



State of Washington

**DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF BANKS**

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**ISGC – 2005 – 004 - DOB**

April 22, 2005

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Fax: [REDACTED]

RE: [REDACTED] Bank – Title 30 RCW Lending Limits & Market Variance for “Available for Sale Securities”

Dear Ms. Sager:

You have inquired (hereinafter, “Inquiry”), on behalf of [REDACTED] Bank (hereinafter, “Bank”), whether the *market variance* for “Available for Sale Securities” (hereinafter, “AFS Variance”) is not included in the lending limit calculation authorized by the Bank’s state charter pursuant to Title 30 RCW, at RCW 30.04.111 (hereinafter, “State Lending Limit Calculation”).

1.0 Summary Interpretation

Based upon the analysis and interpretation set forth in Section 2.0 below, the Division of Banks has concluded that, in the absence of legislative amendment or formal rulemaking, the AFS Variance (gain or loss) is not to be included in the State Lending Limit Calculation.

## 2.0 Analysis & Interpretation

2.1 Current State Lending Limit Calculation Silent About Available for Sale Securities. The current State Lending Limit Calculation, at RCW 30.04.111, declares generally, as follows:

The total loans and extensions of credit by a bank . . . to a person outstanding at any one time shall not exceed ***twenty percent of the capital and surplus of such bank or trust company.***

[Emphasis added.]

For purposes of interpreting the above-stated provision, RCW 30.04.111 further defines “capital” and “surplus,” as follows:

For the purposes of this section "capital" shall include the amount of common stock outstanding and unimpaired, the amount of preferred stock outstanding and unimpaired, and capital notes or debentures issued pursuant to chapter 30.36 RCW.

For the purposes of this section "surplus" shall include capital surplus, reflecting the amounts paid in excess of the par or stated value of capital stock, or amounts contributed to the bank other than for capital stock, and undivided profits.

RCW 30.04.111 is silent whether Available for Sale Securities are to be included as gains or losses. It follows, therefore, that, because the statute is silent, the AFS Variance is not to be included in the State Lending Limit Calculation.

2.2 Federal Rules Do Not Govern or Supersede State Policy. It may be argued that the Division of Banks should look to federal regulation, such as the regulations of the Office of the Comptroller of the Currency (hereinafter, “OCC”). To this end, RCW 30.04.111 also states, in pertinent part, as follows:

The director may prescribe rules to administer and carry out the purposes of this section, . . . the director shall be guided by rulings of the comptroller of the currency that govern lending limits applicable to national commercial banks.

However, legislative history is critical here. RCW 30.04.111 *used to be* RCW 30.04.110.<sup>1</sup> RCW 30.04.110 was *repealed* in 1986 and replaced by RCW 30.04.111.<sup>2</sup> Since the

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<sup>1</sup> The legislative history of RCW 30.04.110 was: 1983 c 157 § 4; 1969 c 136 § 1; 1955 c 33 § 30.04.110; 1943 c 142 § 1; 1933 c 42 § 21; 1917 c 80 § 51; Rem. Supp. 1943 § 3258.]

<sup>2</sup> See 1986 c 279.

inclusion of the above-referenced provision,<sup>3</sup> the Division of Banks has not adopted rules to administer and carry out the purposes of this section. Therefore, it cannot be said that there has ever been any rule adopted by the Division of Banks on this subject from which the Director could have been guided by regulation from the OCC.<sup>4</sup>

The implementation of AFS Variance (gain or loss) in capital calculations came after the repeal of RCW 30.04.110 and the enactment of RCW 30.04.111 in its place. Since then, the Division of Banks has made no rulings or interpretations with respect to AFS Variance, and there has been no amendment by the Legislature to RCW 30.04.111 since that time. Therefore, in the absence of legislative amendment or DFI rulemaking in conformity with the Washington Administrative Procedures Act (Chapter 34.05 RCW), the Division of Banks cannot apply AFS Variance to the State Lending Limit Calculation.

### 3.0 Concluding Remarks

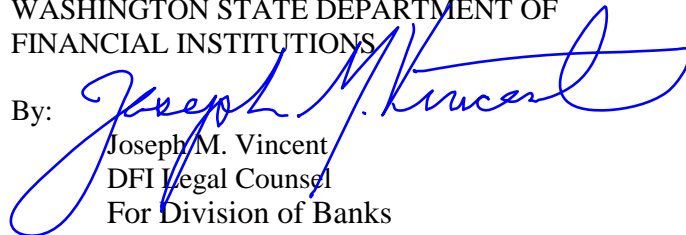
For all of the reasons set forth above, we conclude that Available for Sale Securities are not included in the State Lending Limit Calculation, and that the AFS Variance is also not included. The statutory standards for making the determinations above are uniformly applicable for any other commercial bank chartered under Title 30 RCW, similarly situated. However, persons other than Bank are advised that each commercial bank’s relevant facts and circumstances may be different; and such relevant facts, as applied to the governing law, may result in the Director reaching a conclusion different than the one set forth above.

Should you have any questions, please do not hesitate to call upon the Division of Banks at either (360) 902-8700 or (206) 956-3229.

Sincerely,

WASHINGTON STATE DEPARTMENT OF  
FINANCIAL INSTITUTIONS

By:



Joseph M. Vincent  
DFI Legal Counsel  
For Division of Banks

<sup>3</sup> The legislative history of RCW 30.04.111 has been: 1995 c 344 § 1; 1994 c 92 § 12; 1986 c 279 § 3.

<sup>4</sup> In addition, we cannot say that to be “guided” by OCC regulations is to slavishly comply with them. The term “guide” or “guided” is not defined in terms of strict compliance. According to [www.dictionary.com](http://www.dictionary.com), the terms “guide” and “guided,” as used in RCW 30.04.111, mean or refer to “something that serves to direct or indicate” or “to exert influence over.” This definition does not mean strict compliance. The DFI has a long-established precedent of issuing “guidance” to the industry that it does not deem to have the force of law or rule. And, in determining the legislative intent of a statute, courts are to give great *deference* to a governmental agency’s own interpretation of a statute that it administers. See *Chevron U.S.A. Inc. v. Natural Resources Defense Council*, 467 U.S. 837; 81 L. Ed. 2d 694; 1984 U.S. LEXIS 118 (1984). Accordingly, since the DFI has not historically perceived “guidance” to have the force of actual law or rule, it is consistent and reasonable for the Director to interpret the term “guided by” in RCW 30.04.111 so as to take consideration of OCC regulations but not necessarily comply with them. Even though the DFI is privileged, in this instance, to not strictly follow OCC regulations, we have also determined that the AFS Variance (gain or loss) is not even included in the calculation of lending limits pursuant to OCC Regulations, at 12 CFR Part 3. Therefore, even if the Division of Banks were to be guided by the OCC *on this issue*, we could not say that the OCC interpretation of its rules contradicts our own interpretation of the State Lending Limit Calculation.