



National Credit Union Administration

March 28, 2016

Mr. Paul T. Clark
Seward & Kissel LLP
901 K Street, NW
Washington, DC 20001

Dear Mr. Clark:

You have asked if a federal credit union (FCU) has the authority to act on behalf of its member by placing the member's funds, which initially have been deposited in the FCU, in a deposit account at a depository institution the accounts of which are insured by the Federal Deposit Insurance Corporation (FDIC) and to serve as custodian for that FDIC-insured account. Yes, an FCU has that authority subject to the conditions discussed more fully below.

An FCU is authorized to engage in activities that are incidental to its business.¹ An incidental powers activity is one that is necessary or requisite to enable an FCU to carry on effectively the business for which it is incorporated. An activity meets the definition of an incidental powers activity if the activity: 1) is convenient or useful in carrying out the mission or business of credit unions consistent with the Federal Credit Union Act; 2) is the functional equivalent or logical outgrowth of activities that are part of the mission or business of credit unions; and 3) involves risks similar in nature to those already assumed as part of the business of credit unions.

We believe that an FCU may, as an incidental powers activity, act in a ministerial capacity to effectuate the placement of funds from a member account held at the FCU to an account at a depository institution insured by the FDIC, provided the FCU is only following explicit instructions from the member and also satisfies the following enumerated conditions.

Because an FCU generally does not have trust powers and is not authorized to serve as a broker-dealer, an FCU is authorized to perform the subject activity as an incidental powers activity only if: 1) the member's funds to be placed in an FDIC-insured institution are first deposited in a share account at the FCU; 2) the funds are placed in an FDIC-insured institution solely at the member's discretion and in accordance with the member's explicit written instructions; 3) the FCU performs all related custodial services consistent with the principles of sound custodial administration; 4) the FCU informs the member in writing that share insurance provided through the National Credit Union Share Insurance Fund only covers fund balances that remain in the share account at the FCU; 5) the FCU performs functions that are exclusively ministerial and custodial; and 6) the FCU does not provide any investment advice, take any discretionary action

¹ 12 U.S.C. 1757(17); 12 C.F.R. §721.1

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or perform any services that would require the FCU to act in the capacity of a broker-dealer or any other entity requiring registration, or otherwise engage in activities impermissible for FCUs.

Please contact Staff Attorney Marvin Shaw at (703) 518-6553 with any additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. McKenna", with a long, sweeping horizontal line extending to the right.

Michael J. McKenna
General Counsel

GC/MS:bhs
SSIC 3501