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JUL 22 '05 PM 1:22 BOARD

07/21/05

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:

The National Credit Union Administration ("NCUA") is proposing to adopt an Interpretive Ruling and Policy Statement ("IRPS") regarding Sales of Non-Deposit Investments, which will replace the NCUA Letter to Credit Unions No. 150. NASA FCU is 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. NASA FCU will incur substantial expenses in the following areas:

Since for all products, the credit union should identify specific laws, regulations, and any other limitations or requirements, including qualitative considerations, that will expressly govern the selection and marketing of products a broker may offer, we will need to hire NASD registered personnel to regularly review the available offerings of our Broker/Dealer and their associated vendors. These personnel will be non-producing overhead given that those performing the compliance function should be independent of any credit union personnel involved in investment product sales and management.

Due to the current regulatory climate and existing demand for competent compliance personnel, we anticipate paying significant salary premiums for such resources as we compete with banks, brokerages, and most significantly the other credit unions also trying to meet IRPS requirements. We will incur additional expense in maintaining their licensed status given that credit unions are unable to maintain such licenses and will have to license them through a second NASD registered Broker/Dealer independent from the primary Broker/Dealer.



We will need to retain additional credit union legal counsel with specific investment and insurance regulatory experience. We again anticipate significant salary competition over the even smaller pool of qualified legal candidates.

Since the non-deposit duties performed by our dual employee platform employees should not bring them into contact with members that might also perform deposit activities, we will have to either discontinue our Registered Member Service Associates Program or hire investment-only dedicated employees.

Since dual employees should have no management or policy-setting responsibilities within the credit union related to non-deposit investments, we will have to hire a new registered employee to replace the sales capabilities of our existing producing Program Manager (PM). Further, the PM will have to terminate his dual employee status with the Broker/Dealer, state insurance agencies and product vendors. The PM will become overhead.

Since the proposed ratio of income not directly attributable to non-members cannot exceed 5% of gross program income, we will not be able to hire high-quality reps with existing and transferable books of non-member business.

Since our credit union will no longer receive reimbursement of expenses in excess of 5% incurred while providing brokerage services to the members of affiliated smaller credit unions, we will have to terminate our shared broker program.

## **2. Paperwork Reduction Act**

According to the NCUA, the IRPS will not increase paperwork requirements. We disagree for the following reasons:

Our credit union's investment program is already subject to OSJ, Broker/Dealer, NASD, SEC, and NCUA oversight requirements. The proposed IRPS will add yet another level of audit/paperwork requirements for an already heavily compliance burdened line of business. Additional non-producing staff will have to be hired to meet the additional credit union supervisory and NASD Principal requirements.

Furthermore, if the newly proposed credit union compliance program is required to duplicate the current efforts of the Broker/Dealer in contacting investment clients, monitoring customer complaints, and reviewing accounts for suitability, the member/client will also be subject to a significant increase in existing paperwork requirements.

## **3. Proposed Contract Provisions**

We rely heavily on the Due Diligence resources and capabilities of our Broker/Dealer, one of the criteria in their original selection. The requirement to identify and analyze all products available for sale by our Broker/Dealer, would



necessitate the hiring of additional independent non-producing staff registered through a second Broker/Dealer. It would also seem to open the credit union to issues of liability concerning the business operations of the Broker/Dealer and all product vendors.

Our credit union does not have the resources necessary to duplicate the existing and substantial capabilities of our Broker/Dealer, a capability we already subscribe to and pay for with our commission revenues. In fact, to in effect pay twice for duplicate resources would cause us to question the purpose of a third party Broker/Dealer relationship, even though it is prohibitively expensive for us to become our own Broker/Dealer.

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

We believe significant required disclosures and procedures are already in place. If the credit union had such a proposed mandatory follow-up, which credit union employee(s) independent of investment sales would be qualified to conduct it? Would the credit union's supplemental sales oversight personnel, as well as their employer the credit union, not assume additional liabilities as the supposed guarantors of member/client investment suitability? The effort might also leave an impression in the mind of the member/client that our licensed employees are not sufficiently qualified to sell appropriate non-deposit products.

#### **5. Dual Employees**

NCUA has gone to great lengths recently to encourage credit unions to reabsorb their investment programs. Dual employee positions have been purposely created at the management, advisor, and platform levels to accomplish this worthwhile goal. Dual employees must perform functions for both the credit union and the Broker/Dealer. The resulting program has created greater sales and operations synergies between the credit union and its alternative financial services.

Additionally, most non-Broker/Dealer programs now employ a PM at the credit union staff level. Securities licensed PMs bring a wealth of experience to the credit union's policy making and management efforts. It appears that under the proposed IRPS, only a non-licensed, non-registered, non-dual employee without sales supervisory authority will be permitted to advise the credit union on non-deposit investment policy. This would eliminate a significant policy advisory role that our credit union currently enjoys.

According to the IRPS, the use of dual employees increases the risk a credit union may be held liable for abusive practices. We have found the opposite to be true. The credit union, with ultimate employment and supervision of all personnel serving its membership, in concert with the compliance oversight of the

Broker/Dealer now has much greater vested control over the activities of its non-deposit sales employees than it did under the CUSO model.

**6. Non Deposit Sales to Nonmembers**

It has been our program's history that non-member business is unavoidable. Existing investment reps simply do acquire non-member/clients through a variety of means, most often the result of being hired away from another firm. Given the competitive nature of investment rep recruiting, it is unusual to find high quality candidates that do not have preexisting non-member/clients let alone hire such candidates with the proviso they terminate some or all of those legacy relationships.

We wonder how any percentage of non-member business can be accurately measured or enforced short of forcing the divestiture of a rep's clients. We prefer the adoption of policy that provides for the credit union to receive reasonable expense reimbursement for non-member activity regardless of its potential volume. If expenses will be assessed by the credit union from the earned commissions of non-member business, the rep will have powerful incentive to convert those clients to members or mitigate their impact on his/her overall business.

In summary, we believe that for our non-deposit program many of the proposed requirements are burdensome, expensive, and unnecessary duplications of current Broker/Dealer functions and credit union policies/procedures. We also consider the proposed ruling to be inappropriate in general tone. Bringing what was once CUSO exclusive activities in-house, within the dual employee agreement framework and under the supervision of a licensed Program Manager with credit union staff level authority, has immeasurably improved our non-deposit investment program, and we suspect the majority of other similar programs. We benefit from the reality that the credit union has become much more directly involved with the Broker/Dealer in its oversight role over non-deposit activities.

Should you have any questions, please contact me at 800-638-8484.

Sincerely,



Kevin Walrath  
Program Manager  
Investment Services  
NASA FCU