

Article 6.

Bank Operations.

§ 53C-6-1. Loans and extensions of credit.

(a) A bank may make a loan or extension of credit secured by the pledge of its own shares or the shares of its holding company, provided:

- (1) When a bank exercises its security interest in shares of the bank or its holding company, it shall dispose of all of the shares within a period of six months. If the shares have not been disposed of within six months, the shares shall be charged to profit and loss and no longer carried as an asset of the bank. The Commissioner may extend the six-month period not to exceed an additional six months.
- (2) A bank may not extend credit to finance the purchase of or to carry shares of the bank or the shares of its holding company. For purposes of this subsection, the phrase "to carry" has the meaning set forth in 12 C.F.R. Part 221, as promulgated by the Federal Reserve Board.

(b) Loans and Extensions of Credit – Limitations:

- (1) The total loans and extensions of credit, both direct and indirect, by a bank to a person, other than a municipal corporation for money borrowed, including in the liabilities of a company the liabilities of the several members of the company, outstanding at one time and not fully secured, as determined in a manner consistent with subdivision (2) of this subsection, by collateral having a market value at least equal to the amount of the loan or extension of credit, shall not exceed the greater of (i) fifteen percent (15%) of the sum of the bank's capital plus those portions of the bank's allowance for loan and lease losses, deferred tax assets, and intangible assets that are excluded from the bank's capital under 12 C.F.R. Part 325 or (ii) the amount permitted for national banks in this State by statute or regulation of the Comptroller of the Currency.
- (2) The total loans and extensions of credit, both direct and indirect, by a bank to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the loan or extension of credit outstanding, shall not exceed the greater of (i) ten percent (10%) of the sum of the bank's capital plus those portions of the bank's allowance for loan and lease losses, deferred tax assets, and intangible assets that are excluded from the bank's capital under 12 C.F.R. Part 325 or (ii) the amount permitted for national banks by statute or regulation of the Comptroller of the Currency. This limitation shall be separate from and in addition to the limitation contained in subdivision (1) of this subsection.
- (3) The following shall not be considered as extensions of credit within the meaning of this section; provided that the limitations of this subsection shall not apply to loans or obligations to the extent that they are secured or covered by guarantees or by commitments or agreements to take over or purchase the same made by any federal reserve bank or by the United States or any department, board, bureau, commission, or establishment of the United States, including any corporation wholly owned, directly or indirectly, by the United States:

- a. The discount of bills of exchange drawn in good faith against actual existing values.
 - b. The discount of solvent trade acceptances or other solvent commercial or business paper actually owned by the person negotiating the same.
 - c. Loans or extensions of credit secured by a segregated deposit account in the lending bank.
 - d. The purchase of bankers' acceptances of the kind described in section 13 of the Federal Reserve Act and issued by other depository institutions.
 - e. The purchase of any notes and the making of any loans secured by not less than a like face amount of bonds of the United States or any agency of the United States; or other obligations guaranteed by the United States government or the State of North Carolina; or certificates of indebtedness of the United States, or agency thereof; or other obligations guaranteed by the United States government.
- (4) For purposes of this subsection, the following definitions and conditions apply:
- a. "Person" includes an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed; provided, the term "person" shall not include (i) a clearing organization registered with the Commodity Futures Trading Commission (or its successor) or the Securities and Exchange Commission (or its successor) or any federal banking agency or (ii) a bank's affiliates.
 - b. Loans or extensions of credit to one person include loans made to other persons when the proceeds of the loans or extensions of credit are to be used for the direct benefit of the first person or the persons are engaged in a common enterprise.
 - c. For purposes of this section, extensions of credit by a bank to a person shall include the bank's credit exposures to the person in derivative transactions with the bank.
 - d. "Derivative transaction" includes 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, debt instruments, currencies, interest or other rates, indices, or assets.
 - e. Credit exposure to a person in connection with a derivative transaction shall be determined based on an amount that the bank reasonably determines, in accordance with customary industry practices under the terms of the derivative transaction or otherwise, would be its loss if the person were to default on the date of determination, taking into account any netting and collateral arrangements and any guarantees or other credit enhancements, provided that the bank may elect to determine credit exposure on the basis of such other method of determining credit exposure as may be permitted by the bank's primary federal regulator.

(c) The Commissioner shall monitor the lending activities of banks under this section for undue credit concentrations and inadequate risk diversification that could adversely affect the safety and soundness of the banks.

(d) Rules adopted by the Commissioner to ensure that extensions of credit made by banks are in keeping with sound lending practices and to promote the purposes of this Chapter shall not prohibit a bank from making any extension of credit that is a permitted extension of credit for a federally chartered institution.

(e) Any bank may, by resolution duly passed at a meeting of its board of directors or a board-authorized committee, request the Commissioner to suspend the limitations on loans set forth in this section as the limitations may apply to any particular loan (i) on the bank's books that then exceeds such limitations, or (ii) which the bank desires to make or modify in a manner that would not otherwise be permitted in the absence of a suspension of such limitations. Upon receipt of a duly certified copy of such resolution, the Commissioner may, in the Commissioner's discretion and subject to such requirements, limitations, and conditions as the Commissioner deems appropriate, suspend the limitations on loans set forth in this section insofar as they apply to the loan in question. (2012-56, s. 4; 2013-29, ss. 9, 10.)