



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

September 9, 1986

Office of General Counsel

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Anne K. Gifford, Esq.
Law Offices of Richard Schwarzstein
1201 Dove Street
Sixth Floor Penthouse
Newport Beach, California 92660

Dear Ms. Gifford:

This responds to your letter dated August 7, 1986, concerning the legality of an investment agreement between SDW and a Federal credit union (FCU). We should point out that NCUA does not normally render opinions on specific agreements between FCUs and third parties. However, we can assist you in making your own determination.

Two issues must be addressed in order to determine whether the program is permissible for FCUs. First, all of the investments and investment activities in which SDW engages must be permissible for FCUs. Second, it must be determined that the delegation of investment authority by an FCU to SDW is permissible.

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 provisions of Federal law regulating FCU investments and deposits. Under the terms of the Investment Management Agreement you have provided to us, SDW will invest exclusively in U.S. Government obligations. Without further description or definition of "U.S. Government obligations," it is not possible to determine whether the SDW investments are permissible for FCUs. Similarly, it cannot be determined what is intended by the following: "The line of credit for such account shall not be less than One Million Dollars (\$1,000,000)." Do you intend that the FCU obtain a line of credit for that amount or is it that the FCU must make a minimum investment of that amount under the Agreement?

If, in fact, all of the investments made by the SDW are determined to be legal and there are no problems with the terms mentioned above, the second issue is whether it is permissible for an FCU to enter into an arrangement whereby it delegates its

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Anne K. Gifford, Esq.

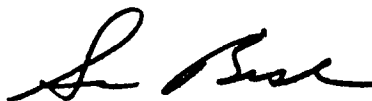
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investment decisions (or at least a part of such decisions) to an investment advisor (SDW). Section 113(6) of the FCU Act, 12 U.S.C. §1761(6) provides that an FCU's board of directors shall be responsible for the FCU's investments.

Pursuant to the Agreement, SDW will provide advice on the purchase and sale of U.S. Government obligations and place direct orders for the purchase and sale of such securities when authorized by the FCU. The question which must be answered is whether the authority granted to SDW 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 SDW) made by an FCU. The authority delegated to SDW in the Agreement can properly be viewed as an investment decision made by an FCU's board or investment committee and would, therefore, be a permissible delegation. Our determination that the delegation is permissible in no way reflects our opinion as to whether SDW is capable or suitable. Our opinion is not an endorsement or recommendation.

I hope we have been of assistance.

Sincerely,



STEVEN R. BISKER
Assistant General Counsel

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