

fail to meet a requirement of this part, the corporate credit union must, within 30 calendar days of the failure, provide to the OCCU Director a written action plan that addresses:

(1) The investment's characteristics and risks;

(2) The process to obtain and adequately evaluate the investment's market pricing, cash flows, and risk;

(3) How the investment fits into the credit union's asset and liability management strategy;

(4) The impact that either holding or selling the investment will have on the corporate credit union's earnings, liquidity, and capital in different interest rate environments; and

(5) The likelihood that the investment may again pass the requirements of this part.

(b) The OCCU Director may require, for safety and soundness reasons, a shorter time period for plan development than that set forth in paragraph (a) of this section.

(c) If the plan described in paragraph (a) of this section is not approved by the OCCU Director, the credit union must adhere to the OCCU Director's directed course of action.

[62 FR 12938, Mar. 19, 1997, as amended at 67 FR 65656, 65659, Oct. 25, 2002]

**§ 704.11 Corporate Credit Union Service Organizations (Corporate CUSOs).**

(a) A corporate CUSO is an entity that:

(1) Is at least partly owned by a corporate credit union;

(2) Primarily serves credit unions;

(3) Restricts its services to those related to the normal course of business of credit unions as specified in paragraph (e) of this section; and

(4) Is structured as a corporation, limited liability company, or limited partnership under state law.

(b) *Investment and loan limitations.* (1) The aggregate of all investments in member and non-member corporate CUSOs must not exceed 15 percent of a corporate credit union's capital.

(2) The aggregate of all investments in and loans to member and non-member corporate CUSOs must not exceed 30 percent of a corporate credit union's capital. A corporate credit

union may lend to member and non-member corporate CUSOs an additional 15 percent of capital if the loan is collateralized by assets in which the corporate has a perfected security interest under state law.

(3) If the limitations in paragraphs (b)(1) and (b)(2) of this section are reached or exceeded because of the profitability of the CUSO and the related GAAP valuation of the investment under the equity method without an additional cash outlay by the corporate, divestiture is not required. A corporate credit union may continue to invest up to the regulatory limit without regard to the increase in the GAAP valuation resulting from the corporate CUSO's profitability.

(c) *Due diligence.* A corporate credit union must comply with the due diligence requirements of §§ 723.5 and 723.6(f) through (j) of this chapter for all loans to corporate CUSOs. This requirement does not apply to loans excluded under § 723.1(b).

(d) *Separate entity.* (1) A corporate CUSO must be operated as an entity separate from a corporate credit union.

(2) A corporate credit union investing in or lending to a corporate CUSO must obtain a written legal opinion that concludes the corporate CUSO is organized and operated in a manner that the corporate credit union will not reasonably be held liable for the obligations of the corporate CUSO. This opinion must address factors that have led courts to "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

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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 or 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 the CUSO's personnel, facilities, equipment, books, records, and any other documentation that the auditor, directors, or NCUA deem pertinent;
- (6) Will inform the corporate, at least quarterly, of all the compensation paid by the CUSO to its employees who are

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also employees of the corporate credit union; and

(7) 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.

[75 FR 64843, Oct. 20, 2010, as amended at 76 FR 23868, Apr. 29, 2011]

### § 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.