



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

July 29, 1986

Office of General Counsel

GC/SRB:sg
4660

Mr. Scotty Broome
Keesler Federal Credit Union
P.O. Box 5369
Keesler AFB, MS 39534

Dear Mr. Broome:

This is in response to your letter of June 13, 1986, concerning the permissibility of Federal credit union (FCU) participation in the Merrill Lynch Asset Management (MLAM) Program. According to the investment guidelines and agreement enclosed with your letter, Merrill Lynch will act as an investment advisor and manage the assets of the FCU under the MLAM Program.

Two issues must be addressed in order to determine whether the MLAM Program is a permissible activity for FCUs. First, all of the investment and investment activities in which the MLAM Program participates must be permissible for FCUs. Second, it must be determined that the MLAM Program is a permissible delegation of investment authority by an FCU to Merrill Lynch.

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 exclusive provisions of Federal law regulating FCU investments and deposits. According to the MLAM investment guidelines, Merrill Lynch will invest in "U.S. Government and Federal Agency obligations." The investment guidelines note further that uninvested cash balances will be invested in certificates of deposits and money market funds comprised of U.S. Government and Federal Agency obligations.

Having reviewed all the documents provided to us we have determined that the investment guidelines do not provide sufficient information concerning the types of government obligations that will be invested in on behalf of the FCU. Further, the investment guidelines do not indicate whether the certificates of deposits will be issued by FDIC- or FSLIC-insured institutions as required by Sections 107(7) and (8) of the FCU Act.

Assuming, however, that all of the investments of the MLAM Program are determined to be legal for FCUs, 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

FOIA Vol I Part E.5.

Mr. Scotty Broome

Page Two

of such decisions) to an investment advisor (Merrill Lynch). 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 MLAM 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 Merrill Lynch) made by an FCU. It is our opinion that the MLAM 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 MLAM is within the bounds of Section 113(6) of the FCU Act. Nevertheless, there is insufficient information provided with respect to the MLAM 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 MLAM Program is permissible for FCUs.

I hope we have been of assistance.

Sincerely,

STEVEN R. BISKER
Assistant General Counsel

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