

CHAPTER 158

FINANCIAL INSTITUTIONS

SENATE BILL 07-101

BY SENATOR(S) Isgar, Spence, Takis, and Taylor;
also REPRESENTATIVE(S) Butcher, Kerr J., White, Liston, and Rose.

AN ACT**CONCERNING THE REGULATION OF FOREIGN CAPITAL DEPOSITORIES.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 11-37.5-103, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

11-37.5-103. Definitions. As used in this article, unless the context otherwise requires:

(9.5) "DEPOSIT" MEANS CUSTOMER ASSETS HELD IN A CUSTOMER ACCOUNT BY THE FOREIGN CAPITAL DEPOSITORY THAT ARE A LIABILITY TO THE DEPOSITORY.

SECTION 2. 11-37.5-112, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

11-37.5-112. Administrative orders by commissioner. (1.5) (a) THE COMMISSIONER MAY ISSUE A CEASE AND DESIST ORDER IF THE COMMISSIONER DETERMINES FROM COMPETENT AND SUBSTANTIAL EVIDENCE THAT A FOREIGN CAPITAL DEPOSITORY:

(I) IS OR HAS ENGAGED, OR IF THE COMMISSIONER HAS REASONABLE CAUSE TO BELIEVE THE FOREIGN CAPITAL DEPOSITORY IS ABOUT TO ENGAGE, IN AN UNSAFE OR UNSOUND PRACTICE; OR

(II) IS VIOLATING, HAS VIOLATED, OR IS ABOUT TO VIOLATE A MATERIAL PROVISION OF LAW, A CONDITION IMPOSED IN WRITING BY THE COMMISSIONER, OR A WRITTEN AGREEMENT MADE WITH THE COMMISSIONER.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(b) ANY PERSON AGGRIEVED BY A FINAL ORDER OF THE COMMISSIONER ISSUED PURSUANT TO THIS SECTION MAY APPEAL SUCH ORDER TO THE BANKING BOARD.

SECTION 3. 11-102-104 (6), Colorado Revised Statutes, is amended to read:

11-102-104. Powers of banking board. (6) The banking board has the power to affirm, modify, reverse, vacate, or stay the enforcement of any order or ruling made by a hearing officer acting pursuant to section 11-102-201, or the ~~bank~~ commissioner acting pursuant to authority delegated by the banking board OR SECTION 11-37.5-112.

SECTION 4. 11-37.5-108 (2), Colorado Revised Statutes, is amended to read:

11-37.5-108. Rule-making authority. (2) In addition to any other authority conferred by law, the ~~commissioner~~ BOARD has the authority to, and shall, promulgate rules to implement sections 11-37.5-114, 11-37.5-115, and 11-37.5-119 and to specify the conditions under which a depository may be found to be operating in a manner that is unsafe or unsound.

SECTION 5. The introductory portion to 11-37.5-114 (1) and 11-37.5-114 (2), Colorado Revised Statutes, are amended to read:

11-37.5-114. Regulation and supervision - rules. (1) To ensure the prudential supervision of foreign capital depositories, the ~~commissioner~~ BOARD shall adopt rules that:

(2) With respect to an action concerning the issuance, suspension, or revocation of a charter or an action to enforce part 5 of this article, the ~~commissioner~~ BOARD shall adopt rules to determine prehearing discovery procedures, including the taking of depositions and the production of documents.

SECTION 6. 11-37.5-119 (4), Colorado Revised Statutes, is amended to read:

11-37.5-119. Reports - contents and restrictions. (4) The department may provide a copy of the report to ~~another supervisory agency~~ ANY PERSON WHO REQUESTS IT; EXCEPT THAT CUSTOMER IDENTIFYING AND FINANCIAL INFORMATION SHALL REMAIN CONFIDENTIAL.

SECTION 7. 11-102-306, Colorado Revised Statutes, is amended to read:

11-102-306. Information confidential. (1) The banking board, the ~~bank~~ commissioner, and all deputies and employees of the division shall not divulge any information acquired by them in the discharge of their duties except insofar as disclosure may be rendered necessary OR AUTHORIZED by law. The banking board, the commissioner, and their designees may exchange information with the United States comptroller of the currency, the federal deposit insurance corporation, the board of governors of the federal reserve system, the federal home loan bank in which an institution is a member or is making an application to become a member, the executive director of the department of regulatory agencies, the division of financial services, and banking regulatory agencies of other states, subject to any

confidentiality agreement entered into between the banking board or the commissioner and the United States comptroller of the currency, the federal deposit insurance corporation, the board of governors of the federal reserve system, or the federal home loan bank in which an institution is a member or is making an application to become a member. In addition, the banking board, the commissioner, and their designees may exchange information obtained by the banking board as to possible violations of the federal "Employee Retirement Income Security Act of 1974", 29 U.S.C. sec. 1001 et seq., with the federal department of labor or the executive director of the department of regulatory agencies. In addition, the banking board, the commissioner, and their respective designees may exchange information obtained by the banking board as to possible criminal violations of federal law relating to the activities of a federally insured institution with the federal bureau of investigation or the executive director of the department of regulatory agencies.

(2) The executive director of the department of regulatory agencies and the state commissioner of financial services and their deputies shall, before entering upon the discharge of their duties specified in this section, in addition to an oath required by the state constitution, take and subscribe an oath to keep secret all information acquired by them in the discharge of such duties, except as may otherwise be required by law. Willful violation of this oath shall be a criminal offense. Notwithstanding any other provision of this article to the contrary, the ~~bank~~ commissioner, the deputies, and the members of the banking board may disclose any information in the records of the division of banking or acquired by them within the discharge of their duties that is publicly available from the federal deposit insurance corporation, the United States comptroller of the currency, or the federal reserve system and disclose information that has been specifically authorized by the board of directors of the bank to which such information relates. Nothing in this section shall be construed to authorize the board of directors of a bank to waive any privileges that belong solely to the banking board, the division, or its employees.

SECTION 8. 11-37.5-111, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

11-37.5-111. Suspension, revocation, and restoration of charter. (5) (a) THE BOARD MAY REQUIRE A DIRECTOR, EXECUTIVE OFFICER, OR CONTROLLING PERSON OF A DEPOSITORY TO OBTAIN A BACKGROUND CHECK PURSUANT TO SECTION 11-37.5-110 WITHIN THE FIRST THREE YEARS AFTER GRANTING THE DEPOSITORY ITS CHARTER.

(b) THE COMMISSIONER MAY SUSPEND A DIRECTOR, EXECUTIVE OFFICER, OR CONTROLLING PERSON OF A FOREIGN CAPITAL DEPOSITORY WHO IS NOT OF GOOD CHARACTER, AS DETERMINED UNDER SECTION 11-37.5-110, FROM OWNING, OPERATING, OR MANAGING THE DEPOSITORY.

SECTION 9. Effective date - applicability. This act shall take effect July 1, 2007, and shall apply to acts occurring on or after said date.

SECTION 10. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 20, 2007