§ 103.* Restrictions on loans, purchases of securities and total liabilities to bank or trust company of any one person.

* NB Effective until notification of the superintendent of financial services

* Restrictions on loans, purchases of securities, total liabilities and other credit exposures to a bank or trust company of any one person.

* NB Effective upon notification of the superintendent of financial services

No bank or trust company shall:

1. Lend to any person (which term shall mean, for the purposes of this subdivision, any individual, partnership, unincorporated association, corporation or body politic) an amount which will exceed fifteen per centum of the capital stock, surplus fund and undivided profits of such bank or trust company. Any extension of credit to a person by means of the issue or confirmation of irrevocable sight letters of credit upon the responsibility of such person, or by means of the discount or purchase of, or investment in, bills of exchange, notes, bonds, debentures or other obligations made, drawn or accepted by such person, shall be considered a loan to such person for the purposes of this subdivision except that (1) in the case of an accepted bill of exchange, the loan shall be considered, subject to clause (2) below, to be made to the acceptor and not to the drawer; and (2) if any bill of exchange, note, bond, debenture or other obligation is endorsed without limitation or guaranteed by any person and discounted with, or sold to, such bank or trust company by such person, the loan shall be considered a loan to such person and not to the maker, drawer or acceptor of such bill of exchange, note, bond, debenture or other obligation. The foregoing limitation is subject to the following exceptions:

(a) The limitations in this subdivision shall not apply to (1) any loan to the extent that the United States, this state or any city, county, town, village or school district of this state, or any department, agency or instrumentality of the United States or this state designated by the superintendent by general or specific regulation, has agreed to pay the principal and interest thereof, or has guaranteed payment (by guaranty or commitment to purchase or otherwise) of such

principal and interest, or is committed to supply, by loan, subsidy or otherwise, funds sufficient to pay such principal and interest, or has otherwise pledged its faith and credit for the payment of such principal and interest; or (2) any loan secured by not less than a like amount (based on their principal amount or market value, whichever is lower, at the time the loan is made) of direct obligations of the United States or of this state or of any city, county, town, village or school district of this state or of any such department, agency or instrumentality of the United States or this state or by obligations otherwise fully guaranteed as to principal and interest by the United States.

(b) The limitations in this subdivision shall not apply to any loan to the extent such loan is secured by cash collateral which is not subject to withdrawal.

In addition, the limitations in this subdivision shall not apply (i) to loans arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse; (ii) to loans to the student loan marketing association; (iii) to loans to any financial institution or to any receiver, conservator, superintendent of financial services, or other agent in charge of the business and property of such financial institutions when such loans are approved by the superintendent; (iv) to the purchase of bankers' acceptances of the kind described in section 13 of an act of congress entitled the "Federal Reserve Act" and issued by other banking corporations; and (v) to loans made to facilitate prompt clearance or settlement arising from the purchase or sale of readily marketable securities which loans (A) are secured by readily marketable securities having a market value or a principal face amount (whichever is less) at the time the loan is made of not less than the principal amount of said loan, and (B) shall be required to be repaid upon settlement of such purchase or sale.

(c) Loans (exclusive of any loan described in paragraph (a) of this subdivision) to any state other than the state of New York, or to any foreign nation, the New York State thruway authority, the Triborough bridge and tunnel authority, The Port of New York Authority, a railroad corporation, a municipal corporation of this state, a corporation subject to the jurisdiction of a public service commission of this

state, or any international lending facility or public benefit corporation designated by the superintendent by regulation, may equal but not exceed twenty-five per centum of the capital stock, surplus fund and undivided profits of such bank or trust company.

(d) Loans to any person, other than loans described in paragraph (a), (b) or (c) of this subdivision, may equal but not exceed twenty-five per centum of the capital stock, surplus fund and undivided profits of such bank or trust company, provided such loans either in whole or in part, but in any event that part thereof in excess of fifteen per centum of such capital stock, surplus fund and undivided profits:

(1) are upon, or with respect to, drafts or bills of exchange drawn in good faith against actually existing values, or upon bankers' acceptances or bills of exchange of the kinds and maturities made eligible by law for purchase in the open market by federal reserve banks; or

(2) are secured by collateral having an ascertained market value, or otherwise having a value as collateral as found in good faith by an officer of such bank or trust company, at least equal to the excess of such loans over fifteen per centum of such capital stock, surplus fund and undivided profits.

(d-1) Loans 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 per centum of the capital stock, surplus fund and undivided profits of such bank or trust company in addition to the general limitations if the market value of the staples securing each additional loan at all times equals or exceeds one hundred fifteen per centum of the outstanding amount of such loan. The staples shall be fully covered by insurance whenever it is customary to insure such staples.

(d-2) Loans 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 per centum of the face amount of the note covered, shall be subject to a maximum limitation equal to twenty-five per centum of the capital stock, surplus fund and undivided profits of such bank or trust company.

In addition, loans 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 to a limitation of twenty-five per centum of the capital stock, surplus fund and undivided profits of such bank or trust company.

(e) In computing the total loans by any bank or trust company (i) to any individual, there shall be included all loans by the bank or trust company to any partnership or unincorporated association of which he is a member, and all loans made for his benefit or for the benefit of such partnership or association; (ii) to any partnership or unincorporated association, there shall be included all loans by the bank or trust company to its individual members and all loans made by the bank or trust company for the benefit of such partnership or unincorporated association or any member thereof; and (iii) to any corporation, there shall be included all loans made by the bank or trust company for the benefit of the corporation. A loan shall be deemed to be made for the benefit of a corporation only to the extent that the proceeds of such loan (1) are to be loaned to the corporation; (2) are to be used for the acquisition (otherwise than in connection with a public offering) from the corporation by a person in control of, or under common control with, the corporation, of any stock or other securities issued by the corporation, or (3) are to be transferred to the corporation without fair and adequate consideration, and the discharge of an equivalent amount of debt previously incurred in good faith and for value shall be considered fair and adequate consideration. A loan shall not be deemed to be made for the benefit of a corporation if such loan is made to a person other than the corporation and is secured as provided in subdivision four of this section or is secured by collateral having an ascertained market value, or otherwise having a value as collateral as found in good faith by an officer of such bank or trust company, at least equal to the amount of the loan; provided that stock or other securities issued by, or a lien on property of, such corporation shall not be considered collateral for the purposes of this provision.

(f) The limitations in this subdivision shall not apply to the acceptance of bills of exchange or the issue or confirmation of letters of credit calling for acceptances by a bank or trust company, but no

bank or trust company shall make acceptances, or issue letters of credit calling for acceptances, upon the responsibility of any person to an amount in excess of fifteen per centum of the capital stock, surplus fund and undivided profits of such bank or trust company, unless that part thereof in excess of fifteen per centum of such capital stock, surplus fund and undivided profits is, and will remain, secured either by accompanying documents or by some other actual security growing out of the same transaction as the acceptance or by substituted security of similar character.

(g) Loans arising from the discount of negotiable or non-negotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the transferor of such paper shall be subject to a limitation of twenty-five per centum of the capital stock, surplus fund and undivided profits of such bank or trust company. Within the meaning of this subdivision, the liability to such bank or trust company of any individual, partnership, unincorporated association or corporation as endorser or guarantor of negotiable or non-negotiable instalment consumer paper shall not be deemed a loan to such individual, partnership, unincorporated association or corporation to the extent of the value of the obligation thereon of the maker of such instalment consumer paper, as found in good faith in writing by an officer of such bank or trust company, designated to make such evaluation and certification by the board of directors of the bank or trust company, and upon the further certification by the said officer that the bank or trust company is relying primarily on the maker of the instalment consumer paper for the payment of an amount owing upon the instalment consumer paper upon the security of which the bank or trust company is making the loan or in which it is making the investment. The certifications are to be made at the time of making the loan or investment, and are to be based on information contained in the files of the bank or trust company, or on the personal knowledge of the designated officer. Instalment consumer paper, for the purposes of this section, shall mean retail instalment contracts and retail instalment obligations as defined in subdivisions six and six-a of section four hundred ninety-one of this chapter, and similar agreements entered into outside of this state.

(h) The limitations in this subdivision shall not apply to any advance

of federal funds by such bank or trust company to a commercial bank, provided such advance is made on the condition that it be repaid on the next business day following the day on which the advance is made. For purposes of this paragraph, the term "federal funds" shall mean funds on deposit at a federal reserve bank or funds on deposit at a commercial bank which are exchangeable for funds on deposit at a federal reserve bank; the term "commercial bank" shall mean any bank, trust company, private banker, national banking association, any banking corporation organized under the laws of the United States or any state of the United States and engaged in a commercial banking business, or any banking corporation organized under the laws of any foreign country and engaged in the commercial banking business that maintains a branch or agency licensed by any state of the United States or the comptroller of the currency; and the term "business day" shall mean any day on which the bank or trust company making the advance, the commercial bank obtaining the advance and any federal reserve bank or banks through which such advance was effected are all open for general business.

* (i) The limitations in this subdivision shall not apply to the investment of such bank or trust company in the bonds, debentures, notes or other obligations of any person, provided: (i) such bonds, debentures, notes or other obligations mature not less than one year after their respective dates of issuance, and, at the time of such investment, are rated in one of the three highest rating grades by an independent rating service designated by the superintendent of financial services; (ii) such investment does not exceed fifteen per centum of the capital stock, surplus fund and undivided profits of such bank or trust company; and (iii) such investment complies with such additional limitations and conditions as the superintendent of financial services from time to time may prescribe by general regulation.

* NB Effective until notification of the superintendent of financial services

* (i) The limitations in this subdivision shall not apply to the investment of such bank or trust company in the bonds, debentures, notes or other obligations of any person, provided: (i) such bonds, debentures, notes or other obligations mature not less than one year after their respective dates of issuance, and, at the time of such investment, meet the standards of creditworthiness established by

regulation by the superintendent; (ii) such investment does not exceed fifteen per centum of the capital stock, surplus fund and undivided profits of such bank or trust company; and (iii) such investment complies with such additional limitations and conditions as the superintendent from time to time may prescribe by regulation.

* NB Effective upon notification of the superintendent of financial services

* (j) In the case of a trust company which (1) does not receive deposits from the general public and (2) has been exempted by the superintendent of financial services from the requirements of section thirty-two of this chapter, the limitations of this subdivision shall not apply to the investment of such trust company in the bonds, debentures, notes or other obligations of, any foreign nation, or any political subdivision, agency or instrumentality thereof, provided: (i) at the time of such investment, such bonds, debentures, notes or other obligations are rated in one of the three highest rating grades by an independent rating service designated by the superintendent of financial services; (ii) for any such bonds, debentures, notes or other obligations, the foreign nation, or any political subdivision, agency or instrumentality thereof, has guaranteed payment (by guaranty or commitment to purchase or otherwise) of such principal and interest, or is committed to supply, by loan, subsidy or otherwise, funds sufficient to pay such principal and interest, or has otherwise pledged its faith and credit for the payment of such principal and interest; (iii) such investments do not exceed the per centum applicable to such obligor of the capital stock, surplus fund and undivided profits of such bank or trust company as the superintendent shall approve, and (iv) such investments comply with such limitations and conditions as the superintendent may from time to time prescribe.

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* (j) In the case of a trust company which (1) does not receive deposits from the general public and (2) has been exempted by the superintendent from the requirements of section thirty-two of this chapter, the limitations of this subdivision shall not apply to the investment of such trust company in the bonds, debentures, notes or other obligations of, any foreign nation, or any political subdivision,

agency or instrumentality thereof, provided: (i) at the time of such investment, such bonds, debentures, notes or other obligations meet the standards of creditworthiness established by regulation by the superintendent; (ii) for any such bonds, debentures, notes or other obligations, the foreign nation, or any political subdivision, agency or instrumentality thereof, has guaranteed payment (by guaranty or commitment to purchase or otherwise) of such principal and interest, or is committed to supply, by loan, subsidy or otherwise, funds sufficient to pay such principal and interest, or has otherwise pledged its faith and credit for the payment of such principal and interest; (iii) such investments do not exceed the per centum applicable to such obligor of the capital stock, surplus fund and undivided profits of such bank or trust company as the superintendent shall approve; and (iv) such investments comply with such limitations and conditions as the superintendent may from time to time prescribe.

* NB Effective upon notification of the superintendent of financial services

* (k) In the case of a trust company which (1) does not receive deposits from the general public and (2) has been exempted by the superintendent of financial services from the requirements of section thirty-two of this chapter, the limitations of this subdivision shall not apply to the purchase of securities under repurchase agreement provided that the repurchase agreement relates to not less than a like amount of direct obligations (based on their principal amount or market value, whichever is lower, at the time the purchase occurs) of any foreign nation, or any political subdivision, agency or instrumentality thereof, provided: (i) at the time of such purchase, such direct obligations are rated in one of the three highest rating grades by an independent rating service designated by the superintendent of financial services; (ii) for any such direct obligations, the foreign nation, or any political subdivision, agency or instrumentality thereof, has guaranteed payment (by guaranty or commitment to purchase or otherwise) of the principal and interest thereof, or is committed to supply, by loan, subsidy or otherwise, funds sufficient to pay such principal and interest, or has otherwise pledged its faith and credit for the payment of such principal and interest; (iii) the purchase price of such securities does not exceed the per centum applicable to the obligor of

such securities of the capital stock, surplus fund and undivided profits of such bank or trust company as the superintendent shall approve; and (iv) such purchase complies with such limitations and conditions as the superintendent may from time to time prescribe.

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* (k) In the case of a trust company which (1) does not receive deposits from the general public and (2) has been exempted by the superintendent from the requirements of section thirty-two of this chapter, the limitations of this subdivision shall not apply to the purchase of securities under repurchase agreement provided that the repurchase agreement relates to not less than a like amount of direct obligations (based on their principal amount or market value, whichever is lower, at the time the purchase occurs) of any foreign nation, or any political subdivision, agency or instrumentality thereof, provided: (i) at the time of such purchase, such direct obligations meet the standards of creditworthiness established by regulation by the superintendent; (ii) for any such direct obligations, the foreign nation, or any political subdivision, agency or instrumentality thereof, has guaranteed payment (by guaranty or commitment to purchase or otherwise) of the principal and interest thereof, or is committed to supply, by loan, subsidy or otherwise, funds sufficient to pay such principal and interest, or has otherwise pledged its faith and credit for the payment of such principal and interest; (iii) the purchase price of such securities does not exceed the per centum applicable to the obligor of such securities of the capital stock, surplus fund and undivided profits of such bank or trust company as the superintendent shall approve; and (iv) such purchase complies with such limitations and conditions as the superintendent may from time to time prescribe.

* NB Effective upon notification of the superintendent of financial services

* The superintendent of financial services shall be empowered to promulgate rules and regulations as shall be appropriate to carry out the purposes of this subdivision.

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regulations as shall be appropriate to carry out the purposes of this subdivision.

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* The superintendent also shall be authorized to determine the manner and extent to which credit exposure resulting from derivative transactions, repurchase agreements, reverse repurchase agreements, securities lending transactions and securities borrowing transactions shall be taken into account for purposes of this section. As used in this section, the term "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, any quantitative measure of, or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices or other assets. In making such determinations, the superintendent may, but is not required to, act by order or regulation.

* NB Effective upon notification of the superintendent of financial services

4. Make a loan upon the security of real estate within or without this state which does not comply with any such rules or regulations as the superintendent of financial services may prescribe.

No loan shall be made under the provisions of this subdivision except upon the written and signed certificate of an appraiser appointed pursuant to policies established by the board of directors, certifying to the value of the premises according to his judgment.

The provisions of this subdivision shall not constitute the authority to make a loan to a natural person upon the security of a mortgage which is not a first lien.

Where the collateral for any loan consists partly of real estate security and partly of other security, including a guarantee or endorsement by or an obligation or commitment of a person other than the borrower, only the amount by which the loan exceeds the value as collateral of such other security, as found in good faith by a duly

authorized officer of such bank or trust company, at the time of the making of the loan or commitment therefor, shall be considered a loan upon the security of real estate, provided, that in no event shall a loan be considered a loan upon the security of real estate (i) where the principal amount of any real estate security taken therefor is less than fifteen per centum of the amount of such loan or (ii) where the loan is payable in monthly or quarterly installments over a period not to exceed one hundred twenty-one months and does not exceed twenty thousand dollars and is for the purpose of paying the cost of any repairs, alterations or improvements upon, or in connection with, or, as the superintendent may authorize, the equipping of existing structures or the building of new structures by the owners thereof or by the lessees under a lease expiring not less than six months after the maturity of the loan or (iii) where the loan is fully guaranteed or insured by the United States or a state, or any department, agency or instrumentality thereof, and for the payment of which loan the full faith and credit of the United States or of such state is pledged and if under the terms of the guaranty or insurance agreement the bank or trust company will be assured of repayment in accordance with the terms of the loan or (iv) where there is a binding and valid commitment or agreement by a financially responsible lender, purchaser or other financially responsible party either directly with the lending bank or trust company or which is for the benefit of, or has been assigned to, the lending bank or trust company and pursuant to which commitment, agreement or assignment, the lender, purchaser or other party is required to advance to the lending bank or trust company within thirty months from the date of such commitment or agreement the full amount of the loan to be made by the lending bank or trust company upon the security of real estate improved by a building or buildings, or to be improved by a building or buildings in the process of construction, the major portion of which building is used, or in the case of a building under construction is to be used, for residential, business, manufacturing or agricultural purposes, and where pursuant to the terms and provisions of such commitment or agreement such advance shall be made prior to or upon the maturity of the loan by the lending bank or trust company.

Real estate security for purposes of this section shall not include

(a) an assignment of rents under a lease, (b) a mortgage or other lien upon a leasehold, (c) a mortgage or other lien upon leasehold, royalty or other rights in oil, gas, minerals, standing timber, or other products of land, (d) a mortgage or other lien made or given upon real estate and taken as collateral security for loans to a borrower, provided, that at the time of the making of the loan or commitment therefor, repayment thereof is reasonably expected to be made out of the operations of such borrower or of the mortgagor, or (e) such mortgages or other liens on property as may be specifically exempted from the limitations and restrictions of this subdivision by the superintendent of financial services by general or specific regulations. Nothing in this paragraph shall be construed to imply that security of a kind not mentioned herein is to be deemed real estate security.

The limitations and restrictions contained in this subdivision shall not prevent the acceptance of any real estate security to secure the payment of a debt previously contracted in good faith. Every mortgage and every assignment of a mortgage taken or held by such bank or trust company shall immediately be recorded or registered in its name in the office of the clerk or the proper recording officer of the county in which the real estate described in the mortgage is located, except that where the underlying real estate is located outside the state of New York such mortgage or assignment may be recorded or registered in the name of a duly authorized nominee, and except that if such mortgage or assignment of mortgage or of an interest therein shall be taken from a corporation organized under the banking law or all of the capital stock of which is owned by not less than twenty savings banks of this state, the bank or trust company may hold such mortgage or assignment unrecorded unless the superintendent shall direct the bank or trust company to record the same. The recording or registering of assignments of mortgages shall not be required when not less than ten mortgages are assigned as security for a loan, the term of which does not exceed twelve months.

Any bank or trust company may renew from time to time any loan upon the security of real estate lawfully made by it prior to June thirtieth, nineteen hundred thirty-seven.

None of the prohibitions and restrictions contained in this subdivision shall apply to any corporation all of the capital stock of which is owned by not less than twenty savings banks of this state.

4-a. A bank or trust company may, in addition to the authority granted under any other provisions of this article, make a loan to a natural person upon the security of a mortgage which is not a first lien at the rate or rates agreed to by the bank or trust company and the borrower, subject to such regulations as the superintendent of financial services may prescribe. Such regulations by the superintendent of financial services may include such restrictions as the superintendent of financial services finds necessary or proper, including without limitation, a restriction as to the percentage of total assets which may be invested in such loans or a restriction on the loan to appraisal value of property securing such loan.

For purposes of this subdivision, the term mortgage shall include a lien on an existing ownership interest in certificates of stock or other evidence of an ownership interest in, and a proprietary lease from, a corporation or partnership formed for the purpose of the cooperative ownership of real estate.

5. Make any loan for the purpose of financing the purchase of or refinancing an existing ownership interest in certificates of stock or other evidence of an ownership interest in, and a proprietary lease from, a corporation or partnership formed for the purpose of the cooperative ownership of real estate, unsecured except to the extent of an assignment or transfer of the stock certificates or other evidence of ownership interest of the borrower and the proprietary lease within ninety days from the making of the loan, which shall exceed the maximum per cent of the loan permitted to be made on real estate improved by a single family residence occupied by the owner, provided that for purposes of this section the amount of the purchase price shall be deemed to equal the appraised value of such certificate of stock or other evidence of an ownership interest, or, in the case of a refinancing, the appraised value of such certificates of stock or other

evidence of an ownership interest and which shall fail to provide for full repayment of principal and interest within the same number of years as a conventional mortgage loan previously described in this subdivision, provided that all real estate owned by such corporation or partnership shall be located within the state; and provided, further, that such loan shall be subject to such regulations as the superintendent of financial services may from time to time promulgate. The maximum rate of interest which may be charged, taken or received upon any loan or forbearance made pursuant to this subdivision may exceed the rate of interest prescribed by the superintendent of financial services in accordance with section fourteen-a by no more than one and one-half per centum per annum.

6. Make any loan or discount on the security of the shares of its own capital stock, or, except as provided in section five thousand twelve of this chapter, be the purchaser of any such shares, unless such security or purchase shall be necessary to minimize or avoid loss upon a debt previously contracted in good faith, and stock so purchased shall be sold at public or private sale, or otherwise disposed of, within six months from the time of its purchase unless the superintendent shall authorize such bank or trust company in writing to hold such shares for a longer period. Any bank or trust company violating any of the provisions of this subdivision shall forfeit to the people of the state twice the amount of the loan or purchase.

7. Knowingly lend, directly or indirectly, any money or property for the purpose of enabling any person to pay for or hold shares of its stock, unless the loan is made upon security having an ascertained market value of at least fifteen per centum more than the amount of the loan. Any bank or trust company violating the provisions of this subdivision shall forfeit to the people of the state twice the amount of the loan.

8. Except in conformity with such rules and regulations as may be promulgated by the superintendent, lend any sum of money to any executive officer or director of such bank or trust company. The superintendent shall have power to determine by regulation who shall be

considered, under the provisions of this subdivision, to be an executive officer and what shall be considered, under the provisions of this subdivision, to be a loan to an executive officer or director. In making such determination, the superintendent shall have power to include or exclude, subject to such conditions and limitations, if any, as he shall prescribe, any or all of the following: (1) any transaction as a result of which an executive officer or director of a bank or trust company becomes obligated to such bank or trust company upon any note, draft, bill of exchange or other indebtedness, as maker, drawer, endorser, guarantor, surety or otherwise; and (2) any transaction as a result of which a corporation, in which an executive officer or director or any combination of such persons, owns or controls a majority of the stock, or as a result of which a partnership in which an executive officer or director is a partner, becomes obligated or renews its obligation to such bank or trust company upon any note, draft, bill of exchange or other indebtedness, as maker, drawer, endorser, guarantor, surety or otherwise. Every bank or trust company violating this provision or any regulation issued pursuant thereto and every officer or director of such bank or trust company knowingly participating in such violation shall, for each offense, forfeit to the people of the state twice the amount of the loan.

No executive officer or director of a bank or trust company shall borrow from the bank or trust company of which he is an executive officer or director except as permitted by this section.