



Office of Thrift Supervision
Department of the Treasury

1700 G Street, N.W., Washington, D.C. 20552 • (202) 906-6000

94/CC-02

TO: REGIONAL DIRECTORS

FROM: Carolyn Lieberman
Acting Chief Counsel 

SUBJECT: New SEC Policy Re: Referral Fee Program "No-action"
Letters

DATE: January 7, 1994

Introduction

The purpose of this memo is to 1) alert you to the Securities and Exchange Commission's (SEC) new policy to no longer issue individual "no-action" letters to federal associations regarding securities brokerage referral fee programs in service corporation networking arrangements, and 2) in light of the SEC's policy change, provide interim guidance as to how federal associations may otherwise effect compliance with current OTS requirements to obtain a SEC no-action letter in order to conduct referral fee programs.

Discussion

Current OTS requirements

The OTS service corporation regulations provide, in pertinent part, that a federal association may acquire or establish a service corporation to engage in certain preapproved securities brokerage activities, provided certain conditions are met.

One of these conditions prohibits payment to any employee of the association of a referral fee, bonus or incentive compensation, in cash or in kind, for referring any thrift customer to the service corporation except as may be consistent with a "no-action" letter received by the association from the SEC, stating that the SEC will not recommend enforcement action if association employees receive the planned referral fee but do not register as a broker dealer under the securities laws. See 12 C.F.R. § 545.74(c)(4)(ii)(B). As a matter of policy, a similar requirement has been imposed on non-preapproved service corporation brokerage activities. See Service Corporation Guidelines, Section 710.10, OTS Applications Processing Handbook.

SEC policy change

To date, federal associations have complied with the above described requirement by individually requesting "no-action" letters from the SEC.

The SEC, however, generally will no longer issue no-action letters in this area. In this regard, the SEC's Division of Market Regulation recently issued a comprehensive no-action letter, In Re Chubb Securities Corporation, dated November 24, 1993 ("Chubb letter")(attached) which sets forth the SEC's policy regarding networking arrangements between broker-dealers and depository institutions. In connection with issuing the Chubb letter, the SEC staff advised OTS that 1) it will no longer respond to individual requests for no-action relief regarding such arrangements, unless a request presents novel or unusual issues, and 2) broker-dealers and depository institutions, including federal associations and their service corporations, may rely on the Chubb letter if they structure their networking arrangements in accordance with the terms and conditions set forth in the letter.

Interim guidance

In light of the new SEC policy, OTS will be considering appropriate regulatory and policy changes in this area in the near future. In the interim, OTS will not enforce the no-action letter requirement, provided the following two conditions are met:

1. The applicant provides an initial opinion of counsel or an opinion from the senior securities principal responsible for overseeing the subject brokerage program, with subsequent certification from the applicant's board of directors, that any referral fee arrangement is in compliance with the Chubb letter, and any related SEC regulations and policies. The opinion on this issue may be included in the initial opinion required by OTS from federal associations that propose to establish service corporation brokerage programs (re: that the program has been established pursuant to procedures designed to ensure conformity with applicable securities laws and regulations).¹

2. The Regional Director has no other supervisory objections to the proposed referral fee arrangement.

If you have any questions regarding the foregoing, please contact Dean Shahinian, Corporate and Securities Division at (202) 906-7289.

¹ See 12 C.F.R. § 545.74(c)(4)(i)(D); OTS Applications Processing Handbook at Section 710.10.



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20540

DIVISION OF
MARKET REGULATION

November 24, 1993

Carolyn Lieberman, Esq.
Acting Chief Counsel
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552

Dear Ms. Lieberman:

Enclosed is a no-action letter issued by this office on November 24, 1993, to Chubb Securities Corporation ("CSC"), a registered broker-dealer. In that letter, CSC proposed to enter into networking arrangements with various depository institutions, including federal savings associations and their service corporations, to provide brokerage services on the premises of such institutions, without such institutions or their unregistered employees registering as broker-dealers.

The enclosed letter to CSC sets forth our policy with regard to networking arrangements between broker-dealers and depository institutions. In the future, we will no longer respond to requests for no-action relief regarding such arrangements, unless a request presents novel or unusual issues. Broker-dealers and depository institutions, including federal savings associations and their service corporations, may rely on the letter to CSC if they structure their networking arrangements in accordance with the terms and conditions set forth in that letter.

Sincerely,

Catherine McGuire
Chief Counsel

Enclosure



DIVISION OF
MARKET REGULATION

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

November 24, 1993

Ian E. Celecia, Esq.
Chubb Securities Corporation
One Granite Place
P.O. Box 2005
Concord, New Hampshire 03302

Re: Chubb Securities Corporation

Dear Mr. Celecia:

In your letter of September 1, 1993, on behalf of Chubb Securities Corporation ("CSC"), as supplemented by telephone conversations with the staff, you request assurance that the staff would not recommend enforcement action to the Commission under Section 15(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act") if CSC enters into networking arrangements with certain federal and state chartered banks, savings and loan associations, savings banks, and credit unions (collectively, "Financial Institutions") and, where required by law, their service corporation subsidiaries, to provide securities brokerage services on the premises of such Financial Institutions, as described in your letter, without the Financial Institutions, the required service corporations, or their unregistered employees registering as broker-dealers under Section 15(b) of the Exchange Act.

We understand the facts to be as follows:

CSC, a wholly-owned subsidiary of Chubb Life Insurance Company of America, is a registered broker-dealer and member of the National Association of Securities Dealers, Inc. ("NASD"). CSC proposes to enter into networking arrangements with Financial Institutions to provide securities brokerage services to customers of such Financial Institutions and the general public, on the premises of the Financial Institutions. Where required by the laws or regulations governing a Financial Institution, the Financial Institution will enter into the networking arrangement with CSC through a service corporation subsidiary of the Financial Institution.

CSC will provide brokerage services on the premises of each Financial Institution in an area that is physically separate from the Financial Institution's regular business activities, in such a way as to clearly segregate and distinguish CSC from the Financial Institution. The area in which CSC provides brokerage services will clearly display CSC's name and an indication that

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CSC is a member of the NASD, and will be registered with the NASD as a branch office of CSC. Under the networking arrangements, CSC will provide brokerage services only on the premises of the Financial Institutions themselves, and not in areas where a service corporation has a location independent of the Financial Institution.

The networking arrangement between CSC and each Financial Institution (including its required service corporation) will be governed by a Customer Access Agreement, which will set forth the responsibilities of the parties, the conditions of the arrangement, and the compensation to be received by the Financial Institution (including its required service corporation). As a registered broker-dealer, CSC will comply with all statutory and regulatory requirements applicable to broker-dealers, including applicable rules of self-regulatory organizations ("SROs"). CSC will exclusively control, supervise, and be responsible for all securities business conducted in its locations at the Financial Institutions. Under the networking arrangements, transactions in securities may be effected only by registered representatives of CSC, some of whom also may be employees of the Financial Institution, including its required service corporation ("Dual Employees"). CSC will control, properly supervise, and be responsible for all its registered representatives, including any Dual Employees acting in their capacity as CSC registered representatives.

Any materials used by CSC or the Financial Institutions (including required service corporations) to advertise or promote the availability of brokerage services under the networking arrangements will be approved by CSC for compliance with the federal securities laws prior to distribution. All such materials will be deemed to be CSC's materials, and will indicate clearly that the brokerage services are being provided by CSC and not the Financial Institution or its required service corporation; that neither the Financial Institution nor its required service corporation is a registered broker or dealer; that the customer will be dealing solely with CSC with respect to the brokerage services; and that CSC is not affiliated with the Financial Institution or its required service corporation. References to a Financial Institution in advertising or promotional materials will be for the purpose of identifying the location where brokerage services are available only, and will not appear prominently in such materials.

All confirmations, account statements, and other customer communications regarding securities transactions under the networking arrangements will be sent directly to the customer by CSC or by the issuer, transfer agent, or principal underwriter of the security. All documentation sent by CSC directly to a

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customer, including confirmations and account statements, will indicate clearly that the brokerage services are provided by CSC and not by the Financial Institution or its required service corporation. If any documentation regarding securities transactions is sent directly to a customer of CSC by an issuer, transfer agent, or principal underwriter, CSC will be responsible for ensuring that such materials comply with the federal securities laws; and the name of the Financial Institution or its required service corporation will not appear on such materials.

Each Financial Institution (including required service corporations) will allow supervisory personnel of CSC and representatives of the Commission, the NASD and other SROs of which CSC is a member, as well as other applicable federal and state governmental authorities, to inspect the Financial Institution's premises where CSC conducts brokerage activities and any books and records maintained by CSC with respect to brokerage activities. Each Financial Institution (including required service corporations) will be deemed to be an associated person of CSC within the meaning of Section 3(a)(18) of the Exchange Act.

Employees of the Financial Institutions (including required service corporations) who are not registered representatives of CSC will not engage in any securities or investment-related activities on behalf of CSC. Unregistered employees will be prohibited from recommending any security or giving any other form of investment advice, describing investment vehicles such as mutual funds, discussing the merits of any security or type of security with a customer, or handling any question that might require familiarity with the securities industry or the exercise of judgment regarding securities and investment alternatives. Unregistered employees will refer all securities-related questions to registered representatives of CSC. All telephone inquiries related to CSC will be answered solely by registered representatives of CSC. Unregistered employees will be prohibited from accepting or transmitting orders, handling customer funds or securities (except that unregistered employees may effect electronic funds transfers to CSC from an account at the Financial Institution or required service corporation at a customer's request) or having any involvement in securities transactions other than providing clerical and ministerial assistance.

Unregistered employees of the Financial Institutions (including required service corporations) will not receive any compensation based on transactions in securities or the provision of securities advice. Unregistered employees may, however, be paid a nominal fee for referring Financial Institution customers to CSC. The amount of any such fees, which will be unrelated to

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the volume of securities traded by the customer, will be determined and paid by the Financial Institution (or required service corporation). Unregistered employees will be paid no more than one fee per customer referred. Other than this one-time, nominal fee, unregistered employees will not receive any other compensation, such as trips, free meals, or monetary awards, as the result of a referral or the number of referrals made. Supervisory employees will not receive any fees for referrals made by their subordinates.

CSC will provide conduct manuals to unregistered employees of the Financial Institutions (and required service corporations) that specify the limits on their permissible activities, as set forth above. Each Financial Institution (including required service corporations) will monitor the activities of its unregistered employees, and ensure their compliance with the limits on their permissible activities as set forth in the conduct manual. Furthermore, CSC will conduct periodic reviews to assure that the Financial Institutions (including required service corporations) and their unregistered employees comply with the limits on their activities set forth in the conduct manual. CSC also will provide each of its registered representatives with a copy of CSC's compliance manual. Registered representatives will adhere to the policies and procedures contained in CSC's compliance manual. CSC will monitor its registered representatives' compliance in this regard.

All brokerage services provided at the Financial Institutions (including required service corporations) will be provided by registered representatives of CSC, either Dual Employees or otherwise, all of whom will be registered and qualified as necessary with the Commission, the NASD, and any appropriate state regulatory authorities, and all of whom will be associated persons of CSC within the meaning of Section 3(a)(18) of the Exchange Act. Each Financial Institution (including required service corporations) will agree that any Dual Employee whom the Commission, the NASD, or CSC bars or suspends from association with CSC or any other broker-dealer will be terminated or suspended, accordingly, from all securities activities by the Financial Institution (and its required service corporation). The securities activities of each Dual Employee will be supervised by the supervisory personnel of CSC, who are registered securities principals. The amount of any transaction-related compensation paid to CSC's registered representatives, including Dual Employees, under the networking arrangement, will be determined solely by CSC. For convenience with respect to tax and social security withholding, health, retirement, and other benefits, transaction-related compensation may be paid to Dual Employees by the employer Financial Institution (including

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required service corporations), provided that it is clear that such payments are made on behalf of CSC from funds allocated by CSC for payment of Dual Employees.

Registered representatives are required to inform all securities customers, and obtain a written acknowledgment from such customers, that the brokerage services are being provided by CSC and not by the Financial Institution (or its required service corporation), and that the offered securities are not guaranteed by the Financial Institution (or its required service corporation) or insured by the Federal Deposit Insurance Corporation ("FDIC") or any other federal or state deposit guarantee fund relating to financial institutions.

CSC will not solicit customers of a Financial Institution in connection with the purchase or sale of the securities of that institution or any of its affiliates (including required service corporations). CSC may execute unsolicited transactions in the equity securities of the Financial Institution or its affiliates (including required service corporations) on behalf of a Financial Institution customer, provided that the customer signs an affidavit affirming that the transaction was effected on an unsolicited basis and that the customer has been informed that the securities are not insured by the Financial Institution or any of its affiliates (including required service corporations), the FDIC, or any other state or federal deposit guarantee fund relating to financial institutions. No debt securities of the Financial Institution or its affiliates (including its required service corporations) will be sold, on an unsolicited basis or otherwise, on any part of the premises of the Financial Institution that is generally accessible to the public.

CSC will pay a fee to the each Financial Institution (including required service corporations) based on all securities transactions that occur at or are attributable to activities conducted on that Financial Institution's premises. CSC will provide a copy of this letter to each Financial Institution (including required service corporations) and will ensure that each Financial Institution (including required service corporations) understands its obligations under the networking arrangement.

Response:

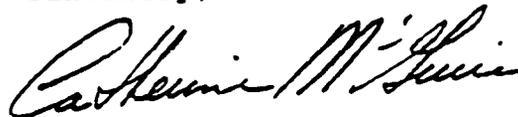
On the basis of your representations and the facts presented, and strict adherence thereto by CSC, the Financial Institutions (including required service corporations) and their unregistered employees, and particularly in view of the fact that CSC is a registered broker-dealer and all personnel engaged in securities activities under the networking arrangements will be

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fully subject to the regulatory requirements of the federal securities laws and the applicable rules of SROs, the staff would not recommend enforcement action to the Commission under Section 15(a)(1) of the Exchange Act if CSC offers brokerage services under the networking arrangements described above without the Financial Institutions (including required service corporations) and their unregistered employees registering as broker-dealers under Section 15(b) of the Exchange Act. This staff position is based in part on CSC's representation that it will control, properly supervise, and be responsible for all registered representatives participating in the networking arrangements. Consequently, any designation of such registered representatives as "independent contractors" will have no effect on CSC's responsibilities under the federal securities laws, including without limitation Sections 15(b) and 20(a) of the Exchange Act.¹

This position concerns enforcement action only and does not represent a legal conclusion regarding the applicability of the statutory or regulatory provisions of the federal securities laws. Moreover, this position is based solely on the representations that you have made; any different facts or conditions may require a different response.

Sincerely,



Catherine McGuire
Chief Counsel

¹See *Hollinger v. Titan Capital Corp.*, 914 F.2d 1564, 1572-78 (9th Cir. 1990), cert. denied, 111 S. Ct. 1621 (1991).