



# COLORADO

## Department of Regulatory Agencies

Division of Banking

February 20, 2025

**STATE BANKING BOARD  
3 CCR 701-6 TC7  
PERTAINING TO TITLE 11, ARTICLE 109, SECTION 402  
COLORADO REVISED STATUTES**

**STATEMENT OF BASIS, PURPOSE AND SPECIFIC STATUTORY AUTHORITY**

Statutory Basis

The statutory basis for Banking Board Rule 3 CCR 701-6 TC7 is found in Section 11-109-402 of the Colorado Revised Statutes.

Purpose of this Rulemaking

The purpose of this rule is to require banks to prepare financial statements in accordance with generally accepted accounting principles except where the banking board may allow banks to deviate from such principles in order to establish regulatory and competitive parity.

The purpose of this rulemaking is to amend Rule 3 CCR 701-6 TC7.

The Colorado Division of Banking (Division) finds that the proposed amendments to this rule are necessary as follows:

- Rename the Rule and remove reference verbiage as generally accepted accounting procedures change routinely and banks should prepare financial statements and reports in conformance with current requirements, not those that were in effect as of the date of the Rule.

Rulemaking Authority

- 11-101-102. Declaration of policy.  
11-102-104. Powers and duties of the banking board.  
11-109-402. Reports to the banking board and to the commissioner - penalty - rules.





# COLORADO

## Department of Regulatory Agencies

Division of Banking

February 20, 2025

**STATE BANKING BOARD  
3 CCR 701-6 TC9  
PERTAINING TO TITLE 11, ARTICLE 109, SECTION 902(5)  
COLORADO REVISED STATUTES**

### STATEMENT OF BASIS, PURPOSE AND SPECIFIC STATUTORY AUTHORITY

#### Statutory Basis

The statutory basis for Banking Board Rule 3 CCR 701-6 TC9 is found in Section 11-109-902(5) of the Colorado Revised Statutes.

#### Purpose of this Rulemaking

The purpose of this rule is to provide information and requirements pertaining to limitations of a Trust Company's investments.

The purpose of this rulemaking is to amend Rule 3 CCR 701-6 TC9.

The Colorado Division of Banking (Division) finds that the proposed amendments to this rule are necessary as follows:

- To better align investment limitations with federal investment limitations, the following updates are needed:
  - Clarify that Type II and III securities are limited to 10 percent of capital and surplus;
  - Clarify that Type IV securities have no investment limitation;
  - Add that Type V securities are limited to 25 percent of capital and surplus;
  - Add that when applying the limitation for Type II, III, and V securities, the trust company is to take account of the security type the trust company is legally committed to purchase in addition to its existing holdings;
  - Add requirements pertaining to the calculation of Type III and V securities holdings;
  - Add requirement pertaining to certain credit information to be maintained in the trust company's investment files; and,
  - Add information and a requirement pertaining to the treatment of nonconforming investments.
  - Clarify rule applicability to the divestiture of a nonconfirming investment.
- Update the current incorporation by reference of Code of Federal Regulations Title 12 - Banks and Banking Chapter I - Comptroller of the Currency, Department of the Treasury Part 1 Investment Securities. The incorporated material is available at <https://banking.colorado.gov/banking-home/rules-statutes>.

#### Rulemaking Authority

- 11-101-102. Declaration of policy.
- 11-102-104. Powers and duties of the banking board.
- 11-109-103. Applicability of powers of banking board and bank commissioner to trust companies.
- 11-109-902. Investments.





# COLORADO

Department of  
Regulatory Agencies

Division of Banking

February 20, 2025

**STATE BANKING BOARD  
3 CCR 701-6 TC19  
PERTAINING TO TITLE 11, ARTICLE 109, SECTION 902  
COLORADO REVISED STATUTES**

**STATEMENT OF BASIS, PURPOSE AND SPECIFIC STATUTORY AUTHORITY**

Statutory Basis

The statutory basis for Banking Board Rule 3 CCR 701-6 TC19 is found in Section 11-109-902(5) of the Colorado Revised Statutes.

Purpose of this Rulemaking

The purpose of this rule is to establish the general and additional limitations for a trust company investing in an operating subsidiary.

The Colorado Division of Banking (Division) finds that the proposed amendments this rule are necessary as follows:

- Modernize the limitations of a trust company's investment in an operating subsidiary to increase parity with the Office of the Comptroller of the Currency's (OCC) regulation of national banks.
- Expand the operating subsidiaries in which a trust company can invest.
- Decrease the percentage of voting interest of the operating subsidiary from 80 percent to 50 percent.
- Establish the conditions in which an operating subsidiary may engage in activities in which the parent trust company may engage.
- Define the meaning of "the ability to control the management and operations" of the subsidiary.
- Expand the business entities in which a trust company, through its operating subsidiary, may invest.
- Decrease the percentage of ownership level in a business that a trust company, through its subsidiary, may invest in from 80 percent to 50 percent.
- Require that the business entity in which the trust company invests, must agree to Division supervision and examination.

Rulemaking Authority

- 11-101-102. Declaration of policy.  
11-102-104. Powers and duties of the banking board.  
11-109-902. Investments.





# COLORADO

Department of  
Regulatory Agencies

Division of Banking

February 20, 2025

**STATE BANKING BOARD  
3 CCR 701-6  
PERTAINING TO TITLE 11, ARTICLE 109, SECTION 402  
COLORADO REVISED STATUTES**

**STATEMENT OF BASIS, PURPOSE AND SPECIFIC STATUTORY AUTHORITY**

Statutory Basis

The statutory basis for proposed Banking Board Rule 3 CCR 701-6 TC29 is found in Section 11-109-402(4)(c) of the Colorado Revised Statutes.

Purpose of this Rulemaking

The purpose of this rulemaking is to promulgate Rule 3 CCR 701-6 TC29 is to establish the requirements pertaining to the audit of fiduciary activities.

A fiduciary audit is a comprehensive assessment of the trust company's fiduciary practices, governance, investment management, risk management and compliance activities to determine their effectiveness in managing fiduciary activity risk. An audit of fiduciary assets should be performed at least once during the calendar year, or as an alternative, the trust company may adopt a continuous audit system, arranging for discrete audits of each significant fiduciary activity at an interval commensurate with the risk of the activity. A risk assessment of the trust company's fiduciary activity<sup>1</sup> can help in identifying all significant fiduciary activities and determine audit intervals for each activity. The fiduciary audit may be performed by independent auditors with fiduciary-specific expertise commensurate with the trust company's fiduciary activities or conducted by in-house audit staff. The annual audit report results, including any corrective actions taken as a result of the audit, should be noted in the minutes of the board of directors/managers (Board), or in the case of a continuous fiduciary audit system, the results of discrete audits performed since the last audit report, including significant actions taken as a result of these audits, should be noted in the minutes of the Board at least once during each calendar year.

The Colorado Division of Banking (Division) finds that the proposed promulgation of this rule is necessary as follows:

- Require a trust company to annually 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 lieu of performing annual audits, 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.

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<sup>1</sup> The limitation of the audit requirements to "significant fiduciary activities" is to provide the flexibility to determine, based on specific facts and circumstances, which of the trust company's fiduciary activities are de minimis and therefore not subject to the fiduciary audit requirement. For example, a trust company may determine that activities related to a very limited number of small accounts under a particular fiduciary activity as an incidental service for particular customers are de minimis.



### Rulemaking Authority

- 11-101-102. Declaration of policy.
- 11-102-104. Powers and duties of the banking board.
- 11-109-402. Reports to the banking board and to the commissioner.

**TC7 ~~Generally Accepted Accounting Principles~~ Financial Reporting [Section 11-109-402, C.R.S.]**

~~A. — Generally accepted accounting principles (GAAP) as defined in this Rule shall consist of those opinions, statements, and standards set by the Financial Accounting Standards Board (FASB) and its precursor the Accounting Principles Board (APB).~~

**BA.** While it is the Colorado State Banking Board's (Banking Board) intention to require that ~~GAAP~~ 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 ~~GAAP~~ generally accepted accounting principles. In reporting transactions not covered in principle by regulatory instructions, trust companies must follow ~~GAAP~~ 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.

~~C. — References: GAAP are issued by the FASB which is overseen by the Financial Accounting Foundation, an independent, not for profit organization. The APB was a committee of the American Institute of Certified Public Accountants.~~

## 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-42 CFR Part 1](#), subject to the following restrictions:
- ~~Obligations of any issuer may be purchased up to a limit of 15 percent of the trust company's total capital provided that the purchase is based on adequate evidence of the maker's ability to perform.~~ 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.
  - 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).
  - 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.
  - ~~The limitations prescribed in Paragraph (B)(1) and/or Paragraph (B)(2) of this Rule are reduced to 5 percent of total capital when purchase judgment is predicated on reliable estimates as described in 12 CFR Part 1.~~ 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.
  - 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.
  - 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.

~~C. D. Reference~~

~~1. 12 CFR Part 1 was issued by the Comptroller of Currency, effective December 2, 1996.~~

~~2. This Rule does not include amendments to or editions of the referenced material later than November 7, 2023. December 2, 1996. A copy of 12 CFR Part 1 may be examined at the Colorado Division of Banking, at any State Publications Depository.~~

~~3. For more detailed information pertaining to these provisions, please contact the Secretary to the Colorado State Banking Board at 1560 Broadway, Suite 975-1175, Denver, Colorado 80202, 303-894-7584.~~



**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, ~~or~~ 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 ~~holds~~ owns and controls more than at least an 580 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) ~~ownership~~ interest of the operating ~~in the~~ subsidiary greater than the trust company's interest ~~corporation or LLC~~;
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 ~~of a trust company~~ may invest in a ~~subsidiary~~ corporation, ~~or~~ LLC, partnership, or similar business entity at less than an ~~80-50~~ percent ownership level provided that each of the following conditions are met:

1. The activities of the ~~subsidiary~~ corporation, ~~or~~ 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;

- 0.2. The trust company is able to prevent the ~~subsidiary corporation or LLC~~ 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;
- 0.3. The trust company's loss exposure is limited, as ~~both a legal and accounting~~ matter, and the trust company does not have ~~open-ended unlimited~~ liability for the obligations of the ~~subsidiary corporation, or LLC, partnership or similar business entity~~; ~~and~~
4. The investment is convenient ~~or~~ and useful to the trust company in carrying out its business and not a mere passive investment unrelated to the trust company's ~~business~~ business; and
- 0.5. 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.

**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.