

October 23, 2001

Guy A. Messick, Esq.
Lastowka & Messick P.C.
The Madison Building
108 Chesley Drive
Media, PA 19063-1712

Re: FCU as Custodian for Self-Directed IRA Accounts.

Dear Mr. Messick:

You have asked us to confirm your interpretation that Interpretive Ruling and Policy Statement (IRPS) 85-1 authorizes a federal credit union (FCU) to act as a custodian of self-directed Individual Retirement Accounts (IRAs) and maintain an "omnibus account" with a securities broker-dealer to facilitate trades. By an omnibus account we understand you to mean an account the FCU maintains in its own name with a broker-dealer to execute investments in mutual funds and other securities as directed by the individual members. Your letter indicates that this same omnibus account is also used to hold stock pledged by members as collateral for loans with the FCU.

As discussed below, whether the omnibus account is permissible is a question determined under the regulatory provisions of other federal agencies. Also, we caution that the FCU must ensure that it performs only custodial duties in connection with securities trades for the self-directed IRAs.

As a preliminary matter, we note that NCUA withdrew IRPS 85-1 in 1997. 62 Fed. Reg. 50245, 50247 (Sept. 25, 1997). The authority for FCUs to act as trustees or custodians for self-directed IRA and Keogh accounts has appeared in NCUA regulations since 1990. 12 C.F.R. Part 724.

Our regulation does not expressly authorize the use of an omnibus account with a broker-dealer, but directs FCUs to comply with the requirements of agencies with jurisdiction over IRAs. It states:

All funds held in a trustee or custodial capacity must be maintained in accordance with applicable laws and rules and regulations as may be promulgated by the Secretary of Labor, the Secretary of the Treasury, or any other authority exercising jurisdiction over such trust or custodial accounts. The Federal credit union shall maintain individual records for each participant which show in detail all transactions relating to the funds of each participant or beneficiary.

12 C.F.R. §724.1. For your information, we note that, in the Internal Revenue Service (IRS) regulation governing IRAs, there is a provision stating that "[t]he assets of the trust must not be commingled with other property except in a common

trust fund or common investment fund.” 26 C.F.R. §1.408-2(b)(5). The rule also establishes the qualifications for a common investment fund and the process for administering the fund. 26 C.F.R. §1.408-2(e)(5)(vi), (viii)(C). We suggest that you review this rule, in addition to any other applicable regulations, to determine whether the omnibus account permissibly commingles the assets of multiple IRAs and, further, whether the same account may be used to hold stock pledged as collateral for loans with the FCU. As this is an IRS regulation, we suggest that you may want to consult with that agency if you need interpretive guidance.

Finally, we want to highlight that, while an FCU may “facilitate the transfer of plan funds to assets other than share and share certificates of the credit union,” an FCU must comply with the regulatory requirements and restrictions in §724.2. We note specifically that, on the issue of securities trades, the preamble to proposed Part 724 in 1989 incorporated the discussion of this issue that had appeared in IRPS 85-1.

IRPS 85-1 did not authorize FCU’s to handle member orders to buy or sell securities or to otherwise engage in activities that would require registration by the FCU as a broker-dealer and trigger related responsibilities under Securities and Exchange Commission regulations and Federal securities laws. The proposal [the proposed regulation] also does not authorize this type of activity. . . . [I]t will be necessary for an FCU to have an arrangement with a securities broker-dealer pursuant to which the broker-dealer receives all buy and sell orders from the member and executes the securities trades.

54 Fed.Reg.48112 (Nov. 21, 1989). We suggest you may want to consult with the National Association of Securities Dealers or the Securities and Exchange Commission to ensure the FCU’s maintenance of the omnibus account and any other actions it undertakes to facilitate member trades do not amount to engaging in activities triggering broker-dealer registration or other responsibilities that would result in a violation of NCUA’s regulation.

Sincerely,

Sheila A. Albin
Associate General Counsel