



National Credit Union Administration
Office of Examination and Insurance

May 15, 2018

SENT BY FEDERAL EXPRESS AND EMAIL

XXXX
Chief Executive Officer
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Dear XXXX:

On April 24, 2018, you filed a request for review by the Director of the Office of Examination and Insurance (“E&I”) of your credit union’s required divestiture of an impermissible investment. You filed this request pursuant to 12 C.F.R. Part 746.106, which allows a credit union to seek my review of a written material supervisory determination by a program office.

The written material supervisory determination you are requesting a review of was made on March 26, 2018 by Regional Director XXXX, which reaffirmed your credit union must divest of an impermissible investment with XXXX by March 31, 2018. In your request, you are seeking my permission to continue to hold the XXXX investment.

As discussed more fully below, I conclude your credit union must divest of the impermissible investment by May 31, 2018.

Background

On November 7, 2016, XXXX purchased a security with the XXXX, CUSIP number XXXX. This security was purchased on the advice of XXXX, a Wealth Management Advisor with XXXX. XXXX has provided investment advice to the credit union for over XXXX years.

The permissibility of this investment was originally questioned by XXXX during the credit union’s June 30, 2017 examination. The Document of Resolution delivered on October 18, 2017 required you to divest of the impermissible investment by November 18, 2017. You subsequently asked Regional Director XXXX to extend the due date to divest until the investment’s next scheduled interest payment on May 15, 2018.

On March 2, 2018, Regional Director XXXX issued a Regional Director Letter (RDL) requiring you to divest by March 16, 2018. On March 21, 2018 you attempted to file an appeal of the divestiture requirement by email to the Chairman of the NCUA’s Supervisory Review Committee (SRC). Pursuant to 12 C.F.R. Part 746.105, a credit union may appeal a material supervisory determination within 30 days of receiving an official written communication. Such an appeal,

however, must first be made via a written request for reconsideration from the NCUA program office that issued the determination. Accordingly, the SRC forwarded your filing to Region XXXX for review.

On March 26, 2018, Regional Director XXXX affirmed XXXX earlier determination the XXXX investment was impermissible and again required the credit union to divest of the investment by March 31, 2018. On April 24, 2018, you filed your request for E&I review of Regional Director XXXX' material supervisory determination.

Discussion

E&I has jurisdiction to review the Regional Director's decision, as your request for review was timely and it is a material supervisory determination as defined by 12 C.F.R. Part 746.103. Despite the overall capital strength of your credit union (XXXX percent as of March 31, 2018) and the relatively small size of the investment (less than XXXX percent of total assets), we find the estimated \$XXXX loss the credit union will incur as a result of divestiture is significant to the earnings of the credit union.

Following the receipt of your request, my staff requested and received additional information from your credit union, XXXX, and Region XXXX. In addition, we discussed relevant law and agency guidelines with the NCUA's Office of General Counsel. Based on a full and careful review of relevant law, I have confirmed the XXXX investment is impermissible.

Under Section 107 of the Federal Credit Union Act (Act), 12 U.S.C. §1757(7)(B), a credit union may invest its funds, "in obligations of the United States of America, or securities fully guaranteed as to principal and interest thereby." The XXXX is a subsidiary of XXXX. It was formed to XXXX. Although a security with the XXXX may have an AAA rating (as you have argued), it does not fall under any of the permissible institutions for deposits or investment activities under the Act. The XXXX is a XXXX. The security would be permissible if it was entirely backed by the full faith and credit of the U.S. Government, which it is not. Both you and XXXX concede this fact, and are only seeking forbearance regarding Region XXXX's divestiture requirement.

I evaluated a variety of considerations when reviewing your request for forbearance. These considerations included the extent to which continuing to hold the investment would represent a safety and soundness concern for the credit union, the impact on the credit union's financial condition of holding or selling the investment, and whether the credit union's practices, combined with an Agency forbearance, would undermine the applicable limitations on credit union authority in the Act or NCUA Regulations.

I find the credit union is able to afford divesting of the impermissible XXXX investment given its over \$XXXX million in net worth (as of March 31, 2018). I would also note the \$XXXX updated loss estimate provided by XXXX on May 3, 2018,¹ that will result from the sale of the

¹ The initial loss estimate provided in your November 15, 2017, letter was \$XXXX. The increased loss is a direct result of the credit union's failure to divest of the XXXX investment in a timely manner as instructed.

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XXXX investment will be offset to some degree by the higher future investment income if the credit union invests the proceeds in a permissible investment at the current, higher interest rates.

Regarding the credit union's current practices, the XXXX investment is the second impermissible investment identified in the credit union's portfolio in the last year. Given this was not an isolated incident, I do not believe your credit union qualifies for forbearance of a violation of the Act. I strongly encourage you to strengthen the credit union's governance and controls around investing to avoid purchasing impermissible investments in the future.

Decision

My decision is that your credit union may not hold the impermissible XXXX investment to maturity. However, you may have until May 31, 2018 to sell the investment. As you previously requested, this will allow your credit union to receive the investment's next semi-annual payment on May 15, 2018.

Pursuant to NCUA's Regulations, 12 C.F.R. Part 746.107, you may appeal this decision to the Supervisory Review Committee within 30 calendar days of receipt of this letter. Such an appeal must follow the requirements of the regulation, and must be filed in writing with the Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428. Please refer to Part 746.107 for additional information regarding the required contents of an appeal.

Sincerely,

Larry Fazio
Director

cc: Board Chairperson XXXX
Regional Director XXXX
Board Secretary Poliquin
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