

July 25, 2005

Ms. Mary Rupp, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314

Re: Proposed Interpretive Ruling and Policy Statement No. 05-1, Sales of Nondeposit Investment Products

Dear Ms. Rupp:

The National Association of State Credit Union Supervisors (NASCUS)¹ submits comments in response to the National Credit Union Administration's (NCUA) request for comments on proposed Interpretive Ruling and Policy Statement No. 05-1, Sales of Nondeposit Investment Products.

NCUA's proposed Interpretive Ruling and Policy Statement (IRPS) No. 05-1 replaces NCUA Letter to Credit Unions Number 150. NASCUS believes the existing Letter to Credit Unions Number 150 and NCUA's proposed IRPS No. 05-1 are overbroad in their application to state-chartered federally insured credit unions. Furthermore, NCUA's proposed IRPS No. 05-1 raises other issues of practical application that are of concern to NASCUS.

Overbroad Application

NCUA intends IRPS No. 05-1 to "help credit unions conduct third party brokerage activities in a manner that is legal, protects members from potential securities fraud and abuse, and minimizes safety and soundness concerns for the credit union." However, in applying rules and regulations to state-chartered federally insured credit unions, NCUA must focus on safety and soundness concerns as the administrator of the National Credit Union Share Insurance Fund (NCUSIF). By that standard, NCUA's proposed limitation of income from sales to non-members of five percent can not be applicable to state-chartered federally insured credit unions.

A credit union's ability to provide services to non-members is an authority derived from the laws under which the credit union is chartered. In the state system, various states legislatures have chosen to allow credit unions to serve non-members to varying degrees. Those decisions are beyond NCUA's authority to curtail without a clear demonstration of overriding safety and soundness concerns.

In addition to the five percent proposal discussed above, IRPS No. 05-1 contains many other operational restrictions that appear directed more toward member protection than real safety and soundness concerns. For state-chartered federally insured credit unions,

¹ NASCUS is the professional association of the 48 state and territorial credit union regulatory agencies that charter and supervise the nation's 4,000 state-chartered credit unions.

member protection is the responsibility of state law and regulation. While NCUA cites limited case law to demonstrate a nexus between civil liability and safety and soundness, that connection seems tenuous. Furthermore, NASCUS believes state regulatory agencies are better positioned to make determinations as to appropriate broker dealer practices within state-chartered credit unions than is NCUA. Most state regulatory agencies are combined agencies with in-house expertise on, and practical experience with, securities practices. As a chartering entity, if NCUA is concerned with securities practices in federal credit unions, then the agency should promulgate federal credit union rules and regulations to address those concerns. Unless a clear and convincing safety and soundness concern is demonstrated for all insured credit unions, NCUA should defer to state regulator expertise in these matters.

Additional Issues Raised by IRPS No. 05-1

There are several other issues raised by IRPS No. 05-1. NASCUS will briefly identify these issues, but leave detailed discussion of the issues to industry experts who may be in a better position to fully articulate the practical impact upon credit unions.

- Credit union oversight of sales program and compliance

The IRPS requires credit unions to analyze the complexity and volatility of the investments the broker will offer to members. While it may be good practice for a credit union to attempt to tailor offerings to its membership, NASCUS questions regulatory directives that trespass on purely business decisions. Are credit unions qualified to judge the best investment opportunities for their individual members? It would seem that credit unions are relying on the broker's expertise to guide the members to the optimum investment opportunities.

- Separation of Duties

NCUA should more clearly articulate its concerns regarding dual employees. It seems impractical that dual employees may not reference their employment with the credit union. This provision runs contrary to trends of product integration and may confuse credit union members. Further, this provision may actually weaken credit union diligence. An investment services manager may be hired for their very expertise and the credit union may rely on that individual to help the credit union set policy.

NASCUS appreciates the opportunity to comment on NCUA's proposed Interpretive Ruling and Policy Statement No. 05-1, Sales of Nondeposit Investment Products. Please do not hesitate to contact NASCUS if you wish to discuss our comments.

Sincerely,

Brian Knight
Vice President, Regulatory Affairs