

BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING

Depository Institutions

Proposed Readoption with Amendments: N.J.A.C 3:4

Proposed New Rules: N.J.A.C. 3:4-1.1 and 2.1

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

Authority: N.J.S.A. 17:1-8.1, 1-15e, 17:9A-8.10, 17:9A-27.50, 17:9A-106, 17:9A-266 et seq.,
17:12B-72 and 17:12B-177 et seq.

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

Proposal Number: PRN 2007-345

Submit comments by February 1, 2008 to:

Robert J. Melillo, Chief
Legislative and Regulatory Affairs
New Jersey Department of Banking and Insurance
P.O. Box 325
Trenton, NJ 08625-0325
Fax: (609) 292-0896
Email: Legsregs@dobi.state.nj.us

The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to readopt N.J.A.C. 3:4 governing depository institutions. Pursuant to N.J.S.A. 52:14B-5.1c, the rules in this chapter are scheduled to expire on April 21, 2008.

The Department proposes to readopt the rules. The Department has reviewed the rules and has determined that they continue to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The rules proposed to be readopted thus will continue

to provide the regulatory framework to enable the Commissioner to monitor depository institutions. The rules in Subchapter 1 help ensure that institutions do not operate in an unsafe and unsound manner, and that they maintain appropriate levels of capital. The rules in Subchapter 2 continue to set standards for stock option plans offered to directors, officers and employees. Subchapter 3 requires institutions to file necessary reports with the Department. Lastly, Subchapter 4 specifies the activities permitted and not permitted by agents of foreign banks.

The Department proposes to add new N.J.A.C. 3:4-1.1 and 2.1 to add a “purpose and scope” section to these subchapters and recodify the existing subsections.

A 60 day comment period is provided and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal 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 and new rules apply to all New Jersey State-chartered depository institutions. N.J.A.C. 3:4-3 also applies to out-of-State state-chartered depository institutions that have a branch in New Jersey. N.J.A.C. 3:4-4 applies to agents of foreign banks.

The rules in this chapter provide standards with respect to capital requirements for depository institutions for determining whether such institutions are operating in an unsafe or unsound condition, and reflect permissible activities with respect to the provision of stock option plans consistent with law.

With regard to capital requirements, the Department notes that reviewing capital ratios is an important way to measure the safety and soundness of a depository institution. A depository institution with a higher capital ratio has a larger cushion for protection in the event of an economic or business decline. By periodically reviewing capital ratios and other aspects of bank finances and operations, the Department is able to identify potential problems and assist institutions in addressing those problems before their condition deteriorates. Capital helps avoid failures, which in turn protects against disruptions to depositors and the public generally. Ultimately, the Commissioner has the authority to take possession of institutions pursuant to N.J.S.A. 17:9A-269 or 17:12B-179.

With respect to compensation requirements, the rules proposed for readoption will continue to reflect existing statutory requirements by providing flexibility to State depositories in compensating their directors, officers and employees. This, in turn, may better enable such depositories to attract and retain qualified persons to such positions. To the extent that depositories are able to operate efficiently and profitably through this employment, the public should similarly benefit.

The banking industry has come to rely on the presence and viability of these rules and their operation. State depository institutions are provided with standards concerning capital requirements and threshold levels at which the Department will determine whether such depositories are in an unsafe or unsound financial condition for purposes of taking action in accordance with N.J.S.A. 17:9A-266 et seq. and 17:12B-177 et seq. The rules further reflect and implement provisions with respect to compensation and the offering of stock options by State depositories to their directors, officers and employees. This chapter thus implements various statutory requirements and enables the Department to fulfill its statutory duties under law.

Failure to readopt these rules would impair the Department's ability to properly oversee banking operations, and would unsettle established relations between banking institutions and the public, their directors, officers and employees, and the Department. The protections that these rules afford depositors and the operational guidance they provide to the banking industry compel their continued existence, both to implement statutory provisions and to foster or promote a sound regulatory policy. Therefore, the rules will have a beneficial social impact upon depository institutions, their customers and the general public.

By stating the purpose and scope of Subchapters 1 and 2, the proposed amendments and new rules will also have a beneficial social impact upon depositories, their customers and the general public, as readers of the rules will be better able to quickly grasp their intent and the scope of each subchapter.

Economic Impact

The rules proposed for readoption with amendments and new rules will not impose any additional economic impact on State depository institutions or depositors in that the readoption will continue existing requirements.

State depositories will continue to incur costs associated with compliance with the requirements set forth in the chapter. These requirements include maintaining applicable capital to asset ratios as set forth in N.J.A.C. 3:4-1. As indicated above, these ratios are comparable to those applicable to Federally-chartered banks and Federally-chartered savings institutions, as prescribed by Federal banking regulators. Moreover, by continuing to define unsafe operation and unsafe condition, the rules specify when the Department may take enforcement action against a depository institution in accordance with N.J.S.A. 17:9A-266 et seq. and 17:12B-177 et

seq. State depository institutions will continue to be required to incur costs associated with any order issued due to the failure of such institution to maintain appropriate capital ratios as set forth in the rules. However, the Department believes that any costs that may be imposed are outweighed by the benefits to be achieved through the potential elimination of unsafe or unsound financial conditions and attendant costs and disruptions.

With respect to stock option plans, the rules will continue to have a positive economic impact on these institutions to the extent that depositories are able to transact business more efficiently and attract and retain qualified people. The Department does not believe that any negative economic impact will result from the readoption of N.J.A.C. 3:4-2. All stock option plans are approved by the Department.

Further, as noted in the Social Impact above, the rules in this chapter address various statutory requirements governing banks and other regulated depositories. The rules will continue to provide standards by which the Department may monitor the financial condition of State depositories to help ensure that such entities will not be or become in an unsafe or unsound financial condition, and if a State depository is in such condition, to take appropriate action pursuant to law to help avoid further deterioration. This, in turn, should benefit depositors, banks, savings banks, savings and loan associations, taxpayers, and the public generally.

The failure to readopt this chapter would require State depository institutions to engage in business without guidance from the Department. This could impose significant costs on the industry since current compliance requirements would not be readily available to the industry, requiring depositories to implement guidelines, which may or may not be acceptable to the Department. This, in turn, could result in disruption to the market with attendant additional

costs. Further, the readoption of the current rules will enable the Department to continue to monitor State depository institutions in an appropriate manner.

The Department has carefully monitored, and continues to monitor, the impact of the rules in this chapter through communication with the banking industry and the public. The Department is unaware of any provisions of these rules that impose undue or unnecessary financial burdens on State depositories.

Finally, the Department will continue to be required to incur any costs associated with monitoring the financial condition of depository institutions to ensure compliance with this chapter. The Department anticipates that future annual costs to ensure compliance with these rules should be consistent with current annual costs. Some depository institutions may choose to seek or continue to use professional assistance for compliance with the rules. This assistance would be in the form of accountants, financial industry consultants or attorneys. The cost of the professional will vary based on the individual professional and the amount of work requested.

Federal Standards Statement

The rules proposed for readoption with amendments and new rules do not contain standards or requirements that exceed standards or requirements imposed by Federal law. The rules proposed for readoption with amendments and new rules continue to apply to State-chartered depositories certain Federal standards, as set forth at 12 CFR §325 Appendix A. §304.4, §324, §325.2t and 325.2v, and §567.6, and 12 U.S.C. §1813(a)(2).

Jobs Impact

The Department does not anticipate that any jobs will be lost as a result of the rules proposed for readoption with amendments and new rules. Most depository institutions will use existing staff for continued compliance with the existing rules. Some institutions may choose to employ professional services to meet the recordkeeping, reporting and other compliance requirements. The costs of these professional services are discussed in the Economic Impact above.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed readoption with amendments and new rules 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 and new rules.

Regulatory Flexibility Analysis

Some depository institutions operating in this State are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption with amendments and new rules will continue to impose recordkeeping and reporting requirements on these entities in the form of reports of their financial condition to the Department. The rules proposed for readoption with amendments and new rules will also continue to require New Jersey banks, savings banks and savings and loan associations to maintain capital in the amount

set forth in the rules and, if such an institution seeks to do so, to provide for stock option plans in accordance with the rules.

The Department believes that these requirements are generally mandated pursuant to good banking practice. The costs are discussed in the Economic Impact above. Moreover, the Department does not believe that these requirements are unduly burdensome and in many cases should not require professional services for compliance. By using a percentage-based formula N.J.A.C. 3:4-1.3, which prescribes the minimum risk-based capital requirement applicable to these institutions, does provide for variation based upon business size. Generally, however, the purpose of these rules is to provide guidance to depository institutions in their operations and to protect consumers, regardless of the size of the institution. This purpose does not vary based upon business size. Accordingly, other than as set forth in N.J.A.C. 3:4-1.3, no differentiation based on business size is provided.

The proposed amendments and new rules do not impose any reporting, recordkeeping or compliance requirements upon depositories.

Smart Growth Impact

The rules proposed for re adoption with amendments and new rules 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 re adoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:4.

Full text of the proposed amendments and new rules follows (additions indicated in boldface **thus**):

SUBCHAPTER 1. CAPITAL REQUIREMENTS

3:4-1.1 Purpose and scope

(a) This subchapter implements the capital requirements of the “Banking Act of 1948,” N.J.S.A. 17:9A-1 et seq. and the “Savings and Loan Act (1963),” N.J.S.A. 17:12B-1 et seq.

(b) This subchapter shall apply to all depository institutions.

Recodify existing N.J.A.C. 3:4-1.1 through 1.6 as **1.2 through 1.7** (No change in text.)

SUBCHAPTER 2. COMPENSATION

3:4-2.1 Purpose and scope

(a) This subchapter implements the stock option plan set forth in the “Banking Act of 1948” at N.J.S.A. 17:9A-8.10 and 27.50 et seq.

(b) This subchapter shall apply to all depositories.

Recodify existing N.J.A.C. 3:3-2,1 and 2.2 as **2.2 and 2.3** (No change in text.)