

§91.803. Investment Limits and Prohibitions.

(a) Limitations. [With the exception of] Except for deposits [held by] placed in a Federal Reserve Bank, a credit union may invest no more than 50% of its net worth with any single obligor or related obligors. This limitation [also] does not apply to the extent that the investment is insured or guaranteed by the United States government, or an agency, sponsored enterprise, corporation, or instrumentality, of the United States government, or to any trust or trusts established for investing, directly or collectively, in such securities, obligations, or instruments. For the purposes of this section, obligor is defined as an issuer, trust, or originator of an investment, including the seller of a loan participation investment.

(b) Designated Depository. As a single exception to subsection (a) of this section, a credit union's board of directors may establish the maximum aggregate deposit limit for a single financial institution approved by the board as the credit union's designated depository. This deposit limit shall be a percentage of net worth and must be based on the credit union's liquidity trends and funding needs as documented by its asset/liability management policy. This authority is contingent upon the credit union appropriately documenting its due diligence to demonstrate that the investments in this designated depository do not pose a safety and soundness concern. The credit union's board of directors shall review and approve at least annually the maximum aggregate deposit limit for its designated depository. The review shall include a current due diligence analysis of the financial institution.

(c) Prohibited Activities.

(1) Definitions.

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

(B) Collateralized mortgage obligation (CMO)--a multi-class bond issue collateralized by mortgages or mortgage-backed securities.

(C) Commercial mortgage related security--a mortgage related security 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.

(D) Fair value--the price at which a security can be bought or sold in a current, arm's length transaction between willing parties, other than in a forced or liquidation sale.

(E) Real estate mortgage investment conduit (REMIC)--a nontaxable entity formed for the sole purpose of holding a fixed pool of mortgages secured by an interest in real property and issuing multiple classes of interests in the underlying mortgages.

(F) Residual interest--the remainder cash flows from a CMO/REMIC, or other mortgage-backed security transaction, after payments due bondholders and trust administrative expenses have been satisfied.

(G) Short sale--the sale of a security not owned by the seller.

(H) Stripped mortgage-backed security--a security that represents either the principal-only or the interest-only portion of the cash flows of an underlying pool of mortgages or mortgage-backed securities.

(I) Zero coupon investment--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.

(2) A credit union may not:

(A) use financial derivatives for replication, or for any purposes other than hedging;

- (B) engage in adjusted trading or short sales;
- (C) purchase stripped mortgage backed securities;
- (D) purchase residual interests in CMOs/REMICs, or other structured mortgage backed securities;
- (E) purchase mortgage servicing rights as an investment but may retain mortgage servicing rights on a loan originated by the credit union and sold on the secondary market;
- (F) purchase commercial mortgage related securities of an issuer other than a U.S. Government sponsored enterprise;
- (G) purchase any security that has the capability of becoming a first credit loss piece which supports another more senior security;
- (H) purchase a zero coupon investment with a maturity date that is more than 10 years from the settlement date;
- (I) purchase investments whereby the underlying collateral consists of foreign receivables or foreign deposits;
- (J) purchase securities used as collateral by a safekeeping concern;
- (K) Purchase exchangeable mortgage backed securities, unless they are fully compliant with the provisions outlined in Part 703 of the National Credit Union Administration Rules and Regulations; or
- (L) purchase securities convertible into stock at the option of the issuer.

(d) Investment pilot program.

(1) The commissioner may authorize a limited number of credit unions to engage in other types of investment activities under an investment pilot program. A credit union wishing to participate in an investment pilot program shall submit a request that addresses the following items:

- (A) board policies approving the activities and establishing limits on them;
- (B) a complete description of the activities, with specific examples of how the credit union will conduct them and how they will benefit the credit union;
- (C) a demonstration of how the activities will affect the credit union's financial performance, risk profile, and asset-liability management strategies;
- (D) examples of reports the credit union will generate to monitor the activities;
- (E) a projection of the associated costs of the activities, including personnel, computer, audit, etc.;
- (F) a description of the internal systems to measure, monitor, and report the activities, and the qualifications of the staff and/or official(s) responsible for implementing and overseeing the activities; and
- (G) the internal control procedures that will be implemented, including audit requirements.

(2) In connection with a request to participate in an investment pilot program, the commissioner will consider the general nature and functions of credit unions, as well as the specific financial condition and management of the applicant credit union, as revealed in the request, examinations, or such other information as may be available to the commissioner. The commissioner may approve the request, approve the request conditionally, approve it in modified form, or deny it in whole or in part. A decision by the commissioner concerning participation in an investment pilot program is not appealable.

(3) The commissioner may find that an investment pilot program previously authorized is no longer a safe and prudent practice for credit unions generally to engage in, [or] that it has become inconsistent with applicable state or federal law, or that it has ceased to be a safe and prudent practice for one or more [particular] credit unions in light of their financial condition or management. Upon such a finding, the commissioner will send written notice informing the board

of directors of any or all of the credit unions engaging in such a practice that the authority to engage in the practice has been revoked or modified. When the commissioner so notifies any credit union, its directors and officers shall forthwith take steps to liquidate the investments in question or to make such modifications as the commissioner requires. Upon demonstration of good cause, the commissioner may grant a credit union some definite period of time in which to arrange its affairs to comply with the commissioner's direction. **The commissioner deems credit [Credit] unions [which] that continue to engage in investment practices [where] after their authority to do so has been revoked or modified [will be deemed] to be engaging in an unsound practice.**