

February 6, 1998

Paul T. Clark, Esq.
Seward & Kissel
1200 G Street, NW
Washington, DC 20005

Re: Pass-Through Insurance (Your Letter of September 4, 1997).

Dear Mr. Clark:

You have asked whether your client, PaineWebber, Inc. ("PaineWebber"), could establish the basis for share insurance with respect to the beneficial owner of a share account in a federally insured credit union ("FICU") by submitting its account records to the National Credit Union Administration ("NCUA"). Yes, if the beneficial owner and PaineWebber agree that PaineWebber will maintain custody of the beneficial owner's account records.

Background

PaineWebber proposes to make shares of FICUs available to other credit unions and to public units, which are "members" as defined by NCUA in 12 C.F.R. §745.1(b). PaineWebber would establish an account with a FICU for each such member purchasing shares from that Issuer/FICU. The account would be in the name of "PaineWebber as custodian" for an unnamed beneficial owner, meaning the member. PaineWebber would not disclose the identity of the beneficial owners/members to an Issuer/FICU.

After each purchase of shares, PaineWebber would issue a confirmation to the beneficial owner/member stating the name of the Issuer/FICU, the amount of shares purchased, the interest rate, and the maturity date. PaineWebber would retain a copy of the confirmation. PaineWebber also would maintain records stating the identity and tax identification number of the beneficial owner/member, the amount of shares held, and other relevant information.

Analysis

Prior to discussing pass-through insurance, there are several points we believe should be emphasized. First, PaineWebber is assuming the duty of assuring that each beneficial owner is in fact a "member" of the Issuer/FICU. You have stated that PaineWebber will not disclose the beneficial owner's identity to the Issuer. Thus, the Issuer will be required to rely on PaineWebber. This should be set forth in any arrangement with the Issuer. Second, by assuming such duty, PaineWebber may be deemed an "institution-affiliated party" as defined in §206(r) of the Federal Credit Union Act ("Act"), 12 U.S.C. §1786(r). Third, the extent of share insurance is governed by the Act and NCUA's regulations. PaineWebber is not an agent of NCUA and cannot bind NCUA to extending coverage beyond that provided by law, *i.e.*, to parties not entitled to such coverage or in amounts in excess of \$100,000. Fourth, the funds in question are subject to the limitations contained in 12 C.F.R. §701.32 of NCUA's regulations. (*See also*, 12 C.F.R. §741.204.) Finally, in the case of federally-insured state chartered credit unions, membership will be dependent on state law.

NCUA regulations provide that the account records of an insured credit union are conclusive as to the evidence of any relationship, such as a custodial relationship, under which the funds in the account are deposited and on which a claim for insurance coverage is founded. 12 C.F.R. §745.2(c)(1). NCUA regulations further provide that, if the account records disclose the existence of a relationship that may

provide a basis for additional insurance, the details of the relationship and the interest of the other parties in the account must be ascertainable from the records of either the credit union or the member. 12 C.F.R. §745.2(c)(2). In the situation you have described, only the records of the FICU or the beneficial owner/member could establish a basis for pass-through insurance.

Our view is that the confirmations, as described above, that PaineWebber proposes to issue to the beneficial owner/member would be "records of the member" that, if "maintained in good faith and in the regular course of business," could be considered in establishing additional insurance coverage. 12 C.F.R. §745.2(c)(2).

You note that the Federal Deposit Insurance Corporation (FDIC) will look to the records of a custodian to establish a relationship that permits deposit insurance to pass through the custodian to the purchaser of a deposit in a federally insured bank. 12 C.F.R. §330.4(b)(2). Unlike the FDIC regulations, NCUA's regulations would not permit PaineWebber's records, by themselves, to establish coverage. If, however, PaineWebber has an agreement with the beneficial owner/member to maintain custody of the beneficial owner/member's records, NCUA would consider those records to be "records of the member" within the meaning of 12 C.F.R. §745(c)(2).

Sincerely,

Sheila A. Albin
Associate General Counsel

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