

July 22, 2005

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

Via Email to [regcomments@ncua.gov](mailto:regcomments@ncua.gov)

**RE: Proposed Interpretive Ruling and Policy Statement No. 05-1**

Dear Ms. Rupp:

Nevada 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 wish 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. We respectfully disagree as explained in the following points.

By adding additional regulatory requirements as stated in the IRPS it is going to require additional employee(s) to provide the stated supervision. Credit Union investment programs already have regulatory oversight from the SEC, the NASD, our Broker/Dealer and the State of Nevada Investment Division. I see the IRPS creating a fifth layer of oversight. It continues to get harder to provide the much needed personal financial planning our members need when the regulations keep piling up. Regulations are necessary and they are already in place by multiple entities. By creating additional requirements it will certainly have increased cost related to the compliance no matter the size of the credit union.

**2. Paperwork Reduction Act**

According to the NCUA, the IRPS will not increase paperwork requirements. We disagree based on the following.

When implementing additional oversight to the many layers that already exist, the paper is certainly going to grow. In discussions with other professionals in the industry and reading time and time again it's sad to see many seasoned and well qualified people get out of the business because of the increased burdens.

This reminds me of conversations with my father that I had in recent years. My father is a retired physician. He practiced medicine, General Family Practice, in the Whittier/La Habra, California area for some 35 years. He would call me at work on Friday evenings often times at 6:00 or 7:00 at night. It was earlier in my career so I didn't think it was out of place for me to be putting the hours. When I would ask him what he was doing at work he would say, "I'm doing paperwork, more regulations...more paperwork". He absolutely loved the medical profession. It was truly shocking for me to hear from his very lips one day "It's not fun anymore there's too much paperwork and it takes away from the time to see the patients." He was the type of person that would have practiced until the day he died. I'm a little biased of course but, he was a good doctor that enjoyed seeing and treating the patients. He was known as the doctor in his medical group where you would have to wait a long, long time to get in from your scheduled appointment. Patients certainly did not like the waiting but they did it because I assume they felt they were getting the bedside manner/service they were looking for. Hopefully I have given a real world glimpse. The same corollary exists in the financial services world. More regulation will definitely create more paperwork—it's a given.

Too many good people are leaving the business and thereby creating a void for the ever so critical need of personal financial planning. As you well know people "getting behind" in their ever critical financial planning creates a less stable, financially and emotionally stressed society.

### **3. Proposed Contract Provisions**

The following contract provisions would negatively affect an investment program.

One of the IRPS proposed provisions for contracts 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 the 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.

An additional proposed contract provision states that the brokerage firm should allow the credit union the right to check for compliance and access member brokerage accounts for oversight. We believe that the brokerage firm, with properly licensed individuals and not the credit union is in the best position to evaluate securities and ensure compliance. There may be no qualified credit union

employees to monitor compliance. Secondly, allowing the credit union to access client brokerage accounts may violate state and internal privacy policies.

#### **4. Compliance with the requirements of the IRPS and applicable law and regulation.**

The below proposed compliance requirements may negatively affect and are not practical for credit unions as follows.

Requiring a qualified individual at the credit union to oversee the overseer of the investment program, who is already overseen by multiple overseers, would create the mandatory need to hire additional staff. In order to be “qualified” that individual would need to be appropriately licensed. So the credit union would have to have an additional Series 24, licensed principal, via our Broker/Dealer. This would duplicate duties and add additional cost and burdens. We already have the oversight by our Broker/Dealer on an ongoing basis. If I am not appropriately carrying out the necessary tasks then the Broker/Dealer oversight will get the situation rectified by correcting things or by removing me if necessary.

Additionally that licensed individual would not be an “independent” overseer. They could not be licensed with another Broker/Dealer because the State of Nevada does not allow investment representatives to be dually license with differing Broker/Dealers. It confuses the boundaries of supervision.

#### **5. Dual Employees**

The restrictions detailed below on dual employees would negatively affect and is not practical for credit unions for the following reasons.

We do not agree with the IRPS provision, which states that the dual employee should not have management or policy setting responsibilities within the credit union related to non-deposit investments. The dual employees are likely the only employees with securities licensing and investment sales experienced. Therefore, the dual employees’ guidance is critical with respect to investment practices. It would be akin to a procedure of not allowing business lending management individuals to set policy for business loans.

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.

In summary, we believe that the Proposed Interpretive Ruling will compound the current layers of regulatory oversight that already exist and create increased burdens and cost to credit unions. It will make it much more difficult to run an effective investment program which is a critical need to credit union members. I appreciate the opportunity to comment and hope these points will be taken into serious consideration before making such proposed changes.

If you have any questions, please contact me at 702.641.4331.

Sincerely,

Chris

Chris A. Wible, CFP®  
VP Member Investments & Insurance Services

CC: Brad Beal  
Paul Parrish  
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