

April 26, 2006

Dale Verderano, CEO/President
Matadors Community Credit Union
20045 Prairie Street
Chatsworth, CA 91311

Re: Permissibility of Investment in Mutual Fund for a 457(f) Plan.

Dear Mr. Verderano:

You asked if it is permissible for your federally-insured state-chartered credit union (FISCU) to invest in a mutual fund as the underlying investment for a 457(f) plan. We have addressed this issue on several previous occasions in a federal credit union (FCU) context and also for a federally-insured state-chartered corporate credit union. Using a similar analysis to address your question, we conclude the investment is permissible under NCUA's regulations when made for an employee benefit purpose and a FISCU need not establish a special reserve.

An FCU has statutory and regulatory authority to compensate its officers and employees. 12 U.S.C. §1761b(12); 12 C.F.R. §701.19. Under this authority, investments made by an FCU to fund an employee benefit obligation are not subject to the investment limitations stated in the Federal Credit Union Act (Act) and NCUA regulations. Consequently, an FCU can invest in instruments that are otherwise impermissible provided the investment directly relates to the FCU's employee benefit obligation. OGC Opinion Letter 05-0117 (January 13, 2005), (permitting the use of a split dollar life insurance fund); OGC Opinion Letter 99-1109 (May 11, 2000), (permitting investment in a mutual fund).

The Act and our regulations limit investments by federally-insured corporate credit unions, including state-chartered corporate credit unions. 12 U.S.C. §1757(7); 12 C.F.R. §704.5. While corporate credit unions are subject to restrictions on investments made on their own behalf, we determined these restrictions did not apply to investments made for employee benefit purposes. Additionally, we expressed the view that this analysis applies to state-chartered corporate credit unions assuming state law confers an analogous authority to provide employee benefits. OGC Opinion Letter 00-1053 (December 27, 2000), (permitting a corporate to hold an investment contract). The referenced letters are available on our website.

Our analysis for a natural person FISCU differs slightly from the analysis used for an FCU and a federally-insured corporate. Generally state law, and not federal law, determines what investments are permissible for a natural person FISCU,

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however, if state law authorizes a FISCO to make an investment beyond what is authorized under the Act or our regulations, the FISCO must establish and maintain a special reserve for non-conforming investments. 12 C.F.R. §741.3(a). Since the Act and our regulations authorize investments for employee benefit purposes, the special reserve requirement does not apply.

We defer to your state supervisory authority regarding the permissibility of your investment under state law. We also defer to other federal and state authorities concerning the applicability of laws such as the Employee Retirement Income Security Act and the Internal Revenue Code to your investment.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/LKD:bhs
06-0406