Public Service Credit Union

7055 E Evans Ave • Denver, CO 80224 • (303) 691-2345 • www.pscu.org

July 19, 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:

Since credit unions cannot register as securities brokers, the requirements the SEC places on brokers, including capital and reserve requirements, are inconsistent with those that NCUA and state supervisory authorities place on credit unions. Therefore, if credit unions wish to bring the option of nondeposit investments to their members, they must structure their involvement so that the SEC will not require them to register as brokers.

We are writing to provide general comments on the IRPS as follows:

1. **Regulatory Flexibility Act**

   According to the NCUA, the IRPS will not have a significant economic impact on the small credit union. We disagree based on the following.

   The IRPS states that a credit union's independent compliance program should contact investment clients, monitor customer complaints, review accounts for churning and suitability and ensure that the broker's supervisory personnel made scheduled examinations. Accordingly, credit unions may be required to train existing staff or hire additional staff with the requisite securities knowledge and experience to effectively conduct these specific compliance functions. Preferably, the compliance staff would be securities licensed to obtain the requisite knowledge of applicable regulations and be subject to ongoing continuing education requirements. However, since only NASD registered broker/dealers can hold an individual's securities licenses, credit unions are unable to maintain such licensing for employees.

   Due to the current regulatory climate, competent compliance personnel are in high demand and companies are competing to retain them. As a result, salaries for compliance positions are extremely competitive and considerably higher than the recent past.

   Additionally, there is a significant cost associated with the development and implementation of a compliance program. Given the complexity and progression of securities regulations, credit unions would be required to create costly surveillance systems in order to conduct the specific reviews as proposed in the IRPS.

Contrary to the NCUA's position, we believe that the additional cost for the credit union's compliance surveillance as proposed in the IRPS is unwarranted given the duplication of efforts since brokerage firms already have a compliance system in place which is subject to oversight by multiple securities regulators.

2. **Paperwork Reduction Act**

According to the NCUA, the IRPS will not increase paperwork requirements. We disagree. As discussed above, the IRPS is prosing that credit union's independent compliance program contact investment clients, monitor customer complaints, review accounts for churning and suitability and ensure that the broker's supervisory personnel made scheduled examinations. Inevitably, such compliance functions involve extensive paperwork including, but not limited to surveillance reports, trade reviews, audits, and correspondence with clients and regulators. The paperwork required would be duplicated by the brokerage firm compliance department and therefore unnecessary.

3. **Proposed Contract Provisions**

One of the IRPS proposed provisions for contracts between a credit union and a broker/dealer would require the credit union to identify and analyze the products that the broker may offer. We don't believe that the credit union is in the best position to conduct this task. Deciding what products to offer should be left with the broker/dealer which has experienced staff to determine what are appropriate investments. If the decision is left up to the credit union, ultimately, the client may be harmed if products are limited.

An additional proposed contract provision states that the brokerage firm should allow the credit union the right to check for compliance and access member brokerage accounts for oversight. As discussed above, we believe that the brokerage firm and not the credit union is in the best position to evaluate securities and ensure compliance. There may be no qualified credit union employees to monitor compliance. Secondly, allowing the credit union to access client brokerage accounts may violate state and internal privacy policies.

With respect to the proposed indemnity clause, we have no objection to including improper sales practices provided that the indemnity is mutual.

4. **Compliance with the requirements of the IRPS and applicable law and regulation.**

As discussed above, the IRPS proposes that the compliance staff contact credit union members that have purchased nondeposit investments to ensure that the member received and understood the required disclosures. We believe client contact for the purpose of discussing investments with credit union personnel who are independent from the investment sales program may potentially confuse clients by blurring the required distinction between credit union deposit and nondeposit functions. More importantly, several securities products are extremely complex. Thus, our concern is whether the credit union employee who is independent of the investment sales can fully understand and competently discuss required disclosures or ably respond to clients' investment inquiries.

In addition to contacting clients, the IRPS proposes that the independent compliance staff monitor customer complaints, review accounts for churning and suitability and ensure that the broker's supervisory personnel made scheduled examinations. These reviews

are already being conducted by the brokerage firms' OSJ's (Office of Supervisory Jurisdiction) and compliance departments and subject to oversight by the SEC, NASD, Self Regulatory Agencies and the individual state securities regulators. The employees of the brokerage firm with the requisite licensing, knowledge and experience are responsible for compliance functions. There may be no employee at the credit union with qualifications required to conduct these functions. The obvious burden on the credit union to comply with this section is outweighed by any benefit since these tasks are being conducted by brokerage firms.

5. **Dual Employees**

Per the IRPS, the duties performed by a credit union should not bring the dual employee into contact with members that might also purchase nondeposit investments. Dual employees must perform functions for both the credit union and the brokerage firm. Therefore, it's not feasible to prevent such employees from coming into contact with members.

We do not agree with the IRPS provision, which states that the dual employee should not have management or policy setting responsibilities within the credit union related to nondeposit investments. The dual employees are likely the only employees with securities licensing and investment sales experienced. Therefore, the dual employees' guidance is critical with respect to investment practices.

The IRPS also states that the dual employees should not reference their positions at the credit union when conducting non deposit investment business. Again, we believe that this is not practical and impossible to supervise.

With respect to the dual employee compensation provision, the IRPS states that the dual employee should have an employment contract with both employers, the credit union and the brokerage firm. However, the dual "employee" may be an independent contractor with the brokerage firm in which case an employment agreement would be inappropriate.

According to the IRPS, the use of dual employees increases the risk a credit union may be held liable for abusive sales practices. We disagree. In fact, we believe that the IRPS as proposed, increases credit union risk. If credit unions are required to perform compliance functions over the investment center as currently proposed, clients may successfully allege that the credit union failed to meet this obligation.

6. **Non Deposit Sales to Nonmembers**

While we agree that credit unions need guidance in this area, the solution to allow a percentage minimum of non-member business would be expensive and difficult if not impossible to measure, would create cost and administrative burden that is greater than the issue it seeks to address and is not practical given the actual circumstances that result in services to non-members. We understand the need to limit business to credit union members only, but in order to facilitate the practical reality of a representative servicing his/her prior book of business (which in a new program, may be 100% of revenue), we suggest that the credit union be allowed to receive reimbursement for the credit unions direct and indirect expenses (which includes compensation to the representative in a dual employee program and program management expenses) related to this business.

In summary, we believe that the requirement for credit unions to have an independent compliance function is (i) not practical since the credit union may not have staff qualified for this function, (ii) redundant since he brokerage firm already has this function, (iii) an unnecessary additional expense for the credit union and (iv) will likely increase, and not reduce, credit union liability for investment activities.

We appreciate the time and effort the NCUA has devoted to supervising federal credit unions. We look forward to reviewing the NCUA's continuing efforts to carry out its mission.

Should you have any questions, please contact me at 303.691.2345.

Sincerely,

David E. Maus

David E. Maus
President/CEO