



NATIONAL CREDIT UNION ADMINISTRATION  
Washington, D.C. 20456

Office of General Counsel

GC/MM:sg  
SSIC 3600  
90-0136

March 6, 1990

Mr. Tom Doxey  
RNC Capital Management Co.  
11601 Wilshire Boulevard  
Penthouse Floor  
Los Angeles, California 90025

Re: Delegation of Investment Authority (Your December  
29, 1989, Letter)

Dear Mr. Doxey:

You have asked us whether it is legal for a Federal credit union's ("FCU") board of directors to delegate its investment decisions to an investment advisor, RNC Capital Management Co. ("RNC"). See response below.

ANALYSIS

As you know, all of the investments and investment activities of a particular investment program must be permissible for FCU's under Sections 107(7), (8) and (15) of the FCU Act (12 U.S.C. 1757(7), (8) and (15) and Part 703 of the NCUA Regulations (12 C.F.R. 703) in order for an FCU to participate in a program. For the reasons stated in the enclosed Letter to Credit Unions No. 92, dated August 13, 1987, this Office will not provide an opinion concerning the legality of the investments. In your letter, you stated that all investments would comply with the FCU Act and NCUA Regulations, so that the crux of the issue is the permissibility of the delegation of investment authority.

Section 113(6) of the FCU Act (12 U.S.C. §1761(b)(6)) provides that an FCU's board of directors shall:

. . . have charge of investments including  
the right to designate an investment

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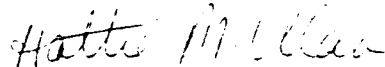
committee of not less than two to act on  
its behalf . . . .

The FCU board must make a proper delegation of its investment authority when entering into an agreement with an investment advisor to make certain investment decisions. We have stated in the past that certain investment decisions may be delegated to an investment advisor. However, an FCU cannot completely delegate out its investment authority. The board of directors must establish an investment policy and monitor compliance with that policy. There is nothing inherently impermissible in the delegation to RNC of some investment authority. An FCU can delegate some investment authority under this program as long as all of the other legal requirements are satisfactorily completed.

In addition to the above-addressed legal requirements, an FCU must determine whether or not a particular program suits its individual investment needs. The determination as to the permissibility of a particular investment program, as well as its suitability for a particular FCU, should be made by the FCU, with the advice of counsel.

This letter should not be interpreted as an approval or endorsement of a particular investment program. It is merely a discussion of the issues to be addressed in making a determination on the legality and suitability of a particular program.

Sincerely,



HATTIE M. ULAN  
Associate General Counsel

Enclosure

# LETTER TO CREDIT UNIONS

NCUA LETTER NO.92

DATE: August 13, 1987

TO THE BOARD OF DIRECTORS OF THE FEDERAL CREDIT UNION ADDRESSED:

In the past, NCUA has responded to requests from broker/dealers, mutual funds, Federal credit unions (FCU's), and others for a determination as to the legality of particular mutual funds (Funds) as FCU investments. For the reasons discussed below, NCUA will no longer issue such opinions.

As you are aware, NCUA has taken the position that mutual funds are permissible investments for FCU's provided that all of the investments and investment practices of the mutual fund are legal if made directly by an FCU. Sections 107(7) and 107(8) of the Federal Credit Union Act set forth the securities, deposits, and other obligations in which an FCU may invest. Part 703 of the NCUA Rules and Regulations places certain limits on the types of transactions that FCU's may enter into in connection with the purchase and sale of authorized securities, deposits, and obligations.

NCUA is aware that some FCU's have invested in mutual funds solely on the basis that NCUA has determined that the Fund is a legal investment. Use of NCUA's legal opinion as the criterion for making an investment raises several concerns. First, an FCU relying solely on NCUA's legal opinion is not determining whether the Fund is an appropriate investment in light of the FCU's current investment portfolio and liability structure. Second, NCUA is concerned that the routine issuing of opinions on mutual funds has indirectly encouraged investment in the funds. Such a result was not intended. The decision to invest in mutual funds should be made based on the individual needs of each FCU. Last, although NCUA has consistently stated that its opinions on the legality of particular mutual funds are not to be interpreted as recommendations or approval of the Funds by NCUA, the opinions have been used by brokers and Funds as a marketing tool. The prospectuses or marketing materials of some Funds incorrectly state that they have been "approved by NCUA", and FCU's have invested in the Funds on this basis.

Accordingly, NCUA has decided that it will no longer issue opinions on the legality of particular funds. NCUA believes that this decision will have a positive effect on FCU investment policies. Those boards of directors which may in the past have

simply relied on NCUA's legal opinions will be encouraged to explore the full range of investment options available, and then make an investment decision that is in the best interests of the FCU. In so doing, they will become more knowledgeable about FCU investment authority and investment restrictions, as contained in the FCU Act and the NCUA Rules and Regulations.

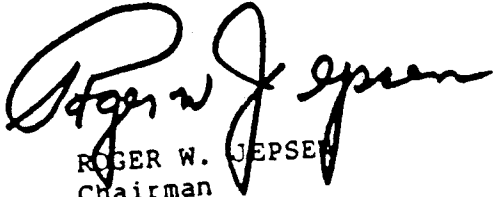
This new policy should not be viewed as NCUA's "abandonment" of FCU's in this area. To the contrary, NCUA's Office of General Counsel and the NCUA Investment Hotline will continue to respond to investment questions requiring an interpretation of the FCU Act and the NCUA Rules and Regulations, in particular the legality of specific direct investments and investment practices. However, the FCU will be responsible for establishing and supporting the legality of any of its investments. If in doubt about a particular investment, FCU's are encouraged to obtain the opinion of qualified legal counsel.

Finally, NCUA is considering requiring that a Fund's prospectus or statement of additional information provide that the type of investments the Fund will make and the Fund's investment practices may only be changed if authorized by majority shareholder vote. Thus, if a Fund changes its investment authority or practices in a manner that will make the Fund impermissible for FCU's, the FCU will have knowledge of the change and can take appropriate steps to divest itself of the Fund.

In the interim, FCU's investing in mutual funds should either invest only in Funds that feature the shareholder vote notice, or continually monitor the Fund to ensure that it remains a legal investment. If the Fund does invest in securities or engage in activities not authorized for FCU's, the credit union must immediately divest its interest in the Fund.

Sincerely,

FOR THE NCUA BOARD

  
ROGER W. JEPSEN  
Chairman

RWJ:sg