



NATIONAL CREDIT UNION ADMINISTRATION  
Washington, D.C. 20456

GC/EOR:jrm  
4660

March 23, 1989

Office of General Counsel

Mr. Joseph G. Antonucci  
Chairman  
Phoenix Assets, Inc.  
23201 Lake Center Dr.  
Suite 300  
Lake Forest, CA 92630

Dear Mr. Antonucci:

This responds to your inquiry of March 9, 1989, as to the permissibility of Federal credit unions purchasing automobile loan receivables as part of their investment portfolios. This matter had been previously addressed by this Office and was deemed to be an impermissible investment. That continues to be our position.

For your information, a copy of that prior opinion, dated September 6, 1985, is enclosed, together with a copy of Sections 107(7), (8), and (15) of the Federal Credit Union Act and Part 703 of the NCUA Rules and Regulations, which set forth investment authority.

I hope these will be of assistance to you.

Sincerely,

A handwritten signature in cursive script that reads "Hattie M. Ulan".

HATTIE M. ULAN  
Assistant General Counsel

EOR:jrm

Enclosures

FOIA Vol. I, Part E, 5



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

LS/RMF:cch

4/6/85  
4/11/85

Joseph A. McDonald, Esq.  
Vice President/Legal Counsel  
California Credit Union League  
2350 South Garey Avenue  
Pomona, CA 91766-5898

Dear Joe:

This is in response to your recent letter concerning Federal credit union participation in a Certificate of Automobile Receivables program (CARs program). As explained in your letter, a CARs program involves packaging of automobile loans by an originating lender and sale of ownership interests in the pool of loans to outside investors. The originating lender would typically service the loans, while the cash flow goes to the investors. You asked three specific questions concerning Federal credit union participation in CARs programs. For ease of reference, your questions are restated, followed in each case by our response.

Question 1.

Is this type of program one in which credit unions may invest pursuant to 12 U.S.C. §1757 (Section 107 of the Federal Credit Union Act)?

Federal credit union investment in a CARs program would not appear to be legal. Federal credit union investments are, as you know, limited as set forth in Section 107. This Section does not expressly authorize investment in a CARs program or its equivalent. It might be possible to view the investment as an investment in an equitable interest in underlying loans. The authority of a Federal credit union to invest in loans, however, is generally limited to (1) origination of loans by the credit union to its own members (see Sections 107(5) and 107(7)(A) of the Act and Section 701.21 of NCUA's regulations (12 C.F.R. 701.21)), (2) purchase by the credit union of "eligible obligations" of its own members (see Section 107(13) of the Act and Section 701.23 of NCUA's regulations (12 C.F.R. 701.23)), (3) purchase of notes made by individual members of a liquidating credit union (see Sections 107(13) and 107(14) of the Act and Paragraph I of NCUA Interpretive Ruling 84-1), and (4) purchase of "assets" from another credit union (see Section 107(14) of the Act-- also note that, with the exception of Paragraph I of Interpretive Ruling 84-1, NCUA has not promulgated implementing regulations concerning this authority). It does

NATIONAL CREDIT UNION ADMINISTRATION

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not appear to us that any of these provisions would authorize a Federal credit union to invest in a CARs program, with the possible exception of a CARs program involving a pool of loans that were made solely to individuals who are members of the investing credit union. That eventuality, however, would seem highly unlikely.

Question 2.

Do credit unions have the authority to package the auto loans into a similar program for sale on the secondary market as an incidental power pursuant to 12 U.S.C. §1757(16) (Section 107(16) of the Federal Credit Union Act)?

As previously indicated, a Federal credit union has the authority to sell "eligible obligations" of its members. This authority is implemented pursuant to Section 701.23 of NCUA's regulations. This is the case when it sells loans or groups (packages) of loans. However, here it would appear that an FCU would be underwriting securities representing interests in a pool of loans. Whether or not this is the case requires an analysis of applicable security laws. In any event, pursuant to prevailing case law on express and incidental powers, we question whether this is an authorized activity for FCU's. We would be glad to review your research on this issue if you have reached a different conclusion.

Question 3.

Would it be proper for a Credit Union Service Organization (CUSO) to house and broker a CARs program for credit unions pursuant to Section 701.27 of the NCUA Regulations?

Operation of a CARs program does not appear to be among the authorized activities currently listed in Section 701.27. That regulation is under review, however, and in fact we expect that the NCUA Board will issue a proposed revised regulation at its September 5 meeting. If you believe this should be an authorized activity for CUSO's, I would encourage you to use the comment period as an opportunity to make a case in that regard.

I hope this is responsive to your inquiry. Also, I apologize for the delay in responding. Finally, if you have any questions or wish to pursue these issues further, please feel free, as always, to give me a call.

Sincerely,

151

ROBERT M. FENNER  
Acting General Counsel

(3) the names and addresses of the subscribers to the certificate and the number of shares subscribed by each;

(4) the initial par value of the shares;

(5) the proposed field of membership, specified in detail;

(6) the term of the existence of the corporation, which may be perpetual; and

(7) the fact that the certificate is made to enable such persons to avail themselves of the advantages of this chapter.

Such organization certificate may also contain any provisions approved by the Board for the management of the business of the association and for the conduct of its affairs and relative to the powers of its directors, officers, or stockholders.

## § 1754

## § 104

**Approval of organization certificate.**—The organization certificate shall be presented to the Board for approval. Before any organization certificate is approved, an appropriate investigation shall be made for the purpose of determining (1) whether the organization certificate conforms to the provisions of this chapter; (2) the general character and fitness of the subscribers thereto; and (3) the economic advisability of establishing the proposed Federal credit union. Upon approval of such organization certificate by the Board it shall be the charter of the corporation, and one of the originals thereof shall be delivered to the corporation after the payment of the fee required therefor. Upon such approval the Federal credit union shall be a body corporate and as such, subject to the limitations herein contained, shall be vested with all of the powers and charged with all of the liabilities conferred and imposed by this chapter upon corporations organized hereunder.

## § 1755

## § 105

**Fees.**—(a) In accordance with rules prescribed by the Board, each Federal credit union shall pay to the Administration an annual operating fee which may be composed of one or more charges identified as to the function or functions for which assessed.

(b) The fee assessed under this section shall be determined according to a schedule, or schedules, or other method determined by the Board to be appropriate, which gives due consideration to the expenses of the Administration in carrying out its responsibilities under this Act and to the ability of Federal credit unions to pay the fee. The Board shall, among other things, determine the periods

for which the fee shall be assessed and the date or dates for the payment of the fee or increments thereof.

(c) If the annual operating fee is composed of separate charges, no supervision charge shall be payable by a Federal credit union, and the Board may waive payment of any or all other charges comprising the fee, with respect to the year in which its charter is issued, or in which final distribution is made in its liquidation or the charter canceled.

(d) All operating fees shall be deposited with the Treasurer of the United States for the account of the Administration and may be expended by the Board to defray the expenses incurred in carrying out the provisions of this Act including the examination and supervision of Federal credit unions.

(e)(1) Upon request of the Board, the Secretary of the Treasury shall invest and reinvest such portions of the annual operating fees deposited under subsection (d) as the Board determines are not needed for current operations.

(2) Such investments may be made only in interest bearing securities of the United States with maturities requested by the Board bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(3) All income derived from such investments and reinvestments shall be deposited to the account of the Administration described in subsection (d).

## § 1756

## § 106

**Reports and examinations.**—Federal credit unions shall be under the supervision of the Board, and shall make financial reports to it as and when it may require, but at least annually. Each Federal credit union shall be subject to examination by, and for this purpose shall make its books and records accessible to, any person designated by the Board.

## § 1757

## § 107

**Powers.**—A Federal credit union shall have succession in its corporate name during its existence and shall have power—

(1) to make contracts;

(2) to sue and be sued;

(3) to adopt and use a common seal and alter the same at pleasure;

(4) to purchase, hold, and dispose of property necessary or incidental to its operations;

(5) to make loans, the maturities of which shall not exceed twelve years except as otherwise provided herein, and extend lines of credit to its members, to other credit unions, and to credit union organizations and to participate with other credit unions, credit union organizations, or financial organizations in making loans to credit union members in accordance with the following:

(A) Loans to members shall be made in conformity with criteria established by the board of directors: *Provided, That—*

(i) a residential real estate loan on a one-to-four-family dwelling, including an individual cooperative unit, that is or will be the principal residence of a credit union member, and which is secured by a first lien upon such dwelling, and may have a maturity not exceeding thirty years or such other limits as shall be set by the National Credit Union Administration Board (except that a loan on an individual cooperative unit shall be adequately secured as defined by the Board), subject to the rules and regulations of the Board;

(ii) a loan to finance the purchase of a mobile home, which shall be secured by a first lien on such mobile home, to be used by the credit union member as his residence, a loan for the repair, alteration, or improvement of a residential dwelling which is the residence of a credit union member, or a second mortgage loan secured by a residential dwelling which is the residence of a credit union member, shall have a maturity not to exceed fifteen years unless such loan is insured or guaranteed as provided in subparagraph (iii);

(iii) a loan secured by the insurance or guarantee of, or with advance commitment to purchase the loan by, the Federal Government, a State government or any agency of either may be made for the maturity and under the terms and conditions specified in the law under which such insurance, guarantee, or commitment is provided;

(iv) a loan or aggregate of loans to a director or member of the supervisory or credit committee of the credit union making the loan which exceeds \$10,000 plus pledged shares, be approved by the board of directors;

(v) loans to other members for which directors or members of the supervisory or credit committee act as guarantor or endorser be approved by the board of directors when such loans standing alone or when added to any outstanding loan or loans of the guarantor or endorser exceeds \$10,000;

(vi) the rate of interest may not exceed 15 per centum per annum on the unpaid balance inclusive of all finance charges, except that the Board may establish—

(I) after consultation with the appropriate committees of the Congress, the Department of Treasury, and the Federal financial institution regulatory agencies, an interest rate ceiling exceeding such 15 per centum per annum rate, for periods not to exceed 18 months, if it determines that money market interest rates have risen over the preceding six-month period and that prevailing interest rate levels threaten the safety and soundness of individual credit unions as evidenced by adverse trends in liquidity, capital, earnings, and growth; and

(II) a higher interest rate ceiling for Agent members of the Central Liquidity Facility in carrying out the provisions of title III for such periods as the Board may authorize,

(vii) the taking, receiving, reserving, or charging of a rate of interest greater than is allowed by this paragraph, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back from the credit union taking or receiving the same, in an action in the nature of an action of debt, the entire amount of interest paid; but such action must be commenced within two years from the time the usurious collection was made;

(viii) a borrower may repay his loan, prior to maturity in whole or in part on any business day without penalty, except that on a first or second mortgage loan a Federal credit union may require that any partial prepayments (I) be made on the date monthly installments are due and (II) be in the amount of that part of one or more monthly installments which would be applicable to principal;

(ix) loans shall be paid or amortized in accordance with rules and regulations prescribed by the Board after taking into account the needs or conditions of the borrowers, the amounts and duration of the loans, the interests of the members and the credit unions, and such other factors as the Board deems relevant;

(x) loans must be approved by the credit committee or a loan officer, but no loan may be made to any member if, upon the making of that loan, the member would be indebted to the Federal

credit union upon loans made to him in an aggregate amount which would exceed 10 per centum of the credit union's unimpaired capital and surplus.

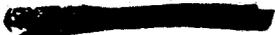
(B) A self-replenishing line of credit to a borrower may be established to a stated maximum amount on certain terms and conditions which may be different from the terms and conditions established for another borrower.

(C) Loans to other credit unions shall be approved by the board of directors.

(D) Loans to credit union organizations shall be approved by the board of directors and shall not exceed 1 per centum of the paid-in and unimpaired capital and surplus of the credit union. A credit union organization means any organization as determined by the Board, which is established primarily to serve the needs of its member credit unions, and whose business relates to the daily operations of the credit unions they serve.

(E) Participation loans with other credit unions, credit union organizations, or financial organizations shall be in accordance with written policies of the board of directors. *Provided*, That a credit union which originates a loan for which participation arrangements are made in accordance with this subsection shall retain an interest of at least 10 per centum of the face amount of the loan.

(6) To receive from its members, from other credit unions, from an officer, employee, or agent of those nonmember units of Federal, Indian Tribal, State, or local governments and political subdivisions thereof enumerated in section 207 of this Act and in the manner so prescribed, from the Central Liquidity Facility, and from nonmembers in the case of credit unions serving predominantly low-income members (as defined by the Board) payments on—(A) shares which may be issued at varying dividend rates; (B) share certificates which may be issued at varying dividend rates and maturities; and (C) share draft accounts authorized under Section 205(f); subject to such terms, rates, and conditions as may be established by the board of directors, within limitations prescribed by the Board.

 (A) in loans exclusively to members; (B) in obligations of the United States of America, or securities fully guaranteed as to principal and interest thereby; (C) in accordance with rules and regulations prescribed by the Board, in loans to other credit unions in the total amount not exceeding 25 per centum of its paid-in and unimpaired capital and surplus; (D) in shares or accounts of savings and loan associations or mutual savings banks, the accounts of which are

insured by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation; (E) in obligations issued by banks for cooperatives, Federal land banks, Federal intermediate credit banks, Federal home loan banks, the Federal Home Loan Bank Board, or any corporation designated in section 846 of Title 31 as a wholly owned Government corporation; or in obligations, participations, or other instruments of or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association or the Government National Mortgage Association; or in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to Section 305 or Section 306 of the Federal Home Loan Mortgage Corporation Act; or in obligations or other instruments or securities of the Student Loan Marketing Association; or in obligations, participations, securities, or other instruments of, or issued by, or fully guaranteed as to principal and interest by any other agency of the United States and a Federal credit union may issue and sell securities which are guaranteed pursuant to section 306(g) of the National Housing Act; (F) in participation certificates evidencing beneficial interests in obligations, or in the right to receive interest and principal collections therefrom, which obligations have been subjected by one or more Government agencies to a trust or trusts for which any executive department, agency, or instrumentality of the United States (or the head thereof) has been named to act as trustee; (G) in shares or deposits of any central credit union in which such investments are specifically authorized by the board of directors of the Federal credit union making the investment; (H) in shares, share certificates, or share deposits of federally insured credit unions; (I) in the shares, stocks, or obligations of any other organization, providing services which are associated with the routine operations of credit unions, up to 1 per centum of the total paid in and unimpaired capital and surplus of the credit union with the approval of the Board: *Provided, however*, That such authority does not include the power to acquire control directly or indirectly, of another financial institution, nor invest in shares, stocks or obligations of an insurance company, trade association, liquidity facility or any other similar organization, corporation, or association, except as otherwise expressly provided by this Act; (J) in the capital stock of the National Credit Union Central Liquidity Facility; and (K) investments in obligations of, or issued by, any State or political subdivision thereof (including any agency, corporation, or instrumentality of a State or political subdivision), except that no credit

union may invest more than 10 per centum of its unimpaired capital and surplus in the obligations of any one issuer (exclusive of general obligations of the issuer).

~~(8) to make deposits in banks~~ and in State banks, trust companies, and mutual savings banks operating in accordance with the laws of the State in which the Federal credit union does business, or in banks or institutions the accounts of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, and for Federal credit unions or credit unions authorized by the Department of Defense operating suboffices on American military installations in foreign countries or trust territories of the United States to maintain demand deposit accounts in banks located in those countries or trust territories, subject to such regulations as may be issued by the Board and provided such banks are correspondents of banks described in this paragraph;

(9) to borrow in accordance with such rules and regulations as may be prescribed by the Board, from any source, in an aggregate amount not exceeding, except as authorized by the Board in carrying out the provisions of title III, 50 per centum of its paid-in and unimpaired capital and surplus: *Provided*, That any Federal credit union may discount with or sell to any Federal intermediate credit bank any eligible obligations up to the amount of its paid-in and unimpaired capital;

(10) to levy late charges, in accordance with the bylaws, for failure of members to meet promptly their obligations to the Federal credit union;

(11) to impress and enforce a lien upon the shares and dividends of any member, to the extent of any loan made to him and any dues or charges payable by him;

(12) in accordance with rules and regulations prescribed by the Board, to sell to members negotiable checks (including travelers checks), money orders and other similar money transfer instruments; and to cash checks and money orders for members, for a fee;

(13) in accordance with rules and regulations prescribed by the Board, to purchase, sell, pledge, or discount or otherwise receive or dispose of, in whole or in part, any eligible obligations (as defined by the Board) of its members and to purchase from any liquidating credit union notes made by individual members of the liquidating credit union at such prices as may be agreed upon by the board of directors of the liquidating credit union

and the board of directors of the purchasing credit union, but no purchase may be made under authority of this paragraph if, upon the making of that purchase, the aggregate of the unpaid balances of notes purchased under authority of this paragraph would exceed 5 per centum of the unimpaired capital and surplus of the credit union; and

(14) to sell all or a part of its assets to another credit union, to purchase all or part of the assets of another credit union and to assume the liabilities of the selling credit union and those of its members subject to regulations of the Board;

~~(15) to invest in securities that—~~

(A) are offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)); or

(B) are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41)), subject to such regulations as the Board may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both;

(16) to exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated.

## § 1758

## § 108

**Bylaws.**—In order to simplify the organization of Federal credit unions the Board shall from time to time cause to be prepared a form of organization certificate and a form of bylaws, consistent with this chapter, which shall be used by Federal credit union incorporators, and shall be supplied to them on request. At the time of presenting the organization certificate the incorporators shall also submit proposed bylaws to the Board for its approval.

## § 1759

## § 109

**Membership.**—Federal credit union membership shall consist of the incorporators and such other persons and incorporated and unincorporated organizations, to the extent permitted by rules and regulations prescribed by the Board, as may be elected to membership and as such shall each subscribe to at least one share of its stock and pay the initial installment thereon and a uniform entrance fee if required by the board of directors; except that Federal credit union membership shall be limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district.

## §703.1 Scope

Sections 107(7), 107(8) and 107(15) of the Federal Credit Union Act (12 U.S.C. §§1757(7), 1757(8), 1757(15)), set forth those securities, deposits, and other obligations in which Federal credit unions may invest. Included are securities issued or fully guaranteed by the United States Government or any of its agencies, shares of central credit unions and any federally-insured credit union, accounts in other federally-insured financial institutions, certain mortgages and mortgage-related securities, and other specified investments. This Part interprets several of the provisions of Sections 107(7), 107(8) and 107(15)(B). It also places limits on the types of transactions that Federal credit unions may enter into in connection with the purchase and sale of authorized securities, deposits, and obligations under Sections 107(7), 107(8) and 107(15)(B). This Part does not apply: to investments in loans to members and related activities, which are governed by Sections 701.21, 701.22 and 701.23 (12 C.F.R. §§701.21, 701.22 and 701.23); to the purchase of real estate-secured loans pursuant to Section 107(15)(A), which is governed by Section 701.23; to investment in credit union service organizations, which is governed by Section 701.27 (12 C.F.R. §701.27); or to investment in fixed assets, which is governed by Section 701.36 (12 C.F.R. §701.36).

## §703.2 Definitions.

(a) *Adjusted trading* means any method or transaction used to defer a loss whereby a Federal credit union sells a security to a vendor at a price above its current market price and simultaneously purchases or commits to purchase from the vendor another security at a price above its current market price.

(b) *Bailment for hire contract* means a contract whereby a third party, bank or other financial institution, for a fee, agrees to exercise ordinary care in protecting the securities held in safekeeping for its customers.

(c) *Bankers' Acceptance* means a time draft that is drawn on and accepted by a bank, and that represents an irrevocable obligation of the bank.

(d) *Cash forward agreement* means an agreement to purchase or sell a security with delivery and acceptance being mandatory and at a future date in excess of thirty (30) days from the trade date.

# Part 703

## Investment and Deposit Activities

(e) *Eurodollar deposit* means a deposit in a foreign branch of a United States depository institution.

(f) *Facility* means the home office of a Federal credit union or any suboffice thereof, including but not necessarily limited to a wire service, telephonic station, or mechanical teller station.

(g) *Federal funds transaction* means a short-term or open-ended transfer of funds to a Section 107(8) institution.

(h) *Futures contract* means a contract for the future delivery of commodities, including certain government securities, sold on commodities exchanges.

(i) *Immediate family member* means a spouse or other family members living in the same household.

(j) *Market price* means the last established price at which a security is sold.

(k) *Maturity date* means the date on which a security matures, and shall not mean the call date or the average life of the security.

(l) *Repurchase transaction* means a transaction in which a Federal credit union agrees to purchase a security from a vendor and to resell the same or any identical security to that vendor at a later date. A repurchase transaction may be of three types:

(1) *Investment-type repurchase transaction* means a repurchase transaction where the Federal credit union purchasing the security takes physical possession of the security, or receives written confirmation of the purchase and a custodial or safekeeping receipt from a third party under a written bailment for hire contract, or is recorded as the owner of the security through the Federal Reserve Book-Entry System;

(2) *Financial institution-type repurchase transaction* means a repurchase transaction with a Section 107(8) institution;

(3) *Loan-type repurchase transaction* means any repurchase transaction that does not qualify as an investment-type or financial institution-type repurchase transaction.

(m) *Reverse repurchase transaction* means a transaction whereby a Federal credit union agrees to sell a security to a purchaser and to repurchase

the same or any identical security from that purchaser at a future date and at a specified price.

(n) *Section 107(8) institution* means a institution in which a Federal credit union is authorized to make deposits pursuant to Section 107(8) of the Federal Credit Union Act (12 U.S.C. 1757(8)), i.e., an institution that either is insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or is a state bank, trust company or mutual savings bank operating in accordance with the laws of a state in which the Federal credit union maintains a facility.

(o) *Security* means any security, obligation, account, deposit, or other item authorized for investment by a Federal credit union pursuant to Section 107(7), 107(8), or 107(15)(B) of the Federal Credit Union Act (12 U.S.C. 1757(7), 1757(8), 1757(15)(B)), other than loans to members.

(p) *Senior management employee* means the credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g., Assistant President, Vice President or Assistant Treasurer/Manager) and the chief financial officer (Comptroller).

(q) *Settlement date* means the date originally agreed to by a Federal credit union and a vendor for settlement of the purchase or sale of a security.

(r) *Short sale* means the sale of a security not owned by the seller.

(s) *Standby commitment* means a commitment to either buy or sell a security, on or before a future date, at a predetermined price. The seller of the commitment is the party receiving payment for assuming the risk associated with committing either to purchase a security in the future at a predetermined price, or to sell a security in the future at a predetermined price. The seller of the commitment is required to either accept delivery of a security (in the case of a commitment to buy) or make delivery of a security (in the case of a commitment to sell), in either case at the option of the buyer of the commitment.

(t) *Trade date* means the date a Federal credit union originally agrees, whether orally or in writing, to enter into the purchase or sale of a security.

(u) *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.

### §703.3 Authorized Activities.

(a) *General Authority.* A Federal credit union may contract for the purchase or sale of a security provided that:

(1) The delivery of the security is to be made within thirty (30) days from the trade date; and

(2) The price of the security at the time of purchase is the market price.

(b) *Cash forward agreements.* A Federal credit union may enter into a cash forward agreement to purchase or sell a security, provided that:

(1) The period from the trade date to the settlement date does not exceed one hundred and twenty (120) days;

(2) If the credit union is the purchaser, it has written cash flow projections evidencing its ability to purchase the security;

(3) If the credit union is the seller, it owns the security on the trade date; and

(4) The cash forward agreement is settled on a cash basis at the settlement date.

(c) *Loans, shares and deposits—other financial institutions.* A Federal credit union may invest in the following accounts of other financial institutions as specified in Section 107(7) and 107(8) of the Federal Credit Union Act (12 U.S.C. 1757(7), 1757(8)): loans to nonmember credit unions in an aggregate amount not exceeding 25 percent of the lending credit union's unimpaired capital and surplus; shares, share certificates or share deposits of federally insured credit unions; shares or deposits of any central credit union specifically authorized by the board of directors; and deposits of any Section 107(8) institution. Any such investment is subject to the other applicable provisions of this Part 703.

(d) *Repurchase transactions.* A Federal credit union may enter into an investment-type repurchase transaction or a financial institution-type repurchase transaction provided the purchase price of the security obtained in the transaction is at or below the market price. A repurchase transaction not qualifying as either an investment-type or financial institution-type repurchase transaction will be considered a loan-type repurchase transaction subject to Section 107 of the Federal Credit Union Act (12 U.S.C. 1757), which generally limits Federal credit unions to making loans only to members.

(e) *Reverse repurchase transactions.* A Federal credit union may enter into a reverse repurchase transaction, provided that either any securities purchased with the funds obtained from the transaction or the securities collateralizing the transaction have a maturity date not later than the settlement date for the reverse repurchase transaction. A reverse repurchase transaction is a borrowing transaction subject to Section 107(9) of the Federal Credit Union Act (12 U.S.C. 1757(9)), which limits a Federal credit union's aggregate borrowing to 50

percent of its unimpaired capital and surplus.

(f) *Federal funds.* A Federal credit union may sell Federal funds to a Section 107(8) institution, provided that the interest or other consideration received from the financial institution is at the market rate for Federal funds transaction and that the transaction has a maturity of one or more business days or the credit union is able to require repayment at any time.

(g) *Yankee Dollars.* A Federal credit union may invest in Yankee Dollar deposits in a Section 107(8) institution.

(h) *Eurodollars.* A Federal credit union may invest in Eurodollar deposits in a branch of a Section 107(8) institution.

(i) *Bankers' acceptances.* A Federal credit union may invest in bankers' acceptances issued by a Section 107(8) institution.

#### **§703.4 Prohibited Activities.**

(a) Except as provided in Section 701.21(i), a Federal credit union may not purchase or sell a standby commitment.

(b) A Federal credit union may not buy or sell a futures contract.

(c) A Federal credit union may not engage in adjusted trading.

(d) A Federal credit union may not engage in a short sale.

(e) A Federal credit union's directors, officials, committee members and senior management employees, and immediate family members of such individuals, may not receive pecuniary consideration in connection with the making of an investment or deposit by the Federal credit union.

(f) The prohibition contained in subsection (e) also applies to any employee not otherwise covered if the employee is directly involved in investments or deposits unless the board of directors determines that the employee's involvement does not present a conflict of interest.

(g) All transactions with business associates or family members not specifically prohibited by subsection (e) must be conducted at arm's length and in the interest of the credit union.