

AR1**Appeal of a Material Supervisory Determination** [Section 11-102-203.5, C.R.S.]

A. Definitions

1. "Appellant." The institution filing an appeal of a material supervisory determination. Colorado state-chartered commercial banks, industrial banks, and trust companies are eligible institutions and may appeal a material supervisory determination.
2. "Initial Appeal." The first appeal of a material supervisory determination. The initial appeal is reviewed by the Commissioner.
3. "Material Supervisory Determination." For purposes of this rule, "material supervisory determination" is defined as a determination involving:
 - a. Examination ratings, including safety and soundness composite camels ratings, information technology ratings, and trust department ratings;
 - b. The adequacy of loan loss reserve provisions;
 - c. Disputed asset classifications exceeding ten percent of total capital;
 - d. Violations of law or regulation; and
 - e. Other determinations that may have an affect on an institution's capital, earnings, operating flexibility, its capital category for prompt corrective action purposes, or that otherwise affect the nature and level of supervisory oversight of the institution.

A determination may not be appealed until it has been received in writing by the appellant. A decision related to formal enforcement action may not be appealed under this Rule. A material supervisory determination remains in effect while under appeal, and until such time as it is modified or overturned through the appeal process.

4. "Subsequent Appeal." Any appeal of the findings of a prior appeal. Subsequent appeals are reviewed by the Banking Board.

B. Procedures for Filing An Appeal

1. An appeal must be filed in writing with the Secretary to the Colorado State Bank Commissioner at 1560 Broadway, Suite 1175, Denver, Colorado 80202, within sixty (60) calendar days of the appellant's receipt of the written material supervisory determination. In order to be determined complete by the Commissioner, an appeal must include a certified copy of the minutes of the meeting at which the appellant's board of directors approved filing the appeal. If the appellant wishes to present oral testimony, a request to do so should be contained in the appeal.
2. The written appeal must contain all the facts and information the appellant intends to have considered in deciding the appeal, but should not include information not available to the Division of Banking at the time the material supervisory determination being appealed was made.
3. An appellant may request an extension of time for filing an appeal by sending a letter detailing the reason(s) for the request to the Commissioner within the sixty (60) day period for filing appeals. The request shall indicate why a complete appeal cannot be filed within sixty (60) calendar days from receipt of the material supervisory determination, and shall indicate the date by which the appellant will file the appeal. The Commissioner may grant requests for extensions as circumstances warrant.

C. Procedures for Reviewing Appeals

1. The Commissioner shall ensure that a letter acknowledging receipt of the appeal is sent to the appellant within five (5) business days of receipt of the appeal. The letter will acknowledge receipt of the appeal and inform the appellant when a determination as to completeness will be made. In addition, the Commissioner will provide the appellant with a copy of this Rule.
2. The Commissioner shall notify the person(s) who made the material supervisory determination under appeal of the receipt of the appeal, and provide that person(s) with a copy of the appeal. The person(s) who made the determination will be given ten (10) business days to gather documentation related to the material supervisory determination under appeal and to provide additional written clarification of the matter under appeal.
3. Within five (5) business days of receipt of the appeal, the Commissioner will review the appeal to determine if it is complete, if it is clear as to the matter being appealed and the basis for the appeal, and if it concerns a material supervisory determination. If the Commissioner determines that minor deficiencies in information or clarity exist in the appeal, he/she will contact the appellant by letter and request that specific additional documentation be forwarded to the Commissioner within ten (10) business days.
4. If the information is not received within the stated timeframe, the Commissioner may return the appeal to the appellant together with a letter notifying the appellant of the deficiencies and stating that the appeal may be refiled within thirty (30) calendar days.
5. If the Commissioner determines that the appeal is substantially deficient in terms of clarity or information or does not concern a material supervisory determination, he/she will return the appeal to the appellant together with a letter outlining the deficiencies and stating that the appeal may be refiled within thirty (30) calendar days. If the appellant made the request to provide oral testimony to the Commissioner, the appeal will not be deemed complete until the later of either the business day after all oral testimony has been heard or additional written information is received from the appellant, if such information is requested by the Commissioner.
6. When the Commissioner determines that the appeal is complete, he/she will notify the appellant that a complete appeal was received. Upon the determination that the appeal is complete, the Commissioner shall notify the Banking Board of the date of receipt of a complete appeal and the date a final written decision is due. The Commissioner shall request that Division of Banking staff provide any views on the matter under appeal and he/she shall provide a date by which such information must be received.
7. If the appeal involves a joint material supervisory determination with another regulatory agency, the Commissioner shall provide a copy of the complete appeal to that agency upon determination that the appeal is complete. The Commissioner will indicate the date of receipt of a complete appeal and the date a final decision is required. The other agency will be provided an opportunity to comment on the appeal in advance of a final decision.
8. Within sixty (60) calendar days of receipt of a complete appeal, the Commissioner may, at his/her sole discretion, solicit the views of the appellant, any Division of Banking staff involved in the determination under appeal, Attorney General staff, and the staff of other supervisory agencies. In addition, the Commissioner may conduct other forms of independent research or investigation as he/she deems necessary to decide the matter under appeal.
9. The Commissioner shall issue written findings within ninety (90) calendar days of receiving the complete appeal, unless the appellant and the Commissioner jointly agree to extend the time for a decision. The written decision shall set forth the basis for the

Commissioner's conclusions, including the scope of the review, and appropriate citations to legal authority, to Banking Board Rules, to Division of Banking policies, and to documentation provided by the appellant or the Division of Banking staff.

10. The Commissioner shall send the written decision to the appellant by certified mail and will provide copies to the person(s) who made the material supervisory determination.

D. Subsequent Appeal to the Colorado State Banking Board

1. An appellant may appeal an adverse determination by the Commissioner to the Banking Board within thirty (30) calendar days of the appellant's receipt of the adverse decision. This subsequent appeal shall include a certified copy of the minutes of the board of directors' meeting at which the subsequent appeal was authorized.
2. The appeal shall be filed with the Secretary to the Colorado State Banking Board at 1560 Broadway, Suite 1175, Denver, Colorado 80202, and must include all facts and information that the appellant intends for the Banking Board to consider. The Banking Board Secretary shall forward a copy of the appeal to the chairman of the Banking Board within five (5) business days after receipt of the appeal.
3. The Chairman of the Banking Board shall review the appeal for informational completeness and clarity as to the matter under appeal and shall notify the appellant of any deficiencies, consistent with the procedures for initial appeals.
4. The Chairman of the Banking Board shall obtain the record of the initial appeal from the Commissioner and provide the Commissioner with a copy of the subsequent appeal. If the appeal raises issues not addressed in the initial appeal, the person(s) who made the material supervisory determination under appeal shall notify the Chairman of the Banking Board. The Banking Board Chairman shall provide a reasonable period of time for the person(s) who made the material supervisory determination to provide a written response to the new material.
5. When the Chairman determines that the subsequent appeal is complete, he/she shall:
 - a. Notify the appellant of receipt of a complete subsequent appeal and of the due date for a final written determination;
 - b. Notify the Banking Board members of the date of the Banking Board meeting at which the subsequent appeal will be discussed and decided;
 - c. Send a copy of the complete subsequent appeal file and the complete initial appeal file to each member of the Banking Board, and
 - d. Provide a copy of the subsequent appeal file to any other regulatory agency that may have participated in the underlying material supervisory determination, along with notice of the date a final determination is required, and the due date for receipt of that agency's comments.
6. The Banking Board shall hear oral testimony from the appellant, if the appellant intends to present such testimony, within ninety (90) days of receipt of the complete subsequent appeal; and shall issue written findings within one hundred eighty (180) calendar days of receiving the complete subsequent appeal, unless the appellant and the Banking Board jointly agree to extend the time for decision.
7. The Banking Board shall send the written decision to the appellant by certified mail and will provide a copy to the Commissioner.

- E. Failure to comply with the procedures of this Rule shall result in a waiver of subsequent appeal rights and judicial review of a material supervisory determination.

F. Protection of Appellant from Retaliation

1. Regardless of the outcome of an appeal, the person(s) who directly participated in the supervisory determination subject to appeal shall not participate in matters affecting the appellant for at least one examination cycle, but in no case for a period less than one year after the final decision of an appeal filed by the appellant. In addition, in cases where the material supervisory determination is overturned on appeal, the person(s) materially participating in the determination shall not participate in matters affecting the appellant for one year, or such longer period as the Commissioner determines to be appropriate. The Commissioner, at his/her discretion, may extend further the recusal period whenever such an extension is determined to be appropriate.
2. Eligible institutions that believe that they have suffered retaliation as the result of an Appeal may contact the Chairman of the Colorado State Banking Board at 1560 Broadway, Suite 1175, Denver, Colorado 80202.

Promulgated Effective December 30, 2004

Implements the supervisory determination appeal process, including timeframes, institutions eligible to appeal, and safeguards against retaliation of a material supervisory determination.