

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

A. Purpose

The Colorado State Banking Board (Banking Board) believes ~~that a minimum leverage ratio is necessary because the risk-based capital guidelines detailed in Banking Board Rule TC14-Risk Based Capital Definitions and Adequacy, that are designed solely as a measure of credit risk, create the possibility for significant leverage. Assets that have no credit risk receive a zero percent risk weight and, therefore, require no capital. However, the Banking Board believes that every institution should have at least a base level of capital as protection against risks not measured by the risk-based capital ratio.~~ 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. ~~Adjusted total assets means the average total assets figure required to be computed for and stated in an institution's most recent quarterly Consolidated Report of Condition and Income (Call Report), minus end-of-quarter intangible assets, deferred tax assets, and credit-enhancing interest-only strips, that are deducted from Tier 1 capital, and minus nonfinancial equity investments for which a Tier 1 Capital deduction is required pursuant to Paragraph (C)(1)(h) of Banking Board Rule TC14. The Banking Board reserves the right to require an institution to compute and maintain its capital ratios on the basis of actual, rather than average, total assets when necessary to carry out the purposes of this Rule.~~ 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. ~~"Tier 1 Capital" as determined according to Banking Board Rule TC14-Risk Based Capital Definitions and Adequacy, including the deductions described therein.~~
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. ~~"Tier 2 Capital" as determined according to Banking Board Rule TC14-Risk Based Capital Definitions and Adequacy, including the limitations described therein.~~
4. Total Capital means the sum of Tier 1 and Tier 2 Capital as determined according to 12 CFR 324 FDIC. ~~"Total Capital" as determined according to Banking Board Rule TC14-Risk Based Capital Definitions and Adequacy, including the deductions described therein.~~
- 4.5. 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 ~~Banking Board Rule TC14~~[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 ~~\$1,000,000~~[1,500,000](#), or such greater amount as the Banking Board may reasonably require. New trust companies will be required to maintain ~~total~~ capital in an amount necessary to satisfy minimum capital ratios, but not less than ~~\$750,000~~[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.

~~1. Risk-based capital ratio. All institutions must have and maintain the minimum risk-based capital ratios as set forth in Banking Board Rule TC14.~~

~~0. Total asset leverage ratio (Leverage Ratio). All institutions must have and maintain Tier 4 Capital in an amount equal to at least 3.0 percent of adjusted total assets.~~

~~0. Additional leverage ratio requirements. An institution operating at or near the level in Paragraph (E)(2) of this Rule should have well-diversified risks, including no undue interest rate risk exposure; excellent control systems; good earnings; high asset quality; high liquidity; and well-managed on- and off-balance sheet activities; and in general be considered a strong organization, rated composite 1 under the CAMELS rating system. For all but the most highly-rated institutions meeting the conditions set forth in this Paragraph, the minimum Tier 1 leverage ratio is 4 percent. In all cases, institutions should hold capital commensurate with the level and nature of all risks.~~

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(3), C.R.S., shall refer to Total Capital.~~

~~d. Section 11-109-902(6), C.R.S., shall refer to Total Capital.~~

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

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

~~For more detailed information pertaining to these provisions, please contact the Secretary to the Colorado State Banking Board at 1560 Broadway, Suite 1175, Denver, Colorado 80202, (303) 894-7575.~~