



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

May 16, 1989

Office of General Counsel

Mr. Mitchell C. Glass
Director of Finance
Eastern Airlines Federal Credit Union
P.O. Box 028532
Miami, FL 33102

Re: Investment in Yankee Dollars (Your
February 9, 1989, Letter)

Dear Mr. Glass:

Your have asked whether a Federal credit union ("FCU") may invest in Yankee Dollar deposits offered by state-licensed branches of foreign banks that are not insured by either the Federal Deposit Insurance Corporation ("FDIC") or the Federal Savings and Loan Insurance Corporation ("FSLIC"). FCU's are not permitted to invest in Yankee Dollars offered by such institutions.

BACKGROUND

Eastern Airlines FCU has been purchasing Yankee Dollar Bankers' Acceptances and Certificates of Deposits issued by state licensed branches of foreign banks. It is your opinion that state licensed branches of foreign banks operating in accordance with the laws of a state in which a credit union maintains a facility are equivalent to Section 107(8) institutions as defined in the FCU Act and the NCUA Rules and Regulations.

FCIA
Vol. I Part (E)(5) Yankee Dollar in
State - licensed financial institution

GC/RIN
3501

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LAWS

Section 107(8) of the FCU Act (12 U.S.C. §1757(8)) provides, in part, that FCU's have the power:

to make deposits in national banks and in State banks, trust companies, and mutual savings banks operating in accordance with the laws of the State in which the Federal credit union does business, or in banks or institutions the accounts of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation....

Section 703.3(g) of the NCUA Regulations (12 C.F.R. §703.3(g)) provides:

(g) A Federal credit union may invest in Yankee Dollar deposits in a branch of a Section 107(8) institution.

Section 703.2(u) of the NCUA Regulations (12 C.F.R. §703.2(u)) defines Yankee Dollar deposit as:

(u) a deposit in a United States branch of a foreign bank licensed to do business in the state in which it is located, or a deposit in a state chartered, foreign controlled bank.

ANALYSIS

On March 30, 1984, the NCUA issued a revised Part 703 of its Regulations (49 Fed. Reg. 12668). The preamble to the final rule discussed Yankee Dollar deposits:

A Yankee Dollar deposit is a dollar denominated deposit in a United States branch or subsidiary of a foreign bank. If the branch or subsidiary is federally insured or operating in accordance with the laws of a state in which the Federal credit union does business, then a Federal credit union deposit in the branch or subsidiary is authorized pursuant to section 107(8) [of] the [Federal Credit Union] Act. Section 703.3(g) of the proposal set forth this authority. It has

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been carried over to the final rule without substantive change. (Emphasis added.)

The preamble to the proposed rule issued on September 22, 1984 (48 Fed. Reg. 43182) also discussed Yankee Dollar deposits:

Yankee Dollar deposits are deposits in United States branches of foreign banks and in United States subsidiaries (of foreign banks) chartered under state law. If the branch or subsidiary is FDIC or FSLIC insured, or is a state bank, trust company or mutual savings bank operating in accordance with the laws of the state in which the FCU maintains a facility ... investment in such an institution (a "Yankee Dollar deposit") is authorized pursuant to the plain language of sections 107(7)(d) and 107(8) of the Act....

Taken alone, a reading of the preamble to the final rule would appear to permit FCU's to invest in Yankee Dollars in federally-insured institutions, state-chartered institutions and state-licensed institutions. This is not the correct result in light of the authority found in the FCU Act and the preamble to the proposed rule. In the preamble to the final rule the NCUA Board stated that there were no substantive changes from the proposed rule. The preamble to the proposed rule restricts FCU investment in Yankee Dollars to FDIC- and FSLIC-insured or state-chartered institutions (banks, trust companies or mutual savings banks) operating in accordance with the laws of the state in which the FCU maintains a facility.

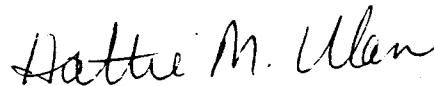
The definition of Yankee Dollar found in 703.2(u) is a general commercial definition and describes what types of institutions offer such investments -- a United States branch of a foreign bank licensed to do business in the state or a state-chartered, foreign-controlled bank. FCU's are permitted to invest in Yankee Dollars offered by specific institutions (Section 107(8) institutions) -- not all institutions offering Yankee Dollars. In our opinion, the FCU Act and NCUA Regulations permit FCU's to invest in Yankee Dollars provided that the financial institution is: (1) insured by the FDIC or FSLIC; or (2) is a state-chartered (i) bank, (ii) trust company, or (iii) mutual savings bank, operating in accordance with the laws of a state in which the FCU maintains a facility.

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The Yankee Dollar investment you describe -- a deposit in a foreign bank licensed to operate in the State of New York, not FDIC or FSLIC insured, and not chartered or incorporated by the State of New York -- does not meet either of the two classifications set forth above. Therefore, such activity is not permissible under the FCU Act or NCUA's Rules and Regulations. If the foreign bank created a subsidiary bank chartered by the State of New York or obtained FDIC or FSLIC insurance, then an FCU could make a permissible Yankee Dollar investment in the institution.

We have consulted with the NCUA's Office of Examination and Insurance concerning this issue. They concur with our opinion. In addition, they believe Yankee Dollar investments in state-licensed institutions would present safety and soundness concerns.

Sincerely,



HATTIE M. ULAN
Assistant General Counsel

RRD:sg