

17:16-67.5 Valuation of units

(a) The following method shall be used in determining the principal value per unit:

1. To the valuation of investments determined as provided in N.J.A.C. 17:16-67.4, there shall be added:

- i. Uninvested cash principal;
  - ii. The value of any rights or stock dividends which may have been declared but not received as of the valuation date when the security has been valued ex-right and ex-dividend;
  - iii. Such portion as shall constitute principal of any extraordinary or liquidating dividend which may have been declared but which is unpaid as of the valuation date when the particular security has been valued ex-dividend; and
  - iv. Temporary investments which shall be valued at cost. The yield on these temporary investments shall not be accrued, but shall be included in income monthly as paid.
2. There shall be deducted from the sum so ascertained all expenses chargeable to principal due or accrued. The net principal value thus determined shall be divided by the number of existing units in order to ascertain the principal value of each unit.

3. All valuations established for items (a)1i through iv above shall be converted into United States dollars at rates shown in the Wall Street Journal on the valuation date, or those established by a recognized pricing service.]

**The net asset value per unit shall be calculated as the net assets of the fund divided by the total number of units outstanding as of such valuation date.**

17:16-67.6 Admission and withdrawal

(a) No admission to or withdrawal from the common fund shall be permitted except on a valuation date [or within 15 days thereafter; however, in the event that an admission or withdrawal occurs within the 15-day period aforementioned, it shall be based upon the principal value as of the last valuation date preceding said admission or withdrawal] **and shall be based upon the value of each unit as of that valuation date.**

(b) (No change.)

17:16-67.8 Distribution of realized appreciation

(a) Subsequent to the receipt of audited financial statements for the prior fiscal year, the Council may consider the realized appreciation in the common fund per unit. The Council may, in its sole discretion, choose [any or all] **either** of the following options:

1. Declare as income to the participating funds such percentage of said realized appreciation of principal as it may deem prudent. When such declaration is made the percentage of such appreciation of principal declared to be income shall be deducted from the total [principal in] **net assets of** the common fund [and added to income in the common fund prior to the next regular monthly valuation. Following such declaration, the amount declared as income shall be treated] and distributed [as income] to the participating funds [monthly or quarterly in cash and/or units] **in proportion to the number of units owned; or**

[2. Declare as capital gains to the participating funds such percentage of said realized appreciation of principal as it may deem prudent. When such declaration is made the percentage of such appreciation of principal declared shall be deducted from the total principal in the common fund and distributed monthly or quarterly in cash and/or units; and/or]

[3.] **2.** (No change in text.)

17:16-67.10 Liquidation

(a)-(c) (No change.)

(d) Distribution upon liquidation shall occur within five days after a valuation date and shall be based upon the [principal] **net asset** value per unit determined upon such valuation date.

(e) (No change.)

(a)

**STATE INVESTMENT COUNCIL**

**Common Pension Fund E**

**Units of Participation; Valuation of Investments and Net Assets; Valuation of Units; Admission and Withdrawal; Distribution of Realized Appreciation; Limitations; Liquidation**

**Proposed Amendments: N.J.A.C. 17:16-69.3, 69.4, 69.6, 69.8, 69.9 and 69.10**

**Proposed Repeal and New Rule: N.J.A.C. 17:16-69.5**

Authorized By: State Investment Council, Timothy M. Walsh, Director, Division of Investment.

Authority: N.J.S.A. 52:18A-91.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2011-189.

Submit comments by November 5, 2011 to:

Timothy M. Walsh  
 Administrative Practice Officer  
 Division of Investment  
 PO Box 290  
 Trenton, New Jersey 08625-0290

The agency proposal follows:

**Summary**

N.J.A.C. 17:16-69 sets forth the rules governing participation, permissible investments, valuation of investments and units, and liquidation procedures for Common Pension Fund E. Common Pension Fund E is a common trust fund established for the purpose of investing in alternative investments on behalf of the Police and Firemen’s Retirement System, Public Employees’ Retirement System, State Police Retirement System, Teachers’ Pension and Annuity Fund and Judicial Retirement System of New Jersey.

N.J.A.C. 17:16-69.3(b) specifies that physical certificates of participation must be prepared and issued by the Director. This is an extremely outdated, burdensome and unnecessary administrative task. It is not standard investment industry practice to issue physical certificates of ownership; ownership is typically evidenced in book entry form in the records of a fund or transfer agent. The proposed amendment to this subsection specifies that units of participation shall be evidenced by records maintained by the Division.

The proposed amendment to N.J.A.C. 17:16-69.3(c) clarifies that units shall be purchased at the unit valuation price as opposed to the principal unit valuation price, to be consistent with proposed terminology changes elsewhere within the subchapter. The proposed amendment also deletes the requirement that initial purchases be made for a principal valuation price of \$1,000 at the outset of the common fund as no longer necessary.

N.J.A.C. 17:16-69.4 sets forth the valuation method for investments in the common fund. The proposed amendments expand the section to include the method for the valuation of net assets. The proposed amendments to N.J.A.C. 17:16-69.4(b) will provide that investments and net assets be valued each business day. Daily net asset valuation will provide the ability to transfer cash between the pension and annuity funds on any business day resulting in the more effective and efficient investment management of the pension and annuity funds. Currently, valuation is only performed monthly, and as a result, admission to or withdrawal from the common pension fund is only permitted within 15 days of a valuation date. Daily valuations will provide a more timely and accurate valuation for the transfer of funds. It will allow the common fund to maintain a lower cash balance, providing for the continued investment of funds. N.J.A.C. 17:16-69.4(b) provides that the valuation of investments shall be based on market prices and accruals. Since this section is being expanded to cover the valuation of both investments and net assets, the proposed language stipulates that the valuations of investments and net assets shall be based on assets and liabilities as of the

close of the previous business day which is consistent with industry practice.

The proposed amendments to N.J.A.C. 17:16-69.4(c) will replace previously specified valuation methodologies that attempted to outline industry pricing and accounting practices. The proposed amendment to N.J.A.C. 17:16-69.4(c)1 will stipulate that investments must be valued in accordance with applicable accounting standards. Since alternative investment funds are typically valued quarterly, the proposed amendment to N.J.A.C. 17:16-69.4(c)2 will require that subsequent to the date of the last available investment valuation, and until the next valuation is received from the outside entity, all subsequent cash contributions and distributions will be recorded as of the date of the transaction as an adjustment to the valuation. In the case of publicly traded securities, the proposed amendment to N.J.A.C. 17:16-69.4(c)3 will require that valuations be made in accordance with applicable accounting standards, using recognized industry pricing sources. The proposed amendment to N.J.A.C. 17:16-69.4(c)4 will also require that the valuation of net assets be calculated as total assets minus total liabilities, in accordance with applicable accounting standards. This calculation is necessary in order to calculate unit value under new N.J.A.C. 17:16-69.5. The proposed amendment to N.J.A.C. 17:16-69.4(c)5 will clarify that all valuations determined under the subsection be converted on the valuation date into United States dollars at rates established by a recognized pricing service.

N.J.A.C. 17:16-69.4(d) states that dividends and interest earned will be retained in the common fund, but may be distributed in whole or part to the participating funds. This subsection is proposed to be deleted as unnecessary. The income will be retained in the common fund under the proposed amendments.

N.J.A.C. 17:16-69.5, which sets forth the procedure for determining the principal value per unit, is being repealed and replaced with a new rule which governs the calculation of a net asset value per unit. Proposed N.J.A.C. 17:16-69.5(a) will stipulate that the net asset value per unit shall be calculated as the net assets of the fund divided by the total number of units outstanding as of such valuation date. The proposed new rule is consistent with current industry and accounting standards and practice.

N.J.A.C. 17:16-69.6 permits admission to or withdrawal from the common fund only on a valuation date or within 15 days thereafter. This language was based on monthly valuation dates, so that the unit values upon admission or withdrawal would not be stale. The proposed amendment will stipulate that admissions to or withdrawals from the common fund be permitted only on a valuation date based upon the value of each unit on the valuation date. The proposed amendments to the subchapter provide for the determination of unit values each business day, providing a more accurate valuation of the admissions to and withdrawals from the common fund.

N.J.A.C. 17:16-69.8(a)1 provides that realized appreciation may be distributed and that such distribution be deducted from the principal and added to the income in the common fund. The proposed amendment stipulates that the distribution be deducted from the net assets of the common fund, to be consistent with terminology changes being proposed concurrently, and distributed to the participating funds in proportion to the number of units owned.

N.J.A.C. 17:16-69.8(a)2 provides that the Council may declare as capital gains such percentage of said appreciation of principal as it may deem prudent. The proposed amendment eliminates this provision as unnecessary.

The proposed amendment to N.J.A.C. 17:16-69.9(a) will clarify that forward and option transactions do not require due diligence information to be presented to the Investment Policy Committee and Council. This is consistent with the rules governing the other common pension funds.

The proposed amendment to N.J.A.C. 17:16-69.10(d), which subsection concerns distribution upon liquidation, replaces the term "principal value" with "net asset value" to be consistent with terminology changes being proposed concurrently in the subchapter.

Because the Division is providing a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

#### Social Impact

The proposed amendments, repeal and new rule shall have a positive social impact because they provide for the more streamlined and efficient management of cash balances for the State-administered funds which will benefit the funds' beneficiaries and lessen the long-term burden on the State's taxpayers.

#### Economic Impact

The proposed amendments, repeal and new rule shall have a positive economic impact by providing a more streamlined and efficient management of cash balances for the State-administered funds.

#### Federal Standards Statement

A Federal standards analysis is not required because the investment policy rules of the State Investment Council are not subject to any Federal requirements or standards.

#### Jobs Impact

The State Investment Council and the Division of Investment do not anticipate that any jobs will be generated or lost by virtue of the proposed amendments, repeal and new rule.

#### Agriculture Industry Impact

The proposed amendments, repeal and new rule will have no impact on the agriculture industry.

#### Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed amendments, repeal and new rule will have no effect on small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but regulate only the Director of the Division of Investment.

#### Smart Growth Impact

The proposed amendments, repeal and new rule are not anticipated to have an impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

#### Housing Affordability Impact Analysis

The proposed amendments, repeal and new rule will have no impact on the affordability of housing in the State of New Jersey. The proposed amendments, repeal and new rule will permit more streamlined and efficient management of cash balances of the State-administered funds.

#### Smart Growth Development Impact Analysis

The proposed amendments, repeal and new rule are not anticipated to have an impact on the availability of affordable housing or housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey. The proposed amendments, repeal and new rule will permit more streamlined and efficient management of cash balances of the State-administered funds.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

17:16-69.3 Units of participation

(a) (No change.)

(b) All units of participation in Common Pension Fund E, representing net capital contributions to the fund together with any income thereon, shall be evidenced by [a certificate prepared by and issued by the Director] **records maintained by the Division.** [Each such certificate may represent one or more units of participation, and shall contain the following information:

1. The number of units purchased;

2. The purchaser;

3. The aggregate principal valuation price for the number of units purchased;

4. The date of purchase;

5. The serial number of the certificate; and

6. The principal valuation price per unit purchased.]

(c) All units of participation shall be purchased by cash payments or in kind. All units shall be purchased by the participating fund for the [principal] **unit** valuation price determined by this subchapter. [At the outset of said common fund, all initial purchases shall be made for a principal valuation price of \$1,000 per unit.]

## 17:16-69.4 Valuation of investments and net assets

(a) Upon each valuation date, as provided in (b) below, there shall be a valuation for every investment in the common fund **and the net assets of the common fund** in the method provided for in this section.

(b) The valuation of **investments and net assets** shall be determined at the opening of **each** business [of the first business] day [of each month] at the discretion of the Director but in any event such valuation of **investments** shall be determined no less frequently than once per quarter. The valuation shall be based on [market prices and accruals] **assets and liabilities** as of the close of the previous business day, in every case converted into United States dollars.

(c) The Director shall use the following method of valuation of investments **and net assets**:

1. The valuation of **an investment** established by an outside entity, including the general partner or manager of an investment, may be used; provided that such entity provides supporting information to the Director, and the valuation is reviewed and approved by the Director. **The valuation of investments shall be made in accordance with applicable accounting standards.**

2. [An investment purchased and awaiting payment against delivery shall be included for valuation purposes as a security and the cost thereof recorded as an account payable.] **Subsequent to the date of the last available investment valuation, and until the next valuation is received from the outside entity, all subsequent cash contributions and distributions will be recorded as of the date of the transaction as an adjustment to the valuation.**

3. [An investment sold but not delivered pending receipt of proceeds shall be valued at the net sales price.] **The valuation of publicly traded securities shall be made in accordance with applicable accounting standards, using recognized industry pricing sources.**

4. [For the purposes of valuation of an investment, with the exception of investments sold but not delivered, it shall not be necessary to deduct from the value ascertained by this subsection, brokers' commission or other expenses which would be incurred on a sale thereof.] **The valuation of net assets shall be calculated as total assets minus total liabilities, in accordance with applicable accounting standards.**

5. [For the purposes of valuing securities, all values] **All valuations** determined under this section shall be converted **on the valuation date** into United States dollars at rates [shown in the Wall Street Journal on the valuation date, or those] established by a recognized pricing service.

[(d) Dividends, distributions and interest earned shall be retained within the common fund, but may be distributed in whole or in part to the participating funds, at the direction of the Council.]

## 17:16-69.5 Valuation of units

[(a) The following method shall be used in determining the principal value per unit:

1. To the valuation of investments determined as provided in N.J.A.C. 17:16-69.4, there shall be added:

i. Uninvested cash principal;

ii. The value of any rights, warrants, distributions or other options which may have been declared but not received as of the valuation date, valued in accordance with the method of valuation provided in N.J.A.C. 17:16-69.4;

iii. Such portion as shall constitute principal of any extraordinary or liquidating dividend or distributions which may have been declared but which is unpaid as of the valuation date, valued in accordance with the method of valuation provided in N.J.A.C. 17:16-69.4; and

iv. Temporary investments which shall be valued at cost. The yield on these temporary investments shall not be accrued, but shall be included in income monthly as paid.

2. There shall be deducted from the sum ascertained under (a) i above all expenses chargeable to principal due or accrued. The net principal value thus determined shall be divided by the number of existing units in order to ascertain the principal value of each unit.

3. All valuations established for items (a) i through iv above shall be converted into United States dollars at rates shown in the Wall Street Journal on the valuation date, or those established by a recognized pricing service.]

**The net asset value per unit shall be calculated as the net assets of the fund divided by the total number of units outstanding as of such valuation date.**

## 17:16-69.6 Admission and withdrawal

(a) No admission to or withdrawal from the common fund shall be permitted except on a valuation date [or within 15 days thereafter; however, in the event that an admission or withdrawal occurs within the 15-day period aforementioned, it shall be based upon the principal value as of the last valuation date preceding said admission or withdrawal] **and shall be based upon the value of each unit as of that valuation date.**

(b) (No change.)

## 17:16-69.8 Distribution of realized appreciation

(a) Subsequent to the receipt of audited financial statements for the prior fiscal year, the Council may consider the realized appreciation in the common fund per unit. The Council may, in its sole discretion, choose [any or all] **either** of the following options:

1. Declare as income to the participating funds such percentage of said realized appreciation of principal as it may deem prudent. When such declaration is made, the percentage of such appreciation of principal declared to be income shall be deducted from the total [principal in] **net assets** of the common fund [and added to income in the common fund prior to the next regular monthly valuation. Following such declaration, the amount declared as income shall be treated] and distributed [as income] to the participating funds [monthly or quarterly in cash and/or units] **in proportion to the number of units owned; or**

[2. Declare as capital gains to the participating funds such percentage of said realized appreciation of principal as it may deem prudent. When such declaration is made, the percentage of such appreciation of principal declared shall be deducted from the total principal in the common fund and distributed monthly or quarterly in cash and/or units; and/or]

[3.] 2. (No change in text.)

## 17:16-69.9 Limitations

(a) For all investments (other than the State of New Jersey Cash Management Fund, United States Treasury Obligations, commercial paper, common and preferred stocks, issues convertible into common stock and exchange-traded funds, direct bank loans, and [credit default] **forward, option and** swap transactions) made in Common Pension Fund E, the following shall occur:

1.-4. (No change.)

(b)-(f) (No change.)

## 17:16-69.10 Liquidation

(a)-(c) (No change.)

(d) Distribution upon liquidation shall occur within five days after a valuation date and shall be based upon the [principal] **net asset** value per unit determined upon such valuation date.

(e) (No change.)

## OTHER AGENCIES

(a)

### NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

#### Notice of Proposed Substantial Changes Upon Adoption to Proposed New Rules Section 13.e Delegation of School Facilities Projects Proposed New Rules: N.J.A.C. 19:34B

Proposed: October 18, 2010 at 42 N.J.R. 2380(a).

Authorized By: New Jersey Schools Development Authority, Marc Larkins, Chief Executive Officer.

Authority: P.L. 2007, c. 137, § 4k (N.J.S.A. 52:18A-238.k).

Submit written comments by November 5, 2011 to:

Cecelia Haney, Administrative Practice Officer  
New Jersey Schools Development Authority