



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

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Daniel M. Jaffe, Esq.  
Associate Counsel and  
Assistant Secretary  
Massachusetts Financial  
Services Company  
200 Berkeley Street  
Boston, MA 02116

Dear Mr. Jaffe:

This is in response to your letter of August 22, 1985, concerning the permissibility of Federal credit union (FCU) investment in the ~~MFS~~ Government Guaranteed Securities Trust (Trust), prospectus dated July 29, 1985.

As noted in your letter, we previously held the Trust to be an impermissible FCU investment because the Trust is, among other things, involved in futures transactions. FCU's are specifically prohibited from buying or selling futures contracts. (See Sections 703.2(h) and 703.4(b) of NCUA Rules and Regulations, 12 C.F.R. §§703.2(h) and 703.4(b).) You argue that the regulation only prohibits an FCU's direct investment in futures transactions. The regulation does not prohibit an FCU from investing in an investment company such as the Trust which, in turn, invests in futures contracts. Hence, you theorize that FCU investment in the Trust may be legal. We disagree. Our reasoning follows.

First, we should note that FCU's are corporations and, as such, have only those powers that are provided by the FCU Act, NCUA Rules and Regulations, and its Charter. To argue that because a specific activity (in this case the authority to make a particular investment) is not specifically prohibited means that it is authorized, is an inappropriate analysis of corporate powers.

Second, 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. Although not expressly stated in these provisions, it has been our longstanding policy that mutual funds or trusts are permissible investments for FCU's only if all of the investments and investment practices of the fund or trust are permissible if made directly by the FCU. The only permissible way an FCU can invest in the Trust is if the Trust's investments and investment transactions are in compliance

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with the FCU Act and NCUA Rules and Regulations. Since the Trust does not comply with our regulation prohibiting investment in futures contracts, it is an impermissible investment for FCU's.

Our regulations also require that when-issued securities be delivered within 120 days of the trade date. (See Sections 703.2(d) and 703.3(b) of NCUA Regulations.) The prospectus for the Trust indicates that delivery will take place as long as 60 days or more after the commitment is made for the security. Our 120 day limitation would have to be added to either the prospectus or the supplementary information in order for such transactions to comply with our regulation.

In conclusion, the Trust continues to be an impermissible investment for FCU's for the above stated reasons. We hope that we have been of assistance.

Sincerely,

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STEVEN R. BISKER  
Assistant General Counsel