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TO: ALL STATE CHARTERED BANKS  
FROM: ROGER NOVOTNY, DIRECTOR  
RE: BORROWING BY BANKS

In response to requests by state-chartered banks, the Division of Banking has researched the question of borrowing money and pledging assets by banks. We have determined that national banks are granted broad authority to borrow money and pledge assets. South Dakota banking rules are more restrictive with ARSD 20:07:03:26 outlining the limited purposes for which a bank can borrow: to fund loan demand and deposit withdrawal demand.

SDCL 51A-2-14.1 provides that a South Dakota state-chartered bank has the same powers and authorities as were granted to a national bank prior to January 1, 1999, regardless of any restrictive language in state law or rule. Research has shown that powers granted to national banks pursuant to 12 USC §24(Seventh) and several court decisions provide that a national bank may borrow money for the purposes of its business and in the usual course of business. Those powers are dated prior to January 1, 1999.

Therefore, it is the interpretation of the Division of Banking that a state-chartered bank in South Dakota may borrow money and pledge assets in the usual course of business without regard to the limitations set forth in state rule. The use of borrowed money and the pledge of assets will be reviewed in the examination process and be factored into the examiner's assessment of the safety and soundness of the institution.

cc: State Bank Examiners  
Federal Deposit Insurance Corporation  
Federal Reserve Bank of Minneapolis