



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

May 29, 1987

GL/RD:59
4660

Office of General Counsel

Reginald L. Marden, Esq.
23 Central Street
Andover, MA 01810

Dear Mr. Marden:

This responds to your letter concerning an investment management contract between a Federal credit union (FCU) and an investment advisor (the Advisor). I would like to apologize for any delay on NCUA's part in responding to your earlier request. We searched our files and could not locate your original August 19, 1986, letter.

I should point out that NCUA does not normally render opinions on specific agreements between FCU's and third parties. However, we can assist you in making your own determination.

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.

Two issues must be addressed in order to determine whether a particular investment management agreement is permissible for a Federal credit union. First, all of the investments and investment activities covered by the agreement must be permissible for FCU's. Second, it must be determined that the agreement is a permissible delegation of investment authority by an FCU to the investment advisor.

In the agreement between Merrimack Valley FCU (the FCU) and Bay Bank Merrimack Valley, N.A. (the Bank), the Bank would be limited to only those investments listed under 12 U.S.C. §§1757(7)(B) and (7)(E). Provided these are the only investment powers permitted to the Bank, the investment activities would be permissible for an FCU. However, you should note that the investment activities of the Bank must also comply with Part 703 (Investment and Deposit Activities) of the NCUA Rules and Regulations (12 C.F.R. Part 703.) Further, the Bank must meet the requirements under Section 107(8) of the FCU Act (12 U.S.C. 1757(8)). Having reviewed the documents provided us, we question whether the delegation of investment authority is proper for the FCU. We are concerned with, among other things, the type of "investment

FOIA Vol. I Part E 1 Permissible Investments
Vol. III Part A4(a) Delegation of Investment Authority

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management services" that will be provided by the Bank to the FCU. For example, does the phrase above refer to repurchase transactions, forward commitment or futures contracts? As written, the contract is unclear as to whether the investment activities of the Bank would be permissible under the FCU Act and NCUA Rules and Regulations.

The agreement provides that the FCU "will always remain the title holder to these funds [the monies deposited into the Bank]" and the Bank will be "authorized to hold all securities in the name of its nominee and arrange to hold said securities in book entry form." This statement is unclear as to whether the nominee will hold the securities in the name of the FCU, with the Bank as Agent, or whether the nominee will hold the securities in the name of the Bank. The ownership of securities under the control of the Bank or any nominee must be vested in the FCU.

If you have further questions, please contact this Office.

Sincerely,

STEVEN R. BISKER
Assistant General Counsel

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