

July 24, 2005

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

RE: Proposed IRPS No. 05-1

Dear Ms. Rupp:

It is my understanding 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.

I am writing 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. I disagree based on the following.

The IRPS states that a credit union’s independent compliance program should contact investment members, monitor customer complaints, review accounts for churning and suitability and ensure that the broker’s supervisory personnel made scheduled examinations. To comply with these provisions, credit unions may be required to train existing staff or hire additional staff with the requisite securities knowledge and experience to effectively conduct these specific compliance functions. Preferably, the compliance staff would be securities licensed to obtain the requisite knowledge of applicable regulations and be subject to ongoing continuing education requirements. However, since only NASD registered broker/dealers can hold an individual’s securities licenses, credit unions are unable to maintain such licensing for employees.

Additionally, there is a significant cost associated with the development and implementation of a compliance program. Given the complexity and progression of securities regulations, credit unions would be required to bear additional cost to

create surveillance systems in order to conduct the specific reviews as proposed in the IRPS.

I believe that the additional cost for the credit union's compliance surveillance as proposed in the IRPS is unwarranted given the duplication of the efforts of the brokerage firm's compliance systems. The brokerage firm's compliance systems are already subject to oversight by multiple securities regulators.

## **2. Proposed Contract Provisions**

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. I do not believe that the credit union is in the best position to conduct this task. Deciding what products to offer should be the broker/dealer's responsibility. The broker/dealer has experienced staff to determine the appropriate investments. If the decision is left up to the credit union, ultimately, the member may be harmed if products are limited.

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

The IRPS proposes that the compliance staff contact credit union members that have purchased non-deposit investments to ensure that the member received and understood the required disclosures. I believe member contact for the purpose of discussing investments with credit union personnel who are independent from the investment sales program may potentially confuse members by blurring the required distinction between credit union deposit and non-deposit functions. I also am concerned as to whether a credit union employee who is independent of the investment sales can fully understand and competently discuss required disclosures or ably respond to members' investment inquiries.

In addition to contacting members, the IRPS proposes that the independent compliance staff monitor customer complaints, review accounts for churning and suitability and ensure that the broker's supervisory personnel made scheduled examinations. These reviews are already being conducted by the brokerage firms' OSJ's (Office of Supervisory Jurisdiction) and compliance departments and subjected to oversight by the SEC, NASD and the individual state securities regulators. Brokerage firm employees with the requisite licensing, knowledge and experience are responsible for compliance functions. The burden on the credit union to comply with this section is outweighed by any benefit since these tasks are already conducted by the brokerage firm.

## **4. Dual Employees**

Per the IRPS, the duties performed by a credit union should not bring the dual employee into contact with members who might also purchase non-deposit

investments. Dual employees must perform functions for both the credit union and the brokerage firm. It is not feasible to prevent them from coming into contact with members.

I 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 experience. Therefore, the dual employees' guidance is critical with respect to investment practices.

According to the IRPS, the use of dual employees increases the risk a credit union may be held liable for abusive sales practices. On the contrary, I believe that the IRPS as proposed, increases credit union risk. If credit unions are required to perform compliance functions over the investment services as currently proposed, members may successfully allege that the credit union failed to meet this obligation.

I believe that the requirement for credit unions to have an independent compliance function is not practical since the credit union does not have staff qualified for this function. This requirement creates a redundancy since the brokerage firm already handles this function. I also believe that most credit unions would incur substantial increased costs to comply with the additional compliance function outlined in this IRPS. Furthermore, I believe that the proposed regulation will increase, and not reduce, credit union liability for investment activities.

Should you have any questions, please contact me at (321) 752-2222, ext. 9200.

Sincerely,

Thomas R. Baldwin III  
EVP/CFO  
Space Coast Credit Union

