



July 25, 2005

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

RE: Comments on Proposed IRPS (Sales of Nondeposit Investments)

Dear Ms. Rupp:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions (FCUs), I am responding to the National Credit Union Administration's (NCUA) request for comment on the proposed Interpretive Ruling and Policy Statement (IRPS) No. 05-1. The proposed IRPS updates and replaces NCUA's Letter to Credit Unions No. 150 on the sales of nondeposit investments, and provides requirements and guidance issued by the Securities and Exchange Commission (SEC) and NCUA for credit unions offering nondeposit investments through third party brokerage accounts. Overall, NAFCU supports the proposed IRPS as it clarifies the role of the credit union in the sale of nondeposit investments. NAFCU believes, however, that some areas of the proposed guidance require clarification and offers the suggestions outlined below.

Required Disclosures

The proposed guidance outlines five mandatory disclosures for credit unions when selling, advertising, or otherwise marketing uninsured investment products to members. NAFCU supports disclosure requirements that clarify for members that the investments are not insured and not provided by credit unions. For these reasons, NAFCU supports the first four requirements as necessary and sufficient. However, NAFCU does not believe that the dual employee disclosure is needed to reach the objective of the disclosures, and NAFCU is concerned that this requirement may unnecessarily confuse members.

Advertising Signage Guidance

The proposed guidance also states that a sales representative should, when discussing nondeposit investments with members face-to-face, display a sign, readily visible that states some of the important disclosure information. NAFCU believes that the mandatory disclosures along with the requirement that a member separately sign and acknowledge that the services are not insured or provided by the credit union are sufficient to inform members of their rights and that the benefit of the sign is therefore not equal to the administrative costs. NAFCU is unaware of any instances of member confusion from existing disclosures.

Written Policy Guidelines

NCUA proposes that a credit union in its written nondeposit investment policy should name the physical locations where such sales will take place. Brokers often, for the convenience of members, sell investments in a number of different locations such as at member homes, benefit fairs, etc. If a specific location or address is required by this guideline, many beneficial and appropriate transactions would not take place. Credit unions would also inherit the burden of having to update the policy with each new location change. NAFCU supports a clarification of the guideline that makes clear that these locations may be worded generally, thus enabling appropriate flexibility for brokers and credit unions in serving their members.

The Use of Dual Employees

The proposed guidance outlines the separation of duties required if employees are both employees of the credit union and the brokerage firm. One of the requirements states that “the duties performed for the credit union should not bring the employees into contact with members that might also purchase nondeposit investments.” This provision appears to prohibit dual employees from marketing other financial services products to members. Third party contracts typically assign the marketing of nondeposit investments to credit unions, and dual employees are in the best position to market complex investment products. Dual employees should not be prohibited from marketing other financial services products to credit union members simply because they market nondeposit investments as well.

The “De Minimus” Amount of Five Percent

NCUA also proposes that credit unions may accept a *de minimus* amount of income derived from preexisting arrangements that the broker brings to the credit union. NCUA defines this amount as one not exceeding five percent of total income attributable to nondeposit investment sales.

NAFCU believes the five percent calculation is arbitrary and may limit credit unions’ ability to provide quality brokers. Nonmember business is a necessary by-

product of permitting a broker/dealer to offer investment services with registered representatives who have some nonmember customers. As an alternative to creating a cap, NAFCU suggests that the registered representatives could establish separate tracking for member business and for nonmember business. A full revenue share would be paid to the credit union for the member business, and the nonmember business would be paid only to the extent of the actual expenses incurred by the credit union to service the business. Since the credit union would not be making a profit on the transaction, there would be no incentive to increase the nonmember business. Further, the elements making up the cost of the transaction, such as overhead costs, could be made available to auditors to provide transparency in the process.

Credit Union Responsibility for Compliance

NAFCU is concerned about the proposed requirements that would require credit unions to ensure that the broker/dealer complies with Securities and Exchange Commission (SEC) regulations. These requirements present logistical and economic difficulties and create unnecessary legal risk for a credit union.

Credit unions that choose to affiliate with a brokerage firm do so in order to obtain the skills, experience and knowledge that are attendant upon a sales professional licensed by and subject to the oversight of the National Association of Securities Dealers, and who is also subject to SEC oversight. In effect, credit unions through a contractual relationship outsource nondeposit investment know-how, experience and compliance responsibility because they recognize the inherent risk to providing these services to members without adequate resources. In this manner, the brokerage firm is responsible for the broker/dealer's qualifications, activities and for over all compliance with industry regulations. To go beyond the compliance responsibilities agreed to by the brokerage firm in the service contract and require the credit union to ensure compliance by the brokerage firm, ignores that the credit union already acknowledges that it does not have the expertise to offer nondeposit investments directly or to ensure compliance with industry regulations.

NAFCU does not mean to suggest that credit unions should have no responsibility for the brokerage firm or broker/dealer's activities once it signs the contract. Rather, as part of its normal business practice, a credit union should actively monitor the relationship between its members and the broker/dealer as part of its commitment to member service. It should ensure that members receive required disclosures, be open to member questions, monitor member-broker/dealer relationships, act on member complaints and verify that complaints are adequately resolved. Furthermore, a credit union should end a relationship with a brokerage firm that fails to meet member needs or does not comply with industry regulations. The credit union should also require an indemnification clause in the contract that protects the credit union, and ultimately the share insurance fund, from the acts or omissions of the brokerage firm and its registered representatives.

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NAFCU notes that these best practices should only be recommendations and not mandatory guidance under the IRPS.

NAFCU would like to thank you for this opportunity to share its views on this proposed IRPS. Should you have any questions or require additional information please call me or Carrie Hunt, NAFCU's Associate Director of Regulatory Affairs, at (703) 522-4770 or (800) 336-4644 ext. 234.

Sincerely,

A handwritten signature in cursive script, reading "Fred R. Becker, Jr.", positioned to the left of a vertical red line.

Fred R. Becker, Jr.
President/CEO

FRB/crh