



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

Office of General Counsel

Gary L. Bosco, Esq.
Suite 900
1275 K Street, N.W.
Washington, D.C. 20005

Dear Mr. Bosco:

This is in response to your letter of March 21, 1986, concerning the legality of a Federal credit union issuing checks in foreign currencies pursuant to the Citibank Worldlink Sales and Service Agreement (Agreement), enclosed with your letter.

It is our understanding that the program works as follows. A Federal credit union (FCU) will enter into the Agreement with Citibank to offer payment instruments in several currencies to its members. The payment instruments will be provided by Citibank to the FCU. The FCU will issue the instruments to its members by inserting the face amounts (in one of the several currencies) and tendering them to its members. Payments for the instruments shall be based on the foreign currency exchange rate quoted by Citibank on the day of issuance. The FCU member will pay the FCU such rate plus any fee the FCU charges for the sale of the instruments. The FCU will hold the payment, less sale charges, for Citibank and remit such funds to Citibank pursuant to the "Settlement Payment Plan." (We did not receive a copy of the Settlement Payment Plan.)

The following opinion is based on and limited to our understanding of the Agreement as outlined above.

Section 107(12) of the FCU Act, 12 U.S.C. §1757(12), provides, in part, as follows:

"A Federal credit union . . . shall have power--

* * *

(12) in accordance with rules and regulations prescribed by the Board, to sell to members negotiable checks (including travelers' checks), money orders and other similar money transfer instruments. . . ."

FCU Act file: Vol I, I - Check & Money Orders

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Pursuant to Section 107(12), it is our opinion that an FCU has the express authority to issue and sell the type of checks described in your letter and in the Agreement. Although we agree that FCU's have the authority to issue and sell such checks, there are several other issues that must be addressed.

First, both your letter and the Agreement note that the proceeds (payments) from the issuance of the checks are to be held in the Credit Union in a special account denoted as "Trust Account for Issuances of Citibank Payment Investments" before they are remitted to Citibank. It is our understanding that such funds will be held as a special deposit (constructive trust) rather than in a true trust account. The special deposit account can be established at an FCU. However, it should be recognized that such deposits are not insured member accounts. They are in the nature of an accounts-payable account.

Second, although not mentioned in the Agreement or your letter, there is an issue as to whether the FCU will receive any fees for participation in this program. Since the program is authorized expressly by Section 107(12) of the FCU Act rather than as an incidental power or a goodwill service, an FCU can receive a fee in excess of its costs for participation in this program. The activity is not subject to the reimbursement limitations of Part 721 of the NCUA Rules and Regulations, 12 C.F.R. Part 721.

Lastly, while it does not appear that an FCU will be trading in foreign currencies by participating in the program, there may be other potential safety and soundness problems not addressed in this letter. An FCU should use sound business judgment in determining whether or not to participate in the program and receive adequate guidance as to its potential liability in conjunction with such participation.

We hope that we have been of assistance. If further questions arise, please contact Hattie Ulan of this office.

Sincerely,

STEVEN R. BISKER
Assistant General Counsel

HMU:cch