



FEDERAL CREDIT UNION ADMINISTRATION

20456

May 23, 1990

Mr. Thomas F. Konop
General Motors Building
767 Fifth Avenue
New York, N.Y. 10153

Re: Permissibility of Investment (Your
April 27, 1990, Letter)

Dear Mr. Konop:

You requested a legal opinion from this Office on the permissibility of a Federal credit union ("FCU") investment in the Lord Abbett Equity Fund. In the past, as a matter of policy, this Office has issued such opinions to members of the public, including credit unions, attorneys and broker/dealers. For the reasons stated in the enclosed Letter to Credit Unions No. 92, dated August 13, 1987, this Office is no longer issuing such opinions.

You also asked whether there is a catchall regulation which would permit an FCU to invest in a fund that has an irrevocable and unconditional guarantee that its initial investment will be returned on a certain date provided that dividends and distributions are reinvested. The statutory investment authority for FCUs is found in Sections 107(7), 107(8) and 107(15) of the FCU Act (12 U.S.C. 1757(7), (8) and (15)) and permits an FCU to invest, among other things, in certain instrumentalities guaranteed by the U.S. Government or an agency thereof. Part 703 of NCUA Rules and Regulations (12 C.F.R. Part 703) interprets and places certain restrictions on these authorities. There is no catchall regulation that would permit an FCU to invest in a fund

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Vol. I, Part E, Govt. Obligations

Mr. Thomas F. Konop
May 23, 1990
Page 2

because of an unconditional guarantee of a return of the initial investment. The investments must be authorized pursuant to the FCU Act and NCUA Rules and Regulations.

Sincerely,



Hattie M. Ulan
Associate General Counsel
Office of General Counsel

Enclosure
GC/MM:sg
SSIC 3601
90-0506

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.

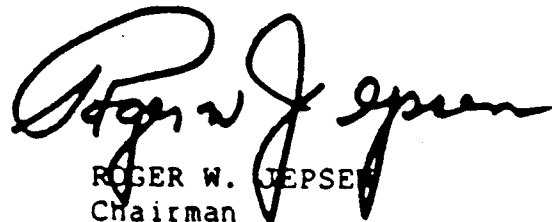
This new policy should not be viewed as NCUA's "abandonment" of FCU's in this area. To the contrary, NCUA's Office of General Counsel and the NCUA Investment Hotline will continue to respond to investment questions requiring an interpretation of the FCU Act and the NCUA Rules and Regulations, in particular 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