

OCC Amends Regulations to Expand Loan to One Borrower Rules

June 25, 2012

The Office of the Comptroller of the Currency (“OCC”) has amended the regulations applicable to national banks and federal savings associations with respect to loans to one borrower (“LTOB”). The amendments: (1) expand the definition of “loans and extensions of credit” to include credit exposures arising from derivative transactions, repurchase agreements, reverse repurchase agreements, securities lending transactions and securities borrowing transactions; and (2) consolidate the LTOB rules for national banks and federal savings institutions.

The amendments are effective July 21, 2012, but institutions will not be required to comply with the new rules expanding the definition of “loans and extensions of credit” until January 1, 2013. A summary of the amendments is set forth below. (Please note that these amendments generally do not apply to state-chartered banks, other than state savings associations that are subject to OCC regulations.)

Expanded Definition of “Loans and Extensions of Credit

Included within the many provisions of the Dodd-Frank Act of 2010 (“Dodd-Frank”) was a statutory amendment that affects the LTOB restrictions on national banks and federal savings associations. The amendment expanded the definition of “loans and extension of credit” under the LTOB rules to include any credit exposure arising from derivative transactions, repurchase agreements, reverse repurchase agreements, securities lending transactions and securities borrowing transactions. The OCC has now adopted regulations implementing the statutory change made by Dodd-Frank.

Accordingly, to the extent a national bank or federal savings association enters into a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction or securities borrowing transaction with a third party, such transaction will be considered a “loan or extension of credit” subject to the LTOB rules. Generally, the total loans and extensions of credit that a national bank or federal savings association may make to a person outstanding at one time cannot exceed 15 percent of the institution’s unimpaired capital and unimpaired surplus if the loan is not fully secured, plus an additional 10 percent of unimpaired capital and unimpaired surplus if the loan is fully secured. (Certain additional rules and exceptions apply.)

The amended regulations provide certain definitions of key terms, such as “derivative transaction,” and provide additional guidance on complying with the new requirements.

Although the statutory amendment made by Dodd-Frank on the LTOB rules is effective July 21, 2012, the OCC has recognized that national banks and federal savings associations will need time to conform their operations to the new requirements. Accordingly, the amended regulations provide a temporary exception from the new LTOB rules until January 1, 2013.

Consolidation of LTOB Rules Applicable to National Banks and Federal Savings Associations

The amended regulations consolidate the LTOB rules applicable to national banks and federal savings associations. The LTOB rules for these types of institutions have always been substantially the same, but they were in separate regulatory sections. With the passage of Dodd-Frank and the elimination of the Office of Thrift Supervision, the OCC has determined to consolidate the LTOB rules in one place (12 C.F.R. Part 32) and to specifically address in that regulation the few minor differences in the LTOB rules applicable to national banks and federal savings associations. This consolidation does not make any substantive changes in the LTOB rules.

If you have any questions regarding the amended regulations, please contact Joseph D. Simon at 516-357-3710 or via email at jsimon@cullenanddykman.com.

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