National Credit Union Administration

§ 704.12

“pierce the corporate veil,” such as inadequate capitalization, lack of corporate identity, common boards of directors and employees, control of one entity over another, and lack of separate books and records.

(e). **Permissible activities.** (1) Beginning on April 18, 2011, a corporate CUSO must agree to limit its activities to:

(i) Brokerage services,

(ii) Investment advisory services, and

(iii) Other categories of activities as approved in writing by NCUA and published on NCUA’s Web site.

(2) A corporate credit union must divest from any CUSO that is engaged in activities not approved by NCUA under paragraph (e)(1) of this section. A corporate credit union may take until October 20, 2011 to divest itself from a CUSO engaging in one or more unapproved activities, but only if the CUSO was engaging in those activities before October 20, 2010 and the corporate credit union can establish that those activities satisfied the requirements of this section as it existed before October 20, 2010.

(3) Once NCUA has approved an activity and published that activity on its Web site as provided for in paragraph (e)(1)(iii) of this section, NCUA will not remove that particular activity the approved list, or make substantial changes to the content or description of that approved activity, except through the formal rulemaking process.

(f) An official of a corporate credit union which has invested in or loaned to a corporate CUSO may not receive, either directly or indirectly, any salary, commission, investment income, or other income, compensation, or consideration from the corporate CUSO. This prohibition also extends to immediate family members of officials.

(g) Prior to making an investment in or loan to a corporate CUSO, a corporate credit union must obtain a written agreement that the CUSO:

(1) Will follow GAAP;

(2) Will provide financial statements to the corporate credit union at least quarterly;

(3) Will obtain an annual CPA opinion audit and provide a copy to the corporate credit union. A wholly owned or majority owned CUSO is not required to obtain a separate annual audit if it is included in the corporate credit union’s annual consolidated audit;

(4) Will not acquire control, directly or indirectly, of another depository financial institution, to invest in shares, stocks, or obligations of an insurance company, trade association, liquidity facility, or similar organization;

(5) Will allow the auditor, board of directors, and NCUA complete access to its personnel, facilities, equipment, books, records, and any other documentation that the auditor, directors, or NCUA deem pertinent; and

(6) Will comply with all the requirements of this section.

(h) Corporate credit union authority to invest in or loan to a CUSO is limited to that provided in this section. A corporate credit union is not authorized to invest in or loan to a CUSO under part 712 of this chapter.

§ 704.12 Permissible services.

(a) **Preapproved services.** A corporate credit union may provide to members the preapproved services set out in this section. NCUA may at any time, based upon supervisory, legal, or safety and soundness reasons, limit or prohibit any preapproved service. The specific activities listed within each preapproved category are provided as illustrations of activities permissible under the particular category, not as an exclusive or exhaustive list.

(1) **Correspondent services agreement.** A corporate credit union may only provide financial services to nonmembers through a correspondent services agreement. A correspondent services agreement is an agreement between two corporate credit unions, whereby one of the corporate credit unions agrees to provide services to the other corporate credit union or its members.

(2) **Credit and investment services.** Credit and investment services are advisory and consulting activities that assist the member in lending or investment management. These services may include loan reviews, investment portfolio reviews and investment advisory services.

(3) **Electronic financial services.** Electronic financial services are any services, products, functions, or activities that a corporate credit union is otherwise authorized to perform, provide or deliver to its members but performed through electronic means. Electronic services may include automated teller machines, online transaction processing through a website, website hosting services, account aggregation services, and internet access services to perform or deliver products or services to members.

(4) **Excess capacity.** Excess capacity is the excess use or capacity remaining in facilities, equipment or services that: a corporate credit union properly invested in or established, in good faith, with the intent of serving its members; and it reasonably anticipates will be
taken up by the future expansion of services to its members. A corporate credit union may sell or lease the excess capacity in facilities, equipment or services, such as office space, employees and data processing.

(5) Liquidity and asset and liability management. Liquidity and asset and liability management services are any services, functions or activities that assist the member in liquidity and balance sheet management. These services may include liquidity planning and balance sheet modeling and analysis.

(6) Operational services. Operational services are services established to deliver financial products and services that enhance member service and promote safe and sound operations. Operational services may include tax payment, electronic fund transfers and providing coin and currency service.

(7) Payment systems. Payment systems are any methods used to facilitate the movement of funds for transactional purposes. Payment systems may include Automated Clearing House, wire transfer, item processing and settlement services.

(8) Trustee or custodial services. Trustee services are services in which the corporate credit union is authorized to act under a written trust agreement to the extent permitted under part 724 of this chapter. Custodial and safekeeping services are services a corporate credit union performs on behalf of its member to act as custodian or safekeeper of investments.

(b) Procedure for adding services that are not preapproved. To provide a service to its members that is not preapproved by NCUA:

(1) A federal corporate credit union must request approval from NCUA. The request must include a full explanation and complete documentation of the service and how the service relates to a corporate credit union’s authority to provide services to its members. The request must be submitted jointly to the OCCU Director and the Secretary of the Board. The request will be treated as a petition to amend §704.12 and NCUA will request public comment or otherwise act on the petition within a reasonable period of time. Before engaging in the formal approval process, a corporate credit union should seek an advisory opinion from NCUA’s Office of General Counsel as to whether a proposed service is already covered by one of the authorized categories without filing a petition to amend the regulation; and

(2) A state-chartered corporate credit union must submit a request for a waiver that complies with §704.1(b) to the OCCU Director.

(c) Prohibition. A corporate credit union is prohibited from purchasing loan servicing rights.

[67 FR 65656, Oct. 25, 2002]

§ 704.13 [Reserved]

§ 704.14 Representation.

(a) Board representation. The board will be determined as stipulated in its bylaws governing election procedures, provided that:

(1) At least a majority of directors, including the chair of the board, must serve on the board as representatives of member credit unions;

(2) The chair of the board may not serve simultaneously as an officer, director, or employee of a credit union trade association;

(3) A majority of directors may not serve simultaneously as officers, directors, or employees of the same credit union trade association or its affiliates (not including chapters or other subunits of a state trade association);

(4) For purposes of meeting the requirements of paragraphs (a)(2) and (a)(3) of this section, an individual may not serve as a director or chair of the board if that individual holds a subordinate employment relationship to another employee who serves as an officer, director, or employee of a credit union trade association; and

(5) In the case of a corporate credit union whose membership is composed of more than 25 percent non credit unions, the majority of directors serving as representatives of member credit unions, including the chair, must be elected only by member credit unions.

(b) Credit union trade association. As used in this section, a credit union trade association includes but is not limited to, state credit union leagues and league service corporations and national credit union trade associations.