



# The Commonwealth of Massachusetts

Office of the Commissioner of Banks

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May 1, 2002

The Honorable Steven T. James  
Clerk of the House of Representatives  
State House, Room 145  
Boston, Massachusetts 02133

Dear Mr. James:

Enclosed for filing please find the Division of Banks' (the "Division") summary of its proposed amendments to 209 CMR 50.00 *et seq.*, Parity with Federal Credit Unions, which are the implementing regulations of G.L. c. 171, §6A. This summary and a copy of the proposed amendments, found at Appendix A, are required to be filed with your office pursuant to the statute. The Division's required statement that it has complied with the pertinent provisions of G.L. c. 30A is found at Appendix B.

A public hearing on these amendments was held pursuant to G.L. 30A on Friday, April 5, 2002 at 10:00 a.m. and written comments were accepted through 5:00 p.m. on Wednesday, April 17, 2002. Oral comments were received from the credit union trade association. Written comments were received from the credit union trade association, the banking trade association and six credit unions. Although the banking trade association expressed certain concerns in its letter<sup>1</sup>, the credit union trade association and the six credit unions were all in support.

The Parity with Federal Credit Union regulations had been authorized by the enactment of Chapter 223 of the Acts of 1998, An Act Relative to State-Chartered Credit Unions (the "Act"), which authorized the Division of Banks (the "Division") to propose regulations that would grant state-chartered credit unions certain expanded powers enjoyed by federally-chartered credit unions. The Act was signed into law on August 6, 1998 and became effective on November 4, 1998. This Act amended Massachusetts General Laws chapter 171, The Massachusetts Credit Union Act, by inserting a new section 6A, which permits state-chartered credit unions to exercise certain powers granted to federal credit unions under the Federal Credit Union Act<sup>2</sup>. In addition, this provision specifically charged the Commissioner of Banks with the task of promulgating regulations authorizing state-chartered credit unions to exercise such federal credit union powers not otherwise permitted by Massachusetts law.

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<sup>1</sup> The concerns of the banking trade association will each be addressed in the Division's comments below in the section-by-section summary.

<sup>2</sup> 12 U.S.C. §§1751 *et seq.*

The Act required the Division to promulgate authorizing regulations subject to legislative review. Said proposed regulations were submitted to the Clerk of the House of Representatives on April 29, 1999 and printed as House 4295. The Division issued its first set of so-called parity regulations at 209 CMR 50.00 *et seq.* on August 20, 1999, which became effective on that date.

The Act's purpose was to ensure that state-chartered credit unions remain competitive with their federally-chartered credit union counterparts in terms of permissible powers and activities. The 1999 Parity with Federal Credit Union regulations were not intended to be a definitive or static listing of federally-chartered credit union powers. The Legislature, the Division and the credit union industry all view the federally-chartered credit union parity process as an evolving one. Consequently, it was intended that additional federally-chartered credit union powers would be adopted on a periodic basis to reflect changed in federal credit union laws, official interpretations, and operating conditions.

The Division has undertaken a lengthy internal review of their implementation, and now proposes new amendments. These amendments reflect new authorities requested of the Division prior to and during the comment period, as well as several clarifications resulting from the implementation of the existing regulations.

The Division notes that the National Credit Union Administration's ("NCUA") regulations upon which the Division based its own parity regulations differ in that while the NCUA's authorities are pre-approved, the authorities within the parity regulations are specific, and with very few exceptions require approval by or notice to the Division. The NCUA is the federal agency which regulates federally-chartered credit unions. It is the Division's goal in drafting these amendments to enable all eligible credit unions to take full advantage of them through the application and notice processes.

The proposed 2002 amendments to 209 CMR 50.00 *et seq.* would authorize nine new authorities, clarify four existing authorities, and make several technical corrections.

The proposed new authorities are as follows:

- Specified incidental powers at 209 CMR 50.07;
- 97% loan-to-value residential loans at 209 CMR 50.06(3)(k)2.;
- Pilot investment program at 209 CMR 50.11;
- Expedited approval for five-year 100% loan-to-value financing for automobiles at 209 CMR 50.06(3)(f);
- Notice authority for the purchase and sale of consumer and mortgage loans for well-capitalized credit unions 209 CMR 50.09(3)(c);
- For credit unions that have already received approval to establish Credit Union Service Organizations ("CUSO"), new notice authority for certain CUSO activities at 209 CMR 50.10;

- Authority for CUSOs to invest in non-CUSO service providers at 209 CMR 50.06(3)(c)2.j and 209 CMR 50.10(3)g.;
- Authority for CUSOs to engage in activities related to routine, daily operations at 209 CMR 50.06(3)2.k. and 209 CMR 50.10(3)h.; and
- Authority for CUSOs to invest in or lend to federally-chartered CUSOs at 209 CMR 50.06(3)(c)1.

The clarifications of existing authorities are as follows:

- Clarification of definitions relative to residential mortgages and automobile loans at 209 CMR 50.04;
- Language setting the same restrictions on officials and senior management employees relative to salary, commission, investment income or other income or compensation involving CUSOs that are applicable to federally-chartered credit unions at 209 CMR 50.06(3)(c)5;
- Several clarifications of real estate mortgage lending at 209 CMR 50.06(3)(j) and 209 CMR 50.06(3)(k); and
- Group purchasing authority at 209 CMR 50.06(3)(n) has been repealed, but substantively incorporated into incidental powers at 209 CMR 50.07.

Each of these new authorities is permissible under the Federal Credit Union Act and interpretations thereof issued by the NCUA. The Act Relative to State-Chartered Credit Unions requires the Division to promulgate authorizing regulations subject to legislative review.<sup>3</sup>

In drafting these regulations, the Division researched and considered amendments to the federal regulations since 1999 and other issues raised in applications submitted by credit unions to the Division since the implementation of 209 CMR 50.00 *et seq.* in August 1999. Requests relative to additional federal credit union powers and amendments to the federal regulations were also submitted by the credit union trade organization.

In its Notice of Public Hearing, the Division requested specific comment on two questions. The first question was whether the proposed incidental powers authority should meet, subject to the written approval of the Commissioner, the following three standards: any activity which is convenient or useful in carrying out the mission or business of credit unions consistent with the Federal Credit Union Act; is the functional equivalent or logical outgrowth of activities that are part of the mission or business of credit unions; and involves risks similar in nature to those already assumed as part of the business of credit unions. The second question was whether the NCUA's proposed rulemaking on expanded Investment and Deposit Activities<sup>4</sup> pursuant to 12

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<sup>3</sup> See e.g. 209 CMR 50.00 *et seq.* (Regulations entitled: *Parity with Federal Credit Unions*).

<sup>4</sup> See 66 FR 54168 (National Credit Union Administration Advance Notice of Proposed Rulemaking 12 CFR Part 703).

CFR Part 703 contained any revisions or clarifications for consideration in the amendments to 209 CMR 50.00 *et seq.*

An internal Division working group critically reviewed and measured each proposed power or activity against the standards established by the Division for the initial parity regulations in 1999.<sup>5</sup> A detailed list of the federal credit union powers considered and excluded from the amendments is found at Appendix D. A detailed list of the federal credit union powers and activities included in the amendments is found at Appendix E. A chart comparing the old and new provisions of 209 CMR 50.00 *et seq.* is found at Appendix C.

There were three additional provisions considered and excluded by the Division: member business loans, the standard for consideration of additional incidental powers that was included in the Division's Notice of Public Hearing, and secondary capital. The Division declines to authorize member business loans at this time as it did in the initial parity regulations. Credit unions' current ability to lend to an "organization member" pursuant to G.L. c. 171 mitigates, in part, the impact of this decision. The Division declines also to adopt the proposed standard for consideration of additional incidental powers at this time. The standard is, however, indirectly adopted since those are the tests that NCUA will use in granting further incidental powers. After review, the Division would then determine whether any such new power would be authorized for state-chartered credit unions. The Division declines to authorize secondary capital prior to NCUA action due to statutory limitations not permitted under the Federal Credit Union Act. The Division, however, recognizes that credit unions are mutual organizations, with limited ability to raise capital, but subject to federal Prompt Corrective Action regulations and the possible need for a credit union to obtain access to capital other than through earnings. Therefore, it would be the position of the Division, if necessary, that some new or hybrid form of capital should be recognized for regulatory purposes. Any of the matters which the Division declined to adopt at this time, including member business loans, may be revisited during future amendment processes.

## SECTION-BY-SECTION SUMMARY AND DISCUSSION

A section-by-section summary of the proposed amendments to 209 CMR 50.00 *et seq.* and a discussion of the proposed amendments follows.

### 50.04 Definitions

#### *Summary*

The definitions to the terms "adequately capitalized" and "well capitalized" include a technical amendment. The definition of "automobile" is amended to include a motorcycle and a truck up to \$50,000 and a truck exceeding \$50,000 that is primarily for personal, family, or household purposes. The definition of "manufactured home" is amended to include a mobile home and any other home as defined by 42 U.S.C. 5402(6). The definition of the term "residential mortgage loan" is added and includes an owner-occupied unit of a condominium.

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<sup>5</sup> See House Doc. No. 4295 (1999) at 2-3.

### *Discussion*

These definitions are included in the proposed amendments to 209 CMR 50.00 *et seq.* to reflect the broader coverage of federal regulations to the specific terminology used in the existing regulations. There are no supervisory or regulatory reasons to preclude the broader coverage of these definitions.

The credit union trade associated requested that the Division consider the addition of open and closed-end home equity loans on condominiums. In its consideration of this request, the Division included a definition of “residential mortgage loan” that clarified the applicability of the residential mortgage loan powers at 209 CMR 50.06(3)(j) and 209 CMR 50.06(3)(k) to condominiums.

## **50.06 Application Process to Conduct Certain Activities**

### **50.06(1) General.**

#### *Summary*

This technical amendment updates references to 209 CMR 50.07, 209 CMR 50.08, and 209 CMR 50.09.

#### *Discussion*

The addition of new sections to 209 CMR 50.00 *et seq.* required several changes in enumeration.

### **50.06(3)(c) Investments in Credit Union Service Organizations.**

#### *Summary*

This amendment replaces the language governing Credit Union Service Organizations (“CUSO”) in order to make the following changes:

- 209 CMR 50.06(3)(c)1: Investments in Credit Union Service Organizations  
This amendment provides that a credit union may now invest in or lend to a federally-chartered CUSO provided that the CUSO limits itself to those activities that can be conducted by a state-chartered CUSO.
- 209 CMR 50.06(3)(c)2: Permissible Activities  
This language specifies those CUSO activities permitted at 209 CMR 50.06(3)(c)2. within each of the following categories: checking and currency services; clerical, professional and management services; consumer mortgage loan origination; electronic transaction services; financial counseling services; leasing; loan support services; record retention, security and disaster recovery services; student loan origination; and CUSO investments in non-CUSO service

providers. There is also language authorizing the Commissioner to approve activities related to the routine, daily operations of a credit union.

- 209 CMR 50.06(3)(c)3: Prohibited Activities

There are two technical corrections relative to prohibited activities at 209 CMR 50.06(3)(c)3. The first is a technical amendment to the prohibition of securities brokerage services at 209 CMR 50.06(3)(c)3.c. The Division notes that no change has been made to the ability of credit unions to provide securities brokerage services through third party arrangements with independent vendors pursuant to 209 CMR 50.06(3)(c)3.c. The second is a technical amendment to the prohibition of real estate brokerage services at 209 CMR 50.06(3)(c)3.f. that updates the reference to the NCUA's regulation but does not change the Division's prohibition of this activity.

- 209 CMR 50.06(3)(c)4: Corporate Requirements

This amendment to the corporate requirements at 209 CMR 50.06(3)(c)4. clarifies that a credit union may now invest in or lend to a federally-chartered CUSO provided that the CUSO limits itself to those activities that can be conducted by a state-chartered CUSO as provided in 209 CMR 50.06(3)(c)2.

- 209 CMR 50.06(3)(c)5: Officials and Senior Management Employees

This amendment adds language at 209 CMR 50.06(3)(c)5. to set the same restrictions on officials, senior management employees and their immediate family members that are applicable to federally-chartered credit unions relative to salary, commission, investment income or other income or compensation from the CUSO either directly or indirectly, or from any person being serviced through the CUSO as set forth under 12 CFR §712.8.

### *Discussion*

One of the most significant changes in this section is that it now lists the specific authorities within each category, instead of linking the category to the NCUA's regulation. This amendment was included to help clarify permissible authorities. Credit unions now also will have additional authority to invest in or lend to a federally-chartered CUSO. A new provision setting the same restrictions on officials, senior management employees and their immediate family members that set forth in 12 CFR § 712.8 was included as an additional safeguard. New authorities available to credit unions include authority for CUSOs to invest in non-CUSO service providers at 209 CMR 50.06(3)(c)2.j and authority for CUSOs to engage in activities related to routine, daily operations at 209 CMR 50.06(3)2.k. A related new authority permitting credit unions that have already received approval to establish a CUSO pursuant to 209 CMR 50.06(3)(c) to engage in specific activities listed pursuant to 209 CMR 50.10(3) by providing notice to the Division is discussed below.

In its review of activities and services specified for inclusion in each category, the Division reviewed all of the categories included in the federal regulation at 12 CFR Part 712. A detailed list of said powers is found at Appendix E.

The banking trade association, in its written comments, raised a concern regarding potential abuse by credit unions of the “open-ended authority” within the CUSO regulations. The Division had considered the open-ended nature of the current regulation’s structure of linking the specific authorities to the NCUA regulations. The Division noted the possibility of any potential confusion given the format and structure of the federal regulations, which are pre-approved and do not provide a list of specific authorities within each category. The Division was also concerned with any potential confusion raised by future changes at the federal level. Accordingly, the Division’s initial and ultimate drafts listed the specific activities in each category, to clarify the specific activities and services authorized under the CUSO regulations in order to minimize any potential confusion. In addition, as discussed in greater detail at 209 CMR 50.10, below, certain CUSO authorities are not subject to the notice requirements contained in that section, and would require the Division’s approval to proceed. In addition, any activity undertaken by a credit union pursuant to 209 CMR 50.00 *et seq.* shall remain subject to periodic review by the Commissioner, as well as the Division’s examination process.

**50.06(3)(e) 12-Year Consumer Loans.**

***Summary***

This amendment is a technical correction deleting the first sentence of 209 CMR 50.06(3)(e)4., which provides that credit unions making personal loans pursuant to 209 CMR 50.06(3)(e) shall be subject to the aggregate outstanding loan balance limitations of G.L. c. 171, §59.

***Discussion***

Said section 59 does not include aggregate outstanding loan balance limitations. Therefore, that reference is deleted.

**50.06(3)(f) 100% Automobile Financing.**

***Summary***

This provision includes three amendments to 209 CMR 50.06(3)(f). The first amendment is language authorizing expedited review for applications for direct 100% loan-to-value financing for automobiles for the amount of the loan but not extending the term beyond the statutory limitation of 5 years.

The second amendment is to clarify that credit unions are eligible to apply for indirect lending authority for automobiles pursuant to 209 CMR 50.06(3)(f) and 209 CMR 50.06(3)(1). This amendment was included upon consideration of the request of the credit union trade association.

The third amendment is a technical correction deleting the first sentence of 209 CMR 50.06(3)(f)4., which provides that credit unions making automobile loans under 209 CMR 50.06(3)(f) shall be subject to the aggregate outstanding loan balance limitations of G.L. c. 171, §59.

### *Discussion*

The Division included the new authority to provide expedited review of direct five-year, 100% loan-to-value financing for automobiles to adequately-capitalized credit unions after consideration of the credit union trade association's request at the public hearing. Requests for automobile financing pursuant to 209 CMR 50.06(3)(f) are the most frequent application made to the Division under the parity regulations.

With regard to indirect lending, the Division issued an opinion letter for clarification relative to the indirect lending authority of credit unions after the parity regulations were originally issued.<sup>6</sup> This provision was added to provide this clarification directly in the regulations.

With regard to the technical correction to 209 CMR 50.06(3)(f)4., as noted above in the amendment to 209 CMR 50.06(3)(e)4., said section 59 does not include aggregate outstanding loan balance limitations. Therefore, that reference is deleted.

#### **50.06(3)(i) 20-Year Loans.**

### *Summary*

This is a technical correction to 209 CMR 50.06(3)(i)5, amending the last reference to be 209 CMR 50.06(3)(i)(5).

### *Discussion*

This reference appears as 209 CMR 50.06(3)(i)4 in the current regulations.

#### **50.06(3)(j) Residential Mortgage Loans.**

### *Summary*

This amendment clarifies 209 CMR 50.06(3)(j)1. so that the authority contained therein includes the setting of the maximum dollar amount of a loan and aggregate amount that may be loaned to one member on real estate loans. Additionally, this section is amended to clarify authority for home equity loans, both closed-end and open-end, by adding 209 CMR 50.06(3)(j)2. and 209 CMR 50.06(3)(j)3., respectively.

### *Discussion*

In its review of all loan applications under parity, the Division needs to consider the requested maximum dollar amount, as well as the requested term. In the case of residential mortgage loans, the Division also takes the requested aggregate amount that may be loaned to one member on real estate loans into consideration as part of its review.

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<sup>6</sup> Division of Banks Op. No. 99-060 (May 27, 1999).



While the maximum term for first lien residential mortgages pursuant to 209 CMR 50.06(3)(j)1. remains at 40 years, the Division notes that closed-end home equity loans pursuant to 209 CMR 50.06(3)(j)2. are for a maximum term of 20 years.

**50.06(3)(k) 95% and 97% Loan-to-Value Residential Mortgage Loans**

***Summary***

This provision adds a new class of residential mortgage loans at 97% loan-to-value. The amendment also ties such loans to real estate loans for low to moderate income members, first-time homebuyers or written in accordance with government programs to finance and expand the supply of affordable housing, and ties it into aggregate loans governed by the Division of Banks Regulatory Bulletin Manual 4.2-103<sup>7</sup> on portfolio loans. The 95% loan-to-value authority has also been retained with a slight change due to new definitions. The Division notes that home equity loans are included in the class of 95% loan-to-value residential mortgage loans through the provisions of 209 CMR 50.06(3)(j)2. and 209 CMR 50.06(3)(j)3.

***Discussion***

This provision was added upon the Division's consideration of a request by the credit union trade association for 97% loan-to-value residential mortgage loans, particularly those of first-time homebuyers, and requested that the credit unions be allowed to retain such loans in their portfolios. The Division proposes this new authority provided that it is tied to real estate loans for low to moderate income members, first-time homebuyers or written in accordance with government programs to finance and expand the supply of affordable housing. The Division also requires that such loans be tied into aggregate loans governed by the Division of Banks Regulatory Bulletin Manual 4.2-103 on portfolio loans.

In its written comments, the banking trade association raised concerns relative to the expertise necessary to review 95% and 97% loan-to-value home equity loans, particularly in light of economic uncertainty. The Division notes that the provision of increased loan-to-value residential mortgage loans places an increased responsibility requiring considerable expertise for any lending institution. However, the Division is confident that the eligibility requirements contained in 209 CMR 50.05, which include financial and managerial requirements, policy and procedure requirements, and provision that any activity undertaken by a credit union pursuant to 209 CMR 50.00 *et seq.* shall remain subject to periodic review by the Commissioner, as well as the Division's examination process would provide adequate safeguards.

**50.06(3)(n) Group Purchasing Activities.**

***Summary***

The language authorizing group purchasing activities at 209 CMR 50.06(3)(n) is repealed in its entirety.

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<sup>7</sup> Division of Banks Regulatory Bulletin Manual 4.2-103 (1998 ed.) (Regulatory Bulletin entitled *Residential Mortgage Loan Underwriting*).

### *Discussion*

The credit union trade association, in its request for incidental powers, noted that the federal authority for group purchasing activities has been repealed and replaced by 12 CFR Part 721, relative to incidental powers, which became effective on September 5, 2001. The substantive provisions of the group purchasing activities formerly at 209 CMR 50.06(3)(n) have been revised and incorporated into the new incidental powers provisions at 209 CMR 50.07. Insurance, mutual funds, and annuities are now permitted as finder activities through outside vendors within incidental powers at 209 CMR 50.07(5)(f)(2)<sup>8</sup>. Financial planning services are now permitted within incidental powers at 209 CMR 50.07(5)(e) as financial counseling services.

### **50.07 Incidental Powers**

#### *Summary*

This language relative to incidental powers authorizes a credit union to engage in specified activities and services in the following categories: certification services, correspondent services, electronic financial services, excess capacity, financial counseling, finder activities, loan-related products, marketing activities, monetary instrument services, and stored value products. A detailed list of approved activities and services is found at Appendix E. A credit union is permitted to engage in other activities if the NCUA approved such activity pursuant to regulation, guidelines or written opinions of the NCUA's General Counsel provided that the Commissioner affirmatively determines by regulation or in writing that the activity is reasonably related to an individual power set out in 209 CMR 50.07.

The process for approval varies by activity as specified in each category. Certain activities are permitted either by receiving approval from the Commissioner or by providing notice to the Commissioner. Other activities require neither such approval nor such notice.

#### *Discussion*

The Division includes this amendment upon consideration of the request of the credit union trade association, and in conjunction with changes to the federal regulation. As noted above in the discussion relative to group purchasing activities at 209 CMR 50.06(3)(n), its substantive provisions have been revised and incorporated into the new incidental powers provisions at 209 CMR 50.07. A detailed list of activities and services considered and excluded by the Division is found at Appendix D.

One substantive amendment to the Division's proposed incidental powers regulations was made upon consideration of the credit union trade association's request at the hearing for inclusion of monetary instrument services for members and under circumstances for non-members under certain circumstances. The Division also added a provision to the monetary instrument services language that prohibits a credit union from engaging in foreign exchange activities for speculative purposes for its own account. The monetary instrument services available to non-members relate to the transmittal of money.<sup>9</sup> This provision recognizes the need to people who have traditionally been underserved and are not yet part of the banking system to

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<sup>8</sup> See 66 Fed. Reg. 40852-40853; see also National Credit Union Administration Opinion Letter 01-0869.

<sup>9</sup> See National Credit Union Administration Opinion Letter 02-0250.

have such a service available for sending money to families and relatives in foreign countries. The Division recognizes the ongoing concerns regarding illegal activities in the transmission of money to foreign countries. Permitting credit unions to provide this service to non-members will allow such people to obtain this service through a professional entity, which is a chartered and regulated financial institution.

The banking trade association, in its written comments, raised a concern whether open-ended interpretation of such phrases as financial counseling and finder activities could lead to unsafe and unsound practices. The Division considered the potential magnitude of incidental powers regulations at length, and whether such regulations could be structured to avoid open-ended implementation. As in its consideration of CUSO authority, the Division had considered the different format of the regulations adopted by the NCUA, which do not provide a specified list of activities and services within each authorized category. Accordingly, the Division's initial and ultimate drafts listed the specific activities in each category, to clarify the specific activities and services authorized under the incidental powers regulations in order to minimize any potential confusion. In addition, the provision to require the Commissioner's approval in regulations and writing for any activities and services within authorized categories that the NCUA may deem approved in the future provides additional safeguards and a process for change.

#### **50.08 Expedited Review Process to Conduct Certain Activities**

##### *Summary*

This technical amendment updates references reflecting the change of this section from 209 CMR 50.07 to 209 CMR 50.08.

##### *Discussion*

The addition of new sections to 209 CMR 50.00 *et seq.* required several changes in enumeration.

The Division notes that no changes were made to the text of this section, which applies to well-capitalized credit unions only. However, new authority to provide expedited review of direct five-year, 100% loan-to-value financing for automobiles for adequately-capitalized credit unions is provided separately at 209 CMR 50.06(3)(f).

#### **50.09 Notice Process to Conduct Certain Activities**

##### *Summary*

The substantive amendment to this section adds the purchase and sale of loan portfolios for well-capitalized credit unions to the notice provisions at 209 CMR 50.09(3)(c). The technical amendment to this section updates references reflecting the change of this section from 209 CMR 50.08 to 209 CMR 50.09.

### *Discussion*

The new authority relative to the purchase and sale of loan portfolios was added for well-capitalized credit unions upon the Division's consideration of the request of the credit union trade association at the hearing relative to the NCUA's Regulatory Flexibility Program, pursuant to 12 CFR Part 742. The existing regulation at 209 CMR 50.06(3)(1) retains this purchase and sale authority for adequately-capitalized credit unions subject to application and approval. The addition of new sections to 209 CMR 50.00 *et seq.* required several changes in enumeration.

## **50.10 Notice Process to Conduct Certain Activities Relative to Credit Union Service Organizations**

### *Summary*

Credit unions which have already received approval from the Division to establish CUSOs pursuant to 209 CMR 50.06(3)(c) will now be able to engage in specific activities listed pursuant to 209 CMR 50.10(3) by providing notice to the Division. Permissible activities include those specified in the following categories: checking and currency services; clerical, professional and management services, electronic transaction services; loan support services; record retention, security and disaster recovery services; student loan origination; and CUSO investments in non-CUSO service providers. There is also language authorizing the Commissioner to approve activities related to the routine, daily operations of a credit union. This notice authority is available to credit unions that are adequately-capitalized.

### *Discussion*

This amendment provides new notice authority for certain powers available to credit union that have already received approval from the Division to establish CUSOs. The Division notes that not all activities and services permitted through the application process at 20 CMR 50.06(3)(c) are included in this notice authority. The Division further notes that certain activities and services within several categories are not included in the notice provision. A credit union that has already established a CUSO seeking an authority that is not available pursuant to the notice provision would be able to apply to the Division through the application process at 209 CMR 50.06(3)(c) for said authorities.

This amendment specifies those CUSO activities and services permitted at 209 CMR 50.10(3) within each of the following categories: checking and currency services; clerical, professional and management services; electronic transaction services; loan support services; record retention, security and disaster recovery services; student loan origination; and CUSO investments in non-CUSO service providers. There is also language authorizing the Commissioner to approve activities related to the routine, daily operations of a credit union. A detailed list of the activities and services permitted at 209 CMR 50.10(3) is found at Appendix E. A detailed list of the activities and services excluded from 209 CMR 50.10(3) found at Appendix D, which also notes which of the excluded authorities are still eligible for approval through the application process at 209 CMR 50.06(3)(c).

As noted in the discussion regarding the amendments to the CUSO section at 209 CMR 50.06(3)(c), the banking trade association, in its written comments, raised a concern regarding potential abuse by credit unions of the "open-ended authority" within the CUSO regulations. The

Division's initial and ultimate drafts listed the specific activities in each category, to clarify the specific activities and services authorized under the CUSO regulations in order to minimize any potential confusion. In addition, any activity undertaken by a credit union pursuant to 209 CMR 50.00 *et seq.* shall remain subject to periodic review by the Commissioner, as well as the Division's examination process.

#### **50.11 Pilot Investment Program**

##### *Summary*

This provision establishes a pilot investment program. The pilot program must be in accordance with the criteria set forth in 12 CFR § 703.140. This authority is available to well-capitalized credit unions by application to the Division.

##### *Discussion*

The Division includes this request in consideration of the issues raised by the NCUA's proposed rulemaking for 12 CFR Part 703. This pilot program would allow well-capitalized credit unions to apply to the Division for investment authorities permitted by 12 CFR Part 703. The Division is confident that the eligibility requirements contained in 209 CMR 50.05, which include financial and managerial requirements, policy and procedure requirements, and provision that any activity undertaken by a credit union pursuant to 209 CMR 50.00 *et seq.* shall remain subject to periodic review by the Commissioner, as well as the Division's examination process would provide adequate safeguards. Two other provisions included in the rulemaking relative to 12 CFR Part 703 are covered by operation of federal provisions. The provision relative to safekeeping requirements is included by reference in the Division's regulation at 209 CMR 4.00 *et seq.*, and the provision relative to brokers will occur in conjunction with any change by the NCUA.

#### **50.12 Activities Requiring No Application or Notice**

##### *Summary*

This technical amendment updates references reflecting the change of this section from 209 CMR 50.09 to 209 CMR 50.12.

##### *Discussion*

The addition of new sections to 209 CMR 50.00 *et seq.* required several changes in enumeration.

#### **50.13 Unauthorized Activities**

##### *Summary*

This technical amendment updates references reflecting the change of this section from 209 CMR 50.10 to 209 CMR 50.13. It also updates a reference to group purchasing activities authorized by 209 CMR 50.06(3)(n) to incidental powers authorized by 209 CMR 50.07(5)(f).

Honorable Steven T. James  
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May 2, 2002

*Discussion*

The addition of new sections to 209 CMR 50.00 *et seq.* required several changes in enumeration.

The Joint Committee on Banks and Banking and its staff may contact me at (617) 956-1510 or the Division's Legal Unit at (617) 956-1520, if they have any questions regarding these proposed regulations.

Very truly yours,

Thomas J. Curry  
Commissioner of Banks

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