

BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING

Conversions of Associations

Proposed Readoption with Amendment: N.J.A.C. 3:32

Proposed Repeal: N.J.A.C. 3:32-1.10

Authorized By: Steven M. Goldman, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8, 8.1 and 15e; 17:12B-1 et seq.; and 17:12B-319.

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

Proposal Number: PRN 2009-3

Submit comments by March 6, 2009 to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to readopt N.J.A.C. 3:32, which is scheduled to expire on August 18, 2009 pursuant to N.J.S.A. 52:14B-5.1c. The Department has reviewed Chapter 32 and determined that the rules set forth therein are necessary, reasonable and proper for the purpose for which they were originally promulgated.

Chapter 32 implements the Savings and Loan Act (1963), N.J.S.A. 17:12B-1 et seq., which regulates New Jersey chartered savings and loan associations.

Subchapter 1 requires a mutual association which seeks to convert to a capital stock association to comply with certain specified conditions and procedures. A mutual association applying for conversion must adopt a resolution to that effect, approved by a two-thirds vote of its board of directors. In addition, the conversion plan must be fair and equitable to all members and include sufficient provisions to protect the interests of the depositors of the prospective capital stock association. If the Commissioner approves the preliminary application, he or she is required to issue a notice of "intent to approve," subject to the affirmative vote of a majority of eligible members and compliance with applicable law.

Subchapter 1 also sets forth parameters for members' entitlement to vote, times when special meetings may be called, and the manner in which voting may take place concerning the conversion, the adoption of bylaws and the election of officers, in person or by proxy. In addition, this subchapter defines persons eligible to purchase shares of stock, the price of stock, and designates qualifications for independent persons who will establish the prices of the stock.

Subchapter 2 sets forth at N.J.A.C. 3:32-2.3(a) the information that must be included in the application of an association or mutual association applying to convert to a savings bank. This consists of the following: a certified copy of the resolution of the board of directors authorizing the conversion; a certified copy of the resolution adopted by the stockholders or members; a certificate of incorporation for the converted institution; and copies of all applications for Federal regulatory approval and all approvals required in connection with the conversion, or a Statement or opinion of counsel for the association that no Federal regulatory approvals are required.

Subchapter 3 sets forth the rules pertaining to mutual State association holding companies. Such an entity is defined at N.J.A.C. 3:32-3.1 as being formed by a mutual State association pursuant to N.J.S.A. 17:12B-298 through 17:12B-318 and having its principal office of business in New Jersey. The methods that may be followed by the board of directors of an organizing mutual State association in applying to the Commissioner to form a mutual State association holding company are set forth at N.J.A.C. 3:32-3.2.

Application requirements are detailed at N.J.A.C. 3:32-3.3. Information that must be included in the application consists of the following: a description of the proposed formation of the mutual State association holding company; a certified copy of the resolution of the board of directors of the organizing mutual State association authorizing the application by a two-thirds vote of the board; a certificate of incorporation for the mutual State association holding company containing specified information; proposed by-laws of the surviving subsidiary capital stock State association and mutual State association holding company; and copies of any applications for establishment of a mutual State association holding company filed with any Federal regulator.

Criteria for approval of the application by the Commissioner is Stated at N.J.A.C. 3:32-3.4. N.J.A.C. 3:32-3.5 governs the filing of certificates of incorporation for any subsidiary capital stock State association. Provisions relating to the board of directors and officers of mutual State association holding companies are set forth at N.J.A.C. 3:32-3.6 and 3.7, respectively. N.J.A.C. 3:32-3.8 provides for the division and distribution of any surplus that is deemed by the board of directors of the mutual State association holding company or the Commissioner to be in excess of the amount required for the operation of the holding company.

The Department also proposes to repeal N.J.A.C. 3:32-1.10 and delete N.J.A.C. 3:32-2.3(a)5 to eliminate the references therein to an application fee set out in N.J.A.C. 3:1-2.24. As part of the legislation implementing the dedicated funding mechanism for the Division of Banking (see N.J.S.A. 17:1C-33 et seq.), application fees for existing New Jersey depositories seeking to convert to different forms of State chartered depositories were eliminated. Thus, the proposed repeal and amendment conform the rule to existing law.

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 is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The rules in Subchapters 1 and 2 proposed for readoption with amendment and repeal continue to provide a mechanism for a mutual savings and loan association to convert to a stock savings and loan association and also for the conversion of associations to savings banks. The rules are intended to ensure that, upon such conversion, the depository remains in place with no adverse impact on the community it serves.

The mutual holding company form of ownership provided for by the rules in subchapter 3 promotes the expansion of institutions by authorizing and facilitating their ability to acquire and sell subsidiary depositories. In addition, it provides another method for an institution to attract capital, thereby adding to the safety and soundness of the institution.

For these reasons, the rules proposed for readoption with amendment and repeal will have a beneficial social impact.

Economic Impact

The rules proposed for readoption with amendment and repeal make no change in the previously established requirements for conversion. Some institutions may use attorneys and/or accountants to assist in a conversion application. Costs will vary based on the professional chosen and the services requested.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption with amendment and repeal are not contrary to or in excess of requirements imposed by the Federal Office of Thrift Supervision, United States Department of the Treasury, in particular 12 CFR 563b relating to conversions of associations and savings banks from mutual to stock form.

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 amendment and repeal.

Agriculture Industry Impact

The rules proposed for readoption with amendment and repeal will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The rules proposed for reoption with amendment and repeal impose compliance requirements on savings_banks and associations applying for conversion, and on mutual State associations seeking to form mutual State association holding companies. In particular, certain rules proposed for reoption require applicants to file detailed applications with the Department.

Many of these institutions are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B:16 et seq. It is essential that the Department receive the information required from all applicants in order that it may confirm compliance with statutory requirements. In addition, the information permits the Department to review the soundness of the institution and the competence of its management. In some instances, the professional services of attorneys and outside accounting firms may be needed in the development of applications. Costs are discussed in the Economic Impact. Since this review is necessary for all institutions, no differentiation is made based on the size of the institution.

Smart Growth Impact

The rules proposed for reoption with amendment and repeal would have no impact on smart growth and implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The rules proposed for reoption with amendment and repeal will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules

would evoke a change in the average costs associated with housing because the rules proposed for readoption with amendment and repeal concern conversions of forms of savings and loan associations and savings banks.

Smart Growth Development Impact

The rules proposed for readoption with amendment and repeal will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the rules proposed for readoption with amendment and repeal concern conversions of forms of savings banks and savings and loan associations.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:32.

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

3:32-1.10 [Fees; conversion from mutual to capital stock association] **(Reserved)**

[An application fee as set forth in N.J.A.C. 3:1-2.24 shall accompany every application for the conversion of a mutual association to a capital stock association.]

3:32-2.3 Application for conversion

(a) An application for a conversion from an association to a savings bank shall contain the following:

1. – 2. (No change.)

3. A certificate of incorporation for the new savings bank; **and**

4. Copies of all applications for Federal regulatory approval and all approvals required in connection with the conversion, or, if no application or approval is required, a Statement or opinion of counsel to that effect [; and].

[5. The application fee for the conversion as set forth at N.J.A.C. 3:1-2.24.]

(b) (No change.)