

**STATE OF VERMONT
DEPARTMENT OF BANKING, INSURANCE, SECURITIES
& HEALTH CARE ADMINISTRATION**

)
)
In re: CUNA Mutual Insurance Society) DOCKET NO. 06-064-I
)

ORDER ADOPTING REPORT OF EXAMINATION

NOW COMES John P. Crowley, Commissioner of the Vermont Department of Banking, Insurance, Securities and Health Care Administration, and hereby issues the following Order adopting the Market Conduct Examination Report in the above referenced docket number, subject to the exceptions and qualifications discussed below.

FINDINGS OF FACT

1. Pursuant to the authority granted by Vermont law, including, but not limited to, that contained in 8 V.S.A. §§ 10-13, 18, 3564-3574 and 4726, the Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration (“the Department”) is charged with administering and enforcing the insurance laws and regulations of the State of Vermont and is authorized to conduct periodic examinations of insurers and licensees to determine whether they are in compliance with said laws and regulations.

2. CUNA Mutual Insurance Society is a mutual life insurance company organized under the laws of the State of Wisconsin. CUNA Mutual Insurance Society issues group master contracts to credit unions, providing the credit unions voting rights, ownership and

control of the mutual. This Order shall refer to CUNA Mutual Insurance Society as “the Company.”

3. On April 11, 2006 a final market conduct examination report was issued by examiners James Montgomery III, Robbie Kriplean and Jennifer Greenway on behalf of the Vermont Department of Banking, Insurance, Securities and Health Care Administration (hereinafter “the Report”).

4. In accordance with the requirements of 8 V.S.A. § 3574(b), the Report was transmitted to the Company and the Company was afforded a reasonable period of time to submit a formal written response to the findings of the Report. The Company submitted a formal response (“the Response”), discussed issues raised in the Report with the Department and provided additional information requested by the Department.

5. Pursuant to 8 V.S.A. § 3574(c), the undersigned Commissioner has fully considered the Report, the Company’s Response, and additional information provided.

CONCLUSIONS OF LAW

6. Unless specified otherwise, the Department adopts the Report as it has been written.

7. In the “**PRODUCTION OF RECORDS**” section of the Report (page 12), the examiners discuss lengthy delays in obtaining certificates, and incomplete production once certificates were made available. The Company does not maintain records of its transactions in Vermont, and relies on the member credit unions to maintain the records.

The Company responds that Regulation 99-1 § 4.A permits related entities to maintain the required records, and that the member credit unions qualify as related

entities under 99-1 § 3.G. The Company proposes a corrective action plan to supervise its member credit unions in document retention.

Upon consideration, the Department adopts this portion of the Report. While records may be maintained by a related entity, the insurer ultimately must be responsible for compliance. Because the delegation of records retention to related entities resulted in violations of this regulation, the Company cannot continue such practices. Additionally, the Company cannot comply with Regulation 99-1 § 6.C (reconstruction of policy, claim, complaint or application by name of the insured) without maintaining certificates, or at least electronic information from the certificates, rather than delegating this task. This issue involves more than the Company's inability to comply with the Department's records requests; without this information, the Company does not know the identity of its individual insureds, and thus its exposure, creating the potential for fraud and abuse as well as insolvency. By maintaining records itself, the Company will be able to verify coverage, also, as addressed in the Report at page 28. The Department adopts the recommendation that the Company develop procedures whereby the Company has records of all transactions involving Vermont insureds, and submit such procedures to the Department for approval within 90 days. The examiners documented over 100 violations of Regulation 99-1, for which an administrative penalty of \$5,000 is warranted.

8. In the section of the report entitled "**CLAIMS PROCEDURES AND PROCESSING**" (page 20), the examiners find that the Company was not paying the statutorily required interest on death claims, nor the required 12% rate for claims paid more than 30 days after receipt of proof of loss, in violation of 8 V.S.A. § 3665(c) and (d).

In response, the Company agrees to audit its credit life insurance claims for a reasonably appropriate period as determined by the Department, and to coordinate with its member credit unions the payment of interest on the amounts due under the audit. The Company offers to complete the audit within 90 days of the final order herein, and to coordinate payment within 60 days thereafter. Finally, the Company agrees to implement procedures to comply with 8 V.S.A. § 3665(c)(2) and (d).

The Department accepts the Company's offer to complete the audit within 90 days of the date of this order, which shall be provided to the Department within 90 days in an Excel spreadsheet. Once the Department approves payments under the audit, the Company shall have 30 days within which to pay the interest owed.

While the Company contests the examiners' findings with regard to "loans 71 and 73," the Company agrees to process these claims for payment within 30 days of its response. The Department finds that the Company's response resolves this issue sufficiently. The Company shall provide the Department with proof of payment within 30 days of the date of this order.

Similarly, the Company has agreed to the examiner's recommendation, at page 28, that the Company receive complete information from all physicians whom they have reason to believe might have pertinent information prior to denying a claim. The Department finds that the Company's response resolves this issue sufficiently.

The examiners criticize (at page 29) the Company's practice of determining the effective date of coverage, for calculation of the pre-existing condition exclusion, by commencing a new exclusionary period based on the date of each advance on open ended loans. The Company objects to the examiners conclusions, arguing that the effective date

of a credit policy is when the debtor becomes obligated to the creditor, which the Company argues is upon the payment of the advance. The Company further argues that the Department approved the language in the exclusionary clause to which the examiners object.

Although the Department approved the prior language, the examiners are correct in arguing that the effective date of coverage, which is not the same as the effective date of each obligation, controls the pre-existing condition exclusion. The effective date of coverage must be specified on the certificate of coverage issued, which the Company issues only once (not each time an advance is made). The Company's construction is overly broad, and exclusions are to be construed narrowly. The Company shall refile its certificate of insurance for the Department's approval, to provide for a single effective date of coverage for calculating the pre-existing condition exclusionary period, within 90 days of the final order herein.

Upon consideration, the Department adopts this section of the Report and the examiners' recommendation. The Company shall audit its credit life insurance claims from January 1, 2001 to the present, within 90 days of the final order herein, and to coordinate payment within 60 days thereafter. Also, the Company shall implement procedures to comply with 8 V.S.A. § 3665(c)(2) and (d) forthwith. The failure to pay the required interest rate warrants an administrative penalty of \$1,000.

9. In the "**RATES AND RELATED ISSUES**" section (Report page 34), the examiners find several instances of premium overcharges. The examiners recommend that the Company conduct a periodic review of the credit unions to audit premium calculations.

In response, the Company accepts these findings, and notes that the Company and credit unions have initiated refunds to members who were overcharged, and agrees to coordinate repayments within 120 days of the final order.

Upon consideration, the Department adopts this portion of the Report, and the examiners' recommendation. The Company shall report to the Department the results of its audit, the methodology used, the amounts paid and proof of payment, within 120 days of the date of this order.

The examiners also criticize (at page 37) the single premium credit disability rates charged for non-standard loan periods. The examiners note that Regulation 84-1, Appendix I (B) states that prima facie maximum premium rates for terms of coverage not specified in Appendix I shall be actuarially consistent with the table of rates in the appendix. The Company did not use rates which were actuarially consistent with the table of rates for non-specified terms; instead, the Company used the approved rate for the next highest term.

In response, the Company does not dispute the examiners' findings, but argues that the issue should not be characterized as a violation since the rates were approved by the Department. In truth, the Department did not approve the rates at issue, but only approved the rates for the scheduled terms, for which reason the use of higher scheduled rates for non-scheduled terms is a violation. For non-scheduled terms, the Company shall either file specific rates, or shall use a linear interpolation as recommended by the examiners. The Department finds that this violation warrants an administrative penalty of \$5,000.

The examiners (at page 38) also find a violation of Regulation 84-1 § 10, where the Company determined the deviated rate for a 14-day non-retro level rate credit disability policy by using the same account's (that is, credit union's) experience from a 30-day non-retro plan, which the account used prior to switching to the 14-day plan. The Company considered the plans to qualify as a multiple account case. However, as the examiners note, Regulation 84-1 § 10(6)(b)(ii) defines a multiple account case as two or more similar accounts of an insurer that are combined for underwriting purposes with the approval of the Commissioner. The Company never sought approval to treat these plans as a multiple case account, and therefore cannot combine their experience to determine a deviated rate. The examiners recommend that the Company submit separate rates for each plan, and obtain prior approval of the Commissioner for any multiple account cases in the future.

In its Response, the Company states that it already has taken action to address the recommendation, and the filing submitted on May 15, 2006 incorporates the recommendation. The Department finds that the recent filing of separate rates effectively addresses the violation of Regulation 84-1. This violation warrants an administrative penalty of \$1,000.

10. In the "**FORM FILINGS**" (page 40) section of the Report, the examiners criticize the Company's certificates of insurance, and recommend that the Company develop certificates which fully comply with 8 V.S.A. § 4107(b).

In its Response, the Company contends that the certificates have been approved by the Department, even though the certificates do not contain the name of the debtor or the amount of the premium as required. The Company states that this information is on

the application for insurance, which in “most cases” is printed as an attached document to the certificate; in cases where it is not, the Company states that it instructs the credit union to present both documents to the insured member.

Upon consideration, the Department adopts the examiners’ recommendation. The prior approval of forms does not justify continued noncompliance with the statute, although it does militate against imposing an administrative penalty for the violation. The use of the application to provide the missing information does not cure the violation of the statute’s requirements, either. Section 4107(b) clearly requires the name of the debtor and the amount of the premium to be included in the certificate, together with the other proscribed information. Section 4107(d) addresses the substitution of the application, stating that if the certificate of insurance is not provided to the debtor at the time the debt is incurred as required in subsection (c), the application shall be delivered to the debtor at that time with the certificate to follow within 30 days. Hence, the statute clearly provides that the application cannot be used as a substitute for the certificate, despite the overlap in information required in both documents. The Company shall provide the Department with a revised certificate of insurance form, within 30 days of the expiration of the appeal deadline of this Order, for the Department’s approval.

The examiners criticize (at page 41) the Company’s use of the “Loanliner Subsequent Action” form, which appears to contain an enrollment or application form for which the Company has not sought Department approval. The Company responds that it would initiate the necessary action to discontinue the use of the enrollment aspects of the form. The Company shall certify to the Department in writing, within 30 days of the effective date of this order, that it has discontinued the use of the unapproved form.

The examiners also criticize (at page 41) the use of application forms which are materially different from those approved by the Department. The Company does not dispute this find, and states that corrective action has been initiated. The Company shall file proof of compliance with the Department, within 30 days of the effective date of this order.

The examiners find (at page 43) two violations of regulation 84-1 § 4(2), that the Company used two certificates of insurance that included provisions that had not been filed with the Department. The Company agrees with the examiners, and stated to the examiners that the unapproved language would be discontinued. The Department adopts this section of the Report. The Company shall file proof of discontinuance with the Department within 30 days of the effective date of this order, and shall pay an administrative fine of \$2,000.

11. In the **“SUPERVISION OF CREDIT INSURANCE OPERATIONS”** section of the Report (page 44), the examiners find that the Company has failed to perform any periodic reviews of its Vermont creditors, as required by Regulation 84-1 § 11, during the examination period, despite having furnished a letter in 2004 suggesting that reviews were performed.

In response, the Company states that it has implemented a “self assessment process” and has received responses from every Vermont credit union policyholder. The Company agrees with the examiners’ recommendation that the Department conduct a follow-up review of this program to ensure compliance with the regulations.

Upon consideration, the Department adopts this section of the Report. The Company shall file within 30 days a written description of the self assessment process for

the Department's approval, and within 60 days a summary of the responses received from the self assessment process. The violation of Regulation 84-1 warrants an administrative penalty of \$1,000.

12. In the "**PRODUCER LICENSING**" section of the Report (page 45), the examiners find that the Company is in violation of 8 V.S.A. §§ 4793(a) and 4813b, which require the Company's products be sold only by licensed persons. The examiners recommend that all persons engaged in selling or soliciting for sale the Company's products be licensed and appointed.

The Company responds with multiple objections. First, the Company complains that the definition of "solicitation" is unclear. The Department rejects this contention. "Solicit" is defined clearly in 8 V.S.A. § 4813a(11), as "attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular insurer." Any person engaged in such conduct must be licensed. 8 V.S.A. §4813b.

In response to the examiners, the Company proposed licensing each member credit union under 8 V.S.A. § 4813f(b), which the Company contends requires the business entity and one person to be licensed. However, the Company overlooks the following language in that subsection: "Except as permitted by regulation, licensure of a business entity shall not relieve any natural person who sells, solicits or negotiates insurance of the requirement to be licensed under this chapter." So long as the employees of the credit unions are soliciting the Company's products, they must be licensed.

The Company also raises the "group enrollment exemption" under 8 V.S.A. § 4813d(b)(2). This statute does not create an exemption from licensure, but rather distinguishes certain administrative conduct from solicitation. The Company is correct in

pointing out that credit union loan officers who engage enrolling, without soliciting, are not required to have licenses. However, the Company does not identify a single licensed producer to whom loan officers could (much less do) refer prospective applicants who have questions or request advice that only can be provided by a licensed producer. Moreover, the examiners point to the information packages the Company provides to the credit unions, which expressly refer to the sales of Company products by the credit unions. Since there are no licensed producers, the Department rejects the contention that 8 V.S.A. § 4813d insulates the Company from licensure, as there is no credible evidence that no solicitation occurs.

Moreover, the “group enrollment exemption” requires that the enrolling employee not receive commissions. The Company points out that the credit unions, and not the loan officers, are “reimbursed,” based on a negotiated percentage of the premium collected by the credit union. A reimbursement which is not based upon the value of administrative services rendered, but instead is based on a percentage of sales, is a commission. Since the credit unions are receiving a commission, they must be licensed entities. Currently, the credit unions are not licensed. This is another violation of 8 V.S.A. § 4813b.

Next, the Company argues that 8 V.S.A. § 4811, repealed in 2001, exempted lending institutions from insurance licensure, and that Bulletin 117 acknowledges that the licensing and other requirements of the Bulletin do not apply to the sale of credit insurance. The Department rejects this argument, as well. While there is a document supporting the Company’s interpretation of § 4811, that statute has been repealed since June 16, 2001, precluding any reliance on its provisions. Bulletin 117, by its terms, does

not apply to credit insurance, as the Company acknowledges. Apparently, the Company believes that this exception from the bulletin, which requires banks to comply with licensure requirements, means that credit insurance is excepted from those requirements. This is not a permissible construction of the bulletin; if the legislature or the Department intended to create an exception for producers of credit insurance, the exception would have to be stated explicitly, not inferentially. The fact that Bulletin 117 does not apply to credit insurance means just that, and only that; nothing in the bulletin addresses credit insurance, even by inference.

Upon consideration, the Department adopts this portion of the Report, and adopts the examiners' recommendations as modified herein. The Company shall devise a compliance plan for licensure, and submit the plan to the department for approval within 90 days. The plan can include training loan officers to comply with 8 V.S.A. § 4813d, but must include compliance with the licensure requirements for actual solicitations, as they occur. The violations of 8 V.S.A. § 4813b warrant an administrative penalty of \$5,000.

13. In the **“REPORTS OF LEGAL ACTIONS INVOLVING OTHER INSURANCE DEPARTMENTS”** section of the Report (page 47), the examiners note that the Company failed to file a notification under Bulletin 30 for the year 2001. The Company informed the examiners that there were no reportable legal actions involving other insurance departments that year, but the examiners reply that the Company is obligated to make that representation to the Department annually. The examiners make no recommendations.

Upon consideration, the Department adopts this portion of the Report, and find that no further administrative action is warranted.

14. In the “**COMPLAINTS**” section of the Report (page 48), the examiners reviewed the five consumer complaints the Company reported for the period from January 1, 2001 through September 30, 2004, and find no irregularities in the Company’s actions. The examiners make no recommendations, and the Company does not respond. Upon consideration, the Department adopts this portion of the Report.

ORDER

Based upon the Findings of Fact and Conclusions of Law set forth above, **IT IS THEREFORE ORDERED** by the Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration that the **MARKET CONDUCT EXAMINATION REPORT OF THE CUNA MUTUAL INSURANCE SOCIETY OF MADISON, WISCONSIN BY VERMONT DEPARTMENT OF BANKING, INSURANCE, SECURITIES AND HEALTH CARE ADMINISTRATION** (which is incorporated herein by reference) shall be and hereby is adopted with the following modifications and clarifications:

15. As discussed in Paragraph 7 above, the Department adopts the “**PRODUCTION OF RECORDS**” section of the Report, and adopts the recommendation that the Company develop procedures whereby the Company has records of all transactions involving Vermont insureds, and submit such procedures to the Department for approval within 90 days. The Company shall pay an administrative penalty of \$5,000.

16. As discussed in Paragraph 8 above, the Department adopts the “**CLAIMS PROCEDURES AND PROCESSING**” section of the Report; the Company shall audit its credit life insurance claims from January 1, 2001 to the present, within 90 days of the final order herein, and provide the Department a copy in an Excel spreadsheet; once the Department approves the audit, the Company shall have 30 days within which to pay the

interest owed. Also, the Company shall implement procedures to comply with 8 V.S.A. § 3665(c)(2) and (d) forthwith, and shall provide the Department with proof of payment on loans 71 and 73. Furthermore, the Company shall refile its certificate of insurance for the Department's approval, to provide for a single effective date of coverage for calculating the pre-existing condition exclusionary period, within 90 days of the final order herein. The Company also shall pay an administrative penalty of \$1,000.

17. As discussed in Paragraph 9 above, the Department adopts the "**RATES AND RELATED ISSUES**" section of the report. The Company shall report to the Department the results of its audit, the methodology used, the amounts paid and proof of payment, within 120 days of the date of this order. For single premium disability policies with non-scheduled terms, the Company shall either file specific rates, or shall use a linear interpolation as recommended by the examiners. The Company also shall pay an administrative penalty of \$1,500.

18. As discussed in Paragraph 10 above, discussing the "**FORM FILINGS**" section, the Department adopts the Report as modified herein. The Company shall amend its certificate of insurance form to comply with 8 V.S.A. § 4107(b), within 30 days of the expiration of the appeal deadline of this Order, for the Department's approval. The Company shall certify to the Department in writing, within 30 days of the effective date of this order, that it has discontinued the use of the unapproved enrollment form. The Company shall file proof of compliance of their applications with the Department, within 30 days of the effective date of this order. The Company shall file proof of discontinuance of the unapproved certificates of insurance with the Department within 30 days of the effective date of this order, and shall pay an administrative penalty of \$2,000.

19. As discussed in Paragraph 11 above, discussing the “**SUPERVISION OF CREDIT INSURANCE OPERATIONS**” section, the Department adopts the Report. The Company shall file within 30 days a written description of the self assessment process for the Department’s approval, and within 60 days a summary of the responses received from the self assessment process. The violation of Regulation 84-1 warrants an administrative penalty of \$1,000.

20. As discussed in Paragraph 12 above, the Department adopts the “**PRODUCER LICENSING**” section of the Report, and adopts the examiners’ recommendations as modified herein. The Company shall devise a compliance plan for licensure, and submit the plan to the department for approval within 90 days. The violations of 8 V.S.A. § 4813b warrant an administrative penalty of \$5,000.

21. As discussed in Paragraph 13 above, the Department adopts the “**REPORTS OF LEGAL ACTIONS INVOLVING OTHER INSURANCE DEPARTMENTS**” section of the Report, but does not adopt the recommendations therein.

22. As discussed in Paragraph 14 above, the Department adopts the “**COMPLAINTS**” section of the Report.

23. All penalties described above shall be paid to the Department no later than 10 days after the expiration of the appeal deadline of this Order, or other administrative or judicial order as appropriate.

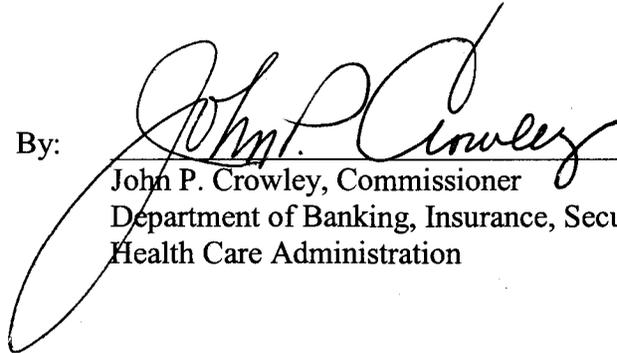
PURSUANT TO 8 V.S.A. § 3574(c), THIS ORDER AND REMEDIAL ACTION SET FORTH HEREIN MAY BE APPEALED TO THE COMMISSIONER BY FILING AN ADMINISTRATIVE APPEAL WITHIN THIRTY (30) DAYS OF THE DATE SET FORTH BELOW. FURTHER

**REMEDIAL ACTIONS AND PENALTIES ORDERED UPON RECEIPT OF
INFORMATION ORDERED HEREIN MAY BE APPEALED WITHIN THIRTY
(30) DAYS OF SUBSEQUENT DECISIONS BY THE DEPARTMENT.**

Dated at Montpelier, Vermont this 8th day of August, 2006.

Department of Banking, Insurance,
Securities and Health Care Administration

By:



John P. Crowley, Commissioner
Department of Banking, Insurance, Securities and
Health Care Administration