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OCC AND DFI EXTEND TEMPORARY EXCEPTION FOR INCLUDING DERIVATIVES IN LENDING LIMITS

The Office of the Comptroller of the Currency has formally extended to July 1, 2013 the temporary exception in applying its lending limit regulation, 12 CFR 32, to certain exposures arising from derivative transactions and securities financing transactions as to national banks and savings associations. In addition the California Department of Financial Institutions just announced that it too is extending its compliance deadline to July 1, 2013 for including these exposures in calculating a California state-chartered bank's unsecured lending limit.

Section 610 of the Dodd-Frank Reform Act revised, for lending limit purposes, the statutory definition of "loans and extensions of credit" to include certain credit exposures arising from derivative transactions, repurchase agreements, reverse repurchase agreements, securities lending transactions, and securities borrowing transactions. In June 2012, the OCC issued an interim final rule implementing this statutory change, which gave national banks and savings associations until January 1, 2013 to comply with the lending limit requirements as to derivative transactions and securities financing transactions. It is that deadline that the OCC first extended to April 1, 2013, and has now extended further to July 1, 2013.

In a related development, the California DFI just announced that it is extending the deadline for the inclusion of derivative exposure in lending limit calculations for California state-chartered banks. See the December 2012 DFI Monthly Bulletin, issued on January 11, 2013. The new deadline for state banks is July 1, 2013, the same as the OCC's deadline for national banks and savings associations. By way of background, in its November 2012 Monthly Bulletin the DFI took the position that current law already includes derivative exposure as part of a state bank's lending limit calculations. However, as we previously reported, neither California law nor DFI regulations provide for any type of methodology for measuring a state bank's derivative exposure. Thus, in that same bulletin the DFI also announced that it will require state banks to use the Conversion Factor Matrix Model (which was one of the models included in the OCC's interim final rule) to compute derivative exposure and confirmed that the model adopted for lending limit purposes has no bearing on measuring derivative exposure for other purposes, such as accounting, loan loss reserves or capital calculations. The DFI indicated that the deadline extension will allow it time to issue regulations before the new requirement becomes mandatory.

For more information about lending limits and the impact of derivative and securities financing transactions, see BCG Handout #12-9B, "Lending Limits" (September 2012).

And for assistance in implementing these new requirements, please contact Mark Aldrich or Michael Delune in the firm's Corporate Practice Group at 949-474-1944, or email them at MAldrich@ABMLawFirm.com or MDelune@ABMLawFirm.com.

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