June 6, 1990

Jeffrey Hayman, Esq.
Assistant General Counsel & Assistant Secretary
Mead World Headquarters
Courthouse Plaza Northeast
Dayton, Ohio 45463

> Re: Performance Reward Program (Your March 26, 1990,
> Letter)

Dear Mr. Hayman:

You have asked whether a Mead-sponsored performance award program
involving federal credit unions ("FCUs") is legally permissible.
It is not permissible in the present format.

BACKGROUND

Mead is creating a performance award program in which federal
credit unions that serve Mead employees will redeem award
certificates for cash or Mead stock to Mead employees. Mead is
not a member of any of these credit unions. All of Mead's
employees are not members of the FCUs. Mead will provide funds
to participating FCU's to enable them to buy shares of Mead stock
in the name of the credit union. The certificates for the shares
will be kept in the FCUs possession as part of the award program.
When the number of shares is reduced to a specified number, the
FCUs will be provided funds to buy more shares after notifying
Mead.

The FCUs will redeem the award certificates for cash or stock.
If the employee wants cash, the FCUs will provide the Mead em-
ployee with cash and notify Mead of the payment. The FCU will
debit a designated Mead account at the credit union for the
amount distributed to the employee. If the employee wants
shares, the FCU will notify Mead's transfer agent to transfer the
shares to the employee. Mead will reimburse the FCU for any ex-
penses incurred in connection with these transfers.

FOIA

In the event of a liquidation or bankruptcy of the FCU, or if the program is terminated, Mead will agree to buy back any shares still held by the credit union at the same price at which the shares were purchased.

ANALYSIS

Nonmember Deposits

Section 107(6) of the FCU Act (12 U.S.C. 1757(6)) limits an FCU to receiving payments on accounts from:

> its members, from other credit unions, from an officer, employee, or agent of those nonmember units of Federal, Indian Tribal, State or local governments and political subdivisions thereof enumerated in section 207 of this Act . . . and from nonmembers in the case of credit unions serving predominately low-income members . . . .

The FCUs therefore do not have the authority to accept a cash deposit from Mead, a nonmember. Additionally, the FCU's do not have the authority to make disbursements for a nonmember (Mead) to other nonmember employees. If the sponsor (Mead) is added to the field of membership of the FCU, it would alleviate some of the legal objections to the nonmember account problem. The FCU does have the authority to make cash disbursements on behalf of a member to third parties. Cash awards could be made to employees from Mead's share account or a line of credit. However, there may be an additional problem if disbursements exceeded Mead's share account balance.

Stock Transfers

Section 107(4) of the FCU Act (12 U.S.C. 1757(4)) enpowers an FCU "to purchase, hold, and dispose of property necessary or incidental to its operations." Section 107(17) of the Act (12 U.S.C. 1757(17)) empowers an FCU "to exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated. This "incidental powers" authority includes the power to do what "is convenient or useful in connection with the performance of one of the established activities pursuant to its express powers. . . ." Arnold Tours v. Camp, 472 F.2d 427 (1st Cir. 1972).
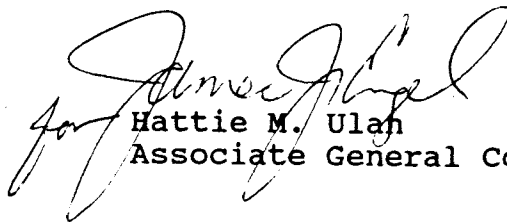
Holding and distributing stock is only authorized if it is incidental to some express power of the FCU. Under the award program outlined above, this stock option does not seem to be incidental to any express power of the FCU. Unless the stock portion of the award program can be tied to some express power of the FCU, it is not permissible.

Sincerely,

for Hattie M. Ulan
Associate General Counsel

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