



**66 FEDERAL  
CREDIT UNION**

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July 22, 2005

JUL25'05 AM 9:45 BOARD

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:

66 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:

**1. Regulatory Flexibility Act**

According to the NCUA, the IRPS will not have a significant economic impact on the small credit union. However, 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. The IRPS is proposing the 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**

The proposed contract provisions may negatively affect and be impractical for credit unions. One of the IRPS proposed provisions for contract 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 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.

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.**

The below proposed compliance requirements may negatively affect and be impractical for credit unions. 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 non-deposit 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 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**

The restrictions on dual employees may negatively affect and be impractical for credit unions. Per the IRPS, the duties performed by a credit union should not bring the dual employee into contact with members that might also purchase non-deposit 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 dual employees should not have management or policy setting responsibilities within the credit union related to non-deposit investments. Dual employees are likely the only employees with securities licensing and investment sales experienced. Therefore, dual employees' guidance is critical with respect to investment practices.

The IRPS also states that 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 dual employees' compensation provision, the IRPS states that dual employees 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 the 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.

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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 918-337-7667.

Sincerely,



Tom Shoemake  
V.P. Business Development