

3133-AD90

NATIONAL CREDIT UNION ADMINISTRATION

12 C.F.R. Part 703

Financial Derivatives Transactions to Offset Interest Rate Risk

Investment and Deposit Activities

AGENCY: National Credit Union Administration

ACTION: Advance Notice of Proposed Rulemaking

SUMMARY

Through this Advance Notice of Proposed Rulemaking (ANPR), the NCUA Board (Board) requests additional public comments to identify the conditions for federal credit unions (FCUs) to engage in certain derivatives transactions for the purpose of offsetting interest rate risk (IRR).¹ This ANPR follows an earlier Advance Notice of Proposed

¹ Interest rate risk refers to the vulnerability of a credit union's financial condition to adverse movements in market interest rates. For example, changes to a credit union's funding costs generally are considered part of the inherent interest rate risk associated with a fixed-rate mortgage loan. A borrower with a fixed-rate mortgage loan is unaffected by increases in market interest rates because his payment is based on a "fixed" rate. The credit union that originated the mortgage loan, however, is subject to losses in the market value of these mortgages from the increases in market interest rates. Furthermore, as market interest rates rise, there is a concomitant increase in the credit union's funding costs, or the interest rate the credit union pays on the money it uses to "fund" the mortgage loan.

Rulemaking on derivatives transactions issued for comment in June 2011 (ANPR I). 76 FR 37030 (June 24, 2011). This ANPR asks additional questions regarding the conditions under which NCUA may grant authority for an FCU to engage in derivatives transactions independently.

DATES: Comments must be received on or before [60 days after publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments by any one of the following methods

(Please send comments by one method only):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: Address to regcomments@ncua.gov. Include “[Your name]—Comments on Advance Notice of Proposed Rulemaking for Part 703, Financial Derivatives Transactions to Offset Interest Rate Risk” in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

PUBLIC INSPECTION: You can view all public comments on NCUA’s website at <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx> as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or

contact information from the public comments submitted. You may inspect paper copies of comments in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518-6546 or send an e-mail to OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Jeremy Taylor, Senior Capital Markets Specialist, at (703) 518-6628; or Lance Noggle, Staff Attorney, Office of General Counsel, at (703) 518-6555. You may also contact them at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.

SUPPLEMENTARY INFORMATION:

I. Background

II. Questions for Comment

I. Background

In June 2011, the Board issued ANPR I (76 FR 37030 (June 24, 2011)) requesting public comment on whether and how to modify its rule on investment and deposit activities to permit FCUs to enter derivatives transactions for the purpose of offsetting IRR. It now seeks additional information to assist in drafting a proposed rule for FCUs to independently engage in derivatives transactions (i.e., without program oversight by a third-party provider).

ANPR I requested comment in five areas. Three areas asked for comments on NCUA's current pilot program and third-party programs in general. Only two areas concentrated

on independent derivatives authority. As the Board focuses on developing requirements for such authority, it seeks additional information to help ensure that a rule granting independent derivatives authority is manageable for both participating FCUs and NCUA, while simultaneously protecting the credit union industry from undue risk.

II. Questions for Comment

Since the inception of the derivatives pilot program, very few FCUs have submitted applications seeking permission to independently engage in derivatives to offset IRR. In ANPR I, the Board sought comment on whether it should allow FCUs to independently engage in derivatives activities. Nearly all commenters who responded to this question supported independent derivatives authority for FCUs. As discussed more fully below, however, not all commenters agreed on the conditions under which the NCUA should grant such authority.

The Board is assessing the parameters under which NCUA may authorize FCUs to independently engage in derivatives activities, and invites comment on the issues raised in this ANPR. To facilitate consideration of the public's views, please address your comments to the specific questions, and organize and identify them by corresponding question number so that each question is addressed separately. To maximize the value of public input on each issue, it is also important that commenters provide and explain the reasons that support each of their opinions. There will be a further opportunity to comment on these issues should the Board issue a proposed rule.

Eligibility of Applicant FCUs for Independent Derivatives Authority

The Board is considering eligibility requirements for FCUs seeking authority to independently enter into derivatives transactions. ANPR I asked several eligibility questions, including what criteria NCUA should consider in granting or denying a request for independent derivatives authority. As noted above, nearly all commenters who addressed the issue of independent derivatives authority supported it. Yet not all of these commenters agreed on the conditions under which NCUA should grant such authority.

Three commenters supported allowing FCUs to independently engage in derivatives activity without further comment. Ten commenters stated that NCUA should consider allowing FCUs to independently engage in derivatives activity, subject to ability to manage derivatives, expertise, and adequate controls, and so long as the activity is shown to offset IRR. Three commenters supported allowing independent derivatives authority for FCUs, but only after they have participated in a third-party program. Two commenters supported independent derivatives approval only if it is limited and qualified by high standards, although these commenters did not define “high standards.” Nine commenters discouraged the use of numerical criteria, such as asset size. Five commenters suggested that NCUA should consider experience, correlation testing, and modeling expertise. Ten commenters stated that FCUs applying to engage independently should comply with the current third-party pilot program standards.

The Board is considering eligibility requirements based on at least three factors, including need, financial condition, and ability to manage derivatives. First, an FCU would need to demonstrate relevant IRR exposure. One of the motivations behind the Board's consideration of expanded derivatives authority is to reduce potentially excessive IRR. The Board, therefore, believes that demonstrating a material exposure to IRR, and how an FCU can mitigate it through derivatives activity, is an appropriate requirement. Second, an FCU would be required to demonstrate a requisite level of financial performance, measured in part by its CAMEL rating and net worth classification. Third, an FCU would need to demonstrate an ability to effectively manage derivatives, including minimum experience requirements for FCU staff involved in the analysis and ongoing risk management of a derivatives book. The Board considers the second and third requirements to be appropriate given the complexity of, and inherent risks in, derivatives transactions.

The Board recognizes that FCUs generally have limited experience with derivatives. Only eight FCUs participated in existing derivatives pilot programs as of June 2011. Of these, six FCUs participated in third-party programs and only two FCUs were authorized to independently engage in derivatives transactions. Generally, most credit unions have an interest rate sensitivity exposure to rising rates, so the downward direction of market rates during the past five years may largely account for FCUs' moderated interest in derivatives. With NCUA and FCUs themselves increasingly concerned about the impact of future rising interest rates on credit unions' balance sheets, especially those with heavy concentrations of long-term, fixed-rate assets, the Board expects that more

FCUs may wish to pursue derivatives as a way to manage IRR. Yet, given the complexity of even the most straightforward derivatives instruments, the Board believes that an FCU should independently engage in derivatives transactions only if FCU management and staff can demonstrate adequate derivatives experience. This position is consistent with the majority of commenters that responded to the independent derivatives authority questions in ANPR I.

The Board believes that what constitutes “adequate derivatives experience” will vary depending on the nature and complexity of an FCU’s balance sheet. As noted in ANPR I, the Board is considering whether to limit the types of derivatives instruments that some FCUs may transact. If an FCU is limited to relatively simple, “plain vanilla” derivatives instruments such as interest rate swaps² and interest rate caps,³ the Board believes that the FCU’s staff should demonstrate at least three years of effective experience with derivatives, including the ability to evaluate key risk factors. A commensurate level of additional experience likely would be required for FCUs whose assets or liabilities exhibit more complex IRR characteristics.

If an FCU is seeking independent derivatives authority, the Board believes it is inappropriate for the FCU to rely exclusively on the derivatives experience of an outside party. Instead, the FCU would be required to demonstrate sufficient internal knowledge

² An interest rate swap is a derivatives instrument that allows one party to exchange (or swap) its set of interest payments (for example, fixed-rate interest payments) for another party’s set of interest payments (for example, floating-rate interest payments). An interest rate swap effectively converts a fixed rate on a loan to a floating one, or vice versa.

³ An interest rate cap is a derivatives instrument that limits floating interest rate exposure to a specified maximum level for a specified period of time. It essentially is an insurance policy purchased by a party to protect itself against rising interest rates.

of derivatives, perhaps in an onsite review prior to the FCU receiving independent derivatives authority.

Question 1: Should the Board require an FCU to demonstrate a material IRR exposure or another evident risk management need before it is granted independent derivatives authority?

Question 2: Is it appropriate to require minimum performance levels, as measured, for example, by CAMEL ratings and net worth classifications, when considering whether to grant or deny an FCU's application to independently engage in derivatives transactions? If so, what performance measures are appropriate and what should those levels be?

Question 3: What is the minimum kind and amount of derivatives experience and expertise that an FCU's staff should demonstrate before the FCU receives independent derivatives authority? For example, if an FCU has a less complex balance sheet, is it sufficient for that FCU's staff to demonstrate a minimum of three years transacting derivatives? Should NCUA require additional kinds and amounts of experience when there is more complexity in the FCU's balance sheet (e.g., prepayments and call options)?

To what extent should an FCU seeking independent derivatives authority be allowed to rely on an outside party to fulfill an experience and expertise requirement?

Safety and Soundness Requirements

The Board believes that, when transacted properly, derivatives can be an effective tool for FCUs to use in IRR mitigation. The Board further believes that transacting derivatives for other purposes, such as speculation, could present unforeseen risks. Accordingly, the Board considers it appropriate to limit the types of derivatives that an FCU may transact to interest rate derivatives instruments that serve to mitigate IRR, namely interest rate swaps and interest rate caps.

Most credit unions with material IRR exposures use short-term liabilities to fund long-term fixed assets. FCUs can mitigate this type of IRR exposure by using interest rate swaps and interest rate caps. Interest rate swaps, particularly “pay-fixed/receive-floating” swaps in which one party pays a fixed rate of interest and receives a floating rate, can offset IRR resulting from cash flows received on fixed, long-term assets such as fixed-rate mortgage loans. Interest rate caps can offset IRR resulting from cash flows paid on liabilities that are either short term or associated with nonmaturity shares on which interest rates may vary by limiting the risk exposure to the capped rate. Other derivatives instruments, such as credit derivatives (e.g., credit default swaps), provide limited IRR mitigation value and potentially could be used for speculation. For these reasons, the Board believes that only interest rate derivatives instruments are appropriate for FCUs to use in managing IRR.

Question 4: Should FCUs be limited to using interest rate swaps and interest rate caps to offset and manage IRR? Should interest rate swaps be limited to pay-fixed/receive-floating instruments? What other limits should be established to ensure that an FCU does not transact interest rate derivatives in an amount greater than the level of its IRR exposure?

There are numerous risks inherent in any derivatives activity, including market risk and counterparty risk. The constant fluctuation of the mark-to-market value of a derivatives position represents the most significant market risk. Mark-to-market valuation requires the value of a derivatives instrument to be set at discrete points in time as prescribed by generally accepting accounting principles. This valuation represents the then-current market sales price for that instrument, which reflects any unrealized gain or loss for the FCU in the derivatives transaction.

The Board is considering whether to establish exposure limits as a way to guard against such volatility in the value of a derivatives portfolio. For example, if an FCU experiences mark-to-market losses in excess of a specified threshold, NCUA could limit the FCU's authority to transact derivatives. These limits may be based on the notional amount of a derivatives instrument or on its mark-to-market valuation. The Board notes that the third-party pilot program includes exposure limits that are based on the notional amount of the derivatives portfolio, expressed as a percentage of the credit union's net worth. Some commenters to ANPR I, however, have suggested that exposure limits should be based on mark-to-market valuation.

Question 5: Should NCUA establish exposure limits for FCUs or should it require an FCU's board of directors to establish exposure limits? Should there be limits on the aggregate amount of each type of derivatives instrument in the portfolio or on the aggregate amount of derivatives transacted with any counterparty? Should limits be based on the notional amount of a derivatives instrument, its mark-to-market valuation, or both?

Another significant risk in derivatives activity is counterparty risk, also known as “default risk” or “credit risk.” Counterparty risk is the risk that losses will occur due to a counterparty’s failure to fulfill its obligations under the derivatives contract. The Board believes that, to manage counterparty risk, an FCU should, on an ongoing basis, monitor counterparties and their creditworthiness, as well as the credit risk mitigation features inherent in the derivatives transaction (e.g., margin requirements, daily valuations of collateral, and performance of third parties).

Consistent with the need to carefully monitor credit features, the Board believes that counterparty risk can be substantially mitigated through effective collateral management. In derivatives transactions, parties may be required to post collateral to secure their obligations under the derivatives contract. Posting collateral protects either party in a derivatives transaction from the risk of loss, which may occur for a number of reasons including counterparty default. The Board, therefore, believes it is appropriate

for an FCU to include the following collateral management standards in the related derivatives contract:

- Bilateral collateral, in which both parties to a derivatives contract agree to post collateral to cover mark-to-market gains and losses.
- Tri-party custody, in which posted collateral is delivered to a third party acting as custodian.
- Zero thresholds, in which parties are required to post collateral at any level of loss over a minimum amount specified in the derivatives contract.
- Restricting the type of assets used as posted collateral to instruments permitted for investment by an FCU.

Question 6: Are there ways to mitigate counterparty risk besides posting collateral? Are there additional or alternate collateralization conditions that NCUA should require beyond those described in this ANPR?

By the National Credit Union Administration Board on January 26, 2012.

Mary F. Rupp
Secretary of the Board