

THIS DATE Aug. 19, 1983

Administrative Law Division

LEGISLATIVE

EMERGENCY

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
Commissioner of Banking

West Virginia Code §31A-4-26(a)
Series IX
(1983)

Subject: Legislative rule pertaining to the legal lending limit.

STATEMENT OF EMERGENCY

Pursuant to West Virginia Code §29A-3-15(a) [1983 Cumulative Supplement], the Commissioner of Banking has determined that an emergency exists, as defined in West Virginia Code §29A-3-15(e), requiring the promulgation of this emergency legislative rule. With the amending of West Virginia Code §31A-4-26(a) [1983 Cumulative Supplement] by the enactment of House Bill 1688 [passed February 24, 1983; effective May 25, 1983], an emergency has arisen that necessitates the promulgation of a legislative rule to prevent substantial harm to the public interest. The Legislature, in enacting West Virginia Code §31A-4-26(a) [1983 Cumulative Supplement] clearly indicated that the Commissioner of Banking may prescribe rules and regulations to administer and carry out the purposes of that Code subsection, including rules or regulations to define or further define terms used in that Code subsection and to establish limits or requirements other than those specified in that Code subsection for particular classes or categories of loans or extensions of credit. Furthermore, the Legislature, in enacting West Virginia Code §31A-4-26(a) [1983 Cumulative Supplement], indicated that the Commissioner of Banking may also prescribe rules and regulations to deal with

loans or extensions of credit, which were not in violation of that Code section prior to the effective date of House Bill 1688, but which would be in violation of that Code subsection upon the effective date of that bill. In conclusion, a legislative rule, needs to be effective for two (2) reasons. First, the Commissioner of Banking must have this legislative rule in effect to adequately supervise and regulate state-chartered banking institutions with regard to the legal lending limit. Second, the state-chartered banking institutions must have this legislative rule in effect to be able to utilize the additional powers granted by the amendments to West Virginia Code §31A-4-26(a) [1983 Cumulative Supplement].

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Section 1. General

- 1.01. Scope and Purpose
- 1.02. Authority
- 1.03. Filing Date
- 1.04. Effective Date

Section 2. Definition

- 2.01. Loans and Extensions of Credit
- 2.02. Person
- 2.03. Unimpaired Capital and Unimpaired Surplus
- 2.04. Contractual Commitment to Advance Funds

Section 3. Limitations and Compliance

- 3.01. General Limitation
- 3.02. Additional General Limitation: Loans Fully Secured By Readily Marketable Collateral
- 3.03. Definition of Readily Marketable Collateral
- 3.04. Compliance with West Virginia Code §31A-4-26

Section 4. Combining Loans to Separate Borrowers

- 4.01. General Rule
- 4.02. Definition of a Common Enterprise

4.03. Definition of Control

Section 5. Loans to Corporations

5.01. Definition of Subsidiary

5.02. General Rule

5.03. Exceptions

Section 6. Loans to Partnerships, Joint Ventures, and Associations

6.01. General Rule

6.02. Attributing

6.03. Exception

Section 7. Exceptions to the Lending Limits

7.01. Discount of Commercial or Business Paper

7.02. Bankers' Acceptances

7.03. Loans Secured by Bills of Lading or Warehouse Receipts
Covering Readily Marketable Staples

7.04. Loans Secured by Obligations of the United States and West
Virginia

7.05. Loans to or Guaranteed by a Federal Agency of the State of
West Virginia

7.06. Loans Secured by Segregated Deposit Accounts

7.07. Loans to State-Chartered Banking Institutions With the
Approval of the Commissioner

7.08. Discount of Installment Consumer Paper

7.09. Loans Secured by Livestock or Dairy Cattle

7.10. Loans to Student Marketing Association

7.11. Loans to a Corporation Owning the Property in Which that
State-Chartered Banking Institution is Located

Section 8. Transitional Rules

8.01. Loans in Violation Prior to Effective Date

- 8.02. Additional Advances after Effective Date
- 8.03. Loans Not in Violation Prior to Effective Date
- 8.04. Commitment to Advance Funds Made Prior to Effective Date

Section 9. Miscellaneous

- 9.01. Obligations of Accommodation Parties
- 9.02. Sale of Federal Funds
- 9.03. Purchase of Third-Party Paper
- 9.04. Overdrafts
- 9.05. Loans Charged Off in Whole or in Part
- 9.06. Sale of Loan Participations
- 9.07. Interest or Discount on Loans
- 9.08. Loans to or Guaranteed by General Obligations of a State or Political Subdivision
- 9.09. Loans to Industrial Development Authorities
- 9.10. Separate Limitations for West Virginia Code §31A-4-26(a)

LEGISLATIVE

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Section 1. General

1.01. Scope and Purpose - This regulation establishes general rules implementing West Virginia Code §31A-4-26(a); it applies to all loans and/or extensions of credit made by state-chartered banking institutions and their domestic operating subsidiaries. This regulation does not apply to loans made by a state-chartered banking institution to its affiliates (as that term is defined in subsection (b)(1) of Section 23A of the Federal Reserve Act (12 U.S.C. 371c(b)(1))) or operating subsidiaries. West Virginia Code §31A-4-26(a) and this regulation are intended to prevent one individual, or a relatively small group, from borrowing an unduly large amount of the state-chartered bank's funds. The statute and this regulation are intended to safeguard the depositors of state-chartered banks by spreading the loans and/or extensions of credit among a relatively large number of persons engaged in different lines of business.

1.02. Authority - This regulation is issued under the authority of West Virginia Code §31A-4-26(a)(5).

1.03. Filing Date - August 19, 1983.

1.04. Effective Date - August 19, 1983.

Section 2. Definitions

For purposes of this regulation:

2.01. "Loans and extensions of credit" means any direct or indirect advance of funds (including obligations of makers and endorsers arising from the discounting of commercial paper) to a person made on the basis of any obligation of that person to repay the funds, or repayable from specific property pledged by or on behalf of a person. "Loans and extensions of credit" also includes a "contractual commitment to advance funds" as that term is defined in 2.04 below.

2.02. "Person" means an individual, sole proprietorship, partnership, joint venture, association, trust, estate, business trust, corporation, not-for-profit corporation, sovereign government or agency, instrumentality, or political subdivision thereof, or any similar entity or organization.

2.03. "Unimpaired capital and unimpaired surplus" means the amount of common stock outstanding and unimpaired plus the amount of surplus outstanding and unimpaired. The term "surplus", as used in this definition, shall include capital surplus, earned surplus, undivided profits, allowance for possible loan losses, subordinated notes and subordinated debentures.

2.04. "Contractual commitment to advance funds" means (1) an obligation on the part of the bank to make payments (directly or indirectly) to a designated third party contingent upon a default by the bank's customer in the performance of an obligation under the terms of that customer's contract with the third party or (2) an obligation to guarantee or stand as surety for the benefit of a third party. The term

includes, but is not limited to, standby letters of credit (as defined in paragraph (e) of this section), guarantees, puts, and other similar arrangements. For purposes of this regulation, undisbursed loan funds and loan commitments not yet drawn upon which are not equivalent to a contractual commitment to advance funds as defined herein are not considered a "contractual commitment to advance funds." The definition also does not include commercial letters of credit and similar instruments where the issuing bank expects the beneficiary to draw upon the issuer, which do not "guarantee" payment of a money obligation, and which do not provide for payment in the event of default by the account party.

(e) A "standby letter of credit" is any letter of credit, or similar arrangement, however named or described, which represents an obligation to the beneficiary on the part of the issuer (1) to repay money borrowed by or advanced to or for the account of the account party, or (2) to make payment on account of any indebtedness undertaken by the account party, or (3) to make payment on account of any default by the account party in the performance of an obligation.

Section 3. Limitations and compliance

3.01. General limitation

West Virginia Code §31A-4-26(a)(1) provides:

The total loans and extensions of credit by a state-chartered banking institution to a person 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 fifteen

percent (15%) of the unimpaired capital and unimpaired surplus of that state-chartered banking institution.

3.02. Additional general limitation: loans fully secured by readily marketable collateral

West Virginia Code §31A-4-26(a)(2) provides:

The total loans and extensions of credit by a state-chartered banking institution 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 funds outstanding shall not exceed 10 percent (10%) of the unimpaired capital and unimpaired surplus of that state-chartered banking institution. This limitation shall be separate from and in addition to the limitation contained in paragraph (1) of this subsection.

3.03. Definition of readily marketable collateral - For purposes of this regulation, "readily marketable collateral" means financial instruments and bullion which are salable under ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions on an auction or a similarly available daily bid and ask price market. "Financial instruments" include stocks, notes, bonds, and debentures traded on a national securities exchange, "OTC margin stocks" (as defined in Regulation U of the Federal Reserve Board), commercial paper, negotiable certificates of deposit, bankers' acceptances, and shares in money market and mutual funds of the type which issue shares in which banks may perfect a security interest.

3.04. Compliance with West Virginia Code §31A-4-26(a)(2) - (a)

Each loan or extension of credit based on the limitation contained in West Virginia Code §31A-4-26(a)(2) shall be secured by readily marketable collateral having a current market value of at least one hundred percent (100%) of the amount of the loan or extension of credit at all times. "Current market value" means the bid or closing price listed for an item in a regularly published listing or an electronic reporting service.

(b) Each bank must institute adequate procedures to ensure that the collateral value fully secures the outstanding loan at all times.

(c) Financial instruments may be denominated in foreign currencies which are freely convertible to U.S. dollars. If collateral is denominated and payable in a currency other than that of the loan or extension of credit which it secures, the bank's procedures must require that the collateral be revalued at least monthly, using appropriate foreign exchange rates, in addition to being repriced at current market value.

(d) If collateral values fall below one hundred percent (100%) of the outstanding loan, to the extent that the loan is no longer in conformance with this section and exceeds the general fifteen percent (15%) limitation, the loan must be brought into conformance within five business days, except where judicial proceedings, regulatory actions, or other extraordinary occurrences prevent the bank from taking action.

Section 4. Combining loans to separate borrowers

4.01. General rule - Loans or extensions of credit to one person will be attributed to other persons, for purposes of this regulation, when (a) the proceeds of the loans or extensions of credit are to be

used for the direct benefit of other other person or persons or (b) a "common enterprise" is deemed to exist between the persons.

4.02. Definition of a common enterprise - (a) Whether two or more persons are engaged in a "common enterprise" will depend upon a realistic evaluation of the facts and circumstances of particular transactions.

(b) Where the expected source of repayment for each loan or extension of credit is the same for each person, a "common enterprise" will be deemed to exist and the loans or extensions of credit must be combined.

(c) Where loans or extensions of credit are made by persons who are related through common control, including where one person is controlled by another person, a "common enterprise" will be deemed to exist if the persons are engaged in interdependent businesses or there is substantial financial interdependence among them. A "common enterprise" will be deemed to exist when fifty percent (50%) or more of one person's gross receipts or gross expenditures (on an annual basis) are derived from transactions with one or more persons related through common control (as defined in 4.03 below) Gross receipts and expenditures include gross revenues/expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments.

(d) A "common enterprise" will also be deemed to exist when separate persons borrow from a bank for the purpose of acquiring a business enterprise of which those persons will own more than fifty percent (50%) of the voting securities.

4.03. Definition of control - For the purposes of 4.02(c) above, "control" shall be presumed to exist when:

(a) One or more persons acting in concert directly or indirectly own, control, or have power to vote twenty-five percent (25%) or more of any class of voting securities of another person; or

(b) One or more persons, acting in concert, control, in any manner, the election of majority of the directors, trustees, or other persons exercising similar functions of another person; or

(c) Any other circumstances exist which indicate that one or more persons acting in concert directly or indirectly exercise a controlling influence over the management or policies of another person.

Section 5. Loans to corporations

5.01. Definition of subsidiary - For purposes of this regulation, a corporation is a "subsidiary" of any person which owns or beneficially owns more than fifty percent (50%) of the voting stock of the corporation. Such ownership need not be direct. Thus, if A owns more than fifty percent (50%) of the voting stock of Corporation X which, in turn, owns more than fifty percent (50%) of the voting stock of Corporation Y, Corporation Y would be considered a subsidiary of both A and of Corporation X.

5.02. General rule - Loans or extensions of credit to a person and its subsidiary or to subsidiaries of one person need not be combined where the state-chartered banking institution has determined that the person and subsidiaries involved are not engaged in a "common enterprise" as that term is defined in 4.02 above.

5.03. Exceptions - Notwithstanding 5.02 above, loans or extensions of credit by a state-chartered banking institution to a "corporate group" may not exceed fifty percent (50%) of the that state-chartered banking institution's unimpaired capital and unimpaired surplus. This aggregate limitation applies only to loans made pursuant to West Virginia Code §31A-4-26(a)(1) and (a)(2). A "corporate group" includes a person and all of its subsidiaries.

Section 6. Loans to partnerships, joint ventures, and associations

6.01. General rule - Loans or extensions of credit to a partnership, joint venture, or association shall, for purposes of this regulation, be considered loans or extensions of credit to each member of such partnership, joint venture, or association.

6.02. Attributing - Loans or extensions of credit to members of a partnership, joint venture, or association shall, for the purpose of this regulation, be attributed to the partnership, joint venture, or association where one or more of the tests set forth in Section 4 of this section is satisfied with respect to one or more such members. However, loans to members of a partnership, joint venture, or association will not be attributed to other members of the partnership, joint venture, or association under this paragraph unless one or more of the tests set forth in Section 4 is satisfied with respect to such other members. The tests set forth in Section 4 of this regulation shall be deemed to be satisfied when loans or extensions of credit are made to members of a partnership, joint venture, or association for the purpose of purchasing an interest in such partnership, joint venture, or association.

6.03. Exception - The rule set forth in 6.01 above is not applicable to limited partners in limited partnerships or to members of joint ventures or associations if such partners or members, by the terms of the partnership or membership agreement, are not be held liable for the debts or actions of the partnership, joint venture, or association. However, the rules set forth in 6.01 above are applicable to such partners or members.

Section 7. Exceptions to the lending limits

7.01. Discount of commercial or business paper - West Virginia Code §31A-4-26(a)(4)(A) provides:

Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse shall not be subject to any limitation based on capital and surplus.

(a) This exception applies to negotiable paper given in payment of the purchase price of commodities in domestic or export transactions purchased for resale or to be used in connection with the fabrication of a product, or to be used for any other business purpose which may be reasonably be expected to provide funds for payment of the paper. Loans or extensions of credit arising from the discount of paper of the kind described in this paragraph must bear the full recourse endorsement of the owner. However, loans or extensions of credit arising from the discount of such paper in export transactions may be endorsed by such owner without recourse or with limited recourse, or may be accompanied by a separate agreement for limited recourse; provided, that if transferred without full recourse, the paper must be supported by an

assignment of appropriate insurance covering the political, credit, and transfer risks applicable to the paper. Insurance provided by the Export-Import Bank or the Foreign Credit Insurance Association is considered appropriate for this purpose. Loans or extensions of credit based on this exception are not subject to any limitation.

(b) Since the reason for the unlimited credit under this exception is that the papers arises from the sale of a commodity which may reasonably be expected to provide funds for payment of the paper, failure to pay either principal or interest when due removes the reason for unlimited credit. Therefore, although the line of credit to the maker or endorser should not be classified as excessive by reason of such default, the paper on which the default has occurred must thereafter be taken into consideration in determining whether additional loans or extension of credit may be made within the limits of West Virginia Code §31A-4-26(a). The same principles of disqualification from the exception applies to any renewal or extension of either the entire loan or an installment thereof.

7.02. Bankers' acceptances - West Virginia Code §31A-4-26(a)(4)(B) provides:

The purchase of bankers' acceptances of the kind described in section thirteen of the Federal Reserve Act and issued by other banks shall not be subject to any limitation based on capital and surplus.

(a) This exception permits the purchase by a state-chartered banking institution without limitation of bankers' acceptances created by other banks, provided that such acceptances are of the kind described in 12 U.S.C. §§372 and 373 (eligible acceptances). Acceptances other

Commissioner of Banking
Adm. Reg. 31A-4-26(a)
Series IX

than those described in 12 U.S.C §§372 and 373 must be included within the purchasing state-chartered banking institution's lending limit to each acceptor bank.

(b) The limits under which a state-chartered banking institution may itself accept drafts eligible for rediscount are contained in 12 U.S.C §§372 and 373. These limits are distinct from the limits under West Virginia Code §31A-4-26(a). Acceptances by a national bank of "ineligible" drafts, i.e., time drafts which do not meet the requirements for discount with a Federal Reserve bank, are subject to the limitations of West Virginia Code §31A-4-26(a).

(c) During any period within which a state-chartered banking institution holds its own acceptances, eligible or ineligible, having given value therefor, the amount given is considered, for purposes of this regulation, to be a loan or extension of credit to the customer for whom the acceptance was made and is subject to the lending limits. To the extent that a loan or extension of credit created by discounting the acceptance is covered by a bona fide participation agreement, the discounting bank need only consider that portion of the discounted acceptance which it retains as being subject to the limitations of West Virginia Code §31A-4-26(a).

7.03. Loans secured by bills of lading or warehouse receipts covering readily marketable staples - West Virginia Code §31A-4-26(a)(4)(c) provides:

Loans and extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples shall be subject to a limitation of thirty-

five percent (35%) of capital and surplus in addition to the general limitations if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds one hundred-fifteen percent (115%) of the outstanding amount of such loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure such staples.

(a) This exception allows a state-chartered banking institution to make loans or extensions of credit to one person in an amount equal to thirty-five percent (35%) of its capital and surplus in addition to the general fifteen percent (15%) permitted by West Virginia Code §31A-4-26(a)(1) and in addition to the ten percent (10%) permitted by West Virginia Code §31A-4-26(a)(2) provided the collateral requirements are met.

(b) A "readily marketable staple" means an article of commerce, agriculture, or industry of such uses as to make it the subject of dealings in a ready market with sufficiently frequent price quotations as to make (i) the price easily and definitely ascertainable, and (ii) the staple itself easy to realize upon sale at any time at a price which would not involve any considerable sacrifice from the amount at which it is valued as collateral. Staples eligible for this exception must be nonperishable, may be refrigerated or frozen, and must be fully covered by insurance when such insurance is customary. This exception is intended to apply primarily to basic commodities, such as wheat and other grains, cotton, wool, and basic metals such as tin, copper, lead, and the like. Whether a commodity is readily marketable depends upon existing conditions and it is possible that a commodity that qualifies

at one time may cease to qualify at a later date. Fabricated commodities which do not constitute standardized interchangeable units and do not possess uniformly broad marketability do not qualify as readily marketable collateral.

(c) Commodities sometimes fail to qualify as nonperishable because of the manner in which they are handled or stored during the life of the loan or extension of credit. Accordingly, the question as to whether a staple is nonperishable must be determined on a case-by-case basis.

(d) This exception is applicable to a loan or extension of credit arising from a single transaction or secured by the same staples for (i) not more than ten (10) months if secured by nonperishable staples; and (ii) not more than six (6) months if secured by refrigerated or frozen staples.

(e) The important characteristic of warehouse receipts, order bills of lading, or other similar documents is that the holder of such documents has control of the commodity and can obtain immediate possession. (However, the existence of brief notice periods, or similar procedural requirements under state law, for the disposal of the collateral will not affect the eligibility of instruments for this exception.) Only documents with these characteristics are eligible security for loans under this exception. In the event of default on a loan secured by such documents, the bank must be in a position to sell the underlying commodity and promptly transfer title and possession to the purchaser, thus being able to protect itself with extended litigation. Generally, documents qualifying under the Uniform Commercial Code are "similar documents" qualifying for this exception.

(f) Field warehouse receipts are an acceptable form of collateral when they are issued by a duly bonded and licensed grain elevator or warehouse having exclusive possession and control of the commodities even though the grain elevator or warehouse is maintained on the commodity owner's premise.

(g) Warehouse receipts issued by the borrower-owner which is a grain elevator or warehouse company, duly bonded and licensed and regularly inspected by state or federal authorities, may be considered eligible collateral under this exception only when the receipts are registered with an independent registrar whose consent is required before the commodities can be withdrawn from the warehouse.

7.04. Loans secured by obligations of the United States and West Virginia - West Virginia Code §31A-4-26(a)(4)(D) provides:

Loans or extensions of credit secured by bonds, notes, certificates of indebtedness or treasury bills of the United States or by other such obligations fully guaranteed as to principal and interest by the United States or by bonds, notes, certificates of indebtedness which are general obligations of the state of West Virginia or by other such obligations fully guaranteed as to principal and interest by the state of West Virginia shall not be subject to any limitation based on capital and surplus.

(a) This exception applies only to the extent that loans or extensions of credit are fully secured by the current market value of obligations of the United States or the state of West Virginia or guaranteed by the United States or the state of West Virginia.

(b) If the market value of the collateral declines to the extent that the loan is no longer in conformance with this exception and exceeds the general fifteen percent (15%) limitation, the loan must be brought into conformance within five (5) business days.

7.05. Loans to or guaranteed by a federal agency of the state of West Virginia - West Virginia Code §31A-4-26(a)(4)(E) provides:

Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission or establishment of the United States or of the state of West Virginia or any corporation wholly owned directly or indirectly by the United States shall not be subject to any limitation based on capital and surplus.

(a) This exception may apply to only that portion of a loan or extension of credit that is covered by a federal government or state of West Virginia guarantee or commitment.

(b) For purposes of this exception, the commitment or guarantee must be payable to cash or its equivalent within sixty (60) days after demand for payment is made.

(c) A guarantee or commitment is unconditional if the protection afforded the bank is not substantially diminished or impaired in the case of loss resulting from factors beyond the bank's control. Protection against loss is not materially diminished or impaired by procedural requirements, such as an agreement to take over only in the event of default, including default over a specific period of time, a requirement that notification of default be given with a specific period after its occurrence, or a requirement of good faith on the part of the bank.

7.06. Loans secured by segregated deposit accounts - West Virginia
§31A-4-26(a)(4)(F) provides:

Loans or extensions of credit secured by a segregated deposit account in the lending bank shall not be subject to any limitation based on capital and surplus.

(a) The lending bank must ensure that a security interest has been perfected in the deposit, including the assignment of a specifically identified deposit and any other actions required by state law.

(b) Deposit accounts which may qualify for this exception include deposits in any form generally recognized as deposits. In the case of deposit eligible for withdrawal prior to the maturity of the secured loan, the bank must establish internal procedures which will prevent the release of the security.

(c) A deposit which is denominated and payable in a currency other than that of the loan or extension of credit which it secures may be eligible for this exception if it is freely convertible to U.S. dollars. The deposit must be revalued at least monthly, using appropriate foreign exchange rates to ensure that the loan or extension of credit remains fully secured. This exception applies to only that portion of the loan or extension of credit that is covered by the U.S. dollar value of the deposit. If the U.S. dollar value of the deposit falls to the extent that the loan is in nonconformance with this exception and exceeds the general fifteen percent (15%) limitation, the loan must be brought into conformance within five (5) business days, except where judicial proceedings, regulatory actions, or other extraordinary occurrences prevent the bank from taking such action. This exception is not authority for

state-chartered banking institutions to take deposits denominated in foreign currencies.

7.07. Loans to state-chartered banking institutions with the approval of the Commissioner - West Virginia Code §31A-4-26(a)(4)(G) provides:

Loans or extensions of credit to any banking institution or to any receiver, conservator or other agent in charge of the business and property of such banking institution or other federally insured depository institution, when such loans or extensions of credit are approved by the commissioner of banking, shall not be subject to any limitation based on capital and surplus.

This exception is intended to apply only in emergency situations where a state-chartered banking institution is called upon to provide assistance to another depository institution.

7.08. Discount of installment consumer paper - West Virginia Code §31A-4-26(a)(4)(H) provides:

(i) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditionally guarantee by the person transferring the paper shall be subject under this section to a maximum limitation equal to twenty-five percent (25%) of such capital and surplus, notwithstanding the collateral requirements set forth in subdivision (2) of this section.

(ii) If the bank's files or the knowledge of its officers of the financial condition of each maker of such consumer paper is reasonably adequate, and an officer of the bank designated for that purpose by the

board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of such loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each such maker shall be the sole applicable loan limitations.

(a) This exception allows a state-chartered banking institution to discount negotiable or nonnegotiable installment consumer paper of one person in an amount equal to ten percent 10% of its capital and surplus (in addition to the fifteen percent (15%) permitted by West Virginia Code §31A-4-26(a)(1) if the paper carries a full recourse endorsement or unconditional guarantee by the seller transferring such paper. The unconditional guarantee may be in the form of a repurchase agreement or a separate guarantee agreement. A condition reasonably within the power of the bank to perform, such as the repossession of collateral, will not be considered to make conditional an otherwise unconditional agreement.

(b) For purposes of 7.08 only, "consumer" means the user of any products, commodities, goods, or services, whether leased or purchased, and does not include any person who purchases products or commodities for the purpose of resale or for fabrication into goods for sale.

(c) For purposes of 7.08 only, "consumer paper" includes paper relating to automobiles, mobile homes, residences, office equipment, household items, tuition fees, insurance premium fees, and similar consumer items. Also included is paper covering the lease (where the bank is not the owner or lessor) or purchase of equipment for use in manufacturing, farming, construction, or excavation.

(d) Under certain circumstances, installment consumer paper which otherwise meets the requirements of this exception will be considered a loan or extension of credit to the maker of the paper rather than the seller of the paper. Specifically, where (i) through the bank's files it has been determined that the financial condition of each maker is reasonably adequate to repay the loan or extension of credit and (ii) an officer designated by the bank's Chairman or Chief Executive Officer pursuant to authorization by the Board of Directors certifies in writing that the bank is relying primarily upon the maker to repay the loan or extension of credit is subject only to the lending limits of the maker of the paper. Where paper is purchased in substantial quantities, the records, evaluation, and certification may be in such form as is appropriate for the class and quantity of paper involved.

7.09. Loans secured by livestock or dairy cattle -

(a) Loans secured by livestock - West Virginia Code §31A-4-26(a)(4)(I)(1) provides:

Loans and extensions of credit secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than one hundred fifteen percent (115%) of the face amount of the note covered, shall be subject under this section, notwithstanding the collateral requirements set forth in subdivision (2) of this subsection, to a maximum limitation equal to twenty-five percent (25%) of such capital and surplus.

This exception allows a state-chartered banking institution to make loans or extensions of credit to one person in an amount equal to ten

percent (10%) of the outstanding loan balance at all times. The loans or extensions of credit may be secured by shipping documents or other instruments which transfer title to, secure title to, or give a first lien on livestock. "Livestock" includes dairy and beef cattle, hogs, sheep, goats, horses, mules, poultry, and fish, whether or not held for resale. To support compliance with this exception, the bank must maintain in its files an inspection and appraisal report on the livestock pledged. The inspection and appraisal report should be performed at least every 12 months, or more frequently as deemed prudent.

Under the laws of certain states, a persons furnishing pasturage under a grazing contract may have a lien on the livestock for the amount due to pasturage. If the lien which is based on pasturage furnished by the lienor prior to the making of the loan (A) is assigned to the bank by a recordable instrument and (B) is protected against being defeated by some other lien or claim, by payment to a person other than the bank, or otherwise, it would qualify under this exception provided the amount of such perfected lien is at least equal to the amount of the loan and the value of the livestock is at no time less than one hundred fifteen percent (115%) of the loan. Where the amount due under the grazing contract is dependent upon future performance thereunder, the resulting lien has merely prospective value and does not meet the requirements of the exception.

(b) Loans secured by dairy cattle - West Virginia Code §31A-4-26(a)(4)(I)(ii) provides:

Loans and extensions of credit which arise from the discount by dealers in dairy cattle of paper given in payment for dairy cattle,

which paper carries a full recourse endorsement or unconditional guarantee of the seller, and which are secured by the cattle being sold, shall be subject under this section, notwithstanding the collateral requirements set forth in subdivision (2) of this subsection to a limitation of twenty-five percent (25%) of such capital and surplus.

This exception allows a state-chartered banking institution to discount paper of one person given in payment for dairy cattle in an amount equal to ten percent (10%) of its capital and surplus [in addition to the fifteen percent (15%) permitted by West Virginia Code §31A-4-2b(a)(1)]. The discounted paper must carry the fully recourse endorsement or unconditionally guarantee of the seller and the dairy cattle must secure the debt. Liens on the cattle may be in any form which allows the bank to maintain a perfected security interest in the cattle under applicable state law.

The exception for loans and extensions of credit secured by livestock is separate and apart from the exception for loans and extensions of credit created by the discount of paper of the purchase of dairy cattle. Therefore, a state-chartered banking institution may make loans or extensions of credit to one person secured by each type of collateral in an amount equal to ten percent (10%) of its capital and surplus (in addition to the fifteen percent (15%) permitted under West Virginia Code §31A-4-26(a)(1)).

7.10. Loans to Student Loan Marketing Association - West Virginia Code §31A-4-26(a)(1) provides:

Loans or extensions of credit to the student loan marketing Association shall not be subject to any limitation based on capital and surplus.

7.11. Loans to a corporation owning the property in which that state-chartered banking institution is located - West Virginia Code §31A-4-26(a)(4)(K) provides:

Loans or extensions of credit to a corporation owning the property in which that state-chartered banking institution is located, when that state-chartered banking institution has an unimpaired capital and surplus of not less than one million dollars or when approved in writing by the commissioner of banking, shall not be subject to any limitation based on capital and surplus.

Section 8. Transitional rules

8.01. Loans in violation prior to effective date - Loans or extensions of credit which were in violation of West Virginia Code §31A-4-26 prior to the effective date of this regulation will be considered to remain in violation of West Virginia Code §31A-4-26(a) after that date until they are paid in full, regardless of whether the loans or extensions of credit conform to the rules established in this regulation. Renewals or extensions of such loans or extensions of credit will also be considered violations of law.

8.02. Additional advances after effective date - A state-chartered banking institution which has outstanding loans or extensions of credit to a person in violation of West Virginia Code §31A-4-26(a) as of the effective date of this regulation may make additional advances to such person after those dates if the additional advances are permitted under

this regulation. The additional advances, however, may not be used directly or indirectly to repay any outstanding illegal loans or extensions of credit.

8.03. Loans not in violation prior to effective date - Loans or extensions of credit which were in conformance with West Virginia Code §31A-4-26 prior to the effective date of this regulation, but are not in conformance with the rules established in this regulation will not be considered to be violations of law during the existing contract terms of such loans or extensions of credit. Renewals or extensions of such loans or extensions of credit which are not in conformance with the rules set forth in this regulation may be made on or after the effective dates of this regulation; however, all loans or extensions of credit made under such renewals or extensions must conform with the rules set forth in this regulation no later than January 1, 1985.

8.04. Commitment to advance funds made prior to effective date - If a state-chartered banking institution, prior to the effective date of this regulation, entered into a legally binding commitment to advance funds on or after that date, and such commitment was in conformance with West Virginia Code §31A-4-26(a), advances under such commitment may be made notwithstanding the fact that such advances are not in conformance with this regulation. The bank must, however, demonstrate that the commitment represents a legal obligation to fund, either by a written agreement or through file documentation. Advances under renewals or extensions of such commitments must conform to this regulation if the renewal or extension of the commitment is made on or after the effective date of this regulation.

Section 9. Miscellaneous

9.01. Obligations of accommodation parties - The liability of a drawer, endorser, or guarantor who does not receive any of the proceeds, or the benefit of the proceeds, of the loan or extension of credit is not a loan or extension of credit to such person for purposes of this regulation unless one of the tests set forth in Section 4 above is satisfied.

9.02. Sale of Federal funds - (a) "Sale of Federal funds" means, for purposes of this subsection, any transaction among depository institutions involving the transfer of immediately available funds resulting from credits to deposit balances at Federal Reserve banks or from credits to new or existing deposit balances due from a correspondent depository institution.

(b) "Continuing contract" means, for purposes of this subsection, an agreement that remains in effect for more than one business day but has no specified maturity and requires no advance notice for termination.

(c) Sales of Federal funds with a maturity of one business day or under a continuing contract are not "loans and extensions of credit" for purposes of this regulation. However, sales of Federal funds with a maturity of more than one business day are subject to the legal lending limits.

9.03. Purchase of third-party paper - Where a bank purchases third-party paper subject to an agreement that the seller will repurchase the paper upon default or at the end of a stated period after default, the seller's obligation to repurchase is subject to West

Virginia Code §31A-4-26(a) and is measured by the total unpaid balance of the paper owned by the bank less any applicable dealer reserves. Where the seller's obligation to repurchase is limited, the seller's total loans or extensions of credit, for the purpose of West Virginia Code §31A-4-26(a)(1) are measured by the total amount of paper the seller may ultimately be obligated to repurchase. Where no more than an agreed percentage of the purchase price is retained by the bank and credited to a reserve to be held as a form of collateral security, but the bank has no direct or indirect recourse to the seller, the loans or extensions of credit do not constitute loans or extensions of credit to the seller subject to the limitations of Section 84.

9.04. Overdrafts - Overdrafts, whether or not prearranged, are "loans and extensions of credit" for purposes of this regulation. This rule does not apply to "intra-day" or "daylight" overdrafts.

9.05. Loans charged off in whole or in part - The legal lending limits apply to all existing loans or extensions of credit to a person by the bank, including loans or extensions of credit which have been charged off on the books of the bank in whole or in part. Loans or extensions of credit which have become unenforceable by reason of discharge in bankruptcy or are no longer legally enforceable for other reasons are not "loans and extensions of credit" for purposes of this regulation.

9.06. Sale of loan participations - (a) When a bank sells a participation in a loan or extension of credit, including the discount of a bank's own applicable acceptance, that portion of the loan that is sold on a nonrecourse basis will not be applied to the bank's lending

limits. In order to remove a loan or extension of credit from a bank's lending limit, a participation must result in a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. This is so even where the participation agreement provides that repayment must be applied first to the shares sold. In that case, the pro rata sharing may only be accomplished if the agreement also provides that, in case of a default or comparable event defined in the agreement, participants shall share in all subsequent repayments and collections in proportion to the percentage of participation at the time of the occurrence of the event.

(b) The provisions of 9.06(a) above apply to all "loans and extensions of credit," as defined in 2.01 of this regulation; including "contractual commitment(s) to advance funds," as defined in 2.04 of this regulation.

9.07. Interest or discount on loans - The legal lending limits do not apply to the portion of a loan or extension of credit that represents accrued or discounted interest.

9.08. Loans to or guaranteed by general obligations of a State or political subdivision - (a) A loan or extension of credit to a bank customer which is guaranteed or secured by a "general obligation" of any State or political subdivision thereof, is not considered an obligation of the customer for purposes of West Virginia Code §31A-4-26(a). The lending bank should obtain the opinion of competent counsel that the guarantee or collateral is a valid and enforceable obligation of the public body.

(b) A loan or extension of credit to a State or political subdivision thereof is not subject to any limitation based on capital or surplus if the loan or extension of credit constitutes a "general obligation" of the State or political subdivision. The lending bank should obtain the opinion of competent counsel that the loan or extension of credit is a valid and enforceable obligation of the borrower.

9.09. Loans to industrial development authorities - A loan or extension of credit to an industrial development authority or similar public entity created for the purpose of constructing and leasing a plant facility, including a health care facility, to an industrial occupant is not a loan or extension of credit to the authority for the purposes of West Virginia Code §31A-4-26(a) if: (a) The bank relies on the credit of the industrial occupant in making the loan; (b) the authority's liability with respect to the loan is limited solely to whatever interest it has in the particular facility; (c) the authority's interest is assigned to the bank as security for the loan or a promissory note from the lessee to the bank provides a higher order of security than the assignment of a lease; and (d) the industrial occupant's lease rentals are assigned and paid directly to the bank. A loan or extension of credit meeting the above criteria will be deemed a loan or extension of credit to the lessee and will be combined with other obligations of the lessee for purposes of West Virginia Code §31A-4-26(a).

9.10. Separate limitations for West Virginia Code §31A-4-26(a) - The legal lending limits prescribed by West Virginia Code §31A-4-26(a) are separate and distinct from the investment limits prescribed by West

Virginia Code §31A-4-26(b). Accordingly, a state-chartered banking institution may make loans or extensions of credit to one borrower up to the full amount permitted by West Virginia Code §31A-4-26(a) and also hold eligible investment securities of the same obligor up to the full amount permitted by West Virginia Code §31A-4-26(b). In order for a security to be an "investment security" it must be eligible for investment by a national bank in accordance with the standards set forth in West Virginia Code §31A-4-26(b).

Obsolete
By Reg. Filed
3-30-84



STATE OF WEST VIRGINIA
DEPARTMENT OF BANKING
CHARLESTON 25305

August 19, 1983

obsolete
valid
Aug 19, 1983
for ~~10~~ days
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Series 9

The Honorable A. James Manchin
Secretary of State
State Capitol Building
Charleston, West Virginia 25305

Dear Mr. Manchin:

I, Thomas J. Hansberry, Acting Commissioner of Banking, hereby submit and file three (3) copies of an emergency legislative rule pertaining to the legal lending limit [West Virginia Administrative Regulations, Commissioner of Banking, West Virginia Code §31A-4-26(a), Series IX (1983)]. Attached to each of those three (3) copies is a Statement of Emergency.

Sincerely,

Thomas J. Hansberry
Acting Commissioner
of Banking

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE Aug 19, 1983
Administrative Law Division