

BANKING  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF BANKING

Investments

Proposed Readoption with Amendments: N.J.A.C. 3:11

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-15e, 17:2-10, 17:9A-24, 24.13, 25(12), 25.3, 26(7), 60, 62 and 182.1 through 182.3 and 17:12B-165 and 168.

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

Proposal Number: PRN 2005-20

Submit comments by March 19, 2005 to:

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The agency proposal follows:

**Summary**

The Department of Banking and Insurance (Department) proposes to readopt and amend N.J.A.C. 3:11, which is scheduled to expire on July 17, 2005 pursuant to N.J.S.A. 52:14B-5.1c. N.J.A.C. 3:11 pertains to various investments permitted for banks, savings banks and State associations.

The chapter contains rules concerning the following subjects:

1. Loan and Investment Approval
2. Approved Subsidiaries
3. Organization and Operation of Small Business Investment Companies

4. Investment by Bank in Capital Stock of Bank Principally Engaged in International Banking
5. Investment by Bank in Capital Stock of Domestic Operating Subsidiaries
6. Approved Stock Investment
7. Limitation of Liability to a Bank
8. Savings Banks Investment Securities
9. Standby Letters of Credit
10. Savings Bank Credit Cards
11. Restrictions of Leeway Investments
12. Savings Banks: Commercial Loans
13. Officers and Directors Restrictions

These rules are promulgated to implement many essential provisions of the Banking Act of 1948 and its subsequent amendment (N.J.S.A. 17:9A-1 et seq.) and the Savings and Loan Act of 1963 and its subsequent amendment (N.J.S.A. 17:12B-1 et seq.). As part of this readoption process, the Department has undertaken a review of N.J.A.C. 3:11 to determine whether the rules need updating. Each rule was examined to determine whether it still provides a useful function within the banking regulation system of the State of New Jersey. The Department has determined that N.J.A.C. 3:11 continues to provide the banking industry with appropriate regulatory standards regarding the investments they may undertake. The Department has concluded that the original purpose of each rule continues to exist and is proposing to readopt the rules with the following amendments.

N.J.A.C. 3:11-1.1(b)1i(3) is proposed to be deleted. The proposed amendment deletes New Jersey Highway Authority obligations from the list of obligations in which banks may invest in excess of 15 percent of capital funds, but not in excess of 25 percent. With the merger

of the New Jersey Highway Authority into the New Jersey Turnpike Authority, effective July 9, 2003, the Highway Authority was eliminated and all New Jersey Highway Authority debt was paid.

In addition, the Department proposes to amend N.J.A.C. 3:11-7.3. The section refers to consumer paper that carries “a full resource endorsement.” The Department believes that the proper description of that banking product is “a full recourse endorsement.”

In addition, minor changes are proposed for N.J.A.C. 3:11-10 and 11 to change the case of the word “Commissioner.”

The Department’s rule proposal provides for a comment period of 60 days and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, it is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

### **Social Impact**

New Jersey banks, savings banks and State associations provide an extremely important range of financial services to their customers. The rules proposed for readoption with amendments will continue to provide these institutions the necessary investment flexibility and allow them to remain competitive with Federal and out-of-State institutions. At the same time, the rules proposed for readoption with amendments will continue to provide an appropriate level of Department oversight and control over such investments in order to protect the solvency of these institutions and the interests of consumers. The amendments being proposed merely update the rule on investments to recognize the merger of the New Jersey Highway Authority into the New Jersey Turnpike Authority and make non-substantive textual revisions.

### **Economic Impact**

The rules proposed for readoption with amendments continue long-standing regulatory requirements. The amendments proposed are non-substantive and will have no economic impact on the banking community. Banks, savings banks and State associations will continue to be required to bear any costs associated with recordkeeping and reporting requirements involving investments pursuant to the existing rules. Savings banks and State associations that undertake permitted investments will similarly have to comply with the existing regulatory recordkeeping and reporting requirements with respect to these investments. The rules proposed for readoption with amendments will not impose an undue burden on banks, savings banks and State associations. The information required to be filed or maintained is already maintained in the regular course of business of financial institutions. Moreover, the information will continue to permit the Department to monitor an entity's financial solvency and determine its financial condition and compliance with applicable law. Therefore, the Department believes that the costs to regulated entities are outweighed by the public benefit achieved.

The rules proposed for readoption with amendments will enable New Jersey banks, savings banks and State associations to remain competitive with Federal and out-of-State institutions branching into New Jersey. New Jersey banks, savings banks and State associations greatly benefit the State's economy and allowing them to remain competitive in financial markets will have a beneficial impact.

The Department will continue to incur costs to oversee the regulation of investments contained in this chapter.

### **Federal Standards Statement**

A Federal standards analysis is not required because the requirements of the rules proposed for readoption with amendments are consistent with, but do not exceed Federal

standards. Federal standards applicable to, but not exceeded by, the rules proposed for readoption with amendments are 12 C.F.R. 534 and 563.

### **Jobs Impact**

The Department does not anticipate that any jobs will be generated or lost as a result of the rules proposed for readoption with amendments. Personnel will still be required to do compliance work; however, additional staff should not be required. The Department invites commenters to submit any data or studies concerning the job impact of the rules proposed for readoption with amendments, together with any written comments on other aspects of the proposal.

### **Agriculture Industry Impact**

The Department does not expect any agriculture industry impact from the rules proposed for readoption with amendments.

### **Regulatory Flexibility Analysis**

The rules proposed for readoption with amendments will apply to New Jersey banks, savings banks and State associations. A number of New Jersey banks, savings banks and State associations are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. No new requirements are being imposed as part of this proposed readoption with amendments. New Jersey banks, savings banks and State associations will continue to be required to maintain records of their investments as part of these rules. There are no new reporting requirements imposed by the rules; however, the institutions will have to continue the reporting previously required and will have to continue to make their records available for

examination by the Department. Compliance costs are discussed under the Economic Impact above.

The Department does not believe that any additional professional services will be needed to comply with the rules, as any required documentation can be prepared in house in the regular course of business of the institution.

There has been no distinction made in the recordkeeping or reporting or other compliance requirements for small businesses, as the requirements generally reflect statutory requirements relating to the Department's oversight of institutions to help ensure the financial stability of these institutions. The Department's interest in oversight of these institutions applies regardless of business size. Accordingly, since no undue burden should be imposed, and no distinction could be made without creating a risk to banking institutions and consumers, no differentiation in compliance requirements is provided based on business size.

### **Smart Growth Impact**

The rules proposed for readoption with amendments will have no impact on smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:11.

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

3:11-1.1 Approval to exceed 15 percent limitation

(a) (No change.)

(b) The following are persons which may become liable to a bank or obligations in which a bank may invest in excess of 15 percent, but not in excess of 25 percent of the capital funds of such bank subject to the exercise of prudent banking judgment.

1. Those obligations as the Commissioner may from time-to-time prescribe.

A list of these obligations shall be kept on file in the office of the Commissioner.

i. The following is the current listing of obligations subject to the provisions of this paragraph:

(1) – (2) (No change.)

[(3) New Jersey Highway Authority (non-guaranteed issues);]

Recodify existing (4) – (8) as (3) – (7) (No change in text.)

(c) – (d) (No change.)

3:11-7.3 Limitations on obligations as endorser or guarantor of installment consumer paper

Obligations as endorser or guarantor of installment consumer paper which carries a full [resource] **recourse** endorsement, repurchase agreement or other unconditional guaranty by the seller may exceed 15 percent but not 25 percent of the capital funds of the bank.

3:11-11.2 Type of investment

(a) Only to the extent and upon the conditions that have been authorized by N.J.S.A.

17:9A-24.12 and in accordance with the procedures and limitations contained in this subchapter:

1. A bank, by resolution of its board of directors, and without prior approval of the [commissioner] **Commissioner**, may invest:

i. – iii. (No change.)

2. A bank, by resolution of its board of directors, may apply to the [commissioner] **Commissioner** for approval to make other investments. The application procedure and approval process shall be as provided in N.J.A.C. 3:11-11.9 and N.J.A.C. 3:11-11.10.

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