

## BANKING ALERT - ILLINOIS

12/23/13

### Illinois Banking Act Authorizes Derivative Transactions under Dodd-Frank

In an Interpretive Letter issued by the Illinois Department of Financial and Professional Regulation, Division of Banking (Department), the Department has determined that the Illinois Banking Act (Act) provides authority for Illinois' state chartered banks to participate in derivative transactions pursuant to § 611 of the Dodd-Frank Act.

In general, Dodd-Frank prohibits state chartered banks from engaging in derivative transactions unless the state's banking laws take into consideration credit exposure to derivative transactions with respect to lending limits. The Department found that the Act met the Dodd-Frank requirement via two distinct mechanisms.

First, the Department found that 205 ILCS 5/32 (Section 32) of the Act specifically authorizes state chartered banks to participate in derivative transactions. Section 32 states, in part:

The liabilities outstanding at one time to a state bank of a person for money borrowed, including the liabilities of a partnership or joint venture in the liabilities of the several members thereof, shall not exceed 25% of the amount of the unimpaired capital and unimpaired surplus of the bank.

In addition, the Department determined that the Act considers exposure from derivative transactions by reference in 205 ILCS 5/5(11) (Section 5(11)) as a part of the general corporate powers granted to banks. Section 5(11), pursuant to the interpretation of the Department, is denoted a parity statute through whose operation a state bank may receive powers that are identical to powers that have been granted to national banks. The Department found that federal laws establish definitive terms regarding derivative transactions at 12 U.S.C. 84 and 12 CFR part 32 and that through the operation of Act Section 5(11), banks that propose to engage in any act permitted to national banks (i.e. derivative transactions) may do so under the auspices of federal laws and regulations. A bank citing Section 5(11) as its authority to alter or otherwise avoid the lending limits of Act Section 32 must be able to identify the specific federal laws or regulations that bear on its transactions and is also bound by the lending limits set by federal law.

As a final point, the Department reinforces the requirement that any state bank that chooses to engage in derivative transactions must adhere to safety and soundness principles and that the Department retains the authority to address credit exposures that present undue concentrations on a case-by-case basis.

Adherence to state and/or federal laws regarding derivative transactions can be complex. For further information on the interpretation or implementation of those laws, please contact **Mark D. Belongia** at 312.582.1605 or [mbelongia@ralaw.com](mailto:mbelongia@ralaw.com).