

09-1

March 17, 2009

Re: Internal Revenue Code Section 1031 Deferred Exchanges

Dear Mr. _____:

This responds to your letter of September 26, 2008, and confirms our telephone conversation of March 13, 2009. We regret the delay in responding to your request.

As we discussed, you were unsure whether Financial Code Section 14803 might prevent a California licensed credit union from using the qualified intermediary services provided by your company with regard to Internal Revenue Code Section 1031 deferred exchanges. As described in your letter, use of a deferred exchange may result in a large deposit being credited to a credit union for as long as 100 days until the tax-free exchange is consummated.

Financial Code Section 14803(a) provides that “no credit union shall pay any commission or compensation to any person for securing a new member or for getting an existing member to make an additional deposit.” Read strictly, Section 14803 would appear to prevent any third party, including your company, from encouraging or obtaining deposits from new or existing members that would be placed in a credit union. However, we view Section 14803 as a method of preventing a credit union from paying a third party to increase deposits at the credit union. In other words, credit unions should not be paying for brokered deposits or similar funds. Thus, Section 14803 comes into play only where we find that the primary purpose of an arrangement is to increase credit union deposits.

As you have explained, the primary purpose of effecting a Section 1031 deferred exchange is to allow two parties to exchange real property without having to pay income taxes on the gains that would otherwise be realized by the sales of the properties. The deposit that is placed in a credit union is a temporary deposit that is used to effect the exchange. Thus, the purpose of the transaction is not to increase deposits in a credit union, but to facilitate a tax-free exchange. As a result, the credit union is not paying a fee for the deposits but rather it's a fee for services rendered to credit union members through use of the credit union's deposit taking capabilities. For that reason, we do not find that Section 14803 prevents a credit union and its members from using the qualified intermediary services provided by your company.

I trust this has been responsive to your request. If you have any questions, do not hesitate to contact me at (916) 322-1570.

Very truly yours,

KENNETH SAYRE-PETERSON
Acting General Counsel

KSP103:pjp

September 26, 2010

Mr. Bert McLane
Chief Examiner
California Department of Financial Institutions
300 S. Spring Street
Suite 15513
Los Angeles, Ca. 90012-1204

Re: California Financial Code 14803

Mr. McLane,

We sincerely appreciate taking time out of your busy schedule to speak with us about our _____ program which we are offering through credit unions to their members. As we discussed there has been questions raised as to whether California Financial Code 14803 applies to our fee structure. We are seeking clarification from your department so we can assure our credit union partners (state chartered credit unions) that DFI agrees that our fee structure is a fee for service not a fee for brokering deposits.

In 1990 the Internal Revenue Service affected guidelines related to 1031 deferred exchanges. These guidelines called for the use of Qualified Intermediaries to hold the exchange funds on behalf of the taxpayer until the taxpayer completed their exchange. This one change gave birth to an industry that has since grown into a multi-billion dollar industry. Qualified Intermediary services have since been offered by financial institutions and title companies alike. _____ can leverage our expertise as a nationally recognized Qualified Intermediary to effectively compete on a national platform and offer 1031 Exchange Services to their members at _____, LLC has partnered with _____, LLC to offer _____ exchange services to participating credit union members.

By offering this service credit union members benefit by:

- Access to a free service saving between \$750 to \$1,200 per exchange
- Security knowing that their exchange dollars are safely deposited in segregated accounts at their credit union not aggregated with other exchange dollars at an unknown financial institution
- Professionally managed exchanges as a value added service from their credit union

Credit Unions benefits include:

- Low-cost funds
- Increased deposits -Average \$350,000 per exchange for 100 days
- Members' money comes directly to CU (not held by QI)
- Increased lending capabilities
- Opportunity to offer new loans for replacement properties
- Additional services for their high net worth individuals
- Percentage of _____' revenue donated to _____ in credit union' s name
- Minimal implementation cost or resources
- Live staff training
- Free Educational 1031 and real estate investment seminars for members

Through _____, our referral agreement was reviewed by the law firm of _____. They initially raised the question of whether Financial Code 14803 applies and while they did not conduct an exhaustive review their initial observation is that they did not believe that section 14803 would likely be interpreted as brokering deposits but more appropriately as fees for services. Although they do not believe that our fee structure would be construed as brokerage of deposits, they did note that Section 14803 has not been tested or established either by the courts or DFI. Because of this they suggested that state chartered credit unions (does not apply to federally chartered credit unions) seek formal interpretation of this section from DFI.

As requested, enclosed for your review is our CUAS 1031 Exclusive Referral Agreement. Although the entire agreement should be reviewed since it outlines our overall services, the specific section that is in question is section 1.6 which can be located on page 6 of this agreement. As we discussed you plan on reviewing this agreement and forwarding your comments to your legal department for final review.

We sincerely appreciate the time you spent with us and your willingness to review our agreement. As we indicated we are hoping to get some clarification to this issue prior to the California/Nevada Credit Union League Annual Conference in November. We recognize the pressures on your time during these turbulent economic times and appreciate your willingness to shepherd this through the system. If upon your initial review you have specific questions or need additional clarification, please feel free to reach me at 847/722-6768 anytime.

Again, we sincerely appreciate your time and consideration!

Regards,

1031 REFERRAL AGREEMENT

BETWEEN

_____, LLC
a Nevada limited liability company

AND

BLANK

BINDING ARBITRATION

This is the first page of the 1031 Referral Agreement between _____, LLC and _____ . This Exclusive Referral Agreement is subject to the following:

THIS AGREEMENT IS SUBJECT TO ARBITRATION. THIS AGREEMENT TO ARBITRATE IS BINDING ON ALL PARTIES TO THIS AGREEMENT, THEIR SUCCESSORS, HEIRS, ASSIGNS AND TRANSFEREES.

If other pages, including but not limited to, cover pages, indexes, or tables of contents, are placed in front of this page, those pages shall not be deemed the first page. This page and only this page shall be deemed or considered the first page of this 1031 Referral Agreement for all legal purposes.

**EXAMINATION BY THE BOARD OF
THE NATIONAL CREDIT UNION ASSOCIATION**

The goods and services provided by this 1031 Referral Agreement shall be subject to examination by the Board of the National Credit Union Association to the extent permitted by law.