Mary Rupp, Secretary to NCUA Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

RE: IRPS Number 05-1

Thank you for this opportunity to comment on the proposed IRPS # 05-1. Credit Union Financial Network (CUFN) is a CUSO, currently serving four State Chartered Federally Insured Credit Unions in Arizona. We are in the financial services business addressed by the IRPS, so we are affected by its language.

First: We commend NCUA for replacing Letter 150 and putting all pertinent issues regarding financial services in one place. Including the SEC and NASD rules into the IRPS assists us as we and our Credit Unions conduct business.

Second: CUFN already exceeds the requirements in the IRPS regarding recruiting, training, referrals, compliance, supervision, reporting, oversight, disclosure and discipline for our Credit Unions. We use the dual employee approach and find it works best for our Credit Unions, as the Financial Advisors are more dedicated to helping the credit union achieve its overall mission and goals. As you can imagine, Independent Contractor Advisors and those employed by a 3rd party often have their own agendas.

In the IRPS, NCUA appears to have a bias against the "dual employee" model, based on some abuses in Savings Banks and Credit Unions. We would suggest a "dual employee" can be much better supervised than a "contracted Rep". In the model used by CUFN the Advisor is supervised by three (3) organizations: The Credit Union, The broker/dealer, and CUFN as the hiring, training, supervising firm.

Unless the Credit Union compliance person, suggested in the IRPS, is skilled in the area of securities practices and fraud, the proposed language puts an undue burden and higher potential for liability on the Credit Union, a burden we and our Broker/Dealer gladly accept.

A greater concern for NCUA should be when a Series 24 Principal is a producing Representative and also provides Compliance (OSJ) oversight for his/her work and other Representatives within the Credit Union program. This clearly violates the Credit Union practice of having sound Internal Controls. Loan officers shouldn't disburse loans that they approve, should they? **There are literally dozens of credit unions nationwide allowing their Financial Representatives to serve as their own Compliance Managers. The credit union will lose in court every time trying to defend why their Financial Rep is his/her own OSJ. In nearly all cases of fraud or inappropriate behavior it is the lack of proper <u>independent</u> supervision to blame not the structure (Independent Contractor or Dual Employee).**

Third: We have suggestions with regard to the language in IRPS Section V *"Compliance with the requirements in this IRPS and applicable law and regulation"*. The language seems to assume abuses by the Broker/Dealer and its Representatives are common and it's the Credit Union compliance person's job to find them. In our opinion, compliance is best handled by those licensed and trained through the SEC, NASD, and Broker/Dealer. Abusive selling practices are prevented by having qualified Management hiring and supervising the appropriate Advisors for each credit union.

Fourth: The language reading *"the contract should, however, recognize that the credit union has the right to check for compliance and may access member accounts for verification and oversight"* seems to be in excess of what NCUA's Privacy of Consumer Financial Information Rule and Security Program Rule, 12 CFR 716 and 748 allow. This may be dealing with a member privacy issue and without the member's consent to view the records. We deal with the issue by closely managing the Advisors and by carefully selecting a Broker/Dealer, who has a strong compliance and financial planning discipline.

Fifth: It seems the IRPS moves away from the role of providing guidelines by suggesting contract language and terms for contract termination, which may be well intentioned but not the role of NCUA. Unless NCUA plans to create a universal contract and dictate all terms of the contract between the Credit Union, Broker/Dealer and third parties, these comments should not be part of the IRPS. Contract and networking contract language is operational and not something NCUA should attempt to regulate.

Sixth: In the past, NCUA has encouraged sharing services among credit unions, especially small credit unions. This IRPS will discourage this sharing of expertise and service due to the onerous and unnecessary language regarding serving "non-members". The language on the last page of the IRPS states "NCUA will allow a credit union in a 3rd party brokerage arrangement to accept a de minimus amount of income…". This kind of language will cause concern about being in violation of NCUA's allowance for income. The record keeping will result in small credit unions being forced out of the "non-deposit" investment business. We know of three cases where small credit unions have been dropped by the larger credit unions in terms of helping them deliver service to their members. We doubt this was the NCUA's intent.

In summary, here are the key points we would ask NCUA to address:

- Registered Principals (Series 24 OSJ) should not be allowed to check and approve their own work. Independent Compliance Managers at the CUSO or Broker/Dealer level should be responsible, as they have the appropriate training and experience to help identify abusive practices before they happen.

- NCUA's bias against "dual employees" should be re-evaluated. All major banks utilize a Dual Employee model for one single reason – stronger controls. Recognition of the SEC and NASD requirements for supervision and compliance by a broker/dealer clearly obviates the need for the onerous supervision by credit union staff to interject itself into an already resolved problem.

- Credit Unions should not be expected to have responsibility for looking into each sale for suitability and compliance, especially when NCUA's IRPS states non-deposit sales and deposit taking "must be separated". How could a credit union employee be responsible for supervising Registered Representatives and be *"independent of any credit union personnel involved in sales…"* The IRPS also states, this same person, who by definition must be a dual employee, *"should have no management or policy-setting responsibilities within the credit union related to non-deposit investments"*. The best solution is to have the Credit Unions select the appropriately trained and experienced partners (Independent Broker/Dealer and/or Independent CUSO) to manage the program.

- Finally, the section on serving non-members will harm small credit unions, as they cannot afford to offer the highest quality of products and services without partnering with larger credit unions or CUSOs. Large credit unions will be unwilling to offer the services due to some well-meaning, but constricting language about de minimus income.

  Credit unions have shared branches and shared ATM networks, which create non-member income. Having large credit unions help small credit unions is critical in managing the quality of services offered to the small credit union membership.

Again, we thank you for consolidating the rules and regulations related to the non-deposit investment products. We would be happy to assist you in the final draft of the IRPS.

Sincerely,

From: Mike Prior, CEO
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