

BANKING  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF BANKING

General Provisions

Proposed Readoption with Amendments: N.J.A.C 3:6

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

Authority: N.J.S.A. 17:1-8, 8.1 and 15, 17:9A-24, 24b.1, 28.2, 31, 43, 62H, 71 to 74, 182.1, 195, 256A, 333 and 334.

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

Proposal Number: PRN 2006-195

Submit comments by August 18, 2006 to:

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The agency proposal follows:

**Summary**

The Department of Banking and Insurance (Department) proposes to readopt N.J.A.C. 3:6, which is scheduled to expire on November 16, 2006 pursuant to N.J.S.A. 52:14B-5.1e.

Subchapter 1 sets forth necessary chapter definitions.

Subchapter 2 sets forth the approved depositories for investments comprising security funds.

Subchapter 3 limits the amount of loans a bank may make to an executive officer. The amount may not exceed 2.5 percent of the capital funds of the bank or \$25,000, whichever is greater, but in no event more than \$100,000.

Subchapter 4 remains reserved.

Subchapter 5 concerns the sales of Federal funds, which are defined as the temporary transfer and sale of immediately available funds either from one member bank in the Federal Reserve System to another member bank or to another bank not in the Federal Reserve System. The subchapter exempts liabilities arising under Federal funds transactions from the 15 percent of capital limitation on total loans and extensions of credit by a bank to one borrower at one time.

Subchapter 6 permits a qualified bank to invest in variable account notes of a single borrower on a short-term basis. The subchapter sets standards for these instruments, and requires that records be maintained.

Subchapter 7 remains reserved.

Subchapter 8 concerns the conversion of a savings bank to a savings and loan association or to a bank. In particular, it sets forth the application requirements, and permits the Commissioner to waive these requirements based on specified factors.

Subchapter 9 remains reserved.

Subchapter 10 provides that unsecured days funds may be transferred only to a commercial bank whose deposits are insured by the Federal Deposit Insurance Corporation.

Subchapter 11 permits the investment on a short-term basis of cash held for various fiduciary accounts. In addition, the subchapter sets standards regarding these investments.

Subchapter 12 sets forth the rules for parity for State banks and savings banks with Federal and out-of-State banks. The Department is proposing amendments to N.J.A.C. 3:6-12.1 to replace the reference to the public law with the current statutory citation and to correct the spelling of a word.

Subchapter 13 remains reserved.

Subchapter 14 contains the requirements for foreign banks that seek a certificate of authority to transact business in New Jersey. The Department proposes to amend N.J.A.C. 3:6-14.3(b)1 and 2ii. The amendments would add the phrase “or articles of association” after the existing phrase “certificate of incorporation.” The reason for the change is to recognize that foreign banks that may seek the certificate of authority governed by the subchapter may be incorporated via either a certificate of incorporation or articles of association.

Subchapter 15 permits a savings bank to lend to its officers and managers according to the same terms and limitations applicable to banks.

Subchapter 16 permits a qualified bank to acquire certain securities for one or more of its trust accounts from itself or an affiliate bank as defined therein, when the qualified bank or affiliate bank holds the security as a result of being the underwriter or a member of the underwriting syndicate of the security, so long as specified conditions are met.

Subchapter 17 concerns the conversion of a bank to a savings bank. In particular, it sets forth the application requirements, and permits the Commissioner to waive these requirements based on specified factors. The Department proposes to amend N.J.A.C. 3:6-17.1(c) and 17.2(a)2. The amendments would delete the phrases “members or” and “or members” and adjust necessary language. The reason for the change is to recognize that only capital stock entities (who have shareholders) may convert under this subchapter, not mutual institutions (who have members but no shareholders).

The Department also proposes to amend N.J.A.C. 3:6-8.2(a)6 and 17.2(a)6. The amendments would change the requirement on a proposal for conversion from a request for the most recent quarterly financial report, a general request, to a request for a most recent quarterly

Consolidated Report of Condition indicating the bank's financial condition . The reason for the change is to ensure that the Department has the best and most current information available to it in making its decisions.

In addition, the Department proposes to amend N.J.A.C. 3:6-8.2(a)7 and 17.2(a)7. The amendments would add the phrase "and capital ratios" after the existing phrase "capital requirements." The reason for the change is to ensure that the financial institution provides additional information needed by the Department to review the application.

The Department has reviewed the remaining rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

This 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 proposed for readoption with amendments apply to all banks and savings banks subject to supervision or regulation by the Department. They will continue to implement the pertinent statutes and the policies of the Department on a wide variety of subjects. The rules give banks and savings banks substantial parity with their Federal and out-of-State counterparts; regulate investments and deposits of banks and savings banks with other institutions; provide guidelines for loans to employees and other related persons; and require an application to convert a savings bank into a bank or savings and loan association, or to convert a bank into a savings bank. The readoption of the rules on these important subjects is necessary to prevent disruptions in both the private and public sectors.

The rules proposed for readoption with amendments will continue to enable the Department to carry out its mission of requiring banks and savings banks to engage in their business in a manner that is in accordance with safe and sound banking practices, protects consumers while freeing banks and savings banks from unnecessary regulation. Thus, the rules proposed for readoption with amendments will continue to have a beneficial social impact on consumers and banks and savings banks.

### **Economic Impact**

The Department does not expect that the rules proposed for readoption with amendments will have a significant economic impact on banks and savings banks. Furthermore, these rules proposed for readoption give banks and savings banks flexibility in making investment decisions within specified standards. This flexibility allows these institutions to make investment decisions based on their economic benefit.

The rules proposed for readoption will permit the Department to continue to collect the fees that are specified in Subchapter 14, Foreign Banks. These fees have a small economic impact on the regulated industry.

The institution requesting the charter conversion permitted by Subchapter 17 will incur internal costs to prepare an application for conversion. Staff of the institution will need to complete and submit a business plan and financial projections, in addition to completing and assembling corporate records, providing copies of the most recent financial report, providing copies of applications for federal regulatory approval and providing biographical information on the incorporators and/or directors of the new charter entity. Outside professional assistance of accountants, financial advisors and attorneys may be employed by applicants for conversion. Costs for these professionals would be based on the rate contracted for by the institution.

### **Federal Standards Statement**

The rules proposed for readoption with amendments do not contain standards or requirements that exceed standards or requirements imposed by Federal law. These rules continue to apply to New Jersey financial institutions certain Federal standards, set forth at 12 CFR 32.2(j)(1)(vi), 32.3(a) and 215. In addition, pursuant to the parity provisions in Subchapter 12, banks and savings banks may choose to engage in activities pursuant to the Federal standards. While those Federal standards cannot be identified at this time, in almost all respects they will be more liberal than the State standards. In any event, they are a choice of the regulated entity, not a State regulatory requirement.

### **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. Banks and savings banks will use existing staff or retained outside professionals for continued compliance with the rules proposed for readoption with amendments.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed readoption with amendments together with their written comments on other aspects of this proposal.

### **Agriculture Industry Impact**

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

### **Regulatory Flexibility Analysis**

Some New Jersey banks and savings banks are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for reoption with amendments will continue to impose recordkeeping, reporting and other compliance requirements on these entities as discussed in the Summary above. Much of the compliance requires professional assistance in the form of attorneys, financial advisors and accountants. Costs are discussed in the Economic Impact above.

The rules proposed for reoption with amendments will continue to require banks and savings banks to operate in a manner that is responsible to the industry, its customers and the general public. Moreover, the Department does not believe that these requirements are unduly burdensome. They are consistent with prudent banking practices. The purpose of these requirements does not vary based upon business size. Accordingly, no differentiation based on business size is provided.

### **Smart Growth Impact**

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

Full text of the rules proposed for reoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:6.

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

## 3:6-8.2 Application for conversion

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

1. - 5. (No change.)

6. A copy of the savings bank's most recent quarterly [financial report]

**Consolidated Report of Condition indicating the savings bank's financial condition. This requirement shall be deemed satisfied if this information is accessible to the Department via the internet;**

7. Financial projections for the converted association or bank for the next three years. Projections shall include a consolidated average balance sheet and a profit and loss statement at the end of each year. This financial information shall include projections of all relevant regulatory capital requirements **and capital ratios** as well as appropriate income ratios;

8. - 10. (No change.)

(b) (No change.)

## 3:6-12.1 State bank and savings bank parity with Federal and out-of-State institutions

(a) - (b) (No change.)

(c) "Power, right, benefit or privilege" shall not mean any activity that would fail to comply with or would violate:

1. - 4. (No change.)

5. The New Jersey [Homeownership] **Home Ownership** Security Act of 2002 ([P.L. 2003, c.64] **N.J.S.A. 46:10B-22 et seq.**).

(d) (No change.)



3:6-14.3 Certificate of authority to transact trust business

(a) (No change.)

(b) A foreign bank seeking its initial certificate of authority shall also submit the following:

1. A copy of its certificate of incorporation **or articles of association** and all amendments thereto, certified by its president or a vice president and attested under its corporate seal by its secretary, an assistant secretary, its cashier or an assistant cashier;

2. A certificate executed by its president or a vice president and attested under its corporate seal by its secretary, an assistant secretary, its cashier or an assistant cashier, affirming that, so long as it shall have a New Jersey certificate of authority it will:

i. (No change.)

ii. Promptly following adoption, submit to the Commissioner a copy of each amendment or other change in its certificate of incorporation **or articles of association**, certified and attested as provided in (b)1 above;

3. - 4. (No change.)

(c) - (d) (No change.)

3:6-17.1 Authorization for conversion

(a) - (b) (No change.)

(c) After the board of directors has adopted a resolution, a meeting of the [members or] stockholders shall be held upon not less than 10 days' written notice. The notice shall contain a statement of the time, place and purpose for which such meeting is called. At this meeting, the [members or] shareholders shall vote on whether the bank shall convert to a capital

stock savings bank. An affirmative vote **of shareholders** of at least two-thirds of the [members present, or shares eligible to be voted which are] **stock** represented at the meeting, either in person or by proxy, may approve the conversion.

3:6-17.2 Application for conversion

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

1. (No change.)

2. A certified copy of the resolution adopted by the stockholders [or members] relating to the plan of conversion, containing the following information:

i. - iv. (No change.)

3. - 5. (No change.)

6. A copy of the bank's most recent quarterly [financial report]

**Consolidated Report of Condition indicating the bank's financial condition. This condition shall be deemed satisfied if this information is accessible to the Department via the internet;**

7. Financial projections for the converted capital stock savings bank for the next three years. Projections shall include a consolidated average balance sheet and a profit and loss statement at the end of each year. This financial information should include projections of all relevant regulatory capital requirements **and capital ratios** as well as appropriate income ratios;

8. - 10. (No change.)

(b) (No change.)

