

# Rule R339-6. Rule Clarifying Industrial Loan Corporation Investments.

As in effect on April 1, 2009

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R339-6-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Section 7-1-301(8), and construes and applies to Sections 7-8-13 and 7-8-14.

(2) This rule applies to industrial loan corporations and thrift institutions.

(3) This rule defines acceptable investments for the funds of an industrial loan corporation and defines and clarifies investments in real estate pursuant to Sections 7-8-13 and 7-8-14.

R339-6-2. Definitions.

(1) "Affiliate" means any company under common control with the industrial loan corporation excluding any subsidiary.

(a) The following shall not be considered to be an affiliate:

(i) Any company engaged solely in holding the premises of the industrial loan corporation with which it is affiliated, and

(ii) Any company where control results from the exercise of rights arising out of a bona fide debt previously contracted, but only for the period of time specifically authorized by Rule 339-6-3(1)(i), below.

(2) "Capital" means the excess of an industrial loan corporation's assets over its liabilities detailed in the following accounts: capital stock, surplus, and undivided profits. Unpaid stock subscriptions are not part of capital.

(3) "Capital Stock" means the total of:

(a) the par value of all shares of the bank having a par value that have been issued; plus

(b) the amount of the consideration received by the bank for all shares of the bank without par value that have been issued, except that part of the consideration which has been allocated to capital surplus in a manner permitted by law; plus

(c) the amounts not included in Subsections (a) and (b) as have been transferred to stated capital of the bank, whether upon the issue of shares as a share dividend or otherwise; minus

(d) all reductions from such sum as have been effected in a manner permitted by law.

(4) "Commissioner" means the Commissioner of Financial Institutions.

(5) "Contractual commitment to advance funds" means an obligation on the part of the industrial loan corporation to make payments, directly or indirectly, to a designated third party contingent upon a default by the industrial loan's customer in the performance of an obligation under the terms of that customer's contract with the third party or an obligation to guarantee or stand as surety for the benefit of a third party to the extent permitted by law. The term includes standby letters of credit, guarantees, puts and other similar arrangements. Undisbursed loan or lease funds and loan or lease commitments not yet drawn upon are not considered a contractual commitment to advance funds.

(6) "Company" means a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization or any form of business entity.

(7) "Control" means "control" as defined in Section 7-1-103.

(8) "Depository institution" means "depository institution" as defined in Section 7-1-103.

(9) "Industrial loan corporation" means "industrial loan corporation" as defined in Section 7-1-103.

(10) "Institution" means institution as defined in Section 7-1-103.

(11) "Investment grade securities" means marketable obligations in the form of a bond, note, debenture or preferred stock rated in one of the four highest ratings of a nationally recognized rating agency; it does not include investments which are predominantly speculative in nature.

(12) "Loans and extensions of credit" means any direct or indirect advance of funds in any manner whatsoever to a person. This is made on the basis of any obligation of that person to repay the funds, or repayable from specific property pledged by or on behalf of a person. "Loans and extensions of credit" includes:

(a) A purchase under repurchase agreement of securities, other assets or obligations other than investment grade securities in which the purchasing industrial loan corporation has a perfected security interest, with regard to the seller but not as an obligation of the underlying obligor of the security;

(b) An advance by means of an overdraft, cash item, or otherwise;

(c) A contractual commitment to advance funds;

(d) An acquisition by discount, purchase, exchange, or otherwise of any note, draft, or other evidence of indebtedness upon which a person may be liable as maker, drawer, endorser, guarantor, or surety;

(e) A participation without recourse, with regard to the participating industrial loan corporation, but not the originating industrial loan corporation;

(f) Existing loans, leases, or advances which have been charged off on the books of the industrial loan corporation in whole or in part and which are legally enforceable, including statutory bad debt under Section 7-3-25 or Section 7-8-15 respectively.

(13) "Loans and extensions of credit" does not include:

(a) A receipt by an industrial loan corporation of a check deposited in or delivered to the industrial loan corporation in the usual course of business unless it results in the carrying of a cash item for the granting of an overdraft other than an inadvertent overdraft in a limited amount that is promptly repaid;

(b) An acquisition of a note, draft, bill of exchange, or other evidence of indebtedness through a merger or consolidation of financial institutions or a similar transaction by which an institution acquires assets and assumes liabilities of another institution, or foreclosure on collateral or similar proceeding for the protection of the industrial loan corporation, provided that such indebtedness is not held for a period of more than three years from the date of the acquisition, unless permission to extend the period is granted by the commissioner on the basis that holding the indebtedness beyond three years is not detrimental to the safety and soundness of the acquiring industrial loan corporation;

(c) An endorsement or guarantee for the protection of an industrial loan corporation of any loan or other asset previously acquired by the industrial loan corporation in good faith or any indebtedness to an industrial loan corporation for the purpose of protecting the industrial loan corporation against loss or of giving financial assistance to it;

(d) Non-interest bearing deposits to the credit of the industrial loan corporation;

(e) The giving of immediate credit to an industrial loan corporation upon uncollected items received in the ordinary course of business;

(f) The purchase of investment grade securities subject to repurchase agreement in which the purchasing industrial loan corporation has a perfected security interest, or where the securities are purchased from the state or any political subdivision thereof;

(g) The sale of Federal funds;

(h) Loans or extensions of credit which have become unenforceable by reason of discharge in bankruptcy or are no longer legally enforceable for other reasons.

(14) "Parent" means any company which controls the industrial loan corporation.

(15) "Person" means "person" as defined in Section 7-1-103.

(16) "Prudent Investments" means any investment not expressly prohibited by law or rule and made in the exercise of judgment and care under the circumstances then prevailing which men of prudence, discretion, and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

(17) "Readily marketable government securities" means obligations in the form of a bond, bill, note or debenture issued or offered by any governmental agency, municipality or board which is rated in one of the four highest ratings of a nationally recognized rating service.

(18) "Real estate" means improved or unimproved real property.

(19) "Standby letter of credit" means any letter of credit, or similar arrangement however named or described which represents an obligation to a designated third party on the part of the issuer:

(a) To repay money borrowed by or advanced to or for the account of the issuer's customer, or

(b) To make payment on account of any indebtedness undertaken by the issuer's customer, or

(c) To make payment on account of any default by the issuer's customer in the performance of an obligation.

(20) "Subsidiary" means "subsidiary" as defined in Section 7-1-103.

(21) "Surplus" is a capital account which includes the amount received by an industrial loan corporation for its capital stock in excess of the par value of the stock, or, in the case of stock without par value, the amount designated as surplus of the total amount received for its capital stock. Surplus may also include amounts received as capital contributions. Amounts may also be transferred to the industrial loan's surplus account by the board of directors from undivided profits.

(22) "Total Capital" means the sum of capital, reserve for contingencies, reserves for loan losses, and the principal outstanding amount of subordinated capital notes or debentures not maturing within one year.

(23) "Undivided Profits" is a capital account representing the industrial loan corporation's capital in excess of its capital stock and surplus accounts. The amount represented by the undivided profits account may arise from net earnings of the industrial loan corporation or out of capital funds paid into the industrial loan corporation in excess of the capital stock and surplus accounts. Undivided profits may be used to absorb losses of the industrial loan corporation, for payment of cash dividends to stockholders or for transfer into surplus, upon appropriate resolution of the industrial loan corporation's board of directors.

R339-6-3. Acceptable Investments for the Deposits and Other Funds of Industrial Loan Corporations.

(1) In the absence of a statute or rule to the contrary, an industrial loan corporation is unrestricted as to a percentage of its total capital being invested in the following:

(a) Cash, demand, or time deposits in a federally insured depository institution, or in deposits maintained directly with a federal reserve bank;

(b) Obligations of, or obligations which are fully guaranteed as to principal and interest by, the United States or this state or any of its political subdivisions;

(c) Any investment grade securities;

(d) Any securities purchased under agreements to resell;

(e) Leases, loans, or extensions of credit, whether unsecured or secured;

(f) Real estate contracts;

(g) Consumer and commercial installment sales contracts and security agreements;

(h) A subsidiary with the prior written approval of the commissioner upon finding that the subsidiary is primarily engaged in activities closely related to banking; or

(i) Such real estate as the industrial loan corporation may purchase at any sale, public or private, or which may be conveyed to the industrial loan corporation in satisfaction of or on account of a debt previously contracted in the conduct of its business upon which it had a mortgage, trust deed, judgment, assignment, lien or other claim; however:

(i) Any real estate acquired under this section shall be sold within two years after the date of acquisition;

(ii) If real estate acquired under this section is not sold within the two year period, it shall be charged off the books of the industrial loan corporation at the rate of 20% of the acquisition book value thereof each year commencing one year from the date of expiration of the two year period. The same shall be entirely charged off within five years from the expiration of the two year period.

(j) Any other investment with the prior written approval of the commissioner.

(2) An industrial loan corporation is restricted to 50% of its total capital at any one time being invested in the following:

Premises used in the conduct of the business which include real property and any interest therein, property such as furniture, fixtures, and equipment for use in carrying on its own business and the stock, bonds, debentures, or other obligations of any subsidiary or affiliate having as its exclusive activity the ownership and management of the property or interests.

(a) The amount invested in premises may exceed 50% of total capital upon application and finding by the commissioner that the additional investment is necessary to promote the viability and stability of the industrial loan corporation;

(b) If the use of any of the premises for the conduct of business of the thrift institution is discontinued, the industrial loan corporation shall consider the real property as an investment under the 10% of total capital limitation cited in Section (3) below.

(3) An industrial loan corporation is restricted to 10% of its total capital at any one time being invested in real estate other than real estate used in the premises in the conduct of the business or real estate purchased or conveyed on account of a debt previously contracted. Such limited investment by an industrial loan corporation may include real estate or participation interests in real estate whether in partnership, joint venture or participation interest in the real estate for the purpose of producing income or for inventory and sale or for improvement, including the erection of buildings on the real estate for sale or rental purposes, and the industrial loan corporation may hold, sell, lease, operate or otherwise exercise the rights of any owner of any property.

(4) An industrial loan corporation is restricted to an aggregate of 20% of its total capital at any time being invested in any other "prudent investments" not specifically mentioned above, in Rule R339-6-3(1) through (3); provided however, that the aggregate of investments in any form in any one person made pursuant to this section shall not exceed 10% of total capital.

KEY

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Date of Enactment or Last Substantive Amendment

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September 24, 2007

Authorizing, Implemented, or Interpreted Law

7-1-301; 7-8-13; 7-8-14