ORANGE COUNTY'S
CREDIT UNION℠

(714) 755-5900
P.O. Box 11777
Santa Ana, CA 92711-1777
www.orangecountyscu.org

JUL 06 '05 PM12:58 BOARD

23

June 29, 2005

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

Re: Comment Letter to Proposed Interpretative Ruling and Policy Statement No. 05-1
Sales of Nondeposit Investment Products

Dear Ms. Rupp,

With 24 years of financial services experience (banking and credit unions, including 15 of those years in the securities industry within financial institutions) and as a former broker-dealer president, I would like to focus my response on the compliance areas of the proposed IRPS.

Speaking from a broker-dealer perspective, the regulators who oversee the operations of a broker-dealer (NASD/SEC/State Securities Regulators) provide ample oversight through electronic, as well as manual surveillance of transactions done with the public. The NASD Rule 2350 addresses broker-dealer ("BD") conduct on the premises of a financial institution and clearly states it's the NASD member's responsibility to be in physically distinct locations in branches, get the proper disclosures to the customer (orally and in writing) and that products and services are clearly provided by the BD and not the financial institution. I believe all of the above has, in general, been adhered to by the financial institution industry and these obligations are taken seriously by the credit unions offering Nondeposit investments and insurance products. Making sure the members of the credit unions are not confused and understand what they are purchasing, if a Nondeposit investment product is involved, has been one of the highest priorities, almost to the point of over disclosure if we are being compared to our "wire-house brethren"!

On top of Rule 2350, the NASD Manual and the Code of Conduct is applied to every BD and it's employees, regarding sales practices, disclosures, commissions and mark-ups, advertising and sales literature, along with licensing and continuing education, and much, much more. With all of these regulations, coupled with those applied by the SEC and the State Securities Regulators, it's unfair to ask credit union personnel to analyze the level of complexity and volatility of the investments that the credit union will permit the BD to offer to it's members. In fact, this rule could create liability to the credit union, for

example, if certain mutual funds on a credit union approved menu didn't allow for a credit union member to transfer to a particular fund within the same fund family because it wasn't approved by the credit union, although it may be completely suitable for the member. The member could potentially make a case that he/she wasn't allowed to manage their portfolio. I've literally seen a group of bankers sitting around a table with Morningstar data, trying to figure out which Oppenheimer funds they were going to put on the bank's approved list – although the broker-dealer had approved the entire fund family of Oppenheimer, and would gladly talk with the bankers regarding which of the funds were more aggressive/volatile in nature. The bank/credit union could make some funds available on an unsolicited basis for those more sophisticated investors, while limiting the availability of the more aggressive funds to which a novice investor has access. The notion that credit unions around the country have the expertise to manage the process you are trying to create is nonsense, and will create a huge financial burden in trying to hire that expertise.

The BD should be responsible for compliance of their investment reps. In a dual employee program, the credit union employee is governed by the BD for all securities related transactions. As a principal for the last 12 years, most bank/credit union compliance officers do not understand the brokerage/securities business, including branch audit requirements, OSJ functionality, etc. Their independent review of the results of any regulatory audits, BD audits, advertising and sales literature approvals would be appropriate oversight, but to require "qualified counsel" would again create an undue burden (financially and from a regulatory standpoint). Separately, but still part of the compliance program, customer complaint monitoring is an essential part of an investment program in a financial institution and is a great indicator of how well managed the investment reps are regarding disclosures and the sales process each member experiences. Monitoring by a CU compliance officer is great; handling a securities related complaint without the BD would be a mistake for the credit union. The BD must be involved and should always lead the complaint investigation if securities products or services were the cause of the complaint.

I completely disagree with the dual employee compensation and identification issue in the IRPS. The proposal is not "real world". As a credit union ("CU") executive, we always collect commission from the BD and then pay the investment reps. If the reps were being paid directly from the BD, they would be considered Managed Reps and not dual employees. Regarding identification, again, leave the compliance issues to the BD, which is answering to the NASD, SEC and the State Securities Regulators. Within the framework of the contract between the CU and the BD, the duties and responsibilities of each are spelled out and the appropriate "hold harmless" section pushes the liability into it's respective corners.

From a CU perspective, managing a dual employee program in concert with the BD makes the most sense. It would be IMPOSSIBLE to stay on top of all of the compliance notices, issues, etc., the NASD and SEC kick out each day, week and month. Even with 15 years of securities related experience, I still feel overwhelmed at times with all we are required to comply with in keeping our programs "safe and sane". We are much more

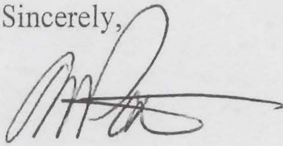
P.O. Box 11777 • Santa Ana, CA 92711-1777 • (714) 755-5900 • www.orangecountyscu.org

regulated NOW than our wire-house counterparts and I feel the proposed IRPS would unduly tax our resources (both financial and human) and make us uncompetitive. The Federal Reserve, FDIC, OCC and OTS are not requiring these same burdensome rule changes, and the NCUA should re-assess rolling out these proposed new rules.

Lastly, I submit that several credit union "live this stuff everyday" experts would make themselves available to discuss with the board more appropriate rules to bring NCUA Letter 150 into the current investment environment.

I appreciate the opportunity to comment on the proposed IRPS.

Sincerely,



Bill Partin
Senior Vice President

P.O. Box 11777 • Santa Ana, CA 92711-1777 • (714) 755-5900 • www.orangecountyscu.org