

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 703

RIN 3133-AE55

Investment and Deposit Activities - Bank Notes

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is finalizing a rule that amends the maturity requirement for bank notes to be permissible investments for federal credit unions (FCUs) by removing the word “original” from the current requirement that bank notes have “original weighted average maturities of less than 5 years.”

DATES: This rule is effective [Insert date 30 days from publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: John Nilles, Senior Capital Markets Specialist, Office of Examination and Insurance, at the above address or telephone (703) 518-6360; or Justin M. Anderson, Senior Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518-6540.

SUPPLEMENTARY INFORMATION:

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I. Background

In October 2015, the Board issued a proposed rule to amend the maturity requirement for bank notes to be permissible investments for FCUs by removing the word “original” from the requirement that bank notes have “original weighted average maturities of less than 5 years.”¹

As the Board noted in the proposal, the authority for FCUs to invest in bank notes is derived from the provision in the Federal Credit Union Act (the Act) that permits FCUs to make deposits in, among other things, national and state banks.

The Act does not provide authority for FCUs to purchase bank notes that are not deposits. The Act, however, does not define “deposit.” NCUA’s long-standing policy has been to use the

¹ 80 FR 63932 (Oct. 22, 2015).

definition of deposit in the Federal Reserve Board's Regulation D. Regulation D provides, in relevant part, that a liability of a depository institution can be a "deposit" if, among other things: 1) it is insured; 2) it is not subordinated to the claims of depositors; and 3) it has a weighted average maturity of less than five years.²

The Board stated in the proposal that removing the word "original" would better align NCUA's requirements for bank notes with the Regulation D definition of a deposit. Further, the Board noted that this amendment would also provide FCUs with some measure of regulatory relief. By removing the word "original," which ties the bank note's maturity to its original date of issuance, FCUs will be permitted to select from a much larger pool of possible bank note offerings. Specifically, FCUs will be permitted to purchase bank notes that had *original* maturities of *greater* than five years but have *remaining* maturities of *less than* five years. Expanding the list of permissible offerings for FCUs will result in: 1) cheaper execution prices; 2) flexibility for FCUs; and 3) greater efficiency for FCUs in finding suitable offerings. The weighted average maturity of less than five years will also maintain safety and soundness by avoiding excessive interest rate risk.

II. Comments on the October 2015 Proposal

The Board received eight comment letters in response to the October 2015 proposal. Generally, all of the commenters supported the rule as proposed. Several of those commenters, however, suggested ways to improve the rule.

One commenter suggested the Board eliminate the maturity requirement for bank notes completely. This commenter suggested that, because there is no statutory requirement for the Board to align the definition of deposit with Regulation D, the Board should define deposit in a way that would allow FCUs to invest in bank notes with any maturities. However, the Federal

² NCUA's regulations do not require that all of these criteria be met for bank notes to be permissible investments.

Reserve Board's Regulation D definition provides sufficient flexibility for FCUs, and maintains safety and soundness in this context. The Board, therefore, will continue to follow NCUA's long-standing policy to use the definition of deposit in Regulation D to determine permissible bank notes that may be purchased by FCUs under the Act.

Another commenter requested the Board issue guidance on concentration limits for FCUs investing in bank notes. The Board notes that there are no regulatory concentration limits on bank notes due to the limited exposure to FCUs that the asset class currently represents.

A final commenter suggested the Board authorize additional investments for FCUs under part 703. This comment raises an issue that is outside the scope of this rulemaking. However, part 703 was included in the Office of General Counsel's review of one-third of NCUA's regulations in 2015. As a result, the Board is considering whether additional amendments to part 703 are warranted. If the Board determines to promulgate such amendments, it will do so in a separate rulemaking.

III. Final Rule

For the reasons stated above, the Board is adopting as final the proposed amendment without change.

IV. Regulatory Procedures

1. Regulatory Flexibility Act.

The Regulatory Flexibility Act requires NCUA to prepare an analysis of any significant economic impact a regulation may have on a substantial number of small entities (primarily those under \$100 million in assets).³ This final rule will have a minimal economic impact on

³ 5 U.S.C. 603(a); 12 U.S.C. 1787(c)(1).

small credit unions as bank notes are just one small fraction of a typical investment portfolio. Accordingly, NCUA certifies the rule will not have a significant economic impact on a substantial number of small credit unions.

2. Paperwork Reduction Act.

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden or increases an existing burden.⁴ For purposes of the PRA, a paperwork burden may take the form of a reporting or recordkeeping requirement, both referred to as information collections. This final rule creates new investment options for FCUs but will not create any new burdens or increase any existing burdens. Therefore, a PRA analysis is not required.

3. Executive Order 13132.

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. The final rule does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has, therefore, determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

4. Assessment of Federal Regulations and Policies on Families.

NCUA has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

⁴ 44 U.S.C. 3507(d); 5 CFR part 1320.

List of Subjects

12 CFR Part 703

Credit unions, Investments.

By the National Credit Union Administration Board on March 24, 2016.

Gerard Poliquin,
Secretary of the Board.

For the reasons discussed above, the National Credit Union Administration amends 12 CFR part 703 as follows:

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

1. The authority citation for part 703 continues to read as follows:

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

2. Amend §703.14(f)(5) by deleting the word “original”.