

## 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, ~~industrial banks~~, savings ~~and loan~~ associations, [savings banks](#), credit unions, or trust companies, ~~or to non-depository 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 ~~at least~~ 8 percent or greater, a Tier 1 risk-based capital ratio of ~~at least 65~~ percent or greater, a common equity tier 1 capital ratio of 4.5 percent or greater, and a leverage ratio of ~~at least 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. ~~Banking Board Rule TC13-Minimum Capital Ratios, and Banking Board Rule TC14-Risk-Based Capital Definitions and Adequacy.~~](#)

#### 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>.

~~1.~~

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)~~ ~~Where the expected source of repayment for each existing commercial loan is the same for each person,~~ A common enterprise will be deemed to exist and such loans or extensions of credit must be combined.

~~(2)~~ (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.

~~(3)~~ (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 a common enterprise will be deemed to exist if the persons are engaged in interdependent businesses or there is a~~ substantial financial interdependence exists between or among them. ~~A common enterprise will be~~ 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 one or more persons related through common control, as defined in this Paragraph of this Rule. Gross receipts and expenditures include gross revenues/expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments.

~~(4)~~ (c) ~~A common enterprise will also be deemed to exist~~ 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.

~~(5)~~(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) ~~One or more persons acting in concert directly or indirectly~~ Owns, controls, or has ~~ve the~~ the power to vote 25 percent or ~~f~~ more of any class of voting securities of another person; or

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

(c) ~~Any other circumstances exist that indicate that one or more persons acting in concert directly or indirectly~~ 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 ~~stock~~securities or voting interests of the corporation. ~~Such ownership need not be direct.~~ Thus, if Corporation A owns more than 50 percent of the voting ~~securities~~stock of Corporation X which, in turn, owns more than 50 percent of the voting ~~securities~~stock 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 ~~satisfied~~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 ~~to be~~ 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 ~~in domestic or export transactions~~ purchased for resale, ~~or to be used in connection with the~~ fabrication of a product, or ~~to be used for~~ 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 ~~However, existing commercial loans arising from the discount of such~~ paper discounted in connection with export transactions, that is transferred ~~may be endorsed by such owner~~ without recourse, or with limited recourse, ~~or may be accompanied by a separate agreement for limited recourse; provided, that if transferred without full recourse, the paper~~ 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 ~~either such~~ 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~~ ~~must be~~ 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 ~~in the case of~~ loss ~~should~~ result~~ing~~ 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~~take over~~ 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 the deposits at least monthly, using appropriate foreign exchange rates,~~ 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 ~~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.