

**IB40****Transactions With Affiliates and Loans to Executive Officers, Directors, and Principal Shareholders** [Section 11-105-302, C.R.S.]

## A. Transactions With Affiliates

## 1. General Restrictions

- a. A bank and its subsidiaries may engage in a covered transaction with an affiliate only if:
  - (1) In the case of any affiliate, the aggregate amount of covered transactions of the bank and its subsidiaries will not exceed 10 percent of the capital stock and surplus of the bank; and
  - (2) In the case of all affiliates, the aggregate amount of covered transactions of the bank and its subsidiaries will not exceed 20 percent of the capital stock and surplus of the bank.
- b. For the purpose of this Rule, any transaction by a bank with any person shall be deemed to be a transaction with an affiliate to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that affiliate.
- c. A bank and its subsidiaries may not purchase a low-quality asset from an affiliate unless the bank or such subsidiary, pursuant to an independent credit evaluation, committed itself to purchase such asset prior to the time such asset was acquired by the affiliate.
- d. Any covered transactions and any transactions exempt under Paragraph (A)(4) of this Rule between a bank and an affiliate shall be on terms and conditions that are consistent with safe and sound banking practice.

## 2. Definitions

- a. For the purpose of this Rule, the term "affiliate" with respect to a bank means:
  - (1) Any company that controls the bank and any other company that is controlled by the company that controls the bank;
  - (2) A bank subsidiary of the bank;
  - (3) Any company:
    - (a) That is controlled directly or indirectly, by a trust or otherwise, by or for the benefit of shareholders who beneficially or otherwise control, directly or indirectly, by trust or otherwise, the bank or any company that controls the bank; or
    - (b) In which a majority of its directors or trustees constitute a majority of the persons holding any such office with the bank or any company that controls the bank.
  - (4) Any company, including a real estate investment trust, that is sponsored and advised on a contractual basis by the bank or any subsidiary or affiliate of the bank; or
  - (5) Any investment company with respect to which a bank or any affiliate thereof is an investment advisor as defined in paragraph (1)(a)(20) of the investment company act of 1940; and
  - (6) Any company that the Division of Banking determines to have a relationship with the bank or any subsidiary or affiliate of the bank, such that covered transactions by the bank or its subsidiary with that company may be affected by the relationship to the detriment of the bank or its subsidiary.
- b. The following shall not be considered to be an affiliate:

- (1) Any company, other than a bank, that is a subsidiary of a bank, unless a determination is made under Paragraph (A)(2)(a)(6) of this Rule not to exclude such subsidiary company from the definition of affiliate;
  - (2) Any company engaged solely in holding the premises of the bank;
  - (3) Any company engaged solely in conducting a safe deposit business;
  - (4) Any company engaged solely in holding obligations of the United States or its agencies or obligations fully guaranteed by the United States or its agencies as to principal and interest; and
  - (5) Any company where control results from the exercise of rights arising out of a bonafide debt previously contracted, but only for the period of time specifically authorized under applicable state or federal law or regulation or, in the absence of such law or regulation, for a period of two years from the date of the exercise of such rights or the effective date of this Rule, whichever date is later, subject, upon application, to authorization by the Banking Board for good cause shown for extensions of time of not more than one year at a time; however, such extensions in the aggregate shall not exceed three years.
- c. A company or shareholder shall be deemed to have control over another company if:
- (1) Such company or shareholder, directly or indirectly, or acting through one or more other persons, owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other company;
  - (2) Such company or shareholder controls in any manner the election of a majority of the directors or trustees of the other company; or
  - (3) The Division of Banking determines that such company or shareholder, directly or indirectly, exercises a controlling influence over the management or policies of the other company; and
  - (4) Notwithstanding any other provision of this Rule, no company shall be deemed to own or control another company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in Paragraph (A)(2)(a)(3) of this Rule, or if the company owning or controlling such shares is a business trust.
- d. The term "subsidiary," with respect to a specified company, means a company that is controlled by such specified company.
- e. The term "bank" includes a state bank, industrial bank, and banking association.
- f. The term "company" means a corporation, partnership, business trust, association, or similar organization and, unless specifically excluded, the term "company" includes a "member bank" and a "bank."
- g. The term "covered transaction" means, with respect to an affiliate of a bank:
- (1) A loan or extension of credit to the affiliate;
  - (2) A purchase of, or an investment in, securities issued by the affiliate; and
  - (3) A purchase of assets, including assets subject to an agreement to repurchase, from the affiliate, except such purchase of real and personal property as may be specifically exempted by the Banking Board by order or Rule.
- h. The term "aggregate amount of covered transactions" means the amount of the covered transactions about to be engaged in added to the current amount of all outstanding covered transactions.
- i. The term "securities" means stocks, bonds, debentures, notes, or other similar obligations.

- j. The term "low quality asset" means an asset that falls into any one or more of the following categories:
    - (1) An asset classified as "substandard," "doubtful," or "loss," or treated as "other loans especially mentioned" in the most recent report of examination or inspection of an affiliate prepared by either a federal or state supervisory agency;
    - (2) An asset in a nonaccrual status;
    - (3) An asset on which principal or interest payments are more than thirty (30) days past due; or
    - (4) An asset whose terms have been renegotiated or compromised due to the deteriorating financial condition of the obligor.
  - k. The term "person" means an individual or a company.
3. Collateral for Certain Transactions with Affiliates
- a. Each loan or extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, an affiliate by a bank or its subsidiary shall be secured at the time of the transaction by collateral having a market value equal to:
    - (1) One hundred percent of the amount of such loan or extension of credit, guarantee, acceptance, or letter of credit, if the collateral is composed of:
      - (a) Obligations of the United States or its agencies;
      - (b) Obligations fully guaranteed by the United States or its agencies as to principal and interest;
      - (c) Notes, drafts, bills of exchange or bankers acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank; or
      - (d) A segregated, earmarked deposit account with the member bank.
    - (2) One hundred ten percent of the amount of such loan or extension of credit, guarantee, acceptance, or letter of credit if the collateral is composed of obligations of any state or political subdivision of any state;
    - (3) One hundred twenty percent of the amount of such loan or extension of credit, guarantee, acceptance, or letter of credit if the collateral is composed of other debt instruments, including receivables; or
    - (4) One hundred thirty percent of the amount of such loan or extension of credit, guarantee, acceptance, or letter of credit if the collateral is composed of stock, leases, or other real or personal property.
  - b. Any such collateral that is subsequently retired or amortized shall be replaced by additional eligible collateral where needed to keep the percentage of the collateral value relative to the amount of the outstanding loan or extension of credit, guarantee, acceptance, or letter of credit equal to the minimum percentage required at the inception of the transaction.
  - c. A low-quality asset shall not be acceptable as collateral for a loan or extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, an affiliate.
  - d. The securities issued by an affiliate of the bank shall not be acceptable as collateral for a loan or extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, that affiliate or any other affiliate of the bank.
  - e. The collateral requirements of this Paragraph shall not be applicable to an acceptance that is already fully secured either by attached documents or by other property having an ascertainable market value that is involved in the transaction.

4. Exemptions: The provisions of this Rule, except Paragraph (A)(1)(d) of this Rule, shall not be applicable to:
  - a. Any transaction, subject to the prohibition contained in Paragraph (A)(1)(c) of this Rule, with a bank:
    - (1) Which controls 80 percent or more of the voting shares of the member bank;
    - (2) In which the bank controls 80 percent or more of the voting shares; or
    - (3) In which 80 percent or more of the voting shares are controlled by the company that controls 80 percent or more of the voting shares of the bank.
  - b. Making deposits in an affiliated bank or affiliated foreign bank in the ordinary course of correspondent business, subject to any restrictions that the Division of Banking may prescribe.
  - c. Giving immediate credit to an affiliate for uncollected items received in the ordinary course of business.
  - d. Making a loan or extension of credit to, or issuing a guarantee, acceptance, or letter of credit on behalf of, an affiliate that is fully secured by:
    - (1) Obligations of the United States or its agencies;
    - (2) Obligations fully guaranteed by the United States or its agencies as to principal and interest; or
    - (3) A segregated, earmarked deposit account with the bank.
  - e. Purchasing securities issued by any company of the kinds described in section 4(c)(1) of the Bank Holding Company Act of 1956.
  - f. Purchasing assets having a readily identifiable and publicly available market quotation and purchased at that market quotation or, subject to the prohibition contained in Paragraph (A)(1)(3) of this Rule, purchasing loans on a nonrecourse basis from affiliated banks.
  - g. Purchasing from an affiliate a loan or extension of credit that was originated by the bank and sold to the affiliate subject to a repurchase agreement or with recourse.
5. Rulemaking and Additional Exemptions
  - a. The Banking Board may issue such further Rules, including definitions consistent with this Paragraph (A)(2) of this Rule, as may be necessary to administer and carry out the purposes of this Rule and to prevent evasions thereof, and as are consistent with federal banking law or regulation.
  - b. The Banking Board may, at its discretion, by Rule exempt transactions or relationships from the requirements of Paragraph (A)(1) and (A)(3) of this Rule if it finds such exemptions to be in the public interest and consistent with the purposes of this Paragraph and as are consistent with federal banking law or regulation.

## B. Restrictions on Transactions With Affiliates

1. General Provisions
  - a. Terms. A bank and its subsidiaries may engage in any of the transactions described in Paragraph (B)(1)(b) of this Rule only:
    - (1) On terms and under circumstances, including credit standards, that are substantially the same, or at least as favorable to such bank or its subsidiary, as those prevailing at the time for comparable transactions with or involving other nonaffiliated companies; or

- (2) In the absence of comparable transactions, on terms and under circumstances, including credit standards, that in good faith would be offered to or would apply to nonaffiliated companies.
  - b. Transactions covered. Paragraph (B)(1)(a) of this Rule applies to the following:
    - (1) Any covered transaction with an affiliate;
    - (2) The sale of securities or other assets to an affiliate, including assets subject to an agreement to repurchase;
    - (3) The payment of money or the furnishing of services to an affiliate under contract, lease, or otherwise;
    - (4) Any transaction in which an affiliate acts as an agent, or broker, or receives a fee for its services to the bank or to any other person; and
    - (5) Any transaction or series of transactions with a third party:
      - (a) If an affiliate has a financial interest in the third party; or
      - (b) If an affiliate is a participant in such transaction or series of transactions.
  - c. Transactions that benefit an affiliate. For the purpose of Paragraph (B)(1) of this Rule, any transaction by a member or its subsidiary with any person shall be deemed to be a transaction with an affiliate of such bank if any of the proceeds of the transaction are used for the benefit of, or transferred to, such affiliate.
- 2. Prohibited Transactions
  - a. In General. A bank or its subsidiary:
    - (1) Shall not purchase as fiduciary any securities or other assets from any affiliate unless such purchase is permitted:
      - (a) Under the instrument creating the fiduciary relationship;
      - (b) By court order; or
      - (c) By law of the jurisdiction governing the fiduciary relationship; and
    - (2) Whether acting as a principal or fiduciary, shall not knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security if a principal underwriter of that security is an affiliate of such bank.
  - b. Exception. Paragraph (B)(1)(a)(2) of this Rule shall not apply if the purchase or acquisition of such securities has been approved, before such securities are initially offered for sale to the public, by a majority of the directors of the bank who are not officers or employees of the bank or any affiliate thereof.
  - c. Definitions. For the purpose of Paragraph (B) of this Rule:
    - (1) The term "security" has the meaning given to such term in section 3(a)(10) of the Securities Exchange Act of 1934; and
    - (2) The term "principal underwriter" means any underwriter who, in connection with a primary distribution of securities:
      - (a) Is in privity of contract with the issuer or an affiliated person of the issuer;
      - (b) Is acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate; or
      - (c) Is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution.
- 3. Advertising Restriction. A member bank or any subsidiary or affiliate of a member bank shall not publish any advertisement or enter into any agreement stating or suggesting that the bank shall in any way be responsible for the obligations of its affiliates.
- 4. Definitions. For the purpose of Paragraph (B) of this Rule:

- a. The term “affiliate” has the meaning given to such term in Paragraph (A)(2)(a) of this Rule; but does not include any company described in Paragraph (A)(2)(b) of this Rule, or any bank;
  - b. The terms “bank,” “subsidiary,” “person,” and “security,” other than security as used in Paragraph (B)(2) of this Rule have the meanings given to such terms in Paragraph (A)(2) of this Rule; and
  - c. The term “covered transaction” has the meaning given to such term in Paragraph (A)(2)(g) of this Rule, but does not include any transaction that is exempt from such definition under Paragraph (A)(4) of this Rule.
5. Rules. The Banking Board may prescribe Rules as are consistent with federal banking law or regulation to administer and carry out the purposes of Paragraph (B) of this Rule, including:
- a. Rules to further define terms used in Paragraph (B) of this Rule; and
  - b. Rules to:
    - (1) Exempt transactions or relationships from the requirements of Paragraph (B) of this Rule; and
    - (2) Exclude any subsidiary of a bank holding company from the definition of affiliate for purposes of Paragraph (B) of this Rule if the Banking Board finds such exemptions or exclusions are in the public interest and are consistent with the purposes of Paragraph (B) of this Rule.

C. Loans to Executive Officers, Directors, and Principal Shareholders

1. General Prohibitions

a. Terms and Creditworthiness

No bank may extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of that person unless the extension of credit:

- (1) Is made on substantially the same terms (including interest rates and collateral) as, and following credit-underwriting procedures that are not less stringent than, those prevailing at the time for comparable transactions by the bank with other persons that are not covered by this Rule; and
- (2) Does not involve more than the normal risk of repayment or present other unfavorable features.
- (3) Exception. Nothing in this Rule shall prohibit any extension of credit made pursuant to a benefit or compensation program that:
  - (a) Is widely available to employees of the bank and, in the case of extensions of credit to an insider of its affiliates, is widely available to employees of the affiliates at which that person is an insider; and
  - (b) Does not give preference to any insider of the bank over the other employees of the bank and, in the case of extensions of credit to an insider of its affiliates, does not give preference to any insider of its affiliates over other employees of the affiliates at which that person is an insider.

b. Prior Approval

- (1) No bank may extend credit (which term includes granting a line of credit) to any of its executive officers, directors, or principal shareholders or to

any related interest of that person in an amount that, when aggregated with the amount of all other extensions of credit to that person and to all related interests of that person, exceeds the higher of \$25,000 or 5 percent of the bank's total capital unless:

- (a) The extension of credit has been approved in advance by a majority of the entire board of directors of the bank; and
  - (b) The interested party has abstained from participating directly or indirectly in the voting.
- (2) In no event may a bank extend credit to any one of its executive officers, directors, or principal shareholders, or to any related interest of that person, in an amount that, when aggregated with all other extensions of credit to that person, and all related interests of that person, exceeds \$500,000, except by complying with the requirements of this paragraph.
- (3) Approval by the board of directors under Paragraph (C)(1)(b)(1) and (b)(2) of this Rule is not required for an extension of credit that is made pursuant to a line of credit that was approved under Paragraph (C)(1)(b)(1) of this Rule within fourteen (14) months of the date of the extension of credit. The extension of credit must also be in compliance with the requirements of Paragraph (C) of this rule.
- (4) Participation in the discussion, or any attempt to influence the voting by the board of directors regarding an extension of credit constitutes indirect participation in the voting by the board of directors on an extension of credit.

c. Lending Limit

No bank may extend credit to any of its executive officers or principal shareholders or to any related interest of that person in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person, exceeds the lending limit of the bank specified in Banking Board Rule IB64. This prohibition does not apply to an extension of credit by a bank to a company of which the bank is a subsidiary or to any other subsidiary of that company.

d. Aggregate Lending Limit

- (1) General limit. A bank may not extend credit to any insider unless the extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions of credit by that bank to all of its insiders, does not exceed the bank's total capital.
- (2) Banks with deposits of less than \$100,000,000. Banks with deposits of less than \$100,000,000 may by resolution of its board of directors, increase the general limit specified in Paragraph (C)(1)(d)(1) of this Rule for a period ending May 18, 1993, to a level not to exceed two times the bank's total capital, if:
- (a) The board of directors determines that such higher limit is consistent with prudent, safe, and sound banking practices in light of the bank's experience in lending to its insiders and is necessary to attract or retain directors or to prevent restricting the availability of credit in small communities;
  - (b) The resolution sets forth the facts and reasoning on which the board of directors bases the finding, including the amount of the

bank's lending limit to its insiders as a percentage of the bank's total capital as of the date of the resolution;

- (c) The bank has submitted the resolution to the Division of Banking;
- (d) The bank meets or exceeds, on a fully phased-in basis, all applicable capital requirements established by the Banking Board; and
- (e) The bank received a satisfactory composite rating in its most recent report of examination.

e. Overdrafts

- (1) No bank may pay an overdraft of an executive officer or director of the bank or executive officer or director of its affiliates on an account at the bank, unless the payment of funds is made in accordance with:
  - (a) A written, preauthorized, interest-bearing extension of credit plan that specifies a method of repayment; or
  - (b) A written, preauthorized transfer of funds from another account of the account holder at the bank.
- (2) This prohibition does not apply to payment of inadvertent overdrafts on an account in an aggregate amount of \$1,000 or less, provided:
  - (a) The account is not overdrawn for more than five business days; and
  - (b) The bank charges the executive officer or director the same fee charged any other customer of the bank in similar circumstances.
- (3) This prohibition does not apply to the payment by a bank of an overdraft of a principal shareholder of the bank, unless the principal shareholder is also an executive officer or director. This prohibition also does not apply to the payment by a bank of an overdraft of a related interest of an executive officer, director, or principal shareholder of the bank.

2. Additional Restrictions on Loans to Executive Officers

- a. No bank may extend credit to any of its executive officers, and no executive officer of a bank shall borrow from or otherwise become indebted to the bank, except in the amounts, for the purposes, and upon the conditions specified in Paragraphs (C)(2)(c) and (d) of this Rule.
- b. No bank may extend credit in an aggregate amount greater than the amount permitted in Paragraph (C)(2)(c)(3) of this Rule to a partnership in which one or more of the bank's executive officers are partners, and either individually or together, hold a majority interest. For the purposes of Paragraph (C)(2)(c)(3) of this Rule, the total amount of credit extended by a bank to such partnership is considered to be extended to each executive officer of the bank who is a member of the partnership.
- c. A bank is authorized to extend credit to any executive officer of the bank:
  - (1) In any amount to finance the education of the executive officer's children;
  - (2) In any amount to finance or refinance the purchase, construction, maintenance, or improvement of a residence of the executive officer, if the extension of credit is secured by a first lien on the residence and the residence is owned, or expected to be owned after the extension of credit, by the executive officer. "First lien" for the purpose of this Paragraph of this Rule includes not only a first mortgage or deed of trust but also a second or other junior mortgage or deed of trust where the

bank holds all prior encumbrances and such junior encumbrance has the same priority with respect to liens of third parties as the first mortgage or deed of trust; and in the case of a refinancing, that only the amount thereof used to repay the original extension of credit, together with the closing costs of the refinancing, and any additional amount thereof used for any of the purposes enumerated in this Paragraph (C)(2)(c)(2), are included within this category of credit; and

(3) For any other purpose not specified in Paragraphs (C)(2)(c)(1) and (2) of this Rule, if the aggregate amount of loans to that officer under this paragraph does not exceed at any one time the higher of 2.5 percent of the bank's total capital or \$25,000, but in no event more than \$100,000.

d. Any extension of credit by a bank to any of its executive officers shall be:

(1) Promptly reported to the bank's board of directors;

(2) In compliance with the requirements of general prohibitions of Paragraph (C)(1) of this Rule;

(3) Preceded by the submission of a detailed current financial statement of the executive officer; and

(4) Made subject to the condition that the extension of credit will, at the option of the bank, become due and payable at any time that the officer is indebted to any other bank or banks in an aggregate amount greater than the amount specified for a category of credit in Paragraph (C)(2)(c) of this Rule.

### 3. Reference

a. Banking Board Rule IB64 is a rule and regulation enacted by the Colorado State Banking Board and is administered by the Colorado Division of Banking.

b. This Rule does not include amendments to or editions of the referenced material later than the effective date of this Rule, June 30, 1997.

c. For more detailed information pertaining to these provisions, please contact the secretary to the Colorado State Banking Board at 1560 Broadway, Suite 1175, Denver Colorado 80202, (303) 894-7575.

Amended Effective March 30, 2005

Amendments correct minor grammatical and technical errors.

Amended Effective August 30, 2004

Corrections to incorrect citations, correct references within the Rule, revised language in order to maintain parity, and reinstate an omitted paragraph.

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 December 30, 1997

Repeal the provisions of Paragraph (C)(1)(a)(3)(a) and (b) because they conflict with Section 11-22-115(1)(l), C.R.S.

Amended Effective June 30, 1997

Paragraph (C)(1)(a)(3)(a) and (b) to permit insiders of a bank and of a bank's affiliates to obtain loans under company-wide employee benefit plans, provided that the benefit plan does not give preference to any insider of the bank over other insiders of the bank; and in the case of extensions of credit to an insider of its affiliates, does not give preference to any insider of its affiliates over other employees of the affiliate at which that person is an insider. In addition, paragraph (A)(2)(k) adds the federal definition of person and includes executive officers and directors of a bank's affiliates in the overdraft prohibition.