

VIRGINIA ACTS OF ASSEMBLY -- 2013 SESSION

CHAPTER 126

An Act to amend and reenact § 6.2-875 of the Code of Virginia, relating to banks; derivative transactions; lending limit.

[H 2104]

Approved March 6, 2013

Be it enacted by the General Assembly of Virginia:

1. That § 6.2-875 of the Code of Virginia is amended and reenacted as follows:

§ 6.2-875. Limitations on obligations of borrowers.

A. As used in this section:

"Derivative transaction" shall include 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.

"Installment consumer paper" shall include installment notes of up to 10 years' duration for the purchase of unimproved real property.

"Obligation" means the direct liability of the maker or acceptor of the paper discounted with or sold to a bank and the liability of the endorser, drawer, or guarantor who obtains a loan from or discounts paper with or sells paper under his guaranty to such bank. "Obligation" shall include:

1. In the case of obligations of a corporation or a limited liability company, all obligations of all subsidiaries thereof in which the corporation or limited liability company owns or controls a majority interest; and

2. Any liability of the bank under a letter of credit, other than a letter of credit arising out of transactions involving the importation or exportation of goods or the domestic shipment of goods, except to the extent (i) the bank has a binding participation of another bank, organized under the laws of the Commonwealth or another state or the United States, or a written commitment by another such bank to assume primary liability therefor or (ii) such bank issuing the letter of credit has in its possession money on deposit to the credit of such customer or securities or assets readily convertible into cash with which to honor such letter of credit; and

3. Any credit exposure to a person arising from a derivative transaction between the bank and the person.

B. Subject to the exceptions set forth in subsections D, E, F, and I, the total obligations of any person, including, with respect to a partnership, as provided in subsection C, the partners having a five percent or greater interest in either the income or capital of a partnership other than limited partners, to any bank shall at no time exceed 15 percent of the sum of the capital, surplus, and loan loss reserve of such bank.

C. For the purposes of this section:

1. The obligation of partners in the partnership and the partnership shall not be combined with each other except if (i) the purpose for which the obligation of any partner was incurred or utilized relates to the partnership or the purposes of the partnership, including acquisition of an interest in the partnership, such obligation shall be combined with the obligation of the partnership or (ii) the primary source of repayment of a partner's individual obligation is the partnership or funds therefrom, the obligation of the partnership shall be combined with the obligation of such partner, other than a limited partner or partner with less than five percent interest, and the limitation specified herein shall apply to the combined obligations of each such partner and the partnership. Except in the two instances specified in clauses (i) and (ii), the individual liability of the partner shall not be treated as an obligation of the individual, and the obligations of partner as individual guarantor on partnership obligations shall not be treated as an obligation of the individual for purposes of computation hereunder when, in either case, the bank has a certificate of a responsible officer, designated by the board of directors for this purpose, stating that the responsibility of the partnership for each obligation has been evaluated and the bank is relying primarily upon such partnership for the payment of such indebtedness; and

2. There may be counted as part of the surplus (i) the undivided profits as of the date of the most recent call statement and (ii) capital notes and debentures, the issuance of which has been approved by the Commission, outstanding as of said date, and consisting of debt obligations subordinate to all other contractual liabilities of the bank.

D. The following kinds of obligations shall not be subject to any limitation, except as expressly stated in subdivision 20:

1. Obligations in the form of drafts or bills of exchange drawn in good faith against actually existing values;

2. Obligations arising out of the discount of commercial or business paper actually owned by the person, partnership, association, limited liability company, or corporation negotiating the same;

3. Obligations drawn in good faith against actually existing values and secured by goods or commodities in process of shipment;

4. Obligations in the form of banker's acceptances of other banks of the kind described in section thirteen of the Federal Reserve Act;

5. Obligations of the United States, the Commonwealth, or any political subdivision of the Commonwealth, including sanitary or public facilities districts;

6. Obligations fully guaranteed or insured by a state or by a state authority for the payment of the obligation of which the faith and credit of the state is pledged;

7. First mortgage real estate loans that are insured by the Federal Housing Administrator;

8. Obligations guaranteed as to principal and interest by the United States;

9. Loans in which the Small Business Administration or a federal reserve bank has definitely agreed or committed itself to participate, to the extent of such participation;

10. Obligations guaranteed by the Small Business Administration or Farmers Home Administration, to the extent of such guaranty;

11. Loans that the Federal Commodity Credit Corporation has definitely agreed to purchase;

12. Direct obligations of, and obligations guaranteed by, the Export-Import Bank;

13. Loans guaranteed by a federal guaranteeing agency pursuant to the Defense Production Act of 1950;

14. Bonds and notes of the Federal National Mortgage Association;

15. Bonds, debentures, and other similar obligations of Federal Land Banks, Federal Intermediate Credit Banks, or Banks for Cooperatives issues pursuant to acts of Congress;

16. Obligations of the Federal Financing Bank, the Student Loan Marketing Association, the Federal Home Loan Mortgage Corporation, the National Credit Union Administration, Farm Credit Banks, the Government National Mortgage Association, or the Commodity Credit Corporation;

17. Time deposits in, or obligations issued by, a Federal Home Loan Bank;

18. Repurchase agreements of obligations authorized by this subsection;

19. Obligations of any person, secured by not less than a like amount of bonds or notes or other evidences of indebtedness of the United States or of the Commonwealth;

20. Obligations as endorser or guarantor of installment consumer paper that carry a full or limited endorsement or guarantee of the person transferring the same when the bank has a certificate of a responsible officer, designated by its board of directors for that purpose, stating that the responsibility of the maker of such obligation has been evaluated and the bank is relying primarily upon such maker for the payment of such obligation. In such case the limitations of this section as to the obligations of the maker shall be the sole applicable loan limitation; and

21. Obligations secured by the pledge or assignment of certificates of deposit or saving certificates of the lending bank, to the extent of the principal amount of such certificates so pledged or assigned.

E. The following kinds of obligations shall be subject to a limitation of 30 percent of such capital and surplus:

1. Obligations as endorser or guarantor of notes, other than commercial or business paper excepted under subdivision D 2 having a maturity of not more than six months, and owned by the person endorsing and negotiating the same;

2. Obligations of any person in the form of notes or drafts secured by shipping documents or instruments (i) transferring or securing title covering livestock or (ii) giving a lien on livestock when the market value of the livestock securing the obligations is not at any time less than 115 percent of the amount by which the obligations exceed 15 percent of such capital and surplus; and

3. Obligations secured by bonds or notes of the United States, or bonds of the Commonwealth or any of its political subdivisions, if the face value thereof is at least equal to the excess of the obligations over 15 percent of such capital and surplus.

F. Nonrenewable obligations having not more than 10 months to run consisting of notes or drafts secured by shipping documents, warehouse receipts, or similar documents creating a security interest in readily marketable, nonperishable, staple commodities, insured to the extent that insurance is customarily required, shall be subject to a sliding scale limitation up to 50 percent of such capital, surplus, and undivided profits. The sliding scale limitation shall require that when the face amount of the obligation exceeds 15 percent of such capital and surplus by any number of percentage points up to 35, the market value of the security for the obligation shall exceed the face amount of the obligation by at least the same number of percentage points.

G. The Commission shall adopt necessary regulations to require entities that would otherwise be treated as separate entities to be treated as related for the purposes of compelling reporting not more frequently than quarterly, to the Commission of the aggregate obligations of such parties to the bank. For the purposes of this subsection:

1. The Commission may treat as related parties individuals that are in the same household or that are the parents, grandparents, children, or grandchildren of each other whether or not in the same household;

2. Any person owning as much as 34 percent of stock of a corporation or being an officer or director of such corporation may be treated as related to such corporation;

3. Any person entitled to a share of the profits and losses of or distributions from a limited liability company, or who is a manager of a manager-managed limited liability company or a member of a member-managed limited liability company, may be treated as related to the limited liability company; and

4. Any person having an interest in income or capital of a partnership may be treated as a related party.

H. All loans made by a bank in excess of 15 percent of its capital and surplus shall be approved by the board of directors or the executive committee of the bank by resolution recorded in the bank's minute book.

I. Notwithstanding the limitations in this section, the Commission may by regulation authorize state banks to make loans to one borrower in such amounts as may be authorized under any lending limit laws applicable to national banks.

J. The Commission may adopt such regulations as it deems appropriate to (i) further define the term "derivative transaction" and (ii) set forth the rules for calculating credit exposures arising from derivative transactions. Before adopting any such regulation, the Commission shall give reasonable notice of its content and shall afford interested parties an opportunity to be heard, in accordance with the Commission's Rules.