

TREASURY — GENERAL

(a)

STATE INVESTMENT COUNCIL

Deferred Compensation Plan

General Provisions; Permissible Investments; Units of Participation; Valuation of Investments and Net Assets; Valuation of Units; Admission and Withdrawal; Limitations; Liquidation

Proposed Amendments: N.J.A.C. 17:16-65.1 through 65.6 and 65.9

Proposed Repeal: N.J.A.C. 17:16-65.10

Authorized By: State Investment Council, Timothy M. Walsh,
Director, Division of Investment.

Authority: N.J.S.A. 52:18A-91.

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

Proposal Number: PRN 2012-095.

Submit comments by September 14, 2012 to:

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PO Box 290
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The agency proposal follows:

Summary

N.J.A.C. 17:16-65 sets forth the rules for permissible investments, limitations, units of participation, valuation of investments and units, admission, withdrawal, and liquidation procedures for the New Jersey State Employees Deferred Compensation Plan (DCP). The current rules provide that moneys from salary deductions of New Jersey State employees on or after January 2, 2006 may only be invested in funds offered and managed by outside vendors (Outside Funds). The proposed amendments, as further described below, will eliminate this restriction and provide that the New Jersey State Employees Deferred Compensation Board, in consultation with the Director, will determine which funds will be offered to participants for investment, subject to procedures as set forth in the subchapter. This will enable the Common Funds, managed by the Division of Investment, and currently closed to new contributions, to be considered as investment options for participants. Further proposed amendments and the repeal of N.J.A.C. 17:16-65.10 are described in detail below. The operative date for the adoption of the proposed amendments is expected to coincide with the award of the contract to a Plan Administrator.

The proposed amendment to N.J.A.C. 17:16-65.1(b) sets forth an abbreviated term, DCP, for New Jersey State Employees Deferred Compensation Plan and clarifies that moneys are from salary deductions of DCP participants. The proposed amendment to N.J.A.C. 17:16-65.1(c) sets forth an abbreviated term, DCP Board, for the New Jersey State Employees Deferred Compensation Board. These proposed abbreviated terms are utilized throughout the proposed amendments and included in the proposed amendments to N.J.A.C. 17:16-65.2 and 65.3. The proposed amendment to N.J.A.C. 17:16-65.1(c) also clarifies that participation of State employees in the DCP is subject to the rules of the DCP.

Several sections of the rules are proposed to be amended, as further described in detail below, to provide that investment options for participants may include the Common Funds and Outside Funds. Currently, salary deductions of participants may not be deposited into the Common Funds managed by the Division. The amendments are intended to provide investment flexibility to participants by providing the ability to invest in Common Funds managed by the Division or Outside Funds as conditions may warrant and as determined by the Board in consultation with the Director. Proposed N.J.A.C. 17:16-65.2(d) stipulates that the DCP Board, in consultation with the Director, will determine which DCP Funds shall accept ongoing deposits or transfers from participants as of a

specified effective date. Proposed N.J.A.C. 17:16-65.2(e) provides that to the extent that a DCP Fund is closed to ongoing deposits or transfers, the DCP Board, in consultation with the Director, will determine whether participants may maintain any balances in that fund, or whether balances must be transferred to other DCP Funds.

N.J.A.C. 17:16-65.1(b) provides that moneys from salary deductions of participants may be deposited in the Common Funds up to and including January 1, 2006, and in Outside Funds on or after January 2, 2006. The proposed amendment clarifies that the participants elect to participate in the plan and eliminates the restriction that moneys may only be deposited in Outside Funds. The proposed amendment stipulates that moneys from DCP participants may be deposited in the Common Funds or in approved investment options offered and managed by outside vendors (Outside Funds) pursuant to the procedures described in the subchapter. N.J.A.C. 17:16-65.2(a) provides that the Common Funds will not accept ongoing deposits or transfers from participants on or after January 2, 2006, but participants may choose to maintain any balances invested in the Common Funds or transfer all or part of such balances to one or more of the Outside Funds; this language is proposed to be deleted. The proposed amendment to this section stipulates that the investment options will be selected pursuant to the procedures described in the subchapter, and the investment options may include the Common Funds and shall include the Outside Funds. N.J.A.C. 17:16-65.2(c)1 states that the Portfolio Manager shall invest moneys deposited at the participant's option in the Outside Funds on or after January 2, 2006, and participants shall be permitted to authorize the transfer of all or a portion of the funds previously invested in the Common Funds to the Outside Funds; this section is also being proposed for deletion. The portion of N.J.A.C. 17:16-65.6(a) which stipulates that admission to the Common Funds is only permitted until January 1, 2006 is likewise being deleted.

In order to reflect the proposed changes to the subchapter discussed above regarding the procedures for the selection of investment options, proposed amendments to the language in existing N.J.A.C. 17:16-65.2(c)4, recodified as proposed N.J.A.C. 17:16-65.2(f), will provide that the Director shall prepare a report to the Council at least one time per year which shall include a description of the DCP Funds available for investment and a summary of any DCP Fund which was added or discontinued as an investment option for participants since the date of the last report and the rationale for adding or deleting such DCP Fund.

The proposed amendment to N.J.A.C. 17:16-65.2(b)3 will clarify that the New Jersey State Employees Deferred Compensation Cash Management Fund shall be invested in securities which are permitted by the rules of the Council, as opposed to just the subchapter, which is more all-inclusive.

N.J.A.C. 17:16-65.2(b)5 stipulates that Common Funds may be organized as commingled accounts, mutual funds registered with the Securities and Exchange Commission, separate accounts of an insurance company licensed to transact business in the State, commingled trust accounts of a trust bank authorized to transact business in the State, or any other legal structure deemed acceptable to the Director. Since it is not anticipated that the Common Funds managed by the Division would be legally structured other than in the manner so described, this section is proposed to be deleted.

The proposed amendment to N.J.A.C. 17:16-65.3(c) will clarify that units shall be purchased for the unit valuation price, rather than for the principal valuation price, to be consistent with the term as used elsewhere in the subchapter.

N.J.A.C. 17:16-65.4 sets forth the valuation method for investments. The proposed amendments to the section heading and N.J.A.C. 17:16-65.4(a) and (b) expand the section to include the method for the valuation of net assets. The proposed amendments to N.J.A.C. 17:16-65.4(c) will replace previously specified valuation methodologies that attempted to outline industry pricing and accounting practices. The proposed amendments will stipulate that investments must be valued in accordance with applicable accounting standards, using recognized industry pricing sources. The proposed amendments will also require that the valuation of net assets be calculated as total assets minus total liabilities, in accordance with applicable accounting standards. This calculation is necessary in order to calculate the unit value under N.J.A.C. 17:16-65.5.

The methodology for the valuation of stable value funds is being moved from N.J.A.C. 17:16-65.5(a) to N.J.A.C. 17:16-65.4(c)1.

The proposed amendment to N.J.A.C. 17:16-65.5(a) corrects a cross-reference to the more appropriate section of the subchapter and modifies the definition of the calculation of unit value to be net assets of the fund divided by total outstanding units of participation, which is consistent with current industry and accounting standards and practices, rather than total value of the fund's securities and other assets, less any administrative expenses or other liabilities.

The proposed amendments to N.J.A.C. 17:16-65.2(b)2, 65.9(a), and 65.9(c) include the deletion of the term "preferred stocks," and modifies N.J.A.C. 17:16-65.2(b)2 to state that investments will be made in common stocks and issues convertible into common stock, to conform the descriptions to permissible investments as defined in N.J.A.C. 17:16-42.

The proposed repeal of N.J.A.C. 17:16-65.10 is based upon the fact that any liquidation would be governed by Federal Tax laws and requirements set forth in the DCP at the time of the liquidation.

Because the Division is providing a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

There will be no social impact from the proposed amendments and repeal.

Economic Impact

The proposed amendments and repeal shall have a positive economic impact by providing an opportunity for enhanced supplemental retirement account earnings to participants of the New Jersey State Employees Deferred Compensation Plan through the potential offering of investment options currently unavailable to them.

Federal Standards Statement

A Federal standards analysis is not required because the investment policy rules of the State Investment Council are not subject to any Federal requirements or standards.

Jobs Impact

The State Investment Council and the Division of Investment do not anticipate that any jobs will be generated or lost by virtue of the proposed amendments and repeal.

Agriculture Industry Impact

The proposed amendments and repeal will have no impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed amendments and repeal will have no effect on small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but regulate only the Director of the Division of Investment.

Housing Affordability Impact Analysis

The proposed amendments and repeal will have no impact on the affordability of housing in the State of New Jersey. The proposed amendments will expand the investment options available to the participants of the New Jersey State Employees Deferred Compensation Plan.

Smart Growth Development Impact Analysis

The proposed amendments and repeal are not anticipated to have an impact on the availability of affordable housing or housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey. The proposed amendments will expand the investment options available to the participants of the New Jersey State Employees Deferred Compensation Plan.

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

17:16-65.1 General provisions

(a) (No change.)

(b) **At the election of participants in the New Jersey State Employees Deferred Compensation Plan (the DCP), [Moneys]**

moneys from salary deductions [of New Jersey State employees] shall be deposited in the Common Funds [up to and including January 1, 2006.] **or in approved [Investment] investment** options offered and managed by outside vendors (collectively, the Outside Funds) [may accept deposited moneys from salary deductions of New Jersey State employees] pursuant to the procedures described in this subchapter [on or after January 2, 2006]. Collectively, the Common Funds and the Outside Funds shall be referred to as the DCP Funds.

(c) The participation of State employees **in the DCP** is subject to the [Plan] **rules of the DCP** as established by the New Jersey State Employees Deferred Compensation Board.

17:16-65.2 Permissible investments

(a) The Director and/or any persons, entities or organizations engaged by the New Jersey State Employees Deferred Compensation Board (**DCP Board**) to invest plan assets (collectively, the Portfolio Manager) shall invest the assets of the New Jersey State Employees Deferred Compensation Plan (**DCP**) in [securities] **investment options** which are legal investments for fiduciaries of trust estates in New Jersey which are permitted under N.J.S.A. 52:18A-163 et seq., subject to the applicable provisions of the regulations of the Council, **and selected pursuant to the procedures described in this subchapter**, which [shall] **investment options may** include the Common Funds and **shall include** the Outside Funds. [The Common Funds will not accept ongoing deposits or transfers from participants on or after January 2, 2006, but participants may choose to maintain any balances invested in the Common Funds or transfer all or part of such balances to one or more of the Outside Funds.]

(b) Moneys in the Common Funds shall be invested as follows:

1. (No change.)

2. The New Jersey State Employees Deferred Compensation Equity Fund and the New Jersey State Employees Deferred Compensation Small Capitalization Equity Fund will be invested in such common [and preferred] stocks and issues convertible into common stock as are permitted under N.J.A.C. 17:16-42[.]; **provided that, [In] in** the case of the New Jersey State Employees Deferred Compensation Small Capitalization Equity Fund, investments will be made in **common stocks and issues convertible into common stock**, which are eligible under N.J.A.C. 17:16-42 and which are designated as small capitalization stocks by the Division.

3. The New Jersey State Employees Deferred Compensation Cash Management Fund shall be invested in the State of New Jersey Cash Management Fund or in such other fixed income securities maturing in less than one year as [may be] permitted by [this subchapter] **the rules of the Council.**

4. (No change.)

[5. Common Funds may be organized as commingled accounts, mutual funds registered with the Securities and Exchange Commission (SEC), separate accounts of an insurance company licensed to transact business in the State, commingled trust accounts of a trust bank authorized to transact business in the State, or any other legal structure deemed acceptable to the Director.]

(c) Moneys in the Outside Funds shall be invested as follows:

[1. The Portfolio Manager shall invest moneys deposited at the participant's option in the Outside Funds on and after January 2, 2006. Participants shall also be permitted to authorize the transfer of all or a portion of the funds previously invested in the Common Funds to the Outside Funds.]

[2.] 1. (No change in text.)

[3.] 2. The [New Jersey State Employees Deferred Compensation Plan] **DCP** shall offer a minimum of five Outside Funds for investment to participants. Such Outside Funds shall be selected by the Director in consultation with the [New Jersey State Employees Deferred Compensation] **DCP** Board. The Outside Funds shall offer participants a range of investment options with varying levels of risk and expected returns, and may include funds which invest primarily in domestic equity securities, international equity securities, domestic fixed income securities, and money market instruments.

(d) The DCP Board, in consultation with the Director, will determine which DCP Funds shall accept ongoing deposits or transfers from participants as of a specified effective date.

(e) **To the extent that a DCP Fund is closed to ongoing deposits or transfers, the DCP Board, in consultation with the Director, will determine whether its participants may maintain any balances in that fund, or whether balances must be transferred to other DCP Funds.**

[4.] (f) The Director shall prepare a report [for acceptance by] to the Council **at least one time per year which shall include:**

[i. Upon the initial determination of the Outside Funds to be offered; and

ii. One time per year, commencing in 2006.

5. The report in (c)4 above shall describe the criteria utilized by the Director:

i. In selecting the investment objectives for the number and type of Outside Funds; and

ii. In selecting each specific Outside Fund.]

1. **A description of the DCP Funds available for investment; and**
2. **A summary of any DCP Fund which was added or discontinued as an investment option for participants since the date of the last report and the rationale for adding or deleting such DCP Fund.**

17:16-65.3 Units of participation

(a) (No change.)

(b) All units of participation in the New Jersey State Employees Deferred Compensation Plan (DCP), representing net capital contributions to the DCP Funds together with any income thereon, shall be evidenced by proper entries setting forth ownership units in the records of the persons, entities, or organizations engaged by the New Jersey State Employees Deferred Compensation Board to administer the plan, which may include the Division of Pensions and Benefits, Department of the Treasury, and/or one or more private organizations contracting with the Division pursuant to N.J.S.A. 52:18A-167 (collectively, the Plan Administrator).

(c) All units of participation shall be purchased by cash payments. All units shall be purchased for the [principal] **unit** valuation price determined by this subchapter.

17:16-65.4 Valuation of investments **and net assets**

(a) Upon each valuation date, as provided in (b) below, there shall be a valuation for every investment in **and the net assets of** the DCP [funds] **Funds** in the method provided for in this section.

(b) For the Common Funds, the valuation of **investments and net assets** shall be determined after the close of business on the last business day of each month (or on each day that the primary securities exchanges in the United States are open for business, if so determined by the Director), and shall be based on [market prices and accruals] **values** as of the close of business on such day. For the Outside Funds, the valuation of **investments and net assets** shall be determined after the close of business on each day that the primary securities exchanges in the United States are open for business, and shall be based on [market prices and accruals] **values** as of the close of business on such day.

(c) [The Director shall use the] **The** following method [of] **shall be utilized for the** valuation of investments **and net assets:**

[1. Securities' prices will be determined by a pricing service or a method which has been approved by the Director.

2. Accrual and amortization procedures will be calculated by procedures and formulas approved by the Director.]

1. **The valuation of investments shall be made in accordance with applicable accounting standards, using recognized industry pricing sources. In the case of stable value funds, the total value of the fund's investments shall equal the aggregate amount of principal deposited in the fund, plus the amount of interest provided in any synthetic guaranteed investment contract.**

2. **The valuation of net assets shall be calculated as total assets minus total liabilities, in accordance with applicable accounting standards.**

3. (No change.)

[4. In the case of a stock where a dividend has been declared and not as yet paid and the amount of such dividend has been included as income, such amount shall be deducted from the value of the stock, unless such value is based on an ex-dividend valuation.

5. An investment purchased and awaiting payment against delivery shall be included for valuation purposes as a security and the cost thereof recorded as an account payable.

6. An investment sold but not delivered pending receipt of proceeds shall be valued at the net sales price.

7. For the purposes of valuation of an investment, with the exception of investments sold but not delivered, it shall not be necessary to deduct from the value ascertained by this section, brokers' commission or other expenses which would be incurred on a sale thereof.]

(d) (No change.)

17:16-65.5 Valuation of units

(a) The net asset value per unit of participation in each DCP Fund on the valuation date set forth in N.J.A.C. 17:16-~~[65.6]~~**65.4(b)** shall be determined by dividing the [total value of the fund's securities and other assets, less any administrative expenses or other liabilities,] **net assets of the fund** by the total outstanding units of participation in the fund. [In the case of stable value funds, the total value of the fund's securities and other assets shall equal the aggregate amount of principal deposited in the fund, plus the amount of interest provided in any synthetic guaranteed investment contract.]

(b)-(d) (No change.)

17:16-65.6 Admission and withdrawal

(a) Admission to [(until January 1, 2006)] or withdrawal from the Common Funds shall be permitted as of the first business day of each month (or as of the end of each business day, if so determined by the Director), subject to the procedures of the Plan Administrator. Admissions to or withdrawals from the Outside Funds shall be permitted as of the end of each business day, subject to the procedures of the Plan Administrator.

(b) (No change.)

17:16-65.9 Limitations

(a) With respect to the New Jersey State Employees Deferred Compensation Equity Fund, not more than 10 percent of the market value of the Fund shall be invested in the common stocks[, preferred stocks] and securities convertible into common stock of any one corporation.

(b) (No change.)

(c) With respect to the New Jersey State Employees Deferred Compensation Small Capitalization Equity Fund, not more than 10 percent of the market value of the [fund] **Fund** shall be invested in the common stocks[, preferred stocks] and securities convertible into common stock of any one corporation.

17:16-65.10 [Liquidation] **(Reserved)**

[(a) The Director, upon direction of the New Jersey State Employees Deferred Compensation Board and with the approval of the Council, shall liquidate the aforementioned Common Funds and/or holdings in one or more of the Outside Funds.

(b) In the event of such fund liquidation, the owners of the units shall share proportionately, according to units owned, in each investment held by the liquidated fund.

(c) When such proportionate distribution is impracticable in the judgment of the Director, he or she may instead distribute on liquidation, cash or temporary investments held by the liquidated fund.

(d) Distribution upon fund liquidation shall occur within five days after a valuation date and shall be based upon the principal value per unit determined upon such valuation date.

(e) No fund liquidation will be effectuated without the approval by the Council of a plan of distribution of the assets of the liquidated fund.]