



State of New Hampshire

Banking Department

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**In the Matter of the Petition of the
New Hampshire Banker's Association, as Agent
For A Declaratory Ruling**

Document Number: 10241

Effective as of the date signed.

The Department issues this declaratory ruling to the Petitioners with respect to only the particular facts and circumstances described in the petition.

Issue presented: The New Hampshire Banker's Association, as agent for and on behalf of several of its members¹, has requested an interpretive declaratory ruling under N.H. RSA chapter 541 that the legal lending limit laws of New Hampshire take into consideration credit exposure to derivative transactions, as will soon be required under federal law, and therefore the state law allows state chartered banks to engage in derivative transactions. See N.H. RSA 387:26, RSA 392:39, and 12 USC 1828(y) (codifying § 610 of the Dodd-Frank Act).

Discussion: The lending limit laws in New Hampshire for savings banks and trust companies² (collectively, referred to herein as "banks") state in relevant part the following:

The total *liabilities* of [any] person for money borrowed from a [bank] which is insured by the Federal Deposit Insurance Corporation shall not exceed the limitation prescribed for national banks under federal laws and regulations. (Emphasis added.) N.H. RSA 387:26 (savings banks) and N.H. RSA 392:39 (trust companies).³

¹ The New Hampshire Banker's Association acts as Agents for the following banks in this matter: Bank of New England, Bank of New Hampshire, Centrix Bank, Claremont Savings Bank, Community Guaranty Savings Bank, First Colebrook Bank, Franklin Savings Bank, Meredith Village Savings Bank, Merrimack County Savings Bank, Northway Bank, Optima Bank & Trust, Piscataqua Savings Bank, Salem Co-operative Bank, Savings Bank of Walpole, Sugar River Bank, The Nashua Bank, and Woodsville Guaranty Savings Bank.

² In New Hampshire, commercial banks are chartered under the trust company chapter, RSA 392.

³ Note that N.H. RSA 392:39 uses the word "a" instead of "any" but is otherwise identical.

The word “liabilities” is not elsewhere defined in statute. In banking terms, a liability is defined as “a legally enforceable claim on the assets of a company, excluding owner’s equity, or the property of an individual, calling for a transfer of assets at a determined future date.” Fitch, Thomas P., Dictionary of Banking Terms, 4th Ed., Barron’s Business Guide (2000).

A third party (commonly called a “counterparty”) entering a derivative transaction with a bank is exposed to potential liability when, under the terms of a contract, the counterparty bears an obligation to pay money to the bank, even if the obligation is contingent upon a future event. The bank must calculate the credit risk that it may experience a loss due to the counterparty’s default or inability to meet contractual payment terms. Under the application of RSA 387:26 and RSA 392:39, this credit risk needs to be considered by the bank when calculating the “total liabilities” of the counterparty for lending limit purposes.

Furthermore, the statute requires the bank to consider not only the total liabilities of the borrower of funds, but of “any person” associated with the loan. *See* RSA 387:26 (and RSA 392:39, *but see* n.2.) The bank’s obligation to consider these credit exposures is thus not limited to borrowers only.

The statute next states that the calculation for the total liabilities of any person must “not exceed the limitation prescribed for national banks under federal laws and regulations.” The plain wording of the statute and the legislative history of the provision indicates that it was intended to provide state-chartered banks with parity to federally-chartered banks.⁴

For example, written testimony from the legislative record states in part the following:

387:26 General Lending Authority. Savings banks are generally authorized to engage in any type of lending. The proposed bill makes clear that banks are authorized to make any kinds of loans and to place responsibility on the banks to adopt policies relative to loan-to-value ratios and creditworthiness. For purposes of uniformity, it also subjects

⁴ In order to fully take advantage of state parity with federal banks, New Hampshire banks seeking to rely on the federal rule for derivatives must also file a notice of intent to exercise powers under federal law, pursuant to Ban 523, with the Commissioner.

savings banks to the national bank loans-to-one-borrower rules which are currently used by the banking department as guidelines.

See Senate Comm. Hearing on HB1165, (March 31, 1998) (written testimony submitted by the New Hampshire Bankers Association, April 1, 1998). (Similar testimony was received regarding amendments to RSA 392:39).

The federal law referenced in the state law that prescribes limits for national banks is found at 12 USC § 84, and the federal rules implementing this provision are found at 12 CFR Part 32. Section 610 of the Federal Dodd-Frank Act amends the National Bank Act to subject derivative transactions of national banks to the lending limits of 12 USC § 84. The Office of the Comptroller of the Currency has adopted an amendment to 12 CFR Part 32 addressing derivative transactions which will be effective April 1, 2013.

Since the lending limit laws of New Hampshire provide that New Hampshire banks must comply with the lending limits prescribed under federal law, it follows that New Hampshire state - chartered banks must comply with the federal provisions relating to the consideration of credit exposures in derivative transactions.

Conclusion and Ruling:

- (1) New Hampshire's legal lending limit laws are intended to provide New Hampshire state-chartered banks and trust companies with parity to engage in the same general lending authority permitted for national banks under federal laws and regulations.
- (2) This lending authority includes the required consideration of credit exposure in derivative transactions.

(3) New Hampshire state-chartered banks are permitted to engage in derivative transactions in accordance with Section 611 of the Dodd-Frank Act, embodied in 12 USC 1828(y), which permits FDIC-insured state banks to engage in derivative transactions if the governing state banking law on lending limits “takes into consideration credit exposure to derivative transactions.”



Ronald A. Wilbur
Bank Commissioner

12/5/12
Date