatory requirements/guidelines might apply to an Investment/Insurance Arrangement.

Analysis

Authority

The initial issue here is whether a WASCU possesses the authority under state law to enter into an Investment/Insurance Arrangement. We believe that a WASCU possesses such authority, based on our state statute that grants WASCUs the powers and authorities of federal credit unions, including their incidental powers. See Section 31.12.404 of the Revised Code of Washington (RCW) and our Opinion No. O-01-08.

The incidental powers of federal credit unions include the power to enter into arrangements with third parties to sell investment and insurance products to members, and to earn fees from such arrangements. See 12 C.F.R. Part 721.

In addition, our rules generally recognize the authority of WASCUs to enter into arrangements with third parties to provide products and services to members. See Chapter 208-440 of the Washington Administrative Code (WAC).

Other regulatory requirements

In entering into and implementing an Investment/Insurance Arrangement, WASCUs must comply not only with the statutes and rules cited above, but also with applicable pronouncements issued by the following federal and state agencies:

- The National Credit Union Administration (NCUA)
- The Securities and Exchange Commission (SEC)
- The Securities Division (Securities Division) of the Washington State Department of Financial Institutions (DFI)
- The Washington State Office of Insurance Commissioner (OIC)

Compliance with State and Federal Securities Laws

Under state and federal securities laws, sharing in brokerage commissions or advisory fees can trigger broker-dealer or investment adviser licensing requirements. When a WASCU receives fees for broker-dealer or investment advisory services, the credit union must consider whether it, or its employees or agents, need to be licensed under the broker-dealer or investment adviser provisions of the securities laws. Licensed broker-dealers and investment advisers that have entered into certain contractual relationships with the credit union may provide such brokerage and advisory services. See SEC letter to FNIC dated May 18, 1988; SEC letter to Chubb Securities dated November 24, 1993; Securities Division letter to FNIC dated March 8, 1988 (note that the Securities Division was part of another agency, the Department of Licensing, at that time); and Securities Division Securities Act Interpretive Statement - 22.

Applicable pronouncements

Some of the regulatory pronouncements that may apply to an Investment/Insurance Arrangement include (but are not limited to):

A. RCW 31.12.404; 12 C.F.R. Part 721; Chapter 208-440 WAC

B. NCUA's Letter 150 concerning the sale of nondeposit investment products, which may be found at <http://ncua.gov/ref/letters/e-let150.html>

C. NCUA General Counsel's Opinion dated April 2, 1996, concerning investment product sales disclosures. The opinion incorporates:

- The Uniform Guidance on Mutual Fund Sales, also known as the Interagency Statement on Retail Sales of Nondeposit Investment Products, dated February 15, 1994
- The Clarification of Interagency Guidelines, also known as Joint Interpretations of the Interagency Statement, dated September 12, 1995

D. NCUA General Counsel's opinion on insurance sales, which may be found at http://ncua.gov/ref/opinion_letters/01-0869.html

E. SEC letter to FNIC dated May 18, 1988; SEC letter to Chubb Securities dated November 24, 1993; Securities Division letter to FNIC dated March 8, 1988 (note that DFI's Securities Division was part of the Department of Licensing in 1988); and Securities Division Securities Act Interpretive Statement - 22

F. The SEC's proposed rules set forth at <http://www.sec.gov/rules/final/34-44291.htm> implementing the pertinent provisions of the federal Gramm-Leach-Bliley Act. Please feel free to contact us if you are not able to locate any of these materials. Some of these pronouncements may have been superseded by subsequent regulatory issuances.

Before entering into an Investment/Insurance Arrangement, WASCU's should seek out the opinion of knowledgeable counsel concerning compliance with applicable regulatory pronouncements.

Conclusion

Washington State-chartered credit unions possess the authority to enter into arrangements with third parties to sell investment and insurance products to members, subject to compliance with all applicable state and federal regulatory pronouncements.