



# Dora

Department of Regulatory Agencies

## Division of Banking

Kenneth Boldt

Acting State Bank Commissioner

John W. Hickenlooper  
Governor

Barbara J. Kelley  
Executive Director

**February 24, 2014**

### BEFORE THE COLORADO STATE BANKING BOARD

IN THE MATTER OF )

RULE AMENDMENT )

**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 April 17, 2014, 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 are 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)(a), C.R.S. Sections 11-102-104(5) and 11-105-304(7), C.R.S., provide for parity between Colorado's commercial banks and national banks, and the authority to regulate lending and investments is found in Sections 11-105-302 through -305, C.R.S.

#### IV. Opportunity to testify and submit written comments

Any interested person(s) has the right to submit written comments or data, view, or argument. It is requested that written information be filed with the Division no later than April 7, 2014. To submit written information, please contact Diana Gutierrez, Banking Board Secretary, at [diana.gutierrez@state.co.us](mailto: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

Kenneth Boldt

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**STATE BANKING BOARD  
RULE CB101.64**

**PERTAINING TO TITLE 11, ARTICLE 102, SECTION 104(5) AND  
TITLE 11, ARTICLE 105, SECTIONS 302-305  
COLORADO REVISED STATUTES**

**STATEMENT OF BASIS, PURPOSE, AND SPECIFIC AUTHORITY**

Statement of Basis

Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended Section 18 of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1828) by adding:

- (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.

In addition, sections 11-102-104(5) and 11-105-304(7) of the Colorado Revised Statutes create parity between the powers and authorities of national banks and banks chartered by the state of Colorado. In conformance with the requirements of state and federal law, on February 20, 2014, through an emergency rulemaking, the Division of Banking (Division) amended its lending limits rule to mirror the final lending limits rule of the Office of the Comptroller of the Currency (OCC). The final rule of the OCC, which took effect October 1, 2013, reduces the burden of the new credit exposure calculations for derivatives and securities financing transactions, particularly for smaller and midsize national banks and savings associations. The OCC's final rule provides options for measuring the exposures for each transaction type permitting institutions to adopt compliance alternatives that fit their size and risk management requirements, consistent with safety and soundness and the goals of the FDIA as amended. The OCC's final rule also reserves authority permitting the OCC - for safety and soundness reasons - to require a particular bank to use a particular method.

The amendments to State Banking Board Rule CB101.64 mirror the October 1, 2013 OCC rule and specifically provide that:

- 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), there is a special rule for calculating credit exposure, based on exposure to the counterparty and reference entity;
- For securities financing transactions, banks can choose either (i) to use an internal model approved by the Division or the Bank's primary federal regulator or (ii) fix the attributable exposure based on the type of transaction (repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction); and
- Securities financing transactions relating to Type I securities (U.S. or state government obligations, etc.) are exempt 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.

#### Specific Purpose of this Rulemaking

Sections 11-102-104(5) and 11-105-304(7) of the Colorado Revised Statutes create parity between national banks and banks chartered by the state of Colorado. The February 20, 2014 emergency version of CB101.64, the rule governing state chartered banks, mirrors the final rule issued by the OCC. Without a final amendment to CB101.64, banks chartered by the state of Colorado are held to a stricter standard than national banks and are at a competitive disadvantage.

#### 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 11-105-303, C.R.S. - Corporate powers - interest and charges.**

In addition to the general corporate powers granted by this code, a state bank has the power, subject to the limitations and restrictions imposed by this code and the rules of the banking board, to lend money either upon the security of real property or personal property, or otherwise; to charge, or to receive in advance, interest therefor; and to contract for a charge for a secured or unsecured installment loan.

**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.

**Section 11-105-305. – Acceptances - letters of credit**

(1) A state bank may accept:

(a) A draft that has not more than six months' sight to run, exclusive of days of grace, and is drawn to finance the purchase of goods with maturity in accordance with the original terms of purchase, or is secured by shipping documents transferring or securing title to goods, or by receipt of a licensed or bonded warehouse or elevator transferring or securing title to readily marketable staples;

(b) A draft that has no more than three months' sight to run, exclusive of days of grace, and is drawn by a bank outside the continental limits of the United States for the purpose of furnishing dollar exchange for trade.

(2) A state bank may issue letters of credit, but, unless the authority conferred to draw upon the bank or its correspondents is limited to such drafts as a bank is authorized by this section to accept, the amount of the credit outstanding at any one time shall be deemed to be a loan to the person for whose account the credit was issued.