

December 4, 2002

Michael J. Kapp, Jr., Vice President
ING FNC
100 Passaic Avenue
One Greenbrook Corporate Center
Fairfield, New Jersey 07004

Re: Bank Notes.

Dear Mr. Kapp:

You have asked if a federal credit union (FCU) may purchase a bank note with an original weighted average maturity of ten years if the remaining maturity is less than five years. No, an FCU is only permitted to purchase a bank note with an original weighted average maturity of less than five years. You also have asked if NCUA distinguishes between different kinds of bank notes such as senior and subordinated bank notes. Yes, only bank notes that conform to NCUA's regulatory requirements and definition of bank notes are permissible investments for FCUs. These do not include subordinated bank notes as you have described them.

FCUs may invest in bank notes if they constitute deposits permissible under the FCU Act and NCUA's investment regulation. The FCU Act permits FCUs to make deposits in national banks and in state banks, trust companies, and mutual savings banks operating in accordance with the laws of the state in which the FCU does business, or in banks or institutions the accounts of which are insured by the FDIC. 12 U.S.C. 1757(8). In determining whether an instrument, including a bank note, constitutes a deposit for purposes of §107(8), NCUA has generally looked to the definition of deposit in the Federal Reserve Board's Regulation D (Reg D). 12 C.F.R. §204.2.

NCUA's investment regulation defines bank note as "a direct, unconditional, and unsecured general obligation of a bank that ranks equally with all other senior, unsecured indebtedness of the bank, except deposit liabilities and other obligations that are subject to any priorities or preferences." 12 C.F.R. §703.150. NCUA permits FCUs to purchase "bank notes with original weighted average maturities of less than five years." 12 C.F.R. §703.100(h)(5). Bank notes with original weighted average maturities of five years or greater are not permissible investments for FCUs, even if the remaining maturity is less than five years.

As noted above, NCUA defines bank notes, in part, as having equal ranking with all other senior, unsecured indebtedness of the bank. During a telephone conversation with staff, you described subordinated bank notes as those that rank less than equally with all other senior, unsecured indebtedness of the bank. Subordinated bank notes, as you described them, are not permissible investments for FCUs.

You also have asked us to review four summaries from a financial information service company that describe various bank notes to determine if they are permissible investments for FCUs. First, we note that these summaries do not contain sufficient information to make a determination. Further, our office's longstanding policy is not to review individual investments for prior approval but to provide guidance and legal interpretations that enable FCUs and their own investment or legal counsel to make these determinations.

Sincerely,

Sheila A. Albin
Associate General Counsel

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