

## **SOUTHWEST CORPORATE FEDERAL CREDIT UNION**

**Publicly Available May 31, 1983**

### **SEC LETTER**

**Advisers Act Sec. 202(a)(11)**

**April 28, 1983**

**Our Ref. No. 83-41-CC  
Southwest Corporate Federal Credit Union  
File No. 132-3**

Based on your foregoing representations, we cannot assure you that we would not recommend any enforcement action under the Investment Advisers Act of 1940 ("Advisers Act") against Southwest Corporate Federal Credit Union ("Southwest Corporate") if it proceeds with its proposed cash management program without registering under the Advisers Act. The fact that Southwest Corporate's proposed fee would reasonably approximate the "costs of investment, management, wire transfer and safekeeping services incurred" does not mean that the fee would not satisfy the element of compensation in the definition of "investment adviser" in section 202(a)(11) of the Advisers Act. This element is satisfied by the receipt of any economic benefit. See Investment Advisers Act Release No. 770, August 13, 1981.

Stanley B. Judd  
Deputy Chief Counsel

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### **INCOMING LETTER**

**April 8, 1983**

**Securities and Exchange Commission  
Judiciary Plaza  
450 Fifth Street, N.W.  
Washington, D.C. 20549  
Attention: Ms. Karen Burgess  
Division of Market Regulation  
Office of Chief Counsel**

**Re: Amended Request for No-Action  
Re: Southwest Corporate Federal Credit Union  
Re: Securities Exchange Act of 1934-3(a)(12), 15(a)(1)  
Re: Investment Advisors Act of 1940-202(a)(11), 203(a)**

Gentlemen:

Please consider this letter to amend in its entirety our previous request letter dated December 29, 1982. It reflects amplified consultation with our client in an effort to more completely describe pertinent facts requested by the Commission's staff in recent conversations.

We are acting as special counsel in connection with the introduction of a cash management program (the "Program") offered by Southwest Corporate Federal Credit Union, a federally chartered credit union ("Southwest Corporate"), to approximately 15 to 20 of its member credit unions located in Texas, Arkansas, Louisiana and New Mexico.

Southwest Corporate was chartered in 1975 to serve state and federally chartered credit unions in

Texas, Arkansas, Louisiana and New Mexico. As of December 31, 1982, Southwest Corporate had assets of \$532 million and almost 1,600 member credit unions. Southwest Corporate is part of a national network of 42 corporate credit unions with combined assets in excess of \$8 billion. Corporate credit unions act as financial intermediaries in providing member credit unions with credit, investment, correspondent and information services.

Regulated by the National Credit Union Administration, Southwest Corporate is also subject to certain regulations of the Federal Reserve System. The National Credit Union Administration currently has the Program under review and Southwest Corporate expects the Program to receive its approval. In 1980, Southwest Corporate received a determination of the Board of Governors of the Federal Reserve System of its status as a "bankers' bank" within the meaning of the Board's Regulation D (Reserve Requirements of Depository Institutions), 12 C.F.R. § 204.121 (1982). As a "bankers' bank," Southwest Corporate meets all of the criteria promulgated by the Board of Governors under said Regulation D.

Under the Program, Southwest Corporate would provide the following services:

1. Asset-liability management planning service. Southwest Corporate would consult with participating member credit unions regarding their asset-liability structure, cash flow requirements, liquidity needs, investment diversification and earnings needs. From this planning service, investment guidelines would be developed and approved by the participating credit union.
2. Investment service. Southwest Corporate would assist participating member credit unions in investing surplus cash in the financial markets. Each participant would have an approved list of acceptable institutions. Southwest Corporate would assist in the development of the list, and would monitor it on a periodic basis. Investments would be made, on behalf of members, in instruments on the approved list. Investments would be limited to U.S. government obligations, federal agency securities guaranteed as to interest and principal, deposits in banks insured by the FDIC, deposits in savings and loan associations insured by the FSLIC, deposits in mutual savings banks, federal funds obligations of banks, and deposits in other credit unions including Southwest Corporate. There would be separate accounting for all investment transactions which would be detailed on a monthly report provided by Southwest Corporate to participating credit unions. All investment transactions would be approved by a designated official of the member credit union before being consummated. Such transactions would also be confirmed on the monthly statement. Southwest Corporate would purchase the investments directly from the issuers or through broker-dealers, for the account of the member credit union. Southwest Corporate would not earn a commission or fee for purchasing or selling investments.
3. Credit analysis program. Southwest Corporate would perform credit analysis, using a formalized rating program, of the issuers of the investments purchased by member credit unions. With this program, a participating credit union could obtain a credit file for certain institutions represented in its investment portfolio.
4. Security safekeeping and clearing service. The investments of participating credit unions would be placed in safekeeping by Southwest Corporate in a designated third party safekeeping institution. Southwest Corporate would handle all necessary arrangements with the safe-keeping institution including agreements, instructions, and record-keeping. Southwest Corporate would provide wire transfer of funds for purchases of investments.
5. Internal management of deposits held at Southwest Corporate. Account balances would be monitored and analyzed by Southwest Corporate to ensure that sufficient balances are maintained to avoid overdrafts, while at the same time maximizing the use of higher yield accounts to the extent possible.

A monthly Program activity fee would be charged to participating credit unions on the basis of the number of institutions analyzed under the credit analysis program, the number of investments made on behalf of the participant, the amount of securities in safekeeping, and the time spent in consultation by telephone or on-site. Such regular monthly fee would reasonably approximate the additional costs of investment, management, wire transfer and safekeeping services incurred as a result of the Program.

Participating credit unions might also be required to maintain certain minimum account balances.

The Program will be available to only selected member credit unions who have demonstrated a need for such a service due to the size of their investment portfolio. Initially the program may be offered to only two or three credit unions on a pilot basis, with later expansion to include possibly 15 to 20 credit unions.

Based upon the foregoing, we are of the opinion that Southwest Corporate would not be required to register as a broker or dealer pursuant to Section 15(a)(1) of the Securities Exchange Act of 1934 (the "1934 Act"). We do not believe that Southwest Corporate would be "engaged in the business" of acting as a broker or a dealer since its activities on behalf of members would consist primarily of credit and similar financial intermediary services consistent with its role as a corporate credit union. Any investment services would be only incidental to the existing full range of services performed by Southwest Corporate for member credit unions. Further, substantially all of the securities purchased or sold by Southwest Corporate under the Program for the account of member credit unions would be deemed exempt securities within the meaning of Section 3(a)(12) of the 1934 Act.

We are further of the opinion that registration by Southwest Corporate as an investment advisor pursuant to Section 203(a) of the Investment Advisors Act of 1940 (the "Advisors Act") would not be required. We note specifically that the definition of an "investment advisor" in Section 202(a)(11) of the Advisors Act expressly indicates that the services of an investment advisor are performed for compensation; whereas Southwest Corporate would receive no special remuneration for its investment services.

We believe our opinions set forth above are wholly consistent with the staff's position in Gary Robben & Associates, Inc. (avail. November 7, 1982) and Cooperative Central Bank (avail. May 26, 1978).

Accordingly, we respectfully request your advice as to whether you would recommend that no action be taken by the Commission if the Program were offered initially to two or three member credit unions and then later to approximately 15 to 20 of Southwest Corporate's member credit unions, in reliance on our opinion, without registration under the 1934 Act or the Advisors Act. We would greatly appreciate receiving your advice as soon as practicable.

If further information is needed, please do not hesitate to contact the undersigned at (214) 748-7211.

Very truly yours,

Bruce H. Hallett