



Dora
Department of Regulatory Agencies

Division of Banking
Kenneth Boldt
Acting State Bank Commissioner

John W. Hickenlooper
Governor

Barbara J. Kelley
Executive Director

March 31, 2014

**STATE BANKING BOARD
RULE PDP3
PERTAINING TO TITLE 11, ARTICLE 10.5, SECTION 107
COLORADO REVISED STATUTES**

STATEMENT OF BASIS, PURPOSE, AND SPECIFIC AUTHORITY

Statement of Basis

The Public Deposit Protection Act (PDPA) establishes standards and procedures to ensure the preservation and protection of public funds on deposit in a bank that are ineligible for Federal Deposit Insurance Corporation deposit insurance. PDP3 lists the eligible collateral that can be pledged to secure public deposits. On March 20, 2014, the Banking Board adopted an emergency rule revising paragraph C so that it states the eligibility criteria applicable to promissory notes secured by first lien mortgages or deeds of trust on 1-4 family residential real property and eliminating the 50 percent limitation on certain securities in paragraph G of the emergency rule (paragraph E of the proposed final rule.) This final rulemaking adopts those changes.

In addition, the Division recognizes that the current PDP 3 includes old verbiage, outdated descriptions, and illiquid securities. Accordingly, the Division proposes that:

- the definition of eligible US treasury and agency securities be expanded while retaining the five year limitation on Treasury STRIPS;
- Commercial Mortgage-Backed Securities (CMBS) issued by the Government National Mortgage Association, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation be added as eligible collateral; and
- African Development Bonds and discount notes, International Bank for Reconstruction and Development and discount notes, Inter-American Development Bond and discount notes and money market funds that consist entirely of U.S. Government-issued and U.S. Government Agency-issued securities be removed as acceptable collateral.

The proposed revisions meet the criteria for eligible collateral established in Section 11-10.5-107(1)(a)-(f).

Specific Purpose of this Rulemaking

This change will broaden the definition of eligible collateral, eliminate collateral which is difficult to value or is less liquid, update the language of PDP3, and adopt the changes made in the March 20, 2014 emergency rulemaking, while continuing to preserve and protect public funds as required by Section 11-10.5-107, C.R.S.



Rulemaking Authority

Section 11-101-102, C.R.S. Declaration of policy.

(1) It is hereby declared to be the policy of the state of Colorado that, to protect the public interest, the business of all state banks be supervised and regulated in such manner as to:

- (a) Preserve and promote:
 - (I) Sound and constructive competition among financial services institutions;
 - (II) A dual federal and state banking system;
 - (III) The security of deposits;
 - (IV) The safe and sound conduct of the business of state banks; and
 - (V) A statewide safe and sound banking system;
- (b) Seek:
 - (I) Regulatory coordination and cooperation; and
 - (II) Regulatory parity among financial services institutions; and
- (c) Encourage diversity in financial products and services.

Section 11-102-104, C.R.S. Powers and duties of banking board.

(1) The banking board is the policy-making and rule-making authority for the division of banking and has the power to:

- (a) Make, modify, reverse, and vacate rules for the proper enforcement and administration of this code and the "Public Deposit Protection Act", article 10.5 of this title;

Section 11-10.5-102, C.R.S. Legislative declaration.

(1) The general assembly hereby declares that the purpose of this article is to serve the taxpayers and the citizens of Colorado by establishing standards and procedures to ensure the preservation and protection of all public funds held on deposit by a bank that are either not insured by or are in excess of the insured limits of federal deposit insurance, and to ensure the expedited repayment of such funds in the event of default and subsequent liquidation of a bank which holds such deposits.

(2) The general assembly further finds, determines, and declares that the protection of public funds on deposit in banks is a matter of statewide concern and importance and that as such:

- (a) The provisions of this article shall prevail over any local government ordinance or resolution and over any home rule or territorial charter provision in conflict therewith; and
- (b) The requirement that a national bank comply with the provisions of this article neither encroaches upon the prerogatives of a nationally chartered bank nor exceeds the authority of the state of Colorado.

Section 11-10.5-105, C.R.S. Authority of banking board.

The banking board shall have the authority to implement any provision of this article by order and by rule and regulation and may obtain restraining orders and injunctions to prevent violation of or to enforce compliance with the provisions of this article and the orders and rules and regulations issued under such provisions. The authority of the banking board shall be liberally construed to ensure that the purposes of this article are properly implemented.

Section 11-10.5-107, C.R.S. Eligible collateral - uninsured public deposits.

(1) The banking board shall establish by rule and regulation a list of approved instruments and obligations to be used as eligible collateral by an eligible public depository in order to comply with the provisions of this section. As part of its findings, the banking board shall determine that each approved obligation or instrument meets at least the following criteria:

- (a) The obligation or instrument is characterized by attributes of safety, liquidity, and soundness meeting the purposes of this article for the preservation and protection of public funds;

(b) The obligation or instrument, with respect to its market value, shall be marketable or convertible into cash within such time periods as shall be prescribed by the banking board to assure that any claim made pursuant to section 11-10.5-110 is fully and promptly paid;

(c) The standards and relevant factors required to establish and evaluate the current market value of the obligation or instrument are prescribed by the banking board at the time the obligation or instrument is approved for use as eligible collateral, which standards and relevant factors may include statistical standards for deviations from the original market value assigned at the time of approval for use that would result in an automatic deletion from the list of approved eligible collateral;

(d) The market value of each obligation or instrument is verified at least monthly, unless the banking board prescribes a different period for a particular obligation or instrument;

(e) The banking board has at its disposal adequate resources to monitor and evaluate the market value of the obligation or instrument; and

(f) The obligation or instrument satisfies such other criteria as the banking board may establish.

(2) (a) Except as provided in subsection (4) of this section, the banking board shall not treat any eligible public depository differently than any other eligible public depository.

(b) In promulgating the list of eligible collateral pursuant to subsection (1) of this section, the banking board, within the bounds of safety and soundness, shall not establish market values or other evaluation criteria which are disproportionately more restrictive for banks than comparable market values or evaluation criteria for any other class of eligible public depositories operating under this article or any other state law. It is the intent of the general assembly that, to the extent practicable, competitive parity among eligible public depositories which existed under applicable law in effect prior to September 1, 1989, should be maintained.

(3) The banking board shall establish procedures to notify each eligible public depository in a timely manner of the obligations and instruments that have been approved for use as eligible collateral and of obligations and instruments that have been deleted from the list of approved eligible collateral. Any eligible public depository utilizing as collateral an obligation or instrument which has been deleted from the list of approved eligible collateral shall, within three business days of receiving notice of the deletion or within such longer period as prescribed by the banking board, remove it from its portfolio of collateral and substitute sufficient other obligations or instruments that are approved for use as eligible collateral to properly secure public funds as required by this article.

(4) (a) The banking board shall by rule establish criteria and procedures for reducing or removing any uninsured public funds deposited in an eligible public depository if said depository fails to comply with the capital or safety and soundness standards established by the banking board.

(b) The banking board shall require an eligible public depository to increase, substitute, add to, or modify the amount or type of eligible collateral held to secure any uninsured public funds so that the collateral is adequate to fully protect the public funds if the capital or financial condition of the eligible public depository fails to comply with the capital or safety and soundness standards established by the banking board. The banking board shall establish such procedures as may be necessary to ensure that all collateral held pursuant to an action taken under this paragraph (b) is characterized by the highest degree of marketability and liquidity so that, in the event of default, all public deposits may be promptly and fully repaid.

(5) As an ongoing requirement of designation as an eligible public depository, any such depository shall pledge collateral having a market value in excess of one hundred two percent of the aggregate uninsured public deposits.

(6) An eligible public depository shall remove any obligation or instrument pledged as eligible collateral if the banking board determines that the obligation or instrument has failed in some manner to meet the criteria required by this section and shall substitute another obligation or instrument of eligible collateral that is satisfactory to the banking board.



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**BEFORE THE
COLORADO STATE BANKING BOARD**

IN THE MATTER OF)
) **NOTICE OF PROPOSED RULEMAKING**
RULE AMENDMENT)

I. Notice of hearing

PLEASE BE ADVISED THAT, as required by Section 24-4-103, C.R.S., of the State Administrative Procedures Act, the Colorado State Banking Board (Banking Board) hereby gives notice of proposed rulemaking. A hearing is scheduled for May 15, 2014, commencing at 10:00 a.m., at the Division of Banking (Division), DORA 975 Conference Room, 1560 Broadway, Suite 975, Denver, Colorado.

II. Purpose of the proposed rulemaking

The purpose of the hearing is to hear comments concerning the proposed amendment of Banking Board Rule PDP3 – List of Approved Eligible Collateral Instruments and Obligations. The proposed amendments to PDP3 will broaden the definition of eligible collateral, eliminate collateral which is difficult to value or is less liquid, update the language of PDP3, and adopt the changes made in the March 20, 2014 emergency rulemaking, while continuing to preserve and protect public funds as required by Section 11-10.5-107, C.R.S.

III. Statutory authority for proposed rulemaking

The proposed amendment of the rule is being held under the authority given the Banking Board by the Colorado Banking Code in accordance with Sections 11-101-102, 11-102-104(1), 11-10.5-102, 11-10.5-105, and 11-10.5-107, C.R.S.

IV. Opportunity to testify and submit written comments

Any interested person(s) has the right to submit written comments or data, view, or argument. It is requested that written information be filed with the Division no later than May 5, 2014. To submit written comments, please contact Diana Gutierrez, Banking Board Secretary, at diana.gutierrez@state.co.us. In addition, any interested person(s) has the right to make an oral presentation at the Hearing, unless the Banking Board deems any oral presentation unnecessary.

SUBMITTED ON BEHALF OF THE
COLORADO STATE BANKING BOARD


Kenneth Boldt
Acting State Bank Commissioner

