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~~Confidential Treatment Requested by Dechert, Washington, D.C. on Behalf of
Evangelical Christian Credit Union~~

WAIVED

September 21, 2001

Jonathan Katz
Secretary
Office of the Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549

Re: Application for Exemption, Pursuant to §§ 15 and 36
of the Securities Exchange Act, from Registration and
Regulation as a Broker-Dealer

Dear Mr. Katz:

We are writing to you on behalf of Evangelical Christian Credit Union ("ECCU"), a mutual benefit corporation chartered as a credit union under California state law. ECCU requests an exemption pursuant to Section 15(a)(2) and Section 36(a) from the broker-dealer registration requirements of Section 15(a)(1) of the Securities Exchange Act of 1934, as amended (the "Exchange Act" or the "Act") and the reporting and other requirements specifically imposed on broker-dealers by the Act, if ECCU offers its member institutions a sweep account service (the "sweep account") in the manner described below without registering as a broker-dealer. As set forth more fully below, we believe that the proposed arrangement is consistent with the policies and purposes underlying Section 15, and therefore believe it would be appropriate for the Securities and Exchange Commission (the "Commission") to grant the relief requested.

~~ECCU also requests confidential treatment pursuant to Rule 81(b) of the Commission's Regulations Concerning Information and Requests for 120 days from the issuance of any written response by the Commission. ECCU represents that this request for an exemption and the Commission's response to this request include sensitive, confidential and proprietary information which is not available to the public from any other source.~~

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Founded in 1964, ECCU currently has \$237 million in member deposits (\$292 million in total assets)¹ and serves evangelical institutions from all 50 states. As a state-chartered credit union, ECCU's primary regulator is the California Department of Financial Institutions. ECCU accounts are insured by the National Credit Union Administration ("NCUA"), a federal governmental agency. ECCU is headquartered in Anaheim, California and maintains a regional office in Colorado Springs, Colorado. To become a member and utilize the services of a credit union, individuals or organizations must fit within the credit union's field of membership through the sharing of a common bond of association. In ECCU's case, this shared association consists of a common statement of faith and ECCU's members accordingly consist of evangelical Christian churches, ministries, and other institutions ("member institutions"). Member institutions are commonly structured as corporations or unincorporated associations and as religious, donor-based, non-profit organizations under §501(c)(3) of the Internal Revenue Code. Over 96% of the member institutions are so structured. The sweep account services described in this exemptive application would not be available to retail consumers but only to ECCU member institutions.

ECCU believes that its member institutions would greatly benefit from a money market sweep account program offered through ECCU. Typically, member institutions are funded primarily by cyclical donor cash-flows with year-end seasonal donations often providing substantial funding for their annual budget. Member institutions generally maintain conservative policies on borrowing. Further, they must comply with strict internal limitations on the selection of permissible investments for their surplus funds. As a result, during surplus periods they often carry balances in their ECCU transaction accounts significantly above their institutional needs for currently available funds. The safety, liquidity and (as compared to bank or credit union accounts) enhanced yields offered by the underlying money market mutual funds available through the proposed sweep account would be especially attractive to ECCU member institutions.

I. Summary of the Law and Request for Relief

As described in greater detail below, Section 15(a) of the Exchange Act generally requires registration of individuals or entities that fit within the statutory definition of brokers or dealers in, respectively, Sections 3(a)(4) and 3(a)(5) of the Act. The operation of a sweep account by a depository institution implicates broker-dealer registration in that, under the typical sweep account arrangement, deposit account customers instruct the institution to automatically invest their excess account balances, usually in shares of a money market mutual fund.² The depository institution may thus be deemed to be "effecting" transactions in securities for the account of others.

¹ Figures are as of December 31, 2000.

² The deposit account and the money market mutual fund are then linked so that money "sweeps" automatically back and forth between the two, maintaining a set minimum balance

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Pursuant to exceptions from the Section 3(a)(4) and 3(a)(5) definitions of brokers and dealers, banks have been able to operate sweep accounts without registering as broker-dealers under the Act.³ Credit unions have not been able to extend these benefits directly to credit union members because credit unions are not similarly excepted from the Exchange Act.⁴

The Gramm-Leach-Bliley Act of 1999 (the "GLB Act")⁵ eliminates the bank "status" exceptions in Sections 3(a)(4) and 3(a)(5) of the Exchange Act, but specifically permits banks to operate no-load money market sweep accounts without registering as broker-dealers, within certain parameters (the "GLB Act Sweep Account Exception").⁶ The Commission on May 11, 2001 issued Interim Final Rules intended to clarify the applicability of the GLB Act's eleven bank activity exceptions, including the GLB Act Sweep Account Exception⁷. Most relevant to this request for exemptive relief are new Interim Final Rules 3b-17(e) and (f) which, respectively, define the terms "money market fund" and "no-load."

As set forth below, ECCU proposes to offer a sweep account that satisfies the parameters of the GLB Act Sweep Account Exception and Interim Final Rules 3b-17(e) and (f) -- *i.e.*, on terms and conditions such that, if ECCU were a bank instead of a credit union, the sweep account would not necessitate broker-dealer registration or regulation. On ECCU's behalf, we therefore respectfully request that the Commission exempt ECCU pursuant to Section 36(a) of the Exchange Act to permit it to operate the proposed sweep account without registration or regulation as a broker-dealer.

in the deposit account while excess balances (*e.g.*, balances above a specified target level) are automatically invested in the money market mutual fund.

³ Bank regulators have long permitted banks to operate sweep accounts. *OCC Banking Circular 218* (October 31, 1986) (Permissibility of Sweep Arrangement); *Opinion Letter from Comptroller of the Currency James E. Smith* (June 10, 1974). Sweep accounts are also specifically permitted for federal thrift institutions, but on a more limited basis than for banks. *OTS Memorandum P-98-1* (March 2, 1998) (Permissibility of Sweep Arrangements) (noting that thrift/mutual fund sweep arrangements require an intermediary, typically an affiliated service organization or a third-party).

⁴ *See, e.g., IBM Interstate Employees Federal Credit Union* (pub. avail. June 3, 1988) (federally chartered credit union not within the definition of a bank in Section 3(a)(6) of the Act).

⁵ Gramm-Leach-Bliley Act of 1999 (Nov. 12, 1999), P.L. 106-102, 113 Stat. 1338.

⁶ *See* Section 3(a)(4)(B)(v) of the Exchange Act, added by Section 201 of the GLB Act.

⁷ *See* Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, Release No. 34-44291, 66 Fed. Reg. 27760 (May 18, 2001) ("Adopting Release").

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II. ECCU's Proposal: To Offer No-Load Mutual Fund Sweep Accounts in Conjunction with Federated Securities Corp., a Registered Broker-Dealer

The primary purpose of ECCU's proposed sweep account is to meet the unique needs of ECCU's member institutions. As noted above, many ECCU member institutions are funded by cyclical donor cash-flows, with year-end seasonal donations often providing substantial funding for their annual budget. Member institutions generally maintain conservative policies on borrowing. Further, they have strict internal limitations on the selection of permissible investments for surplus funds. As a result, during surplus periods they often carry balances in their ECCU transaction accounts significantly above their institutional needs for currently available funds. Thus, many ECCU member institutions would benefit from the cash management services provided by the proposed sweep account.

The sweep account would be operated substantially as follows:

- *Program Generally.* ECCU proposes to offer its member institutions a sweep account linking a member institution's ECCU transaction account ("Transaction Account") with an omnibus account ("Omnibus Sweep Account") maintained with Federated Securities Corp. ("FSC") and representing the interests of ECCU member institutions in one or more no-load money market mutual funds sponsored by Federated Investors, Inc. ("Federated")⁸. ECCU would establish minimum and maximum Transaction Account balances and, within these parameters, would automatically either transfer member institutions' funds into the Transaction Account from the linked Omnibus Sweep Account or into the linked Omnibus Sweep Account from the Transaction Account, as the case may be, on a daily basis. All securities transactions would be effected through FSC, a registered broker-dealer that serves as principal underwriter for the funds. The sweep mechanism itself would be operated by software provided by Open Solutions, Inc., a provider of core applications for small and medium sized banks. Sweep account statements reflecting fund share transactions and holdings would be generated and distributed monthly by ECCU. These statements would identify ECCU as the originating depository institution and would list redemptions and purchases, dividend postings, initial and ending balances, and the sweep account's 30-day net yield.
- *ECCU Support Activities.* Pursuant to a "Mutual Funds Service Agreement" (the "Service Agreement") among ECCU, Federated Securities Corp. ("FSC")

⁸ Federated currently has sweep account arrangements with over 300 banks nationwide, and all these arrangements are operated on a basis similar to that proposed by ECCU. As suggested in footnote 169 of the Adopting Release, ECCU will obtain from each fund that ECCU makes available through the sweep program written confirmation that the fund is a "no load" "money market fund" as those terms are defined in Interim Final Rules 3b-17(f) and 3b-17(e), respectively.

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and Federated Shareholder Services Corp. ("FSSC"), ECCU (and unregistered persons employed by ECCU) would engage only in limited shareholder servicing and support activities with respect to the sweep account program. These would be the same types of activities typically engaged in by banks and their unregistered personnel in connection with bank sweep account programs. ECCU would open the Omnibus Sweep Account and review Omnibus Sweep Account activity regularly, and open, close and maintain member institution sweep accounts. For active sweep accounts, ECCU personnel would provide balance, yield and transaction information when requested by a member institution.

While ECCU generally advertises its services and products as permitted by applicable law, it would engage only in limited promotional activities with respect to the proposed sweep service. Promotional activities principally would consist of direct mailings concerning the sweep service to institutions that currently are ECCU members. ECCU may also advertise the availability of its sweep service to a limited extent in trade publications that target institutions eligible for ECCU membership. In response to inquiries from member or potential member institutions, unregistered persons employed by ECCU may describe the sweep service and, in general terms, the type of investment vehicle (i.e., money market mutual fund) available through the program, but will not discuss the attributes or merits of the funds themselves nor make any recommendations concerning the funds. ECCU also would maintain and distribute current copies of fund prospectuses and shareholder reports. All sales materials used in connection with the funds will be prepared by FSC, in accordance with the applicable requirements of the Commission and of NASD Regulation, Inc. ("NASDR") To the extent required, all such materials are submitted for review by NASDR. In the event questions arise about the funds that are not answered in the funds' prospectuses or shareholder reports or in Federated sales materials, such questions would be referred to registered personnel at FSC.

- Compensation. As described in their prospectuses, the participating Federated funds pay Federated a management fee of 0.20% of fund net asset value *per annum* and also reimburse Federated for certain operating expenses incurred in connection with the funds.⁹ Federated will not pass through to ECCU any portion of its management fee or operating expense reimbursements received from the funds. In consideration of the shareholder servicing and support activities conducted by ECCU pursuant to the Service Agreement, as described

⁹ Operating expenses for the funds currently contemplated for the sweeps program are estimated to be approximately 0.10% of fund net asset value *per annum*. See the Institutional Service Shares prospectus dated September 30, 2000 for Federated's Money Market Obligations Trust, which includes the Prime Obligations Fund and Treasury Obligations Fund.

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above, the funds, through FSC or FSSC, will pay ECCU an administrative services fee not to exceed 0.25% annually of the net asset value of shares invested in the funds through the Omnibus Sweep Accounts. The 0.25% administrative services fee that ECCU will receive from the funds may or may not be characterized as “charges against net assets for sales or sales promotion expenses and personal service or the maintenance of shareholder accounts” for purposes of Interim Final Rule 3b-17(f) and thus capped at 0.25% per annum. However, even assuming that all of that fee is so characterized, ECCU understands that the funds will not pay any other fees that would be similarly characterized. ECCU will not receive payments other than this 0.25% on assets either from Federated or its affiliates or from the funds. Accordingly, the funds should qualify as “no load” funds. In addition, as noted earlier and as suggested by footnote 169 of the Adopting Release, ECCU will obtain written confirmation from Federated that the funds made available through the sweep program are “no load” “money market funds” for purposes of Interim Final Rules 3b-17(e) and (f).

ECCU will charge member institutions participating in the sweep program fees for establishing and maintaining the sweep feature in connection with their Transaction Accounts and performing the sweep functions. In this respect, ECCU notes that the text accompanying footnote 169 of the Adopting Release expressly states that Interim Final Rule 3b-17(f) “would not prevent a bank from directly charging its customers for the bank’s sweep services, because such direct charges would have no effect on whether the fund is a ‘no-load’ fund.” ECCU will charge each member institution a flat, monthly, cash management service fee for the sweep service. In addition, ECCU will charge member institutions a fee not to exceed 1.00% *per annum* on balances maintained in the funds through their sweep accounts. These fees will be set up, charged and disclosed to member institutions in accordance with regulations applicable to ECCU as a credit union and in the same manner as other fees associated with transaction products currently offered by ECCU.

- Disclosures. All sales material relating to the funds that may be directed to ECCU member institutions or potential member institutions will contain a legend prominently disclosing as follows: “May Lose Value. Not NCUA Insured. Not Credit Union Guaranteed. Not an Obligation of the Credit Union.” The financial relationship between ECCU and Federated (and the fact that they are separate business organizations) will, in all cases, be disclosed to ECCU members. Similarly, FSC’s role in connection with all brokerage activities for the sweep account program will be disclosed to ECCU members.

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III. Discussion and Legal Analysis

**A. Subject to the limitations of the GLB Act Sweep Account
Exception applicable to banks, credit unions should be able to
directly provide member institutions with the benefits of sweep
accounts without registering as broker-dealers.**

Section 15(a) of the Exchange Act generally requires registration of individuals or entities that fit within the statutory definition of brokers or dealers in, respectively, Sections 3(a)(4) and 3(a)(5) of the Exchange Act. Section 3(a)(4)(A) generally defines a broker as “any person engaged in the business of effecting transactions in securities for the account of others.” Section 3(a)(5)(A) similarly defines a dealer generally as “any person engaged in the business of effecting transactions in securities for such person’s own account through a broker or otherwise.” The operation of a sweep account by a depository institution implicates broker-dealer registration in that, under the typical sweep account arrangement, deposit account customers instruct the institution to automatically invest their excess account balances, usually in shares of a money market mutual fund. The depository institution may thus be deemed to be “effecting transactions in securities” for the account of others.

Prior to the adoption of the GLB Act, however, banks were specifically excepted from the Section 3(a)(4) and 3(a)(5) definitions of brokers and dealers, and thus were able to operate sweep accounts without registering as broker-dealers under the Act.¹⁰ In recent years, sweep accounts have become a popular and widespread bank product, increasing the potential returns for bank customers on deposited funds and permitting bank customers to more efficiently manage their deposit account balances. Other depository institutions, such as credit unions and thrifts, have not been able to rely on the bank exception because they have been found not to be “banks” within the meaning of the Section 3(a)(6) definition of the term.¹¹ This has prevented credit unions from operating sweep accounts and, therefore, from extending the benefits of these programs to credit union members.

¹⁰ Banking regulators permit banks to operate sweep accounts. *See supra* note 3. Similarly, senior staff of the California Department of Financial Institutions, ECCU’s principal regulators, have indicated that the Department would permit California state-chartered credit unions to operate sweep accounts and that no state law issue exists that would prevent the Department from taking such a position formally, if requested to do so. ECCU will obtain any necessary regulatory authorizations before proceeding with the sweep account proposal.

¹¹ *See, e.g., IBM Interstate Employees Federal Credit Union* (pub. avail. June 3, 1988) (federally chartered credit union not within the definition of a bank in Section 3(a)(6) of the Act); *Ameriway Savings Assoc.* (pub. avail. Apr. 28, 1986) (Texas-chartered savings and loan with trust powers not within the definition of a bank in Section 3(a)(6) of the Act); *AmeriFed Federal Savings Bank* (pub. avail. Jan. 18, 1990) (federally regulated savings bank not within the definition of a bank in Section 3(a)(6) of the Act).

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As discussed below, ECCU believes that the proposed sweep account program would, if offered by a bank, not necessitate registration as a broker-dealer. Congress' judgment in the GLB Act suggests that sweep account activities within the scope of that Act are not inappropriate to a depository institution, even absent registration. As with a bank, it would be burdensome and impracticable, for these limited purposes, for ECCU to register and undertake ongoing compliance responsibilities as a broker-dealer. We nonetheless believe it is consistent with the Commission's investor protection concerns under the Exchange Act to permit ECCU to provide the sweep service to its member institutions in a manner substantially similar to that permitted banks by Congress.

B. ECCU's sweep account proposal is within the bounds of the GLB Act Sweep Account Exception.

The GLB Act eliminated the status exemption available to banks in Sections 3(a)(4) and 3(a)(5) of the Exchange Act, replacing it with eleven bank activity exceptions, including an exception applicable to certain sweep account programs. The GLB Act thus reflects a Congressional judgment that bank sweep accounts, if operated in accordance with that Act's provisions, involve such limited broker-dealer activity that they should not require broker-dealer registration by the bank.

Under the GLB Act Sweep Account Exception, a bank is excepted from the Section 3(a)(4) definition of a broker if the bank "effects transactions as part of a program for the investment or reinvestment of deposit funds into any no-load, open-end management investment company registered under the Investment Company Act of 1940 that holds itself out as a money market mutual fund."¹² Interim Final Rule 3b-17(e) defines a "money market fund" as "an open-end management investment company that is registered under the Investment Company Act of 1940 . . . that is regulated as a money market fund under [Rule 2a-7]." Interim Final Rule 3b-17(f) defines the term "no load" similarly to NASD Rule 2830 (the "Investment Company Rule"),¹³ providing that the term no-load means

(i) [p]urchases of the investment company's securities are not subject to a sales load, as that term is defined in Section 2(a)(35) of the Investment Company Act of 1940 . . . , or a deferred sales load, as that term is defined in [Rule 6c-10]; and

¹² Section 3(a)(4)(B)(v) of the Exchange Act, added by Section 201 of the GLB Act.

¹³ Courts and commentators have stated that, under established principles of statutory interpretation, "terms of art used in a statute are presumed to have their technical meaning" in the absence of legislative intent to the contrary or other overriding evidence of a different meaning. 2A Norman J. Singer, *Sutherland Statutory Construction* § 47.29 (5th ed. 1992). See also, e.g., *Corning Glass Works v. Brennan*, 417 U.S. 188, 201 (1974), quoting *Greenleaf v. Goodrich*, 101 U.S. 278, 284 (1880) ("where Congress has used technical words or terms of art, 'it is proper to explain them by reference to the art or science to which they are appropriate'"). For this reason, it is appropriate to look to the customary industry usage for an understanding of the term "no load."

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(ii) the investment company's total charges against net assets for sales or sales promotion expenses and personal service or the maintenance of shareholder accounts do not exceed 0.25 of 1% of average net assets annually and are disclosed in the money market fund's prospectus."¹⁴

ECCU's sweep account proposal is thus firmly within the proper bounds of the GLB Act Sweep Account Exception and Interim Final Rules 3b-17(e) and (f). With administrative service fees paid by the underlying money market fund(s) limited to 0.25% of average fund net assets annually, and the written confirmation that ECCU will obtain from the funds (as suggested by 169 of the Adopting Release) that the funds are "no load" "money market funds" for purposes of Interim Final Rules 3b-17(e) and (f), ECCU's sweep program would satisfy the GLB Act Sweep Account Exception were ECCU a "bank". In addition, with respect to the sweep account program, ECCU and its unregistered personnel would engage only in limited support and promotional activities of the type typically engaged in by banks and their unregistered personnel in connection with bank sweep account programs. Finally, ECCU would be compensated by the funds only for its shareholder servicing and support activities in connection with the proposed program, and by its member institutions through fees for maintaining the sweep account and performing sweep functions. Fees charged to member institutions would be imposed in the same manner as other fees currently associated with the credit union transaction products offered by ECCU.

C. Permitting ECCU to offer sweep account programs in accordance with its Sweep Account Proposal is consistent with post-GLB Act federal securities laws.

ECCU submits that, notwithstanding past interpretations that the bank exception from broker-dealer registration was available only to Section 3(a)(6) banks, ECCU's sweep account proposal is consistent with the requirements of the post-GLB Act federal securities laws. Further, ECCU believes that granting the requested exemption from broker-dealer registration and regulation to permit ECCU to provide the proposed sweep service, on the terms and conditions described in this application, is in accord with the Commission's goals of promoting investor protection. Most importantly, in this regard, all securities transactions in connection with the sweep service will be effected by a registered broker-dealer subject to the various consumer protection provisions of the Exchange Act.


¹⁴ Interim Final Rule 3b-17(f)(1).

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IV. Request for Relief

For the reasons stated above, we ask that the requested exemptive relief be granted. If you need further information regarding this request, please do not hesitate to contact me at (202) 261-3348, or David Harris at (202) 261-3385. Thank you for your attention to this matter.

Sincerely,



Paul Schott Stevens

cc: Mark Jones
Randy Moore
Eugene Maloney
David Harris
Catherine McGuire, Associate Director
and Chief Counsel, Division of Market
Regulation