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June 30, 2005

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

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

Dear Ms. Rupp:

ABNB Federal Credit Union has been advised 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 the credit union's compliance officer should contact investment clients, monitor complaints, review accounts for churning and suitability and ensure the broker's supervisory personnel made scheduled examinations. If this is required, it will be necessary for us to train staff or hire additional staff with securities knowledge and experience to effectively conduct these specific compliance functions.

From my perspective for the credit union to adequately perform these activities our staff would need to be licensed and knowledgeable of applicable regulations and would require ongoing continuing education. Further, I do not understand how this could be accomplished since only NASD registered broker/dealers may hold a securities license and credit unions are unable to maintain such licenses for employees.

Contrary to the NCUA's position and in light of the complexity of securities regulations the resources necessary for the development, implementation and staffing of such a program as proposed in the IRPS would be a very expensive proposition and an unwarranted duplication of efforts since brokerage firms already have compliance systems in place that are subject to oversight by multiple securities regulators.

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## 2. Paperwork Reduction Act

According to the NCUA, the IRPS will not increase paperwork requirements. I disagree. Any time you duplicate an effort for one party to satisfy the requirements of another you create paperwork. To infer otherwise is not realistic.

## 3. Proposed Contract Provisions

An IRPS provision that contracts between a credit union and a broker/dealer requires the credit union to identify and analyze the products that the broker may offer is in my opinion unwise. I do not believe the credit union is in the best position to evaluate these products. Deciding what products to offer should be left to a qualified broker/dealer with experienced staff. If the decision is left up to the credit union, ultimately, the client may be harmed if products are limited.

The possibility that the credit union has engaged in this decision process could create additional liability for the credit union.

An additional provision states the brokerage firm should allow the credit union the right to check for compliance and access member brokerage accounts for oversight. As discussed above, we believe that the brokerage firm and not the credit union is in the best position to evaluate securities and ensure compliance.

With respect to the proposed indemnity clause, we have no objection to including improper sales practices provided the indemnity is mutual.

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

The IRPS proposes that credit union compliance staff contact members that have purchased nondeposit investments to ensure the member received and understood the required disclosures. I believe client contact for the purpose of discussing investments with credit union personnel who are not involved in the investment sales program may confuse members by blurring the required distinction between credit union deposit and nondeposit functions. More importantly, securities products are generally more complex. My concern is whether a credit union employee who is independent of the investment sales can fully understand and competently discuss required disclosures or ably respond to clients' investment inquiries. I would think this person should also be licensed which takes us back to my comments in paragraph 1.

The IRPS proposes the compliance staff monitor complaints, review accounts 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 subject to oversight by the SEC, NASD, Self Regulatory Agencies and the individual state securities regulators. The employees of the brokerage firm with the requisite licensing, knowledge and experience are

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responsible for compliance functions. There may be no employee at the credit union with qualifications required to conduct these functions. The obvious burden on the credit union to comply with this section is outweighed by any benefit since these tasks are being conducted by brokerage firms.

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

According to the IRPS, the duties performed by a credit union should not bring the dual employee into contact with members that might also purchase nondeposit investments. Dual employees must perform functions for both the credit union and the brokerage firm. Therefore, it's not feasible to prevent such employees from coming into contact with members.

I do not agree with the IRPS provision, which states the dual employee should not have management or policy setting responsibilities within the credit union related to nondeposit investments. In most situations, 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.

The IRPS also states that dual employees should not reference their position at the credit union when conducting nondeposit investment business. Again, we believe this is not practical and would be virtually impossible to supervise.

With respect to the dual employee compensation provision, the IRPS states the dual employee should have an employment contract with both employers, the credit union and the brokerage firm. However, the dual "employee" may be an independent contractor with the brokerage firm in which case an employment agreement would be inappropriate.

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

#### **6. Nondeposit Sales to Nonmembers**

Credit unions need guidance in the area of nondeposit sales to nonmembers, however the solution to permit a percentage minimum of nonmember business would be expensive and difficult if not impossible to measure. This would create greater costs and administrative burdens than the issue it seeks to address. It is not practical given the actual circumstances that result in services to nonmembers. I understand the need to limit business to credit union members only, but in order to facilitate the practical reality of a representative servicing his/her prior book of business (which in a new program, may be 100% of revenue), I suggest the credit union simply be allowed to receive reimbursement

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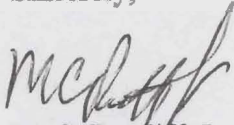
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for their direct and indirect expenses (which includes compensation and program management expenses) related to nonmember business.

In closing, I believe the requirement for credit unions to have a compliance function is not practical, redundant, adds unnecessary expense for the credit union and will likely increase, and not reduce, credit union liability for investment activities.

Should you have any questions, please contact me at 757-523-5340.

Sincerely,



M. C. Ratcliff, Jr.  
President/CEO