



Dora

Department of Regulatory Agencies

Division of Banking
Fred J. Joseph
State Bank Commissioner

John W. Hickenlooper
Governor

Barbara J. Kelley
Executive Director

January 28, 2013

**BEFORE THE
COLORADO STATE BANKING BOARD**

**IN THE MATTER OF
RULE AMENDMENT**

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NOTICE OF PROPOSED RULEMAKING

I. Notice of hearing

PLEASE BE ADVISED THAT, as required by Section 24-4-103, C.R.S., of the State Administrative Procedures Act, the Colorado State Banking Board (Banking Board) hereby gives notice of proposed rulemaking. A hearing is scheduled for March 21, 2013, commencing at 10:00 a.m., at the Division of Banking (Division), DORA 975 Conference Room, 1560 Broadway, Suite 975, Denver, Colorado.

II. Purpose of the proposed rulemaking

The purpose of the hearing is to hear comments concerning the proposed amendment of Banking Board Rule CB101.64 – Lending Limits, to ensure that the State lending limits regulation mirrors the Office of the Comptroller of the Currency's lending limits regulation. The amendments ensure that derivatives and securities financing transactions be included in the lending limits calculation in order to comply with the Dodd-Frank Wall Street Reform and Consumer Protection Act directives.

III. Statutory authority for proposed rulemaking

The proposed amendment of CB101.64 is being held under the authority given the Banking Board by the Colorado Banking Code in accordance with Section 11-102-104(1), C.R.S., which states "the banking board is the policy-making and rule-making authority for the division of banking and has the power to: (a) make, modify, reverse, and vacate rules for the proper enforcement and administration of this code..."

IV. Opportunity to testify and submit written comments

Any interested person(s) has the right to submit written comments or data, view, or argument. Written information should be filed with the Division no later than March 11, 2013. To submit written comments, please contact Diana Gutierrez, Banking Board Secretary, at diana.gutierrez@state.co.us. In addition, any interested person(s) has the right to make an oral presentation at the Hearing, unless the Banking Board deems any oral presentation unnecessary.

SUBMITTED ON BEHALF OF THE
COLORADO STATE BANKING BOARD



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State Bank Commissioner





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**STATE BANKING BOARD
RULE CB101.64
PERTAINING TO TITLE 11, ARTICLE 105, SECTION 303
COLORADO REVISED STATUTES**

STATEMENT OF BASIS, PURPOSE, AND SPECIFIC AUTHORITY

Statement of Basis

The Office of the Comptroller of the Currency (OCC) has issued an interim final rule that amends its lending limits rule, 12 CFR 32, to implement section 610 of the Dodd–Frank Act of 2010, P.L. 111–203. Section 610 revises the lending limits statute, 12 USC 84, to include credit exposures arising from derivative transactions and repurchase agreements, reverse repurchase agreements, securities lending transactions, and securities borrowing transactions (collectively, securities financing transactions). This interim final rule also consolidates the lending limits rules applicable to national banks and federal and state savings associations (collectively, banks).

To reduce the burden of the new credit exposure calculations for derivatives and securities financing transactions, particularly for smaller and midsize banks and savings associations, the interim final rule provides options for measuring the exposures for each transaction type. These options permit institutions to adopt compliance alternatives that fit their size and risk management requirements, consistent with safety and soundness and the goals of the statute. However, the OCC may require a particular bank to use one of these options for safety and soundness reasons.

- Specifically, banks can choose to measure the credit exposure of derivatives (except credit derivatives) in one of three ways: (1) through an approved internal model, (2) by use of a look-up table that fixes the attributable exposure at the execution of the transaction, or (3) by use of a look-up table that incorporates the current mark to market and a fixed add-on for each year of the transaction’s remaining life. For credit derivatives (transactions in which banks buy or sell credit protection against loss on a third-party reference entity), the interim final rule provides a special rule for calculating credit exposure, based on exposure to the counterparty and reference entity. With respect to securities financing transactions, institutions can choose to use either an OCC-approved internal model or fix the attributable exposure based on the type of transaction (repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction).



- The interim final rule also specifically exempts securities financing transactions relating to Type I securities (U.S. or state government obligations, etc.) from the lending limits calculations.

The revised lending limits rule continues to provide that all loans and extensions of credit, including those that arise from derivative transactions and securities financing transactions, must be consistent with safe and sound banking practices.

The interim final rule is effective on July 21, 2012. The OCC, however, recognizes that national banks and savings associations will need time to conform their operations to the amendments implementing section 610 as applied by the OCC. The interim final rule, therefore, includes a temporary exception from the lending limit rules for extensions of credit arising from derivative transactions or securities financing transactions, until July 1, 2013.

Section 610 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) requires lending limits applicable to credit exposure on derivative transactions, repurchase agreements, reverse repurchase agreements, and securities lending and borrowing transactions.

- (a) National Banks. Section 5200(b) of the Revised Statutes of the United States (12 U.S.C. 84(b)) is amended
- (1) in paragraph (1), by striking “shall include” and all that follows through the end of the paragraph and inserting the following: “shall include
 - “(A) all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person;
 - “(B) to the extent specified by the Comptroller of the Currency, any liability of a national banking association H. R. 4173—237 to advance funds to or on behalf of a person pursuant to a contractual commitment; and
 - “(C) any credit exposure to a person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the national banking association and the person;”;
 - (2) in paragraph (2), by striking the period at the end and inserting “; and”; and
 - (3) by adding at the end the following:

“(3) the term ‘derivative transaction’ includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.”.
- (b) Savings Associations. Section 5(u)(3) of the Home Owners’ Loan Act (12 U.S.C. 1464(u)(3)) is amended by striking “Director” each place that term appears and inserting “Comptroller of the Currency”.
- (c) Effective Date. The amendments made by this section shall take effect 1 year after the transfer date.

Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) requires a “consistent treatment of derivative transactions in lending limits.” This section of the Act requires the following:

- (a) Amendment - Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following:
- “(y) State Lending Limit Treatment of Derivatives Transactions – An insured State bank may engage in a derivative transaction, as defined in section 5200(b)(3) of the Revised Statutes of the United States (12 U.S.C. 84(b)(3)), only if the law with respect to lending limits of the State in which the insured State bank is chartered takes into consideration credit exposure to derivative transactions.”

Specific Purpose of this Rulemaking

This change will allow state chartered banks to continue to engage in derivative transactions. Section 611 of the Dodd-Frank Act permits such investments only if State law “takes into consideration credit exposure to derivative transactions.”

Rulemaking Authority

Section 11-101-102, C.R.S. - Declaration of policy.

(1) It is hereby declared to be the policy of the state of Colorado that, to protect the public interest, the business of all state banks be supervised and regulated in such manner as to:

- (a) Preserve and promote:
- (I) Sound and constructive competition among financial services institutions;
 - (II) A dual federal and state banking system;
 - (III) The security of deposits;
 - (IV) The safe and sound conduct of the business of state banks; and
 - (V) A statewide safe and sound banking system;
- (b) Seek:
- (I) Regulatory coordination and cooperation; and
 - (II) Regulatory parity among financial services institutions; and
- (c) Encourage diversity in financial products and services.

Section 11-102-104, C.R.S. – Powers and duties of the banking board.

(1) The banking board is the policy-making and rule-making authority for the division of banking and has the power to:

- (a) Make, modify, reverse, and vacate rules for the proper enforcement and administration of this code and the "Public Deposit Protection Act", article 10.5 of this title;
- (b) Make, promulgate, alter, amend, or revise reasonable rules as may be necessary for the enforcement and execution of the provisions of the "Money Order Act", article 52 of title 12, C.R.S.; and
- (c) Regulate procedure and practice of the banking board.

(5) The banking board has the power to authorize such banks to engage in any banking activity in which state banks could engage were they operating as national banks at the time such authority is granted, so long as such activity is not prohibited elsewhere in this code and to the extent permissible under rules of the banking board promulgated pursuant to subsection (1) of this section consistent with the policies set forth in section 11-101-102, or under any other provision of this code. State banks may engage in interstate branching to the same extent as if they were operating as national banks so long as such activity is in accordance with the rules of the banking board.

Section 11-105-302, C.R.S. - Loans, acceptances, investments, and letters of credit.

A state bank may make such loans, secured or unsecured, accept such drafts, make such investments, and issue such letters of credit as shall be permissible pursuant to rules promulgated by the banking board or otherwise permitted by this code. In promulgating such rules the banking board shall consider all relevant factors, including without limitation the policies set forth in section 11-101-102.

Section 11-105-304. Bank investments - customers' orders.

(7) Notwithstanding any restrictions upon investments in obligations, powers, or activities contained in this code, a state bank may invest in any obligation, exercise such powers, and engage in such activities that such bank could legally acquire, exercise, and engage in were it operating as a national bank at the time such investment was made, such powers were exercised, or such activities were engaged in, to the extent permitted by the rules promulgated by the banking board.