



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

August 2, 2011

Ms. Rose Oswald Poels
President/CEO
Wisconsin Bankers Association
4721 S. Biltmore Lane
Madison, WI. 53718

Interpretive Letter #1134
December 2011
12 CFR 32.2(k)(2)(vi)

Subject: Lending Limit

Dear Ms. Poels:

This letter is in response to an inquiry from counsel for the Wisconsin Bankers Association regarding the lending limit loan participation rule in 12 C.F.R. § 32.2(k)(2)(vi). The inquiry seeks confirmation that a participation that meets the requirements set forth in section 32.2(k)(2)(vi) but that is not a sale under applicable accounting standards nonetheless qualifies for lending limit relief. We confirm that lending limit relief is granted under section 32.2(k)(2)(vi) without reference to sale treatment under applicable accounting standards.

Under the long-standing lending limit participation rule, 12 C.F.R. § 32.2(k)(2)(vi), lending banks may obtain relief from the lending limit upon the sale of loan participations provided the participations meet certain requirements set forth in the rule, including that there be a pro rata sharing of credit risk between the selling and participant banks. The rule further provides that where a participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing will be deemed to exist if the agreement also provides that in the event of default, participants share in subsequent repayments and collections in proportion to their participation interests at the time of default. The lending limit loan participation rule contains no reference to applicable accounting standards¹ and, accordingly, conformity with sale requirements under such standards is not required in order to obtain lending limit relief.

¹ Counsel for the Association notes that the recently issued Statement of Financial Accounting Standards No. 166 (FAS 166), which amended FASB Statement No. 140, sets forth the criteria for determining when a loan participation may be treated as a sale for accounting purposes. For example, the loan participation transfer must satisfy the definition of “participating interest.” A “participating interest” must, among other things, represent “a proportionate (pro rata) ownership interest in an entire financial asset.” Paragraph 8.B.a. of FAS 166. In addition to the requirement that banks must hold a pro rata interest in a loan participation at all times, cash flow from the borrower has to be divided proportionately among all the participating interest holders in an amount equal to their share of ownership, subject to certain limited exceptions. If a particular loan participation fails to meet the numerous conditions set forth in paragraph 8B or 9 of FAS 166, the participation is treated as a secured borrowing and the lead

I trust this is responsive to your inquiry. If you have any questions, please contact Carleton Goss, Attorney, at (202) 874-5300.

Sincerely,

Jonathan Fink

Jonathan Fink
Assistant Director
Bank Activities & Structure

lender must continue to report the loan on its financial statements as if the transfer had not occurred. Paragraph 12 of FAS 166.