

National Credit Union Administration

§ 703.1

covered credit union, except those existing and identified as part of the covered credit union's balance sheet, or off-balance sheet positions, such as asset sales or derivatives positions, on the date of the stress test.

(f) *Information collection.* Upon request, the covered credit union must provide NCUA with any relevant qualitative or quantitative information requested by NCUA pertinent to the stress test under this section.

(g) *Stress test results.* NCUA will provide each covered credit union with the results of the stress test by May 31 of the year following the effective testing date. A credit union conducting its own stress test must provide NCUA the results of its stress test with its capital plan by February 28 of the year following the effective testing date.

(h) *Supervisory actions.* If NCUA-run stress tests show that a covered credit union does not have the ability to maintain a stress test capital ratio of 5 percent or more under expected and stressed conditions in each quarter of the 9-quarter horizon, the credit union must provide NCUA, within 90 days of receipt of the stress test results, a stress test capital enhancement plan showing how it will meet that target. If the credit union-run stress tests show that it does not have the ability to maintain a stress test capital ratio of 5 percent or more under expected and stressed conditions in each quarter of the 9-quarter horizon, the credit union must incorporate a stress test capital enhancement plan into its capital plan. Any affected credit union operating without a stress test capital enhancement plan accepted by NCUA may be subject to supervisory actions on the part of NCUA.

(i) *Consultation on proposed action.* Before taking any action under this section against a federally insured, state-chartered credit union, NCUA will consult and work cooperatively with the appropriate State official.

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

Subpart A—General Investment and Deposit Activities

- Sec.
- 703.1 Purpose and scope.
- 703.2 Definitions.
- 703.3 Investment policies.
- 703.4 Recordkeeping and documentation requirements.
- 703.5 Discretionary control over investments and investment advisers.
- 703.6 Credit analysis.
- 703.7 Notice of non-compliant investments.
- 703.8 Broker-dealers.
- 703.9 Safekeeping of investments.
- 703.10 Monitoring non-security investments.
- 703.11 Valuing securities.
- 703.12 Monitoring securities.
- 703.13 Permissible investment activities.
- 703.14 Permissible investments.
- 703.15 Prohibited investment activities.
- 703.16 Prohibited investments.
- 703.17 Conflicts of interest.
- 703.18 Grandfathered investments.
- 703.19 Investment pilot program.
- 703.20 Request for additional authority.

Subpart B—Derivatives Authority

- 703.100 Purpose and scope.
- 703.101 Definitions.
- 703.102 Permissible derivatives.
- 703.103 Derivative authority.
- 703.104 Requirements for derivative counterparty agreements, collateral and margining.
- 703.105 Reporting requirements.
- 703.106 Operational support requirements.
- 703.107 External service providers.
- 703.108 Eligibility.
- 703.109 Applying for derivatives authority.
- 703.110 Application content.
- 703.111 NCUA approval.
- 703.112 Applying for additional products or characteristics.
- 703.113 Pilot program participants with active derivatives positions.
- 703.114 Regulatory violation.

APPENDIX TO SUBPART B—EXAMPLES OF DERIVATIVE LIMIT AUTHORITY CALCULATIONS

AUTHORITY: 12 U.S.C. 1757(7), 1757(8), 1757(15).

SOURCE: 68 FR 32960, June 3, 2003, unless otherwise noted.

Subpart A—General Investment and Deposit Activities

§ 703.1 Purpose and scope.

(a) This part interprets several of the provisions of Sections 107(7), 107(8), and

§ 703.2

107(15) of the Federal Credit Union Act (Act), 12 U.S.C. 1757(7), 1757(8), 1757(15), which list those securities, deposits, and other obligations in which a Federal credit union may invest. Part 703 identifies certain investments and deposit activities permissible under the Act and prescribes regulations governing those investments and deposit activities on the basis of safety and soundness concerns. Additionally, part 703 identifies and prohibits certain investments and deposit activities. Investments and deposit activities that are permissible under the Act and not prohibited or otherwise regulated by part 703 remain permissible for Federal credit unions.

(b) This part does not apply to:

(1) Investment in loans to members and related activities, which is governed by §§ 701.21, 701.22, 701.23, and part 723 of this chapter;

(2) The purchase of real estate-secured loans pursuant to Section 107(15)(A) of the Act, which is governed by § 701.23 of this chapter, except those real estate-secured loans purchased as a part of an investment repurchase transaction, which is governed by §§ 703.13 and 703.14 of this chapter;

(3) Investment in credit union service organizations, which is governed by part 712 of this chapter;

(4) Investment in fixed assets, which is governed by § 701.36 of this chapter;

(5) Investment by corporate credit unions, which is governed by part 704 of this chapter.

(6) Investment activity by State-chartered credit unions, except as provided in § 741.3(a)(2) and § 741.219 of this chapter; or

(7) Funding a Charitable Donation Account pursuant to § 721.3(b) of this chapter.

[68 FR 32960, June 3, 2003, as amended at 69 FR 27828, May 17, 2004; 71 FR 76124, Dec. 20, 2006; 78 FR 76730, Dec. 19, 2013]

§ 703.2 Definitions.

The following definitions apply to this part:

Adjusted trading means selling an investment to a counterparty at a price above its current fair value and simultaneously purchasing or committing to purchase from the counterparty an-

12 CFR Ch. VII (1–1–15 Edition)

other investment at a price above its current fair value.

Associated personnel means a person engaged in the investment banking or securities business who is directly or indirectly controlled by a National Association of Securities Dealers (NASD) member, whether or not this person is registered or exempt from registration with NASD. Associated personnel includes every sole proprietor, partner, officer, director, or branch manager of any NASD member.

Banker's acceptance means a time draft that is drawn on and accepted by a bank and that represents an irrevocable obligation of the bank.

Bank note means a direct, unconditional, and unsecured general obligation of a bank that ranks equally with all other senior unsecured indebtedness of the bank, except deposit liabilities and other obligations that are subject to any priorities or preferences.

Borrowing repurchase transaction means a transaction in which the Federal credit union agrees to sell a security to a counterparty and to repurchase the same or an identical security from that counterparty at a specified future date and at a specified price.

Call means an option that gives the holder the right to buy a specified quantity of a security at a specified price during a fixed time period.

Collateralized Mortgage Obligation (CMO) means a multi-class mortgage related security.

Collective investment fund means a fund maintained by a national bank under 12 CFR part 9 (Comptroller of the Currency's regulations).

Commercial mortgage related security means a mortgage related security, as defined below, except that it is collateralized entirely by commercial real estate, such as a warehouse or office building, or a multi-family dwelling consisting of more than four units.

Counterparty means the party on the other side of the transaction.

Custodial Agreement means a contract in which one party agrees to hold securities in safekeeping for others.

Delivery versus payment means payment for an investment must occur simultaneously with its delivery.

Derivative means a financial contract which derives its value from the value

and performance of some other underlying financial instrument or variable, such as an index or interest rate.

Embedded option means a characteristic of an investment that gives the issuer or holder the right to alter the level and timing of the cash flows of the investment. Embedded options include call and put provisions and interest rate caps and floors. Since a prepayment option in a mortgage is a type of call provision, a mortgage-backed security composed of mortgages that may be prepaid is an example of an investment with an embedded option.

Eurodollar deposit means a U.S. dollar-denominated deposit in a foreign branch of a United States depository institution.

European financial options contract means an option that can be exercised only on its expiration date.

Exchangeable Collateralized Mortgage Obligation means a class of a collateralized mortgage obligation (CMO) that, at the time of purchase, represents beneficial ownership interests in a combination of two or more underlying classes of the same CMO structure. The holder of an exchangeable CMO may pay a fee and take delivery of the underlying classes of the CMO.

Fair value means the price that would be received to sell an asset, or paid to transfer a liability, in an orderly transaction between market participants at the measurement date, as defined by GAAP.

Financial options contract means an agreement to make or take delivery of a standardized financial instrument upon demand by the holder of the contract as specified in the agreement.

Forward sales commitment means an agreement to sell an asset at a price and future date specified in the agreement.

Immediate family member means a spouse or other family member living in the same household.

Independent qualified agent means an agent independent of an investment repurchase counterparty that does not receive a transaction fee from the counterparty and has at least two years experience assessing the value of mortgage loans.

Industry-recognized information provider means an organization that obtains compensation by providing information to investors and receives no compensation for the purchase or sale of investments.

Interest rate lock commitment means an agreement by a credit union to hold a certain interest rate and points for a specified amount of time while a prospective borrower's application is processed.

Investment means any security, obligation, account, deposit, or other item authorized for purchase by a Federal credit union under Sections 107(7), 107(8), or 107(15) of the Act, or this part, other than loans to members.

Investment grade means the issuer of a security has an adequate capacity to meet the financial commitments under the security for the projected life of the asset or exposure, even under adverse economic conditions. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest on the security is expected. A Federal credit union may consider any or all of the following factors, to the extent appropriate, with respect to the credit risk of a security: Credit spreads; securities-related research; internal or external credit risk assessments; default statistics; inclusion on an index; priorities and enhancements; price, yield, and/or volume; and asset class-specific factors. This list of factors is not meant to be exhaustive or mutually exclusive.

Investment repurchase transaction means a transaction in which an investor agrees to purchase a security from a counterparty and to resell the same or an identical security to that counterparty at a specified future date and at a specified price.

Maturity means the date the last principal amount of a security is scheduled to come due and does not mean the call date or the weighted average life of a security.

Mortgage related security means a security as defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41)).

Mortgage servicing rights means a contractual obligation to perform mortgage servicing and the right to receive compensation for performing those services. Mortgage servicing is the administration of a mortgage loan, including collecting monthly payments and fees, providing recordkeeping and escrow functions, and, if necessary curing defaults and foreclosing.

Negotiable instrument means an instrument that may be freely transferred from the purchaser to another person or entity by delivery, or endorsement and delivery, with full legal title becoming vested in the transferee.

Net worth means the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles and as further defined in § 702.2(f) of this chapter.

Official means any member of a Federal credit union's board of directors, credit committee, supervisory committee, or investment-related committee.

Ordinary care means the degree of care, which an ordinarily prudent and competent person engaged in the same line of business or endeavor should exercise under similar circumstances.

Pair-off transaction means an investment purchase transaction that is closed or sold on, or before the settlement date. In a pair-off, an investor commits to purchase an investment, but then pairs-off the purchase with a sale of the same investment before or on the settlement date.

Put means an option that gives the holder the right to sell a specified quantity of a security at a specified price during a fixed time period.

Registered investment company means an investment company that is registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a). Examples of registered investment companies are mutual funds and unit investment trusts.

Regular way settlement means delivery of a security from a seller to a buyer within the time frame that the securities industry has established for immediate delivery of that type of security. For example, regular way settlement of a Treasury security includes settle-

ment on the trade date (cash), the business day following the trade date (regular way), and the second business day following the trade date (skip day).

Residual interest means the remainder cash flows from collateralized mortgage obligations/real estate mortgage investment conduits (CMOs/REMICs), or other mortgage-backed security transaction, after payments due bondholders and trust administrative expenses have been satisfied.

Securities lending means lending a security to a counterparty, either directly or through an agent, and accepting collateral in return.

Security means a share, participation, or other interest in property or in an enterprise of the issuer or an obligation of the issuer that:

(1) Either is represented by an instrument issued in bearer or registered form or, if not represented by an instrument, is registered in books maintained to record transfers by or on behalf of the issuer;

(2) Is of a type commonly dealt in on securities exchanges or markets or, when represented by an instrument, is commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

(3) Either is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations.

Senior management employee means a Federal credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager), an assistant chief executive officer, and the chief financial officer.

Small business related security means a security as defined in section 3(a)(53) of the securities Exchange Act of 1934 (15 U.S.C. 78c(a)(53)). This definition does not include Small Business Administration securities permissible under section 107(7) of the Federal Credit Union Act.

Weighted average life means the weighted-average time to the return of a dollar of principal, calculated by multiplying each portion of principal received by the time at which it is expected to be received (based on a reasonable and supportable estimate of

that time) and then summing and dividing by the total amount of principal.

When-issued trading of securities means the buying and selling of securities in the period between the announcement of an offering and the issuance and payment date of the securities.

Yankee dollar deposit means a deposit in a United States branch of a foreign bank licensed to do business in the State in which it is located, or a deposit in a State-chartered, foreign controlled bank.

Zero coupon investment means an investment that makes no periodic interest payments but instead is sold at a discount from its face value. The holder of a zero coupon investment realizes the rate of return through the gradual appreciation of the investment, which is redeemed at face value on a specified maturity date.

[68 FR 32960, June 3, 2003, as amended at 69 FR 39831, July 1, 2004; 71 FR 76124, Dec. 20, 2006; 77 FR 74109, Dec. 13, 2012; 79 FR 5241, Jan. 31, 2014]

§ 703.3 Investment policies.

A Federal credit union's board of directors must establish written investment policies consistent with the Act, this part, and other applicable laws and regulations and must review the policy at least annually. These policies may be part of a broader, asset-liability management policy. Written investment policies must address the following:

- (a) The purposes and objectives of the Federal credit union's investment activities;
- (b) The characteristics of the investments the Federal credit union may make including the issuer, maturity, index, cap, floor, coupon rate, coupon formula, call provision, average life, and interest rate risk;
- (c) How the Federal credit union will manage interest rate risk;
- (d) How the Federal credit union will manage liquidity risk;
- (e) How the Federal credit union will manage credit risk including specifically listing institutions, issuers, and counterparties that may be used, or criteria for their selection, and limits

on the amounts that may be invested with each;

(f) How the Federal credit union will manage concentration risk, which can result from dealing with a single or related issuers, lack of geographic distribution, holding obligations with similar characteristics like maturities and indexes, holding bonds having the same trustee, and holding securitized loans having the same originator, packager, or guarantor;

(g) Who has investment authority and the extent of that authority. Those with authority must be qualified by education or experience to assess the risk characteristics of investments and investment transactions. Only officials or employees of the Federal credit union may be voting members of an investment-related committee;

(h) The broker-dealers the Federal credit union may use;

(i) The safekeepers the Federal credit union may use;

(j) How the Federal credit union will handle an investment that, after purchase, is outside of board policy or fails a requirement of this part; and

(k) How the Federal credit union will conduct investment trading activities, if applicable, including addressing:

- (1) Who has purchase and sale authority;
- (2) Limits on trading account size;
- (3) Allocation of cash flow to trading accounts;
- (4) Stop loss or sale provisions;
- (5) Dollar size limitations of specific types, quantity and maturity to be purchased;
- (6) Limits on the length of time an investment may be inventoried in a trading account; and
- (7) Internal controls, including segregation of duties.

§ 703.4 Recordkeeping and documentation requirements.

(a) Federal credit unions with assets of \$10,000,000 or greater must comply with all generally accepted accounting principles applicable to reports or statements required to be filed with NCUA. Federal credit unions with assets less than \$10,000,000 are encouraged to do the same, but are not required to do so.

§ 703.5

12 CFR Ch. VII (1–1–15 Edition)

(b) A Federal credit union must maintain documentation for each investment transaction for as long as it holds the investment and until the documentation has been audited in accordance with § 715.4 of this chapter and examined by NCUA. The documentation should include, where applicable, bids and prices at purchase and sale and for periodic updates, relevant disclosure documents or a description of the security from an industry-recognized information provider, financial data, and tests and reports required by the Federal credit union's investment policy and this part.

(c) A Federal credit union must maintain documentation its board of directors used to approve a broker-dealer or a safekeeper for as long as the broker-dealer or safekeeper is approved and until the documentation has been audited in accordance with § 715.4 of this chapter and examined by NCUA.

(d) A Federal credit union must obtain an individual confirmation statement from each broker-dealer for each investment purchased or sold.

[68 FR 32960, June 3, 2003, as amended at 69 FR 27828, May 17, 2004; 72 FR 30246, May 31, 2007]

§ 703.5 Discretionary control over investments and investment advisers.

(a) Except as provided in paragraph (b) of this section, a Federal credit union must retain discretionary control over its purchase and sale of investments. A Federal credit union has not delegated discretionary control to an investment adviser when the Federal credit union reviews all recommendations from investment advisers and is required to authorize a recommended purchase or sale transaction before its execution.

(b)(1) A Federal credit union may delegate discretionary control over the purchase and sale of investments to a person other than a Federal credit union official or employee:

(i) Provided the person is an investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. 80b); and

(ii) In an amount up to 100 percent of its net worth in the aggregate at the time of delegation.

(2) At least annually, the Federal credit union must adjust the amount of funds held under discretionary control to comply with the 100 percent of net worth cap. The Federal credit union's board of directors must receive notice as soon as possible, but no later than the next regularly scheduled board meeting, of the amount exceeding the net worth cap and notify in writing the appropriate regional director within 5 days after the board meeting. The credit union must develop a plan to comply with the cap within a reasonable period of time.

(3) Before transacting business with an investment adviser, a Federal credit union must analyze his or her background and information available from State or Federal securities regulators, including any enforcement actions against the adviser, associated personnel, and the firm for which the adviser works.

(c) A Federal credit union may not compensate an investment adviser with discretionary control over the purchase and sale of investments on a per transaction basis or based on capital gains, capital appreciation, net income, performance relative to an index, or any other incentive basis.

(d) A Federal credit union must obtain a report from its investment adviser at least monthly that details the investments under the adviser's control and their performance.

§ 703.6 Credit analysis.

A Federal credit union must conduct and document a credit analysis on an investment and the issuing entity before purchasing it, except for investments issued or fully guaranteed as to principal and interest by the U.S. government or its agencies, enterprises, or corporations or fully insured (including accumulated interest) by the National Credit Union Administration or the Federal Deposit Insurance Corporation. A Federal credit union must update this analysis at least annually for as long as it holds the investment.

§ 703.7 Notice of non-compliant investments.

A Federal credit union's board of directors must receive notice as soon as possible, but no later than the next

National Credit Union Administration

§ 703.10

regularly scheduled board meeting, of any investment that either is outside of board policy after purchase or has failed a requirement of this part. The board of directors must document its action regarding the investment in the minutes of the board meeting, including a detailed explanation of any decision not to sell it. The Federal credit union must notify in writing the appropriate regional director of an investment that has failed a requirement of this part within 5 days after the board meeting.

§ 703.8 Broker-dealers.

(a) A Federal credit union may purchase and sell investments through a broker-dealer as long as the broker-dealer is registered as a broker-dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) or is a depository institution whose broker-dealer activities are regulated by a Federal or State regulatory agency.

(b) Before purchasing an investment through a broker-dealer, a Federal credit union must analyze and annually update the following:

(1) The background of any sales representative with whom the Federal credit union is doing business;

(2) Information available from State or Federal securities regulators and securities industry self-regulatory organizations, such as the National Association of Securities Dealers and the North American Securities Administrators Association, about any enforcement actions against the broker-dealer, its affiliates, or associated personnel; and

(3) If the broker-dealer is acting as the Federal credit union's counterparty, the ability of the broker-dealer and its subsidiaries or affiliates to fulfill commitments, as evidenced by capital strength, liquidity, and operating results. The Federal credit union should consider current financial data, annual reports, external assessments of creditworthiness, relevant disclosure documents, and other sources of financial information.

(c) The requirements of paragraph (a) of this section do not apply when the Federal credit union purchases a certificate of deposit or share certificate

directly from a bank, credit union, or other depository institution.

[68 FR 32960, June 3, 2003, as amended at 69 FR 39831, July 1, 2004; 77 FR 74109, Dec. 13, 2012]

§ 703.9 Safekeeping of investments.

(a) A Federal credit union's purchased investments and repurchase collateral must be in the Federal credit union's possession, recorded as owned by the Federal credit union through the Federal Reserve Book-Entry System, or held by a board-approved safekeeper under a written custodial agreement that requires the safekeeper to exercise, at least, ordinary care.

(b) Any safekeeper used by a Federal credit union must be regulated and supervised by either the Securities and Exchange Commission, a Federal or State depository institution regulatory agency, or a State trust company regulatory agency.

(c) A Federal credit union must obtain and reconcile monthly a statement of purchased investments and repurchase collateral held in safekeeping.

(d) Annually, the Federal credit union must analyze the ability of the safekeeper to fulfill its custodial responsibilities, as evidenced by capital strength, liquidity, and operating results. The Federal credit union should consider current financial data, annual reports, external assessments of creditworthiness, relevant disclosure documents, and other sources of financial information.

[68 FR 32960, June 3, 2003, as amended at 69 FR 39831, July 1, 2004; 77 FR 74109, Dec. 13, 2012]

§ 703.10 Monitoring non-security investments.

(a) At least quarterly, a Federal credit union must prepare a written report listing all of its shares and deposits in banks, credit unions, and other depository institutions, that have one or more of the following features:

- (1) Embedded options;
- (2) Remaining maturities greater than 3 years; or
- (3) Coupon formulas that are related to more than one index or are inversely related to, or multiples of, an index.

§ 703.11

(b) The requirement of paragraph (a) of this section does not apply to shares and deposits that are securities.

(c) If a Federal credit union does not have an investment-related committee, then each member of its board of directors must receive a copy of the report described in paragraph (a) of this section. If a Federal credit union has an investment-related committee, then each member of the committee must receive a copy of the report, and each member of the board must receive a summary of the information in the report.

§ 703.11 Valuing securities.

(a) Before purchasing or selling a security, a Federal credit union must obtain either price quotations on the security from at least two broker-dealers or a price quotation on the security from an industry-recognized information provider. This requirement to obtain price quotations does not apply to new issues purchased at par or at original issue discount.

(b) At least monthly, a Federal credit union must determine the fair value of each security it holds. It may determine fair value by obtaining a price quotation on the security from an industry-recognized information provider, a broker-dealer, or a safekeeper.

(c) At least annually, the Federal credit union's supervisory committee or its external auditor must independently assess the reliability of monthly price quotations received from a broker-dealer or safekeeper. The Federal credit union's supervisory committee or external auditor must follow generally accepted auditing standards, which require either re-computation or reference to market quotations.

(d) If a Federal credit union is unable to obtain a price quotation required by this section for a particular security, then it may obtain a quotation for a security with substantially similar characteristics.

§ 703.12 Monitoring securities.

(a) At least monthly, a Federal credit union must prepare a written report setting forth, for each security held, the fair value and dollar change since the prior month-end, with summary information for the entire portfolio.

12 CFR Ch. VII (1-1-15 Edition)

(b) At least quarterly, a Federal credit union must prepare a written report setting forth the sum of the fair values of all fixed and variable rate securities held that have one or more of the following features:

- (1) Embedded options;
- (2) Remaining maturities greater than 3 years; or
- (3) Coupon formulas that are related to more than one index or are inversely related to, or multiples of, an index.

(c) Where the amount calculated in paragraph (b) of this section is greater than a Federal credit union's net worth, the report described in that paragraph must provide a reasonable and supportable estimate of the potential impact, in percentage and dollar terms, of an immediate and sustained parallel shift in market interest rates of plus and minus 300 basis points on:

- (1) The fair value of each security in the Federal credit union's portfolio;
- (2) The fair value of the Federal credit union's portfolio as a whole; and
- (3) The Federal credit union's net worth.

(d) If the Federal credit union does not have an investment-related committee, then each member of its board of directors must receive a copy of the reports described in paragraphs (a) through (c) of this section. If the Federal credit union has an investment-related committee, then each member of the committee must receive copies of the reports, and each member of the board of directors must receive a summary of the information in the reports.

§ 703.13 Permissible investment activities.

(a) *Regular way settlement and delivery versus payment basis.* A Federal credit union may only contract for the purchase or sale of a security as long as the delivery of the security is by regular way settlement and the transaction is accomplished on a delivery versus payment basis.

(b) *Federal funds.* A Federal credit union may sell Federal funds to an institution described in Section 107(8) of the Act and credit unions, as long as the interest or other consideration received from the financial institution is at the market rate for Federal funds transactions.

(c) *Investment repurchase transaction.* A Federal credit union may enter into an investment repurchase transaction so long as:

(1) Any securities the Federal credit union receives are permissible investments for Federal credit unions, the Federal credit union, or its agent, either takes physical possession or control of the repurchase securities or is recorded as owner of them through the Federal Reserve Book Entry Securities Transfer System, the Federal credit union, or its agent, receives a daily assessment of their market value, including accrued interest, and the Federal credit union maintains adequate margins that reflect a risk assessment of the securities and the term of the transaction; and

(2) The Federal credit union has entered into signed contracts with all approved counterparties.

(d) *Borrowing repurchase transaction.* A Federal credit union may enter into a borrowing repurchase transaction so long as:

(1) The transaction meets the requirements of paragraph (c) of this section;

(2) Any cash the Federal credit union receives is subject to the borrowing limit specified in Section 107(9) of the Act, and any investments the Federal credit union purchases with that cash are permissible for Federal credit unions; and

(3) The investments referenced in paragraph (d)(2) of this section must mature under the following conditions:

(i) No later than the maturity of the borrowing repurchase transaction;

(ii) No later than thirty days after the borrowing repurchase transaction, unless authorized under §703.20, provided the value of all investments purchased with maturities later than borrowing repurchase transactions does not exceed 100 percent of the federal credit union's net worth; or

(iii) At any time later than the maturity of the borrowing repurchase transaction, provided the value of all investments purchased with maturities later than borrowing repurchase transactions does not exceed 100 percent of the federal credit union's net worth and the credit union received a composite CAMEL rating of "1" or "2" for

the last two (2) full examinations and maintained a net worth classification of "well capitalized" under part 702 of this chapter for the six (6) immediately preceding quarters or, if subject to a risk-based net worth (RBNW) requirement under part 702 of this chapter, has remained "well capitalized" for the six (6) immediately preceding quarters after applying the applicable RBNW requirement.

(e) *Securities lending transaction.* A Federal credit union may enter into a securities lending transaction so long as:

(1) The Federal credit union receives written confirmation of the loan;

(2) Any collateral the Federal credit union receives is a legal investment for Federal credit unions, the Federal credit union, or its agent, obtains a first priority security interest in the collateral by taking physical possession or control of the collateral, or is recorded as owner of the collateral through the Federal Reserve Book Entry Securities Transfer System; and the Federal credit union, or its agent, receives a daily assessment of the market value of the collateral, including accrued interest, and maintains adequate margin that reflects a risk assessment of the collateral and the term of the loan;

(3) Any cash the Federal credit union receives is subject to the borrowing limit specified in Section 107(9) of the Act, and any investments the Federal credit union purchases with that cash are permissible for Federal credit unions and mature no later than the maturity of the transaction; and

(4) The Federal credit union has executed a written loan and security agreement with the borrower.

(f)(1) *Trading securities.* A Federal credit union may trade securities, including engaging in when-issued trading and pair-off transactions, so long as the Federal credit union can show that it has sufficient resources, knowledge, systems, and procedures to handle the risks.

(2) A Federal credit union must record any security it purchases or sells for trading purposes at fair value on the trade date. The trade date is the date the Federal credit union commits,

§ 703.14

12 CFR Ch. VII (1–1–15 Edition)

orally or in writing, to purchase or sell a security.

(3) At least monthly, the Federal credit union must give its board of directors or investment-related committee a written report listing all purchase and sale transactions of trading securities and the resulting gain or loss on an individual basis.

[68 FR 32960, June 3, 2003, as amended at 77 FR 31991, May 31, 2012]

§ 703.14 Permissible investments.

(a) *Variable rate investment.* A federal credit union may invest in a variable rate investment, as long as the index is tied to domestic interest rates. Except in the case of Treasury Inflation Protected Securities, the variable rate investment cannot, for example, be tied to foreign currencies, foreign interest rates, domestic or foreign commodity prices, equity prices, or inflation rates. For purposes of this part, the U.S. dollar-denominated London Interbank Offered Rate (LIBOR) is a domestic interest rate.

(b) *Corporate credit union shares or deposits.* A Federal credit union may purchase shares or deposits in a corporate credit union, except where the NCUA Board has notified it that the corporate credit union is not operating in compliance with part 704 of this chapter. A Federal credit union's aggregate amount of perpetual and nonperpetual capital, as defined in part 704 of this chapter, in one corporate credit union is limited to two percent of the federal credit union's assets measured at the time of investment or adjustment. A Federal credit union's aggregate amount of contributed capital in all corporate credit unions is limited to four percent of assets measured at the time of investment or adjustment.

(c) *Registered investment company.* A Federal credit union may invest in a registered investment company or collective investment fund, as long as the prospectus of the company or fund restricts the investment portfolio to investments and investment transactions that are permissible for Federal credit unions.

(d) *Collateralized mortgage obligation/real estate mortgage investment conduit.* A Federal credit union may invest in a fixed or variable rate collateralized

mortgage obligation/real estate mortgage investment conduit.

(e) *Municipal security.* A Federal credit union may purchase and hold a municipal security, as defined in section 107(7)(K) of the Act, only if it conducts and documents an analysis that reasonably concludes the security is at least investment grade. The Federal credit union must also limit its aggregate municipal securities holdings to no more than 75 percent of the Federal credit union's net worth and limit its holdings of municipal securities issued by any single issuer to no more than 25 percent of the Federal credit union's net worth.

(f) *Instruments issued by institutions described in Section 107(8) of the Act.* A Federal credit union may invest in the following instruments issued by an institution described in Section 107(8) of the Act:

- (1) Yankee dollar deposits;
- (2) Eurodollar deposits;
- (3) Banker's acceptances;
- (4) Deposit notes; and

(5) Bank notes with original weighted average maturities of less than 5 years.

(g) *European financial options contract.* A Federal credit union may purchase a European financial options contract or a series of European financial options contracts only to fund the payment of dividends on member share certificates where the dividend rate is tied to an equity index provided:

(1) The option and dividend rate are based on a domestic equity index;

(2) Proceeds from the options are used only to fund dividends on the equity-linked share certificates;

(3) Dividends on the share certificates are derived solely from the change in the domestic equity index over a specified period;

(4) The options' expiration dates are no later than the maturity date of the share certificate.

(5) The certificate may be redeemed prior to the maturity date only upon the member's death or termination of the corresponding option;

(6) The total costs associated with the purchase of the option is known by the Federal credit union prior to effecting the transaction;

National Credit Union Administration

§ 703.14

(7) The options are purchased at the same time the certificate is issued to the member.

(8) The counterparty to the transaction is a domestic counterparty and has been approved by the Federal credit union's board of directors;

(9) The counterparty to the transaction meets the minimum credit quality standards as approved by the Federal credit union's board of directors.

(10) Any collateral posted by the counterparty is a permissible investment for Federal credit unions and is valued daily by an independent third party along with the value of the option;

(11) The aggregate amount of equity-linked member share certificates does not exceed 50 percent of the Federal credit union's net worth;

(12) The terms of the share certificate include a guarantee that there can be no loss of principal to the member regardless of changes in the value of the option unless the certificate is redeemed prior to maturity; and

(13) The Federal credit union provides its board of directors with a monthly report detailing at a minimum:

(i) The dollar amount of outstanding equity-linked share certificates;

(ii) Their maturities; and

(iii) The fair value of the options as determined by an independent third party.

(h) *Mortgage note repurchase transactions.* A federal credit union may invest in securities that are offered and sold pursuant to section 4(5) of the Securities Act of 1933, 15 U.S.C. 77d(5), only as a part of an investment repurchase agreement under §703.13(c), subject to the following conditions:

(1) The aggregate of the investments with any one counterparty is limited to 25 percent of the Federal credit union's net worth and 50 percent of its net worth with all counterparties;

(2) At the time the Federal credit union purchases the securities, the counterparty, or a party fully guaranteeing the counterparty, must meet the minimum credit quality standards as approved by the Federal credit union's board of directors.

(3) The federal credit union must obtain a daily assessment of the market

value of the securities under §703.13(c)(1) using an independent qualified agent;

(4) The mortgage note repurchase transaction is limited to a maximum term of 90 days;

(5) All mortgage note repurchase transactions will be conducted under tri-party custodial agreements; and

(6) A federal credit union must obtain an undivided interest in the securities.

(i) *Zero-coupon investments.* A federal credit union may only purchase a zero-coupon investment with a maturity date that is no greater than 10 years from the related settlement date, unless authorized under §703.20 or otherwise provided in this paragraph. A federal credit union that received a composite CAMEL rating of "1" or "2" for the last two (2) full examinations and maintained a net worth classification of "well capitalized" under part 702 of this chapter for the six (6) immediately preceding quarters or, if subject to a risk-based net worth (RBNW) requirement under part 702 of this chapter, has remained "well capitalized" for the six (6) immediately preceding quarters after applying the applicable RBNW requirement, may purchase a zero-coupon investment with a maturity date that is no greater than 30 years from the related settlement date.

(j) *Commercial mortgage related security (CMRS).* A federal credit union may purchase a CMRS permitted by Section 107(7)(E) of the Act; and, pursuant to Section 107(15)(B) of the Act, a CMRS of an issuer other than a government-sponsored enterprise enumerated in Section 107(7)(E) of the Act, provided:

(1) The Federal credit union conducts and documents a credit analysis that reasonably concludes the CMRS is at least investment grade.

(2) The CMRS meets the definition of mortgage related security as defined in 15 U.S.C. 78c(a)(41) and the definition of commercial mortgage related security as defined in §703.2 of this part;

(3) The CMRS's underlying pool of loans contains more than 50 loans with no one loan representing more than 10 percent of the pool; and

(4) The aggregate amount of private label CMRS purchased by the federal credit union does not exceed 25 percent of its net worth, unless authorized

§ 703.15

under § 703.20 or as otherwise provided in this subparagraph. A federal credit union that has received a composite CAMEL rating of “1” or “2” for the last two (2) full examinations and maintained a net worth classification of “well capitalized” under part 702 of this chapter for the six (6) immediately preceding quarters or, if subject to a risk-based net worth (RBNW) requirement under part 702 of this chapter, has remained “well capitalized” for the six (6) immediately preceding quarters after applying the applicable RBNW requirement, may hold private label CMRS in an aggregate amount not to exceed 50% of its net worth.

(k) *Derivatives.* A Federal credit union may only enter into in the following derivatives transactions:

(1) Any derivatives permitted under § 701.21(i) of this chapter, § 703.14(g), or subpart B of this part;

(2) Embedded options not required under generally accepted accounting principles (GAAP) adopted in the United States to be accounted for separately from the host contract; and

(3) Interest rate lock commitments or forward sales commitments made in connection with a loan originated by a Federal credit union.

[68 FR 32960, June 3, 2003, as amended at 69 FR 39831, July 1, 2004; 71 FR 76124, Dec. 20, 2006; 75 FR 64826, Oct. 20, 2010; 77 FR 31991, May 31, 2012; 77 FR 74110, Dec. 13, 2012; 78 FR 13213 Feb. 27, 2013; 79 FR 5241, Jan 31, 2014]

§ 703.15 Prohibited investment activities.

Adjusted trading or short sales. A Federal credit union may not engage in adjusted trading or short sales.

§ 703.16 Prohibited investments.

(a) *Mortgage servicing rights.* A Federal credit union may not purchase mortgage servicing rights as an investment but may perform mortgage servicing functions as a financial service for a member as long as the mortgage loan is owned by a member;

(b) *Stripped mortgage backed securities (SMBS).* A Federal credit union may not invest in SMBS or securities that represent interests in SMBS except as described in paragraphs (1) and (3) below.

12 CFR Ch. VII (1–1–15 Edition)

(1) A Federal credit union may invest in and hold exchangeable collateralized mortgage obligations (exchangeable CMOs) representing beneficial ownership interests in one or more interest-only classes of a CMO (IO CMOs) or principal-only classes of a CMO (PO CMOs), but only if:

(i) At the time of purchase, the ratio of the market price to the remaining principal balance is between .8 and 1.2, meaning that the discount or premium of the market price to par must be less than 20 points;

(ii) The offering circular or other official information available at the time of purchase indicates that the notional principal on each underlying IO CMO should decline at the same rate as the principal on one or more of the underlying non-IO CMOs, and that the principal on each underlying PO CMO should decline at the same rate as the principal, or notional principal, on one or more of the underlying non-PO CMOs; and

(iii) The credit union staff has the expertise dealing with exchangeable CMOs to apply the conditions in paragraphs (e)(1)(i) and (e)(1)(ii) of this section.

(2) A Federal credit union that invests in an exchangeable CMO may exercise the exchange option only if all of the underlying CMOs are permissible investments for that credit union.

(3) A Federal credit union may accept an exchangeable CMO representing beneficial ownership interests in one or more IO CMOs or PO CMOs as an asset associated with an investment repurchase transaction or as collateral in a securities lending transaction. When the exchangeable CMO is associated with one of these two transactions, it need not conform to the conditions in paragraphs (e)(1)(i) and (ii) of this section.

(c) *Other prohibited investments.* A Federal credit union may not purchase residual interests in collateralized mortgage obligations, real estate mortgage investment conduits, or small business related securities.

[68 FR 32960, June 3, 2003, as amended at 69 FR 39832, July 1, 2004; 77 FR 31991, May 31, 2012; 79 FR 5241, Jan. 31, 2014]

National Credit Union Administration

§ 703.19

§ 703.17 Conflicts of interest.

(a) A Federal credit union's officials and senior management employees, and their immediate family members, may not receive anything of value in connection with its investment transactions. This prohibition also applies to any other employee, such as an investment officer, if the employee is directly involved in investments, unless the Federal credit union's board of directors determines that the employee's involvement does not present a conflict of interest. This prohibition does not include compensation for employees.

(b) A Federal credit union's officials and employees must conduct all transactions with business associates or family members that are not specifically prohibited by paragraph (a) of this section at arm's length and in the Federal credit union's best interest.

§ 703.18 Grandfathered investments.

(a) Subject to safety and soundness considerations, a Federal credit union may hold a CMO/REMIC residual, stripped mortgage-backed securities, or zero coupon security with a maturity greater than 10 years, if it purchased the investment:

(1) Before December 2, 1991; or

(2) On or after December 2, 1991, but before January 1, 1998, if for the purpose of reducing interest rate risk and if the Federal credit union meets the following:

(i) The Federal credit union has a monitoring and reporting system in place that provides the documentation necessary to evaluate the expected and actual performance of the investment under different interest rate scenarios;

(ii) The Federal credit union uses the monitoring and reporting system to conduct and document an analysis that shows, before purchase, that the proposed investment will reduce its interest rate risk;

(iii) After purchase, the Federal credit union evaluates the investment at least quarterly to determine whether or not it actually has reduced the interest rate risk; and

(iv) The Federal credit union accounts for the investment consistent with generally accepted accounting principles.

(b) A federal credit union may hold a zero-coupon investment with a maturity greater than 10 years, a borrowing repurchase transaction in which the investment matures at any time later than the maturity of the borrowing, or CMRS that cause the credit union's aggregate amount of CMRS from issuers other than government-sponsored enterprises to exceed 25% of its net worth, in each case if it purchased the investment or entered the transaction under the Regulatory Flexibility Program before July 2, 2012.

(c) All grandfathered investments are subject to the valuation and monitoring requirements of §§ 703.10, 703.11, and 703.12 of this part.

[68 FR 32960, June 3, 2003, as amended at 77 FR 31991, May 31, 2012]

§ 703.19 Investment pilot program.

(a) Under the investment pilot program, NCUA will permit a limited number of Federal credit unions to engage in investment activities prohibited by this part but permitted by the Act.

(b) Except as provided in paragraph (c) of this section, before a Federal credit union may engage in additional activities it must obtain written approval from NCUA. To obtain approval, a Federal credit union must submit a request to its regional director that addresses the following items:

(1) Certification that the Federal credit union is "well-capitalized" under part 702 of this chapter;

(2) Board policies approving the activities and establishing limits on them;

(3) A complete description of the activities, with specific examples of how they will benefit the Federal credit union and how they will be conducted;

(4) A demonstration of how the activities will affect the Federal credit union's financial performance, risk profile, and asset-liability management strategies;

(5) Examples of reports the Federal credit union will generate to monitor the activities;

(6) Projections of the associated costs of the activities, including personnel, computer, audit, and so forth;

§ 703.20

(7) Descriptions of the internal systems that will measure, monitor, and report the activities;

(8) Qualifications of the staff and officials responsible for implementing and overseeing the activities; and

(9) Internal control procedures that will be implemented, including audit requirements.

(c) A third-party seeking approval of an investment pilot program must submit a request to the Director of the Office of Capital Markets and Planning that addresses the following items:

(1) A complete description of the activities with specific examples of how a credit union will conduct and account for them, and how they will benefit a Federal credit union;

(2) A description of any risks to a Federal credit union from participating in the program; and

(3) Contracts that must be executed by the Federal credit union.

(d) A Federal credit union need not obtain individual written approval to engage in investment activities prohibited by this part but permitted by statute where the activities are part of a third-party investment program that NCUA has approved under this section.

[68 FR 32960, June 3, 2003, as amended at 69 FR 39832, July 1, 2004; 70 FR 55517, Sept. 22, 2005]

§ 703.20 Request for additional authority.

(a) *Additional authority.* A federal credit union may submit a written request to its regional director seeking expanded authority above the following limits in this part:

(1) Borrowing repurchase transaction maximum maturity mismatch of 30 days under § 703.13(d)(3)(ii).

(2) Zero-coupon investment 10-year maximum maturity under § 703.14(i), up to a maturity of no more than 30 years.

(3) CMRS aggregate limit of 25% of net worth under § 703.14(j), up to no more than 50% of net worth. To obtain approval for additional authority, the federal credit union must demonstrate three consecutive years of effective CMRS portfolio management and the ability to evaluate key risk factors.

(b) *Written request.* A federal credit union desiring additional authority must submit a written request to the

12 CFR Ch. VII (1–1–15 Edition)

NCUA regional office having jurisdiction over the geographical area in which the credit union's main office is located, that includes the following:

(1) A copy of the credit union's investment policy;

(2) The higher limit sought;

(3) An explanation of the need for additional authority;

(4) Documentation supporting the credit union's ability to manage the investment or activity; and

(5) An analysis of the credit union's prior experience with the investment or activity.

(c) *Approval process.* A regional director will provide a written determination on a request for expanded authority within 60 calendar days after receipt of the request; however, the 60-day period will not begin until the requesting credit union has submitted all necessary information to the regional director. The regional director will inform the requesting credit union, in writing, of the date the request was received and of any additional documentation that the regional director requires in support of the request. If the regional director approves the request, the regional director will establish a limit on the investment or activity as appropriate and subject to the limitations in this part. If the regional director does not notify the credit union of the action taken on its request within 60 calendar days of the receipt of the request or the receipt of additional requested supporting information, whichever occurs later, the credit union may proceed with its proposed investment or investment activity.

(d) *Appeal to NCUA Board.* A federal credit union may appeal any part of the determination made under paragraph (c) to the NCUA Board by submitting its appeal through the regional director within 30 days of the date of the determination.

[77 FR 31991, May 31, 2012]

Subpart B—Derivatives Authority

SOURCE: 79 FR 5241, Jan. 31, 2014, unless otherwise noted.

§ 703.100 Purpose and scope.

(a) *Purpose.* This subpart allows Federal credit unions to enter into certain derivatives transactions exclusively for the purpose of reducing interest rate risk exposure.

(b) *Scope.* (1) This subpart applies to all Federal credit unions. Except as provided in § 741.219, this rule does not apply to federally insured, state-chartered credit unions.

(2) *Mutual funds.* This subpart does not permit a Federal credit union to invest in registered investment companies or collective investment funds under § 703.14(c) of this part, where the prospectus of the company or fund permit the investment portfolio to contain derivatives.

§ 703.101 Definitions.

For purposes of this subpart:

Amortizing notional amount means a characteristic of a derivative, in which the notional amount declines on a predetermined fixed basis over the term of the contract, according to an amortization schedule to which the parties agree when executing the contract;

Basis swap means an agreement between two parties in which the parties make periodic payments to each other based on floating rate indices multiplied by a notional amount;

Cleared swap has the meaning as defined by the Commodity Futures Trading Commission in 17 CFR 22.1;

Counterparty means a swap dealer, derivatives clearing organization, or exchange that participates as the other party in a derivatives transaction with a Federal credit union;

Credit support annex means the terms or rules under which collateral is posted or transferred between a Federal credit union and a counterparty to mitigate credit risk that may result from changes in the fair value of derivatives positions;

Derivative means a financial contract which derives its value from the value and performance of some other underlying financial instrument or variable, such as an index or interest rate;

Derivatives clearing organization has the meaning as defined by the Commodity Futures Trading Commission in 17 CFR 1.3(d);

Economic effectiveness means the extent to which a derivatives transaction results in offsetting changes in the interest rate risk that the transaction was, and is, intended to provide;

Exchange means a central financial clearing market where end users can trade futures, as defined in this section of this subpart;

External service provider means any entity that provides services to assist a Federal credit union in carrying out its derivatives program and the requirements of this subpart;

Fair value has the meaning specified in § 703.2 of subpart A of this part;

Field director means an NCUA Regional Director or the Director of the Office of National Examinations and Supervision;

Forward start date means an agreement that delays the settlement date of a derivatives transaction for a specified period of time;

Futures means a U.S. Treasury note financial contract that obligates the buyer to take delivery of Treasury notes (or the seller to deliver Treasury notes) at a predetermined future date and price. Futures contracts are standardized to facilitate trading on an exchange;

Futures commission merchant (FCM) has the meaning as defined by the Commodity Futures Trading Commission in 17 CFR 1.3(p);

Hedge means to enter into a derivatives transaction to mitigate interest rate risk;

Interest rate cap means a contract, based on a reference interest rate, for payment to the purchaser when the reference interest rate rises above the level specified in the contract;

Interest rate floor means a contract, based on a reference interest rate, for payment to the purchaser when the reference interest rate falls below the level specified in the contract;

Interest rate risk means the vulnerability of a Federal credit union's earnings or economic value to movements in market interest rates;

Interest rate swap means an agreement to exchange future payments of interest on a notional amount at specific times and for a specified time period;

Introducing broker means a futures brokerage firm that deals directly with the client, while the trade execution is done by a futures commission merchant;

ISDA protocol means a multilateral contractual amendment mechanism that has been used to address changes to International Swap and Derivatives Association (ISDA) standard contracts since 1998;

Leveraged derivative means a derivative where the value of the transaction does not change in a one to one proportion with the contractual rate or index;

(x) *Margin* means the minimum amount of funds that must be deposited between parties to a derivatives transaction, as detailed in a credit support annex or clearing arrangement;

Master service agreement means a document agreed upon between two parties that sets out standard terms that apply to all derivatives transactions entered into between those parties. Each time the same two parties enter into a transaction, the terms of the master service agreement apply automatically and do not need to be renegotiated. The most common form of a master service agreement is a master ISDA agreement;

Minimum transfer amount means the minimum amount of collateral that a party to a derivatives transaction will require, per transfer, to cover exposure in excess of the collateral threshold;

Net economic value means the economic value of assets minus the economic value of liabilities;

Net worth has the meaning specified in § 702.2 of this chapter;

Non-cleared means transactions that do not go through a derivatives clearing organization;

Notional amount means the contracted amount of a derivatives contract for swaps and options on which interest payments or other payments are based. For futures contracts, the notional amount is represented by the contract size;

Novation means the substitution of an old obligation with a new one that either replaces an existing obligation with a new obligation or replaces an original party with a new party;

Reference interest rate means the index or rate to be used as the variable

rate for resetting derivatives transactions;

Reporting date means the end of the business day on the date used to report positions and fair values for limit compliance (e.g., daily, month-end, quarter-end and fiscal year-end);

Senior executive officer has the meaning specified in § 701.14 of this chapter and any other similar employee that is directly within the chain of command for the oversight of a Federal credit union's derivatives program, as identified in a Federal credit union's process and responsibility framework, as discussed in § 703.106(b)(1) of this subpart;

Structured liability offering means a share product created by a Federal credit union with contractual option features, such as periodic caps and calls, similar to those found in structured securities or structured notes;

Swap dealer has the meaning as defined by the Commodity Futures Trading Commission in 17 CFR 1.3(ggg);

Swap execution facility means a Commodities and Futures Trading Commission-registered facility that provides a system or platform for participants to execute cleared derivatives transactions;

Threshold amount means an unsecured credit exposure that a party to a derivatives transaction is prepared to accept before requesting additional collateral from the other party;

Trade date means the date that a derivatives order (new transactions, terminations, or assignments) is executed in the market; and

Unamortized premium means the balance of the upfront premium payment that has not been amortized.

§ 703.102 Permissible derivatives.

(a) *Products and characteristics.* A Federal credit union with derivatives authority may apply to use each of the following products and characteristics, subject to the limits in § 703.103 of this subpart:

(1) Interest rate swaps with the following characteristics:

(i) Settle within three business days, unless the Federal credit union is approved for a forward start date of no more than 90 days from the trade date; and

(ii) Do not have fluctuating notional amounts, unless the Federal credit union is approved to use derivatives with amortizing notional amounts.

(2) Basis swaps with the following characteristics:

(i) Settle within three business days, unless the Federal credit union is approved for a forward start date of no more than 90 days from the trade date; and

(ii) Do not have fluctuating notional amounts, unless the Federal credit union is approved to use derivatives with amortizing notional amounts.

(3) Purchased interest rate caps with no fluctuating notional amounts, unless the Federal credit union is approved to use derivatives with amortizing notional amounts.

(4) Purchased interest rate floors with no fluctuating notional amounts, unless the Federal credit union is approved to use derivatives with amortizing notional amounts.

(5) U.S. Treasury note futures (2-, 3-, 5-, and 10-year contracts).

(b) *Overall program characteristics.* A Federal credit union may only enter into derivatives, as identified and described in paragraph (a) of this section, that have the following characteristics:

(1) Not leveraged;

(2) Based on domestic rates, as defined in § 703.14(a) of subpart A of this part;

(3) Denominated in U.S. dollars;

(4) Except as provided in § 703.14(g) of subpart A of this part, not used to create structured liability offerings for members or nonmembers;

(5) Have contract maturity terms of equal to or less than 15 years, at the trade date; and

(6) Meet the definition of a derivative under GAAP.

§ 703.103 Derivative authority.

(a) *General authority.* A Federal credit union that is approved for derivatives authority under § 703.111 of this subpart may use any of the products and characteristics, described in § 703.102(a), subject to the following limits, which are described in more detail in appendix A to this subpart:

(1) *Entry limits authority.* Unless a Federal credit union is permitted to use standard limits authority under

this subpart, the aggregate fair value loss (as defined in appendix A) on all of a Federal credit union's derivatives positions may not exceed 15 percent of net worth, and a Federal credit union's weighted average remaining maturity notional (as defined in appendix A), may not exceed 65 percent of net worth.

(2) *Standard limits authority.* A Federal credit union that is permitted to use standard limits authority may not exceed an aggregate fair value loss on all of the Federal credit union's derivatives positions of 25 percent of net worth, and a weighted average remaining maturity notional of 100 percent of net worth, provided:

(i) The Federal credit union has engaged in derivatives at the entry limits authority for a continuous period of one year (beginning on the trade date of its first derivatives transaction); and

(ii) The Federal credit union has not been notified in writing by NCUA of any relevant safety and soundness concerns while engaged in derivatives at the entry limits authority.

(b) *Limit description*—(1) *Fair value limit.* The fair value limit is calculated by aggregating the fair values for all derivatives positions at the reporting date. If an aggregate loss exists, it must be less than the limit set forth in this subpart. A further description of this limit and example calculations are detailed in appendix A to this subpart.

(2) *Weighted average remaining maturity notional limit.* The weighted average remaining maturity notional limit is calculated by aggregating the notional amount for all derivatives positions based on each derivative's pricing sensitivity and maturity. A further description of this limit and example calculations are detailed in appendix A to this subpart.

§ 703.104 Requirements for derivative counterparty agreements, collateral and margining.

(a) A Federal credit union may have exchange-traded, centrally cleared, or non-cleared derivatives, in accordance with the following:

(1) *Exchange-traded and cleared derivatives.* A Federal credit union with derivatives that are exchange-traded or centrally cleared must:

§ 703.105

(i) Comply with the Commodity Futures Trading Commission's rules;

(ii) Use only swap dealers, introducing brokers, and/or futures commission merchants that are current registrants of the Commodity Futures Trading Commission; and

(iii) Comply with the margining requirements required by the futures commission merchant.

(2) *Non-cleared derivative transactions.* A Federal credit union with derivatives that are non-cleared must:

(i) Have a master service agreement and credit support annex with a registered swap dealer that are in accordance with ISDA protocol for standard bilateral agreements;

(ii) Utilize margining requirements contracted through a credit support annex and have a minimum transfer amount of \$250,000 for daily margining requirements; and

(iii) Accept as collateral, for margin requirements, only cash (U.S. dollars), U.S. Treasuries, government-sponsored enterprise debt, and government-sponsored enterprise residential mortgage-backed security pass-through securities.

(b) *Counterparty, collateral, and margining management.* A Federal credit union must:

(1) Have systems in place to effectively manage collateral and margining requirements;

(2) Have a collateral management process that monitors the Federal credit union's collateral and margining requirements daily and ensures that its derivatives positions are collateralized at all times and in accordance with the collateral requirements of this subpart and the Federal credit union's agreement with its counterparty. This includes the posting, tracking, valuation, and reporting of collateral using fair value; and

(3) Analyze and measure potential liquidity needs related to its derivatives program and stemming from additional collateral requirements due to changes in interest rates. The Federal credit union must calculate and track contingent liquidity needs in the event a derivatives transaction needs to be novated or terminated, and must establish effective controls for liquidity exposures arising from both market or

12 CFR Ch. VII (1-1-15 Edition)

product liquidity and instrument cash flows.

§ 703.105 Reporting requirements.

(a) *Board reporting.* At least quarterly, a Federal credit union's senior executive officers must deliver a comprehensive derivatives report to the Federal credit union's board of directors. The report may be delivered separately or as part of the standard funds management or asset/liability report.

(b) *Senior executive officer and asset liability committee.* At least monthly, Federal credit union staff must deliver a comprehensive derivatives report to the Federal credit union's senior executive officers and, if applicable, the Federal credit union's asset liability committee.

(c) *Comprehensive derivatives report.* At a minimum, the reports required in paragraphs (a) and (b) of this section must include:

(1) Identification of any areas of non-compliance with any provision of this subpart or the Federal credit union's policies;

(2) Utilization of the limits in § 703.103 and any additional limits in the Federal credit union's policies;

(3) An itemization of the Federal credit union's individual positions and aggregate current fair values, and a comparison with the Federal credit union's fair value loss and notional limit authority, as described in appendix A to this subpart;

(4) A comprehensive view of the Federal credit union's statement of financial condition, including, but not limited to, net economic value calculations for the Federal credit union's statement of financial condition done with derivatives included and excluded;

(5) An evaluation of the effectiveness of the derivatives transactions in mitigating interest rate risk; and

(6) An evaluation of effectiveness of the hedge relationship and reporting for derivatives in compliance with GAAP.

§ 703.106 Operational support requirements.

(a) *Required experience and competencies.* A Federal credit union operating with derivatives authority must

internally possess the following experience and competencies:

(1) *Board.* Before entering into any derivatives transactions, and annually thereafter, a Federal credit union's board members must receive training that provides a general understanding of derivatives and the knowledge required to provide strategic oversight of the Federal credit union's derivatives program. This requirement includes understanding how derivatives fit into the Federal credit union's business model and risk management process. The Federal credit union must maintain evidence of this training, in accordance with its document retention policy, until its next NCUA examination.

(2) *Senior executive officers.* A Federal credit union's senior executive officers must be able to understand, approve, and provide oversight for the derivatives activities. These individuals must have a comprehensive understanding of how derivatives fit into the Federal credit union's business model and risk management process.

(3) *Qualified derivatives personnel.* To engage in derivatives transactions, a Federal credit union must employ staff with experience in the following areas:

(i) *Asset/liability risk management.* Staff must be qualified to understand and oversee asset/liability risk management, including the appropriate role of derivatives. This requirement includes identifying and assessing risk in transactions, developing asset/liability risk management strategies, testing the effectiveness of asset/liability risk management, determining the effectiveness of managing interest rate risk under a range of stressed rates and statement of financial condition scenarios, and evaluating the relative effectiveness of alternative strategies. Staff must also be qualified to understand and undertake or oversee the appropriate modeling and analytics related to scope of risk to earnings and economic value over the expected maturity of derivatives positions;

(ii) *Accounting and financial reporting.* Staff must be qualified to understand and oversee appropriate accounting and financial reporting for derivatives transactions in accordance with GAAP;

(iii) *Derivatives execution and oversight.* Staff must be qualified to undertake or oversee trade executions; and

(iv) *Counterparty, collateral, and margining management.* Staff must be qualified to evaluate counterparty, collateral, and margining risk as described in § 703.104 of this subpart.

(b) *Required management and internal controls structure.* To effectively manage its derivatives activities, a Federal credit union must assess the effectiveness of its management and internal controls structure. At a minimum, the internal controls structure must include:

(1) *Transaction support.* Before executing any derivatives transaction, a Federal credit union must identify and document the circumstances that lead to the decision to hedge, specify the derivatives strategy the Federal credit union will employ, and demonstrate the economic effectiveness of the hedge;

(2) *Internal controls review.* For the first two years after commencing its derivatives program, a Federal credit union must have an internal controls review that is focused on the integration and introduction of derivatives functions. This review must be performed by an independent external unit or, if applicable, the Federal credit union's internal auditor. The review must ensure the timely identification of weaknesses in internal controls, modeling methodologies, risk, and all operational and oversight processes;

(3) *Financial statement audit.* Any Federal credit union engaging in derivatives transactions pursuant to this subpart must obtain an annual financial statement audit, as defined in § 715.2(d) of this chapter, and be compliant with GAAP for all derivatives-related accounting and reporting;

(4) *Process and responsibility framework.* A Federal credit union must maintain a written and schematic description (e.g., flow chart or organizational chart) of the derivatives management process in its derivatives policies and procedures. The description must include the roles of staff, qualified personnel, external service providers, senior executive officers, the board of directors, and any others involved in the derivatives program;

§ 703.107

12 CFR Ch. VII (1–1–15 Edition)

(5) *Separation of duties.* A Federal credit union's process, whether conducted internally or by an external service provider, must have appropriate separation of duties for the following functions defined in paragraph (a)(3) of this section:

- (i) Asset/liability risk management;
- (ii) Accounting and financial reporting;
- (iii) Derivatives execution and oversight; and
- (iv) Collateral, counterparty, and margining management.

(c) *Legal review.* A Federal credit union with derivatives authority must hire or engage legal counsel to reasonably ensure that all derivatives contracts adequately protect the legal and business interests of the Federal credit union. The Federal credit union's counsel must have legal expertise with derivatives contracts and related matters.

(d) *Policies and procedures.* A Federal credit union with derivatives authority must operate according to comprehensive written policies and procedures for control, measurement, and management of derivatives transactions. At a minimum, the policies and procedures must address the requirements of this subpart, except for those in §§ 703.108 through 703.114, and any additional limitations imposed by the Federal credit union's board of directors. A Federal credit union's board of directors must review the policies and procedures described in this section annually and update them when necessary.

§ 703.107 External service providers.

(a) *General.* A Federal credit union with derivatives authority may use external service providers to support or conduct aspects of its derivatives program, provided:

- (1) The external service provider, including affiliates, does not:
 - (i) Act as a counterparty to any derivatives transactions that involve the Federal credit union;
 - (ii) Act as a principal or agent in any derivatives transactions that involve the Federal credit union; or
 - (iii) Have discretionary authority to execute any of the Federal credit union's derivatives transactions.

(2) The Federal credit union has the internal capacity, experience, and skills to oversee and manage any external service providers it uses; and

(3) The Federal credit union documents the specific uses of external service providers in its process and responsibility framework, as described in § 703.106(b)(1) of this subpart and the application.

(b) *Support functions.* A Federal credit union must perform the following functions internally and independently. A Federal credit union may have assistance and input from an external service provider, provided the external service provider does not conduct the following functions in lieu of the Federal credit union:

- (1) Asset/liability risk management; and
- (2) Liquidity risk management.

§ 703.108 Eligibility.

(a) A Federal credit union may apply for derivatives authority under this subpart if it meets the following criteria:

- (1) The Federal credit union's most recent NCUA-assigned composite CAMEL code rating is 1, 2, or 3, with a management component of 1 or 2; and
- (2) The Federal credit union has assets of at least \$250 million as of its most recent call report.

(b) Notwithstanding paragraph (a)(2) of this section, a Federal credit union may request permission from the appropriate field director to apply for derivatives authority, subject to requirements imposed by the field director. If the field director grants such permission, the application will be subject to §§ 703.109 through 703.111.

§ 703.109 Applying for derivatives authority.

An eligible Federal credit union must receive written approval to use derivatives by submitting a detailed application, consistent with this subpart and any guidance issued by NCUA. A Federal credit union must submit its application to the applicable field director.

§ 703.110 Application content.

A Federal credit union applying for derivatives authority must document

how it will comply with the requirements of this subpart and any guidance issued by NCUA, and must include all of the following in its application:

(a) An interest rate risk mitigation plan that shows how derivatives are one aspect of the Federal credit union's overall interest rate risk mitigation strategy, and an analysis showing how the Federal credit union will use derivatives in conjunction with other on-balance sheet instruments and strategies to effectively manage its interest rate risk;

(b) A list of the products and characteristics the Federal credit union is seeking approval to use, a description of how it intends to use the products and characteristics listed, an analysis of how the products and characteristics fit within its interest rate risk mitigation plan, and a justification for each product and characteristic listed;

(c) Draft policies and procedures that the Federal credit union has prepared in accordance with § 703.106(d) of this subpart;

(d) How the Federal credit union plans to acquire, employ, and/or create the resources, policies, processes, systems, internal controls, modeling, experience, and competencies to meet the requirements of this subpart. This includes a description of how the Federal credit union will ensure that senior executive officers, board of directors, and personnel have the knowledge and experience in accordance with the requirements of this subpart;

(e) A description of how the Federal credit union intends to use external service providers as part of its derivatives program, and a list of the name(s) of and service(s) provided by the external service providers it intends to use;

(f) A description of how the Federal credit union will support the operations of margining and collateral; and

(g) A description of how the Federal credit union will comply with GAAP.

§ 703.111 NCUA approval.

(a) *Interim approval.* The field director will notify the Federal credit union in writing if the field director has approved or denied its application and, if applicable, the reason(s) for any denial. A Federal credit union approved for derivatives authority may not enter into

any derivatives transactions until it receives final approval from NCUA under paragraph (c) of this section.

(b) *Notice of readiness.* A Federal credit union approved under paragraph (a) of this section must provide written notification to NCUA when it is ready to begin using derivatives.

(c) *Final approval.* NCUA will review every approved Federal credit union's derivatives program to ensure compliance with this subpart and evaluate the Federal credit union's implementation of the items in its application. This supervisory review may be conducted on site. After NCUA has completed its review, the field director will notify the Federal credit union in writing if the field director has granted final approval and the Federal credit union may begin entering into derivatives transactions. If applicable, the notification will include the reason(s) for any denial. A Federal credit union may not enter into any derivatives transactions under this subpart until it receives this determination from the applicable field director. At a field director's discretion, a Federal credit union may reapply under this subsection if the field director has determined that the Federal credit union has demonstrated compliance with this subpart and its application.

(d) *Right to appeal.* A Federal credit union may submit a written appeal to the NCUA Board within 60 days from the date of denial by NCUA under paragraph (b) or (c) of this section.

§ 703.112 Applying for additional products or characteristics.

(a) A Federal credit union with derivatives authority may subsequently apply for approval to use additional products and characteristics, described in § 703.102 of this subpart, that it did not request in its initial application, subject to the following:

(1) A Federal credit union must submit an application to NCUA;

(2) A Federal credit union's application must include a list of the products and/or characteristics for which it is applying; and

(3) A Federal credit union must include a justification for each product and/or characteristic requested in the application and an explanation of how

§ 703.113

the Federal credit union will use each product and/or characteristic requested.

(b) The field director will notify the Federal credit union in writing if the field director has approved or denied its application for additional products or characteristics. If applicable, the notification will include the reason(s) for denial.

(c) A Federal credit union may appeal any denial of an application for additional products and/or characteristics in accordance with § 703.111(d).

§ 703.113 Pilot program participants with active derivatives positions.

(a) A Federal credit union with outstanding derivatives positions under NCUA's derivatives pilot program as of January 1, 2013, must comply with the requirements of this subpart within 12 months of the effective date of this subpart, including the requirement to submit an application for derivatives authority. During the 12-month interim period, the Federal credit union may continue to operate its derivatives program in accordance with its pilot program terms and conditions.

(b) A Federal credit union with outstanding derivatives positions under NCUA's derivatives pilot program as of January 1, 2013, that does not comply with the requirements of this subpart within 12 months of the effective date of this subpart, or does not want to continue engaging in derivatives transactions, must:

(1) Stop entering into new derivatives transactions; and

(2) Within 30 days, present a corrective action plan to NCUA describing how the Federal credit union will cure any deficiencies or wind down its derivatives program.

§ 703.114 Regulatory violation.

(a) A Federal credit union with derivatives authority that no longer meets the requirements of this subpart or fails to comply with its approved strategy (including employing the resources, policies, procedures, accounting, and competencies that formed the basis for the approval) must:

(1) Immediately stop entering into any new derivatives transactions until the Federal credit union is in compli-

12 CFR Ch. VII (1–1–15 Edition)

ance with this subpart. During this period, however, the Federal credit union may terminate existing derivatives transactions. NCUA may permit a Federal credit union to enter into offsetting transactions if NCUA determines these transactions are part of a corrective action strategy.

(2) Within three business days from the regulatory violation, provide the appropriate field director notification of the regulatory violation, which must include a description of the violation and the immediate corrective action the Federal credit union is taking; and

(3) Within 15 business days after notifying the appropriate field director, submit a written corrective action plan to the appropriate field director.

(b) NCUA may revoke a Federal credit union's derivatives authority at any time if a Federal credit union fails to comply with the requirements of this subpart. Revocation will prohibit a Federal credit union from executing any new derivatives transactions under this subpart, and may require the Federal credit union to terminate existing derivatives transactions if, in the discretion of the applicable field director, doing so would not pose a safety and soundness concern.

(c) Within 60 days from the date of the related field director's action, a Federal credit union may appeal the following to the NCUA Board:

(1) NCUA's revocation of a Federal credit union's derivatives authority; and

(2) NCUA's order that a Federal credit union terminate existing derivatives positions.

(d) With respect to an appeal regarding revocation of a Federal credit union's derivatives authority, the Federal credit union may not enter into any new derivatives transactions until the NCUA Board renders a final decision on the appeal. The Federal credit union may, however, elect to terminate existing derivatives positions. With respect to an appeal regarding an order to terminate a Federal credit union's existing derivatives positions, the Federal credit union is not required to terminate any existing positions until the NCUA Board renders a final decision on the appeal.

(3) Through the originator’s initial written communication with a consumer, if any, whether on paper or electronically.

APPENDIX TO SUBPART B—EXAMPLES OF DERIVATIVE LIMIT AUTHORITY CALCULATIONS

Limit authority. A Federal credit union that is approved for derivatives authority under §703.111 may use any of the products and characteristics described in §703.102(a), subject to the following position and risk limits:

TABLE 1—AUTHORITY LIMITS

| Limit authority | Entry limits (first 12 months of transactions) | Standard limits |
|---|--|--------------------|
| Fair Value Loss (See (a) below) | 15% of net worth | 25% of net worth. |
| Weighted Average Remaining Maturity Notional (WARMN) (See (b) below). | 65% of net worth | 100% of net worth. |

(a) *Calculating the fair value loss limit for compliance with this subpart.* To demonstrate compliance with the fair value loss limit authority of this subpart, a Federal credit union must combine the total fair value (as defined by product group below) of all derivatives transactions. The fair value loss limit is exclusive to the derivatives positions (not net of offsetting gains and losses in the hedged item).

(1) The resulting figure, if a loss, must not exceed the Federal credit union’s authorized fair value loss limit:

(i) *Options*—the gain or loss is the difference between the fair value and the unamortized premium at the reporting date;

(ii) *Swaps*—the gain or loss is the fair value at the reporting date; and

(iii) *Futures*—the gain or loss is the difference between the exchange closing price at the reporting date and the purchase or sales price.

(2) *Example calculations for compliance with this subpart: fair value loss limit.* The table below provides an example of the fair value loss limit calculations for a sample Federal credit union that has entry level authority. The sample Federal credit union has a net worth of \$100 million and total assets of \$1 billion; its fair value loss limit is –\$15 million (15 percent of net worth).

TABLE 2—EXAMPLE FAIR VALUE LOSS CALCULATIONS

| | Fair value gains (losses) | | | | % of Net worth (percent) | Limit violation |
|------------|---------------------------|--------------|-------------|--------------|--------------------------|-----------------|
| | Options | Swaps | Futures | Total | | |
| Scenario A | \$1,000,000 | \$2,000,000 | \$200,000 | \$3,200,000 | 3 | No. |
| Scenario B | 5,000,000 | 10,000,000 | 2,000,000 | 17,000,000 | 17 | No. |
| Scenario C | 1,000,000 | (3,000,000) | 250,000 | (1,750,000) | (2) | No. |
| Scenario D | 1,000,000 | (20,000,000) | (2,000,000) | (21,000,000) | (21) | Yes. |
| Scenario E | (2,000,000) | (10,000,000) | 1,000,000 | (11,000,000) | (11) | No. |

(b) *Calculating the WARMN exposure for compliance with this subpart.* The WARMN calculation adjusts the gross notional of a derivative to take into account its price sensitivity and remaining maturity. The WARMN limit is correlated to the fair value loss limit, as described in paragraph (a) of

this appendix, for a 300 basis point parallel shift in interest rates. To demonstrate compliance with the WARMN limit authority of this subpart, a Federal credit union must calculate the WARMN using the following reference table, definitions, and calculation steps:

TABLE 3—SUMMARY OF WARMN CALCULATION

| Product | Step #1 gross notional | Adjustment factor (percent) | Step #2 adjusted notional | Step #3 WARM |
|------------------|------------------------|-----------------------------|----------------------------|-----------------------------|
| Options (Caps) | Current notional | 33 | 33% of current notional .. | Time remaining to maturity. |
| Options (Floors) | Current notional | 33 | 33% of current notional .. | Time remaining to maturity. |
| Swaps | Current notional | 100 | 100% of current notional | Time remaining to maturity. |

TABLE 3—SUMMARY OF WARMN CALCULATION—Continued

| Product | Step #1 gross notional | Adjustment factor (percent) | Step #2 adjusted notional | Step #3 WARM |
|---------------|------------------------|-----------------------------|--|--|
| Futures | Contract size | 100 | 100% of contract size Sum = Total Adjusted Notional. | Underlying contract. Sum = Overall WARM |

Step #4 WARMN = Adjusted Notional x (WARM/10)

(1) *Step #1—Calculate the gross notional of all outstanding derivative transactions.* (i) For options and swaps, all gross notional amounts must be absolute, with no netting (i.e., offsetting a pay-fixed transaction with a receive-fixed transaction). The gross notional for derivatives transactions with amortizing notional amounts is the current contracted notional amount, in accordance with the amortization schedule.

(ii) For futures, the gross notional is the underlying contract size as designated by the Chicago Mercantile Exchange (CME) product specifications (e.g., a five-year Treasury note futures contract will use \$100,000 for each contract purchased or sold and reported here on a gross basis for limit purposes.)

(2) *Step #2—Convert each gross notional by its derivative adjustment factor to produce an adjusted gross notional.* The derivative adjustment factor approximates the price sensitivity for each of the product groups in order to weight the notional amount by sensitivity before weighting for maturity.

(i) For cap and floor options, the derivative adjustment factor is 33 percent. For example, an interest rate cap with a \$1 million notional amount has an adjusted gross notional of \$330,000 ($\$1,000,000 \times 0.33 + \$330,000$).

(ii) For interest rate swaps and Treasury futures, the derivative adjustment factor is 100 percent. For example, an interest rate swap with a \$1 million notional amount has an adjusted gross notional of \$1,000,000 ($\$1,000,000 \times 1.00 = \$1,000,000$).

(iii) The total adjusted notional for all derivatives positions is the sum of (i) and (ii) above.

(3) *Step #3—Produce the weighted average remaining time to maturity (WARM) for all derivatives positions.* (i) For interest rate caps, interest rate floors, and interest rate swaps,

the remaining maturity is the time left between the reporting date and the contracted maturity date, expressed in years (round up to two decimals);

(ii) For Treasury futures, the remaining maturity is the underlying deliverable Treasury note’s maximum maturity (e.g., a five-year Treasury note future has a five-year remaining maturity); and

(iii) Determine the WARM using the adjusted gross notional, as set forth in subsection (2) of this section, and the remaining time to maturity as defined for each product group above in paragraphs (b)(3)(i) and (ii) of this appendix.

(4) *Step #4—Produce the WARMN by converting the WARM to a percentage and then multiplying the percentage by the total adjusted gross notional.* (i) Divide the WARM, as calculated in paragraph (b)(3) of this appendix, by ten to convert it to a percentage (e.g., 7.75 WARMN is translated to 77.5 percent); and

(ii) Multiply the WARM converted to a percentage, as described in paragraph (c)(4)(i) of this appendix, by total adjusted gross notional, described in paragraph (c)(2) of this appendix.

(5) *Compare WARMN calculation to the WARMN limit for compliance.* The total in step four (4) must be less than the limit in paragraph (a)(1)(ii) or (a)(2)(ii) of this appendix, as applicable.

(6) *Example calculations for compliance with this subpart: WARMN.* The table below provides an illustrative example of the WARMN limit calculations for a sample Federal credit union that has entry level authority. The sample Federal credit union has a net worth of \$100 million and total assets of \$1 billion; its notional limit authority is \$65 million (65 percent of net worth).

TABLE 4—EXAMPLE WARMN LIMIT CALCULATION

| | Options | Swaps | Futures | Total |
|--|---------------|---|-------------|---------------------------|
| Gross Notional (Step #1) | \$100,000,000 | \$50,000,000 | \$5,000,000 | \$155,000,000 |
| Adjustment Factor | 33% | 100% | 100% | |
| Adjusted Notional (Step #2) | \$33,000,000 | \$50,000,000 | \$5,000,000 | \$88,000,000 |
| Weighted Average Remaining Maturity (WARM) (Step #3) | 7.00 | 8.50 | 5.00 | 7.74 |
| | | Weighted Average Remaining Maturity Notional (WARMN) (Step #4): | | ¹ \$68,100,000 |

TABLE 4—EXAMPLE WARMN LIMIT CALCULATION—Continued

| | Options | Swaps | Futures | Total |
|--|---------|---|---------|---------------|
| | | Notional Limit Authority (65% of net worth) | | \$65,000,000 |
| | | Under/(Over) Notional Limit Authority | | (\$3,100,000) |

¹ (77.4% of Step #3.)

PART 704—CORPORATE CREDIT UNIONS

Sec.

- 704.1 Scope.
- 704.2 Definitions.
- 704.3 Corporate credit union capital.
- 704.4 Prompt corrective action
- 704.5 Investments.
- 704.6 Credit risk management.
- 704.7 Lending.
- 704.8 Asset and liability management.
- 704.9 Liquidity management.
- 704.10 Investment action plan.
- 704.11 Corporate Credit Union Service Organizations (Corporate CUSOs).
- 704.12 Permissible services.
- 704.13 Board responsibilities.
- 704.14 Representation.
- 704.15 Audit and reporting requirements.
- 704.16 Contracts/written agreements.
- 704.17 State-chartered corporate credit unions.
- 704.18 Fidelity bond coverage.
- 704.19 Disclosure of executive compensation.
- 704.21 Enterprise risk management.
- 704.22 Membership fees.

APPENDIX A TO PART 704—CAPITAL PRIORITIZATION AND MODEL FORMS

APPENDIX B TO PART 704—EXPANDED AUTHORITIES AND REQUIREMENTS

APPENDIX C TO PART 704—RISK-BASED CAPITAL CREDIT RISK-WEIGHT CATEGORIES

AUTHORITY: 12 U.S.C. 1766(a), 1781, 1789.

SOURCE: 62 FR 12938, Mar. 19, 1997, unless otherwise noted.

§ 704.1 Scope.

(a) This part establishes special rules for all federally insured corporate credit unions. Non federally insured corporate credit unions must agree, by written contract, to both adhere to the requirements of this part and submit to examinations, as determined by NCUA, as a condition of receiving shares or deposits from federally insured credit unions. This part grants certain additional authorities to federal corporate credit unions. Except to the extent that they are inconsistent with this part, other provisions of

NCUA's Rules and Regulations (12 CFR chapter VII) and the Federal Credit Union Act apply to federally chartered corporate credit unions and federally insured state-chartered corporate credit unions to the same extent that they apply to other federally chartered and federally insured state-chartered credit unions, respectively.

(b) The Board has the authority to issue orders which vary from this part. This authority is provided under Section 120(a) of the Federal Credit Union Act, 12 U.S.C. 1766(a). Requests by state-chartered corporate credit unions for waivers to this part and for expansions of authority under appendix B of this part must be approved by the state regulator before being submitted to NCUA.

§ 704.2 Definitions.

As used in this part:

Adjusted core capital means core capital modified as follows:

(1) Deduct an amount equal to the amount of the corporate credit union's intangible assets that exceed one half percent of the corporate credit union's moving daily average net assets, but the NCUA, on its own initiative, upon petition by the applicable state regulator, or upon application from a corporate credit union, may direct that a particular corporate credit union add some or all of these excess intangibles back to the credit union's adjusted core capital;

(2) Deduct investments, both equity and debt, in unconsolidated credit union service organizations (CUSOs);

(3) If the corporate credit union, on or after October 20, 2011, contributes any perpetual contributed capital (PCC), or maintains any NCAs, at another corporate credit union, deduct an amount equal to this PCC or NCA;

(4) Beginning on October 20, 2016, and ending on October 20, 2020, deduct any