

# COLORADO DIVISION OF BANKING

## Amendment of Rules and Regulations

### Fact Sheet

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**LEGISLATION:** 11-10.5-107(4)(a); 11-10.5-107(4)(b), C.R.S.

**PUBLIC HEARING DATE:** November 21, 2019

**RULE TO BE AMENDED:** 3-CCR 701-4 PDP5 – *Criteria and Procedures for Reducing/Removing Uninsured Public Deposits From a Bank, or Increasing Collateral Requirements, if the Eligible Public Depository fails to Comply With Minimum Capital Standards or Safety and Soundness Standards*

**Corresponding Rules:** N/A

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#### SUMMARY

The amendment of 3-CCR 701-4 PDP5 is to reflect technical language revisions, changes made in the Banking Board and Division's practices, changes made to collateral pledging percentages and to align capital ratios with Prompt Corrective Action (PCA) Capital Guidelines which went into effect on January 1, 2015.

The purpose of this rulemaking is to amend 3-CCR 701-4 PDP5(A) to add the definition of "market value" for clarification purposes. The proposed language reflects the following changes:

1. Added a reference to 3-CCR 701-4 PDP4 which defines the current market value for each eligible collateral type.

The purpose of this rulemaking is to amend 3-CCR 701-4 PDP5(B) to align capital ratios with PCA Capital Guidelines, reflect technical language revisions as well as changes to collateral pledging percentages. The proposed language reflects the following changes:

1. Changed 'total capital to risk-weighted assets' to 'total risk-based capital to risk-weighted assets ratio' to better reflect the description of the total risk-based capital ratio.
2. The total risk-based capital to risk-weighted assets ratio has changed to less than 8 percent, but greater than or equal to 6 percent for an Undercapitalized depository.
3. PDP5(B)(2) was updated to include a reference to the additional requirement stated in 3-CCR 701-4 PDP1(B) for an Undercapitalized depository.
4. Removed PDP5(B)(3) containing the 140 percent pledging category for Rule simplification and alignment with the capital categories of: Adequately Capitalized, Undercapitalized, and Significantly Undercapitalized.
5. The collateral requirement for a Significantly Undercapitalized depository has been reduced from 160 percent to 140 percent while still adequately collateralizing public deposits.

The purpose of this rulemaking is to amend 3-CCR 701-4 PDP5(C) to reflect technical language revisions and changes to collateral pledging percentages. The proposed language reflects the following changes:

1. The collateral requirement for a depository with a composite CAMELS rating of 5 has been reduced from 160 percent to 140 percent while still adequately collateralizing public deposits.

The purpose of this rulemaking is to eliminate 3-CCR 701-4 PDP5(D) by removing the requirement for a depository to not accept any additional uninsured public deposits or renew any uninsured public deposits.

The purpose of this rulemaking is to amend 3-CCR 701-4 PDP5(E) (will change to D) to align capital ratios with PCA Capital Guidelines, reflect technical language revisions as well as changes to Banking Board and Division practices. The proposed language reflects the following changes:

1. Revised language from a depository being required to "eliminate all public deposits" to "reducing uninsured public deposits" per a plan and timeframe approved and/or modified by the Banking Board on a case-by-case basis.
2. The total risk-based capital to risk-weighted assets ratio has changed to less than 6 percent for a Significantly Undercapitalized depository.

The purpose of this rulemaking is to amend 3-CCR 701-4 PDP5(F) (will change to E) to reflect a new requirement that a depository must immediately notify the Banking Board when any capital or rating condition within PDP5 is met.

#### ANALYSIS

In the Division's review of 3-CCR 701-4 PDP5, it was determined that revisions were necessary to reflect technical language clean-up and alignment with PCA Capital Guideline ratios. Upon presentation to the Banking Board on May 16, 2019, the Division received feedback from the Banking Board regarding liquidity concerns. Additionally, the Banking Board expressed concerns regarding the divestment of public deposits for depositories meeting the criteria in PDP5(E). The Division made changes to the proposal and presented these changes at the Banking Board meeting on June 20, 2019. The Banking Board approved the proposal and Rule PDP5 was submitted for public comment. During the public comment period, a letter from Shapiro Biegling Barber Otteson LLP, representing the Independent Bankers of Colorado, was received expressing concerns regarding the divestment of public deposits for depositories meeting the criteria in PDP5(E). Upon review of the proposed amendment, it was determined that the intent for the Banking Board to review and modify the divestment plan of uninsured deposits held at such depositories on a case-by-case basis, was not made clear in the proposed language. The Rulemaking hearing was cancelled and the Rule pulled to make clarifications and to fully address the concerns expressed by the Banking Board and within the public comment.

Regarding the Prompt Corrective Action (PCA) guidelines implemented in January 2015, the new capital rule implemented revisions to the regulatory framework to better reflect banks' risk profiles. The PCA capital categories relevant to the proposed rule amendment are as follows:

- Adequately Capitalized: the total risk-based capital to risk-weighted assets ratio is less than 10 percent, but greater than or equal to 8 percent.
- Undercapitalized: the total risk-based capital to risk-weighted assets ratio is less than 8 percent, but greater than or equal to 6 percent.
- Significantly Undercapitalized: the total risk-based capital to risk-weighted assets ratio is less than 6 percent.

Amend 3-CCR 701-4 PDP5(A) to add the definition of "market value" for clarification purposes. The proposed language to the rule is as follows:

1. (A)(2) SHALL READ: "Market value" is the current market value as established in Banking Board Rule PDP4.

Amend 3-CCR 701-4 PDP5(B) to align capital ratios with PCA Capital Guidelines, reflect technical language revisions as well as changes to collateral pledging percentages. PDP5(B)(3) is to be eliminated, moving PDP5(B)(4) to (3). The proposed language to the rule is as follows:

1. (B) SHALL READ: Each eligible public depository (hereinafter "depository") must comply with the following collateral requirements based on the depository's total risk-based capital to risk-weighted assets ratio. The depository is required to pledge the higher of the amount of eligible collateral required under this paragraph or paragraph C below:
2. (B)(1) SHALL READ: If the total risk-based capital to risk-weighted assets ratio of a depository is greater than or equal to 8 percent, the depository shall pledge eligible collateral having a market value at all times in excess of 102 percent of the aggregate of uninsured public deposits held by it.
3. (B)(2) SHALL READ: If the total risk-based capital to risk-weighted assets ratio of a depository is less than 8 percent, but greater than or equal to 6 percent, the depository shall pledge eligible collateral having a market value at all times in excess of 120 percent of the aggregate of uninsured public deposits held by it. The depository must also comply with the requirements of Banking Board Rule PDP1(B).
4. (B)(3) SHALL READ: If the total risk-based capital to risk-weighted assets ratio of a depository is less than 6 percent, the depository shall pledge eligible collateral having a market value at all times in excess of 140 percent of the aggregate of uninsured public deposits held by it. The depository must also comply with the requirements of PDP5(D).

Amend 3-CCR 701-4 PDP5(C) to reflect technical language revisions and changes to collateral pledging percentages. The proposed language to the rule is as follows:

1. (C) SHALL READ: Each depository must comply with the following collateral requirements based on the depository's composite CAMELS rating. The depository is required to pledge the higher of the amount of eligible collateral required under this paragraph or paragraph B above.
2. (C)(1) SHALL READ: Upon a depository's receipt of a final report of examination or other notice that the depository has been assigned a composite CAMELS rating of 4, the depository shall pledge collateral having a market value at all times in excess of 120 percent of the aggregate of uninsured public deposits held by it.
3. (C)(2) SHALL READ: Upon a depository's receipt of a final report of examination or other notice that the depository has been assigned a composite CAMELS rating of 5, the depository shall pledge eligible collateral having a market value at all times in excess of 140 percent of the aggregate of uninsured public deposits held by it. The depository must also comply with the requirements of PDP5(D).

Eliminate 3-CCR 701-4 PDP5(D).

Amend 3-CCR 701-4 PDP5(E) to align capital ratios with PCA Capital Guidelines, reflect technical language revisions as well as changes to the Banking Board and Division's practices. The amendment also reflects the removal of PDP5(D). The removal of (D) moves previous language, (E) to (D). The proposed language to the rule is as follows:

1. (D) SHALL READ: Upon meeting one or both of the following conditions, a depository shall submit to the Banking Board a plan and timeframe for reducing uninsured public deposits. The plan and

timeframe will be approved as submitted or modified by the Banking Board on a case-by-case basis.

2. (D)(1) SHALL READ: If the depository's total risk-based capital to risk-weighted assets ratio is less than 6 percent; or

Amend 3-CCR 701-4 PDP5(F) to reflect changes to the Banking Board and Division's practices. The removal of (D) moves previous language, (F) to (E). The proposed language to the rule is as follows:

1. (E) SHALL READ: Compliance with this rule shall be the responsibility of each depository regardless of the frequency or form of the reports required by the Banking Board. A depository shall immediately notify the Banking Board upon meeting any of the capital and/or rating conditions listed in this Rule.

#### RECOMMENDATION

Based on research by Division staff and Banking Board feedback, it is the recommendation by the Division of Banking that the proposed changes be made to 3-CCR 701-4 PDP5 to reflect technical language revisions, changes made in the Banking Board and Division's practices, changes made to collateral pledging percentages and to align capital ratios with Prompt Corrective Action (PCA) Capital Guidelines.

REFERENCES (*Federal regulations, operating memorandum, interpretive letter, and other background material*)

Colorado Revised Statute.

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

#### STATUTORY AUTHORITY

- 11-101-102. Declaration of policy.
- 11-102-104. Powers and duties of the banking board.
- 11-10.5-106. Designation as eligible public depository.
- 11-10.5-107. Eligible collateral – uninsured public deposits.

#### INCORPORATION BY REFERENCE

I concur:



**Kenneth Boldt**  
State Bank Commissioner

9/26/2019

Date