

May 1, 2003

Sharon B. Whiddon, Financial Administrator
Florida Office of Financial Institutions
200 East Gaines Street
Tallahassee, FL 32399

Re: Investment Advice and Financial Counseling.

Dear Ms. Whiddon:

You have asked if a federal credit union (FCU) employee may offer investment advice to members under NCUA's incidental powers rule. 12 C.F.R. §721.3. No, an FCU employee, as such, may not give investment advice or effect securities transactions that would subject the employee or FCU to federal or state securities laws. FCU employees, however, may provide general financial counseling in their capacity as a credit union employee, or investment advice if acting under the control of a third-party as a shared employee of both the FCU and third-party.

In 1993, NCUA issued Letter to Credit Unions No. 150 (Letter 150), providing guidance on third-party sales of securities to credit union members. It states that FCUs have no authority to offer investment advice. The NCUA Board reaffirmed this position in the preamble to NCUA's incidental powers rule in its discussion about the permissible activity of financial counseling:

Under this activity, FCUs may counsel members about financial matters, such as setting budgets, establishing financial goals, and managing tax liabilities. Other examples within this category may include counseling members on money management, paying down debt, saving for the future, types of investments, and diversification principles. This category applies only to financial counseling provided by an FCU to its members and does not encompass activities that require SEC registration as a broker, dealer or investment adviser.

66 Fed. Reg. 40845, 40852 (Aug. 6, 2001). The preamble also distinguishes between an FCU's financial counseling activities and the finder activities associated with the nondeposit investment sales contemplated in Letter 150. Id. The incidental powers rule, therefore, does not currently provide any authority for an FCU to offer investment advice through its employees.

An FCU may share its employees with a broker, dealer, or investment adviser so that the FCU employee is acting in a dual capacity for both the FCU and the third-party. As you noted, our legal opinion OGC 01-0742, dated August 31, 2001, recognizes that a shared employee may provide investment advice when that employee does so exclusively on behalf and under the control of the licensed or otherwise regulated third-party and not in his capacity as an FCU employee.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/CJL
03-0308