

TREASURY—GENERAL

(a)

STATE INVESTMENT COUNCIL

Common Pension Funds, Real Assets, Private Equity Limitations

Proposed Amendments: N.J.A.C. 17:16-69.9, 71.4, and 90.4

Authorized By: State Investment Council, Corey Amon, Director, Division of Investment.

Authority: N.J.S.A. 52:18A-91 and P.L. 2018, c. 55.

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

Proposal Number: PRN 2020-001.

Submit comments by March 6, 2020, to:

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The agency proposal follows:

Summary

N.J.A.C. 17:16 provides the regulatory framework that governs the methods, practices, or procedures for investment, reinvestment, purchase, sale, or exchange transactions followed by the Director of the Division of Investment (Division) for the funds under the supervision of the State Investment Council (Council). The Council is proposing amendments to its rules to increase the percentage of pension and annuity fund assets that may be invested in private equity and real estate investments to allow greater flexibility in asset allocation and to continue to implement P.L. 2018, c. 55, which transferred authority to direct investment policy related to the assets of the Police and Firemen's Retirement System (PFRS) from the Council to the PFRS Board of Trustees.

N.J.A.C. 17:16-69 sets forth the rules governing participation, permissible investments, valuation of investments and units, and liquidation procedures for Common Pension Funds A, B, D, E, and L. N.J.A.C. 17:16-69.9(b) provides that not more than five percent of the market value of the assets invested through direct investments, separate accounts, funds-of-funds, commingled funds, co-investments, and joint ventures, pursuant to N.J.A.C. 17:16-23.2(a)2, 71.2(a)1, 90.2(a)1, and 100.2(a)1, plus outstanding commitments, may be committed to any one partnership or investment, without the prior written approval of the Council. P.L. 2018, c. 55 transferred the authority to direct the investment policy of PFRS from the Council to the PFRS Board of Trustees. Investments in private assets are made through a common trust fund, Common Pension Fund E, and PFRS will continue to have an ownership interest in Common Pension Fund E. N.J.A.C. 17:16-3.1(c) establishes that, beginning with the transition date, PFRS is no longer included in the definition of Pension and Annuity Funds, as the term is used in the chapter, so that only the pension and annuity funds under the supervision of the Council, and not PFRS, are included for purposes of determining compliance with the Council's investment limitations. The proposed amendment to N.J.A.C. 17:16-69.9(b) clarifies that the investment limitation shall be applied to the Pension and Annuity Funds' proportionate interest in the investments.

N.J.A.C. 17:16-71 establishes that the Director may invest and reinvest the moneys of any eligible fund in real assets, subject to the limitations expressed in the subchapter. N.J.A.C. 17:16-71.4(a)1 provides that the Pension and Annuity Funds' proportionate interest in the aggregate market value of the investments in real estate under the subchapter shall not exceed nine percent of the combined assets of all of the Pension and Annuity Funds. The proposed amendment increases the limit from nine percent to 10 percent to provide for continued investment diversification

and the opportunity for increased risk-adjusted returns of the State-administered funds.

N.J.A.C. 17:16-90 establishes that the Director may invest and reinvest the moneys of any eligible fund in private equity, subject to the limitations expressed in the subchapter. N.J.A.C. 17:16-90.4(a)1 provides that the Pension and Annuity Funds' proportionate interest in the aggregate market value of private equity investments shall not exceed 12 percent of the combined assets of all of the Pension and Annuity Funds. N.J.A.C. 17:16-90.4(a)2 provides that no more than 12 percent of the combined assets of all of the Pension and Annuity Funds may be invested in buyout investments. The proposed amendments to N.J.A.C. 17:16-90.4(a)1 and 2 increase the limits for private equity and buyout investments from 12 percent to 15 percent to provide for continued investment diversification and the opportunity for increased risk-adjusted returns of the State-administered funds.

As the Council has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendment to N.J.A.C. 17:16-69 is necessary to implement P.L. 2018, c. 55 and clarifies that the limitation on the amount that can be committed to any one partnership or investment applies to the funds under the supervision of the Council. The proposed amendments to N.J.A.C. 17:16-71 and 90 will provide the opportunity for continued investment diversification and increased overall risk-adjusted returns for the State-administered funds under the supervision of the Council. The rules, as proposed for amendment, will continue to provide a regulatory framework for the investment of State-administered funds under the supervision of the Council, thereby benefitting the funds' beneficiaries and the State's taxpayers.

Economic Impact

The proposed amendment to N.J.A.C. 17:16-69 is necessary to implement P.L. 2018, c. 55 and clarifies that the limitation on the amount that can be committed to any one partnership or investment applies to the funds under the supervision of the Council. The proposed amendments to N.J.A.C. 17:16-71 and 90 will provide the opportunity for continued investment diversification and increased overall risk-adjusted returns for the State-administered funds under the supervision of the Council. The Council rules, as proposed for amendment, will continue to provide a regulatory framework for the investment of State-administered funds under the supervision of the Council and will, in turn, be followed by the Director of the Division of Investment. The rules are beneficial to the long-term economic security of the funds' beneficiaries and are expected to lessen the long-term economic burden of State employee pension plans on the State's taxpayers.

Federal Standards Statement

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

Jobs Impact

The proposed amendments will have no impact on the generation or loss of jobs in New Jersey.

Agriculture Industry Impact

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

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed amendments regulate only the Director of the Division of Investment and 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.

Housing Affordability Impact Analysis

The proposed amendments will have no impact on the affordability of housing in the State of New Jersey and the proposed amendments are unlikely to evoke a change in the average costs associated with housing because the proposed amendment to N.J.A.C. 17:16-69 is necessary to implement P.L. 2018, c. 55, and the proposed amendments to N.J.A.C.

17:16-71 and 90 will provide the opportunity for continued investment diversification and increased overall risk-adjusted returns for the State-administered funds under the supervision of the Council.

Smart Growth Development Impact Analysis

The proposed amendments are unlikely to evoke a change in housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed amendment to N.J.A.C. 17:16-69 is necessary to implement P.L. 2018, c. 55, and the proposed amendments to N.J.A.C. 17:16-71 and 90 will provide the opportunity for continued investment diversification and increased overall risk-adjusted returns for the State-administered funds under the supervision of the Council.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Division has evaluated the proposed amendments and determined that they will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

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

SUBCHAPTER 69. COMMON PENSION FUNDS

17:16-69.9 Limitations

(a) (No change.)

(b) Not more than five percent of the market value of the assets invested through direct investments, separate accounts, funds-of-funds, commingled funds, co-investments, and joint ventures pursuant to N.J.A.C. 17:16-23.2(a)2, 71.2(a)1, 90.2(a)1, and 100.2(a)1, plus outstanding commitments, may be committed to any one partnership or investment, without the prior written approval of the Council. **This limitation shall be applied to the Pension and Annuity Funds' proportionate interest in the investments.**

(c)-(f) (No change.)

SUBCHAPTER 71. REAL ASSETS

17:16-71.4 Limitations

(a) At the time of initial purchase, the following conditions shall be met:

1. The Pension and Annuity Funds' proportionate interest in the aggregate market value of the investment in real estate under this subchapter shall not exceed [nine] **10** percent of the combined assets of all of the Pension and Annuity Funds;

2.-9. (No change.)

(b) (No change.)

SUBCHAPTER 90. PRIVATE EQUITY

17:16-90.4 Limitations

(a) At the time of initial purchase, the following conditions shall be met:

1. The Pension and Annuity Funds' proportionate interest in the aggregate market value of private equity investments under this subchapter shall not exceed [12] **15** percent of the combined assets of all of the Pension and Annuity Funds;

2. No more than [12] **15** percent of the combined assets of all of the Pension and Annuity Funds may be invested in buyout investments, and no more than seven percent of the combined assets of all of the Pension and Annuity Funds may be invested in buyout investments outside of the United States. This limitation shall be applied to the Pension and Annuity Funds' proportionate interest in the investments. This limitation shall not apply to direct investments in common and preferred stock, exchange-traded funds, and convertible debt issues;

3.-7. (No change.)

(b) (No change.)