DEPARTMENT OF REGULATORY AGENCIES

Division of Banking

TRUST COMPANIES

3 CCR 701-6

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

TC1 Definitions [Section 11-109-908, C.R.S.]

A. "Appropriate." For the purposes of Section 11-109-908(2) and (3), C.R.S., the term "appropriate" is defined as:

1. The appropriateness of each asset depends on the purpose of the account and the needs and circumstances of account beneficiaries and remaindermen. An investment policy statement should be created that establishes the account's investment objectives and strategies.

TC4 Assessments and Fees [Section 11-109-303, C.R.S.]

(Repealed and recodified in 3 CCR 701-10 AR16)

TC5 Investment in Small Business Investment Companies [Section 11-109-902, C.R.S] [Expired 5/15/07 per House Bill 07-1167]

TC6 Repealed and reserved for future use.

TC7 Financial Reporting [Section 11-109-402, C.R.S.]

A. While it is the Colorado State Banking Board's (Banking Board) intention to require that generally accepted accounting principles be followed, certain statements filed by trust companies with various state and federal regulatory agencies are supervisory and regulatory documents, not primarily accounting documents. Because of the special supervisory, regulatory, and economic policy needs of trust company reports, the instructions do not always follow generally accepted accounting principles. In reporting transactions not covered in principle by regulatory instructions, trust companies must follow generally accepted accounting principles. However, in such circumstances, unless the trust company has already obtained a ruling from another regulatory agency pursuant to the policies expressed in Section 11-101-102, C.R.S., a specific ruling shall be sought promptly from the Banking Board.

TC8 Dividends [Section 11-109-501, C.R.S.]

A. Purpose

This Rule applies restrictions to the declaration and payment of dividends by a state chartered trust company.

B. Definitions

For the purposes of this Rule, the following definitions apply:

1. Capital surplus means the total of surplus as reported in the trust company's Report of Condition and Income and surplus on perpetual preferred stock.

2. Retained net income means the net income of a specified period less the total amount of all dividends declared in that period.

3. Undivided profits means retained earnings as reported in the trust company's Report of Condition and Income.

C. Earnings Limitation on Payment of Dividends

Subject to paragraph D(1) of this Rule, a trust company may declare and pay dividends of so much of the undivided profits as they judge to be expedient. However, unless the dividend is approved by the Banking Board, a trust company shall not declare a dividend if the total amount of all dividends, including the proposed dividend, declared by such trust company in any calendar year exceeds the total of the trust company's net income of that year to date, combined with its retained net income of the preceding two years. The trust company's net income during the current year and its retained net income from the prior two calendar years is reduced by any net losses incurred in the current or prior two years, and any required transfers to surplus or to a fund for the retirement of preferred stock.

D. Capital Limitation on Payment of Dividends

1. General limitation. A trust company may not declare a dividend in excess of undivided profits.

2. Restrictions on undercapitalized institutions. Notwithstanding any other provision in this Rule, a trust company may not declare or pay any dividend if, after making the dividend, the trust company would be "undercapitalized" as defined in TC13.5(D) or as determined according to Code of Federal Regulations Title 12 – Banks and Banking Chapter III – Federal Deposit Insurance Corporation Subchapter B – Regulations and Statements of General Policy Part 324 Capital Adequacy of FDIC-Supervised Institutions - Subpart H Prompt Corrective Action ("12 CFR 324 FDIC, Subpart H").

3. Incorporation by Reference

Code of Federal Regulations Title 12 - Banks and Banking Chapter III - Federal Deposit Insurance Corporation Subchapter B - Regulations and Statements of General Policy Part 324 Capital Adequacy of FDIC-Supervised Institutions - Subpart H Prompt Corrective Action ("12 CFR 324 FDIC, Subpart H") as effective on June 27, 2024, is hereby incorporated by reference. No later amendment or edition of 12 CFR 324 FDIC, Subpart H is incorporated into this Section TC8. All referenced laws and regulation shall be available for copying or public inspection during regular business hours from the Division of Banking, Department of Regulatory Agencies, 1560 Broadway, Suite 975, Denver, CO 80202. The Division of Banking will provide a certified copy of the material incorporated at cost or will provide the requester with information on how to obtain a certified copy. 12 CFR 324 FDIC, Subpart H is also available at: https://banking.colorado.gov/banking-home/rules-statutes.

E. Date of Declaration of Dividend

The trust company shall use the date a dividend is declared for the purposes of determining compliance with this Rule.

TC9 Investment Limitations [Section 11-109-902(5), C.R.S.]

A. A trust company may, for its own account, purchase Type I securities in an unlimited amount, subject to the exercise of prudent judgment.

B. A trust company may, for its own account, purchase Type II, III, IV, and V securities, as described in Code of Federal Regulations Title 12 - Banks and Banking Chapter I - Comptroller of the Currency, Department of the Treasury Part 1 Investment Securities, subject to the following restrictions:

1. The aggregate par value of Type II and III securities issued by any one obligor may be purchased up to 10 percent of the trust company's total capital. In applying this limitation, the trust company shall take account of the Type II or III securities that the trust company is legally committed to purchase in addition to the trust company's existing holdings.

2. Obligations of issuers having a maturity date of less than five (5) years may be purchased not to exceed 10 percent of the total capital, provided that the purchase is based on adequate evidence of the maker's ability to perform. This limitation shall be separate from and in addition to the limitation contained in Paragraph (B)(1).

3. The aggregate par value of Type V securities issued by any one issuer may be purchased up to 25 percent of the trust company's total capital. In applying this limitation, the trust company shall take account of Type V securities that the trust company is legally committed to purchase in addition to the trust company's existing holdings.

4. In calculating the amount of its investment in Type III or Type V securities issued by any one obligor, the trust company shall aggregate: (a) obligations issued by obligors that are related directly or indirectly through common control; and (b) securities that are credit enhanced by the same entity. The aggregation requirement in this Paragraph applies separately to the Type III and Type V securities held by the trust company.

5. Every trust company shall maintain in its files credit information adequate to demonstrate that it exercised prudence in its decision to purchase and to retain any security in its investment portfolio. The trust company shall determine there is adequate evidence that an obligor possesses resources sufficient to provide for all required payments on its obligations, or, in the case of securities deemed to be investment securities on the basis of reliable estimates of an obligor's performance, that the trust company reasonably believes that the obligor will be able to satisfy the obligation. Failure to maintain such information could result in the determination that the security is not a permissible trust company investment.

6. Incorporation by Reference

Code of Federal Regulations Title 12 - Banks and Banking Chapter I - Comptroller of the Currency, Department of the Treasury Part 1 Investment Securities ("12 CFR 1") as effective on November 26, 2024, is hereby incorporated by reference. No later amendment or edition of 12 CFR 1 is incorporated into this Section TC9. All referenced laws and regulation shall be available for copying or public inspection during regular business hours from the Division of Banking, Department of Regulatory Agencies, 1560 Broadway, Suite 975, Denver, CO 80202. The Division of Banking will provide a certified copy of the material incorporated at cost or will provide the requester with information on how to obtain a certified copy. 12 CFR 1 is also available at https://banking.colorado.gov/banking-home/rules-statutes.

C. Nonconforming Investments

1. A trust company's investment in securities that no longer conform to Paragraph B but conformed when made will not be deemed in violation but instead will be treated as nonconforming if the reason why the investment no longer conforms is because:

a. The trust company's capital declines;

b. Issuers, obligors, or credit-enhancements merge;

c. Issuers become related directly or indirectly through common control;

d. The investment securities rule changes;

e. The security no longer qualifies as an investment security; or

f. Other events identified by the Division occur.

2. A trust company shall exercise reasonable efforts to bring an investment that is nonconforming as a result of events described in Paragraph 1 of this section into conformity with this part unless to do so would be inconsistent with safe and sound practices. Nothing in this rule requires a trust company to divest of the nonconforming investment.

TC10 Reports of New Executive Officers, Directors, and Persons in Control and Related Late Filing Penalty [Section 11-109-402(5) and (6), C.R.S.]

A. Any person who becomes an executive officer, director, or person responsible, directly or indirectly, for the management, control, or operation of a trust company, must notify the Division of Banking in writing within ninety (90) days thereafter.

The written notice must include a statement describing any civil or criminal offenses of which such person has been found guilty or liable by any federal or state court or federal or state regulatory agency.

B. In addition, any person who becomes an executive officer, director, or person responsible, directly or indirectly, for the management, control, or operation of a trust company, must file a biographical report with the Division within ninety (90) days thereafter, if:

1. The trust company has been chartered less than two (2) years;

2. Within the preceding two (2) years, the trust company has undergone a change in control that required a notice to be filed pursuant to Section 11-109-401(2), C.R.S.;

3. Within the preceding two (2) years, the holding company became a registered holding company, unless the holding company is owned or controlled by a registered holding company, or the holding company was established in a reorganization in which substantially all of the shareholders of the holding company were shareholders of the trust company prior to the holding company's formation; or

4. The trust company or holding company is not in compliance with all minimum capital requirements applicable to the institution as determined on the basis of the institution's most recent report of condition, examination, or is otherwise in a troubled condition as indicated by a composite rating of 3, 4, or 5 at the institution's most recent examination by a state or federal banking regulator.

The biographical report to be filed with the Division of Banking may be either on the form provided by the Division of Banking or the form filed with the institution's federal regulator for reporting the change of executive officer, director, or person in control.

C. For the purposes of this Rule, except as provided in Paragraph (D), the term “director” does not include an advisory director who:

1. Is not elected by the shareholders of the trust company;

2. Is not authorized to vote on any matters before the board of directors; and

3. Provides solely general policy advice to the board of directors.

D. The Banking Board or the Division of Banking may otherwise determine that additional reporting is required of any person who becomes an executive officer, director, or person in control. Written notice will be provided by the Division of Banking to such person of any additional requirements.

E. The Banking Board may assess a $100.00 per day penalty for late filing of reports of new executive officers, directors, and persons in control that are required by Section 11-109-402(5) and (6), C.R.S., and this Rule. Said penalty may be waived by the Banking Board pursuant to statute. Filing of an incorrect report form is not grounds for the waiving of the penalty

TC11 Scope of Directors' Examinations [Section 11-109-402(2), C.R.S.]

A. Definitions

For the purposes of this Rule, the term “reviewer” shall mean such public accountant or other independent person(s) as determined by the Colorado State Banking Board (Banking Board).

B. Examination Scope

For the purposes of Section 11-109-402(2), C.R.S., a trust company (institution), at a minimum, shall perform annually the procedures as set forth in Appendix A as the scope of a directors' examination. The recommended procedures are intended to address the high risk areas common to all financial institutions. However, each institution must review its own particular business and determine if additional procedures are required to cover other high risk areas. The reviewer shall be informed of, and permitted access to, all examination reports, administrative orders, and any additional communications between the institution and the Division of Banking (Division), including the Banking Board, as well as the appropriate federal regulatory agency. The reviewer shall obtain the institution management's written representation that he or she has been informed of, and granted access to, all such documents prior to completion of the field work.

C. Extent of Testing

Where the procedures set forth in Appendix A require testing or determinations to be made, sampling may be used. Both judgmental and statistical sampling may be acceptable methods of selecting samples to test. Sample sizes should be consistent with generally accepted auditing standards, or as agreed upon by the reviewer and the client institution. In any event, the sampling method and extent of testing, including the sample size(s) used, shall be disclosed in the directors' examination report.

D. Reports to be Filed with the Division of Banking

After the completion of the procedures, or agreed-upon procedures, set forth in Appendix A, the independent reviewer shall evaluate the results of his audit work and promptly prepare and submit a report addressed to the board of directors/managers (board) of the institution. The report shall detail the findings and suggestions resulting from performance of the auditing procedures. Independent reviewers shall include in the report, at a minimum:

1. Financial statements (balance sheet and statement of earnings as of the examination date).

2. The accounts or items on which the procedures were applied.

3. The sampling methods used.

4. The procedures and agreed-upon extent of testing performed.

5. The accounting basis, either generally accepted accounting principles (GAAP) or regulatory required accounting, on which the accounts or items being audited are reported.

6. The reviewer's findings.

7. The as of date that the procedures were performed.

The reviewer shall sign and date the report. The report shall also disclose the reviewer's business address.

The institution must send a copy of the report, the engagement letter, and any management letter or similar letter of recommendation to the Division and, if applicable, to the appropriate federal regulators within thirty (30) days after its receipt, but no later than one hundred fifty (150) days after the date of examination. In addition, each institution shall promptly notify the Division when a reviewer is engaged to perform a directors' examination and when a change in its reviewer occurs.

E. References

GAAP are issued by the Financial Accounting Standard Board which is overseen by the Financial Accounting Foundation, an independent not-for-profit organization.

F. Incorporation by Reference

1. U.S. Code - Title 12 - Chapter 3-Federal Reserve System - Subchapter X-Powers and Duties of Federal Reserve Banks - 371c - Banking affiliates - (b) Definitions (“12 USC 371c(b)”) as effective on June 27,2024, is hereby incorporated by reference. No later amendment or edition of 12 USC 371c(b) is incorporated into this Section TC11. All referenced laws and regulation shall be available for copying or public inspection during regular business hours from the Division of Banking, Department of Regulatory Agencies, 1560 Broadway, Suite 975, Denver, CO 80202. The Division of Banking will provide a certified copy of the material incorporated at cost or will provide the requester with information on how to obtain a certified copy. 12 USC 371c(b) is also available at: https://banking.colorado.gov/banking-home/rules-statutes.

2. Code of Federal Regulations Title 12 - Banks and Banking Chapter II - Federal Reserve System Subchapter A - Board of Governors of the Federal Reserve System Part 215 Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks (Regulation O) - 2 Definitions (“Regulation O 12 CFR 215.2”) as effective on June 27, 2024, is hereby incorporated by reference. No later amendment or edition of Regulation O 12 CFR 215.2 is incorporated into this Section TC11. All referenced laws and regulation shall be available for copying or public inspection during regular business hours from the Division of Banking, Department of Regulatory Agencies, 1560 Broadway, Suite 975, Denver, CO 80202. The Division of Banking will provide a certified copy of the material incorporated at cost or will provide the requester with information on how to obtain a certified copy. Regulation O 12 CFR 215.2 is also available at: https://banking.colorado.gov/banking-home/rules-statutes.

APPENDIX A - TC11

For the purpose of Section 11-109-402(2), C.R.S., a trust company (institution), at a minimum, shall have the following procedures performed annually.

A. Securities

1. Review the investment policies and procedures established by the institution's board. Review the board, or investment committee, minutes for evidence that the policies and procedures are periodically reviewed and approved. The policies and procedures should include, but not be limited to:

    a. Investment objectives, including use of “available for sale,” “held for sale” and trading activities;

    b. Permissible types of investments;

    c. Diversification guidelines to prevent undue concentration;

    d. Maturity schedules;

    e. Limitation on quality ratings;

    f. Hedging activities and other uses of futures, forwards, options, and other financial instruments;

    g. Handling exceptions to standard policies;

    h. Valuation procedures and frequency;

    i. Limitations on the investment authority of officers; AND

    j. Frequency of periodic reports to the board on securities holdings.

2. Test the investment procedures and ascertain whether information reported to the board, or investment committee, for securities transactions is in agreement with the supporting data by comparing the following information on such reports to the trade tickets for a sample of items, including futures, forwards, and options:

    a. Descriptions;

    b. Interest rate;

    c. Maturity;

    d. Par value, or number of shares;

    e. Cost; and

    f. Market value on date of transaction, if different than cost.

3. Using the same sample items, analyze the securities register for accuracy and confirm the existence of the sample items by examining securities physically held in the institution and confirming the safekeeping of those securities held by others.

4. Balance investment subledger(s) or reconcile computer-generated trial balances with the general ledger control accounts for each type of security.

5. Review policies and procedures for controls that are designed to ensure that unauthorized transactions do not occur. Ascertain through reading of policies, procedures, and board minutes whether investment officers and/or appropriate committee members have been properly authorized to purchase/sell investments and whether there are limitations or restrictions on delegated responsibilities.

6. Obtain a schedule of the book, par, and market values of securities, as well as the rating classifications. Test the accuracy of the market values of a sample of securities and compare the ratings listed to see that they correspond with those of the rating agencies. Review the institution's documentation on any permanent declines in value that have occurred among the sample of securities to determine that any recorded declines in market value are appropriately computed. Examine the institution's computation of the allowance account for securities, if any, for proper presentation and adequacy.

7. Test securities income and accrued interest by:

    a. Determining the institution's method of calculating and recording interest accruals;

    b. Obtaining trial balances of accrued interest;

    c. Testing the reconciliation of the trial balances to the general ledger;

    d. Determining that interest accruals are not made on defaulted issues;

    e. Selecting items from each type of investment and money market holding:

        (1) Determining the stated interest rate and most recent interest payment date of coupon instruments by reference to sources of such information that are independent of the institution;

        (2) Testing timely receipt of interest payments and correctness of entries to applicable general ledger accounts;

        (3) Calculating accrued interest and comparing it to the trial balance; and

        (4) Reviewing recorded book value for appropriate accretion of discount and amortization of premium; and

    f. Performing an analytical review of yields on each type of investment and money market holdings for reasonableness.

8. Review investment accounts for volume of purchases, sales activity and length of time securities have been held. Inquire as to the institution's intent and ability to hold securities until maturity. If there is frequent trading in an investment account, such activity may be inconsistent with the notion that the institution has the intent and ability to hold securities to maturity. Test gains and losses on disposal of investment securities by sampling sales transactions and:

    a. Determining sales prices by examining invoices or brokers' advices;

b. Checking for the use of trade date accounting and the computation of book value on trade date;

c. Determining that the general ledger has been properly relieved on the investment, accrued interest, premium, discount and other related accounts;

d. Recomputing the gain or loss and compare to the amount recorded in the general ledger; and

e. Determining that the sales were approved by the board or a designated committee or were in accordance with policies approved by the board.

9. Determine that sufficient and adequate securities have been collateralized against uninsured deposits, if applicable.

B. Allowance for Fee Receivables

1. Review policies and procedures for ensuring the collectibility of fees due.

2. Test charge-offs and recoveries for proper authorization and/or reporting by reference to the board minutes.

3. Review the institution's computation of the amount needed in the allowance as of the end of the most recent quarter. Documentation should include consideration of the following matters:

a. Aging of delinquent fees;

b. Ability to offset fees to account assets;

c. Valuation and marketability of assets in fee delinquent accounts;

d. Trends in the level of delinquent fees as compared with previous loss and recovery experience;

e. Monitoring controls; and

f. Collection efforts, both internal and through outside sources.

C. Insider Transactions

NOTE: For purposes of this section of the procedures, insiders include all affiliates of the institution, including its parent holding company, and all subsidiaries of the institution, as those terms are defined in 12 USC 371c(b), as well as the institution's executive officers, directors, principal shareholders, and their related interests, as those terms are defined in Regulation O 12 CFR 215.2.

1. Review the institution's policies and procedures to ensure that extensions of credit to, and other transactions with, insiders are addressed. Ascertain that the policies include specific guidelines defining fair and reasonable transactions between the institution and insiders, and test insider transactions for compliance with the guidelines and statutory and regulatory requirements. Ascertain that the policies and procedures on extensions of credit comply with the requirements of Federal Reserve Regulation O.

2. Obtain an institution-prepared list of insiders, including any business relationships the institution may have other than as a nominal customer. Also obtain a list of extensions of credit to, and other transactions that the institution, its affiliates, and its subsidiaries have had with, insiders that are outstanding as of the audit date or that have occurred since the prior year's external auditing procedures were performed. Compare the lists to those prepared for the prior year's external auditing program to test for completeness.

3. Review the institution's policies and procedures to ensure that expense accounts of individuals who are executive officers, directors, and principal shareholders are addressed and test a sample of the actual expense account records for compliance with the policies and procedures.

D. Internal Controls - General Accounting and Administrative Controls

1. Review the board minutes to verify that account reconciliation policies have been established and approved and are reviewed periodically by the board. Determine that management has implemented appropriate procedures to ensure the timely completion of reconciliations of accounting records and the timely resolution of reconciling items.

2. Determine whether the institution's policies regarding segregation of duties and required vacations for employees, including those involved in the information technology function, have been approved by the board and verify that the policies and the implementing procedures established by management are periodically reviewed, are adequate, and are followed.

3. Confirm a sample of deposits, as applicable, in each of the various types of deposit accounts maintained by the institution. Inquire about controls over dormant deposit accounts.

4. Test to determine that reconciliations are prepared for all significant asset and liability accounts, such as “due from” accounts; demand deposits; NOW accounts; money market deposit accounts; other savings deposits; certificates of deposit; and other time deposits and their related accrued interest accounts, as applicable. Review reconciliations for:

   a. Timeliness and frequency;

   b. Accuracy and completeness; and

   c. Review by appropriate personnel with no conflicting duties.

5. Compare a sample of balances per reconciliations to the general ledger and supporting trial balances.

6. Examine detail and aging of a sample of reconciling items from the accounts whose reconciliations have been tested and reviewed and a sample of items in suspense, clearing, and work-in-process accounts by:

   a. Testing aging;

   b. Determining whether items are followed up on and appropriately resolved on a timely basis; and

   c. Discussing items remaining on reconciliations and in the suspense account with appropriate personnel to ascertain whether any should be written off.

Review a sample of charged-off reconciling and suspense items for proper authorization.

7. Verify through inquiry and observation that the institution maintains adequate records of its off-balance sheet activities. Review the institution's procedures to determine whether probable or reasonably possible losses exist.

E. Internal Controls - Information Technology (IT) Controls

1. Read the board minutes to determine whether the board has reviewed and approved the institution's IT policies, including those regarding third-party servicers, if any, and the internal use of individual personal computers (PCs), other electronic devices, and personalized programs for official institution records, at least annually, confirm that management has established appropriate implementing procedures, and verify the institution's compliance with these policies and procedures.

a. The policies and procedures for either internal processing or use of a third-party service provider should include:

(1) A contingency plan for continuation of operations and recovery when power outages, natural disasters, or other threats could cause disruption and/or major damage to the institution's IT support, including compatibility of the servicer's plan with that of the institution;

(2) Requirements for IT-related insurance coverage that include the following provisions:

(a) Extended blanket bond fidelity coverage to employees of the institution or servicer;

(b) Insurance on documents in transit, including cash letters; and

(c) Verification of the insurance coverage of the institution or service provider and the courier service;

(3) Review of exception reports and adjusting entries approved by supervisors and/or officers;

(4) Controls for input preparation and control and output verification and distribution;

(5) Assess the “Back-up” of all systems is adequate;

(6) Security to ensure integrity of data and system modifications; and

(7) Necessary detail to ensure an audit trail.

b. When a third-party service provider is employed, the policies and procedures should address the following additional items:

(1) The requirement for a written contract for each automated application detailing ownership and confidentiality of files and programs, fee structure, termination agreement, and liability for documents in transit;

(2) Review of each contract by legal counsel; and

(3) Review of each third party review of the service provider, if any.

2. In the area of general IT controls, determine through inquiry and observation that policies and procedures have been established for:

a. Management and user involvement and approval of new or modified application programs;

b. Authorization, approval, and testing of system software modifications;

c. The controls surrounding computer operations processing;

d. Restricted access to computer operations facilities and resources including:

(1) Off-premises backup of critical data files, application systems, and network schematic; Assess whether controls are adequate.;

(2) physical and logical security of the data center, network, and the institution's PCs and other electronic devices; and

(3) Use and periodic changing of passwords.

3. With respect to IT applications controls, inquire about and observe:

a. The controls over:

(1) Input submitted for processing;

(2) Processing transactions;

(3) Output;

(4) Applications updates for PCs and other electronic devices; and

(5) Telecommunications and networks both between and within institution offices.

b. The security over unissued or blank supplies of potentially negotiable items; and

c. The control procedures on wire transfers including:

(1) Authorizations and agreements with customers, including who may initiate transactions;

(2) Limits on transactions; and

(3) Call back procedures.

F. Trust Function

1. Supervisory Review

a. Determine the significant functions of the department, including areas of responsibility within the department and the financial institution.

b. Review the institution's written policies to determine that sufficient guidelines are established to meet fiduciary responsibilities and to comply with applicable laws. Policies should include:

(1) Account acceptance;

(2) Closed account review;

(3) Investments;

(4) Account review;

(5) Discretionary distributions;

(6) Conflicts of interest; and

(7) Other as needed for scope of fiduciary activities.

c. Ascertain the qualifications of the staff and of the board giving consideration to the nature of the fiduciary responsibilities accepted.

d. Determine if board policies are implemented and followed.

2. Accounting and Physical Controls

a. Verify account assets. Include a confirmation from holders of assets retained outside the department.

b. Determine that the assets are adequately safeguarded, and held separately from other assets of the institution.

c. Verify that a vault record of assets under joint custody is maintained.

d. Verify prompt ledger control of assets, including worthless assets, received as original and subsequent deposits of assets, including stock splits and dividends.

e. Verify that fiduciary cash accounts are regularly and appropriately reconciled to demand deposit or money market account statements.

f. Verify that internal balancing control procedures are performed each time account ledgers are posted.

g. Verify that suspense or operating accounts are reconciled at least monthly, contain only appropriate items, and are cleared in a timely manner.

h. Reconcile or verify the proper reconcilement of each of the following to the department's general ledger at least quarterly:

(1) Income cash;

(2) Principal cash;

(3) Invested income;

(4) Invested principal;

(5) Each type of investment, such as stock, bonds, real estate loans and real estate; and

(6) Investments by issuer.

i. If applicable, verify reconciliations or reconcile outstanding bonds for bond trusteeships, or paying agent activities.

j. Verify the accurate payment of dividends.

3. Activity Control

a. Verify fees paid to the trust company.

b. Verify proceeds from sales of assets to brokers' invoices, sellers' receipts, or other evidence of sales price.

c. Verify payment for purchases of assets to brokers' invoices, sellers' receipts, or other evidence of purchase price.

d. Verify accuracy of amounts and receipt of income from investments.

4. Compliance

a. Verify that transactions between fiduciary accounts and directors, officers, or employees of the institution, its holding company or other related entities do not constitute self-dealing. In general, self-dealing is considered to exist when the fiduciary uses or obtains the property held in a fiduciary capacity for his or her own benefit.

b. Review fiduciary account holdings of the following items in light of self-dealing issues:

(1) Stock, obligations, repurchase agreements, or deposit accounts with the institution, its affiliates or other related organizations in which there exists such an interest that might affect the best judgment of the institution.

(2) Obligations of directors, officers and employees of the institution, its holding company or affiliates or other entities with whom there exists a connection that might affect the exercise of the best judgment of the institution.

c. Verify that all accounts for which the institution has investment responsibilities are reviewed by the board or a committee thereof.

d. Verify that cash receipts are promptly invested or distributed.

e. Verify and review the annual audit of each collective investment fund.

5. Administrative Review

a. Complete administrative reviews of all major account types, including but not limited to, personal trusts, estates, corporate trusts, collective investment funds, pension trusts and profit sharing trusts. An acceptable administrative review would perform the following practices:

(1) Determine that the original or authenticated copy of the governing instrument is on file;

(2) Determine that synoptic and history records are current, reliable and comprehensive;

(3) Determine that accounts are administered and invested in conformance with management policies, governing instruments, laws, regulations and sound fiduciary principles;

(4) Determine that the minutes of the board and committee meetings document the review of trust company activities; significant practices for the board review include the acceptance of new accounts, the closing of accounts and the review of discretionary payments of principal or income; and

(5) Test the accuracy of account statements submitted to beneficiaries.

TC12 Qualifications for Independent Person(s) Assuming Responsibility for Due Care of Directors' Examinations [Section 11-109-402(2), C.R.S.]

A. Qualifications

The following persons may qualify to be responsible for conducting a directors' examination of a trust company:

1. A Certified Public Accountant(s) who holds an active certificate under the laws of this state, or who may practice in this state under a reciprocal agreement between Colorado and the holder's state of certification.

2. A qualified independent person(s) or firm whose credentials have been submitted to and approved by the Colorado State Banking Board to conduct such examinations. The Banking Board will take into consideration such things as past proven work of the person or firm, professional reputation, training and education, and capacity to perform the examination in a timely manner.

3. The Banking Board reserves the right to revoke any previously approved qualification for due cause.

B. Independence

A person who conducts or reviews and/or approves a directors' examination of a trust company must be independent with respect to the trust company in fact and appearance.

Independence will be considered impaired if, for example, during the period of the directors' examination, or at the time of the issuing of the report, the person:

1. Was or is committed to acquire any direct, or material indirect, financial interest in the institution;

2. Is or was a trustee of any trust, or executor or administrator of any estate, if such trust or estate was or is committed to acquire any direct or material indirect financial interest in the institution;

3. Has or had any joint, closely-held business investment with the institution or any officer, director, or principal stockholder thereof that is material in relation to the net worth of either the institution or the person; or

4. Has or had any loan to or from the institution or any officer, director, or principal shareholder thereof other than loans of the following kinds made by a financial institution under normal lending procedures, terms, and requirements:

   a. Loans obtained by the person that are not material in relation to the net worth of the borrower;

   b. Home mortgages; and

   c. Other secured loans, except those secured solely by a guarantee of the person.

Independence will also be considered to be impaired if, during the period covered by the financial statements, during the period of the directors' examinations, or at the time of the issuing of the report, the person:

1. Was or is connected with the institution as a promoter, underwriter, voting trustee, director or officer, or in any capacity equivalent to that of a member of management or of an employee;

2. Was or is a trustee for any pension or profit sharing trust of the institution;

3. Received, or had a commitment to receive, other compensation from the institution or a third party for services or products of others to be procured by the institution; or

4. Received, or had a commitment from the institution to receive, a contingent fee. For this purpose, a contingent fee means compensation for the performance of services, payment of which or the amount of which is contingent upon the findings or results of such services.

TC13 Minimum Capital Requirements for Depository Trust Companies [Section 11-109-304, C.R.S.]

A. Purpose

The Colorado State Banking Board (Banking Board) believes trust companies should maintain certain minimum capital levels pursuant to policies set forth in Section 11-101-102, C.R.S., and relevant federal laws and regulations. Accordingly, Banking Board Rule TC13-Minimum Capital Requirements for Depository Trust Companies sets forth certain minimum capital ratios and overall capital adequacy standards for depository trust companies.

B. Definitions: For the purposes of this Rule:

1. Leverage ratio means Tier 1 Capital to average total consolidated assets as reported on the institution’s Consolidated Report of Condition and Income (Call Report) minus amounts deducted from Tier 1 Capital as determined according to Code of Federal Regulations Title 12 – Banks and Banking Chapter III – Federal Deposit Insurance Corporation Subchapter B – Regulations and Statements of General Policy Part 324 Capital Adequacy of FDIC-Supervised Institutions, which includes Subpart H Prompt Corrective Action (“12 CFR 324 FDIC”) Section 324.22(a), (c), and (d).

2. Tier 1 Capital means the sum of common equity tier 1 capital and additional tier 1 capital as determined according to 12 CFR 324 FDIC.

3. Tier 2 Capital means the sum of Tier 2 capital elements and any related surplus, minus regulatory adjustments and deductions as determined according to 12 CFR 324 FDIC.

4. Total Capital means the sum of Tier 1 and Tier 2 Capital as determined according to 12 CFR 324 FDIC.

5. Incorporation by Reference

Code of Federal Regulations Title 12 - Banks and Banking Chapter III - Federal Deposit Insurance Corporation Subchapter B - Regulations and Statements of General Policy Part 324 Capital Adequacy of FDIC-Supervised Institutions, which includes Subpart H Prompt Corrective Action ("12 CFR 324 FDIC") as effective on June 27, 2024, is hereby incorporated by reference. No later amendment or edition of 12 CFR 324 FDIC is incorporated into this Section TC13. All referenced laws and regulation shall be available for copying or public inspection during regular business hours from the Division of Banking, Department of Regulatory Agencies, 1560 Broadway, Suite 975, Denver, CO 80202. The Division of Banking will provide a certified copy of the material incorporated at cost or will provide the requester with information on how to obtain a certified copy. 12 CFR 324 FDIC is also available at: https://banking.colorado.gov/banking-home/rules-statutes.

C. Reservation of Authority

1. Deductions from capital. Notwithstanding the definitions of Tier 1 Capital and Tier 2 Capital, the Banking Board may find that a newly developed or modified capital instrument constitutes Tier 1 Capital or Tier 2 Capital, and may permit one or more institutions to include all or a portion of funds obtained through such capital instruments as Tier 1 or Tier 2 Capital, permanently or on a temporary basis, for the purpose of compliance with the Banking Board Rules.

Similarly, the Banking Board may find that a particular intangible asset, deferred tax asset or credit-enhancing interest-only strip need not be deducted from Tier 1 or Tier 2 Capital. Conversely, the Banking Board may find that a particular intangible asset, deferred tax asset, credit-enhancing interest-only strip or other Tier 1 or Tier 2 Capital component, has characteristics or terms that diminish its contribution to an institution's ability to absorb losses, and may require the deduction from Tier 1 or Tier 2 Capital of all of the component or of a greater portion of the component than is otherwise required.

2. Risk weight categories. Notwithstanding the risk categories in 12 CFR 324 FDIC, the Banking Board will look to the substance of the transaction and may find that the assigned risk weight for any asset, or the credit equivalent amount, or credit conversion factor for any off-balance sheet item does not appropriately reflect the risks imposed on an institution and may require another risk weight, credit equivalent amount, or credit conversion factor that the Banking Board deems appropriate. Similarly, if no risk weight, credit equivalent amount or credit conversion factor is specifically assigned, the Banking Board may assign any risk weight, credit equivalent amount, or credit conversion factor that the Banking Board deems appropriate. In making its determination, the Banking Board considers risks associated with the asset or off-balance sheet item as well as other relevant factors.

D. Initial Capital

No depository trust company shall be granted a charter unless it has paid-in capital stock of at least $1,500,000, or such greater amount as the Banking Board may reasonably require. New trust companies will be required to maintain capital in an amount necessary to satisfy minimum capital ratios, but not less than $1,000,000.

E. Minimum Capital Ratios For Depository Trust Companies

Depository trust companies must maintain minimum capital ratios and calculate its minimum capital requirements in accordance with 12 CFR 324 FDIC.

F. Establishment of Minimum Capital Ratios for an Individual Institution

1. Applicability

The Banking Board may require higher minimum capital ratios for an individual institution in view of its circumstances. For example, higher capital ratios may be appropriate for:

a. A newly chartered institution;

b. An institution receiving special supervisory attention;

c. An institution that has, or is expected to have, losses resulting in capital inadequacy;

d. An institution with significant exposure due to risks from concentrations of credit, certain risks arising from nontraditional activities, or management's overall inability to monitor and control financial and operating risks presented by concentrations of credit and nontraditional activities;

e. An institution with significant exposure to declines in the economic value of its capital due to changes in interest rates;

f. An institution with significant exposure due to fiduciary or operational risk;

g. An institution exposed to a high degree of asset depreciation, or a low level of liquid assets in relation to short term liabilities;

h. An institution exposed to a high volume of, or particularly severe, problem assets;

i. An institution that is growing rapidly, either internally or through acquisition; or

j. An institution that may be adversely affected by the activities or condition of its parent company, affiliate(s), or other persons or institutions including chain banking organizations, with which it has significant business relationships.

2. Standards for determination of appropriate individual minimum capital ratios. The appropriate minimum capital ratios for an individual institution cannot be determined solely through the application of a rigid mathematical formula or wholly objective criteria. The decision is necessarily based in part on subjective judgment grounded in Banking Board and Division of Banking expertise. The factors to be considered in the determination will vary in each case and may include, for example:

a. The conditions or circumstances leading to the Banking Board's determination that higher capital ratios are appropriate or necessary for the institution;

b. The exigency of those circumstances or potential problems;

c. The overall condition, management strength, and future prospects of the institution and, if applicable, its parent company and/or affiliate(s);

d. The institution's liquidity, capital, risk asset and other ratios compared to the ratios of its peer group; and

e. The views of the institution's directors and senior management.

G. Unsafe and unsound practice. Any institution that has less than its minimum leverage capital requirement is deemed to be engaged in unsafe and unsound practice. Except that such an institution that has entered into, and is in compliance with, a written agreement with the Banking Board, or has submitted to the Banking Board; and is in compliance with, a plan approved by the Banking Board to increase its Tier 1 leverage capital ratio to such a level as the Banking Board deems appropriate and to take such other action as may be necessary for the institution to be operated so as not to be engaged in such unsafe or unsound practice will not be deemed to be engaged in unsafe or unsound practice on account of its capital ratios. An institution must file a written capital restoration plan with the Banking Board within forty-five (45) days of the date that the institution receives notice or is deemed to have notice that the institution is undercapitalized, unless the Banking Board notifies the institution in writing that the plan is to be filed within a different period. The Banking Board is not precluded from taking any enforcement action against an institution with capital above the minimum requirement if the specific circumstances deem such action to be appropriate.

H. Statute References to Capital

1. As referenced in the statutes, the following definitions will apply:

a. Section 11-109-306(1)(d), C.R.S., shall refer to the leverage ratio and Tier 1, Tier 2, and Total Capital.

b. Section 11-109-902(2), (3), and (6) C.R.S., shall refer to Total Capital.

c. Section 11-109-902(7), C.R.S., shall refer to Total Capital.

d. Section 11-109-702(1), C.R.S., shall refer to the leverage ratio.

TC13.5 Minimum Capital for Non-Depository Trust Companies [Section 11-109-304, C.R.S.]

A. Purpose

The Colorado State Banking Board (Banking Board) believes that trust companies should maintain certain minimum capital levels pursuant to policies set forth in Section 11-101-102, C.R.S., and relevant federal laws and regulations. Accordingly, Banking Board Rule TC13.5-Minimum Capital for Non Depository Trust Companies sets forth certain minimum capital requirements for non-depository trust companies.

B. Definitions: For the purpose of this Rule:

1. "Fiduciary Assets" means those assets held for benefit of, or in trust for others. The Trust Company may have investment discretion, or the investment authority may remain with the account holder or external manager.

2. Total Capital means the sum of Tier 1 and Tier 2 Capital as determined in accordance with 12 CFR 324 FDIC.

3. Incorporation by Reference

Code of Federal Regulations Title 12 - Banks and Banking Chapter III - Federal Deposit Insurance Corporation Subchapter B - Regulations and Statements of General Policy Part 324 Capital Adequacy of FDIC-Supervised Institutions, Subpart A General Provisions - 324.2 Definitions and Subpart C - Definition of Capital 324.20 Capital Components and Eligibility Criteria for Regulatory Capital Requirements ("12 CFR 324 FDIC") as effective on June 27, 2024, is hereby incorporated by reference. No later amendment or edition of 12 CFR 324 FDIC is incorporated into this Section TC13.5. All referenced laws and regulation shall be available for copying or public inspection during regular business hours from the Division of Banking, Department of Regulatory Agencies, 1560 Broadway, Suite 975, Denver, CO 80202. The Division of Banking will provide a certified copy of the material incorporated at cost or will provide the requester with information on how to obtain a certified copy. 12 CFR 324 FDIC is also available at: https://banking.colorado.gov/banking-home/rules-statutes

C. Initial Capital

No non-depository trust company shall be granted a charter unless it has paid-in capital of at least $1,500,000, or such greater amount as the Banking Board may reasonably require.

D. Minimum Capital for Non-Depository Trust Companies

Non-depository trust companies must maintain total capital of not less than the greater of: (1) $1,000,000, or (2) one tenth of one percent (.001) of fiduciary assets, such amount not to exceed $5,000,000.

E. Establishment of Minimum Capital for an Individual Institution

1. Applicability

The Banking Board may require higher minimum capital levels for an individual institution in view of its circumstances. For example, higher capital levels may be appropriate for:

a. A newly chartered institution;

b. An institution receiving special supervisory attention;

c. An institution that has, or is expected to have, losses resulting in capital inadequacy;

d. An institution with significant exposure due to risks from concentrations of credit, certain risks arising from nontraditional activities, or management's overall inability to monitor and control financial and operating risks presented by concentrations of credit and nontraditional activities;

e. An institution with significant exposure to declines in the economic value of its capital due to changes in interest rates;

f. An institution with significant exposure due to fiduciary or operational risk;

g. An institution exposed to a high degree of asset depreciation or a low level of liquid assets in relation to short term liabilities;

h. An institution exposed to a high volume of, or particularly severe, problem assets;

i. An institution that is growing rapidly, either internally or through acquisition; or

j. An institution that may be adversely affected by the activities or condition of its parent company, affiliate(s), or other persons or institutions including chain banking organizations, with which it has significant business relationships.

2. Standards for Determination of Appropriate Individual Minimum Capital. The appropriate minimum capital ratios for an individual institution cannot be determined solely through the application of a rigid mathematical formula or wholly objective criteria. The decision is necessarily based in part on subjective judgment grounded in Banking Board and Division of Banking expertise. The factors to be considered in the determination will vary in each case and may include, for example:

a. The conditions or circumstances leading to the Banking Board's determination that higher capital levels are appropriate or necessary for the institution;

b. The exigency of those circumstances or potential problems;

c. The overall condition, management strength, and future prospects of the institution and, if applicable, its parent company and/or affiliate(s);

d. The institution's liquidity, capital, risk asset and other ratios compared to the ratios of its peer group; and

e. The views of the institution's directors and senior management.

F. Unsafe and unsound practice. Any institution that has less than its minimum capital requirement is deemed to be engaged in unsafe and unsound practice. Except that such an institution that has entered into, and is in compliance with, a written agreement with the Banking Board; or has submitted to the Banking Board, and is in compliance with, a plan approved by the Banking Board to increase its minimum capital to such a level as the Banking Board deems appropriate and to take such other action as may be necessary for the institution to be operated so as not to be engaged in such unsafe or unsound practice will not be deemed to be engaged in unsafe or unsound practice on account of its capital. An institution must file a written capital restoration plan with the Banking Board within forty-five (45) days of the date that the institution receives notice or is deemed to have notice that the institution is undercapitalized, unless the Banking Board notifies the institution in writing that the plan is to be filed within a different period. The Banking Board is not precluded from taking any enforcement action against an institution with capital above the minimum requirement if the specific circumstances deem such action to be appropriate.

In addition, upon receiving notice of operating below its minimum capital requirement, the institution may be prohibited from doing any of the following without the State Bank Commissioner's prior written approval:

1. Making any capital distribution;

2. Entering into any material transaction other than in the usual course of business, including any expansion, acquisition, sale of assets or other similar action;

3. Paying excessive compensation or bonuses.

G. Compliance Date. Non-depository trust companies shall meet the minimum capital requirements of this rule no later than 36 months from Rule implementation.

H. Statute References to Capital

1. As referenced in the Colorado Revised Statutes, the following definitions will apply:

a. Section 11-109-306(1)(d), C.R.S., shall refer to Total Capital;

b. Section 11-109-902(2), (3), (6), and (7), C.R.S., shall refer to Total Capital;

c. Section 11-109-104(2), C.R.S., shall refer to Total Capital; and

d. Section 11-109-702(1), C.R.S., shall refer to Total Capital.

TC14 Repealed and reserved for future use.

TC15 Suspicious Activity Reports [Section 11-109-103, C.R.S.] [Repealed eff. 04/30/2016]

TC16 Insurance [Section 11-109-104(1)(f), C.R.S.]

A. A trust company must, at all times, maintain a fidelity bond appropriate to the size and scope of the company's business, but in no event in an amount less than $2,000,000. In addition, a trust company must, at all times, maintain a fiduciary errors and omissions insurance policy appropriate to the size and scope of the company's business, but in no event in an amount less than $1,000,000. In determining the amount of the fidelity bond and errors and omissions insurance, the trust company's board of directors shall conduct a risk analysis and give due and careful consideration to known elements and factors constituting risk and hazards for the company.

B. Any fidelity bond or errors and omissions insurance secured by a trust company shall provide that the corporate insurance or bonding company providing the bond(s), in the event of cancellation or nonrenewal of such bond(s), will give at least ninety (90) days' notice to the trust company and to the State Bank Commissioner. In addition, the corporate insurance or bonding company must be authorized to do business in this state.

C. Compliance Date. Trust companies shall meet the minimum insurance requirements of this rule no later than one year from rule implementation.

TC17 Deposit of Securities [Section 11-109-104(1)(a), C.R.S.]

A. Purpose. The purpose of this Rule is to protect the Division of Banking against any expense it may incur in liquidating a non-depository trust company when the assets of such trust company available to the Division of Banking for this purpose are insufficient.

B. Definitions: For the purpose of this Rule:

1. "Non-depository trust company" shall mean a Colorado trust company that is not authorized to accept or hold savings deposits, time deposits or certificates of deposit pursuant to Section 11-109- 201(1)(d), C.R.S., of the Colorado Banking Code.

2. "Eligible Securities" shall mean any U.S. Government or U.S. Government agency security that is unconditionally guaranteed by the U.S. Government. This includes a deposit that is insured or otherwise unconditionally guaranteed by the FDIC.

3. "Custodian" shall mean any commercial bank, trust company, depository trust company, or other entity approved by the Division of Banking, other than the trust company, for which the eligible securities are being held, approved by the State Bank Commissioner to hold in custody eligible securities.

C. Deposit of Eligible Securities

1. A non-depository trust company shall deposit with one or more custodians eligible securities having a market value of not less than $250,000. Eligible securities, even if commingled with other assets of the trust company, shall be deemed by operation of law to be held in trust for the benefit of the Division of Banking in the event of the involuntary liquidation of the trust company. Upon deposit, the trust company shall notify the Division of Banking in writing of the name, address, and telephone number of each custodian and the identity and value of each of the eligible securities deposited with the custodian(s).

2. The Custodial Agreement between a non-depository trust company and a custodian holding the eligible securities shall include the following:

"Upon receiving an Order issued by the Colorado State Banking Board that it is taking possession of and seizing the eligible securities hereunder, the custodian shall immediately surrender title and possession of such eligible securities to the State Bank Commissioner. The custodian(s) shall not be liable for any such relinquishment of the eligible securities undertaken in good faith and upon notice that appears valid on its face."

3. A non-depository trust company shall include with each quarterly Consolidated Report of Condition and Income filed with the Division of Banking a list of the eligible securities on deposit with its custodian(s), together with the market value of the eligible securities as of the end of such quarter.

4. A non-depository trust company may, from time to time, substitute other eligible securities for eligible securities on deposit with its custodian(s) provided that:

a. The market value of the substitute eligible securities will, when added to the value of the remaining eligible securities, equal or exceed the amount of the required deposit;

b. The Division of Banking is given not less than seven (7) days prior written notice identifying the eligible securities and the market value of the eligible securities to be withdrawn from the custodian(s), and listing the eligible securities and the market value of the eligible securities to be substituted therefore; and

c. A copy of the notice sent to the Division of Banking is sent to the custodian(s).

D. Priority of Division of Banking.

In the event of the involuntary liquidation of a non-depository trust company, as provided in Sections 11-109-702 and 11-109-704, C.R.S., the custodian(s) shall immediately surrender the eligible securities to the Banking Board; and the Division of Banking shall have a first and prior claim against the eligible securities to satisfy the obligations incurred by the Division of Banking in carrying out its duties and responsibilities under Sections 11-109-702 and 11-109-704, C.R.S.

TC18 Investments in Loans [Section 11-109-902(1)(a), C.R.S.]

A. Purpose.

The purpose of this Rule is to permit Colorado trust companies that are insured by the Federal Deposit Insurance Corporation (FDIC) to diversify their investment portfolios by purchasing existing commercial loans or participations in existing commercial loans. It does not authorize Colorado trust companies to originate or make commercial loans, consumer loans, mortgage loans, or any other type of loan or to have a direct borrower-lender relationship with any person or business customer except as authorized in Section 11-109-907(2), C.R.S..

B. Definitions

1. An “existing commercial loan” means a direct or indirect loan or extension of credit that was made or initiated by a lender or financial institution, other than a Colorado trust company, to a business customer on the basis of any obligation of that customer to repay the funds, or repayable from specific property pledged by or on behalf of the business customer.

2. A “commercial loan” means a direct or indirect loan from a lender or financial institution to a business customer for the purpose of providing funds needed by that customer's business. The term “commercial loan” does not include bankers' acceptances, loans secured by bills of lading or warehouse receipts covering readily marketable securities, or loans to depository institutions, including but not limited to commercial banks, savings associations, savings banks, credit unions, or trust companies.

3. “Business customer” means a corporation, partnership, joint venture, association, business trust, limited liability company, not-for-profit corporation, or similar entity or organization.

C. Purchase of Existing Commercial Loans.

A trust company may invest in existing commercial loans to the same extent that it could acquire or invest in such loans if it were operating as a national bank, subject to the following limitations and conditions:

1. The trust company's capital ratios fall within the adequately capitalized category with a total risk-based capital ratio of 8 percent or greater, a Tier 1 risk-based capital ratio of 6 percent or greater, a common equity tier 1 capital ratio of 4.5 percent or greater, and a leverage ratio of 4 percent or greater. The capital ratios are defined in Code of Federal Regulation Title 12 – Banks and Banking Chapter III – FDIC Subchapter B – Regulations and Statements of General Policy Part 324 Capital Adequacy of FDIC Supervised Institutions, which includes Subpart H Prompt Corrective Action.

a. Incorporation by Reference

Code of Federal Regulations Title 12 - Banks and Banking Chapter III - Federal Deposit Insurance Corporation Subchapter B - Regulations and Statements of General Policy Part 324 Capital Adequacy of FDIC-Supervised Institutions, which includes Subpart H Prompt Corrective Action ("12 CFR 324 FDIC") as effective on June 27, 2024, is hereby incorporated by reference. No later amendment or edition of 12 CFR 324 FDIC is incorporated into this Section TC18. All referenced laws and regulation shall be available for copying or public inspection during regular business hours from the Division of Banking, Department of Regulatory Agencies, 1560 Broadway, Suite 975, Denver, CO 80202. The Division of Banking will provide a certified copy of the material incorporated at cost or will provide the requester with information on how to obtain a certified copy. 12 CFR 324 FDIC is also available at: https://banking.colorado.gov/banking-home/rules-statutes.

2. The aggregate of existing commercial loans shall not exceed 50 percent of the trust company's assets.

3. Except where an existing loan is in default, an existing commercial loan shall be maintained and serviced by the originator of the loan or someone acting on behalf of the originator and not by the trust company.

4. Existing commercial loans do not exceed the lending limits contained in this Rule.

5. For all investments in existing commercial loans, a reserve for loan losses shall be established in accordance with the requirements applicable to state chartered commercial banks.

6. Before investing in existing commercial loans, a trust company shall amend its investment policy to include the guidelines and procedures to be utilized by the trust company in acquiring and monitoring such credits.

7. Before investing in existing commercial loans, a trust company shall have an officer qualified by character and experience consistent with the responsibilities and duties relating to investments in commercial loans.

8. A written lending policy, approved by the directors of the trust company, shall provide a foundation for sound portfolio management.

9. Investing in existing commercial loans shall be supervised by the board of directors of the trust company or a committee thereof.

10. The purchase of existing commercial loans from an affiliate shall be subject to the provisions of Sections 23A and 23B of the Federal Reserve Act.

D. Participations.

A trust company may purchase a participation in a loan that qualifies as an existing commercial loan provided that such participation comes within the limitations and conditions set forth in the preceding Paragraph.

E. Lending Limits.

An existing commercial loan representing obligations of the same obligor or business customer shall not exceed 15 percent of the trust company's total capital.

1. Combining Existing Commercial Loans to Separate Borrowers

a. General Rule

Existing commercial loans to one person will be attributed to other persons, for the purpose of this Rule, when: (1) the proceeds of such loans or extensions of credit are to be used for the direct benefit of the other person or persons to the extent of the proceeds so used; or (2) a common enterprise is deemed to exist between the persons.

b. Common Enterprise

(1) Whether two or more persons are engaged in a common enterprise will depend upon a realistic evaluation of the facts and circumstances of the particular transaction.

(2) A common enterprise will be deemed to exist and such loans or extensions of credit must be combined.

(a) When the expected source of repayment for each existing commercial loan is the same for each person and neither person has another source of income from which the loan (together with the person’s other obligations) may be fully repaid.

(b) Where existing commercial loans are made to persons who are related through common control, including where one person is directly or indirectly controlled by another person; and substantial financial interdependence exists between or among them. Substantial financial interdependence is deemed to exist when 50 percent or more of one person's gross receipts or gross expenditures, on an annual basis, are derived from transactions with the other person. Gross receipts and expenditures include gross revenues/expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments.

(c) When separate persons borrow from the lender for the purpose of acquiring a business enterprise of which those persons will own more than 50 percent of the voting securities or voting interests

(3) For the purpose of this Rule, control shall be presumed to exist when a person directly or indirectly, or acting through or together with one or more persons:

(a) Owns, controls, or has the power to vote 25 percent or more of any class of voting securities of another person; or

(b) Controls, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of another person; or

(c) Has the power to exercise a controlling influence over the management or policies of another person.

c. Loans to Corporations

(1) For the purpose of this Rule, a corporation is a subsidiary of any person that owns or beneficially owns directly or indirectly more than 50 percent of the voting securities or voting interests of the corporation. Thus, if Corporation A owns more than 50 percent of the voting securities of Corporation X which, in turn, owns more than 50 percent of the voting securities of Corporation Y, Corporation Y would be considered a subsidiary of both Corporation A and of Corporation X. For the purpose of this Rule, corporation includes a limited liability company organized under the laws of certain states.

(2) Existing commercial loans to a person and its subsidiary or to subsidiaries of one person need not be combined where the trust company has determined that the person and subsidiaries involved are not engaged in a common enterprise as that term is defined in this Rule.

(3) Notwithstanding Paragraph (E)(1)(c)(2) of this Rule, existing commercial loans to a corporate group may not exceed 50 percent of the trust company's total capital. This aggregate limitation applies only to existing commercial loans made pursuant to Paragraphs (E)(1)(b) and (c) of this Rule. A corporate group includes a person and all of its subsidiaries.

d. Loans to Partnerships, Joint Ventures, and Associations

(1) Existing commercial loans to a partnership, joint venture, or association shall, for the purpose of this Rule, be considered loans or extensions of credit to each member of such partnership, joint venture, or association.

(2) Existing commercial loans to members of a partnership, joint venture, or association shall, for the purpose of this rule, be attributed to the partnership, joint venture, or association where one or more of the tests set forth in Paragraph (E)(1)(a) of this Rule is satisfied with respect to one or more such members. However, loans to members of a partnership, joint venture, or association will not be attributed to other members of the partnership, joint venture, or association under this section of this Rule unless one or more of the tests set forth in Paragraph (E)(1)(a) of this Rule is satisfied with respect to such other members. The tests set forth in Paragraph (E)(1)(a) of this Rule shall be deemed to be met when existing commercial loans are made to members of a partnership, joint venture, or association for the purpose of purchasing an interest in such partnership, joint venture, or association.

(3) The Rule set forth in Paragraph (E)(1)(d)(1) of this Rule is not applicable to limited partners in limited partnerships or to members of joint ventures or associations if such partners or members, by terms of the partnership or membership agreement, are not held generally liable for the debts or actions of the partnership, joint venture, or association. However, the Rules set forth in Paragraph (E)(1) of this Rule are applicable to such partners or members.

2. Exceptions to the Lending Limits

a. Discount of Commercial Business Paper

(1) Existing commercial loans arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse shall not be subject to any limitation based on capital.

(2) This exception applies to negotiable commercial or business paper given in payment of the purchase price of commodities purchased for resale, fabrication of a product, or any other business purpose that may reasonably be expected to provide funds for payment of the paper. Existing commercial loans arising from the discount of paper of the kind described in this Paragraph must bear the full recourse endorsement of the owner of the paper, except that paper discounted in connection with export transactions, that is transferred without recourse, or with limited recourse, must be supported by an assignment of appropriate insurance covering the political, credit, and transfer risks applicable to the paper. Insurance provided by the Export-Import Bank or the Foreign Credit Insurance Association is considered appropriate for this purpose. Existing commercial loans based on this exception are not subject to any limitation.

(3) Since the reason for the unlimited credit under this exception is that the paper arises from the sale of a commodity that may reasonably be expected to provide funds for payment of the paper, failure to pay either principal or interest when due removes the reason for unlimited credit. Therefore, although the line of credit to the maker or endorser should not be classified as excessive by reason of such default, the paper on which the default has occurred must thereafter be taken into consideration in determining whether additional existing commercial loans may be acquired within the limits of this Rule. The same principles of disqualification from the exception applies to any renewal or extension of either the entire loan or an installment thereof.

b. Loans Secured by U.S. Obligations

(1) Existing commercial loans secured by bonds, notes, certificates of indebtedness, or Treasury bills of the United States or by similar obligations fully guaranteed as to principal and interest by the United States shall not be subject to any limitation based on capital.

(2) This exception applies only to the extent that existing commercial loans are fully secured by the current market value of obligations of the United States or guaranteed by the United States.

(3) If the market value of the collateral declines to the extent that the existing commercial loan is no longer in conformance with this exception and exceeds the general 15 percent limitation, the trust company must ensure that the existing commercial loan is brought into conformance by the lender within five (5) business days, except where judicial proceedings, regulatory actions, or other extraordinary occurrences prevent the lender from taking such action.

c. Loans to or Guaranteed by a Federal Agency

(1) Existing commercial loans to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States shall not be subject to any limitation based on capital.

(2) This exception may apply to only that portion of the existing commercial loan that is covered by a federal guarantee or commitment.

(3) For purposes of this exception, the commitment or guarantee must be payable in cash or its equivalent within sixty (60) days after demand for payment is made.

(4) A guarantee or commitment is unconditional if the protection afforded the lender is not substantially diminished or impaired if loss should result from factors beyond the lender's control. Protection against loss is not materially diminished or impaired by procedural requirements, such as an agreement to pay on the obligation only in the event of default, including default over a specific period of time, a requirement that notification of default be given within a specific period after its occurrence, or a requirement of good faith on the part of the lender.

d. Loans Secured by Segregated Deposit Accounts

(1) Existing commercial loans secured by a segregated deposit account by the lender shall not be subject to any limitation based on capital.

(2) The trust company must ensure that a security interest has been perfected by the lender in the deposit, including the assignment of a specifically identified deposit and any other actions required by state law.

(3) Deposit accounts that may qualify for this exception include deposits in any form generally recognized as deposits. In the case of a deposit eligible for withdrawal prior to the maturity of the secured loan, the trust company must ensure that the lender has established internal procedures that will prevent the release of the security.

(4) A deposit that is denominated and payable in a currency other than that of the existing commercial loan that it secures may be eligible for this exception if it is freely convertible to U.S. dollars. The trust company must ensure that the lender has established procedures to periodically revalue foreign currency deposits to ensure that the existing commercial loan remains fully secured at all times. This exception applies to only that portion of the loan or extension of credit that is covered by the U.S. dollar value of the deposit. If the U.S. dollar value of the deposit falls to the extent that the existing commercial loan is in nonconformance with this exception and exceeds the general 15 percent limitation, the trust company must ensure that the loan is brought into conformance by the lender within five (5) business days, except where judicial proceedings, regulatory actions, or other extraordinary occurrences prevent the lender from taking such action. This exception is not authority for lenders to take deposits denominated in foreign currencies.

3. Loans Charged Off in Whole or in Part

The lending limits apply to all existing commercial loans purchased by the trust company, including such loans that have been charged off on the books of the trust company in whole or in part. Existing commercial loans that have become unenforceable by reason of discharge in bankruptcy or are no longer legally enforceable for other reasons, are not existing commercial loans for purposes of this Rule.

4. Approval by Banking Board

Upon application by a trust company to the Banking Board, the Banking Board may allow a trust company to exceed the "lending limits" to purchase a specific existing commercial loan if the trust company proves that such loan will not adversely impact the safe and sound operations of the trust company and the protection of customers of the trust company. In making its decision, the Banking Board shall consider the quality of the existing commercial loans.

The Banking Board shall also have the authority to determine when an existing commercial loan putatively made to a person shall, for the purpose of this Paragraph, be attributed to another person.

TC19 Investment in an Operating Subsidiary [Section 11-109-902(5), C.R.S.]

A. General Limitations

A trust company may invest in an operating subsidiary which includes a corporation, limited liability company (LLC), limited partnership, or similar entity that engages in activities in which the parent trust company may engage, subject to the same limitations the parent trust company would be subject to if it were engaged in the activity, provided that:

1. the parent trust company owns and controls more than 50 percent of the voting (or similar type of controlling) interest of the operating subsidiary, or the parent trust company otherwise controls the operating subsidiary and no other party controls a percentage of the voting (or similar type of controlling) interest of the operating subsidiary greater than the trust company's interest;

2. the trust company has the ability to control the management and operations of the subsidiary, and no other person or entity has the ability to exercise effective control or influence over the management or operations of the subsidiary to an extent equal to or greater than that of the trust company or an operating subsidiary thereof;

   a. The ability to control the management and operations means:

      (1) In the case of a subsidiary that is a corporation, the trust company or an operating subsidiary thereof holds voting interests sufficient to select the number of directors needed to control the subsidiary's board and to select and terminate senior management;

      (2) In the case of a subsidiary that is a limited partnership, the trust company or an operating subsidiary thereof has the ability to control the management and operations of the subsidiary by controlling the selection and termination of senior management; or

(3) In the case of a subsidiary that is an LLC, the trust company or an operating subsidiary thereof has the ability to control the management and operations of the subsidiary by controlling the selection and termination of senior management.

3. and the operating subsidiary is consolidated with the trust company under generally accepted accounting principles.

B. Additional Limitations

The trust company through its operating subsidiary may invest in a corporation, LLC, partnership, or similar business entity at less than a 50 percent ownership level provided that each of the following conditions are met:

1. The activities of the corporation, LLC, partnership or similar business entity in which the investment is made are limited to activities that are part of, or incidental to, the trust company business;

2. The trust company is able to prevent the corporation, LLC, partnership or similar business entity from engaging in activities that do not meet the foregoing standard or has the ability to withdraw its investment;

3. The trust company's loss exposure is limited as a legal matter and the trust company does not have unlimited liability for the obligations of the corporation, LLC, partnership or similar business entity;

4. The investment is convenient and useful to the trust company in carrying out its business and not a mere passive investment unrelated to the trust company's business; and

5. The corporation, LLC, partnership or similar business entity the trust company is investing in agrees to be subject to Colorado Division of Banking supervision and examination.

TC20 Consolidated Reports of Condition and Income (Call Report) Filing Requirements [Section 11-109- 402(4)(a), C.R.S.]

A. Depository Trust Company Requirements

Depository trust companies must file quarterly Consolidated Reports of Condition and Income (Call Reports) electronically with the Federal Financial Institutions Examination Council (FFIEC) Central Data Repository (CDR) in conformance with FFIEC Call Report Instructions. The standard late filing fees will be imposed if the CDR does not receive the Call Report data file within 30 calendar days after the report date.

B. Non-Depository Trust Company Requirements

Non-depository trust companies must file electronically quarterly Call Reports directly with the Colorado Division of Banking in conformance with Non-Depository Call Report Instructions.

TC21 Fiduciary Self-Dealing [Section 11-109-103, C.R.S.]

A. Unless authorized by applicable law, a trust company may not invest funds of a fiduciary account for which a trust company has investment discretion in the stock or obligations of, or assets acquired from: the trust company or its directors, officers or employees; or affiliates of the trust company or any of their directors, officers, or employees; or organizations with whom there exists an interest that might affect the exercise of the best judgment of the trust company. If the retention of stock or obligations of the trust company or its affiliates in a fiduciary account is consistent with applicable law, a trust company may exercise rights to purchase its own stock or securities convertible into its own stock when offered pro rate to stockholders. When the exercise of rights or receipt of the stock dividend results in fractional shareholding, additional fractional shares may be purchased to compliment the fractional shares acquired.

B. A trust company may sell assets between any of its fiduciary accounts if the transaction is fair to both accounts and is not prohibited by applicable law.

C. A trust company may deposit funds of the fiduciary account as time or demand deposits in its own banking department provided such transactions are fair to the fiduciary account.

TC22 Establishment of a Colorado Office Location by a Trust Company Chartered in Another State [Section 11-109-202(5), C.R.S.]

A. Definitions

For the purposes of this Rule

1. “Home state” means the state where the trust company is chartered.

2. “Home state supervisor” means the state supervisory agency with primary responsibility for chartering and supervising the trust company.

3. “Out-of-state trust company” shall mean any trust company chartered under the laws of another state and domiciled in that state.

4. “Representative trust office” shall have the same meaning as set forth in Section 11-109-101(6), C.R.S.

5. “Trust business” shall have the same meaning as set forth in Section 11-109-101(10), C.R.S.

6. “Trust office” shall have the same meaning as set forth in Section 11-109-101(13), C.R.S.

B. Establishment of a Representative Trust Office

1. The Banking Board shall issue a certificate of authority to an out-of-state trust company to establish a representative trust office in Colorado upon finding that:

   a. The out-of-state trust company is lawfully chartered and operating in good standing in the home state;

   b. The out-of-state trust company has the authority to operate a representative office outside of its home state and the establishment of such office has been approved by the applicant’s board of directors;

c. A trust company chartered by, and in good standing with, the Colorado Division of Banking would be allowed by the applicant's home state supervisor to establish a representative trust office under similar terms and conditions in the applicant's home state;

d. The applicant's home state supervisor has entered into a cooperative regulatory and information sharing agreement with the Division of Banking, and/or has entered into the Conference of State Bank Supervisors Nationwide Cooperative Agreement for the Supervision of Multi-State Trust Institutions;

e. The name that the representative trust office is to be operated under is not the same, or deceptively similar to that of an existing Colorado bank- or trust company; and,

f. The applicant has certified that a trust business will not be conducted at the representative office.

C. Establishment of a Trust Office

1. The Banking Board shall issue a certificate of authority to an out-of-state trust company to establish a trust office and conduct a trust business in Colorado upon finding that:

a. The out-of-state trust company is lawfully chartered and operating in good standing in the home state;

b. The out-of-state trust company has the authority to operate a trust office outside of its home state and the establishment of such office has been approved by the applicant's board of directors;

c. A trust company chartered by, and in good standing with, the Colorado Division of Banking would be allowed by the applicant's home state supervisor to establish a trust office under similar terms and conditions in the applicant's home state;

d. The applicant's home state supervisor has entered into a cooperative regulatory and information sharing agreement with the Division of Banking, and/or has entered into the Conference of State Bank Supervisors Nationwide Cooperative Agreement for the Supervision of Multi-State Trust Institutions;

e. The name that the trust office is to be operated under is not the same, or deceptively similar to that of an existing Colorado bank or trust company;

f. If the applicant proposes to accept deposits, such deposits are insured by the Federal Deposit Insurance Corporation; and,

g. The applicant maintains capital at or above the minimum standards as set forth in Banking Board Rule TC13 for depository trust companies, or Banking Board Rule TC13.5 for non-depository trust companies.

(1) An applicant may satisfy the minimum capital requirement by depositing eligible securities in accordance with the requirements of Banking Board Rule TC17 in an amount, when combined with the applicant's equity capital, sufficient to meet the required minimum capital levels.

D. Certificate of Authority

Before a certificate of authority is issued for a representative trust office or trust office, the out-of-state trust company shall pay to the Colorado Division of Banking a fee in an amount as set by the Banking Board and published in accordance with Banking Board Rule AR16. Each certificate of authority shall expire on January 1 unless the out-of-state trust company certifies in writing that it is, and shall remain, in compliance with the conditions of Paragraph (B) or (C) of this Rule, as applicable.

E. Termination of Certificate of Authority

The Commissioner may, upon ten (10) days notice, terminate a certificate of authority if it is determined that the out-of-state trust company is not in compliance with the conditions of Paragraph (B) or (C) of this Rule, as applicable. Within ten (10) days following receipt of the termination notice, the out-of-state trust company may file an application with the Banking Board for hearing to rescind the Commissioner's determination.

TC23 Application Procedures for Private Family Trust Company Charter [Section 11-109-1003, C.R.S.] [Repealed eff. 11/14/2013]

TC24 Private Family Trust Company Exemptions [Section 11-109-1003(1), C.R.S.] [Repealed eff. 11/14/2013]

TC25 Revocation of Exemption [Section 11-109-1006, C.R.S.] [Repealed eff. 11/14/2013]

TC26 Conversion of a Private Family Trust Company to a Public Trust Company [Section 11-109-1007, C.R.S.] [Repealed eff. 11/14/2013]

TC27 Change of Control of a Private Family Trust Company [Section 11-109-1007, C.R.S.] [Repealed eff. 11/14/2013]

TC28 Charter Surrender [Section 11-109-701(1), C.R.S.]

A. Overview and Rule

1. A trust company may discontinue its trust business upon furnishing to the Banking Board satisfactory evidence of its release and discharge from all trust obligations that it has undertaken or that have been imposed by law. Thereupon, the Banking Board shall cancel the charter, and such trust company shall not be permitted to use the word "trust" in its name or connection with its business.

2. A trust company that has not operated in Colorado, or has not conducted any trust business and has been released from any trust or other trust obligations for 24 months or more, must surrender its charter for cancellation and remove the word "trust" from its name.

3. A trust company in good standing when it surrenders its charter, may reapply for a trust charter as outlined in Section 11-109-301, C.R.S., and it must submit an updated business plan and supporting documentation as required in an initial chartering application. The company may also submit a pre-filing of an application for review and feedback from the Commissioner.

TC29 Audit of Fiduciary Activities [Section 11-109-402(4)(c), C.R.S.]

A. Annual audit. At least once during each calendar year, a trust company must arrange for a suitable audit (by internal or external auditors) of all significant fiduciary activities, unless the trust company adopts a continuous audit system in accordance with Paragraph (B) of this Rule. The trust company must note the results of the audit (including significant actions taken as a result of the audit) in the minutes of the board of directors/managers.

B. Continuous audit. In lieu of performing annual audits under Paragraph (A) of this Rule, a trust company may adopt a continuous audit system under which the trust company arranges for a discrete audit (by internal or external auditors) of each significant fiduciary activity (i.e., on an activity-by-activity basis) under the direction of its audit or similar committee, at an interval commensurate with the nature and risk of that activity. Thus, certain fiduciary activities may receive audits at intervals greater or less than one year, as appropriate. A trust company that adopts a continuous audit system must note the results of all discrete audits performed since the last audit report (including significant actions taken as a result of the audits) in the minutes of the board of directors/managers at least once during each calendar year.

Editor's Notes

History

Rule TC13.5 eff. 07/30/2007.

Rules TC23-TC27 eff. 12/30/2008.

Rules TC23-TC27 repealed eff. 11/14/2013.

Rule TC15 repealed eff. 04/30/2016.

Rules TC11 D.7, TC20 A emer. rules eff. 04/02/2020; expired 07/29/2020.

Rules TC11 D.7, TC11 E eff. 04/14/2022.

Rules TC1, TC7, TC8, TC10, TC11, TC13, TC13.5, TC16, TC17, TC18, TC20, TC21, TC22, TC28 eff. 12/15/2024. Rules TC6, TC14 repealed eff. 12/15/2024.

Rules TC7, TC9, TC19, TC29 eff. 06/14/2025.

Annotations

Rule TC5 (adopted 12/15/2005) was not extended by House Bill 07-1167 and therefore expired 05/15/2007.