

December 9, 1999

Tim Pryor, Esq.  
ESL Federal Credit Union  
100 Kings Highway South  
Suite 1200  
Rochester, New York 14617

Re: Federal Credit Union Accounts in Foreign Banks.

Dear Mr. Pryor:

You have asked whether a federal credit union (FCU) may establish an account in a foreign bank in order to facilitate the transfer and negotiation of checks denominated in foreign currency for ESL members residing or traveling in foreign countries. An FCU has the power to "exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated." 12 U.S.C. §1757(17). An FCU may make deposits into a foreign bank account for the purpose of facilitating transactions for members residing or traveling in foreign countries. We believe this activity is within an FCU's incidental powers because it is closely related to the express powers of lending and receiving payments on shares from members and useful to the business of credit unions. However, deposits in such accounts are not permissible as an investment vehicle.

Your credit union has members who reside in foreign countries, specifically Canada and England. To provide them with member services, your FCU proposes to maintain deposit accounts, in the amount of approximately \$50,000, at a bank in both countries. When a member located in either of these countries sends the FCU a payment or deposit in a foreign currency, the FCU would deposit the draft into its bank account at the Canadian or British bank. The FCU would then withdraw the funds in U.S. dollars. The FCU would also provide foreign currency exchange services for its U.S. members, by using its foreign bank accounts as its source for foreign currency. The FCU believes that these accounts afford the FCU the most cost-effective and expedient method for effecting member transactions involving foreign currency. You have noted that the Federal Reserve System does not accept foreign items and that money center banks charge relatively costly fees to process these items.

NCUA's long-standing position is that providing foreign currency exchange services to members is incidental to an FCU's authority to accept and maintain shares and is therefore authorized under the FCU Act. 12 U.S.C. §§ 1757(6) and 1757(17). While FCUs have offered these services to members, they have not had direct access to foreign currencies. NCUA had determined that FCUs did not have the incidental power to maintain deposits in foreign banks. However, recent case law has broadened the analysis of the incidental powers test so that foreign deposit

accounts maintained to facilitate member transactions are viewed as incidental to the business of credit unions.

FCUs may engage in activities incidental to their business beyond the specifically enumerated powers found in 12 U.S.C. §1757. See generally Nationsbank of North Carolina v. Variable Annuity Life Insurance Co. (VALIC), 513 U.S. 251, 259 n.2, 130 L.Ed 2d 740, 749 n.2 (1995) (holding that the business of banking is not limited to banks' express powers and that OCC has discretion to authorize activities beyond enumerated powers). "[I]ncidental powers . . . are not limited to activities that are deemed essential to the exercise of express powers. Rather, courts have analyzed the issue by asking whether the activity is closely related to an express power and is useful in carrying out the business of banking." First National Bank of Eastern Arkansas v. Taylor, 907 F.2d 775, 778 (8<sup>th</sup> Cir. 1990); Norwest Bank Minnesota, N.A. v. Sween Corporation, 118 F.3d 1255, 1260 (8<sup>th</sup> Cir. 1997).

By maintaining a foreign bank account to facilitate member transactions as you have detailed, an FCU can: 1) provide basic credit union services such as lending and deposit taking to members who, due to their residence in a foreign country, are unable to obtain these services from the FCU's domestic offices; and 2) benefit members by providing these services conveniently and at minimal cost in comparison to currency conversion expenses. As such, a deposit account in a foreign bank established for foreign currency exchanges and to facilitate basic services for members located in foreign countries, in furtherance of an FCU's deposit taking and lending authority, is closely related to these express powers and is useful in carrying out the business of credit unions.

Clearly, an FCU must make a diligent inquiry regarding a foreign bank before opening an account, as these deposits do not carry deposit insurance coverage. The FCU should ensure that the foreign bank is a strong institution, suitably regulated by its supervisory authority, and authorized to accept such transactions. An FCU should also review the "Master List of Specially

Designated Nationals and Blocked Persons" issued by the Office of Foreign Asset Control, at [www.treas.gov/ofac](http://www.treas.gov/ofac): a list of countries and individuals prohibited from dealing with U.S. financial institutions.

Sincerely,

Sheila A. Albin  
Associate General Counsel

GC/CJL:bhs

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