

third party along with the value of the option;

(11) The aggregate amount of equity-linked member share certificates does not exceed the 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 it 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.

§ 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) *Derivatives.* A Federal credit union may not purchase or sell financial derivatives, such as futures, options, interest rate swaps, or forward rate agreements, except as permitted under §§ 701.21(i) and 703.14(g) of this chapter;

(b) *Zero coupon investments.* A Federal credit union may not purchase a zero coupon investment with a maturity date that is more than 10 years from the settlement date;

(c) *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;

(d) A Federal credit union may not purchase a commercial mortgage related security that is not otherwise permitted by Section 107(7)(E) of the Act; and

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

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

§ 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;

- (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 Examination and Insurance 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.

PART 742—REGULATORY FLEXIBILITY PROGRAM

■ 3. The authority citation for part 742 continues to read as follows:

Authority: 12 U.S.C. 1756 and 1766.

■ 4. Revise § 742.4 to read as follows:

§ 742.4 From what NCUA regulations will I be exempt?

(a) RegFlex credit unions are exempt from the provisions of the following NCUA regulations without restrictions or limitations: § 701.25, § 701.32(b) and (c), § 701.36(a), (b) and (c), § 703.5(b)(1)(ii) and (2), § 703.12(c); and § 703.16(b) of this chapter.

(b) RegFlex credit unions are exempt from the provisions of the following