

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 ~~C~~capital means [the sum of Tier 1 and Tier 2 Capital as determined in accordance with 12 CFR 324 FDIC.](#) ~~"total capital" as determined according to Banking Board Rule TC14—Risk Based Capital Definitions and Adequacy, including the deductions described herein.~~

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 ~~\$1,000,000~~[\\$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) ~~\$750,000~~[\\$1,000,000](#), or (2) one tenth of one percent (.001) of fiduciary assets, such amount not to exceed ~~five million~~ ~~(\$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.

~~F.~~ 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 ~~chartered prior to July 1, 2007~~ shall meet the minimum capital requirements of this rule no later than 36 months from Rule implementation ~~September 30, 2007~~.

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 ~~the leverage ratio and Tier 1, Tier 2, and~~ Total Capital;
- b. Section 11-109-902(2), (3), (6), and (7), 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. Section 11-109-902(7), C.R.S., shall refer to Total Capital;~~

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

~~6~~d. Section 11-109-702(1), C.R.S., shall refer to Total Capital.