



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

LS/HMU:cch

4660

JUN 07 1985

Paul S. Gottlieb
First Vice President
Associate General Counsel
E. F. Hutton
One Battery Park Plaza
New York, NY 10004

Dear Mr. Gottlieb:

This is in response to your letter of April 4, 1985, concerning the permissibility of Federal credit union (FCU) participation in the ~~Hutton Government Securities~~ Management Program (HGSM). According to the Investment Agreement enclosed with your letter, under the HGSM Program, Hutton will act as an investment advisor and manage the assets of its clients.

Two issues must be addressed in order to determine whether the HGSM Program is a permissible activity for Federal credit unions (FCU's). First, all of the investment and investment activities in which the HGSM Program participates must be permissible for FCU's. Second, it must be determined that the HGSM Program is a permissible delegation of investment authority by an FCU to Hutton (the investment advisor).

As you may know, Sections 107(7) and (8) of the FCU Act (12 U.S.C. §§1757(7) and (8)) and Part 703 of the NCUA Rules and Regulations (12 C.F.R. Part 703) are the pertinent provisions of Federal law regulating FCU investments and deposits. According to the Investment Agreement enclosed with your letter, Hutton will make investments in "United States Treasury bills, notes, bonds or other obligations of the United States federal agency [sic] or repurchase or reverse-repurchase agreements for any of the foregoing as well as any other money market instruments or money market funds."

Having reviewed the documents provided us, we have determined that the Investment Agreement contains insufficient information to determine whether the HGSM Program's repurchase and reverse repurchase transactions are in compliance with the Regulations. The regulatory requirements concerning repurchase and reverse repurchase agreements are set out in Part 703 of the NCUA Regulations. Further, the Investment Agreement fails to provide adequate information to ascertain whether the money market instruments and funds invested in under the HGSM Program are in compliance with the FCU Act and Part 703 of the NCUA Regulations.

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Assuming all of the investments of the HGSM Program are determined to be legal for FCU's, the second issue is whether it is permissible for an FCU to enter into an arrangement whereby it delegates its investment decisions (or at least a part of such decisions) to an investment advisor (Hutton). Section 113(6) of the FCU Act, (12 U.S.C. §1761b(6)) provides that an FCU's board of directors shall be responsible for the FCU's investments. The question that must be answered is whether the HGSM Program is an improper delegation of investment authority or instead a proper investment decision (i.e., decision on the part of the FCU board to invest a certain sum of money in investments with the individual buy and sell decisions made by Hutton) made by an FCU. It is our opinion that the HGSM Program could properly be viewed as an investment decision made by an FCU's board or investment committee.

In summary, the delegation of investment authority from the FCU to Hutton is within the bounds of Section 113(6) of the FCU Act. However, there is insufficient information provided with respect to the HGSM Program's investments and investment activities to determine whether the investments and investment activities are in compliance with the FCU Act and the NCUA Regulations. Hence, we cannot, at this time, conclude that the HGSM Program is permissible for FCU's.

If you wish to discuss this further, please contact Hattie Ulan, Esq. of this Office.

Sincerely,

A handwritten signature in black ink, appearing to be 'S|' or similar, written over the typed name.

STEVEN R. BISKER
Assistant General Counsel