

July 22, 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:

HawaiiUSA Federal Credit Union understands that the National Credit Union Administration ("NCUA" is proposing to adopt an Interpretive Ruling and Policy Statement ("IRPS") regarding Sales of Nondeposit Investments, which will replace the NCUA Letter to Credit Unions No. 150.

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

QUESTIONS REGARDING THE PROPOSED IRPS

1. Do you feel the explanation of the physical separation requirement provides sufficiently clear/specific guidance?

Yes No

Why or why not?

A separate area within a branch office that is clearly marked should meet this requirement.

2. Do you agree with all of the disclosure requirements for brokers?

Yes No

Why or why not?

Currently the disclosures listed are included in all marketing material, a signed acknowledgement of receipt is obtained, and signage stating to the effect the prescribed statement is displayed. No investment products offered are similar in name to the credit union's.

3. Do you agree with the list of best practices for credit union policies, procedures and contracts concerning third-party brokerage arrangements?

Yes No

Why or why not?

- 1) **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 do not 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. We are also unclear as to the definition of “qualitative considerations” and our ability to perform an analysis of the level of complexity and volatility in all the investments offered.**
- 2) **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. We believe that the brokerage firm and not the credit union is in the best position to evaluate securities and ensure compliance. We currently pay the broker/dealer in excess of \$40,000 per year to perform the compliance function. There may be no qualified credit union employees to monitor compliance. To hire personnel with a series 24 license would be impractical and cost prohibitive in offering the investment services to the membership. Secondly, allowing the credit union to access client brokerage accounts may violate state and internal privacy policies.**

4. Do you have concerns with the legal requirement for a credit union with such a brokerage agreement to have in place a program to monitor compliance of the brokerage salespeople with applicable laws and regulations as set forth in the proposal?

Yes No

Why or why not?

- 1) **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.

2) 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 Supervisor 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 make determinations as to suifunctions. Hiring a person with these qualifications would be difficult at best and redundant since the compliance functions are already performed by the brokerage firms. In addition, 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.

5. Do you feel the guidance on the separation of duties of dual employees as well as reimbursement is adequate?

Yes No

Why or why not?

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 is 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 experience. Therefore, the dual employees' guidance is critical with respect to investment practices.

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.

6. Do you think the section on sales to nonmembers is overly restrictive?

Yes No

Why or why not?

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.

7. Other comments?

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 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 proposing 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.

Should you have any questions, please contact me at (808) 534-4300.

Sincerely,

Gregory C. Chang
SVP - Finance
HawaiiUSA Federal Credit Union