



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

June 21, 1988

Office of General Counsel

Mr. John Fritsche
Vice President, Brokerage Services
Members Investment Services, Inc.
P.O. Box 224345
Dallas, Texas 75222-4345

Re: NCUA's February 16, 1988, Opinion Letter
on Securities Brokerage Services (Your
March 25, 1988, Letter)

You have asked two general questions: (1) would it be appropriate to remind a Federal credit union ("FCU") making securities services available to its members pursuant to Part 721 of NCUA's Rules and Regulations [12 C.F.R. §§721.1-.2] that it may be subject to Federal or state securities law requirements; and (2) may a natural-person FCU become a registered broker-dealer under Federal or state law. We have generally refrained from emphasizing need for an FCU to comply with specific state statutes for fear of being under-inclusive and having an FCU infer that the list is exhaustive; we have made an exception where an FCU makes credit or share-related insurance available to members under Part 721 because an FCU's authorization to receive commissions in these instances makes the credit union very likely subject to state insurance regulation. We do not believe there is a similar likelihood an FCU will be subject to Federal and state securities laws for its Part 721 activities; in particular, we are unaware of any natural-person FCU activity which would require registration under Federal or state securities laws.

Unique Aspects of an FCU's Power to Make Certain
Insurance Available to Members

Section 721.1 of NCUA's Rules and Regulations [12 C.F.R. §721.1] states:

A Federal credit union may make
insurance and group purchasing
plans involving outside vendors

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available to the membership (including endorsement), and may perform administrative functions on behalf of the vendors.

Section 721.2(b)(1) [12 C.F.R. §721.2(b)(1)] adds:

Except as otherwise provided by applicable state insurance law, reimbursement or compensation is not limited with respect to insurance sales by the credit union or its employees which are directly related to an extension of credit by the credit union or directly related to the opening or maintenance of a share, share draft or share certificate account at the credit union.

In all other instances, an FCU is limited in compensation to its "cost amount" [12 C.F.R. §721.2(b)(3)], which is defined as [12 C.F.R. §721.2(a)(2)]:

the total of the direct and indirect cost to the Federal credit union of any administrative functions performed on behalf of the vendor. The Federal credit union must be able to justify this amount using standard accounting procedures.

An FCU's unique authorization to receive compensation based on number of member purchases of certain insurance products -- a field highly regulated by state law -- exposes the credit union to significant likelihood of becoming subject to state regulation. For that reason, we have generally included a reminder of this possibility to persons inquiring about making this service available under Part 721. We are not aware of any other service, including securities brokerage, where the likelihood of an FCU's being subject to other Federal or state regulation is nearly as great.

Need for Natural-Person FCU to Register under Federal or State Securities Laws

An FCU may conceivably subject itself to some Federal or state securities law in making brokerage service available to its members -- the SEC's anti-fraud Rule 10b-5, for example. That risk is in our view minimal. Moreover, we know of no securities-related activity a natural-person FCU can legally undertake,

itself or with another under Part 721, which would require FCU registration with Federal or state authorities.

Sincerely,



TIMOTHY P. MCCOLLUM
Assistant General Counsel

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¹ corporate FCU may, under certain circumstances, be permitted to engage in activity which might require registration under Federal or state securities laws.