**Section 330.200 Definitions**

For purposes of this Subpart, the following definitions apply:

"Appropriate Federal Banking Agency" means the Federal Deposit Insurance Corporation, the Federal Reserve Bank of Chicago or the Federal Reserve Bank of St. Louis.

"Borrower" means a person who is named as a borrower or debtor in a loan or extension of credit; a person to whom a state bank has credit exposure arising from a derivative transaction entered by the bank or any other person, including a drawer, endorser or guarantor, who is deemed to be a borrower under Section 32 of the Act, Section 6013 of the Savings Bank Act [205 ILCS 205], or this Part.

"Contractual Commitment to Advance Funds" includes a bank's obligation to:

Make payment (directly or indirectly) to a third person contingent upon default by a customer of the bank in performing an obligation and to make the payment in keeping with the agreed upon terms of the customer's contract with the third person, or to make payments upon some other stated condition;

Guarantee or act as surety for the benefit of a person;

Advance funds under a qualifying commitment to lend; and

Advance funds under a standby letter of credit, a put or other similar arrangement.

The term does not include commercial letters of credit and similar instruments when the issuing bank expects the beneficiary to draw on the issuer, that do not guarantee payment, and that do not provide for payment in the event of a default by a third party.

"Credit Derivative" means a financial contract executed under standard industry credit derivative documentation that allows one party (the protection purchaser) to transfer the credit risk of one or more exposures (reference exposure, e.g., currency interest or equities exposure) to another party (the protection provider).

"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, currencies, interest or other rates, indices or other assets.

"Effective Margining Arrangement" means a master legal agreement governing derivative transactions between a bank or savings association and a counterparty that requires the counterparty to post, on a daily basis, the variation margin to fully collateralize that amount of the bank's net credit exposure to the counterparty that exceeds $1,000,000 created by the derivative transactions covered by the agreement.

"Eligible Credit Derivative" means a single-name credit derivative or a standard, non-tranched index credit derivative provided that:

The derivative contract meets the requirements of an eligible guarantee, as defined in Section 32 of the Act, Section 6013 of the Savings Bank Act, orthis Part and has been confirmed by the protection purchaser and the protection provider;

Any assignment of the derivative contract has been confirmed by all relevant parties;

If the credit derivative is a credit default swap, the derivative contract includes the following credit events:

Failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and

Bankruptcy, insolvency or inability of the obligor on the reference exposure to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due, and similar events;

The terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract;

If the derivative contract allows for cash settlement, the contract incorporates a robust valuation process to estimate loss with respect to the derivative reliably and specifies a reasonable period for obtaining post-credit event valuations of the reference exposure;

If the derivative contract requires the protection purchaser to transfer an exposure to the protection provider at settlement, the terms of at least one of the exposures that is permitted to be transferred under the contract provides that any required consent to transfer may not be unreasonably withheld; and

If the credit derivative is a credit default swap, the derivative contract clearly identifies the parties responsible for determining whether a credit event has occurred, specifies that this determination is not the sole responsibility of the protection provider, and gives the protection purchaser the right to notify the protection provider of the occurrence of a credit event.

"Eligible Guarantee" means a guarantee that:

Is written and unconditional;

Covers all, or a pro rata portion of, all contractual payments of the obligor on the reference exposure;

Gives the beneficiary a direct claim against the protection provider;

Is not unilaterally cancelable by the protection provider for reasons other than the breach of the contract by the beneficiary;

Is legally enforceable against the protection provider in a jurisdiction where the protection provider has sufficient assets against which a judgment may be attached and enforced;

Requires the protection provider to make payment to the beneficiary on the occurrence of a default (as defined in the guarantee) of the obligor on the reference exposure in a timely manner without the beneficiary first having to take legal actions to pursue the obligor for payment;

Does not increase the beneficiary's cost of credit protection on the guarantee in response to deterioration in the credit quality of the reference exposure; and

Is not provided by an affiliate of the bank, unless the affiliate is an insured depository institution, bank, securities broker or dealer, or insurance company that:

Does not control the bank; and

Is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies (as the case may be).

"Eligible Protection Provider" means:

A sovereign entity (a central government, including the U.S. government, an agency, department, ministry or central bank);

The Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission or a multilateral development bank;

A Federal Home Loan Bank;

The Federal Agricultural Mortgage Corporation;

A depository institution, as defined in Section 3 of the Federal Deposit Insurance Act (12 USC 1813(c));

A federal bank holding company, as defined in Section 2 of the Bank Holding Company Act, as amended (12 USC 1841);

A savings and loan holding company, as defined in Section 10 of the federal Home Owners' Loan Act (12 USC 1467a);

A securities broker or dealer registered with the SEC under the Securities Exchange Act of 1934 (15 USC 78o);

An insurance company that is subject to the supervision of a state insurance regulator;

A foreign banking organization;

A non-US-based securities firm or a non-US-based insurance company that is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies; and

A qualifying central counterparty.

"Extension of Credit" shall have the same meaning as ascribed to Letter of Credit in Section 5-102 of Uniform Commercial Code [810 ILCS 5/5-102] and any credit exposure, as determined pursuant to Section 330.230, arising from a derivative transaction.

Loans or extensions of credit, for purposes of this Part, include a contractual commitment to advance funds.

The following items do not constitute loans or extensions of credit for purposes of Section 32 of the Act, Section 6013 of the Savings Bank Act, orthis Part:

Additional funds advanced for the benefit of a borrower by a bank for payment of taxes, insurance, utilities, security and maintenance and operating expenses necessary to preserve the value of real property securing the loan, consistent with safe and sound banking practices, but only if the advance is for the protection of the bank's interest in the collateral, and provided that the amounts must be treated as an extension of credit if a new loan or extension of credit is made to the borrower;

Accrued and discounted interest on an existing loan or extension of credit, including interest that has been capitalized from prior notes and interest that has been advanced under terms and conditions of a loan agreement;

Financed sales of a bank's own assets, including other real estate owned, if the financing does not put the bank in a worse position than when the bank held title to the assets;

Amounts paid against uncollected funds in the normal process of collection; and

That portion of a loan or extension of credit sold as a participation by a bank on a nonrecourse basis, provided that the participation results in a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. When a participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing will be deemed to exist only if the agreement also provides that, in the event of a default or comparable event defined in the agreement, participants must share in all subsequent repayments and collections in proportion to their percentage participation at the time of the occurrence of the event.

When an originating bank funds the entire loan, it must receive funding from the participants before the close of business of its next business day. If the participating portions are not received within that period, then the portions funded will be treated as a loan by the originating bank to the borrower. If the portions so attributed to the borrower exceed the originating bank's lending limit, the loan may be treated as nonconforming, rather than a violation of Section 32 of the Act or Section 6013 of the Savings Bank Act, as applicable, if:

The originating bank had a valid and unconditional participation agreement with a participant or participants that was sufficient to reduce the loan to within the originating bank's lending limit;

The participant reconfirmed its participation and the originating bank had no knowledge of any information that would permit the participant to withhold its participation; and

The participation was to be funded by close of business of the originating bank's next business day.

"Notice" means a copy of the state bank's application to its appropriate federal banking agency for approval to establish a branch.

"Qualifying Master Netting Agreement" means any written, legally enforceable, bilateral agreement, provided that:

The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default, including bankruptcy, insolvency or similar proceeding, of the counterparty;

The agreement provides the bank the right to accelerate, terminate and close-out on a net basis all transactions under the agreement and to liquidate or set off collateral promptly upon an event of default, including upon an event of bankruptcy, insolvency or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions;

The bank has conducted sufficient legal review to conclude with a well-founded basis, and maintains sufficient written documentation of that legal review, that:

The agreement meets the requirements of this definition; and

In the event of a legal challenge, including one resulting from default or from bankruptcy, insolvency or similar proceeding, the relevant court and administrative authorities would find the agreement to be legal, valid, binding and enforceable under the law of the relevant jurisdictions;

The bank establishes and maintains procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of this definition; and

The agreement does not contain a walk-away clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it would make otherwise under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement).

"State Bank" or "Bank" means a bank that has a banking charter issued under the Act, or a savings bank that has a charter issued under Section 1001 of the Savings Bank Act.

(Source: Added at 37 Ill. Reg. 5807, effective April 22, 2013)