

May 4, 1992

Carolyn J. Murphy
Regional Vice President
Field Service
Cash Equivalent
Clearing Corporation
Pacific Financial Plaza
840 Newport Center Dr.
Suite 680
Newport Beach, CA 92660

Re: Denial of Request for Endorsement (Your Letter of April 8, 1992)

Dear Ms. Murphy:

You requested an NCUA endorsement of investment products, including certificates of deposit and time deposits, offered by Cash Equivalent Clearing Corporation ("CECC"). NCUA does not endorse specific individual investment products. Investment decisions should be made by the board of directors of a federal credit union ("FCU") in accordance with guidelines within legal parameters reflecting each FCU's particular needs.

Nor does NCUA opine upon the legality of specific investment schemes. We suggest that counsel for each FCU investing in your products make the determination of the legality of such investments in accord with relevant law, regulations and NCUA policy.

ANALYSIS

FCU investment and deposit authority is governed by Sections 107(7), (8) and (15) of the FCU Act and Part 703 of the NCUA Rules and Regulations. See 12 U.S.C. §§ 1757(7), (8), and (15) and 12 C.F.R. Part 703 (both enclosed). Under Section 107(8) of the FCU Act, an FCU may make deposits in national banks and in state banks, trust companies, and mutual savings banks operating in accordance with the laws of the state in which the FCU does business, or in banks or institutions the accounts of which are insured by the Federal Deposit Insurance Corporation. Several prior opinion letters regarding investments in certificates of deposit, time deposits and like products are enclosed for your guidance. See NCUA Opinion Letter from me to Tobias E. Timm, McDonald & Company, entitled "Bank Notes," dated December 3, 1991; NCUA Opinion Letter from me to Morgan Reed, U.S. Sterling Capital Corporation, entitled "Federal Credit Union Investment Authority," dated January 2, 1991; NCUA Opinion Letter from me to Carl A. Bright, Irwin Union Bank and Trust, entitled "Irwin Union CD Program," dated November 30, 1990; NCUA Opinion Letter from me to Mitchell C. Glass, Eastern Airlines Federal Credit Union, entitled "Investment in Yankee Dollars," dated May 16, 1989; and Letter from Valerie J. Best, Senior Attorney, FDIC, to me, dated November 16, 1990.

An FCU is required to establish written investment policies consistent with the FCU Act, NCUA's regulations and other applicable laws and regulations which are to include policies regarding the FCU's: investment purposes and objectives; delegations of investment authority; investment limits; maturity limits; interest rate risk; credit risk; approved securities dealers/brokerage firms; and securities safekeeping and safekeeping facilities. 12 C.F.R. § 703.4. Any involvement by an FCU with CECC must be in accord with the FCU's investment policies.

The products and services offered by CECC comprise an investment program. The discussion in NCUA Letter to Credit Unions No. 92 (August 13, 1987) (enclosed) applies to investment programs as well as mutual funds. NCUA does not issue opinions on the legality of particular investment programs. FCUs are "encouraged to explore the full range of investment options available, and then to make an investment decision that is in the best interests of the FCU." NCUA Letter to Credit Unions No. 92, p.2. FCUs are responsible "for establishing and supporting the legality of any of its investments. If in doubt about a particular investment, FCU's are encouraged to obtain the opinion of qualified legal counsel." Id. NCUA does not endorse specific investment programs.

It is unclear to us whether your products or services involve a delegation of investment authority from FCUs to CECC. Section 113(6) of the FCU Act (12 U.S.C. ~1761b(6)), provides that the board of directors of an FCU "shall have charge of investments." It has long been NCUA policy that the board of directors of an FCU may delegate its investment authority only if certain conditions are met. Before delegating its investment authority, the board should investigate to its satisfaction the integrity and financial condition of any third party investment manager. The delegation should be noted in the FCU's investment policies, the extent of the delegation of investment authority must be specifically stated, and the delegation must be made in writing by board resolution. Under no circumstances should the third party be given total authority to invest credit union funds with no FCU board of director oversight. The determination as to the permissibility of a particular investment program, as well as its suitability for a particular FCU, should only be made by the board of directors of the FCU, with the advice of counsel. FCU boards may also want to contact their bonding company for further guidance.

This letter should not be interpreted as either an approval or endorsement of your products. It is merely a discussion of the issues to be addressed in making a determination on the legality and suitability of a particular program.

Sincerely,

Hattie M. Ulan
Associate General Counsel

Enclosure

GC/MEC:sg
SSIC 4660
92-0424