

July 12, 2005

Ms. Mary Rupp  
Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314-3428

**RE: Proposed Interpretive Ruling and Policy Statement No. 05-1**

Dear Ms. Rupp,

Please accept this letter as comment on the proposal of the National Credit Union Administration ("NCUA") to adopt Interpretive Ruling and Policy Statement ("IRPS") regarding sales of Nondeposit Investments which, if adopted, will replace the NCUA Letter to Credit Unions No. 150.

Wright-Patt Credit Union, Inc., is a state-chartered, federally insured Credit Union headquartered in Fairborn, Ohio. Our comments to the IRPS proposal are based on our belief that this proposal will place an excessive burden on credit unions like ours and that it is out of proportion to any demonstrated need for such regulation.

Our opposition is summarized as follows. The IRPS:

1. Is not practical since our credit union does not have staff qualified to undertake the specialized compliance functions called for in the proposal; and
2. Is not necessary since our broker/dealer partner already provides the very compliance monitoring methods contained in the proposal, oversight of which is already provided by the various regulatory agencies overseeing securities sales; and
3. Will be expensive for our credit union to implement given the need to hire specialized and trained staff to perform its requirements; and
4. Will almost assuredly increase our liability for offering investment activities, and not reduce such liabilities as is the professed goal of the proposal.



### **Regulatory Flexibility Act**

We do not agree with NCUA's assertion that the IRPS will not have a significant economic impact on credit unions. The requirements of the letter are such that many credit unions, likely ours included, will be forced to hire specialized staff with the requisite securities knowledge and experience to effectively conduct these compliance functions. To think otherwise underestimates the complexity of the securities sales process.

It is also likely that any credit union employee responsible for compliance would need to be licensed and subject to continuing education requirements in order to have a working knowledge of their tasks. Yet, such individual licenses may only be held by NASD registered broker/dealers, making it impossible for credit unions who are not their own broker/dealer to maintain such licensing for its employees.

Finally, the cost of building the systems to monitor for and review accounts will be as expensive as they are unnecessary, particularly as these activities are already taking place through the OSJ (Office of Supervisory Jurisdiction) function we employ to manage the risks of the program as part of our current broker/dealer relationship.

### **Paperwork Reduction Act**

We do not agree with the proposal's contention that compliance will not increase paperwork requirements. How could it not? The proposal that a credit union's independent compliance program contact investment clients, monitor complaints, review accounts for suitability, and ensure that the appropriate supervisory personnel make scheduled examinations will all include a significant recordkeeping component. Records such as surveillance reports, trade reviews, account audits, etc., each of which would be duplicated by our broker/dealer for review by securities regulators, will likely increase the compliance cost substantially for our credit union.

### **Analyzing Securities Products**

One of the provisions would require a credit union to identify and analyze the products that the broker/dealer may offer through the credit union. We strongly believe that such a task is not appropriate for a credit union which, if it does not properly perform this analysis, may increase the credit union's liabilities under their investment program. Deciding what products to offer should be left to professionals who have the experience and education to determine the suitability of investments. Such professionals are closely regulated in the products they offer and the suitability of each based on the needs of individual investors.

### **Accessing Investment Accounts**

Another proposal is that our broker/dealer should allow us the right to check for compliance and access member brokerage accounts for oversight. This proposal again ignores the fact that such reviews are undertaken by the OSJ we employ through our

broker/dealer to ensure our program is operated in compliance with applicable rules and regulation. Further, we believe that allowing the credit union to access client brokerage accounts may run afoul of privacy provisions between the investor and the broker/dealer, and feel that credit union access to member brokerage accounts will increase the credit union's legal liability for activities that are rightly the responsibility of the broker/dealer.

#### **Contacting Investors**

The proposal that credit union staff contact investors that have purchased nondeposit investments to ensure that proper disclosure took place is problematic. I am most concerned that such activity will blur the lines which are rightfully maintained between a member's insured deposits with the credit union and their uninsured nondeposit investments through the broker/dealer. We are also concerned that, unless a licensed employee is hired who understands the securities business, such calls will result in confusion for the investor and an inability by the credit union to answer legitimate investor questions which are best left to licensed staff of the broker/dealer.

#### **Reviewing Accounts**

One of the most onerous provisions of the IRPS proposal is that an independent compliance employee monitor customer complaints, review accounts for churning and suitability, and ensure that the broker/dealer's supervisory personnel are performing their scheduled examinations. Every one of these reviews is already taking place by our broker/dealer's OSJ and their compliance departments. Further, such activity is already reviewed by multiple regulatory bodies, including the SEC, NASD, and individual state securities regulators. This redundancy will be expensive for our credit union and will not yield any increase in safety or soundness.

#### **Dual Employees**

The proposals of the IRPS in this area are impractical and would be difficult, if not impossible, to supervise. The nature of the business and the relationship between the credit union, the broker/dealer, and any dual employees simply necessitates that such employees perform functions for both the credit union and the brokerage firm.

We also do not agree with the provision that states a dual employee should not have management or policy setting responsibilities within the credit union related to nondeposit investments. In many credit unions the dual employee will be the only qualified employee to make such decisions based upon their securities licenses and investment sales experience. The IRPS also states that the dual employees should not reference their positions at the credit union when conducting nondeposit investment business. Such a requirement, simply, would be impossible to supervise.

Finally on the point of dual employees: We strongly disagree that the use of dual employees increases the risk that our credit union may be held liable for abusive sales practices. We believe the opposite to be true. If we are required to perform compliance functions over the investment center as proposed by the NCUA, it will increase the

likelihood that a plaintiff might allege that the credit union failed to meet its obligations. The use of dual employees, properly disclosed, is the way in which we reduce this risk.

**Summary**

In closing, Wright-Patt Credit Union, Inc., which has been serving its members with a nondeposit investment business for four years, does not believe the NCUA's proposals in this area serve credit unions or their members. While we applaud and share NCUA's regard for the safety and soundness of such investment programs and the welfare of members, this proposal does not accomplish this goal. Indeed, all it does is substantially increase the expense and potential liability of nondeposit investment programs for credit unions that choose to offer them.

Cordially,



Douglas A. Fecher  
President/CEO  
Wright-Patt Credit Union, Inc.