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July 25, 2005

Ms. Mary Rupp, Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314-3428

Dear Ms. Rupp:

I write to you today to offer comments to the Proposed Interpretative Ruling and Policy Statement (IRPS) No. 05-1: Sales of Nondeposit Investment Products. As a provider of such services to its members for the past twelve years, Boeing Wichita Credit Union (BWCUC) feels very strongly that its experience in offering these services and its obligations to its membership warrant feedback on certain proposed provisions in the IRPS.

#### **Background**

During the past twelve years, BWCUC has contracted with three different broker/dealers. From 1994 to 2002, BWCUC partnered with two different broker/dealers who provided independent contractors to reside in BWCUC's offices and serve members. Due to one of these independent contractor's illegal behavior and subsequent sentencing to federal prison, in 2002, BWCUC migrated to a managed program and its third broker/dealer whereby that broker/dealer provides employee brokers (financial advisors) to reside in BWCUC's offices and serve members. These financial advisors are employees of the broker/dealer and are subject to the broker/dealer's supervision.

In offering these services, BWCUC has diligently strived to adhere to provisions of NCUA Letter 150 and has had many years to experience the impact that NCUA Letter 150 has imposed on its business activities. BWCUC believes that a regular review and evaluation of these activities is necessary as these activities and BWCUC's business risks continually evolve. Further, a review of rulings and policies should be viewed as an evolutionary process. It is equally important that rulings and policies be consistent with, and change in response to, the competitive environment faced by all credit unions. In furtherance of BWCUC's mission to provide financial services to our member-owners with safe management of their assets, BWCUC is committed to the overall principles of operating and being regulated in a manner that promotes safety and soundness, and promotes effectiveness and efficiency.

While BWCUC agrees with the intent of Letter 150 and its objective to protect consumers, certain provisions within that guidance, in practice, have been onerous and/or seemed to be outside the scope of BWCUC's expertise. ***In any event, BWCUC continues to support the requirements that brokerage services be segregated from the deposit-taking functions at the credit union; that disclosures be in compliance with applicable laws and regulations, and be monitored for compliance; and that members fully understand such products are not being sold by the credit union, are not insured and may lose value.***

That being said, allow me to express my areas of concern as they relate to the proposed IRPS.

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### Concerns

Perhaps of greatest concern to me is the blatant shift of responsibility and oversight for the program from the broker/dealer to the credit union. Not only do I find this shift in responsibility troublesome, but I must point out that BWCUC does not currently have staff on board with the expertise or qualifications to fulfill this requirement. The proposed IRPS expects a credit union to have on staff a person to manage the day-to-day operations of the program locally, and another, independent person to monitor program compliance (down to the level of inspecting members' brokerage accounts and transactions). I find this requirement unreasonable, cost-prohibitive, and redundant. ***BWCUC's contract with its broker/dealer is designed so that compliance and monitoring is performed by those with the expertise—the broker/dealer.***

This concern leads me to ask if the NCUA has contemplated its role in ensuring credit unions adhere to the IRPS. Assuming a credit union took the steps necessary to comply with the additional compliance and oversight functions, how will the NCUA incorporate these additional functions into its periodic examination of credit unions? Does the NCUA have staff on board with the requisite knowledge, experience, licensing, etc., to "examine" the function? Does the NCUA plan to hire these resources? Or, will the NCUA outsource this function to the SEC/NASD?

Second, I am concerned by the mindset shift that the credit union's brokerage firm contract and internal policies must make clear that the brokerage firm is **primarily** [emphasis added] responsible for ensuring the function is conducted in compliance with all applicable laws, regulations, and policies. *Does this mean that a credit union is now expected to become proficient in SEC and NASD rules and regulations? Again, this requirement seems redundant and would expose the credit union to undue liability.* Furthermore, it seems that the IRPS strives to "negate" or "contradict" this requirement by insisting that policies require the brokerage contract be structured to provide that the brokerage firm will indemnify the credit union for any monetary damages arising from these activities, including but not limited to improper sales practices. I interpret this to mean that the NCUA would like a credit union to assume more responsibility for compliance and oversight, but require the brokerage firm to fully indemnify the credit union for any damages sustained. This is contradictory and will cause confusion and conflict between a credit union and its brokerage firm.

A third concern relates to member privacy. To ensure the utmost privacy of our members, BWCUC does not currently share member information with its broker/dealer or their financial advisors. Only if a member gives us permission to provide their information will we forward that information to a financial advisor. BWCUC does not release mailing lists to its broker/dealer; we perform any mailings involving these services ourselves. To now add that the credit union should check for compliance and should periodically and randomly examine member accounts for verification, oversight, and to spot potential abuses raises serious concerns regarding member privacy.

My final concern is that based upon my understanding, regulators for our banking counterparts have not made similar proposals to shift more of the supervision and oversight of bank brokerage programs to the banks. *I have to ask, why does the NCUA feel compelled to take a different route with credit unions?* The additional risk, exposure and internal infrastructure necessary to comply with certain provisions of the IRPS could potentially put credit unions at a competitive disadvantage.

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**Conclusion**

To conclude, the proposed additional oversight and compliance duties that the IRPS would place on credit unions, I believe, would impose unnecessary risk and exposure to credit unions, and for some, would be too cost-prohibitive for those credit unions to continue to offer such services. ***Is this in the best interest of credit unions and their members? I respectfully submit--it is not.***

BWCU appreciates the opportunity to comment upon the proposed IRPS. If any questions arise pertaining to the comments provided, please call me at (316) 651-5119.

Regards,

***Gary Regoli***

Gary Regoli  
President/CEO