Division of Securities
Utah Department of Commerce
160 East 300 South
P.O. Box 146760
Salt Lake City, Utah 84114-6760
Telephone: 801 530-6600
Facsimile: 801 530-6980

BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF:	**STIPULATION AND CONSENT ORDER**
MOUNTAIN AMERICA FEDERAL CREDIT UNION d/b/a MOUNTAIN AMERICA CREDIT UNION;	**Docket No.** SD-07-0022
MOUNTAIN AMERICA FINANCIAL SERVICES;and	**Docket No.** SD-07-0023
MOUNTAIN AMERICA INVESTMENT SERVICES	**Docket No.** SD-07-0024
Respondents.	

The Utah Division of Securities ("Division"), by and through its Director of Licensing, George Robison, and Respondents Mountain America Federal Credit Union d/b/a Mountain America Credit Union ("Mountain America"), Mountain America Financial Services ("MAFS"), and Mountain America Investment Services ("MAIS") (referred to hereinafter collectively as "Respondents" or "Mountain America"), hereby stipulate and agree as follows:

1. Respondents were the subject of an examination conducted by the Division into allegations that they violated the Utah Uniform Securities Act ("Act"), Utah Code Ann. §

61-1-1, *et seq.*

2. In lieu of the Division filing an administrative action for sanctions, Respondents and the Division have agreed to settle this matter by way of this Stipulation and Consent Order ("Order"). If entered, the Order will fully resolve all claims the Division has against Respondents pertaining to this matter.

3. Respondents admit the jurisdiction of the Division over them and over the subject matter of this action.

4. Respondents waive any right to a hearing to challenge the Division's evidence and present evidence on Respondents' behalf.

5. Respondents have read the Order, understand its contents and submit to this Order voluntarily. No promises or threats have been made by the Division, nor by any representative of the Division, to induce Respondents to enter into this Order, other than as described in this Order.

6. Respondents are represented by attorneys J. Bruce Reading and Lyndon L. Ricks and are satisfied with the legal representation received.

I. FINDINGS OF FACT

7. Mountain America Credit Union ("Mountain America") is headquartered in West Jordan, Utah and is a dba of Mountain America Federal Credit Union ("MAFCU").

8. Mountain America Financial Services ("MAFS") is a wholly-owned Credit Union Service Organization ("CUSO")[1] of MAFCU.

---

[1]A Credit Union Service Organization ("CUSO") provides operational and financial services primarily to credit unions and their members. CUSOs are permitted to earn a profit and therefore credit unions have, pursuant to National Credit Union Administration Rules and Regulations,

9. Mountain America Investment Services ("MAIS") is a dba of MAFS.

10. Respondents are not licensed in Utah as a broker-dealer or investment adviser.

11. XCU Capital Corporation, Inc. ("XCU") is a California corporation located in Carlsbad, California and has been a licensed broker-dealer in Utah since October 28, 1992. XCU is a wholly-owned subsidiary of XCU Corporation, Inc.

12. On February 10, 2006, XCU applied for an investment adviser license in Utah. The application is currently pending.

13. XCU Corporation, Inc. ("XCU Corporation") is a California corporation that operates as a Credit Union Service Organization ("CUSO") primarily for the purpose of providing services to credit unions and their members through its wholly-owned subsidiaries. XCU and Focus Insurance Services Corporation, Inc. ("Focus") are wholly-owned subsidiaries of XCU Corporation.

14. On January 31, 2002, MAFCU purchased a 6.66% interest in XCU Corporation and MAFS entered into a Financial Institution Master Service Agreement ("Service Agreement") with XCU.

15. On December 31, 2004, MAFS assigned the Service Agreement to Mountain America. The Service Agreement between Mountain America and XCU is currently in effect.

16. The Service Agreement is a "networking" arrangement whereby XCU, through its registered representatives, provides brokerage services to Mountain America members on Mountain America premises. Pursuant to the Service Agreement, Mountain America shared in the commissions generated by these registered representatives.

---

invested in CUSOs for various business purposes.

17. During the period relevant to this action, XCU registered representatives have been designated as "dual employees," which means they are independent contractors[2] and registered representatives of XCU and are also employees of Mountain America.

18. Dual employees must disclose to credit union members that the employee is acting solely on behalf of the broker-dealer when dealing with investment products.

19. XCU registered representatives received transaction-based commissions but these commissions were not paid to the registered representatives directly by XCU. Instead, pursuant to the Service Agreement, XCU paid between 85% and 93% of the transaction-based commissions to Mountain America. Mountain America determined the percentage that ultimately was paid to the registered representatives and retained the remaining commissions.

CUSOs and Networking Arrangements

20. The National Credit Union Administration ("NCUA") is the federal agency that charters and supervises federal credit unions ("FCUs") and insures deposits in FCUs through the National Credit Union Share Insurance Fund ("NCUSIF").

21. NCUA issues regulations ("NCUA Rules and Regulations")[3] to interpret and enforce the Federal Credit Union Act ("FCUA")[4], which governs federally chartered credit unions.

22. CUSOs are permitted to earn profits and credit unions have, pursuant to NCUA Rules and

---

[2]Generally, an employer must withhold income taxes, withhold and pay Social Security and Medicare taxes, and pay unemployment tax on wages paid to employees. An independent contractor has more independence in completing contracted work and is responsible for his taxes.

[3]Codified at 12 C.F.R. § 700 (2006) *et seq.*

[4]Codified at 12 U.S.C. §1751 (1998) *et seq.*

Regulations, invested in CUSOs for various business purposes.

23. Section 712.5(1) of the NCUA Rules and Regulations, lists brokerage services as one of the enumerated pre-approved activities in which CUSOs may engage.

24. Section 712.4 of the NCUA Rules and Regulations sets forth what a CUSO and a FCU must do to maintain separate identities. One of the requirements is that CUSOs and their investing FCUs must be held out to the public as separate enterprises and that the CUSO cannot be treated as a department of the FCU.

25. Networking arrangements allow broker-dealers to offer investment services on credit union premises to credit union members. Broker-dealers and credit unions often use dual employees to provide the investment services.

Division Examination

26. In March 2006, the Division received a call from a Utah resident who indicated she had a financial adviser at Mountain America. The caller was concerned about a clause in the prospectus of an investment she had recently made through her Mountain America financial adviser in the Aquila Group of Funds.

27. An initial review of the Division's records revealed no registration filing for the Aquila Group of Funds.[5]

28. The Division contacted Mountain America to inquire about the Aquila fund and the call was transferred to various people. None of them could answer the Division's questions.

29. The Division thereafter reviewed Mountain America's website, which contained a list of

---

[5]After meeting with Mountain America, the Division learned the fund the customer invested in is the Tax Free Fund for Utah, which is a part of the Aquila Group of Funds and is properly registered with the Division.

financial advisors. The Central Registration Depository ("CRD")[6] showed that the financial advisors listed on the Mountain America website were licensed with XCU.

30. The Division contacted XCU and was again transferred to various people before reaching a manager of XCU's Office of Supervisory Jurisdiction ("OSJ").

31. The manager told the Division that XCU provides clearing services to Mountain America and that licensed agents are employees of Mountain America, not of XCU.

32. The manager also stated that compliance duties and OSJ supervision are performed by Mountain America employees.

33. Mountain America's Senior Vice President and Chief Risk Officer later returned the Division's earlier call to Mountain America. She told the Division that Mountain America is licensed and gave the Division the name and CRD number of XCU.

34. Division auditors conducted onsite exams at XCU's office in Carlsbad, California and of the OSJ branch office located at Mountain America's West Jordan, Utah location.

35. Mountain America's name and logo were prominently displayed on all investment services promotional materials, including business cards that the Division reviewed during its XCU audit.

36. On promotional materials, dual employees used the title, "Investment Representative, Mountain America Credit Union."

37. Dual employees sent out letters stating, "[t]ime for a free annual review! Now is a good time to review your investments! Mountain America Credit Union Investment Services

---

[6]CRD is a computerized database maintained by the National Association of Securities Dealers ("NASD"). CRD contains employment, licensing and disciplinary information on broker-dealers, investment advisers and investment adviser representatives.

would like to thank you again for your business and I look forward to continuing our relationship."[7]

38. Mountain America's "Non-Solicitation and Confidentiality Agreement" for its dual employees, stated that Mountain America "engages in and operates, among other things, a business which offers 'Investment Products.'"

39. In the same agreement, Mountain America defined "Investment Products" as among other things, "securities products of every kind and nature including, but not limited to, mutual funds, stocks, variable annuities, bonds, and related products which are regulated by the Securities and Exchange Commission or applicable state regulatory entities."

40. Mountain America received transaction-based compensation from XCU. Pursuant to the "Master Service Agreement" between Mountain America and XCU, XCU paid Mountain America between 85% and 93% of the annualized gross commissions XCU received from transactions executed by the dual employees.

41. From the commissions received from XCU, Mountain America paid its XCU brokerage services-related expenses and determined the percentage to pay the dual employees.

42. For the years 2004 and 2005, Mountain America has, after paying for its expenses and paying its dual employees, made profits of approximately $60,000.

43. Mountain America's website, www.macu.com, promoted investment advisory services.

44. On the website, under "Products and Services," Mountain America had a link to a web page for investment services. This web page stated, "Mountain America Investment

---

[7]At the bottom of the letter appeared the language: "Securities offered through XCU Capital Corporation. Member NASD/SPIC. Investments not NCUSIF insured, not credit union guaranteed, and may lose value."

Services [sic] mission is to provide financial peace of mind through sound investment advice."

45. The same web page provided a link to "Investment Representatives." This link led to www.xcucapital.com/mountain_america/advisors.htm. This page listed investment representatives registered through XCU Capital but contained a tab, "Financial Advisors". Under this tab was a "Refer-a-Friend" tab that stated, "yes, I'd like to refer a friend to an advisor with Mountain America Investment Services."

46. Mountain America's dual employees have also sent a portfolio analysis to at least one customer. This portfolio analysis was on Mountain America letterhead[8]. Mountain America asserts that no fee was charged for such analysis.

47. Mountain America gave away promotional items that advertised Mountain America Credit Union Investment & Retirement Group but contained no disclosures regarding XCU and its brokerage services.

48. Based upon Respondents' promotional materials and letterhead, investors may have believed dual employees were broker-dealer agents and investment adviser representatives of Mountain America, which was neither a broker-dealer or investment adviser.

II. CONCLUSIONS OF LAW

49. Since January 2002, Respondents received compensation for effecting securities transactions with residents of this state. Respondents also participated in broker-dealer presentations to the public. These activities violated Section 61-1-3(1) of the Act because

[8]This document also contained the language described above in note 7.

Respondents were not licensed as a broker-dealer.

50. Through the use of promotional materials and letterhead, Respondents also held themselves out as investment advisers. Respondents violated Section 61-1-3(3) of the Act because they were not licensed as an investment adviser.

III. ADMISSIONS BY RESPONDENTS

51. For purposes of this Order only, Respondents admit the Division's findings and conclusions of law. Respondents represent that they inadvertently violated the Act as described above based upon their understanding that their conduct complied with a federal no-action letter and other SEC guidance.[9]

IV. REMEDIAL ACTIONS/SANCTIONS

52. Respondents represent that information provided to the Division in connection with this matter is accurate and complete.

53. Respondents will pay a fine of $25,000, payable within ten (10) days of the entry of this Order.

54. Respondents agree to corrective action in the State of Utah, some of which may have already been implemented, as set forth herein. Within 60 days following entry of this Order, Respondents shall amend contracts and procedures as necessary to ensure compliance with this Order.

55. Respondents shall cease receiving any form of transaction-based commissions from XCU or any successor broker-dealer. Mountain America may enter into networking

---

[9]See SEC Letter re: Chubb Securities Corp. (November 24, 1993) and Securities and Exchange Commission Release No. 34-49879.

arrangements wherein a broker-dealer pays the credit union a reasonable up-front fee for services. This fee may be used to cover the credit union's reasonable expenses, for example, rent for the space on the credit union's premises. Payroll for the dual employees may run through the credit union as it would in a temporary employee agency or payroll services company, and a reasonable charge for such service may be included in the up-front fee. A reasonable fee (as negotiated in advance between Mountain America and the broker-dealer) for access to credit union members and member information may also be paid to the credit union. There will, however, be no charge-backs, no bonuses and no transaction-based portion of the fee that is retained by Mountain America, but such can be passed through to the registered representatives who are dual employees. No portion of the fee retained by Mountain America may be related to the volume of securities business that occurs. Payment of the up-front fee may be paid in monthly installments.

56. All advertisements, correspondence, letterhead, web sites, web pages, business cards, seminar materials, presentations and any similar communications with the public offering brokerage services must market the brand of the broker-dealer and not that of Mountain America. Marketing materials shall only reference Mountain America for purposes of identifying where the broker-dealer's services are located, and may describe the existence of a networking arrangement between the credit union and the broker-dealer. Any use of the Mountain America name and logo on marketing materials must not be greater than one-half the size of the broker-dealer's name and logo.

57. The requirements described in paragraph 56 also apply to any communications with the public that offer or discuss investment advisory services. "Mountain America Investment Services" shall no longer do business, and the name may not be used for marketing purposes, unless Mountain America Investment Services licenses as an investment adviser. Any marketing materials shall not reference Mountain America Investment Services, financial planners, financial planning, investment representatives or any other phrases that might suggest Mountain America is in the business of providing investment advice.

58. If a seminar is to be held on Mountain America premises, a written disclaimer will be made to the participants which clearly indicates that services and products offered are made by the broker-dealer and not by Mountain America.

59. Mountain America will ensure that all broker-dealer business operated on its premises is conducted in an area that is physically separate from Mountain America's regular business activities and that proper broker-dealer signage is clearly visible.

60. Mountain America will ensure that all dual employee business cards include the name and logo of the broker-dealer, a toll-free number for the broker-dealer and the broker-dealer's home office address. Any identification of Mountain America shall be not greater than one-half of the size of the broker-dealer name and logo, and shall only refer to the location and the existence of the networking agreement. Alternatively, dual employees may have separate Mountain America business cards that identify the individual's role as a Mountain America employee.

61. Mountain America will ensure that its dual employees are under the control and supervision of the broker-dealer when the dual employees are acting as registered representatives.

62. For 2007 and 2008, Mountain America will, on a quarterly basis, send the Division copies of all Utah customer complaints, written or verbal, and all memoranda relating to all Utah customer complaints involving the offer and sale of investment products. Mountain America will include documents detailing the resolution of such complaints.

63. Including the items above, Mountain America will also comply with the provisions of the SEC Chubb no-action letter and the Utah Uniform Securities Act. By such compliance, Mountain America shall not be required to register as a broker-dealer or investment adviser.

64. Mountain America may approach the Division to modify this agreement if the Division changes its interpretation of compensation agreements allowed between broker-dealers and credit unions such that sharing of commissions is permitted, whether such change results from change in law, regulation, policy, or from judicial determination.

V. FINAL RESOLUTION

65. Respondents acknowledge that this Order, upon approval by the Division Director shall be the final compromise and settlement of this matter. Respondents further acknowledge that if the Division Director does not accept the terms of the Order, it shall be deemed null and void and without any force or effect whatsoever.

66. Respondents acknowledge that the Order does not affect any civil or arbitration causes of action that third-parties may have against Respondents arising in whole or in part from

Respondents' actions, and that the Order does not affect any criminal cause of action that a prosecutor might bring.

67. This Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Order in any way.

Utah Division of Securities

Date: 03/07/07

By: George Robison
Director of Licensing

Date: 3/1/07

By: Mountain America Federal Credit Union
DON L. CLARK JR.

Approved:

Laurie L. Noda
Assistant Attorney General

Approved:

J. Bruce Reading
Lyndon L. Ricks
Counsel for Respondents

ORDER

Based on the foregoing, the Director hereby:

1. Finds that Respondents have admitted the factual conduct and the violations described in this Order.

2. Enters, as his own findings, the Findings of Fact described in Section I, above.

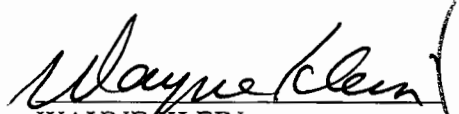
3. Enters, as his own conclusions, the Conclusions of Law described in Section II, above.

4. Orders that:

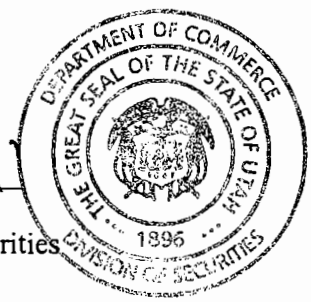
   a. Respondents pay a fine of $25,000 within ten (10) days of entry of this Order.

   b. Respondents comply with the obligations set forth in Section IV of this Order and the requirements of the Utah Uniform Securities Act in all future business in this state.

DATED this 14th day of March, 2007.



WAYNE KLEIN
Director, Utah Division of Securities



Certificate of Mailing

I certify that on the 14TH day of MARCH, 2007, I mailed a true and correct copy of the Stipulation and Consent Order to:

Lyndon L. Ricks
KRUSE LANDA MAYCOCK & RICKS LLC
136 East South Temple 21st Floor
P.O. Box 45561
Salt Lake City, UT 84145-0561

J. Bruce Reading
SCALLEY READING BATES HANSEN & RASMUSSEN, P.C.
15 West South Temple, Suite 600
P.O. Box 11429
Salt Lake City, UT 84147-0429

Pamela Radzinski
Executive Secretary