

BANKING  
DEPARTMENT OF BANKING AND INSURANCE  
OFFICE OF DEPOSITORIES

Procedural Rules  
Minimum and Maximum Stock Subscriptions

Proposed Amendment: N.J.A.C. 3:1-2.19

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

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:9A-1 et seq., and 17:9A-409 et seq.

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

Proposal Number: PRN 2006-371.

Submit written comments by January 19, 2007 to:

Robert J. Melillo, Chief  
Legislative and Regulatory Affairs  
Department of Banking and Insurance  
20 W. State Street  
P.O. Box 325  
Trenton, NJ 08625-0325  
Fax: (609)-292-0896  
E-mail: [legsregs@dobi.state.nj.us](mailto:legsregs@dobi.state.nj.us)

The agency proposal follows:

**Summary**

N.J.A.C. 3:1-2 sets forth the procedural rules for charter applications for New Jersey depository institutions. These rules were amended effective August 7, 2006. See 38 N.J.R. 3160(a). The Department of Banking and Insurance (Department) now proposes to amend N.J.A.C. 3:1-2.19 to address issues regarding individual ownership, direct or indirect, of the voting shares of a depository institution in excess of 24.9 percent. Based on past experience, the Department believes that the ownership by an individual of an amount in excess of 24.9 percent of a depository institution results in a significant concentration of control of the depository.

This, in turn, raises concerns with respect to a lack of independence of the directors and officers of such an institution. The Department believes that an adequate level of such independence fosters the safety and soundness and proper corporate governance of the depository. A summary of the proposed amendments follows.

N.J.A.C. 3:1-2.19(d), which imposes the 24.9 percent subscription limit on individuals, is proposed to be deleted as it is no longer necessary in light of the amendments to current subsection (e), and N.J.A.C. 3:1-2.19(e) is proposed to be recodified as N.J.A.C. 3:1-2.19(d).

Recodified N.J.A.C. 3:1-2.19(d) is proposed to be amended to provide that, on or after the effective date of the adopted amendments, no individual may subscribe, directly or indirectly, for stock in excess of 24.9 percent of the total voting shares of the depository institution, either at the time of its formation or at any time subsequent thereto, except where the acquisition is made pursuant to N.J.S.A. 17:9A-411b. This subsection is also proposed to be amended to delete reference to the exception for a holding company that has registered in accordance with State and Federal law and regulations insofar as N.J.S.A. 17:9A-411 requires prior approval of acquisitions of New Jersey banks or bank holding companies. Accordingly, the existing limits on ownership by companies in excess of 24.9 percent of a bank or bank holding company, without prior approval, continue in effect pursuant to that statute. For purposes of the proposed amendments, direct or indirect ownership includes, but is not limited to, ownership of a holding company that owns a depository institution, and ownership through family members or business associates acting in concert.

The proposed amendments further provide that, notwithstanding the restriction on ownership set forth above, the Commissioner of Banking and Insurance (Commissioner) may approve the direct or indirect ownership by an individual of more than 24.9 percent of the voting

shares of a depository institution if he or she finds that such ownership will not be detrimental to the safety and soundness and proper governance of the depository. In making this determination, the Commissioner shall consider the various factors set forth in the proposed amendments, which include, but are not limited to: whether there is a voting trust for the individual's shares in excess of 24.9 percent and rules governing the voting of the trust shares; whether there is a plan by which the individual will reduce his or her ownership to 24.9 percent or less over time; whether the individual has experience in banking; whether the management of the depository involved has experience in banking; and whether there is a policy for the recusal of the individual owner on matters affecting his or her personal interests related to the depository. The Department believes that the proposed amendments will further the legislative intent of N.J.S.A. 17:9A-11 and 413 by ensuring that the ownership structure that ensues from the formation of a depository will serve the needs of the community and that the acquisition of depositories or holding companies will not be detrimental to the safety and soundness and proper corporate governance of the depository. Indeed, the Department believes that the factors to be considered by the Commissioner in determining whether to waive the maximum ownership restriction should be part of any individual owner's, as well as a corporate owner's, prudent business practices to provide for the proper governance of a depository institution in this State. The Department notes that the proposed amendments do not apply to individuals who own in excess of 24.9 percent of a depository as of the effective date of the amendments.

The Department is proposing a new subsection (e) to provide that the determination made pursuant to N.J.A.C. 3:1-2.9(d) shall constitute a final agency decision.

A 60-day comment period is provided for this notice of proposal, and therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the notice is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

### **Social Impact**

The proposed amendments provide that, to the extent an individual has a high concentration of ownership (and thus control) over a New Jersey chartered depository institution, such an individual and the affected depository have procedures in place that will ensure that the concentration of ownership will not be detrimental to the safety and soundness of the depository institution or to its corporate governance. As noted above in the Summary, the Department believes that such procedures reflect prudent business practice. The proposed amendments thus continue to allow ownership by an individual in excess of 24.9 percent of the voting shares of a depository, provided that the weighing of the factors set forth in the proposed amendments indicates that the degree of individual ownership imposes an acceptable level of risk to the safety and soundness of the depository. This helps ensure that such institutions are well governed and serve their communities and the broader public interest.

### **Economic Impact**

Any individual seeking to own in excess of 24.9 percent of the voting shares of a New Jersey chartered depository institution will be required to incur any costs associated with demonstrating to the Commissioner that such ownership will not be detrimental to the safety and soundness and proper corporate governance of the depository, based on consideration of the various factors set forth in the proposed amendments. As noted in the Summary above, any

individual having a large concentration of control of a New Jersey depository institution should be able to demonstrate proper corporate governance by reference to the factors set forth in the proposed amendments. The Department, therefore, does not believe that the proposed amendments will impose any undue burden on individuals seeking to own in excess of 24.9 percent of the voting shares of the depository or unduly limit the ability of a depository to raise capital by selling its stock to an individual. The Department believes that few, if any, additional professional services should be required to comply with the proposed amendments. Such services would include legal services. In addition, ensuring that proper corporate governance procedures are in place will help ensure that such a concentration of ownership will not be detrimental to the safety and soundness of the depository, thereby benefiting depositors and the public generally.

#### **Federal Standards Statement**

Federal requirements and standards are not applicable to the requirements addressed by these proposed amendments. The proposed amendments relate to applications from entities for a charter as a New Jersey State-chartered depository pursuant to Title 17 of the New Jersey statute and subsequent ownership thereof.

#### **Jobs Impact**

The Department does not anticipate that any jobs should be generated or lost as a result of the proposed amendments.

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

### **Agriculture Industry Impact**

The proposed amendments will have no impact on the agriculture industry New Jersey.

### **Regulatory Flexibility Analysis**

The proposed amendments do not directly apply to “small businesses” as that term is defined in the “Regulatory Flexibility Act,” N.J.S.A. 52:14B-16 et seq. The proposed amendments provide restrictions on individual ownership in excess of 24.9 percent of the voting shares of a New Jersey chartered depository institution, permitting such ownership only where procedures are in place indicating that such ownership will not be detrimental to the safety and soundness and proper corporate governance of the depository in consideration of the various factors set forth in the proposed amendments. As noted above in the Summary above, the Department believes that any depository institution or individual seeking control of such institution should be in a position to demonstrate proper corporate governance, as set forth in the proposed amendments, including: whether the individual has experience in banking; whether the management has experience in banking; whether there are independent directors on the board; whether there is a detailed corporate governance plan; and whether there are plans in place for the recusal of an individual owner on matters affecting his or her personal interests related to the depository. The Department believes that such actions should be a part of prudent business practice for any depository institution and thus should be in place in any event. Accordingly, the Department does not believe that the proposed amendments impose any undue burden on small business. Further, the Department believes that few, if any, additional professional services should be required in order to comply with the proposed amendments. These services would include legal services.

The proposed amendments provide no different reporting, recordkeeping or other compliance requirements based on business size. As noted above in the Summary above, the requirements generally do not apply to the business, but rather to individuals that seek to own in excess of 24.9 percent of the voting shares of a depository institution. The purpose of the proposed amendments is to ensure that where an individual has a large ownership interest in a New Jersey State-chartered depository, procedures are in place to provide for proper corporate governance and ensure the safety and soundness of the depository. These goals do not vary based on business size.

### **Smart Growth Impact**

The proposed amendments will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

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

3:1-2.19 Minimum and maximum stock subscriptions

(a) – (c) (No change.)

[(d) No individual shall subscribe for stock in excess of 24.9 percent of the total capital required by (a) above.]

[(e)] **(d)** [No company] **On or after (the effective date of these amendments), no individual may subscribe, directly or indirectly (which term shall include, but not be limited to, ownership of a holding company that owns a depository institution, and ownership through the individual's spouse, children, siblings or parents, or business associates acting in concert), for stock in excess of 24.9 percent of the total [capital required by (a) above] voting shares of the depository institution, either at formation of the depository or any time subsequent thereto, except [a holding company that has registered in accordance with state and Federal law and regulations if required.] where the acquisition is made pursuant to N.J.S.A. 17:9A-411b. Notwithstanding this restriction, the Commissioner may approve the direct or indirect ownership by an individual of more than 24.9 percent of the voting shares of a depository institution if he or she finds that such ownership will not be detrimental to the safety and soundness and proper corporate governance of the depository. In making this determination, the Commissioner shall consider, without limitation, whether:**

**1. There is a voting trust for the individual's shares in excess of 24.9 percent and whether there are appropriate rules governing the voting of the trust shares that limit the impact of the ownership in excess of 24.9 percent by providing for the independence of the voting of such shares;**

**2. There is a plan by which the individual will reduce his or her ownership to 24.9 percent or less over time;**

3. The individual has experience in banking, and whether his or her involvement in banking institutions demonstrates an appropriate level of expertise in banking;

4. Management of the depository involved demonstrates an appropriate level of expertise in banking;

5. There are independent directors on the board, and if so, their percentage membership of the board;

6. There is a detailed corporate governance plan;

7. There is a policy in place to take detailed corporate minutes;

8. There is a policy in place for the recusal of the individual owner on matters affecting his or her personal interests related to the depository; and

9. There is a policy for review of insider transactions that is independent of the parties involved.

(e) The determination made pursuant to (d) above shall constitute a final agency decision.