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NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

May 31, 1989

Office of General Counsel

Mr. James L. Geary
President
Security Excel Corporation
1200 Weber Street, Third Floor
Orlando, Florida 32802

Re: Automobile Leasing Program (Your May 2, 1989, Letter)

Dear Mr. Geary:

You have forwarded to this Office further information on the automobile leasing program your company offers to Federal credit unions ("FCU's"). In our April 11, 1989, letter to you, we stated that it is impermissible for an FCU to make a loan to a nonmember leasing company as part of an indirect automobile leasing program it offers to its members. You have asked that we reconsider this position. This position is mandated by the FCU Act which limits FCU's to making loans to members, other credit unions, and credit union service organizations. In order for your program to be permissible for an FCU, the nonmember loan must be deleted. Also, it is unclear to us whether your program satisfies all of the requirements of NCUA's Interpretive Ruling and Policy Statement ("IRPS") 83-3 ("Federal Credit Union Leasing of Personal Property to Members").

ANALYSIS

Loan to Nonmember Leasing Company

As stated in our prior letter to you, your indirect leasing program is not permissible for an FCU since it involves an FCU loan to your leasing company, which is not a member of the FCU. The FCU Act limits FCU loans to members, other credit unions, and credit union service organizations. (See 12 U.S.C. 1757(5).)

You stated that use of the loan between the FCU and nonmember leasing company is beneficial because the terms and responsibilities of the leasing company and FCU are specifically set forth in a "Non-Recourse Note and Security Agreement." We agree

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that the terms of the leasing agreement should be set forth in a written contract between the FCU and leasing company. However, the agreement cannot contain a loan from the FCU to the nonmember leasing company.

Compliance with IRPS 83-3

In our prior letter to you, we stated that you did not provide us with sufficient information to make a determination whether your program was in compliance with IRPS 83-3. This continues to be the case. You did send us numerous documents, including insurance contracts, a lease agreement, and a non-recourse note and security agreement. However, you failed to demonstrate how these documents satisfy the requirements of the IRPS.

We have the following questions about your program:

1. We were unable to locate a definitive statement to the effect that, where a residual value in excess of 25% of the original cost is relied on, the residual value over 25% is insured or guaranteed.

2. IRPS 83-3 requires that an FCU maintain a contingent liability insurance policy with an endorsement for leasing. In an indirect leasing program, this policy can be maintained by the leasing company provided the FCU is a coinsured. The sample contingent and excess liability policy from Providence Washington Insurance Company that you sent us does not list an FCU as an insured party. Also, the form entitled "Insurance Information" lists the Security Excel Corporation rather than an FCU, as an additional named insured.

3. As stated in our prior letter, if an FCU does not have title to the leased automobile in an indirect lease, it must receive an unconditional and irrevocable power of attorney authorizing the FCU to assign at will title to itself or anyone it chooses. It is still unclear to us whether an FCU participating in your program would have this authority.

Should you require a further response from this Office, please provide us with documentation on the items discussed above.

Sincerely,

Hattie M. Ulan

HATTIE M. ULAN
Assistant General Counsel

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