SACU
San Antonio Federal Credit Union

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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:

San Antonio Federal Credit Union wishes to comment on the proposed NCUA Interpretive Ruling and Policy Statement ("IRPS") regarding Sales of Nondeposit Investments, which will replace the NCUA Letter to Credit Unions No. 150.

1. **Regulatory Flexibility Act**

   We submit that costs associated with the proposed compliance program could have a significant negative economic impact on all affected credit unions.

   Additional staffing with the securities regulatory knowledge and experience of one holding a securities license would be necessary to effectively lead the proposed compliance function. Due to the current regulatory environment, these individuals are currently in very high demand and commanding higher salaries than in the past. Additional clerical staffing would also be likely.

   Additional technology costs would be necessary to integrate the loan and securities functions, track de minimus income from nonmembers, and monitor the overall compliance burden.

   These activities are currently being performed by the broker/dealer and would be unnecessarily duplicated.

2. **Paperwork Reduction Act**

   We submit that paperwork would actually increase significantly. The audit activities required under the proposal would necessarily require a strong audit trail and other documentation necessary to demonstrate to the NCUA examiners and management that the required audits were actually performed, to what degree, with what results, and with what follow-up.

3. **Proposed Contract Provisions**

   The proposed IRPS suggests that credit union policy define the products that the broker may offer, including an analysis of its volatility and complexity. We submit that the broker/dealer, not we, is the best qualified entity to make this determination. Furthermore, product selection should not be set by credit union policy, rather as a result of an SEC mandated investor suitability obligation of the broker/dealer based upon information obtained from individual investors.

We feel that the suggestion that the credit union have the right to check for compliance actually increases exposure to the credit union contrary to the intent of the IRPS. First, the credit union likely does not have independent staff knowledgeable and experienced in security law and regulation to adequately oversee a compliance function. This would probably require an individual holding one or more securities licenses; yet, if the credit union is not a broker/dealer, who would hold his/her license? Secondly, our contract with our broker/dealer as well as NASD and SEC regulations insist that the broker/dealer is exclusively responsible for securities law compliance. If we should now share that compliance responsibility, would we not then share the liability for noncompliance? This represents additional exposure to the NCUA Insurance Fund as well.

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

Our principal objection to the proposed IRPS has to do with the suggestion that the credit union share responsibility for compliance with the broker/dealer for the reasons stated above. Additionally, we believe client contact for the purpose of discussing investments with independent credit union compliance personnel could confuse clients by eliminating the required distinction between credit union deposit and security 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. Will we perhaps confuse the member with conflicting advice?

The IRPS suggests that independent credit union personnel monitor member complaints, review accounts for churning and suitability, and ensure that the broker's supervisory personnel make scheduled examinations. The broker/dealer's OSJ already performs these activities and are subject to oversight by the SEC, NASD, and individual state securities regulators. Why duplicate these activities, incur additional costs, and assume additional liability?

5. **Dual Employees**

We support efforts to make it clear to the member the distinction between nondeposit investments and deposit products; however, to prevent the credit union employees from coming into contact with members who MIGHT also purchase nondeposit investments is not practical and places credit unions at a competitive disadvantage with banks.

We are committed to helping our members build for a better tomorrow through a trusted advisor model whereby our members trust us to do the right thing in their best interest. Rather than pushing products on our members, we practice a consultative sales approach whereby we probe for what is in the best interest of our members. That may be an insured share deposit or a nondeposit investment. How are we to know what the member wants or needs until we are in contact with them and probe? If the want or need is indeed a nondeposit investment, then our employee should be allowed to either changes employee hats, if licensed to do so, and make full disclosure of the role he/she is now assuming or refer the member to a separate licensed investment representative. This is what banks are allowed to do.

The IRPS suggestion that dual employees should have no management or policy-setting responsibilities does not work and, in fact, may even increase risk. Our initial foray into offering nondeposit investments to our members utilized a nonlicensed program manager and the program had disappointing results because the manager lacked the expertise and experience in the investment industry. "We don't know what we don't know" may be applicable, but could also pose some serious compliance risk. We began hiring licensed and experienced investment professionals as program managers and the program is slowly

gaining momentum and management is much more comfortable that the compliance risk is under control.

We are confused with the suggestion that dual employees should not reference their positions with the credit union. They ARE credit union employees with credit union titles ever since the SEC forced the program into the credit union from the CUSO. It is being suggested that we hide this relationship? There are already numerous safeguards in place that adequately disclose who the member is dealing with in a nondeposit investment transaction and the nature of that transaction. This suggestion is both unnecessary and impractical.

The suggestion that dual employees have contracts with both employers may not be applicable in situations where credit union employees are independent contractors with the brokerage firm.

6. **Non Deposit Sales to Nonmembers**

We appreciate the attempt to provide guidance on the issue of nondeposit investment transactions with nonmembers. The 5% rule, however, seems arbitrary, would require additional technology investment to track, and likely place new hires immediately out of compliance that bring relationships with them because that would initially represent 100% of their revenue.

We think a better approach would be to allow the credit union to receive reimbursement for both the direct and indirect expenses incurred in managing the nonmember book of business, including commissions paid to the licensed representative, office space, transaction fees, direct overhead, etc.

Also, it should matter if the nonmember is a member of another credit union and there is, in fact, precedence for this special treatment. Reg flex qualified credit unions can buy nonmember loans if the borrowers are members of another credit union. They can cash checks for members of other credit unions under the correspondent powers and the serving credit union can be paid a fee to cover its costs of services. Why should investment services be treated any differently?

In summary, we strongly advise against requiring credit unions to assume a compliance role with regard to nondeposit investment programs as they are likely not the best qualified to do so, it would be duplicative and costly, and it would increase, rather than lessen credit union and NCUSIF exposure while diluting broker/dealer exposure. Furthermore, we urge the NCUA to allow cost reimbursement for nonmember business without limitation.

Thank you for allowing us to comment on this proposed IRPS. Should you have any questions, kindly call me at (210) 258-1357.

Sincerely,

James F. Girardeau
Executive Vice President