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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

Sent via Email

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

Dear Ms. Rupp:

The Pennsylvania Credit Union Association (PCUA) appreciates this opportunity to provide comments to the National Credit Union Administration (NCUA) on its proposal to adopt an Interpretive Ruling and Policy Statement (IRPS) on Sales of Nondeposit Investments. As stated in NCUA's proposal, the IRPS provides requirements, direction, and guidance to federally-insured credit unions on the establishment and operation of third party brokerage arrangements. The proposed IRPS updates and replaces NCUA's Letter to Credit Unions No. 150 on the sales of nondeposit investments.

The PCUA is a statewide trade association that represents nearly ninety (90%) percent of the approximate six hundred and sixty (660) credit unions located within the Commonwealth of Pennsylvania. To respond to the Board's request for comment, the PCUA consulted with its Regulatory Review Committee (the Committee). The Committee consists of twelve (12) credit union CEOs who lead the management teams of Pennsylvania federal and state-chartered credit unions. Members of the Committee also represent credit unions of all asset sizes. The comments contained in this letter reflect the input of the Committee and PCUA staff.

While PCUA and its members agree that many of the provisions included in the IRPS are consistent with the NCUA's goal to minimize safety and soundness risks to credit unions participating in third party brokerage arrangements, there are a few areas in which our group believes the IRPS would serve to increase those risks.

Compliance with the requirements of the IRPS and applicable law and regulation.

Our members expressed concern with the requirement that credit unions with brokerage agreements must have programs in place to monitor compliance of the brokerage salespeople with applicable laws and regulations. This requirement at minimum creates the perception that the credit union is responsible for the brokerage firm's compliance with applicable laws and regulations.

As noted in introduction to the proposal, “[c]omplex federal and state laws govern the creation and transfer of securities, and nondeposit investments, including insurance products sold with an investment component, are subject to securities laws.” In order to effectively monitor compliance with these complex laws under the proposal, credit unions would necessarily be required to hire expensive experts to duplicate the supervisory and compliance efforts of the broker/dealers and their regulators.

Broker/dealers are already subject to extensive oversight by National Association of Security Dealers, the state security regulators, and the U.S. Securities and Exchange Commission. The requirement that credit unions duplicate the efforts of these supervisory experts creates unnecessary costs and exposes the credit union to potential liability, through the perception or implication that the credit union is responsible for broker/dealers compliance with the applicable laws and regulations, which increase safety and soundness risks.

Rather, PCUA and its members request that NCUA expand and further clarify the actions or steps that could be taken: to “[d]etermine if the [brokerage] firm can adequately supervise its sales representatives at the credit union's location,” and to otherwise ensure proper due diligence in selecting an appropriate brokerage firm.

We agree that credit unions should receive and monitor complaints, as well as follow up on the resolution of those complaints, and verify receipt and understanding of disclosures by members.

The features of the sales program.

Similar to the requirement to monitor compliance, it is the opinion of our members that the requirement to choose the types of products that a broker may offer to the credit union's members through the third party brokerage arrangement would increase safety and soundness risks. The determination of what types of nondeposit investment products meet members' needs and risk tolerances should be left in the hands of the broker, who has the expertise in determining product suitability. The insertion of the credit union's opinion in product choice is a factor that could be used to determine that a fiduciary relationship exists between the credit union and the member in the sale of third party brokerage products.

The Use of Dual Employees: Separation of duties:

Based upon our conversations with individuals who wrestle with these issues in practice, it is our understanding that the restrictions on dual employees set forth in this section are contrary to industry trends of product integration and would place credit unions at a competitive disadvantage with other financial institutions that offer nondeposit investment products to their customers through third party arrangements.

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Secretary of the Board

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For example, we have been advised that credit union member service representatives and branch managers are sometimes licensed to sell investment products and are cast in the dual employee role. Those individuals necessarily perform duties for the credit unions that bring them into contact with members that also purchase nondeposit investments. To restrict the functions of these employees increases the costs to the credit unions of offering these products and services to their members.

The restriction that the dual employee should have no management or policy-setting responsibilities within the credit union related to nondeposit investments also serves to increase safety and soundness risks to the credit union. As a practical matter, the investment program manager provides the credit union with expertise regarding this activity and frequently holds a management position at the credit union. Restricting this employee from holding a management position would interfere with this individual's ability to participate in management discussions during which issues may be raised that could impact the credit union's safety and soundness.

Sales of Nondeposit Investment to Nonmembers.

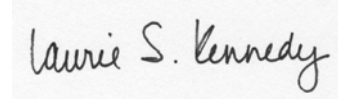
We have likewise been advised by individuals who are involved more intimately in these activities that the approach proposed in the IRPS to deal with nonmember transactions is impractical and complicated. We encourage NCUA to recognize that nonmember business is a necessary by-product of these arrangements and to give serious consideration to the comments and suggestions offered by those individuals to simplify the regulatory approach to this issue.

As you know, the more complex and unworkable a regulatory requirement is, the more likely the credit unions will have difficulty in complying with its provisions. Our Committee members are aware that other alternatives have been suggested to measure nonmember business in this context and support those alternatives which provide an unambiguous and practical method of dealing with nonmember transactions.

Please feel free to contact me or any of the PCUA staff at 1-800-932-0661 if you have any questions.

Sincerely,

Pennsylvania Credit Union Association



Laurie S. Kennedy
Associate Counsel

LSK:llb

cc: Association Board
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