



Memorandum

TO: Bob Ramirez, Garry Woods, Gary Bram
FROM: Chuck Powell
DATE: June 26, 2005
RE: Proposed IRPS – Sales of Nondeposit Investments

The proposed IRPS does not fundamentally change the nature, scope or content of disclosures, or dual employee identification requirements identified originally in NCUA Letter to Credit Unions 150, it does reconfigure investment programs to mirror the changes of incidental powers and a credit union's ability to earn commissions directly from the sale of investments. However, the IRPS does not directly impose the requirement that investment programs have to be run under the credit union. The proposed IRPS establishes four potential business issues with which we may have to deal:

- The IRPS does specifically state that an investment program can not be run from a CUSO and must be run from a credit union. In the wording of the IRPS, all references to CUSOs are removed and replaced with credit union. Without so stating, the implication is investment programs must be run from a credit union.
- The IRPS attempts to implement a **PROPOSED** SEC regulation that would limit the use of CUSOs for the sale of investments.
- The cover letter (not the IRPS) states that state chartered credit unions are granted the authority to engage in the sale of investments under state law. I checked with Cathy Scrivano, and according to her, Arizona law mirrors federal law and in the case of the IRPS, Arizona will most likely adopt, in total, the IRPS as state regulatory guidance.
- The final issue, "The SEC expects a CUSO to register as a broker if its activities rise to the level of "affecting the transfer of securities." The SEC defines "affecting the transfer of securities" very broadly and the sale, marketing, or presentation of nondeposit investment products "affects the transfer of securities." It must be noted that since the SEC has not approved their final rules – there is the "expectation" not the requirement for a CUSO to register as a broker/dealer.

Potentially the significant area for comment is the NCUA attempting to interpret and implement a proposed SEC rule or regulation change prior to its implementation. Establishing NCUA regulation prior to the SEC's final ruling is pre-mature and will, if the new rule is implemented, cause credit unions to significantly alter their nondeposit investment program business models when there is nothing more than the SEC "expectation" that these programs, if run through a CUSO, must be a registered broker/dealer or, if not, the program will have to be run through the credit union.