

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF AN ORDER PURSUANT TO )  
N.J.S.A. 17:9A-25(12), PERMITTING )  
NEW JERSEY STATE CHARTERED BANKS TO )  
CONTINUE ENGAGING IN DERIVATIVE )  
TRANSACTIONS SUBJECT TO THE TERMS, )  
CONDITIONS AND REQUIREMENTS FOR LENDING )  
LIMIT CONSIDERATION SET FORTH BY )  
THE OFFICE OF COMPTROLLER OF CURRENCY IN )  
INTERIM FINAL RULE, LENDING LIMITS, )  
37265 FED. REG. 77 (June 21, 2012) )  
(CODIFIED AT 12 C.F.R. PTS. 32, )  
159 AND 160) AND FINAL RULE, LENDING )  
LIMITS, 76841 FED. REG. 77 )  
(Dec. 31, 2012) )

This matter arises out of the requirement set forth in Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203, 124 Stat. 1376 (codified at 12 U.S.C. § 1828(y)) ("Dodd-Frank Section 611"), that an insured state bank may engage in a derivative transaction 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. This Order requires state banks and savings banks (hereinafter "New Jersey chartered banks") to take into consideration credit exposure to derivative transactions in the same manner and affect as is required by the

Office of Comptroller of Currency ("OCC"), in determining New Jersey's lending limit requirements.

IT APPEARING that effective January 21, 2013, Dodd-Frank Section 611 amends the Federal Deposit Insurance Act, 12 U.S.C. § 1828(y), to prohibit state chartered banks from engaging in derivative transactions unless the state's lending limit laws take into consideration credit exposure to derivative transactions; and

IT FURTHER APPEARING that the State of New Jersey's lending limit laws are set forth in the New Jersey Banking Act of 1948, N.J.S.A. 17:9A-60 et seq., and implementing regulations, N.J.A.C. 3:11-7.1 et seq., but do not expressly require New Jersey chartered banks to take into consideration exposure to derivative transactions; and

IT FURTHER APPEARING that the Department intends to propose amendments to its lending limit regulations set forth at N.J.A.C. 3:11-7.1 et seq., and in due course to subsequently adopt such amendments, but it is in the best interest of the New Jersey chartered bank community and the public for the Department to provide an opportunity for New Jersey chartered banks to experience uninterrupted transition to these new regulatory requirements and be permitted to engage in the same activities as national banks in this regard; and

IT FURTHER APPEARING that Section 610 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203, 124 Stat. 1376 (codified at 12 U.S.C. § 84(b)) ("Dodd-Frank Section 610"), amends the National Bank Act's definition of "loans and extensions of credit" for lending limit purposes to include, among other items, "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"; and

IT FURTHER APPEARING that on July 21, 2012, the OCC issued an Interim Final Rule, Lending Limits 37265 Fed. Reg. 77 (June 21, 2012) (codified at 12 C.F.R. pts. 32, 159 and 160), that amends its lending limits rules to include credit exposures arising from derivative transactions and other securities financing transactions for national banks and federal and state savings associations; and

IT FURTHER APPEARING that on December 31, 2012, the OCC amended the above referenced regulation through Final Rule, Lending Limits 76841 Fed. Reg. 77 (Dec. 31, 2012), to extend, from January 1, 2013 to July 1, 2013, a temporary exception from compliance with the regulation in order to allow sufficient time for national banks and federal and state savings associations to transition to the new requirements, but the Final Rule makes no

substantive changes to the lending limit rules previously set forth in the Interim Final Rule; and

IT FURTHER APPEARING that pursuant to N.J.S.A. 17:9A-25(12) the Commissioner of Banking and Insurance may issue an Order to authorize a New Jersey chartered bank to avail itself of the provisions of any federal legislation providing for the extension of any lawful banking activity in the making of loans or the extension of credit to individuals, or for the financing of business enterprises, or in such other banking activity as may be specified in the legislation and made available for participation by banks; and

IT FURTHER APPEARING that New Jersey's lending limit law, N.J.S.A. 17:9A-62H, states that: "Regulations made pursuant to this section shall be directed toward creating and maintaining substantial equality between State banks and savings banks and national banks, to the end that no class or group of banks or savings banks shall have any substantial competitive advantage over another"; and

NOW THEREFORE IT IS on this 17<sup>th</sup> day of January, 2013;

ORDERED that pursuant to N.J.S.A. 17:9A-25(12), New Jersey chartered banks may, with respect to the limitations on liability set forth in N.J.S.A. 17:9A-62, engage in derivative transactions in the same manner and to the same extent as nationally chartered banks under federal legislation, including

but not limited to, Dodd-Frank Section 610 (codified at 12 U.S.C. § 84); and

IT IS FURTHER ORDERED that the term "loan and extension of credit" as defined in N.J.S.A. 17:9A-60(10) shall be further defined and have the same meaning and affect as set forth in Dodd-Frank Section 610 (codified at 12 U.S.C. § 84), and 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 Commissioner or other appropriate banking regulator, any liability of a bank or savings bank 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 bank or savings bank and the person; and

IT IS FURTHER ORDERED that the terms "person" and "derivative transaction" shall be defined and have the same meaning and affect as set forth in Dodd-Frank Section 610 (codified at 12 U.S.C. § 84), in which the term "derivative transaction" specifically 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"; and

IT IS FURTHER ORDERED that effective on the date of this Order, the lending limit laws of this State shall take into consideration exposure to derivative transactions and all terms, conditions and requirements set forth in the OCC's Interim Final Rule, Lending Limits 37265 Fed. Reg. 77 (June 21, 2012) (codified at 12 C.F.R. pts. 32, 159 and 160), shall be incorporated into the lending limit requirements of this State as if set forth fully therein, including but not limited to, the requirements set forth in N.J.A.C. 3:11-7.8, unless and until such time as that and any other applicable regulations are amended; and

IT IS FURTHER ORDERED that, in accordance with the provisions of Dodd-Frank Section 611, the effect of this order shall be that, effective upon signing, pursuant to N.J.S.A. 17:9A-25 (12), the law of New Jersey with respect to the lending limits applicable to New Jersey chartered banks shall take into consideration credit exposure to derivative transactions in accordance with the terms set forth herein; and

IT IS FURTHER ORDERED that in an effort to maintain substantial equality with the lending limit laws applicable to national banks and in order to provide sufficient time for the

transition to the lending limit requirements herein, consistent with the OCC's Final Rule, Lending Limits 76841 Fed. Reg. 77 (Dec. 31, 2012) the operative provisions of this Order shall be implemented commencing on July 1, 2013, at which time, all New Jersey chartered banks shall comply with all of the rules set forth in the OCC's Interim Final Rule, Lending Limits, 37265 Fed. Reg. 77 (June 21, 2012) (codified at 12 C.F.R. pts. 32, 159 and 160), and in any applicable amended or finally adopted OCC rules for calculating the credit exposure arising from a derivative transaction entered into by the bank for the purposes of determining the bank's loan limitations pursuant to N.J.S.A. 17:9A-60 et seq., and N.J.A.C. 3:11-7.1 et seq.; and

IT IS FURTHER ORDERED that the Commissioner shall retain full authority to address credit exposures that present undue concentrations on a case-by-case basis through all existing safety and soundness authorities.



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Kenneth E. Kobylowski  
Commissioner