

CHAPTER 6

GENERAL PROVISIONS

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.

Source and Effective Date

R.2001 d.203, effective May 20, 2001.
See: 33 N.J.R. 926(a), 33 N.J.R. 2079(c).

Executive Order No. 66(1978) Expiration Date

Chapter 6, General Provisions, expires on May 20, 2006.

Chapter Historical Note

Chapter 6, General Provisions, was adopted and became effective prior to September 1, 1969.

Subchapter 6, Short Term Investment of Cash in Fiduciary Accounts, was adopted as R.1971 d.10, effective June 15, 1971. See: 2 N.J.R. 98(a), 3 N.J.R. 19(d).

Subchapter 9, Small Business Loan Interest Rate, was adopted as R.1980 d.204, effective May 9, 1980. See: 12 N.J.R. 302(d).

Subchapter 1, Report of Ten-Year Dormant Accounts, was repealed, and Subchapter 8, Savings Banks; Deposits, was adopted by R.1980 d.435, effective October 7, 1980. See: 12 N.J.R. 502(b), 12 N.J.R. 627(c).

Subchapter 10, Savings Banks: Unsecured Days Funds Transactions, was adopted as R.1980 d.559, effective December 31, 1980. See: 12 N.J.R. 563(b), 13 N.J.R. 62(c).

Subchapter 11, Short Term Investments for Trust Cash, was adopted as R.1980 d.560, effective December 31, 1980. See: 12 N.J.R. 563(c), 13 N.J.R. 62(d).

Subchapter 12, State Bank Parity, was adopted as R.1981 d.351, effective September 10, 1981. See: 13 N.J.R. 383(c), 13 N.J.R. 552(a).

Subchapter 1, Savings Bank Parity, was adopted as R.1981 d.352, effective September 10, 1981. See: 13 N.J.R. 383(b), 13 N.J.R. 551(b).

Subchapter 9, Small Business Loan Interest Rate, was repealed by R.1982 d.126, effective April 19, 1982. See: 14 N.J.R. 182(a), 14 N.J.R. 383(b).

Subchapter 7, Investment Restatement Accounting, was adopted as R.1982 d.307, effective September 7, 1982. See: 14 N.J.R. 676(a), 14 N.J.R. 988(a).

Subchapter 13, Automated Teller Machines, was adopted as R.1983 d.286, effective July 18, 1983. See: 15 N.J.R. 190(a), 15 N.J.R. 1179(a).

Pursuant to Executive Order No. 66(1978), Subchapter 2, Approved Depositories for Investments Comprising Security Funds, was readopted as R.1984 d.14, effective January 13, 1984. See: 15 N.J.R. 1974(a), 16 N.J.R. 238(a).

Pursuant to Executive Order No. 66(1978), Subchapter 3, Executive Officer Participation in Major Policy-Making Functions of a Bank, was readopted as R.1984 d.188, effective April 27, 1984. See: 16 N.J.R. 475(a), 16 N.J.R. 1196(a).

Subchapter 7, Investment Restatement Accounting, was repealed and a new Subchapter 7, Loss Deferral Accounting for Mutual Savings Banks, was adopted as R.1984 d.577, effective December 17, 1984. See: 16 N.J.R. 2712(a), 16 N.J.R. 3427(a).

Pursuant to Executive Order No. 66(1978), Subchapter 8, Savings Banks; Deposits, expired on April 9, 1985.

Subchapter 15, Savings Banks: Officers and Managers Permitted Loans, was adopted as R.1985 d.556, effective November 4, 1985. See: 17 N.J.R. 2073(b), 17 N.J.R. 2606(b).

Pursuant to Executive Order No. 66(1978), Subchapter 10, Savings Banks: Unsecured Days Funds Transactions, expired on December 31, 1985.

Pursuant to Executive Order No. 66(1978), Subchapter 11, Short Term Investments for Trust Cash, expired on December 31, 1985.

Subchapter 10, Savings Banks; Unsecured Days Funds Transactions, was adopted as new rules by R.1986 d.48, effective March 3, 1986. See: 17 N.J.R. 2936(a), 18 N.J.R. 477(a).

Subchapter 11, Short-Term Investments for Trust Cash, was adopted as new rules by R.1986 d.49, effective March 3, 1986. See: 17 N.J.R. 2937(a), 18 N.J.R. 477(b).

Subchapter 16, Qualified Bank Acquisition of Underwritten Securities, was adopted as R.1987 d.271, effective July 6, 1987. See: 19 N.J.R. 677(b), 19 N.J.R. 1184(b).

Subchapter 9, Capital Stock Savings Bank: Change in Control, was adopted as R.1988 d.404, effective August 15, 1988. See: 19 N.J.R. 1762(a), 20 N.J.R. 2052(c).

Pursuant to Executive Order No. 66(1978), Chapter 6, General Provisions, was readopted by R.1991 d.171, effective March 1, 1991, and Subchapter 7, Loss Deferral Accounting for Mutual Savings Banks, was repealed effective April 1, 1991. See: 23 N.J.R. 147(a), 23 N.J.R. 998(a).

Subchapter 13, Automated Teller Machines, was repealed by R.1991 d.244, effective May 6, 1991. See: 23 N.J.R. 642(a), 23 N.J.R. 1408(b).

Subchapter 8, Conversions of Savings Banks, was adopted as R.1991 d.294, effective June 17, 1991. See: 23 N.J.R. 929(b), 23 N.J.R. 1919(b).

Subchapter 17, Conversions of Banks, was adopted as R.1994 d.208, effective May 2, 1994. See: 26 N.J.R. 286(a), 26 N.J.R. 1827(a).

Pursuant to Executive Order No. 66(1978), Chapter 6, General Provisions, expired on March 1, 1996.

Chapter 6, General Provisions, was adopted as new rules by R.1996 d.244, effective May 20, 1996. See: 28 N.J.R. 1331(a), 28 N.J.R. 2544(a).

Pursuant to Executive Order No. 66(1978), Chapter 6, General Provisions, was readopted by R.2001 d.203, effective May 20, 2001; and Subchapter 1, Savings Bank Parity, was recodified as N.J.A.C. 3:6-12.3, Subchapter 1, Definitions, was adopted as new rules, and Subchapter 9, Capital Stock Savings Bank: Change In Control, was repealed by R.2001 d.203, effective June 18, 2001. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. DEFINITIONS

3:6-1.1 Definitions

The following words and terms, when used in the chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Bank” means a bank as defined in N.J.S.A. 17:19A-1(1).

“Banking institution” means a bank, savings bank, an out-of-State bank having a branch office in this State, an out-of-country bank having a branch office in this State, and a national banking association having its principal or a branch office in this State.

“Capital funds” of a savings bank are deemed to include capital notes of the savings bank for purposes of computing lending limitations.

“Capital stock association” means a capital stock association as defined in N.J.S.A. 17:12B-244(a).

“Capital stock savings bank” means a savings bank organized or converted pursuant to N.J.S.A. 17:9A-8.1 to 8.17.

“De novo branch” means a new branch office of a banking institution or foreign bank established not by means of the acquisition of an existing insured depository institution or branch office of an insured depository institution or by the means of the conversion, merger, or consolidation of any such institution or branch office.

“Executive officer” means a person who participates or has authority to participate, other than in the capacity of a director, in major policy-making functions of the bank, whether or not: the person has an official title; the title contains a designation of assistant; or the person is serving without salary or other compensation. The chairman of the board, president, every vice president, cashier, secretary, treasurer and comptroller are considered to be executive officers, unless pursuant to resolution of the board of directors or the bylaws of the bank any such executive officer is excluded from participation in major policy-making functions, other than in the capacity of a director, and the executive officer does not actually participate therein.

“Foreign bank” means a company, other than a banking institution, organized under the laws of the United States, another state or a foreign government, which is authorized by the laws under which it is organized to exercise some or all of the powers specified in N.J.S.A. 17:9A-24(4), 25(4)(5) and (13), and 28(3) through (9).

(b) Principal is to be valued at cost. The difference between cost and anticipated receipt on maturity is accrued on a straight-line basis.

(c) Assets of the fund must be held to maturity under usual circumstances.

(d) After effecting the entries and withdrawals not less than 40 percent of the value of the remaining assets of the fund must be composed of cash, demand obligations and assets that mature on the fund's next business day.

tutions. In deciding whether the power, right, benefit or privilege is appropriate for New Jersey institutions, the Commission of Banking and Insurance shall consider the effect on the safety and soundness of the institution and the consumer benefit or detriment of permitting institutions to engage in the activity, if any.

New Rule, R.1996 d.483, effective October 7, 1996.

See: 28 N.J.R. 2661(a), 28 N.J.R. 4417(b).

Amended by R.2001 d.203, effective June 18, 2001.

See: 33 N.J.R. 926(a), 33 N.J.R. 2079(c).

Inserted "of Banking and Insurance" following "Commissioner" and "Commission" throughout.

SUBCHAPTER 12. STATE BANK AND SAVINGS BANK PARITY

3:6-12.1 State bank parity with national banks

In addition to other authority granted by law, and unless contrary to State law, a bank may exercise any power, right, benefit or privilege which is now or hereafter authorized for national banks pursuant to Federal law or rules or regulations of the Comptroller of the Currency, the Federal Reserve Board and the Federal Deposit Insurance Corporation. Any such power shall be exercised upon the same terms and subject to the same conditions as are authorized for national banks. The powers, rights, benefits or privileges shall be automatically exercisable upon the expiration of 30 days from the date of adoption by the Federal regulatory agency, except if the Commissioner of Banking and Insurance within that 30 day period provides notice that the power shall not be granted to State banks. Such notice shall be provided to each bank, and to the trade publications of the New Jersey Bankers Association and the New Jersey League Community and Savings Bankers, and/or their successor organizations, if any, for publication. The Commissioner of Banking and Insurance may permit banks to begin exercise of a power prior to the expiration of the 30 day period by providing notice of permission to each bank and to the above mentioned trade publications.

Amended by R.2001 d.203, effective June 18, 2001.

See: 33 N.J.R. 926(a), 33 N.J.R. 2079(c).

In the first sentence, substituted "and" for "an", and rewrote the fourth sentence.

3:6-12.2 State bank parity with out-of-State banks

In addition to other authority granted by law, and unless contrary to State law, a bank may exercise any power, right, benefit or privilege which is now or hereafter authorized by statute or regulation for a state chartered bank chartered in a state other than New Jersey, provided that the bank provides notice to the Commissioner of Banking and Insurance prior to exercising this power, right, benefit or privilege and the Commissioner of Banking and Insurance either specifically approves the activity or does not provide notice before the expiration of 45 days that the power, right, benefit or privilege is not appropriate for New Jersey insti-

3:6-12.3 Savings banks parity with Federally chartered savings banks

In addition to other authority granted by law, a savings bank may exercise any power which is now or hereafter authorized for Federally chartered savings banks pursuant to Federal law or rules or regulations of the Office of Thrift Supervision or any other appropriate Federal regulator. Any such power shall be exercised upon the same terms and subject to the same conditions as are authorized for Federally chartered savings banks. Powers shall be automatically exercisable upon the expiration of 30 days from the date of adoption by the Federal regulatory agency, except if the Commissioner of Banking and Insurance within that 30-day period provides notice that the power shall not be granted to New Jersey savings banks. Such notice shall be provided to each savings bank, and to the trade publications of the New Jersey Bankers Association and the New Jersey League Community and Savings Bankers, and/or their successor organizations, if any, for publication. The Commissioner of Banking and Insurance may permit savings banks to begin exercise of a power prior to the expiration of the 30-day period by providing notice of permission to each savings bank and to the above-mentioned trade publications.

Amended by R.1991 d.171, effective April 1, 1991.

See: 23 N.J.R. 147(a), 23 N.J.R. 998(a).

Changed name of Federal Home Loan Bank Board to Office of Thrift Supervision.

Amended by R.1996 d.244, effective May 20, 1996.

See: 28 N.J.R. 1331(a), 28 N.J.R. 2544(a).

Recodified from N.J.A.C. 3:6-1.1 and amended by R.2001 d.203, effective June 18, 2001.

See: 33 N.J.R. 926(a), 33 N.J.R. 2079(c).

Rewrote the fourth sentence.

SUBCHAPTER 13. (RESERVED)

SUBCHAPTER 14. FOREIGN BANKS

3:6-14.1 Biennial fee

The certificate of authority or certificate of renewal of a certificate of authority for a foreign bank shall run from the

date of issuance to the end of the biennial period. When the initial certificate is issued in the second year of the biennial certificate period, the certificate fee shall be an amount equal to one half of the fee for the biennial certificate period. The first biennial period shall commence as of April 1, 1983. Certificates issued during the period April 1, 1982 to April 1, 1983 will bear a fee equal to one half of the \$800 biennial fee. For the biennial period commencing April 1, 1991, the biennial fee will be \$1,000. Certificates issued during the period April 1, 1990 to April 1, 1991 will bear a fee equal to one half of the \$1,000 biennial fee.

R.1983 d.42, eff. March 7, 1983.
See: 15 N.J.R. 6(a), 15 N.J.R. 330(a).
Emergency amendment, R.1989 d.406, effective July 3, 1989 (expires September 1, 1989).
See: 21 N.J.R. 2397(a).
Amended by R.1989 d.449, effective August 21, 1989.
See: 21 N.J.R. 1601(b), 21 N.J.R. 2473(b).
Biennial fee increased to \$1,000.

3:6-14.2 Miscellaneous fees

(a) A foreign bank shall pay to the Department of Banking and Insurance the following fees:

- 1. For filing a copy of its certificate of incorporation, or an amendment or change to the certificate\$100.00;
- 2. For filing a statement of its financial condition \$50.00;
- 3. For filing a power of attorney \$25.00.

New Rule, R.1989 d.449, effective August 21, 1989.
See: 21 N.J.R. 1601(b), 21 N.J.R. 2473(b).
Amended by R.1991 d.195, effective April 15, 1991.
See: 23 N.J.R. 254(a), 23 N.J.R. 1125(a).
Fees increased from \$50.00 to \$100.00 for filing copy of certificate of incorporation or an amendment or change and for each substitution of securities.
Amended by R.2001 d.203, effective June 18, 2001.
See: 33 N.J.R. 926(a), 33 N.J.R. 2079(c).
In (a), substituted "Department of Banking and Insurance" for "Commissioner" in the introductory paragraph and deleted 4.

SUBCHAPTER 15. SAVINGS BANKS: OFFICERS AND MANAGERS PERMITTED LOANS

3:6-15.1 Terms and conditions

(a) A savings bank may permit its officers and managers and their families and affiliates to become liable to the savings bank only under the same terms and conditions and to the same degree of liability as a bank permits its directors, officers or the corporations or partnerships of the officers or directors of a bank to become liable to a bank under N.J.S.A. 17:9A-71 to 74, N.J.S.A. 17:9A-104 and N.J.A.C. 3:1-11 and 3:6-3.

(b) A savings bank may not permit its officers and managers and their families and affiliates to become liable to the savings bank pursuant to the authority of N.J.A.C. 3:6-12.

(c) The authority of a savings bank to permit its officers and managers and their families and affiliates to become liable to the savings bank under the same terms and conditions and to the same degree of liability as a bank is not to be construed as granting to the savings bank the authority to grant any form or type of loan it is not otherwise authorized to make.

(d) "Manager" of a savings bank means a trustee or director of a savings bank and where reference is made to a director of a bank it shall be deemed to refer to the manager of a savings bank.

Amended by R.1994 d.397, effective August 1, 1994.
See: 25 N.J.R. 3586(b), 26 N.J.R. 3163(a).
Recodified from N.J.A.C. 3:6-15.2 and amended by R.2001 d.203, effective June 18, 2001.
See: 33 N.J.R. 926(a), 33 N.J.R. 2079(c).
In (a), amended N.J.S.A. and N.J.A.C. references; in (b), amended N.J.A.C. reference; and added (d). Former N.J.A.C. 3:6-15.1, Definitions, was repealed.

3:6-15.2 (Reserved)

Recodified to N.J.A.C. 3:6-15.1 by R.2001 d.203, effective June 18, 2001.
See: 33 N.J.R. 926(a), 33 N.J.R. 2079(c).
Section was "Terms and conditions".

SUBCHAPTER 16. QUALIFIED BANK ACQUISITION OF UNDERWRITTEN SECURITIES

3:6-16.1 Definitions

The following words and terms, when used in the chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Affiliate bank" means a bank at least 90 percent of whose issued and outstanding stock is owned by the same corporation.

"Securities" means:

- 1. Bonds, notes or other obligations of or guaranteed by, this State or any agency, authority or instrumentality of this State; and
- 2. Bonds, notes or other obligations of any county, municipality, or other governmental unit or subdivision of this State, or any agency, authority, instrumentality of any county, municipality or other governmental unit or subdivision of this State.

Amended by R.2001 d.203, effective June 18, 2001.
See: 33 N.J.R. 926(a), 33 N.J.R. 2079(c).

Deleted "Issuer", "Qualified bank" and "Trust account".

3:6-16.2 Conditions placed on a qualified bank acquiring certain underwritten securities

(a) A qualified bank may acquire securities, for one or more of its trust accounts, from itself, another member of the underwriting syndicate of the security, or from an affiliate bank, when the qualified bank or affiliate holds the security or securities as a result of its being the underwriter or a member of the underwriting syndicate of the security, provided the following conditions are met with respect to each acquisition:

1. The acquisition is a prudent and appropriate investment for each of the trust accounts for which it is acquired;
2. The price paid is fair as established by market quotation of the security or of securities of similar quality, yield and maturity or as established by independent appraisal; and
3. A notification of such acquisition shall be given by the qualified bank to the person or persons who receive the periodic account statements issued by the qualified bank with respect to the trust account for which the acquisition is made. The notification shall be in writing and may be sent as an individual notice by regular mail or it may be included as part of the next periodic statement. In the case of a common trust fund, notification shall be disclosed in the annual financial report of such fund.

3:6-16.3 Limitations

A qualified bank shall not retain or purchase for its trust accounts or retain or sell to any of its affiliate banks for their trust accounts, securities which in the aggregate will exceed a total of more than 50 percent of an issue of securities regarding which it or any affiliate bank is an issuer.

3:6-16.4 Required records

(a) To support compliance with the provisions of N.J.A.C. 3:6-16.2, a qualified bank shall retain its records relative to the transaction for two years from the date of the acquisition, which records shall include at a minimum:

1. The quality rating of the issue of the security;
2. The price, yield and term of the security;
3. Any and all fees and/or commissions paid;
4. The portion of the total issue of the security acquired by the qualified bank for its trust accounts and the trust accounts of any affiliated bank; and
5. The date or dates of purchase.

3:6-16.5 Exemption provision

Nothing contained within the provisions of this subchapter shall be deemed to prohibit a qualified bank from

acquiring any securities as permitted by other applicable law or regulation.

SUBCHAPTER 17. CONVERSIONS OF BANK CHARTERS

3:6-17.1 Authorization for conversion

(a) Any bank may apply to the Commissioner to convert itself to a capital stock savings bank by organizing and transferring its assets and liabilities to a newly-chartered capital stock savings bank.

(b) Before applying to the Commissioner for a conversion pursuant to (a) above, the bank shall obtain a resolution of the bank's board of directors indicating that the conversion is advisable and in the best interests of the shareholders.

(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 at least two-thirds of the members present, or shares eligible to be voted which are represented at the meeting, either in person or by proxy, may approve the conversion.

Recodified from N.J.A.C. 3:6-17.2 by R.2001 d.203, effective June 18, 2001.

See: 33 N.J.R. 926(a), 33 N.J.R. 2079(c).

Former N.J.A.C. 3:6-17.1, Definitions, was repealed.

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. A certified copy of the resolution of the board of directors authorizing the conversion;
2. A certified copy of the resolution adopted by the stockholders or members relating to the plan of conversion, containing the following information:
 - i. The total number of votes eligible to be cast;
 - ii. The total number of votes represented in person or by proxy at the special meeting;
 - iii. The total number of votes cast in favor and against each matter;
 - iv. The percentage of votes cast in favor and against each matter.
3. A certificate of incorporation for the new capital stock savings bank;

4. Biographical information for each of the incorporators and/or directors on forms approved by the Commissioner;

5. A completed form from the New Jersey State Police requesting criminal history record information for each director and/or incorporator, along with a cashier's check, certified check or money order for the applicable amount, payable to the State Police, stapled to the front of each form;

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

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 as well as appropriate income ratios;

8. A business plan for the capital stock savings bank for three years;

9. Copies of all applications for Federal regulatory approval and all approvals required in connection with the conversion, or, if no application or approval is required, a statement or opinion of counsel to that effect; and

10. The application fee for the conversion.

(b) The Commissioner may, in his or her discretion, waive any of the application requirements of (a) above based on any of the following:

1. The financial condition of the institution;
2. Whether the institution was recently chartered;
3. Whether the public would be served by considering the application in an expeditious manner;
4. Whether the conversion is one step in an integrated application; or
5. Any other factor which may affect the need for a review of any of the materials specified in (a) above.

Recodified from N.J.A.C. 3:6-17.3 and amended by R.2001 d.203, effective June 18, 2001.

See: 33 N.J.R. 926(a), 33 N.J.R. 2079(c).

In (b), substituted "Commissioner" for "Department", neutralized gender reference and inserted "any of" preceding "the following" in the introductory paragraph, substituted "or" for "and" in 4, and rewrote 5. Former N.J.A.C. 3:6-17.2, Authorization for conversion, was recodified to N.J.A.C. 3:6-17.1.

3:6-17.3 (Reserved)

Recodified to N.J.A.C. 3:6-17.2 by R.2001 d.203, effective June 18, 2001.

See: 33 N.J.R. 926(a), 33 N.J.R. 2079(c).

Section was "Application for conversion".