

- A. An industrial bank may merge with another in the manner provided in this Rule.
1. Upon approval of the Banking Board, banks may be merged with, or converted into, a resulting state bank as prescribed in Section 11-103-701, C.R.S.; except that the action by a constituent national bank shall be taken in the manner prescribed by, and shall be subject to, any limitation or requirements imposed by any law of the United States which shall also govern the rights of its dissenting shareholders.
 2. Nothing in the law of this State shall restrict the right of a state bank to merge with, or convert into, a resulting national bank. The action to be taken by a constituent state bank and its rights and liabilities and those of its shareholders shall be the same as those prescribed for national banks at the time of the action by the applicable laws of the United States and not by the laws of this State.
 3. Any such merger shall constitute an amendment to the articles of incorporation of the surviving bank.
- B. Prior to any such merger, the industrial banks desiring to merge shall comply with the requirements set forth in Section 11-103-702, C.R.S., as follows:
1. The board of directors of an industrial bank shall approve a plan of merger setting forth:
 - a. The names and locations of the industrial banks proposing to merge and the name and location of the surviving bank into which they propose to merge;
 - b. With respect to the resulting bank, the name and the location of each proposed office; the name and residence of each director to serve until the next annual meeting of the stockholders; the name and residence of each officer; the amount of capital, the number of shares, and the par value of each share; whether preferred stock is to be issued and the amount terms and preferences; the amendments to the charter and bylaws;
 - c. The terms and conditions of the proposed merger;
 - d. The terms for the exchange of shares of the constituent bank for those of the resulting bank;
 - e. A statement of any changes in the articles of incorporation of the surviving bank to be effected by such merger;
 - f. A statement that the agreement is subject to approval by the Banking Board and by the stockholders of each constituent bank;
 - g. Provisions governing the manner of disposing of the shares of the resulting state bank not taken by dissenting shareholders of constituent banks; and
 - h. Such other provisions as the Banking Board may require to enable it to discharge its duties with respect to the merger.
 2. After approving the plan of merger, the board of directors of the banks shall submit the plan to the shareholders for a vote.
 3. To be effective, a merger must be approved by the stockholders of each constituent state bank by a vote of two-thirds of the outstanding voting stock, at a meeting called to consider such action, which vote shall constitute the adoption of the charter and bylaws of the resulting state bank, including the amendments set forth in the merger agreement.

- a. The notice of the meeting of the stockholders shall state that dissenting stockholders will be entitled to payment of the value of only those shares that are voted against the approval of the plan.
 - b. The owners of shares that were voted against the approval of the merger shall be entitled to receive their value in cash, if and when the merger becomes effective, upon written demand made to the resulting state bank at any time within thirty (30) days after the effective date of the merger, accompanied by the surrender of the stock certificates. The value of such shares shall be determined by selected owners of two-thirds of the dissenting shares involved, one by the board of directors of the resulting state bank and the third by the two so chosen. The valuation agreed upon by any two appraisers shall govern. If the appraisal is not completed within ninety (90) days after the merger becomes effective, the Commissioner shall cause an appraisal to be made.
 - c. The expenses of appraisal shall be paid by the resulting state bank.
 - d. The resulting state bank may fix an amount that it considers to be not more than the fair market value of the shares of a constituent bank at the time of the stockholders' meeting approving the merger, which amount it will pay dissenting shareholders of that constituent bank entitled to payment in cash. The amount due under such accepted offer or under the appraisal shall constitute a debt of the resulting state bank.
4. Duplicate originals of the articles of merger shall be delivered to the Secretary of State for filing.
- C. All such articles of merger shall be adopted as amendments to the articles of incorporation of the surviving bank as follows:
1. All such amendments to the articles of incorporation shall be adopted in compliance with the procedures set forth in this Rule.
 2. Upon adoption, the amendments to the articles of incorporation shall be filed in triplicate in the office of the Secretary of State and with the Commissioner.
- D. No merger shall be approved unless and until the amendments to the articles of incorporation of the surviving bank have been submitted to the Banking Board for approval, and the Banking Board is satisfied:
1. That all the procedural requirements of this Rule have been met;
 2. That the amendments will not impair the financial standing of the bank;
 3. The agreement provides for adequate capital as established by Banking Board Rule;
 4. The agreement is fair;
 5. The merger is not contrary to the public interest;
 6. If the Banking Board disapproves an agreement, it shall state its objections and provide an opportunity to the constituent banks to amend the merger agreement to obviate such objection;
 7. Where the resulting state bank is not to exercise trust powers, the Banking Board shall not approve a merger until it is satisfied that adequate provision has been made for successors to fiduciary positions held by constituent banks;
 8. That the amendments will promote and maintain a sound banking system, the security of deposits and depositors, and the protection of other customers.

- E. If the proposed merger meets such criteria, the Banking Board shall approve the merger. The Banking Board shall approve or deny the application for approval within thirty (30) days after receipt of the proposed amendments to the articles of incorporation.
- F. Notice to depositors. After approval is given by the stockholders, a notice of sale shall be published once a week for three successive weeks in a newspaper of general circulation in the county in which the selling bank has its principal office. Proof of such publications shall be filed with the Division of Banking.
1. Notwithstanding any term of the agreement, or of his or her contract of deposit, any depositor whose business is thus sold has the right, upon payment of any indebtedness owing by him to the bank, to withdraw his deposit in full on demand after the sale, unless by dealing with the purchasing bank with knowledge of the purchase he ratifies the transfer.
- G. The surviving bank shall be responsible and liable for all liabilities and obligations of the merged banks from the date upon which the merger becomes effective, as provided by law. Upon assuming all liabilities and obligations of the merged banks, the surviving bank may also assume all assets of the merged banks. The agreement of sale may provide for the transfer to the purchasing bank of all fiduciary positions held by the selling bank pursuant to Section 11-106-105, C.R.S. No right against, or obligation of, the selling bank, with respect to the assets or business sold, shall be released or impaired by the sale until one year from the last date of publication of the notice; however, after the expiration of such year, no action shall be brought against the selling bank on account of any deposit, obligation, trust, or asset transferred to or liability assumed by the purchasing bank.
- H. Nothing in the law of this State shall restrict the right of a state bank to convert into a national bank upon compliance with the laws of the United States, and upon completion of such conversion it shall surrender its state bank charter.
1. A national bank located in this state that follows the procedure prescribed by federal law to convert to a state bank shall be granted a state bank charter if it meets the requirements for the incorporation of a state bank. Any requirement that shares must be paid in cash may be satisfied by the exchange of shares of the converted state bank for those of the converting national bank, which shares may be valued at no more than their fair cash market value. The procedure for incorporation of a state bank may be modified to the extent made necessary by the difference between an ordinary incorporation and a conversion.
 2. The converted bank shall be considered the same business and corporate entity as the converting bank with all of the rights, powers, and duties of the converting bank except as limited by the charter and bylaws of the resulting bank. It may use the name of the converting bank whenever it can perform any act under such name more conveniently.
 3. Any reference to the converting bank in any writing, whether executed or taking effect before or after the conversion, shall be deemed a reference to the converted bank if not inconsistent with the other provisions of such writing.

- I. If a constituent bank has assets that do not conform to the requirements of State law for the resulting bank, or if a converting national bank has assets that do not conform to the requirement of State law for the converted state bank, or if, in either case, there are business activities that are not permitted for the resulting or converted state bank, the Banking Board may permit a reasonable time to conform with state law.

- J. The resulting state bank shall be considered the same business and corporate entity as each constituent bank with all of the rights, powers, and duties of each constituent bank, except as limited by the charter and bylaws of the resulting state bank.
 - 1. The resulting state bank has the right to use the name of any constituent bank whenever it can perform any act under such name more conveniently.
 - 2. Any reference to any constituent bank in writing, whether executed or taking effect before or after the merger, shall be deemed a reference to the resulting state bank if not inconsistent with the other provisions of such writing.

Amended Effective October 31, 2005

Amendments correct minor grammatical and technical errors.

Amended Effective March 1, 2004

Statutory reference amendment to conform Rule to recodified statutes; update terminology to conform to recodified statutes; formatting changes to comply with Colorado Secretary of State guidelines.

Amended Effective March 2, 1998

To align Rule with requirements pursuant to Title 11, Article 4, C.R.S.; eliminate unnecessary reference to the 1973 Colorado Revised Statutes.