

August 21, 2003

Leon G. Kusnetzky, P.C.
9201 Ward Parkway, Suite 304
Kansas City, MO 64114

Re: Safekeeping Agreement - Compliance with Part 703.

Dear Mr. Kusnetzky:

You have asked if a certain provision in a safekeeping agreement violates NCUA's investment rule. Specifically, it provides that the safekeeper is not required to exercise greater care in safekeeping client investments than it reasonably does in safekeeping its own property. We do not believe the provision violates NCUA's investment rule.

NCUA's investment rule permits a federal credit union (FCU) to have its investments and repurchase collateral held by a safekeeper approved by the FCU's board of directors under a written custodial agreement that requires the safekeeper to exercise, at least, ordinary care. 12 C.F.R. §703.9(a). Custodial agreement is defined as a contract in which one party agrees to exercise ordinary care in protecting the securities held in safekeeping for others. 12 C.F.R. §703.2. Other requirements on FCUs using safekeepers include: using a safekeeper that is regulated by the Securities and Exchange Commission, a federal or state depository institution regulator, or a state trust company regulator; obtaining and reconciling monthly a statement of investments and collateral held in safekeeping; and analyzing annually the safekeeper's ability to fulfill its custodial responsibilities. 12 C.F.R. §§703.9(b)-(d).

The provision you are concerned about states the safekeeper is not required to exercise greater care in safekeeping client investments than it reasonably does in safekeeping its own property. Stated in positive terms, the safekeeper is required to exercise reasonable care in safekeeping the FCU's investments. Our view is that ordinary care and reasonable care mean the same thing. Black's Law Dictionary 204 (7th ed. 1999). Accordingly, the degree of care required by the subject provision is sufficient to satisfy §703.9.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/FSK/bhs
03-0822