

October 28, 2002

V. Gerard Comizio, Esquire

Thacher Proffitt & Wood

1700 Pennsylvania, N.W.

Suite 800

Washington, D.C. 20006

Re: Authority of a Federal Credit Union to Own a Trust-Only Thrift

Dear Mr. Comizio:

You have asked for our opinion on whether Suncoast Schools Federal Credit Union (Suncoast) has the authority to own a credit union service organization (CUSO) trust-only thrift. As explained below, this is a permissible activity for a federal credit union (FCU).

Trust services have been a permissible CUSO activity for twenty years. 47 Fed. Reg. 30462, July 14, 1982. While the Federal Credit Union Act (the Act) prohibits an FCU from acquiring control directly or indirectly of a financial institution, NCUA's longstanding interpretation of financial institution is that it means a deposit taking institution. 12 U.S.C. §1757(7)(l); 51 Fed. Reg. 10353, 10354, March 26, 1986. "Thus, NCUA has viewed trust companies as permissible CUSOs as long as they were not deposit taking organizations." 66 Fed. Reg. 40575, 40577, August 3, 2001.

You have advised us that Suncoast intends to establish a CUSO trust company chartered by the Office of Thrift Supervision (OTS). The OTS requires Federal Deposit Insurance Corporation (FDIC) insurance for all institutions it charters. 12 C.F.R. §543.2. Under the Federal Deposit Insurance Act, an applicant for insurance must be "engaged in the business of receiving deposits other than trust funds." 12 U.S.C. §1815(a)(1). Through legal interpretation and in its regulation the FDIC states that the requirement to be "engaged in the business of receiving deposits other than trust funds" can be satisfied by the maintenance of one or more non-trust deposit accounts in the aggregate amount of \$500,000. 12 C.F.R. §303.14.

Based on the FDIC's interpretation, the NCUA Board has stated that the prohibition on investment in a depository financial institution "should not include a financial institution principally engaged in the business of providing trust services, and which holds only such deposit as is required for FDIC insurance." 66 Fed. Reg. at 40577.

Under the facts presented, Suncoast's proposed ownership in a trust-only federal thrift with FDIC insurance is not prohibited by §107(7)(l) of the Act, provided that all the requirements and provisions of Part 712 of NCUA's CUSO rule are satisfied. 12 U.S.C. §107(7)(l); 12 C.F.R. Part 712.

Sincerely,

Robert M. Fenner

General Counsel

GC/MFR:bhs

SSIC 3000

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