



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawskey
Superintendent

September 18, 2014

TO THE INDIVIDUAL OR INSTITUTION ADDRESSED:

Re: Emergency Adoption of Part 117 of the General Regulations of the Superintendent,
3 NYCRR (Lending Limits: Inclusion of Credit Exposures Arising From Derivative
Transactions)

The Superintendent has adopted the attached new Part 117 of the General Regulations of the Superintendent on an emergency basis. The emergency regulation is effective immediately.

The regulation sets forth the manner and extent to which derivative transactions will be taken into account for purposes of the lending limit provisions of the Banking Law.

Section 611 of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 ("DFA") amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an "insured state bank" (which term includes an insured state savings bank) may engage in a derivative transaction only if the law of its chartering state concerning lending limits "takes into consideration credit exposure to derivative transactions." 12 U.S.C. §1828(y).

In response, the New York Legislature amended the Banking Law regarding loan limits in July 2011 to authorize the Superintendent to determine the manner and extent to which credit exposure resulting from certain types of transactions, including derivative transactions, will be taken into account for purposes of the statutory loan limits.

This emergency regulation implements the Superintendent's authority by setting forth the manner in which derivative transactions will be taken into account for purposes of the lending limit provisions of the Banking Law. The adoption of this Part 117 ensures that New York banks will continue to be able to engage in derivative transactions and manage their risk exposure using derivatives.

Emergency regulations on the same subject were previously adopted on several occasions, starting in January, 2013. The most recent emergency adoption was effective July 8,

2013. This emergency regulation is substantially similar to that adopted on July 8th, except for minor changes (A) conforming certain definitions in the regulation to those in the final rule applicable to national banks issued by the Comptroller of the Currency (78 Fed. Reg. 37930 (June 25, 2013)), and (B) removing a section of the rule that had provided a temporary alternative calculation method until June 30, 2013 (former Section 117.8).

Note that state chartered or licensed entities subject to DFA Section 610, including savings associations, and branches and agencies of foreign banking organizations, are not covered by the regulation. Terms in italics below are defined in the regulation.

General Rule

The regulation requires that in computing the amount of outstanding loans to a person or entity for purposes of the lending limits in the Banking Law, a *bank* (including a savings bank) must include its *credit exposure* arising from *derivative transactions* with that person. Section 117.2(a). The calculation must include the bank's exposure arising from *derivative transactions* other than *credit derivatives*, Section 117.1(e), plus its exposure arising from *credit derivatives*, Section 117.3.

Credit Derivatives

A bank's credit exposure arising from *credit derivatives* consists of both its exposure to each counterparty arising from *credit derivatives* and its exposure with respect to each reference entity arising from *credit derivatives*. The regulation specifies that a bank is to calculate credit exposure to a counterparty from *credit derivatives* by adding up the net notional value of all protection purchased from that counterparty with respect to each reference entity. Section 117.3(a). It also provides that a bank is to calculate such credit exposure with respect to a reference entity by adding up the notional value of all protection sold on such reference entity. Section 117.3(b).

Exposure Mitigants

In computing its credit exposure arising from *derivative transactions*, including *credit derivatives*, a bank may take into account certain exposure mitigants to the extent provided in the regulation. These mitigants include netting in accord with a *qualifying master netting agreement*, *readily marketable collateral* held under an effective margining arrangement and hedging resulting from *eligible credit derivatives* from an *eligible protection provider*. Section 117.4.

Alternative Calculation Methods

The regulation also provides that with the approval of the Superintendent a bank may utilize an alternative method to calculate its credit exposure arising from derivative transactions. Section 117.6. Alternative methods may include internal models used by the bank for calculating such exposures.

Exception for Exposure to Central Counterparties

Credit exposures to certain *qualifying central counterparties* may be excluded from the calculation. Section 117.5.

Superintendent's Authority in Specific Cases

Notwithstanding the methods for calculating credit exposure from derivative transactions set forth in the regulation, the Superintendent may at any time direct a particular bank to use a different method of calculation when the method used by the bank fails to accurately reflect its credit exposure from such transactions. Section 117.7.

Publication of Emergency Rule; Comments

The Notice of Emergency Adoption is expected to be published in the October 8, 2014 issue of the State Register.

Comments should be sent to Hadas A. Jacobi, Assistant Attorney, Department of Financial Services, One State Street, New York, NY 10004 or by email at hadas.jacobi@dfs.ny.gov.

Very truly yours,

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