

April 17, 2003

Christiane G. Hyland
Senior Vice President, General Counsel
Empire Corporate Federal Credit Union
P.O. Box 15021
Albany, NY 12212-5021

Re: Purchase and Safekeeping of Certificates of Deposit

Dear Ms. Hyland:

You have asked if certain business models involving your corporate federal credit union (FCU) and its CUSO assisting member credit unions in the purchase and safekeeping of certificates of deposit (CDs) issued by third-party banks comply with National Credit Union Administration (NCUA) regulations. Generally, the two models you describe are permissible under NCUA regulations, as discussed below.

In your first model, the corporate FCU would locate potential CD issuers, obtain the member's approval for the purchase of CDs, purchase CDs with member funds on account, and hold the CDs as safekeeper for the member. These CD services are permissible activities under the NCUA's corporate rule provisions authorizing "investment services" and "custodial and safekeeping services." 12 C.F.R. §704.12(a)(2) and (8). We note that NCUA's investment rule allows FCUs to use a third-party entity to purchase or sell investments, including CDs, only if the third party is registered with the Securities and Exchange Commission (SEC) or is a depository institution whose broker-dealer activities are regulated by another federal agency. 12 C.F.R. §703.50(c). As discussed in the attached OGC Opinion Letter 01-0616, dated September 10, 2001, a corporate FCU does qualify as a §703.50(a) depository institution.

We caution that the FCU Act and NCUA's investment rule limit FCUs in the types of investments, including CD-related investments, that they may purchase. 12 U.S.C. §1757 and 12 C.F.R. §703. We have attached NCUA Letter to Credit Unions 00-CU-05, issued September 2000, and NCUA Letter to Federal Credit Unions 01-FCU-04, issued April 2001 (LFCU 01-FCU-04), which discuss some of our concerns with investments in brokered CDs. Generally, the corporate should not modify the CD so as to make it a security or otherwise render it an impermissible investment for the member FCU. The corporate should ensure, for example, that the member FCU is the beneficial owner of the underlying CD and that the deposit insurance flows through to the member.

In your second model, the corporate's CUSO, which is not registered with the SEC, would assume the functions of locating CD issuers and contacting the member for CD purchase approval. If the member wants to buy the CD, the CUSO would ask the member to initiate a transfer of funds on account at the corporate directly to the issuing institution. Upon receipt of funds the issuing institution would issue a CD titled on the issuer's books in the member's name, that is: "(member credit union name), care of (corporate credit union name) as safekeeper." The corporate would receive interest payments into the member's account and handle any paperwork associated with

the CD.

A corporate CUSO may provide “services related to the normal course of business of credit unions.” 12 C.F.R. §704.11. Finding CDs and other investments for credit unions or brokering the purchase and sale of CDs and other investments for credit unions is a service related to the normal course of business of credit unions.

As discussed above, NCUA’s investment rule will generally not allow a nondepository CUSO to broker CDs for FCUs unless the CUSO is registered with the SEC. 12 C.F.R. §703.50(a). An entity that restricts its investment activities to assisting FCUs in purchasing CDs directly from the issuer, however, is exempt from the requirements of §703.50(a). 12 C.F.R. §703.50(c). A direct purchase means that the funds of the purchasing credit union are sent directly by the purchaser to the issuing institution and that the issuing institution’s records indicate that the purchasing credit union is the owner of the account. NCUA LFCU 01-FCU-04. The process you describe in your second model satisfies the direct purchase requirements of §703.50(c), and your CUSO would be exempt from the requirements of §703.50(a).

This opinion only addresses the permissibility of your models under NCUA regulations. You must also comply with other applicable federal and state laws, including securities laws. You should also consult with your examiner on the safety and soundness of any particular model before implementation.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/PMP:bhs
03-0157

Attachments