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Clearinghouse Rule 10-009**PROPOSED ORDER OF THE STATE OF WISCONSIN,
OFFICE OF CREDIT UNIONS
ADOPTING RULES**

- 2 The Wisconsin Office of Credit Unions proposes an order to create ch. DFI—CU 65 relating to
3 credit union service organizations.

Analysis Prepared by the Office of Credit Unions

Statute(s) interpreted: ss. 186.11(4), Stats.

Statutory authority: ss. 186.235(8) and 227.11(2), Stats.

Related statute or rule: none.

Explanation of agency authority: Pursuant to ch. 186, Stats., the Office of Credit Unions regulates state-chartered credit unions and credit union service organizations (“CUSO’s”).

Summary of proposed rule: The objective of the rule is to create ch. DFI—CU 65. The purpose of the rule is to set forth certain procedures and requirements for credit union service organizations including definitions, corporate separateness, legal opinions, notice, increase in investment, expansion of services, conflicts of interest, report and audit procedures, and supervision. These rules have been approved by the Credit Union Review Board, pursuant to s. 186.235(8), Stats.

Summary of and preliminary comparison with existing or proposed federal regulation: Comparable rules may be found in federal regulations governing federally-chartered credit unions, National Credit Union Administration regulation Part 712.

Comparison with rules in adjacent states: Illinois has comparable rules; Minnesota, Iowa and Michigan do not.

Summary of factual data and analytical methodologies: The office applied its own experience in its regulation of credit union service organizations regarding the notice, corporate separateness, legal opinions, expansion of services, conflicts of interest, report and audit procedures, increase of investment, and supervision matters addressed by the rule. An additional resource for the office is the National Credit Union Administration and its regulation of credit union service organizations. Furthermore, the office has met and discussed with various credit unions and industry representatives matters regarding CUSO regulation.

Analysis and supporting documentation used to determine effect on small business: Small businesses are neither involved nor affected by this rule.

Agency Contact Persons

To obtain a copy of the proposed rule or fiscal estimate at no charge, to submit written comments regarding the proposed rule, or for questions regarding the agency's internal processing of the proposed rule, contact Mark Schlei, Deputy General Counsel, Department of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708-8861, tel. (608) 267-1705, e-mail mark.schlei@wisconsin.gov. A copy of the proposed rule may also be obtained and reviewed at the Department of Financial Institution's website, www.wdfi.org. Written comments must be received by the conclusion of the department's hearing regarding the proposed rule.

For substantive questions on the rule, contact Suzanne Cowan, Director, Office of Credit Unions, P.O. Box 14137, Madison, WI 53708-0137, tel. (608) 267-2609, e-mail suzanne.cowan@wisconsin.gov.

Pursuant to the statutory authority referenced above, the Office of Credit Unions adopts the following:

SECTION 1. Chapter DFI-CU 65 is created to read:

Chapter DFI-CU 65

CREDIT UNION SERVICE ORGANIZATIONS

DFI—CU 65.01. Definitions. In this chapter: (1) "CUSO" means a credit union service organization. (2) "Office" means the office of credit unions.

DFI—CU 65.02. Corporate separateness. A credit union and a CUSO shall be operated in a manner that demonstrates to the public the separate corporate existence of the credit union and the CUSO. The credit union and the CUSO shall operate so that all of the following apply:

(1) Their respective business transactions, accounts and records are not intermingled.

(2) Each observes the formalities of its separate corporate procedures.

(3) Each is adequately financed as a separate unit in the light of normal obligations reasonably foreseeable in a business of its size and character.

(4) Each is held out to the public as a separate enterprise.

(5) The credit union does not dominate the CUSO to the extent that the CUSO is treated as a department of the credit union.

(6) Unless the credit union has guaranteed a loan obtained by the CUSO, all borrowings by the CUSO indicate that the credit union is not liable.

DFI—CU 65.03. Legal opinion. Prior to a credit union investing in a CUSO, the credit union shall obtain written legal advice as to whether the CUSO is established in a manner that will limit potential exposure of the credit union to no more than the loss of funds invested in or loaned to the CUSO. If a CUSO in which a credit union has an investment plans to change its structure, the credit union shall also obtain written legal advice that the CUSO will remain established in a manner that will limit potential exposure of the credit union to no more than the loss of funds invested in or loaned to the CUSO. The legal advice shall address factors that have led the courts to pierce the corporate veil such as inadequate capitalization, lack of separate corporate identity, common boards of directors and employees, control of one entity over the other, and lack of separate books and records. The legal advice may be provided by independent legal counsel of the investing credit union or the CUSO.

DFI—CU 65.04. Notice. (1) Prior to a credit union investing in a CUSO, a credit union shall provide written notice to the office.

(2) The notice shall include the following:

(a) A description of the corporation, limited partnership, limited liability company or other entity that is permitted under Wisconsin law that the CUSO will adopt.

(b) A description of the products or services that the CUSO will offer and the customer base it will serve.

(c) Evidence that the CUSO has sufficient bond or insurance to protect the credit union investor from loss.

(d) Evidence that the CUSO is adequately financed for the type of business it is designed to operate.

(e) The legal opinion set forth in s. 65.03.

DFI—CU 65.05 Increase of investment. If a credit union seeks to invest more than 1.5% of total assets in a CUSO, prior approval must be received in writing from the office. The investing credit union shall submit a written application to the office containing the purpose and reason for the increased funding, a statement of the potential financial impact upon the credit union, financial statements of both entities, and such other information as the office may request. The office will approve or disapprove the application within 60 days of receipt of the application. With prior notice of no less than 30 days, a credit union that is well-capitalized and not under any suspension of authority may invest an amount in excess of 1.5% of total assets but not to exceed 40% of net worth in a CUSO that engages solely in an activity that the credit union is permitted by law to engage in on its own.

DFI—CU 65.06. Expansion of services. (1) If a CUSO wants to provide a service or product that is not permitted under s. 186.11(4)(b), Stats., the credit union owners shall submit a request in writing to the office for approval.

(2) The request shall contain a description of the product or service and how it is related to the routine daily operations of a credit union.

(3) The office shall approve or disapprove the request within 60 days of receipt of all the information and documentation needed to make the determination.

(4) Once a product or service is approved by the office, it shall be authorized for all CUSOs.

DFI—CU 65.07. Conflicts of interest. All transactions between credit union officials and management and a CUSO shall be conducted at arm's length and in a prudent business manner consistent with applicable conflicts of interest principles. Credit union officials, management and the members of their immediate families shall not be compensated either directly or indirectly by the CUSO. Credit union officials or management may otherwise provide occasional assistance to the CUSO, and the CUSO may reimburse the credit union for the services provided by officials or management.

DFI—CU 65.08. Reporting and audit procedures. (1) A CUSO shall provide quarterly financial statements including a balance sheet and income statement to the office. If the CUSO obtains a certified public accountant audit, it shall provide a copy of the audit report to the office.

(2) The office shall audit a CUSO wholly-owned by a credit union as part of the regular credit union examination. For a CUSO that is owned by or a controlling interest is held by more than one Wisconsin credit union, the office shall audit the CUSO on a periodic basis and will charge the CUSO for the time expended.

(3) For a CUSO that is not controlled by Wisconsin credit unions, the credit union shall not invest in or loan money to that CUSO unless CUSO management signs an agreement to provide the office with complete access to books and records and to provide a copy of any regular audit reports prepared by a certified public accountant.

DFI—CU 65.09 Supervision. A CUSO, whether directly or indirectly owned by a credit union, shall provide the office with complete access to any books and records of the CUSO and the ability to review CUSO internal controls as deemed necessary by the office, and subject to the laws of this state, including s. 186.11, Stats., and ch. DFI—CU 62.

84 **Effective date.** This rule shall take effect on the first day of the month following
85 publication in the *Wisconsin Administrative Register* as provided in s. 227.22 (2) (intro.), Stats.

Dated: _____

Agency: _____

Suzanne Cowan, Director
Office of Credit Unions