

**RULES
OF
THE TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS**

**CHAPTER 0180-19
RULES OF PROCEDURE FOR INVESTMENTS AND ACTIVITIES
FOR STATE-CHARTERED BANKS AND THEIR SUBSIDIARIES**

TABLE OF CONTENTS

0180-19-.01	Purpose and Scope	0180-19-.07	Examination and Supervision of Subsidiaries
0180-19-.02	Definitions	0180-19-.08	Bank Investments in Real Property
0180-19-.03	Category I: Pre-approved Activities Requiring Notice	0180-19-.09	Real Estate Investment Activities
0180-19-.04	Category II: Investment Services and Securities Activities	0180-19-.10	Application for Investments in Certain Business Entities
0180-19-.05	Category III: All Other Activities	0180-19-.11	Limitations on Investments
0180-19-.06	Application Procedures	0180-19-.12	Change in Subsidiary Ownership

0180-19-.01 PURPOSE AND SCOPE

- (1) In enacting Public Chapter 768, “Acts of 1996” (The Bank Reform Act), the General Assembly expressed its intent to broaden the permissible activities available to state-chartered banks and to insure that Tennessee chartered financial institutions can compete on an equal footing with other entities who offer financial products or services. The purpose of this chapter is to establish the limits within which state-chartered banks may make certain investments and engage in certain activities with particular emphasis on the guidelines which must be followed in the interest of safety and soundness. In addition, to adequately monitor the safety and soundness of state-chartered banks, the Department must be notified any time a state-chartered bank forms a subsidiary or begins engaging in a new activity through an existing subsidiary.
- (2) The existence of any subsidiary formed prior to the effective date of this Chapter shall not be subject to the application and/or notice requirements of this Chapter. However, if a subsidiary formed prior to the effective date of this Chapter seeks to engage directly or indirectly in a new activity after the effective date of this Chapter, it must file an application and get the Commissioner’s approval for the new activity or give notice if the activity is listed in Rule 0180-19-.03(1).
- (3) The limitations on certain investments found in Rules 0180-19-.08, .09 and .11 shall apply to all investments upon the effective date of this rule. However, should any bank’s investment exceed these limitations upon these rules becoming effective the bank may maintain the investment for a period of time not to exceed three (3) years so long as the bank submits a plan of divestiture to the Commissioner within ninety (90) days of the effective date of this rule.
- (4) In enacting T.C.A. §§45-2-1801 - 1809 the General Assembly expressed its intent to broaden the permissible activities available to state-chartered banks and to insure the soundness of the state’s banking system by protecting depositors. The purpose of this chapter is to establish the limits within which state-chartered banks may offer securities services to their customers with particular emphasis on the guidelines which must be followed in the interest of safety and soundness. While this chapter greatly expands the permissible securities activities of state-chartered banks, it does not empower the Commissioner to authorize state-chartered banks to directly or indirectly through a subsidiary, engage in any activity which federal law would otherwise prohibit.
- (5) The Commissioner, however, may vary or may waive a requirement where permitted by statute.

Authority: Public Chapter 168, “Acts of 1989”; Section 1; T.C.A. §§45-1-107; 45-2-601; 45-2-602; 45-3-607; and 45-2-1801 et seq. **Administrative History:** Original rule filed June 25, 1990; effective September 26, 1990. Repeal and new rule filed August 31, 1998; effective December 29, 1998.

0180-19-.02 DEFINITIONS

- (1) For purposes of this Chapter, unless the context otherwise provides:
- (a) “Active management” means the parent bank owns more than fifty percent (50%) of the voting shares (or similar type of ownership interest) of a subsidiary.
 - (b) “Affiliate” means any company that directly or indirectly, through one or more intermediaries, controls or is under common control with a state-chartered bank.
 - (c) “Bank” means a bank chartered under Title 45, Chapter 2 of the Tennessee Code.
 - (d) “Bank securities department” means a separate department within a state-chartered bank where securities activities are conducted and at a minimum:
 - 1. Is physically separate from the deposit-taking and lending functions of the bank;
 - 2. Maintains segregated accounting; and
 - 3. Conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the bank that investments recommended, offered, or sold by the bank securities department which are not securities or deposits of the bank are not insured by an agency of the federal government and are neither guaranteed by the bank nor are otherwise obligations of the bank.
 - (e) “Bona fide subsidiary” means a subsidiary of a state-chartered bank that at a minimum:
 - 1. Is adequately capitalized;
 - 2. Is physically separate and distinct in its operations from the operation of the bank;¹
 - 3. Maintains separate accounting and other corporate records;
 - 4. Observes separate formalities, including but not limited to, separate board of directors’ meetings;
 - 5. Maintains separate employees who are compensated by the subsidiary;²
 - 6. Shares no common executive officers with the bank;
 - 7. A majority of its board of directors is comprised of persons who are neither directors nor executive officers of the bank; and
 - 8. Conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the subsidiary that the subsidiary is a separate organization from the bank and that investments recommended, offered, or sold by the subsidiary which are not securities or deposits of the bank, are not insured by an agency of the federal government and are neither guaranteed by the bank nor are otherwise obligations of the bank.
 - (f) “Capital” shall mean capital stock, surplus and undivided profits less any intangible assets.
 - (g) “Classified asset” means an asset which is designated “substandard,” “doubtful” or “loss” in the most recent regulatory report of examination.
 - (h) “Commissioner” means the Commissioner of the department of financial institutions.

(Rule 0180-19-.02, continued)

- (i) “Company” means any corporation (other than a bank), any partnership, business trust, association, joint venture, pool syndicate, or other similar business organization.
- (j) “Control” means the power to directly or indirectly vote 25 percent or more of the voting stock of a bank or company, the ability to control in any manner the election of a majority of a bank’s or company’s directors or trustees, or the ability to exercise a controlling influence over the management and policies of a bank or company.
- (k) “Executive officer” means every officer of a state bank who participates or has authority to participate, otherwise than in the capacity of a director, in major policy-making functions of the bank, regardless of whether the officer has an official title or whether the title contains a designation of assistant and regardless of whether the officer is serving without salary or other compensation. The chairman of the board, the president, every vice president, the cashier, secretary, and treasurer of a state bank are assumed to be executive officers, unless by resolution of the board of directors or by the bank’s bylaws, any such officer is excluded from participation in major policy-making functions, otherwise than in the capacity of a director of the bank, and the officer does not actually participate therein.
- (l) “Financial institution” means a bank; savings and loan association; industrial loan and thrift company; credit union; mortgage broker; mortgage banker; leasing company accepting deposits, making or arranging loans and making or arranging leases; or securities dealer.
- (m) “Invest” or “Investment” shall mean:
 - 1. Any direct or indirect investment, including, but not limited to:
 - (i) Contributions of capital by the bank;
 - (ii) Loans/commitments from the bank;
 - (iii) Equity interests;
 - (iv) Debt obligations held by the bank;
 - (v) Bank guarantees of debt obligations; and
 - (vi) Extensions or commitments of credit to any third (3rd) party for the purpose of making a direct investment in:
 - (I) A subsidiary or any business in which the bank has an ownership interest;
or
 - (II) Any investment held by a subsidiary or any business in which the bank has an ownership interest.
 - 2. “Investment” does not include:
 - (i) any retained earnings on the value of any assets which a subsidiary may hold or any other business in which the bank has an ownership interest may hold; or
 - (ii) loans made by the bank to finance bona fide sales of assets to third (3rd) parties consistent with safe and sound underwriting requirements.
- (n) “Investment quality debt security” means a marketable obligation in the form of a bond, note, or debenture that is rated in the top four rating categories by a nationally recognized rating service or a marketable obligation in the form of a bond, note, or debenture the investment

(Rule 0180-19-.02, continued)

characteristics of which are equivalent to the investment characteristics of such a top-rated obligation, or which meets the requirements of T.C.A. §48-2-103(a)(8).

- (o) “Investment quality equity security” means marketable common stock that is ranked or graded in the four top categories or equivalent categories by a nationally recognized rating service, marketable preferred corporate stock that is rated in the top four rating categories by a nationally recognized rating service, or marketable preferred corporate stock that has investment characteristics that are equivalent to the investment characteristics of top-rated preferred corporate stock, or which meets the requirements of T.C.A. §48-2-103(a)(8).
- (p) “Securities subsidiary” means a securities company that is a subsidiary of a state-chartered bank.
- (q) “Subsidiary” shall mean a corporation, limited liability company, or similar entity all or a part of the stock of which is owned by a bank principally for the purpose of participating in the active management of the business of such corporation as distinguished from the purpose of deriving profit from the appreciation in value of such stock or from dividends paid thereon.
- (r) “Unaffiliated securities company” means any company which is engaged in one of the activities listed in Rule 0180-19-.04(1) and is not directly or indirectly controlled by the state-chartered bank or any affiliate of the state-chartered bank.

1 If the subsidiary conducts business in the same location in which the bank conducts business, the subsidiary must utilize physically separate offices or office space from that used by the bank. Such offices or office space must be clearly and prominently identified so as to distinguish the subsidiary from the bank. The physically separate office or office space requirement only applies in areas to which the public has access.

2 This requirement shall not be construed to prohibit the use by the subsidiary of bank employees to perform functions which do not directly involve customer contact such as accounting, data processing and record keeping, so long as the bank and the subsidiary contract for such services on terms and conditions comparable to those agreed to by independent entities.

Authority: *Public Chapter 168, “Acts of 1989”; Section 1; T.C.A. §§45-2-107; 45-2-1601; 45-2-1602 and 45-2-601. Administrative History: Original rule filed June 25, 1990; effective September 26, 1990. Repeal and new rule filed August 31, 1998; effective December 29, 1998.*

0180-19-.03 CATEGORY I: PRE-APPROVED ACTIVITIES REQUIRING NOTICE.

- (1) The activities listed below shall be known as “Category I” activities and can be engaged in by the bank directly without notice to the Department. However, if a state-chartered bank intends to acquire or establish a subsidiary or begin performing a new activity in an existing subsidiary it shall provide the Department written notice within ten (10) days after acquiring or establishing the subsidiary or commencing a new activity, provided the activity is limited to one of the following:
 - (a) Holding property such as real estate, personal property, securities, or other assets acquired by the bank through foreclosure or otherwise in good faith to compromise a doubtful claim, or in the ordinary course of collecting a debt previously contracted;
 - (b) Business services for the bank or its affiliates - furnishing services for the internal operations of the bank or its affiliates, including: accounting, auditing, appraising, advertising and public relations, data processing and data transmission services, databases, or facilities;
 - (c) Financial advice and consulting for the bank or its affiliates;
 - (d) Selling money orders, savings bonds, or travelers checks;

- (e) Courier services between financial institutions;
 - (f) Providing check guaranty and verification services;
 - (g) Data processing and warehousing products, services, and related activities, including associated equipment and technology;
 - (h) Making, purchasing, selling, servicing, or warehousing loans or other extensions of credit, or interests therein, for the subsidiary's account, or for the account of others, including consumer loans, credit cards loans, commercial loans, residential mortgage loans, and commercial mortgage loans;
 - (i) Leasing of personal property or acting as agent, broker or adviser in leasing;
 - (j) Owning, holding, and managing all or part of the parent bank's investment securities portfolio;
 - (k) Activities related to extending credit, any usual and customary activity in connection with making, acquiring, brokering or servicing loans or other extensions of credit which shall include:
 - 1. Real estate and personal property appraising;
 - 2. Collection agency services;
 - 3. Credit bureau services; and
 - 4. Real estate settlement services.
 - (l) *Sales of credit related insurance;*
 - (m) *Income tax preparation;*
 - (n) *Sales of insurance* on an agency basis from any place having a population which does not exceed 5,000, as shown by the last decennial census, so long as the bank has a branch in the place; and
 - (o) *Any other activity* in which a national bank or a member bank of the federal reserve can engage without having to apply for approval.
- (2) The notice required by Rule 0180-19-.03(1) shall include a complete description of the bank's investment in the subsidiary and of the activity conducted as well as the name of the subsidiary.

Authority: *Public Chapter 168, "Acts of 1989"; Section 1; T.C.A. §§45-1-107; 45-2-1601 and 45-2-1602.*
Administrative History: *Original rule filed June 25, 1990; effective September 26, 1990. Repeal and new rule filed August 31, 1998; effective December 29, 1998.*

0180-19-.04 CATEGORY II: INVESTMENT SERVICES AND SECURITIES ACTIVITIES

- (1) A state-chartered bank may directly, or indirectly, through an existing subsidiary, through the establishment or acquisition of a subsidiary or through an unaffiliated securities company engage in the following investment services and securities activities, subject to the Commissioner's approval of the application to engage in the activities:

- (a) Provide portfolio investment advice to customers;
 - (b) Serve as investment adviser to investment companies, including but not limited to open-end and closed-end mutual funds, private investment companies and investment companies registered under the "Investment Companies Act of 1940";
 - (c) Serve as investment or financial adviser to states, counties and municipalities or subdivisions or instrumentalities thereof;
 - (d) Act as general partner to investment partnerships;
 - (e) Act as dealer-manager or financial adviser to corporations or partnerships, including but not limited to providing valuation advice, opinions with respect to sales or purchases of assets, corporate restructuring, issuances of securities, mergers and other acquisitions;
 - (f) Engage in the sale, distribution and underwriting of, and deal in, commercial paper issued by any entity;
 - (g) Engage in the sale, distribution, and underwriting of and deal in promissory notes secured by real estate mortgages, credit obligations secured by real or personal property or manufactured housing, participation interests in promissory notes and credit obligations, and mortgage related payment bonds secured by promissory notes;
 - (h) Engage in the sale, distribution, and underwriting of, and deal in stocks, bonds, debentures, notes, mutual fund shares or unit investment trust interest, and other securities which may be sold by a broker-dealer, financial institution or investment company under Tennessee law;
 - (i) Engage in the underwriting of direct obligations of or obligations for which is pledged the full faith and credit of the United States, or any agency thereof, or a state or territory of the United States, or a subdivision, instrumentality, or public authority organized under the laws of such state or territory, or pursuant to a contract between two (2) or more states;
 - (j) Engaging in credit life reinsurance in an amount approved by the Commissioner; and
 - (k) Engaging in any securities activity in which a national bank or a member bank of the federal reserve may engage.
- (2) Based upon safety and soundness concerns, securities underwriting shall not be performed by the bank directly and can only be performed through a subsidiary of the bank that is separately capitalized. However, if a national bank can engage in the underwriting of certain securities directly, then a state-chartered bank can underwrite the same type of securities, subject to the same limitations applicable to a national bank.
- (3) A state-chartered bank may not establish or acquire a subsidiary that engages in the sale, distribution, or underwriting of stocks, bonds, debentures, notes or other securities; conducts any activities for which the subsidiary is required to register with the Securities and Exchange Commission as broker/dealer; acts as an investment adviser to any investment company; or engages in any other securities activity unless:
- (a) Except as provided by paragraph (4) of this rule, the subsidiary's underwriting activities which would not be permitted under federal law to be conducted in a national bank or member bank of the federal reserve system shall be limited to the following:
 - 1. Underwriting of investment quality debt securities;

2. Underwriting of investment quality equity securities;
 3. Underwriting of investment companies not more than twenty-five percent (25%) of whose investments consist of investments other than investment quality debt securities and/or investment quality equity securities; and
 4. underwriting of investment companies not more than twenty-five percent (25%) of whose investments consist of investments other than obligations of the United States or U.S. government agencies, repurchase agreements involving such obligations, bank certificates of deposit, bankers acceptances and other bank money instruments, short-term corporate debt instruments, and other similar investments normally associated with a money market fund; and
- (b) The subsidiary is, and thereafter continues to be, a bona fide subsidiary as defined in Rule 0180-19-02 if the subsidiary conducts securities activities not permitted under federal law to be conducted in a national bank or member bank of the federal reserve system.
- (4) Paragraph (3) of this rule notwithstanding, a securities subsidiary of a state-chartered bank may engage in underwriting activities other than as limited thereby provided the following conditions are met:
- (a) The subsidiary is a member in good standing of the National Association of Securities Dealers (“NASD”);
 - (b) No director, officer, general partner, employee, or ten percent (10%) shareholder of any class of voting securities of the subsidiary has been convicted within the past five (5) years of any felony or misdemeanor in connection with the purchase or sale of any security involving the making of a false filing with the securities and exchange commission or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or investment adviser;
 - (c) Neither the subsidiary nor any of its directors, officers, general partners, employees, or 10 percent (10%) shareholders of any class of voting securities of the subsidiary is subject to any state or federal administrative order or court order, judgment, or decree entered in the past five (5) years temporarily or preliminarily enjoining or restraining such person or subsidiary from engaging in, or continuing, any conduct or practice in connection with the purchase or sale of any security involving the making of a false filing with the securities and exchange commission or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or investment adviser; provided, however, the Commissioner may waive or modify this prohibition upon good cause shown;
 - (d) None of the subsidiary’s directors, officers, general partners, employees, or ten percent (10%) shareholders of any class of voting securities of the subsidiary are subject to an order entered within the past five (5) years of the securities and exchange commission entered pursuant to Section 15(b) or 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C. 780, 780-4) or Section 203(c) or (f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(c), (f)); and
 - (e) All officers of the subsidiary who have supervisory responsibility for underwriting activities have at least five (5) years experience in similar activities at NASD member securities firms.
- (5) The Commissioner may suspend or revoke the approval of the state-chartered bank to engage in securities activities directly or indirectly, if any of the following occur:
- (a) The capital, assets, management, earnings, liquidity, or sensitivity to market risk of the state-chartered bank becomes unsatisfactory;

(Rule 0180-19-.04, continued)

- (b) The Commissioner determines the securities activities are being conducted unlawfully or in an unsafe or unsound manner;
 - (c) Other relevant occurrences dictate that the Commissioner suspend or revoke the state-chartered bank's authority to engage in direct or indirect securities activities; or
 - (d) The Commissioner determines that the application submitted for approval to engage in securities activities contained false or misleading information.
- (6) (a) Without the prior written consent of the Commissioner, a state-chartered bank shall be prohibited from transferring any classified asset or any property or interest therein which is collateral for a classified asset to its bank securities department, its securities subsidiary or any other financial institution.
- (b) Without the prior written consent of the Commissioner, a securities subsidiary of a state-chartered bank shall be prohibited from securitizing an asset for sale to investors which has been classified by state or federal regulatory authorities.
- (7) (a) No person may be employed in a bank securities department or in a securities subsidiary who:
- 1. Is currently subject to any state or federal administrative enforcement order or judgment entered by the state or federal securities administrator within the past five (5) years or is subject to any state or federal administrative enforcement order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts or omitting to state material facts, was found and the order or judgment was entered within the past five (5) years;
 - 2. Is subject to any state or federal administrative enforcement order or judgment which prohibits, denies or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities;
 - 3. Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminary restraining or enjoining, or is subject to any jurisdiction permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with a state or federal agency entered within the past five (5) years; or
 - 4. Has been convicted within the past five (5) years of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud.
- (b) Upon a showing of just cause by an applicant, the Commissioner may waive any of the prohibitions contained in subparagraphs (7)(a)1., 2., 3., or 4. above.

Authority: Public Chapter 168, "Acts of 1989"; Section 1; T.C.A. §§45-1-107; 45-2-1601 and 45-2-1602.
Administrative History: Original rule filed June 25, 1990; effective September 26, 1990. Repeal and new rule filed August 31, 1998; effective December 29, 1998.

0180-19-.05 CATEGORY III: ALL OTHER ACTIVITIES

- (1) A state-chartered bank that intends to acquire or establish a subsidiary that will engage in activities other than those listed in Rule 0180-19-.03(1) or 0180-19-.04, or that will perform a new activity that is not listed in those rules in an existing subsidiary, shall submit an application as required by T.C.A.

§45-2-607(d) to, and receive approval from, the Department before acquiring or establishing the subsidiary or engaging in the new activity in an existing subsidiary.

Authority: *Public Chapter 168, "Acts of 1989"; Section 1; T.C.A. §§45-1-107; 45-2-1601 and 45-2-1602.*
Administrative History: *Original rule filed June 25, 1990; effective September 26, 1990. Repeal and new rule filed August 31, 1998; effective December 29, 1998.*

0180-19-.06 APPLICATION PROCEDURES

- (1) The application required by Rules 0180-19-.04, 0180-19-.05, 0180-19-.09, and 0180-19-.10 shall include the following items, unless the context requires otherwise, as determined by the Commissioner:
 - (a) A complete description of the bank's investment and percentage ownership;
 - (b) The proposed activities;
 - (c) The organizational structure and management including comments on management's expertise;
 - (d) The relationship with the bank;
 - (e) A statement as to whether the bank intends to conduct any activity at a location other than the main office or a previously approved branch of the bank;
 - (f) A statement as to any insider involvement;
 - (g) The Board of Director's approval and guidelines for the investment or activity;
 - (h) The Bank's capital position, both dollar and percentage basis, after deducting the investment;
 - (i) Verification that the investment does not exceed the limitations required by Rule 0180-19-.11;
 - (j) A copy of any contract between the bank and any business in which the bank has an ownership interest or any third-party relating to the investment or activity;
 - (k) Evidence that all state or federal licenses required to engage in the activity to be approved have been obtained; and
 - (l) Any other information deemed necessary to adequately describe the proposal.
- (2) The Department reserves the right to require the applicant to submit a legal analysis if the proposal is novel, unusually complex, or raises substantial unresolved legal issues.
- (3) The Commissioner shall approve or deny the application within thirty (30) days following receipt of the complete application. The decision is not subject to the provisions of the "Uniform Administrative Procedures Act": The Commissioner may extend the thirty (30) day period for approval or denial, for an additional thirty (30) day period by notifying the applicant that additional information is needed or additional time for analysis is needed.
- (4) The Commissioner may, as an exercise of discretion, determine whether or not an application should be approved on the basis of the following:
 - (a) The capital, assets, management, earnings, liquidity and sensitivity to market risk of the state-chartered bank are satisfactory;

- (b) The state-chartered bank has sufficient managerial resources to engage in the proposed securities activities; and
 - (c) Any other relevant factors.
- (5) The Department may impose certain conditions and/or limitations in connection with any approval under this Rule. These conditions may include requiring the bank to obtain and show evidence of approval by other pertinent regulatory agencies.
- (6) The Commissioner may suspend or revoke the approval granted under this Rule, if any of the following occur:
- (a) The capital, assets, management, earnings, liquidity or sensitivity to market risk of a state-chartered bank becomes unsatisfactory;
 - (b) The Commissioner determines that the activity being conducted violates state or federal law or is unsafe or unsound;
 - (c) Other relevant occurrences dictate that the Commissioner suspend or revoke the state-chartered bank's approval under this Rule;
 - (d) The Commissioner determines that the application submitted pursuant to paragraph (1) above contained false or misleading information.

Authority: Public Chapter 168, "Acts of 1989"; Section 1; T.C.A. §§45-1-107; 45-2-1601 and 45-2-1602.
Administrative History: Original rule filed June 25, 1990; effective September 26, 1990. Repeal and new rule filed August 31, 1998; effective December 29, 1998.

0180-19-.07 EXAMINATION AND SUPERVISION OF SUBSIDIARIES

- (1) Whenever the Commissioner deems it necessary, the Commissioner may examine any subsidiary of a Tennessee-chartered bank.
- (2) In conducting activities authorized by this Chapter, unless otherwise provided by statute or regulation, applicable provisions of Title 45 and regulations promulgated thereunder pertaining to the operations of the parent bank shall apply to the operations of the bank's subsidiary.
- (3) If upon examination, the Department determines that the subsidiary is operating in violation of law, regulation or written condition, or in an unsafe or unsound manner or otherwise threatens the safety and soundness of the bank, the Department will direct the bank or subsidiary to take appropriate remedial action, which may include requiring the bank to divest or liquidate the subsidiary, or discontinue specified activities.

Authority: Public Chapter 168, "Acts of 1989"; Section 1; T.C.A. §§45-1-10; 45-2-1601 and 45-2-1062.
Administrative History: Original rule filed June 25, 1990; effective September 26, 1990. Repeal and new rule filed August 31, 1998; effective December 29, 1998.

0180-19-.08 BANK INVESTMENTS IN REAL PROPERTY

- (1) Pursuant to T.C.A. §45-2-607(a)(9) banks, either directly or indirectly, may invest in real property to the extent that the total depreciated value thereof does not exceed the capital of the bank;
- (2) The Commissioner has determined, based upon safety and soundness concerns, that no bank, directly or indirectly, shall invest more than twenty-five percent (25%) of its capital in any single piece of real property or real estate project.

- (3) Investments in real property and fixed assets used solely in the conduct of the business of the bank shall not be subject to this Rule.
- (4) Real property acquired in good faith through foreclosure on collateral, by way of a compromise of a doubtful claim, or to avoid a loss in connection with a debt previously contracted, shall not be subject to this Rule unless the Board of Directors so designates the property as an investment for the bank as permitted in Chapter 0180-14.

Authority: T.C.A. §45-1-107 and 45-2-607(a)(9). **Administrative History:** Original rule filed August 31, 1998; effective December 29, 1998..

0180-19-.09 REAL ESTATE DEVELOPMENT ACTIVITIES

- (1) Real estate development activities can only be performed in a subsidiary of the bank.
- (2) Notwithstanding any other provision of this rule, no bank shall invest more than twenty-five percent (25%) of the bank's capital in the development of any single piece of real property or real estate project. Inclusive in this limit is any investment in real property being developed that was acquired under T.C.A. §45-2-607(a)(9).
- (3) The application requirements of Rule 0180-19-.06 shall apply to any subsidiary seeking to engage in real estate development activities.

Authority: T.C.A. §45-1-107; 45-2-601; 45-2-602 and 45-2-607(a)(9). **Administrative History:** Original rule filed August 31, 1998; effective December 29, 1998.

0180-19-.10 APPLICATION FOR INVESTMENTS IN CERTAIN BUSINESS ENTITIES

- (1) Upon filing an application and receiving written approval from the Commissioner, pursuant to T.C.A. §45-2-607(d) a bank may make a minority investment in the stock or purchase the assets of other corporations, firms, partnerships or companies, including limited liability companies and limited liability partnerships that engage in certain approved activities as provided in T.C.A. §45-2-607(d).
- (2) The application required by paragraph (1) shall be subject to the same procedure and requirements as those contained in Rule 0180-19-.06.
- (3) Whenever the Commissioner deems it necessary, the commissioner may examine any business in which the bank has a minority interest approved under this Rule and T.C.A. §45-2-607(d).
- (4) In approving the application the Department will consider the following guidelines:
 - (a) The bank must be able to prevent the entity or enterprise in which the investment is made from engaging in impermissible activities, or be able to withdraw its investment;
 - (b) The bank's loss exposure must be limited, as a legal and accounting matter, and the bank must not have open-ended liability for the obligations of the enterprise; and
 - (c) The activities of the entity or enterprise in which the investment is made must be limited to approved activities.

Authority: T.C.A. §45-1-107(f) and (h); 45-1-118(f); 45-2-602; 45-2-607(d) and 45-2-1602(b)(e). **Administrative History:** Original rule filed August 31, 1998; effective December 29, 1998.

0180-19-.11 LIMITATIONS ON INVESTMENTS

(Rule 0180-19-.11, continued)

- (1) A bank may invest, in the aggregate up to seventy-five percent (75%) of its capital in the stock or purchase of the assets of other corporations, firms, partnerships or companies, including limited liability companies and limited liability partnerships that engage in certain approved activities. However, the Commissioner has determined, based upon safety and soundness concerns, that no bank shall invest more than twenty-five percent (25%) of its capital in any single corporation, firm, partnership or company, including a limited liability company or a limited liability partnership requiring an application and approval pursuant to Rule 0180-19-.04, Rule 0180-19-.05, or Rule 0180-18-.10.
- (2) Based upon safety and soundness concerns a state-chartered bank that directly or indirectly engages in any Category II (Rule 0180-19-.04) activity is subject to the lending limitations of T.C.A. §45-2-1805 unless otherwise provided by this chapter.
- (3) If a single subsidiary engages in activities falling into more than one Category, (See Rules 0180-19-.04, 0180-19-.05 and 0180-19-.10) then the bank's investment in that subsidiary shall be limited to the lowest applicable percentage of capital limitation.

Authority: T.C.A. §45-1-107(h); 45-2-602; 45-2-607(d) and 45-2-1805. **Administrative History:** Original rule filed August 31, 1998; effective December 29, 1998.

0180-19-.12 CHANGE IN SUBSIDIARY OWNERSHIP

If the bank's ownership interest in a subsidiary declines to fifty percent (50%) or less, then the bank shall file an application in accordance with Rule 0180-19-.09 and approval of any such change would be subject to the conditions contained in Rule 0180-19-.09.

Authority: T.C.A. §§45-1-107; 45-2-602 and 45-2-607. **Administrative History:** Original rule filed August 31, 1998; effective December 29, 1998.