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Department of Regulatory Agencies

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**STATE BANKING BOARD
RULE CB101.60 and IB57
PERTAINING TO THE COLORADO BANKING CODE**

STATEMENT OF BASIS AND PURPOSE

Amendment to Banking Board Rule CB101.60 and IB57 Investments in Community Development Projects is necessary as the Office of the Comptroller of the Currency (OCC) allows national banks to hold aggregate outstanding investments in community development and public welfare investments up to 5 percent of its capital and surplus. If the bank is adequately capitalized or well-capitalized, the OCC may allow the bank to invest up to 15 percent of capital and surplus in such projects. There are no sub-limits for individual projects.

Colorado state-chartered banks may hold aggregate outstanding investments in community development projects up to 5 percent of its total capital and may invest up to 2 percent of total capital in any one project.

The Division of Banking is recommending that the investment limitation be changed in order to maintain parity with nationally chartered banks.

Investments in Community Development Projects AND OTHER PUBLIC WELFARE
INVESTMENTS [Sections 11-108-201(1) and (4), C.R.S.]

A. ~~Occasionally state banks are asked to contribute to a community development corporation wherein the bank will receive an equity interest in or evidence of debt that may have value in the future, but that is clearly not a bankable asset by ordinary standards. Such "investment" may be made and charged off as a contribution. If the bank wishes to carry the investment as an asset, the Division will treat it as permissible under Sections 11-103-101(4) and 11-105-304(7), C.R.S., provided that the following conditions are met:~~

- ~~1. The project must be of a predominantly civic, community, or public nature and not merely private and entrepreneurial.~~
- ~~2. The bank's investment in any one project does not exceed 2 percent of its total capital, as defined in Banking Board Rule CB101.52, Paragraph (B)(33), and its aggregate investment in all such projects does not exceed 5 percent of its total capital.~~
- ~~3. Such investments are accounted for on the bank's books under "other assets."~~
- ~~4. The project has received approval that it meets the above conditions from the Banking Board or the Office of the Comptroller of the Currency.~~

A STATE BANK MAY MAKE INVESTMENTS AS DESCRIBED IN PARAGRAPH (C), CONSISTENT WITH SAFETY AND SOUNDNESS. THIS RULE PROVIDES THE STANDARDS AND PROCEDURES THAT APPLY TO THESE INVESTMENTS.

B. ~~Certain institutions are prohibited from participating in this activity as follows:~~

- ~~1. No bank participating in the joint Federal Reserve Board-Federal Deposit Insurance Corporation-Office of the Comptroller of the Currency capital forbearance plan shall engage in such activity.~~
- ~~2. No bank that has a regulatory composite examination rating (CAMELS) of "4" or "5" from any regulator shall engage in such activity.~~
- ~~3. No bank that has a regulatory composite examination rating (CAMELS) of "3" from any regulator and that is subject to a memorandum of understanding, cease and desist order,~~

~~written agreement imposed by or entered into with any regulator of the bank shall engage in such activity without the express written approval of the Banking Board.~~

B. DEFINITIONS.

FOR THE PURPOSES OF THIS RULE:

1. "ADEQUATELY CAPITALIZED" HAS THE SAME MEANING AS 12 CFR §§ 325.103(B)(2) AND 208.43(B)(2).
2. "CAPITAL AND SURPLUS" MEANS:
 - A. A BANK'S TIER 1 AND TIER 2 CAPITAL CALCULATED UNDER THE RISK-BASED CAPITAL STANDARDS UNDER IB47, AS REPORTED IN THE BANK'S CONSOLIDATED REPORT OF CONDITION AND INCOME; PLUS
 - B. THE BALANCE OF A BANK'S ALLOWANCE FOR LOAN AND LEASE LOSSES NOT INCLUDED IN THE BANK'S TIER 2 CAPITAL, FOR PURPOSES OF THE CALCULATION OF RISK-BASED CAPITAL UNDER IB47, AS REPORTED IN THE BANK'S CONSOLIDATED REPORT OF CONDITION AND INCOME.
3. "COMMUNITY AND ECONOMIC DEVELOPMENT ENTITY" (CEDE) MEANS AN ENTITY THAT MAKES INVESTMENTS OR CONDUCTS ACTIVITIES THAT PRIMARILY BENEFIT LOW- AND MODERATE-INCOME INDIVIDUALS, LOW- AND MODERATE-INCOME AREAS, OR OTHER AREAS TARGETED BY A GOVERNMENTAL ENTITY FOR REDEVELOPMENT, OR WOULD RECEIVE CONSIDERATION AS "QUALIFIED INVESTMENTS" UNDER THE INVESTMENT TEST OF THE COMMUNITY REINVESTMENT ACT. THE FOLLOWING IS A NON-EXCLUSIVE LIST OF EXAMPLES OF THE TYPES OF ENTITIES THAT MAY BE CEDES:
 - A. COMMUNITY DEVELOPMENT CORPORATION SUBSIDIARIES;
 - B. PRIVATE OR NONBANK COMMUNITY DEVELOPMENT CORPORATIONS;
 - C. CDFI FUND-CERTIFIED COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS OR COMMUNITY DEVELOPMENT ENTITIES;
 - D. LIMITED LIABILITY COMPANIES OR LIMITED PARTNERSHIPS;
 - E. COMMUNITY DEVELOPMENT LOAN FUNDS OR LENDING CONSORTIA;
 - F. COMMUNITY DEVELOPMENT REAL ESTATE INVESTMENT TRUSTS;
 - G. BUSINESS DEVELOPMENT COMPANIES;
 - H. COMMUNITY DEVELOPMENT CLOSED-END MUTUAL FUNDS;
 - I. NON-DIVERSIFIED CLOSED-END INVESTMENT COMPANIES; AND

J. COMMUNITY DEVELOPMENT VENTURE OR EQUITY CAPITAL FUNDS.

4. "COMMUNITY DEVELOPMENT PROJECT (CD PROJECT)": MEANS A PROJECT TO MAKE AN INVESTMENT THAT MEETS THE REQUIREMENTS OF PARAGRAPH (C) OF THIS RULE.
5. "ELIGIBLE BANK" MEANS, FOR PURPOSES OF PARAGRAPH (C) OF THIS RULE, A STATE-CHARTERED BANK THAT:
 - A. IS WELL CAPITALIZED;
 - B. HAS A COMPOSITE RATING OF 1 OR 2 UNDER THE UNIFORM FINANCIAL INSTITUTIONS RATING SYSTEM;
 - C. HAS A COMMUNITY REINVESTMENT ACT (CRA) RATING OF "OUTSTANDING" OR SATISFACTORY;" AND
 - D. IS NOT SUBJECT TO A CEASE AND DESIST ORDER, CONSENT ORDER, FORMAL WRITTEN AGREEMENT OR PROMPT CORRECTIVE ACTION DIRECTIVE (SEE SECTION 38 OF THE FEDERAL DEPOSIT INSURANCE ACT) OR, IF SUBJECT TO ANY SUCH ORDER, AGREEMENT OR DIRECTIVE, IS INFORMED IN WRITING BY THE DIVISION OF BANKING THAT THE BANK MAY BE TREATED AS AN "ELIGIBLE BANK" FOR PURPOSES OF THIS RULE.
6. "LOW-INCOME" MEANS AN INDIVIDUAL INCOME THAT IS LESS THAN 50 PERCENT OF THE AREA MEDIAN INCOME, OR A MEDIAN FAMILY INCOME THAT IS LESS THAN 50 PERCENT, IN THE CASE OF A GEOGRAPHY.
7. "MODERATE-INCOME" MEANS AN INDIVIDUAL INCOME THAT IS AT LEAST 50 PERCENT AND LESS THAN 80 PERCENT OF THE AREA MEDIAN INCOME, OR A MEDIAN FAMILY INCOME THAT IS AT LEAST 50 AND LESS THAN 80 PERCENT, IN THE CASE OF A GEOGRAPHY.
8. "SMALL BUSINESS" MEANS A BUSINESS, INCLUDING A SMALL FARM OR MINORITY-OWNED SMALL BUSINESS, THAT MEETS THE QUALIFICATIONS FOR SMALL BUSINESS ADMINISTRATION DEVELOPMENT COMPANY OR SMALL BUSINESS INVESTMENT COMPANY LOAN PROGRAMS IN 13 CFR 121.301.
9. "WELL CAPITALIZED" HAS THE SAME MEANING AS IN 12 CFR §§ 325.103(b)(1) AND 208.43(b)(1).

- C. PUBLIC WELFARE INVESTMENTS A BANK OR BANK SUBSIDIARY MAY MAKE AN INVESTMENT DIRECTLY OR INDIRECTLY UNDER THIS RULE IF THE INVESTMENT PRIMARILY BENEFITS LOW- AND MODERATE-INCOME INDIVIDUALS, LOW- AND MODERATE-INCOME AREAS, OR OTHER AREAS TARGETED BY A GOVERNMENTAL ENTITY FOR REDEVELOPMENT, OR THE INVESTMENT WOULD RECEIVE CONSIDERATION UNDER THE INVESTMENT TEST OF THE COMMUNITY REINVESTMENT ACT AS A "QUALIFIED INVESTMENT."

D. INVESTMENT LIMITS

1. A BANK'S AGGREGATE OUTSTANDING INVESTMENTS UNDER THIS RULE MAY NOT EXCEED 5 PERCENT OF ITS CAPITAL AND SURPLUS, UNLESS THE BANK IS AT LEAST ADEQUATELY CAPITALIZED AND THE DIVISION OF BANKING DETERMINES, BY WRITTEN APPROVAL OF A WRITTEN REQUEST BY THE BANK TO EXCEED THE 5 PERCENT LIMIT, THAT A HIGHER AMOUNT OF INVESTMENTS WILL NOT POSE A SIGNIFICANT RISK TO THE DEPOSIT INSURANCE FUND. IN NO CASE MAY A BANK'S AGGREGATE OUTSTANDING INVESTMENTS UNDER THIS PART EXCEED 15 PERCENT OF ITS CAPITAL AND SURPLUS.
2. A BANK MAY NOT MAKE AN INVESTMENT UNDER THIS PART THAT WOULD EXPOSE THE BANK TO UNLIMITED LIABILITY.

E. AFTER-THE-FACT NOTICE AND PRIOR APPROVAL PROCEDURES

1. AFTER-THE-FACT NOTICE. SUBJECT TO PARAGRAPH (D)(1) OF THIS RULE, AN ELIGIBLE BANK MAY MAKE AN INVESTMENT AUTHORIZED BY THIS RULE WITHOUT PRIOR NOTIFICATION TO, OR APPROVAL BY, THE COMMISSIONER IF THE BANK FOLLOWS THE AFTER-THE-FACT NOTICE PROCEDURES DESCRIBED IN THIS PARAGRAPH.
 - A. AN ELIGIBLE BANK SHALL PROVIDE AN AFTER-THE-FACT NOTIFICATION OF AN INVESTMENT, WITHIN 10 BUSINESS DAYS AFTER IT MAKES THE INVESTMENT. THE AFTER-THE-FACT NOTICE MUST INCLUDE:
 - (1) A DESCRIPTION OF THE BANK'S INVESTMENT;
 - (2) THE AMOUNT OF THE INVESTMENT;
 - (3) THE PERCENTAGE OF THE BANK'S CAPITAL AND SURPLUS REPRESENTED BY THE INVESTMENT THAT IS THE SUBJECT OF THE NOTICE AND BY THE BANK'S AGGREGATE OUTSTANDING PUBLIC WELFARE INVESTMENTS AND COMMITMENTS, INCLUDING THE INVESTMENT THAT IS THE SUBJECT OF THE NOTICE; AND
 - (4) A STATEMENT CERTIFYING THAT THE INVESTMENT COMPLIES WITH THE REQUIREMENTS OF PARAGRAPHS (C) AND (D) OF THIS RULE.
 - B. A BANK THAT IS NOT AN ELIGIBLE BANK BUT THAT IS AT LEAST ADEQUATELY CAPITALIZED, AND HAS A COMPOSITE RATING OF AT LEAST 3 WITH IMPROVING TRENDS

UNDER THE UNIFORM FINANCIAL INSTITUTIONS RATING SYSTEM, MAY SUBMIT A LETTER TO THE DIVISION OF BANKING REQUESTING AUTHORITY TO SUBMIT AFTER-THE-FACT NOTICES OF ITS INVESTMENTS. THE COMMISSIONER CONSIDERS THESE REQUESTS ON A CASE-BY-CASE BASIS.

C. NOTWITHSTANDING THE PROVISIONS OF THIS PARAGRAPH, A BANK MAY NOT SUBMIT AN AFTER-THE-FACT NOTICE OF AN INVESTMENT IF:

- (1) THE INVESTMENT INVOLVES PROPERTIES CARRIED ON THE BANK'S BOOKS AS "OTHER REAL ESTATE OWNED," OR
- (2) THE DIVISION OF BANKING DETERMINES THAT THE INVESTMENT IS INAPPROPRIATE FOR AFTER-THE-FACT NOTICE.

2. INVESTMENTS REQUIRING PRIOR APPROVAL. IF A BANK DOES NOT MEET THE REQUIREMENTS FOR AFTER-THE-FACT INVESTMENT NOTIFICATION SET FORTH IN THIS PARAGRAPH, THE BANK MUST SUBMIT AN INVESTMENT PROPOSAL TO THE DIVISION OF BANKING.

A. THE BANK'S INVESTMENT PROPOSAL MUST INCLUDE:

- (1) A DESCRIPTION OF THE BANK'S INVESTMENT;
- (2) THE AMOUNT OF THE INVESTMENT;
- (3) THE PERCENTAGE OF THE BANK'S CAPITAL AND SURPLUS REPRESENTED BY THE PROPOSED INVESTMENT AND BY THE BANK'S AGGREGATE OUTSTANDING PUBLIC WELFARE INVESTMENTS AND COMMITMENTS, INCLUDING THE PROPOSED INVESTMENT; AND
- (4) A STATEMENT CERTIFYING THAT THE INVESTMENT COMPLIES WITH THE REQUIREMENTS OF PARAGRAPHS (C) AND (D) OF THIS RULE.

B. IN REVIEWING A PROPOSAL, THE DIVISION OF BANKING CONSIDERS THE FOLLOWING FACTORS AND OTHER AVAILABLE INFORMATION:

- (1) WHETHER THE INVESTMENT SATISFIES THE REQUIREMENTS OF PARAGRAPHS (C) AND (D) OF THIS RULE;
- (2) WHETHER THE INVESTMENT IS CONSISTENT WITH THE SAFE AND SOUND OPERATION OF THE BANK; AND
- (3) WHETHER IN INVESTMENT IS CONSISTENT WITH THE REQUIREMENTS OF THIS RULE AND DIVISION OF BANKING POLICIES.

C. UNLESS OTHERWISE NOTIFIED IN WRITING BY THE COMMISSIONER, AND SUBJECT TO PARAGRAPH (D)(1), THE PROPOSED INVESTMENT IS DEEMED APPROVED AFTER 30

CALENDAR DAYS FROM THE DATE ON WHICH THE DIVISION OF BANKING RECEIVES THE BANK'S INVESTMENT PROPOSAL.

- D. THE DIVISION OF BANKING, BY NOTIFYING THE BANK, MAY EXTEND ITS PERIOD FOR REVIEWING THE INVESTMENT PROPOSAL. IF SO NOTIFIED, THE BANK MAY MAKE THE INVESTMENT ONLY WITH THE COMMISSIONER'S WRITTEN APPROVAL.
- E. THE COMMISSIONER MAY IMPOSE ONE OR MORE CONDITIONS IN CONNECTION WITH ITS APPROVAL OF AN INVESTMENT UNDER THIS RULE.

F. EXAMPLES OF QUALIFYING PUBLIC WELFARE INVESTMENTS

1. INVESTMENTS THAT PRIMARILY SUPPORT THE FOLLOWING TYPES OF ACTIVITIES ARE EXAMPLES OF INVESTMENTS THAT MEET THE REQUIREMENTS OF PARAGRAPH (C):

A. AFFORDABLE HOUSING ACTIVITIES, INCLUDING:

- (1) INVESTMENTS IN AN ENTITY THAT FINANCES, ACQUIRES, DEVELOPS, REHABILITATES, MANAGES, SELLS, OR RENTS HOUSING PRIMARILY FOR LOW- AND MODERATE-INCOME INDIVIDUALS;
- (2) INVESTMENTS IN A PROJECT THAT DEVELOPS OR OPERATES TRANSITIONAL HOUSING FOR THE HOMELESS;
- (3) INVESTMENTS IN A PROJECT THAT DEVELOPS OR OPERATES SPECIAL NEEDS HOUSING FOR DISABLED OR ELDERLY LOW- AND MODERATE-INCOME INDIVIDUALS; AND
- (4) INVESTMENTS IN A PROJECT THAT QUALIFIES FOR THE FEDERAL LOW-INCOME HOUSING TAX CREDIT;

B. ECONOMIC DEVELOPMENT AND JOB CREATION INVESTMENTS, INCLUDING:

- (1) INVESTMENTS THAT FINANCE SMALL BUSINESSES (INCLUDING EQUITY OR DEBT FINANCING AND INVESTMENTS IN AN ENTITY THAT PROVIDES LOAN GUARANTEES) THAT ARE LOCATED IN LOW- AND MODERATE-INCOME AREAS OR OTHER TARGETED REDEVELOPMENT AREAS OR THAT PRODUCE OR RETAIN PERMANENT JOBS, THE MAJORITY OF WHICH ARE HELD BY LOW- AND MODERATE-INCOME INDIVIDUALS; AND
- (2) INVESTMENTS THAT FINANCE SMALL BUSINESSES OR SMALL FARMS, INCLUDING MINORITY- AND WOMEN-OWNED SMALL BUSINESS OR SMALL FARMS, THAT , ALTHOUGH NOT LOCATED IN LOW- AND MODERATE-INCOME AREAS OR

TARGETED REDEVELOPMENT AREAS, CREATE A SIGNIFICANT NUMBER OF PERMANENT JOBS FOR LOW- AND MODERATE-INCOME INDIVIDUALS;

- (3) INVESTMENTS IN AN ENTITY THAT ACQUIRES, DEVELOPS, REHABILITATES, MANAGES, SELLS, OR RENTS COMMERCIAL OR INDUSTRIAL PROPERTY THAT IS LOCATED IN A LOW- AND MODERATE-INCOME AREA OR TARGETED REDEVELOPMENT AREA AND OCCUPIED PRIMARILY BY SMALL BUSINESS, OR THAT IS OCCUPIED PRIMARILY BY SMALL BUSINESSES THAT PRODUCE OR RETAIN PERMANENT JOBS, THE MAJORITY OF WHICH ARE HELD BY LOW- AND MODERATE-INCOME INDIVIDUALS; AND

- (4) INVESTMENTS IN LOW- AND MODERATE-INCOME AREAS OR TARGETED REDEVELOPMENT AREAS THAT PRODUCE OR RETAIN PERMANENT JOBS, THE MAJORITY OF WHICH ARE HELD BY LOW- AND MODERATE-INCOME INDIVIDUALS;

C. INVESTMENTS IN CEDEs, INCLUDING:

- (1) INVESTMENTS IN A COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION AS DEFINED IN 12 U.S.C. 4742(5); AND
- (2) INVESTMENTS IN A CEDE THAT IS ELIGIBLE TO RECEIVE NEW MARKETS TAX CREDITS UNDER 26 U.S.C. 45D.

D. OTHER PUBLIC WELFARE INVESTMENTS, INCLUDING:

- (1) INVESTMENTS THAT PROVIDE CREDIT COUNSELING, FINANCIAL LITERACY, JOB TRAINING, COMMUNITY DEVELOPMENT RESEARCH, AND SIMILAR TECHNICAL ASSISTANCE FOR NON-PROFIT COMMUNITY DEVELOPMENT ORGANIZATIONS, LOW- AND MODERATE-INCOME INDIVIDUALS OR AREAS OR TARGETED REDEVELOPMENT AREAS, OR SMALL BUSINESSES, INCLUDING MINORITY- AND WOMEN-OWNED SMALL BUSINESSES, LOCATED IN LOW- AND MODERATE-INCOME AREAS OR THAT PRODUCE OR RETAIN PERMANENT JOBS, THE MAJORITY OF WHICH ARE HELD BY LOW- AND MODERATE-INCOME INDIVIDUALS;
- (2) INVESTMENTS OF A TYPE APPROVED BY THE FEDERAL RESERVE BOARD UNDER 12 CFR 208.22 THAT ARE CONSISTENT WITH THE REQUIREMENTS OF PARAGRAPH (C) OF THIS RULE;
- (3) INVESTMENTS OF A TYPE DETERMINED BY THE DIVISION OF BANKING TO BE PERMISSIBLE UNDER THIS RULE; AND

- (4) INVESTMENTS IN MINORITY- AND WOMEN-OWNED DEPOSITORY INSTITUTIONS THAT SERVE PRIMARILY LOW- AND MODERATE-INCOME INDIVIDUALS OR LOW- AND MODERATE-INCOME AREAS OR TARGETED REDEVELOPMENT AREAS.

G. RECORDS AND REMEDIAL ACTION

1. RECORDS. EACH BANK SHALL MAINTAIN IN ITS FILES INFORMATION ADEQUATE TO DEMONSTRATE THAT ITS INVESTMENTS MEET THE STANDARDS SET OUT IN PARAGRAPH (C) OF THIS RULE, AND THAT THE BANK IS OTHERWISE IN COMPLIANCE WITH THE REQUIREMENTS OF THIS RULE.
2. REMEDIAL ACTION. IF THE DIVISION OF BANKING FINDS THAT AN INVESTMENT UNDER THIS PART IS IN VIOLATION OF LAW OR REGULATION, IS INCONSISTENT WITH THE SAFE AND SOUND OPERATION OF THE BANK, OR POSES A SIGNIFICANT RISK TO A FEDERAL DEPOSIT INSURANCE FUND, THE BANK SHALL TAKE APPROPRIATE REMEDIAL ACTION AS DETERMINED BY THE COMMISSIONER.