

February 9, 2011

Jack M. Antonini
President and CEO
NACUSO
PMB 3419 Via Lido #135
Newport Beach, California 92663

Dear Mr. Antonini:

This letter responds to NACUSO's comment letter ("Comment Letter"), dated January 7, 2011, regarding NCUA's Letter to Federal Credit Unions on the Sales of Nondeposit Investments, 10-FCU-03 (December 2010) ("10-FCU-03"). In general, the Comment Letter expresses concerns that NCUA's guidance requires credit unions to perform duties outside the scope of their expertise and to interpose themselves in broker/dealer compliance issues.

We have reviewed your Comment Letter and while we continue to believe the guidance contained in 10-FCU-03 articulates sound and reasonable guidelines for federal credit unions ("FCUs"), we are providing this response to clarify NCUA's position with respect to our expectations for FCUs involved in third party brokerage arrangements for the sales of nondeposit investment products.

As a preliminary matter, you should note that 10-FCU-03 is guidance recommending best practices for FCUs involved in third party brokerage arrangements; it does not carry the force or weight of formal regulation. Indeed, the first sentence of 10-FCU-03 expressly states that "[t]he purpose of this letter is to provide **guidance** to federal credit unions on the establishment and operation of third party brokerage arrangements for the sales of nondeposit investment products." (Emphasis added.) The letter does not impose regulatory requirements on FCUs.

By way of background, 10-FCU-03 supersedes and replaces NCUA's Letter to Credit Unions No. 150 (December 1993) ("Letter No. 150"), which contained NCUA's previous guidance on the sales of nondeposit investments. NCUA proposed to replace Letter No. 150 in 2005 with an Interpretive Ruling and Policy Statement (IRPS), IRPS 05-1 ("IRPS 05-1"), but that rulemaking was not finalized. At the time, an IRPS was the chosen medium because it was the most suitable vehicle to address both mandatory requirements for credit unions based on the Securities and Exchange Commission's (SEC) proposed Regulation B, as well as NCUA's best practices guidance. See 69 Fed. Reg. 39682 (June 30, 2004). IRPS 05-1 was drafted based on the anticipation that Regulation B would be imminently finalized; however, Regulation B was not finalized and the SEC subsequently promulgated Regulation R, which does not apply to credit unions. See 72 Fed. Reg. 56514 (Oct. 3, 2007); 12 CFR Part 218; 17 CFR Parts 240

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and 247. 10-FCU-03 was issued as a Letter to Federal Credit Unions because it is intended to update and replace the best practices guidance in Letter No. 150; it is not intended to include any mandatory requirements for FCUs. Securities regulations for FCUs are currently under consideration by the SEC and may eventually replace NCUA's guidance on this subject.

Your Comment Letter raises two primary concerns. We note the concerns you raise relate to two guidelines that were already included in both Letter No. 150 and IRPS 05-1. In other words, these specific guidelines represent longstanding NCUA guidance that has been in place since 1993. In fact, the language is nearly verbatim. 10-FCU-03 adds some examples of the types of qualitative investment data that FCUs should consider but this was intended to add additional clarification to the old guidance. In our view, 10-FCU-03 does not recommend anything new with respect to these particular best practices and merely reiterates longstanding guidance that continues to be relevant. Nevertheless, we would like to clarify NCUA's position with respect to your concerns.

First, you assert that our guidance recommending that credit unions perform a "qualitative analysis of the level of complexity and volatility in the investments that a credit union will permit the broker to offer members" requires an "improper act by an unregistered entity." You argue that "restricting what products the broker/dealer may offer" could place credit unions at a risk for liability in investor suitability claims.

The intent of this recommendation is to ensure FCU's policies, procedures and contracts reflect the FCU's due diligence in selecting an appropriate broker that can meet the needs of its membership. FCU policies should contemplate and describe the overall features of the sales program, and should identify the laws, regulations, and other limitations and requirements, including qualitative considerations, that will govern the selection and marketing of products a third party broker may offer. The guidance is not intended to require FCU's to select, authorize, or restrict each specific investment product that will be offered to its members; however, an FCU's policies should reflect a prudent analysis of the **types** of products that a broker may offer to its membership, including qualitative considerations.

Second, your Comment Letter raises the concern that our guidance recommending FCUs maintain compliance programs including "a system that monitors member complaints and periodically reviews and randomly samples member account activity to look for evidence of abuse" requires a credit union to "act as a securities law compliance officer by inspecting investment accounts," and insists credit unions "act in the capacity of a registered OSJ Principal and Broker Dealer Compliance Officer," which is beyond the scope of credit unions' expertise.

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The intent of this recommendation is to ensure FCUs exercise prudent, independent oversight over the third party brokerage arrangement to help protect their members from potential abuse. The guideline is not intended to impose an investigatory or policing role on FCUs nor to encourage FCUs to engage in inappropriate self-remedy. FCUs, however, should periodically and independently monitor member complaints and accounts for any signs of suspected abuse so that any abuse on the part of the third party broker dealer can be addressed appropriately. For example, when conducting random samplings, red flags may include: accounts with a high rate of investment turnover, which may indicate the sales representative is churning accounts to generate commissions; accounts with complex investments that may be unsuitable for the particular member; or a combination of loan accounts and nondeposit investment accounts that might indicate a member borrowed large sums of money from the credit union to finance nondeposit investment purchases.

We trust the above information provides insight and additional clarification about NCUA's expectations for best practices for FCUs involved in third party brokerage arrangements.

Sincerely,

/S/

Robert M. Fenner
General Counsel

GC/PWY:bhs
11-0124

cc: Chairman Matz
Board Member Hyland
Board Member Fryzel
David Marquis, Executive Director
Guy Messick, Esq.