SEFCU
1239 Washington Avenue
Albany, NY 12206

July 25, 2005

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

Dear Secretary Rupp,

Thank you for the opportunity to comment on the Proposed Interpretive Ruling and Policy Statement No. 05-1 Sales of Nondeposit Investment Products.

Overview:
The credit union movement has a proud history of representing the best interests of our members through promulgating rules and regulations that require credit union adherence to the highest professional and ethical standards. The NCUA has been a partner and proponent of this philosophy, ensuring that credit unions are given appropriate guidance and regulatory oversight in the conduct of our business activities.

While I readily accept that this proposed IRPS is a continuation of that effort, I must take objection to several of the provisions contained therein. My comments, as applicable to the referenced and italicized sections, are as follows:

The features of the sales program.
This section charges the credit union with the responsibility to provide an ongoing research and compliance effort to *"identify specific laws, regulations, and other limitations or requirements, including qualitative considerations, that will expressly govern the selection and marketing of products a broker may offer."*

I would submit that most credit unions lack the staff and expertise to assume such a comprehensive and ongoing responsibility, and that the costs of staff, or consultants, that a credit union would have to employ would seriously impact on the credit union's ability to offer these products to the membership.

Furthermore, the proposed IRPS states *"Qualitative considerations include an analysis of the level of complexity and volatility in the investments that you will permit the broker to offer to your members."*

I would offer that such an analysis is well beyond the means of existing credit union resources and would necessitate the employment of staff and/or consultants. In addition, what would be the purpose of such an analysis? Would the NCUA expect that credit unions would limit their product offerings to avoid "*complex investments*" and if so, would that not place credit unions at a substantial competitive disadvantage in a highly competitive marketplace?

The same general comment would be applicable in regards to "*volatility*"? By definition, volatility is inherent in all nondeposit products. Again, I must ask, what would be the purpose of analyzing volatility at the program level? The appropriate level of analysis for both volatility and complexity is at the account level, where the dual employee and the broker dealer each currently have the responsibility for an appropriate suitability analysis.

Compliance with the requirements in this IRPS and applicable laws and regulation.

The IRPS states "*Credit unions must maintain programs to monitor compliance by the broker, its salespeople and other entities involved in the sales of nondeposit investments."*

The IRPS goes on to outline specific areas to monitor: investment turnover (churning), investor suitability, and investor borrowing patterns. There is an extensive existing body of law that clearly assigns the responsibility for ensuring broker dealer compliance in each of these areas to the SEC and the NASD. An additional layer of monitoring at the credit union level would accomplish little from a member safety perspective and potentially create contradictory compliance directives. For example, should the credit union investment compliance officer determine that a product is not suitable for an investor, but the broker dealer's compliance officer determines that it is a suitable investment, from whom should the dual employee take direction? Regardless of which course of action the dual employee pursues, the dual employee and the credit union are placed in the difficult position of disregarding direction from a compliance officer. Furthermore, the investor would clearly have a course of legal action regardless of the choice made by the dual employee, since the credit union could be fairly criticized for disregarding the direction of a compliance officer, a substantial admission against the credit union's self interest in any potential litigation.

The proposed IRPS would force credit unions to create a duplicative compliance effort that would lack any regulatory or legal authority to compel a broker dealer, or even a dual employee, to perform their duties in a specific manner. The only recourse that a credit union would have in the case of a disagreement between the credit union and the broker dealer's compliance officers would be for the credit union to terminate the contract with the broker dealer. Assuming such language even existed in the contract to permit such a

termination, the process of changing broker dealers is extremely labor intensive, costly and a great inconvenience to the membership.

An additional concern in regards to this proposed language is the additional costs that a credit union would incur to implement the required monitoring. The language would require that the staff responsible for this monitoring be "*independent of any credit union personnel involved in investment product sale.*". This language would require every credit union offering nondeposit investment products to hire an NASD Series 24 Licensed Principal, at a compensation cost typically in excess of $100,000.

Indemnification

The proposed IRPS states: "*The use of dual employees increases the risk a credit union may be held liable for abusive sales practices. At the same time, the brokerage firm may have less incentive to supervise nondeposit sales activities properly when conducted by a dual employee*".

The IRPS does not offer any logic to support this conclusion, and the language does not accurately reflect the relationship between broker dealers and credit unions or the existing climate of the investment services industry as characterized by the exhaustive focus on compliance and due diligence that is commonplace today. The compliance responsibilities imposed upon broker dealers by the SEC and NASD are extensive and heavily audited. These responsibilities are no less required of dual employees.

Summary:
While no doubt a well intentioned response to an issue of public concern, the IRPS as proposed addresses a problem (unethical or illegal sales of nondeposit products) that simply does not exist in the credit union movement.

In the best case, the proposed IRPS will burden credit unions with extensive compliance responsibilities that will be very expensive to provide and will result in no more the duplication of compliance efforts already residing with the broker dealer. At worst, the IRPS will force credit unions to incur these compliance expenses while placing them in the position of receiving contradictory direction from the two compliance officers who will be reviewing the activities of the program. I would urge you consider these issues as you consider moving forward with the proposed IRPS.

Again, thank you for the opportunity to comment.

John E. Lawler
Sr. Vice President
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