

## TITLE 3

## DEPARTMENT OF BANKING

## CHAPTER 1

## GENERAL PROVISIONS

## Authority

N.J.S.A. 17:1-8; 17:1-8.1; 17:1B-2; 17:2A-1 et seq.; 17:9-41; 17:9A-1; 17:9A-11D et seq.; 17:9A-24(a); 17:9A-24(b); 17:9A-25.2; 17:9A-316; 17:11A-54(a); 17:11B-5; 17:11B-13; 17:12B-8; 17:12B-20 et seq.; 17:12B-48(21); 17:12B-226; 17:16F-11; 17:16I-16; 17:16L-2; and 17:16N-3.

## Source and Effective Date

R.1996 d.168, effective March 6, 1996.  
See: 28 N.J.R. 3(a), 28 N.J.R. 1830(a).

## Executive Order No. 66(1978) Expiration Date

Chapter 1, General Provisions, expires on March 6, 2001.

## Chapter Historical Note

Subchapter 2, Procedural Rules, was filed as R.1970 d.97, effective August 13, 1970. See: 2 N.J.R. 70(a). Subchapter 2 was subsequently amended by R.1973 d.191, effective July 16, 1973. See: 5 N.J.R. 258(b); R.1973 d.217, effective August 9, 1973. See: 5 N.J.R. 76(c), 5 N.J.R. 298(a); R.1973 d.281, effective September 26, 1973. See: 5 N.J.R. 257(b), 5 N.J.R. 364(d); R.1973 d.342, effective December 6, 1973. See: 5 N.J.R. 364(b), 6 N.J.R. 3(a); R.1973 d.366, effective December 21, 1973. See: 6 N.J.R. 50(b); R.1974 d.132, effective May 31, 1974. See: 6 N.J.R. 255(b); R.1974 d.140, effective June 11, 1974. See: 6 N.J.R. 255(b); R.1974 d.247, effective September 6, 1974. See: 6 N.J.R. 387(b); R.1974 d.298, effective October 29, 1974. See: 6 N.J.R. 463(a); R.1975 d.21, effective January 30, 1975. See: 7 N.J.R. 94(b); R.1975 d.155, effective June 5, 1975. See: 7 N.J.R. 191(a), 7 N.J.R. 292(a); R.1976 d.83, effective May 1, 1976. See: 8 N.J.R. 5(c), 8 N.J.R. 164(a); R.1976 d.240, effective July 29, 1976. See: 8 N.J.R. 412(a); R.1976 d.244, effective August 3, 1976. See: 8 N.J.R. 413(a); R.1976 d.305, effective October 1, 1976. See: 8 N.J.R. 411(b), 8 N.J.R. 499(a); R.1976 d.312, effective October 8, 1976. See: 8 N.J.R. 370(b), 8 N.J.R. 499(b); R.1976 d.404, effective December 15, 1976. See: 9 N.J.R. 4(a); R.1977 d.462, effective December 12, 1977. See: 9 N.J.R. 451(c), 10 N.J.R. 2(b); R.1978 d.71, effective February 27, 1978. See: 10 N.J.R. 2(a), 10 N.J.R. 137(a); R.1978 d.204, effective June 23, 1978. See: 10 N.J.R. 315(a); R.1979 d.190, effective May 11, 1979. See: 11 N.J.R. 270(c); R.1979 d.290, effective July 27, 1979. See: 11 N.J.R. 429(b); R.1980 d.151, effective April 10, 1980. See: 12 N.J.R. 249(b); and R.1981 d.258, effective July 9, 1981. See: 13 N.J.R. 182(a), 13 N.J.R. 382(b).

Subchapter 3, Mortgage Loans in Disaster Areas, was adopted by the Commissioner of Banking pursuant to authority delegated at N.J.S.A. 17:2A-1 et seq. and was filed and became effective prior to September 1, 1969.

Subchapter 4, Governmental Unit Deposit Protection, was adopted by the Commissioner of Banking pursuant to authority delegated at N.J.S.A. 17:9-41 and was filed and became effective January 15, 1971 as R.1971 d.9. See: 2 N.J.R. 97(d), 3 N.J.R. 19(c).

Subchapter 5, Mortgage Applicant's Birth Control Practices, was adopted by the Commissioner of Banking pursuant to authority delegated at N.J.S.A. 17:1-8.1, 17:1B-2 and 17:11A-54(a), and was filed and became effective June 21, 1973, as R.1973 d.166. See: 5 N.J.R. 136(a), 5 N.J.R. 216(b). Pursuant to Executive Order No. 66(1978), Subchapter 5, Mortgage Applicant's Birth Control Practices, expired on April 4, 1996.

Subchapter 6, Fees, was adopted pursuant to authority of N.J.S.A. 17:1-8 and was filed and became effective August 9, 1974, as R.1974 d.221. See: 6 N.J.R. 254(c), 6 N.J.R. 342(a). Revisions to Subchapter 6 were filed and became effective December 15, 1977, as R.1977 d.469. See: 10 N.J.R. 3(a).

Subchapter 7, Miscellaneous Fees, was adopted pursuant to authority of N.J.S.A. 17:1-8 and was filed and became effective May 14, 1975, as R.1975 d.120. See: 7 N.J.R. 126(c), 7 N.J.R. 247(c).

Subchapter 9, Home Mortgage Disclosure, was adopted pursuant to authority of N.J.S.A. 17:16F-11 and was filed and became effective August 22, 1977, as R.1977 d.308. See: 9 N.J.R. 303(c), 9 N.J.R. 405(c). Pursuant to Executive Order No. 66(1978), Subchapter 9 was readopted effective August 26, 1983 as R.1983 d.379. See: 15 N.J.R. 1146(a), 15 N.J.R. 1575(a).

Subchapter 10, Restrictions on Real Property Transactions, was filed and became effective February 21, 1978 as R.1978 d.55. See: 9 N.J.R. 404(c), 10 N.J.R. 92(c). Amendments to Subchapter 10 were filed and became effective February 8, 1979 as R.1979 d.55. See: 11 N.J.R. 3(c), 11 N.J.R. 117(d). Further amendments were filed and became effective August 2, 1982 as R.1982 d.242. See: 14 N.J.R. 490(a), 14 N.J.R. 834(a). Subchapter 10 was readopted and amended effective March 19, 1984 by R.1984 d.63. See: 16 N.J.R. 2(a), 16 N.J.R. 520(a).

Subchapter 11, Restrictions on Loans Involving Affiliated Persons, was adopted pursuant to authority of N.J.S.A. 17:1-8.1 and was filed and became effective December 15, 1977, as R.1977 d.471. See: 9 N.J.R. 404(b), 10 N.J.R. 3(c). Amendments were filed and became effective May 5, 1978, as R.1978 d.144. See: 10 N.J.R. 135(c), 10 N.J.R. 219(a).

Subchapter 12, Multiple Party Deposit Accounts, became effective November 1, 1980 as R.1980 d.480. See: 12 N.J.R. 378(c), 12 N.J.R. 686(d). Pursuant to Executive Order No. 66(1978), Subchapter 12 was readopted effective January 6, 1986 as R.1985 d.660. See: 17 N.J.R. 2488(a), 18 N.J.R. 77(b).

Subchapter 13, Insurance Activities, was adopted as R.1983 d.566, effective December 5, 1983. See: 15 N.J.R. 820(a), 15 N.J.R. 2033(a).

Subchapter 14, Revolving Credit Equity Loans, was adopted as R.1983 d.378, effective September 19, 1983. See: 15 N.J.R. 1147(a), 15 N.J.R. 1575(b).

Subchapter 15, Availability of Funds, was adopted as R.1986 d.73, effective March 17, 1986. See: 18 N.J.R. 13(a), 18 N.J.R. 553(a).

Subchapter 16 was adopted as R.1989 d.191, effective April 17, 1989 (operative July 16, 1989). See: 20 N.J.R. 1021(b), 21 N.J.R. 981(c). The Subchapter 16 heading was revised to "Mortgage Loans, Fees, Obligations" by R.1992 d.149, effective April 6, 1992. See: 23 N.J.R. 2613(b), 24 N.J.R. 3(a), 24 N.J.R. 1380(a).

Subchapter 17, Automated Teller Machines (ATM), was adopted pursuant to authority of N.J.S.A. 17:1-8 and 8.1; 17:9A-1, 20D and 316 and 17:12B-8, 37.1 and 226, by R.1991 d.244, effective May 6, 1991. See: 23 N.J.R. 642(a), 23 N.J.R. 1408(b).

Subchapter 18, Foreign Banks and Associations; Registration of Service Facilities, was adopted pursuant to authority of N.J.S.A. 17:1-8.1 and P.L. 1991, c.74, by R.1991 d.347, effective July 1, 1991. See: 23 N.J.R. 1233(a), 23 N.J.R. 2029(a).

Subchapter 19, New Jersey Consumer Checking Accounts, was adopted pursuant to authority of N.J.S.A. 17:16N-1, specifically 17:16N-3, by R.1992 d.303, effective August 3, 1992. See: 24 N.J.R. 1667(a), 24 N.J.R. 2710(a).

Pursuant to Executive Order No. 66(1978), Chapter 1, General Provisions, was readopted as R.1991 d.48, effective January 4, 1991. See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b). The expiration date for Chapter 1 was extended by gubernatorial directive from January 4, 1996 to April 4, 1996. See: 28 N.J.R. 815(a).

Pursuant to Executive Order No. 66(1978), Chapter 1 was readopted as R.1996 d.168, effective March 6, 1996. See: Source and Effective Date. See, also, section annotations.

## CHAPTER TABLE OF CONTENTS

### SUBCHAPTER 1. INTEREST AND USURY

- 3:1-1.1 Interest rates
- 3:1-1.2 Interest rates; other loans

### SUBCHAPTER 2. PROCEDURAL RULES

- 3:1-2.1 Definitions
- 3:1-2.2 Charter applications
- 3:1-2.3 Branch applications
- 3:1-2.4 Charter applications; notice and publication
- 3:1-2.5 Branch applications; notice and publication
- 3:1-2.6 Charter applications; objections and oral presentations
- 3:1-2.7 Branch applications; objections and oral presentations
- 3:1-2.8 Insufficiency of data in support of application; hearing
- 3:1-2.9 Oral presentations
- 3:1-2.10 Failure of party requesting oral presentation to appear
- 3:1-2.11 Minibranches; space limitation
- 3:1-2.12 Prehearing conference
- 3:1-2.13 Procedure for oral presentation
- 3:1-2.14 Priority
- 3:1-2.15 Relaxation or dispensation of requirements of subchapter
- 3:1-2.16 Population
- 3:1-2.17 Closing of branch offices
- 3:1-2.18 Officially recognized data sources
- 3:1-2.19 Applications; copies
- 3:1-2.20 Charter applications; conditions for approval
- 3:1-2.21 Minimum and maximum stock subscription
- 3:1-2.22 Criteria for branch approval; Public interest
- 3:1-2.23 Criteria for branch approval; Promise of success
- 3:1-2.24 Modification of Order and/or rehearing
- 3:1-2.25 Fees; banks and savings banks
- 3:1-2.26 Fees; State associations

### SUBCHAPTER 3. MORTGAGE LOANS IN DISASTER AREAS

- 3:1-3.1 Definitions
- 3:1-3.2 Duties of Commissioner
- 3:1-3.3 Emergency mortgage powers exercisable by financial institutions
- 3:1-3.4 Preliminary requirements
- 3:1-3.5 Limitations

### SUBCHAPTER 4. GOVERNMENTAL UNIT DEPOSIT PROTECTION

- 3:1-4.1 Public depository; acceptance of deposits
- 3:1-4.2 Filing of certified statement by public depository
- 3:1-4.3 Certified statement; time for filing
- 3:1-4.4 Computation of public funds
- 3:1-4.5 Public funds exceeding 75 percent of capital funds
- 3:1-4.6 Retention of certified statement
- 3:1-4.7 Scope of terms surplus and undivided profits
- 3:1-4.8 Substitution of collateral
- 3:1-4.9 Agreement or resolution; custodial depository and Commissioner
- 3:1-4.10 Agreement or resolution; public depository and custodial depository
- 3:1-4.11 Security; State and other public deposits
- 3:1-4.12 Records maintained by Commissioner; eligibility

### SUBCHAPTER 5. (RESERVED)

### SUBCHAPTER 6. FEES

- 3:1-6.1 Definitions
- 3:1-6.2 Assessments
- 3:1-6.3 Payment dates
- 3:1-6.4 Effective date
- 3:1-6.5 Annual review
- 3:1-6.6 Examination charge

### SUBCHAPTER 7. MISCELLANEOUS FEES

- 3:1-7.1 Name change
- 3:1-7.2 Duplicate licenses and certificates
- 3:1-7.3 Requests for licensee standing and locations
- 3:1-7.4 Address change
- 3:1-7.5 Fees subject to review
- 3:1-7.6 Penalty for late filing

### SUBCHAPTER 8. CREDIT OR LOAN APPLICATIONS

- 3:1-8.1 (Reserved)
- 3:1-8.2 Appraisal requirements

### SUBCHAPTER 9. HOME MORTGAGE DISCLOSURE

- 3:1-9.1 Authority; scope; enforcement
- 3:1-9.2 Definitions
- 3:1-9.3 Exemptions
- 3:1-9.4 Compilation of mortgage and home improvement loan data
- 3:1-9.5 Disclosure to public
- 3:1-9.6 Filing requirements; processing fee
- 3:1-9.7 Violations of the Act
- 3:1-9.8 Powers of the Commissioner; investigations and hearings
- 3:1-9.9 Orders; grounds; content; hearing; service
- 3:1-9.10 Investigatory hearings; presiding officer
- 3:1-9.11 Presiding officer's powers
- 3:1-9.12 Investigatory hearing procedure
- 3:1-9.13 Report of presiding officer
- 3:1-9.14 Exceptions to report of presiding officer
- 3:1-9.15 Decision by the Commissioner
- 3:1-9.16 Continued violation of Act; penalty
- 3:1-9.17 Notice of charges; continued violation of Act
- 3:1-9.18 through 3:1-9.19 (Reserved)

### SUBCHAPTER 10. RESTRICTIONS ON REAL PROPERTY TRANSACTIONS

- 3:1-10.1 Definitions
- 3:1-10.2 Application required on real property transactions
- 3:1-10.3 Approval or denial of real estate applications
- 3:1-10.4 Objectors and hearings

### SUBCHAPTER 11. RESTRICTIONS ON LOANS INVOLVING AFFILIATED PERSONS

- 3:1-11.1 Definitions
- 3:1-11.2 Prohibition

### SUBCHAPTER 12. MULTIPLE PARTY DEPOSIT ACCOUNTS

- 3:1-12.1 Definitions
- 3:1-12.2 Types of contracts
- 3:1-12.3 Types of accounts
- 3:1-12.4 Specific content of deposit contract
- 3:1-12.5 Additional provisions
- 3:1-12.6 Change in contract
- 3:1-12.7 Copy of contract
- 3:1-12.8 Limitation of subchapter
- 3:1-12.9 Effective dates

## SUBCHAPTER 13. INSURANCE ACTIVITIES

- 3:1-13.1 Insurance tie-in prohibition
- 3:1-13.2 Amount of fire insurance required

## SUBCHAPTER 14. REVOLVING CREDIT EQUITY LOANS

- 3:1-14.1 Authorization
- 3:1-14.2 Revolving credit equity loan agreement
- 3:1-14.3 Terms of agreement
- 3:1-14.4 Notification of changes
- 3:1-14.5 Interest
- 3:1-14.6 Methods of computing interest

## SUBCHAPTER 15. AVAILABILITY OF FUNDS

- 3:1-15.1 Definitions
- 3:1-15.2 Availability of funds
- 3:1-15.3 Content of written disclosure statement
- 3:1-15.4 Initial written disclosure
- 3:1-15.5 Change in policy
- 3:1-15.6 Filing of written disclosure statements
- 3:1-15.7 Banking institutions' rights
- 3:1-15.8 Compliance with Federal law

## SUBCHAPTER 16. MORTGAGE LOANS, FEES, OBLIGATIONS

- 3:1-16.1 Definitions
- 3:1-16.2 Fees
- 3:1-16.3 Application process
- 3:1-16.4 Lock-in agreements
- 3:1-16.5 Commitment process
- 3:1-16.6 Expiration of lock-in or commitment
- 3:1-16.7 Closing
- 3:1-16.8 Trust funds
- 3:1-16.9 No private right of action
- 3:1-16.10 Special rules for brokers
- 3:1-16.11 Operative date
- 3:1-16.12 (Reserved)

## SUBCHAPTER 17. AUTOMATED TELLER MACHINES (ATM)

- 3:1-17.1 Definitions
- 3:1-17.2 On site location
- 3:1-17.3 Off site location
- 3:1-17.4 Shared ownership
- 3:1-17.5 Interstate access

## SUBCHAPTER 18. FOREIGN BANKS AND ASSOCIATIONS; REGISTRATION OF SERVICE FACILITIES

- 3:1-18.1 Definitions
- 3:1-18.2 Registration requirement
- 3:1-18.3 Registration process
- 3:1-18.4 Registration fee
- 3:1-18.5 Notification of registration or deficiency by the Department
- 3:1-18.6 Permitted activities at service facilities
- 3:1-18.7 Examination of service facilities
- 3:1-18.8 Hearing to close service facilities

## SUBCHAPTER 19. NEW JERSEY CONSUMER CHECKING ACCOUNTS

- 3:1-19.1 Definitions
- 3:1-19.2 Features of New Jersey Consumer Checking Accounts
- 3:1-19.3 Non-conforming accounts
- 3:1-19.4 Closing New Jersey Consumer Checking Accounts
- 3:1-19.5 Consumer information requirements

## APPENDIX A JOINT ACCOUNTS, P.O.D. ACCOUNTS, TRUST ACCOUNTS

## SUBCHAPTER 1. INTEREST AND USURY

## 3:1-1.1 Interest rates

(a) The maximum rate of interest to be charged, taken or received upon a loan of any money, wares, merchandise goods and chattels, made on or after October 20, 1981, shall be six percent per annum, or shall be 16 percent per annum when there is a written contract specifying a rate of interest, except as herein or otherwise provided by law. Such interest shall be calculated in accordance with N.J.S.A. 31:1-1, as amended.

(b) The maximum rate of interest to be charged on loans secured by a first lien on real property on which there is erected or to be erected a structure containing one, two, three, four, five or six dwelling units, a portion of which structure may be used for nonresidential purposes, consummated on or after July 1, 1988, shall be at least six percent per annum but not more than the Monthly Index of Long Term United States Government Bond Yields, compiled by the Board of Governors of the Federal Reserve System and as published by said Board of Governors in the monthly Federal Reserve Bulletin, for the second preceding calendar month plus an additional 3.5 percent per annum rounded off to the nearest quarter of one percent per annum. Such interest shall be calculated in accordance with N.J.S.A. 31:1-1, as amended. Any provision in a mortgage commitment contracted prior to the effective date of this regulation providing for an increase in interest rates to be charged based on the highest lawful interest rate shall be null and void.

(c) Contracts for the following classes or types of loans may lawfully provide for any rate of interest which the parties agree upon, and interest at any such rate may lawfully be taken:

1. Loans in the amounts of \$50,000 or more, except loans where the security given is a first lien on real property on which there is erected or to be erected a structure containing one, two, three, four, five or six dwelling units, a portion of which structure may be used for nonresidential purposes. The rate of interest stated in such contract upon the origination of such loans may be taken notwithstanding that payments thereon reduce the amount outstanding to less than \$50,000;

2. Loans or advances of credit made by savings and loans associations, banking institutions or any Department of Housing and Urban Affairs or Federal Housing Administration approved mortgagees which are subsequently purchased, in whole or in part, by the Federal Housing Administration, Veterans Administration, Farmers Home

Administration, Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, and any successor thereof or by any organization authorized by the Emergency Home Finance Act of 1970 to purchase such loans or by any State or Federal governmental or quasi-governmental organizations.

3. If such loan is not purchased within 395 days from the date the loan instruments are executed, the maximum rate of interest which may be charged on such loan shall not be in excess of that authorized by the commissioner under the provisions of this section and such rate of interest, if in excess of that rate, shall be reduced to the rate in effect at the date of the execution of the loan instruments. No such reduction shall change the maturity date of the loan without the written consent of the borrower nor shall such reduction affect the lien of the mortgage which secures the loan.

(d) Nothing herein shall be construed as being applicable to loans which are subject to the Federal preemption of State usury laws contained in the Depository Institutions Deregulation and Monetary Control Act of 1980, H.R. 4986, Title V.

(e) The rates established herein shall be effective at 12:01 A.M., October 20, 1981, and shall remain in force until such time as this regulation is rescinded or until said rate or rates are revised by a subsequent regulation.

As amended, R.1973 d.191, eff. July 16, 1973.  
See: 5 N.J.R. 258(b).  
As amended, R.1973 d.366, eff. December 21, 1973.  
See: 6 N.J.R. 50(b).  
As amended, R.1974 d.132, eff. May 31, 1974.  
See: 6 N.J.R. 255(b).  
As amended, R.1974 d.140, eff. June 11, 1974.  
See: 6 N.J.R. 255(b).  
As amended, R.1974 d.247, eff. September 6, 1974.  
See: 6 N.J.R. 387(b).  
As amended, R.1975 d.21, eff. January 30, 1975.  
See: 7 N.J.R. 94(b).  
As amended, R.1976 d.240, eff. July 29, 1976.  
See: 8 N.J.R. 412(a).  
As amended, R.1976 d.404, eff. December 15, 1976.  
See: 9 N.J.R. 4(a).  
As amended, R.1978 d.204, eff. June 23, 1978.  
See: 10 N.J.R. 315(a).  
As amended, R.1979 d.190, eff. May 11, 1979.  
See: 11 N.J.R. 270(c).  
As amended, R.1980 d.151, eff. April 10, 1980.  
See: 12 N.J.R. 249(b).  
As amended on an emergency basis, R.1981 d.429, eff. October 20, 1981, exp. December 21, 1981. See: 13 N.J.R. 753(b). Readopted, R.1981 d.511, eff. December 22, 1981. See: 13 N.J.R. 753(b), 14 N.J.R. 101(c).  
(a): "October 20, 1981" was "April 10, 1980"; "Six" percent was "8" percent; and "or shall be . . . rate of interest" added.  
(b): "October 20, 1981" was "April 10, 1980"; "17" percent was "14½" percent.  
(e): "October 20, 1981" was "April 10, 1980".  
Amended by R.1988 d.282, effective June 20, 1988.  
See: 19 N.J.R. 2089(a), 20 N.J.R. 1343(b).  
Change "17" to "six" percent per annum. Added text to (b) "but not more . . . 1 percent per annum".

#### Case Notes

Commissioner of Banking may, by regulation, establish the rate of interest on loans secured by a first lien on property. In re Stepanski, 20 B.R. 399 (Bankr.N.J.1982).

Banking statutes reflect basic understanding that "interest" continues to be defined as specific percentage rates, rather than discrete charges, such as late fees, unrelated to borrowing money. Sherman v. Citibank (South Dakota), N.A., 143 N.J. 35, 668 A.2d 1036 (1995), petition for certiorari filed.

Mortgage interest rate computation rule cited; purchasers entitled to recover benefit of bargain damages where vendors breached executory contract to convey real property. Donovan v. Bachstadt, 91 N.J. 434, 453 A.2d 160 (1982).

#### 3:1-1.2 Interest rates; other loans

(a) Notwithstanding any provisions of N.J.S.A. 31:1-1 or N.J.A.C. 3:1-1.1 and except as otherwise provided by law, any person may charge a rate of interest on any loan which rate does not exceed one percent in excess of the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank of New York on the date of the loan, at any time when that discount rate exceeds seven percent. Nothing in this subsection shall authorize any person to make any loan which is not authorized by law, nor shall anything in this subsection apply to loans secured by a first lien on real estate on which there is erected or to be erected a structure containing one, two, three, four, five or six dwelling units, a portion of which structure may also be used for non-residential purposes. Additionally, nothing in this subsection (a) shall be applicable to the exceptions contained in N.J.S.A. 31:1-1(e) and N.J.A.C. 3:1-1.1(c).

(b) Where in any law a rate of interest applicable to loans regulated by this section is referred to as that established by N.J.S.A. 31:1-1, the rate allowable shall be as established herein.

(c) The rate established herein shall be effective for loans made on or after 12:01 A.M., July 27, 1979.

R.1979 d.290, eff. July 27, 1979.  
See: 11 N.J.R. 429(b).  
Readoption: R.1984 d.397, filed August 16, 1984.  
See: 16 N.J.R. 1642(a), 16 N.J.R. 2356(a).

#### Case Notes

Banking statutes reflect basic understanding that "interest" continues to be defined as specific percentage rates, rather than discrete charges, such as late fees, unrelated to borrowing money. Sherman v. Citibank (South Dakota), N.A., 143 N.J. 35, 668 A.2d 1036 (1995), petition for certiorari filed.

## SUBCHAPTER 2. PROCEDURAL RULES

### 3:1-2.1 Definitions

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

“Bank” shall mean a New Jersey chartered bank, as defined in section 1 of P.L. 1948, c.67 (N.J.S.A. 17:9A-1), and shall include a limited purpose trust company.

“Banking institution” shall mean a depository, or a similar institution chartered by the Federal government or another state.

“Branch application” shall mean an application by a depository to establish a full branch or a minibranch office, or to relocate a principal office, full branch office or minibranch office, or to interchange a principal office and full branch office.

“Commissioner” shall mean the Commissioner of the New Jersey Department of Banking.

“Company” means any corporation, partnership, business trust, association or any other person except an individual.

“Controlling interest” means ownership or control of a majority of the issued and outstanding capital stock or securities of a corporation, having voting rights.

“Department” shall mean the New Jersey Department of Banking.

“Depository” shall mean a bank, savings bank or savings and loan association.

“Individual” shall mean a natural person.



“Savings and loan association” shall mean a New Jersey chartered savings and loan association, and shall include a capital stock association and a mutual association.

“Savings bank” shall mean a New Jersey chartered savings bank, and shall include a capital stock savings bank and a mutual savings bank.

Amended by R.1991 d.48, effective February 4, 1991.  
See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

Deleted “executed indicia of title” as an acceptable document.  
Repeal and New Rule, R.1992 d.483, effective December 7, 1992.  
See: 24 N.J.R. 3034(a), 24 N.J.R. 4341(a).

Section was “Applications; acceptance”.

### 3:1-2.2 Charter applications

(a) Every applicant for a depository charter is required to file with the Department the following data in addition to the statutorily required certificate of incorporation and affidavits (see N.J.S.A. 17:9A-9, 17:12B-14 and 17:12B-246):

1. An economic feasibility study delineating the proposed trade area to be served by the applicant, as well as yearly deposit estimates for the first five years of operation;
2. A pro forma balance sheet and profit and loss statement which shall project the financial condition and net income or loss of the depository on an annual basis for a period of five years and shall indicate the anticipated break-even date, and a business plan for the depository;
3. Departmental forms completed by each incorporator and prospective officer and director containing biographical and financial information, and authorizations by such persons for background checks;
4. The required non-refundable application filing fee;
5. An indicia of title for the proposed site;
6. If the applicant has applied for a charter which includes the authority to accept deposits, a filed copy of an application to the Federal Deposit Insurance Corporation for deposit insurance;
7. The proposed directors’ code of conduct governing activities both inside and outside the bank;
8. If the site is to be acquired or leased from an affiliated person, an application as required by N.J.A.C. 3:1-10.2; and
9. All other information required of a specific applicant by the Commissioner.

(b) The Commissioner may return to the applicant any charter application which does not comply with (a) above.

(c) The Commissioner shall accept or reject a charter application within one year after the applicant submits the application. The failure of the applicant to provide all necessary information within one year shall constitute sufficient grounds to reject the application. The Commissioner

may extend the one-year limitation when the applicant is not substantially at fault for the delay.

Amended by R.1991 d.48, effective February 4, 1991.  
See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

Changed name to N.J. Council of Savings Institutions.  
Repeal and New Rule, R.1992 d.483, effective December 7, 1992.  
See: 24 N.J.R. 3034(a), 24 N.J.R. 4341(a).  
Section was “Notice; publication”.

### 3:1-2.3 Branch applications

(a) An application by a depository to establish a branch office or a minibranch office shall contain the following before it will be accepted by the Department:

1. A completed current application form, including the name of the depository and the location of the applied for branch or minibranch office;
2. The required application filing fee;
3. An original certification of a copy of the resolution authorizing the application;
4. A map of the trade area of the branch with all State and Federally chartered depositories marked thereon;
5. A copy of the depository’s latest Consolidated Reports of Condition and Income as filed with the FDIC or Federal Reserve Board if a bank or a savings bank, or its latest OTS Thrift Financial Report statement of condition if a savings and loan association;
6. If the proposed transaction involves the acquisition of deposits from another banking institution:
  - i. Pro forma balance sheet projections reflecting the acquiring depository before and after the acquisition; and
  - ii. Projections of the ratio of Tier 1 capital to total assets of the depository before and after the acquisition;
7. An executed indicia of title to the proposed site, an agreement to purchase or a lease;
8. If the branch site is to be acquired or leased from an affiliated person, an application as required by N.J.A.C. 3:1-10.2;
9. A copy of the depository’s most recent Community Reinvestment Act Statement; and
10. All other documentation required of a specific applicant by the Commissioner or which the applicant wishes the Department to consider.

(b) An application by a depository to relocate a principal office, full branch office or minibranch office shall contain the following before it will be accepted by the Department:

1. A completed current application form, including the name of the depository and both locations involved in the applied for relocation;

## Case Notes

2. The required application filing fee;
3. An original certification of a copy of the resolution authorizing the application; and
4. A map of the trade area where the principal office, branch office or minibranch office will be located with all State and Federally chartered depositories marked thereon;
5. An executed indicia of title to the proposed site, an agreement to purchase or a lease;
6. If the branch site is to be acquired or leased from an affiliated person, an application as required by N.J.A.C. 3:1-10.2;
7. If a savings and loan association, proof of newspaper publication as required by N.J.S.A. 17:12B-27.1; and
8. All other documentation required of a specific applicant by the Commissioner or which the applicant wishes the Department to consider.

(c) An application by a depository to interchange a branch office and a principal office shall contain the following before it will be accepted by the Department:

1. A completed current application form, including the name of the depository and the location of each office involved in the applied for interchange;
2. The required application filing fee;
3. An original certification of a copy of the resolution authorizing the application; and
4. All other documentation required of a specific applicant by the Commissioner or which the applicant wishes the Department to consider.

(d) The Commissioner may return to the applicant any branch application which does not comply with (a), (b) or (c) above.

(e) The Commissioner shall accept or reject a branch application within one year after the applicant submits the application. The failure of the applicant to provide all necessary information within one year shall constitute sufficient grounds to reject the application. The Commissioner may extend the one-year limitation when the applicant is not substantially at fault for the delay.

Amended by R.1984 d.301, eff. July 16, 1984.

See: 16 N.J.R. 946(a), 16 N.J.R. 1966(a).

Substantial changes in section.

Repeal and New Rule, R.1992 d.483, effective December 7, 1992.

See: 24 N.J.R. 3034(a), 24 N.J.R. 4341(a).

Section was "Objection and request for oral presentation; time for filing; content".

Amended by R.1993 d.258, effective June 7, 1993.

See: 25 N.J.R. 1033(a), 25 N.J.R. 2248(a).

Deleted (a)10 and redesignated existing (a)11 to (a)10.

Appeal of Commissioner's denial of branch banking application held required to be conducted as a "contested case" hearing under the Administrative Procedure Act, where Commissioner had decided to hold a formal hearing; objector banks held parties to administrative proceeding. In re Orange Savings Bank, 172 N.J.Super. 275, 411 A.2d 1150 (App.Div.1980), appeal dismissed 84 N.J. 433, 420 A.2d 339.

A hearing on a branch banking application is neither required by constitutional right nor by statute. Atty.Gen.F.O.1979, No. 6.

**3:1-2.4 Charter applications; notice and publication**

(a) When a charter application is complete, the Department shall send written notice to the applicant setting forth a hearing date. In addition, the Department shall send written notice to the New Jersey Bankers Association, the New Jersey Council of Savings Institutions and the New Jersey Savings League for publication in their weekly bulletins.

(b) Within 10 calendar days after notification of the formal hearing date for any charter application, the applicant shall publish notice of the application once a week for four successive weeks in a newspaper designated by the Commissioner, which is published and circulated in the municipality in which said charter is proposed to be established, or if there be no such newspaper, then in a newspaper of general circulation in the municipality.

(c) The notice shall contain the following:

1. The names of the incorporators;
2. The name and mailing address of the applicant;
3. The proposed location of the principal office;
4. The amount of capital stock and surplus, or the amount of capital deposits, whichever is applicable; and
5. The hearing dates.

(d) The incorporators shall cause a copy of the notice in the form prescribed in (b) above to be forwarded to the chief executive officer of every banking institution having an office within five miles of the proposed location, and to such other offices as the Commissioner shall designate, not more than 10 calendar days after formal notification of the formal hearing date and at least three weeks before the scheduled hearing. Regarding applications of savings and loan associations, the incorporators shall also cause a copy of the notice in the form prescribed by (b) above to be forwarded to the chief executive officer of every banking association having an office within the county where the principal office of the State association is to be located, if not within five miles.

Amended by R.1984 d.301, eff. July 16, 1984.

See: 16 N.J.R. 946(a), 16 N.J.R. 1966(a).

Deleted "Or Limited Facility Branch" and inserted "application".

Repeal and New Rule, R.1992 d.483, effective December 7, 1992.

See: 24 N.J.R. 3034(a), 24 N.J.R. 4341(a).

Section was "Objections to Minibranch applications".

**3:1-2.5 Branch applications; notice and publication**

(a) When a branch application is accepted, the Department shall send written notice to the applicant and to the New Jersey Bankers Association, the New Jersey Council of Savings Institutions and the New Jersey Savings League for publication. Each notice shall contain the following:

1. The name and mailing address of the applicant;
2. A brief statement of the nature of the application;
3. The precise location of the site involved in the particular application; and
4. The date the Department accepted the application.

(b) Notice prescribed by (a) above shall be published in the weekly bulletins of the New Jersey Bankers Association, the New Jersey Council of Savings Institutions, and the New Jersey Savings League in the week following acceptance thereof. The publication of notice shall also include the following statement:

"You are hereby advised that an individual, bank, savings bank or savings and loan association may object to any full branch or relocation application, and may request that an oral presentation be conducted if so requested in writing and if filed within 10 calendar days of the date of this bulletin. Individuals or financial institutions interested in perfecting an objection or request for oral presentation should immediately consult the Department's procedural rules for guidance."

(c) Within 15 days after receiving notification from the Department that the application was accepted, the applying depository shall publish notice of the application in a newspaper published within the municipality in which it proposes to locate the branch office if there is one, and if there is no such newspaper, in a newspaper published in the county and having a substantial circulation in the municipality. The notice shall contain the name and address of the applying depository, the proposed location and the statement contained in (b) above. The depository shall provide the Commissioner with proof of publication within 10 days after this publication.

Amended by R.1984 d.301, eff. July 16, 1984.

See: 16 N.J.R. 946(a), 16 N.J.R. 1966(a).

Deleted "a section 25 association branch".

Repeal and New Rule, R.1992 d.483, effective December 7, 1992.

See: 24 N.J.R. 3034(a), 24 N.J.R. 4341(a).

Section was "Oral presentation granted or denied".

Amended by R.1993 d.258, effective June 7, 1993.

See: 25 N.J.R. 1033(a), 25 N.J.R. 2248(a).

Revised (c).

**Case Notes**

Appeal of Commissioner's denial of branch banking application held required to be conducted as a "contested case" hearing under the Administrative Procedure Act, where Commissioner had decided to hold a formal hearing; objector banks held parties to administrative proceeding. In re Orange Savings Bank, 172 N.J.Super. 275, 411 A.2d 1150 (App.Div.1980), appeal dismissed 84 N.J. 433, 420 A.2d 339.

**3:1-2.6 Charter applications; objections and oral presentations**

(a) An objection to a new charter application of a depository must be filed in the Department of Banking within five business days of the last day of publication or notice of application, or within 10 business days after receiving mailed notice from the applicant as provided in these rules, whichever is later.

(b) To be considered by the Commissioner, an objection shall be in writing and contain:

1. A summary of the reasons for protest;
2. Facts supporting the protest, including relevant economic or financial data;
3. Any adverse effects on the objector which may result from the approval of the application;
4. An indication as to whether the objector will object at the charter hearing. A fee of \$750.00 shall accompany a notice of intent to appear at a charter hearing; and
5. Proof that the objection and a request for a copy of the application were mailed to the applicant.

(c) Upon receipt of notice that an objection has been filed, an applicant shall within five calendar days forward and deliver to the objector copies of the application and all supportive data submitted relative to the application. The applicant shall file with the Commissioner proof of delivery to and receipt by the objector of this data. Within seven days after receiving this data, the objector may then file additional comments with the Department regarding matters contained in the application, and shall send copies of all comments to the applicant.

(d) The Commissioner may dismiss the objection of any objector not complying with this section, and may consider noncompliance by an applicant when considering the charter application.

(e) The Commissioner may extend any time period set forth in this section to allow for an objection and/or for consideration of an objection by the applicant or the Department.

(f) A formal hearing, pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., shall be held on all charter applications. Only those objectors which comply with this section shall be permitted to appear at the hearing.

Repeal and New Rule, R.1992 d.483, effective December 7, 1992.

See: 24 N.J.R. 3034(a), 24 N.J.R. 4341(a).

Section was "Charter applications; publication of hearing dates".

**3:1-2.7 Branch applications; objections and oral presentations**

(a) An objection to a branch application must be filed with the Department within 10 days of the last day of

publication of notice, or 30 days after that day if an extension is requested in writing within the 10-day period. An objection to a minibranch application must be filed within 20 days after publication.

(b) An objection shall be in writing and contain:

1. A summary of the reasons for protest;
2. Facts supporting the protest, including relevant economic or financial data;
3. Any adverse effects on the objector which may result from approval of the application;
4. An indication as to whether the objector applies to have a branch hearing. A fee of \$750.00 shall accompany an application for a branch hearing. If it is later determined that an oral presentation will not be held, the fee will be returned to each of the objectors requesting an oral presentation; and
5. Proof that the objection and a request for a copy of the application were mailed to the applicant.

(c) Upon receiving notice from the objector that an objection has been filed, an applicant shall within seven calendar days forward and deliver to the objector copies of the application and all supportive data submitted relative to the application. The applicant shall file with the Department proof of delivery to and receipt by the objector of this data. Within 14 calendar days after receiving data from the applicant, the objector may file additional comments with the Commissioner regarding matters contained in the application, and shall send copies of all comments to the applicant.

(d) Within 10 days after receiving final comments from an objector, the Commissioner shall notify the objector and the applicant as to whether the objection is substantial and will therefore be considered. An objection is substantial only if:

1. It is in writing and filed on time;
2. It contains a summary of the reasons for protest, a statement of the specific matters in the application to which the protestant objects and the reason for the objection, facts supporting the protest including relevant economic or financial data, and a summary of any adverse effects on the objector which may result from the approval of the application; and
3. It pertains to at least one of the criteria for approval.

(e) The applying depository may file an answer to any substantial objection until 15 days after receipt of written notice from the Commissioner that such protest is considered substantial by furnishing four copies of the answer to the Commissioner.

(f) The Department may grant a request for oral presentation on applications for branch application only if:

1. The objector requesting the oral presentation has filed and perfected an objection and oral presentation request; and
2. The objector requesting the oral presentation has presented sufficient reasons indicating that it is necessary and warranted and that the matter cannot be resolved on the papers.

(g) Notwithstanding (f) above, the Department may schedule a hearing or oral presentation on any application if deemed necessary or warranted under the circumstances.

(h) There shall ordinarily be no oral presentations on minibranch, communication terminal branch, auxiliary or limited facility branch office applications.

New Rule, R.1992 d.483, effective December 7, 1992.  
See: 24 N.J.R. 3034(a), 24 N.J.R. 4341(a).

Old section "Insufficiency of data in support of application; hearing" recodified to 2.8.

### **3:1-2.8 Insufficiency of data in support of application; hearing**

(a) In any matter where the Department shall find that the applicant or objector has not filed sufficient data, information or material in support of or in opposition to a branch application or a charter application, the applicant or objector may be required to file supplementary data, information or material, or be subject to dismissal of the application or objection.

(b) All papers required to be filed must be received in the Department of Banking by close of business on the date due. If the due date falls on a weekend or holiday then the filing must be effected by close of business on the very next business day. Upon good cause shown extensions of time within which to file must be considered if requested in writing with notice to all parties at least five days prior to due date.

(c) Only that data required by rules or required by the Department will be considered.

Recodified from 3:1-2.8 and Amended by R.1992 d.483, effective December 7, 1992.

See: 24 N.J.R. 3034(a), 24 N.J.R. 4341(a).

Revised (a); prior 2.8 "Notice of oral presentation" repealed.

#### **Case Notes**

Appeal of Commissioner's denial of branch banking application held required to be conducted as a "contested case" hearing under the Administrative Procedure Act, where Commissioner had decided to hold a formal hearing; objector banks held parties to administrative proceeding. In re Orange Savings Bank, 172 N.J.Super. 275, 411 A.2d 1150 (App.Div.1980), appeal dismissed 84 N.J. 433, 420 A.2d 339.

Charter hearings for a capital stock association should be conducted by an administrative law judge, unless the commissioner of banking deems it appropriate to himself act as the hearing officer. Atty.Gen. F.O.1979, No. 15.

### 3:1-2.9 Oral presentations

(a) If there is to be oral presentation, the Department shall notify the applicant and objector, if any, of the date, time, place and nature of the proceeding.

(b) Any oral presentation pursuant to the subchapter may be held before the Commissioner, or before any deputy commissioner, regulatory officer or any employee of the Department authorized by the Commissioner.

(c) Every oral presentation shall be open to the public unless the Commissioner shall determine that a private presentation would be in the public interest.

(d) Oral presentations on all applications, shall be strictly limited to a total of seven hours. The applicant shall be limited to three hours to present information in support of its application. The objectors shall be limited to two hours for the presentation of affirmative and rebuttal information. A shorter or longer time may be prescribed by the Department with prior notice to all parties.

(e) When multiple objectors appear through separate counsel, each shall be afforded a pro rata portion of the time allotted to objectors, unless otherwise agreed upon by all objectors.

Amended by R.1992 d.483, effective December 7, 1992.  
See: 24 N.J.R. 3034(a), 24 N.J.R. 4341(a).

Added new (a); redesignated existing (a)-(d) as (b)-(e).

#### Case Notes

A hearing on a branch banking application is neither required by constitutional right nor by statute. Atty.Gen.F.O.1979, No. 6.

### 3:1-2.10 Failure of party requesting oral presentation to appear

When the party requesting the oral presentation or having notified the Department of an intent to appear at a charter hearing fails to appear at a scheduled proceeding without sufficient reason therefor, such failure to appear shall be treated as a withdrawal of the objection and/or the request for an oral presentation. In the event that a party fails to appear at an oral presentation, any fees paid shall be retained by the State.

### 3:1-2.11 Minibranches; space limitation

(a) For the purpose of N.J.S.A. 17:9A-1(16), a bank shall be deemed to occupy the sum of the enclosed areas which it has leased or purchased in conjunction with an application to establish a minibranch, subject to the exceptions in (c) below.

(b) Occupied space shall include all enclosed customer, teller, work, storage, platform and employee lounge areas.

(c) Occupied space shall not include outside facilities such as drive-up or walk-up windows, apparatus or space; common entrance ways or areas which are shared with one or more other business entities; or restroom facilities.

(d) Applications for minibranches which occupy in excess of 500 square feet will be denied. The applicant for a minibranch shall have the burden of establishing that 500 or less square feet will be occupied.

### 3:1-2.12 Prehearing conference

(a) Prior to any hearing, or oral presentation, the regulatory officer may, in his/her discretion, direct all parties and counsel to appear before him/her for a prehearing conference for any or all of the following purposes:

1. Simplification and clarification of the issues;
2. Admission and stipulations of fact and of the contents and authenticity of documents; and
3. Such other matters as may aid in the orderly disposition of the proceeding, including disclosure of the names of witnesses and of documents or in (b) below.

(b) Such conference, in the discretion of the regulatory officer, need not be recorded, but the regulatory officer enter in the record an order signed by the parties which recites the results of the conference. Such order, a copy of which shall be furnished to each party, shall include the regulatory officer's rulings upon matters considered at the conference, together with appropriate directions, if any, to the parties; and such order shall control the subsequent course of the proceedings unless notified at the oral presentation for good cause shown by appropriate order of the regulatory officer.

### 3:1-2.13 Procedure for oral presentation

(a) Both applicant and objector may raise issues and present information only if same have been affirmatively raised in the application, the objection, or the comprehensive objection. All other matters will be excluded unless the person presiding rules otherwise, and then only for good cause shown.

(b) All studies, reports or the like may be offered only if previously submitted to the Department and other interested persons pursuant to the presiding person's direction.

(c) The applicant and the objector shall each be permitted to make an opening statement, stating precisely what information they will present. The applicant and participants may then present witnesses, materials and data. Questions may be addressed to the applicants, objectors and witnesses after each of their presentations by the regulatory officer, applicant or objector. The applicant and objector

shall then concisely summarize their positions. Witnesses shall not be sworn.

(d) The applicant and objectors shall bear a pro rata share of the transcript costs for the transcripts required by the department and all other regulatory agencies requesting same.

#### Case Notes

Appeal of Commissioner's denial of branch banking application held required to be conducted as a "contested case" hearing under the Administrative Procedure Act, where Commissioner had decided to hold a formal hearing; objector banks held parties to administrative proceeding (citing former rule). In re Orange Savings Bank, 172 N.J.Super. 275, 411 A.2d 1150 (App.Div.1980), appeal dismissed 84 N.J. 433, 420 A.2d 339.

Charter hearings for a capital stock association should be conducted by an administrative law judge, unless the commissioner of banking deems it appropriate to himself act as the hearing officer. Atty.Gen. F.O.1979, No. 15.

Branch banking proceedings are not contested cases within the meaning of the Administrative Procedure Act and need not be conducted by administrative law judges. Atty.Gen.F.O.1979, No. 6.

#### 3:1-2.14 Priority

(a) When it appears that two or more applications will serve substantially the same trade area, the application which was first filed and complete will receive priority of decision.

(b) All contemporaneous applications which serve substantially the same trade areas will be considered and decided together, no applicant receiving priority of filing or decision.

(c) "Applications" shall mean and include all charter, branch minibranch, branch relocation and interchange applications by banks, savings banks and state associations which are filed and complete.

(d) Applications for offices which will serve substantially the same trade areas shall be considered "contemporaneous" only if the subsequent applications are filed and accepted within 10 days of publication of notice per N.J.A.C. 3:1-2.2 of the first application.

(e) An application with priority or an application which is considered contemporaneous may lose priority or status as a contemporaneous application if it is not diligently pursued or is otherwise unreasonably delayed as a result of its own action or inaction. Delays caused by other applicants or objectors shall not be held against an applicant.

(f) When the merits of contemporaneous applications for offices which will serve substantially the same trade areas are equal, the department will consider the order of filing.

As amended, R.1984 d.301, eff. July 16, 1984.

See: 16 N.J.R. 946(a), 16 N.J.R. 1966(a).

Deleted "manned limited facility branch".

#### 3:1-2.15 Relaxation or dispensation of requirements of subchapter

In any instance where the Commissioner or his designee shall determine that the foregoing requirements or procedures of this subchapter shall be unwarranted, inapplicable, unreasonable, unnecessary or not required, the Commissioner may relax or dispense with the requirements of procedures established herein.

Amended by R.1996 d.168, effective April 1, 1996.

See: 28 N.J.R. 3(a), 28 N.J.R. 1830(a).

#### Case Notes

Appeal of Commissioner's denial of branch banking application held required to be conducted as a "contested case" hearing under the Administrative Procedure Act, where Commissioner had decided to hold a formal hearing; objector banks held parties to administrative proceeding (citing former rule). In re Orange Savings Bank, 172 N.J.Super. 275, 411 A.2d 1150 (App.Div.1980), appeal dismissed 84 N.J. 433, 420 A.2d 339.

#### 3:1-2.16 Population

In determining the population of a municipality for the purpose of the branching requirements contained in N.J.S.A. 17:9A-19B(3) and N.J.S.A. 17:12B-26, Census of Population and Housing, United States Bureau of the Census, and Population Estimates for New Jersey, prepared by the New Jersey Department of Labor, Division of Planning and Research, Office of Demographic and Economic Analysis, shall be the sole authorities accepted by the Department of Banking. For the years 1980, 1990 and 2000 the official United States Bureau of Census figures will be the only source accepted.

Administrative Correction: Division of Planning and Research, Office of "Business Economics" changed to "Demographic and Economic Analysis".

See: 19 N.J.R. 1572(a).

#### Case Notes

Appeal of Commissioner's denial of branch banking application held required to be conducted as a "contested case" hearing under the Administrative Procedure Act, where Commissioner had decided to hold a formal hearing; objector banks held parties to administrative proceeding (citing former rule). In re Orange Savings Bank, 172 N.J.Super. 275, 411 A.2d 1150 (App.Div.1980), appeal dismissed 84 N.J. 433, 420 A.2d 339.

#### 3:1-2.17 Closing of branch offices

(a) A bank, savings bank or savings and loan association shall notify the Department not less than 30 days before closing a full branch office. The institution shall include in this notice the following:

1. The name of the institution and the location of its principal office;
2. The location of the branch office which will be closed;
3. The prospective date of closing;

4. A statement of reasons leading to the decision to close the branch;



5. A map of the general area served by the branch showing all remaining branches of State or Federally chartered banks, savings banks and savings and loan associations within such area; and

6. A statement indicating the effect the branch closing will have on the availability of financial services in the area.

(b) If a bank, savings bank or savings and loan association acquires a branch or deposits of a branch from the Resolution Trust Corporation or the Federal Deposit Insurance Corporation or has an option to purchase a branch, and closes it within 180 days, or if it sells a branch to another depository which operates the office as a branch, it may comply with this rule by merely filing a Certificate of Discontinuance with the Commissioner along with the required fee.

(c) A bank, savings bank or savings and loan association may submit to the Department a copy of the branch closing notice filed with its Federal regulator in lieu of the filings required by (a)1 through 4 above.

(d) Beginning within 10 calendar days after notification of the Department, the bank, savings bank or savings and loan association shall publish notice of the proposed closing once a week for two successive weeks in a newspaper designated by the Commissioner, which is published and circulated in the municipality in which said branch is to be closed, or if there be no such newspaper, then in a newspaper of general circulation in the municipality. The institution shall include in the notice the name of the institution, the location of the branch office which will be closed and the prospective date of closing, the location of the depository's nearest branch office, and a statement indicating that all comments to the closing of the branch may be made to the institution and to the Department of Banking, along with the mailing address of the Department and the institution. A bank, savings bank or savings and loan association which notifies its customers of the branch closing in accordance with Federal law is exempt from this publication requirement. In addition, for at least 30 days prior to the branch closing, the bank, savings bank or savings and loan association shall conspicuously post notice of the proposed branch closing in the branch to be closed. This notice in the branch shall contain at least the prospective date of closing, the location of the depository's nearest branch office, and a statement indicating that all comments to the closing of the branch may be made to the institution and to the Department of Banking, along with the mailing address of the Department and the institution.

(e) If the Commissioner determines that there are valid concerns regarding the effect of the closing upon the local community, the Commissioner shall be authorized to conduct such meetings with the institution closing the branch, and with banks, savings banks, savings and loan associations, community leaders and others, as are necessary in his or her

judgment to explore the effect of the branch closing on the community and the possibility of replacing such branch office with other adequate facilities.

(f) The Commissioner may suspend the notice requirements on this rule in the event of an emergency or a supervisory merger or acquisition, or when otherwise in the public interest.

(g) Banks, savings banks and savings and loan associations shall maintain a file in their principal office which is open to the public and which contains a description of any meetings or hearings which occurred pursuant to this section in the past two years.

Repealed by R.1988 d.472, effective October 3, 1988.  
See: 20 N.J.R. 697(a), 20 N.J.R. 2450(a).

Section "Fees; conversion from mutual to capital stock association" repealed.

New Rule, R.1991 d.392, effective August 5, 1991.  
See: 23 N.J.R. 801(a), 23 N.J.R. 2305(a).

Amended by R.1991 d.523, effective October 21, 1991.

See: 23 N.J.R. 2208(b), 23 N.J.R. 3133(b).

Posting of closure notice in branch offices required; maintenance of file for public inspection, new (e).

Amended by R.1994 d.318, effective July 5, 1994.

See: 26 N.J.R. 883(b), 26 N.J.R. 2779(a).

#### Case Notes

Appeal of Commissioner's denial of branch banking application held required to be conducted as a "contested case" hearing under the Administrative Procedure Act, where Commissioner had decided to hold a formal hearing; objector banks held parties to administrative proceeding. In re Orange Savings Bank, 172 N.J.Super. 275, 411 A.2d 1150 (App.Div.1980), appeal dismissed 84 N.J. 433, 420 A.2d 339.

#### 3:1-2.18 Officially recognized data sources

(a) The Department will take official notice of one or more of the following data sources when testing the accuracy of data submitted in conjunction with applications and objections, when resolving factual discrepancies and when weighing the accuracy, reasonableness and applicability of documentary and oral evidence before it:

1. United States Department of Commerce, Bureau of the Census, Census of Housing (published decennially);
2. United States Department of Commerce, Bureau of the Census, Census of Population (published decennially);
3. United States Department of Commerce, Bureau of the Census, Census of Business (published every five years);
4. United States Department of Commerce, Bureau of the Census, Census of Manufacturers (published every five years);
5. Population Estimates for New Jersey—Official State Estimates, New Jersey Department of Labor and Industry (published annually);
6. United States Department of Commerce, Bureau of the Census, Construction Review (published monthly);

7. New Jersey Department of Community Affairs, Division of Local Government Services, Annual Report (published annually);

8. New Jersey Department of Labor and Industry, Division of Planning and Research, State of New Jersey—Residential Construction Authorized by Building Permits (published annually and available also on a monthly basis);

9. United States Department of Commerce, Bureau of the Census, Current Population Reports (published monthly);

10. United States Internal Revenue Service, Statistics of Income (published annually);

11. New Jersey Department of Community Affairs, Division of Local Services, United States Census Data for New Jersey Townships (provides tables of statistical information from the 1970 United States Census paralleling those available for nontownships in printed census reports);

12. New Jersey Industrial Directory (published annually);

13. Local zoning ordinances and master plans;

14. Federal Deposit Insurance Corporation, Operating Banking Offices (published annually);

15. Federal Deposit Insurance Corporation, Bank Operating Statistics (published annually);

16. Federal Deposit Insurance Corporation, Changes Among Operating Banks and Branches (published annually);

17. Federal Deposit Insurance Corporation, Summary of Deposits in All Commercial and Mutual Savings Banks (published annually);

18. Federal Home Loan Bank Board, Summary Savings Accounts by Geographic Area (published annually);

19. R.L. Polk & Co., Polk's World Bank Directory (published semiannually);

20. Department of Agriculture, Soil Conservation Series Studies and Reports;

21. New Jersey Department of Labor and Industry, Division of Employment Security Covered Employment Trends (published annually and available on a monthly basis);

22. Various County Planning Board Reports, for example, population studies and projections, employment trends, industrial-commercial development studies, and so forth; and

23. New Jersey Department of Banking, Annual Report;

(b) Other officially noticeable data will be considered when applicable and relevant.

(c) Any applicant or objector(s) shall, simultaneously with the filing of an application or objection, indicate which of the foregoing sources they object to and detail in writing their reasons for objecting.

Amended by R.1992 d.483, effective December 7, 1992.

See: 24 N.J.R. 3034(a), 24 N.J.R. 4341(a).

(a): Stylistic revision; (a)22-23: Stylistic revision; deleted (a)24.

### 3:1-2.19 Applications; copies

An original and one copy of all submissions relative to any application shall be filed with the Department.

### 3:1-2.20 Charter applications; conditions for approval

(a) The Commissioner shall condition approval of a charter application by a depository on the following:

1. If the depository is authorized to take deposits, on the depository becoming a member of the Federal Deposit Insurance Corporation;

2. The depository will not merge, consolidate or sell, either directly or indirectly, with or to any other institution or holding company for five years after issuance of the certificate of authority unless the Commissioner, upon application and as a result of unusual circumstances, deems it advisable;

3. The depository will issue and sell shares of its authorized capital stock in sufficient amount to raise its capital base before commencement of operations to at least the minimum amount set forth in N.J.A.C. 3:1-2.21, and will obtain prior approval from the Department for any person purchasing more than five percent of the authorized capital stock;

4. The depository shall not make loans to directors of the depository, corporations in which a director has a controlling interest or in which a director together with one or more other directors has a controlling interest, partnerships in which a director is a general or limited partner, and persons owning over five percent of the depository or its holding company, for the first three years after issuance of the certificate of authority;

5. The depository for the first three years after issuance of the certificate of authority shall not offer deposits which yield more than 50 basis points above the highest rate offered by a depository in its trade area;

6. For the first three years after issuance of the certificate of authority, the depository shall obtain prior approval from the Commissioner before installing any person on the board of directors or employing any person with the depository in an executive officer position as defined in N.J.A.C. 3:6-3.1; and

7. Such other conditions for a specific applicant as the Commissioner deems appropriate.

Repealed by R.1984 d.301, eff. July 16, 1984.

See: 16 N.J.R. 947(a), 16 N.J.R. 1967(a).

Section was "Sharing limited facility branch offices; notice, fee".

New Rule, R.1992 d.483, effective December 7, 1992.

See: 24 N.J.R. 3034(a), 24 N.J.R. 4341(a).

### 3:1-2.21 Minimum and maximum stock subscriptions

(a) Each charter application for a depository shall provide for stated capital of at least \$6,000,000 which shall include at least \$3,000,000 in capital stock, or such other amount as required by the Commissioner; except that an application for a charter for a trust company, which does not have authority to take deposits, may provide for stated capital of \$4,000,000 or more which shall include at least \$2,000,000 in capital stock; and except that an application for a charter incident to the purchase of a failed institution or a branch or branches of a failed institution, may provide for stated capital of \$4,000,000 or more, or six percent of deposits acquired, whichever is greater, with at least \$2,000,000 in capital stock, so long as the depository agrees to raise additional capital to reach \$6,000,000 within one year following issuance of the Certificate of Authority while also satisfying the capital requirements set forth in N.J.A.C. 3:4.

(b) The incorporators of a depository shall subscribe to all stock listed as issued on the certificate of incorporation, which shall be at least 25 percent of the total capital required by (a) above.

(c) The balance of the capital stock, if any, shall be offered to the general public in the area to be served by the depository if and when the application is approved and under such terms and conditions as set forth in the Commissioner's Decision and Order.

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

(e) No company may subscribe for stock in excess of 24.9 percent of the total capital required by (a) above, except a holding company that has registered in accordance with state and Federal law and regulations if required.

Amended by R.1984 d.119, eff. April 16, 1984.

See: 16 N.J.R. 174(a), 16 N.J.R. 870(a).

Specific minimums deleted, Commissioner granted greater discretion; (d) deleted.

Amended by R.1991 d.48, effective February 4, 1991.

See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

Minimum changed from \$2,000,000 to \$7,000,000.

Amended by R.1992 d.483, effective December 7, 1992.

See: 24 N.J.R. 3034(a), 24 N.J.R. 4341(a).

Revised heading and (a)-(c); added (d)-(e).

Amended by R.1993 d.258, effective June 7, 1993.

See: 25 N.J.R. 1033(a), 25 N.J.R. 2248(a).

Revised (a).

### 3:1-2.22 Criteria for branch approval: Public interest

(a) In reaching a determination as to whether an applicant meets the requirement that "the interests of the public will be served to advantage by the establishment of such full

branch" (N.J.S.A. 17:9A-20A(2)) the Commissioner shall consider only the following factors:

1. The availability of the proposed office to the general public or that segment of the public to be served as the case may be;

2. The presence and experience of a newly-chartered institution or an institution subject to supervisory review by the Department within the trade area of the proposed office;

3. The conditions set forth in Departmental regulations regarding insider real estate transactions; if any and

4. The current financial condition of the applicant, including but not limited to, capital, asset quality, management, earnings and liquidity. The Department files with respect to the factors contained in this subsection shall be confidential (N.J.S.A. 17:9A-264) and shall not be open or available for review by either the applicant or objectors. The Commissioner's determination with respect to these factors shall be final.

(b) The number of existing institutions and the ability of existing institutions within the trade area of the proposed office to compete with the applicant shall not form a basis for denying the full branch approval.

R.1983 d.573, effective December 5, 1983.

See: 15 N.J.R. 1706(a), 15 N.J.R. 2032(b).

### 3:1-2.23 Criteria for branch approval: Promise of success

(a) In reaching a determination as to whether an applicant meets the requirements that a full branch office is afforded a "reasonable promise of success" (N.J.S.A. 17:9A-20A(3)) the Commissioner shall consider only the following factors:

1. The costs of purchasing, constructing, leasing or otherwise establishing the proposed office including the costs for staffing, furniture and equipment needed therefor; and

2. The effect of the costs outlined in (a)1 above on the operations of the applying institution as a whole.

(b) The applicant need not demonstrate an ability to operate the proposed office at a profit within a definable period of time based on the generation of new deposits from the market area to be entered except to the extent that losses suffered at the proposed office could affect the profitability or liability of the applicant's overall operations.

R.1983 d.573, effective December 5, 1983.

See: 15 N.J.R. 1706(a), 15 N.J.R. 2032(b).

### 3:1-2.24 Modification of Order and/or rehearing

(a) When an applicant seeks relief from or modification of an existing Order which restricts stock transfers entered pursuant to authority granted to the Commissioner the applicant shall submit the following:

1. A fee in the amount of \$500.00;
2. An original certification of a copy of a resolution of three-quarters of the duly constituted Board of Directors of the regulated institution approving the request for relief or modification;
3. A memorandum setting forth the grounds for the proposed modification or relief, and outlining the changes in circumstances or new information creating the need for relief.

(b) The Department shall notify the applicant of receipt of a complete application within 10 days, and shall publish notice of the proposed modification in the weekly associations' bulletins of the New Jersey Bankers Association, the New Jersey Council of Savings Institutions, and the New Jersey Savings League. In its notification to the applicant, the Department will advise whether the application on its face appears to require a hearing. If a hearing is deemed necessary, the notice will also indicate the hearing date, location, time, and the procedures to be followed. Upon receipt of such notice from the Department, the applicant shall then mail notice to all shareholders of the affected institution and provide proof of mailing. Said notice shall include: the applicant's name; a brief statement of the nature of the application; if a hearing has been set, its date, time, and location; and the procedure for shareholders to file objections.

(c) The Commissioner reserves the right at any stage in the approval process to order that a hearing shall be conducted. Such order will be transmitted to the applicant and to all objectors and will inform them of the hearing date, time, location, and the procedures to be followed.

(d) The following standards shall be used to determine if relief from the existing Order shall be granted:

1. Would the proposed change contravene the plan which was the subject of existing Order;
2. Would the proposed change have a negative effect on the subject institution, either through disruption of activities, turnover of key personnel, loss of public confidence, or otherwise;
3. Would the proposed change have a chilling effect on other similarly situated institutions;
4. Would the proposed change be fair and equitable to all shareholders;
5. Would the proposed change represent a change in the focus of the regulated institution's activities and create public harm;
6. Would the changes in circumstances render continued compliance with the existing Order burdensome and inequitable; and

7. Such other issues as the parties may deem necessary for a fair and equitable determination by the Commissioner based on all the relevant facts.

(e) In any instance where the Commissioner or his or her designee shall determine that the foregoing requirements or procedures of this section be unwarranted, inapplicable, unreasonable, unnecessary or not required, he or she may relax or dispense with any or all of the requirements and procedures established herein.

New Rule, R.1986 d.293, effective July 21, 1986.  
See: 17 N.J.R. 2487(a), 18 N.J.R. 1453(a).

### 3:1-2.25 Fees; banks and savings banks

(a) A bank or savings bank shall pay to the Commissioner for use of the State the following fees:

1. For filing an application for charter . . . . . \$15,000
2. For filing an application for approval of the establishment of a full branch office . . . . . \$1,500
3. For filing an application for approval of the establishment of a mini-branch office . . . . . \$1,000
4. For filing an application for approval of the establishment of an automated teller machine . . . . . \$500.00
5. For filing an application for approval of a change in location of principal office or full branch office . . . . . \$500.00
6. For filing an application for approval of the cost of the establishment of an auxiliary office . . . . . \$500.00
7. For filing an application for approval of an interchange between principal office and full branch office . . . . . \$500.00
8. For filing an agreement of merger, per bank . . . . . \$3,000
9. For filing plans of acquisition, per company, per bank or savings bank . . . . . \$3,000
10. For filing an application for conversion:
  - i. From a mutual to a stock savings bank . . . . . \$3,500
  - ii. From a savings bank to an association . . . . . \$10,000
  - iii. From a savings bank to a bank . . . . . \$10,000
  - iv. From a bank to a savings bank . . . . . \$10,000
  - v. From a bank to a savings bank to an association in a simultaneous application . . . . . \$10,000
11. For filing a copy of a plan of reorganization . . . . . \$1,000
12. For the issuance by the Commissioner of a certificate of authority . . . . . \$500.00
13. For filing a certificate of amendment of a certificate of incorporation, or an amended certificate of incorporation . . . . . \$200.00
14. For filing any other certificate . . . . . \$50.00
15. For filing a required report . . . . . \$100.00
16. For filing a required affidavit . . . . . \$50.00
17. For filing proof of publication, or other required proof . . . . . \$50.00

- 18. For the issuance of a certified copy of any certificate of incorporation or merger or plan of reorganization or any other certificate or affidavit filed in the Department, plus \$2.00 per page ..... \$25.00
- 19. For filing a pension plan ..... \$500.00
- 20. For filing an amendment or alteration to a pension plan ..... \$200.00
- 21. For the issuance of any other approval by the Commissioner, plus per diem charges where applicable ..... \$100.00
- 22. For the issuance of any extension by the Commissioner, plus per diem charges where applicable ..... \$50.00
- 23. For filing a certificate of discontinuance and/or closing a branch office ..... \$100.00

(b) In addition to the fees in (a), a per diem charge may be assessed when a special investigation of a filing is required.

Emergency New Rule, R.1989 d.406, effective July 3, 1989 (expires September 1, 1989).  
 See: 21 N.J.R. 2397(a).  
 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.244, effective May 6, 1991.  
 See: 23 N.J.R. 642(a), 23 N.J.R. 1408(b).  
 Change of term at (a)4., from "communication terminal branch office" to "automated teller machine."  
 Amended by R.1991 d.294, effective June 17, 1991.  
 See: 23 N.J.R. 929(b), 23 N.J.R. 1919(b).  
 Added fee for conversion from a savings bank to an association.  
 Amended by R.1994 d.208, effective May 2, 1994.  
 See: 26 N.J.R. 286(a), 26 N.J.R. 1827(a).  
 Amended by R.1994 d.318, effective July 5, 1994.  
 See: 26 N.J.R. 883(b), 26 N.J.R. 2779(a).

**3:1-2.26 Fees; State associations**

(a) Every State association shall pay to the Commissioner the following fees:

- 1. Application to establish a mutual association ..... \$7,500
- 2. Application to establish a stock association ..... \$15,000
- 3. Application for a bulk sale, pursuant to N.J.S.A. 17:12B-204 ..... \$500.00
- 4. Application for a conversion:
  - i. From a mutual to a stock association ..... \$3,500
  - ii. From an association to a savings bank ..... \$10,000
  - iii. From an association to a savings bank to a bank in a simultaneous application ..... \$10,000
- 5. Application for a merger:
  - i. Per insured association ..... \$3,000
  - ii. Per institution when one or more is an uninsured association ..... \$1,500
- 6. Application to establish a branch office, not pursuant to a merger or bulk purchase ..... \$1,500
- 7. Application to establish an automated teller machine ..... \$500.00

- 8. Application to interchange a principal and branch office when such interchange involves two separate municipalities ..... \$500.00
- 9. Application to interchange a principal and branch office within the same municipality ..... \$500.00
- 10. Application to change location of a principal office to another municipality ..... \$500.00
- 11. Application to change location of branch office beyond 1,500 feet but within same municipality ..... \$500.00
- 12. Application to change location of branch office to another municipality ..... \$500.00
- 13. Application to share facilities ..... \$100.00
- 14. Application for approval of a savings and loan holding company where the resulting holding company will own 100 percent of the insured association as its only capital through an exchange of stock ..... \$2,000
- 15. Filing plans of acquisition, stock savings and loan and existing holding companies ..... \$3,000
- 16. Application for change of name ..... \$50.00
- 17. Certification by the Commissioner of papers or records on file with the Department, plus \$2.00 per page for each certification ..... \$25.00
- 18. Annual report or certificate ..... \$50.00
- 19. Dissolution ..... \$250.00
- 20. Filing of any other certificate ..... \$50.00
- 21. Issuance of any other approval by the Commissioner, plus a per diem ..... \$100.00
- 22. For filing a certificate of discontinuance and/or closing a branch office ..... \$100.00

(b) In addition to the fees in (a) above, a per diem charge may be assessed when a special investigation of a filing is required.

Emergency New Rule, R.1989 d.406, effective July 3, 1989 (expires September 1, 1989).  
 See: 21 N.J.R. 2397(a).  
 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.244, effective May 6, 1991.  
 See: 23 N.J.R. 642(a), 23 N.J.R. 1408(b).  
 Added new (a)7, establishing a \$500.00 fee for ATM application; recodified remaining paragraphs.  
 Amended by R.1991 d.294, effective June 17, 1991.  
 See: 23 N.J.R. 929(b), 23 N.J.R. 1919(b).  
 Added fee for conversion from an association to a savings bank.  
 Amended by R.1994 d.208, effective May 2, 1994.  
 See: 26 N.J.R. 286(a), 26 N.J.R. 1827(a).  
 Amended by R.1994 d.318, effective July 5, 1994.  
 See: 26 N.J.R. 883(b), 26 N.J.R. 2779(a).

**SUBCHAPTER 3. MORTGAGE LOANS IN DISASTER AREAS**

**3:1-3.1 Definitions**

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

"Commissioner" means the Commissioner of the Department of Banking of the State of New Jersey or his duly authorized deputy or representative.

"Disaster area" means any area of the State of New Jersey which has been proclaimed to be a disaster by the President of the United States or the Governor of New Jersey, or by any official lawfully succeeding to their respective duties or duly authorized to act for them.

"Financial institution" means any bank, savings bank, savings and loan association, building and loan association or insurance company which is organized under the laws of this State or is authorized to do business and is doing business under the laws of this State and which is subject to the supervision of the Department of Banking of the State of New Jersey.

"Mortgage loan" means any loan made by a financial institution which is secured by a mortgage constituting a lien upon real property or upon a leasehold interest in the fee of real property. Such a mortgage loan may be an existing mortgage loan or part interest thereof purchased or otherwise acquired by a financial institution constituting a lien upon real property or upon a leasehold interest in the fee of real property.

"Period of emergency" means a period of time terminating one year from the date upon which an area was proclaimed to be a disaster area. Such period of time may be extended for not more than six months from the termination date thereof if the Commissioner shall find that emergency conditions affecting mortgage loans still prevail within a disaster area.

### 3:1-3.2 Duties of Commissioner

(a) When any area of this State has been proclaimed to be a disaster area, the Commissioner shall investigate and review conditions in the disaster area to determine the extent of destruction and damage to real property and to determine whether or not real property which has been destroyed, damaged or materially affected by the disaster is subject to mortgage liens securing mortgage loans by any financial institution.

(b) If the Commissioner determines that real property within the disaster area, constituting the security of mortgage loans held by financial institutions has been destroyed, damaged or materially affected by the disaster, he may authorize financial institutions to exercise emergency mortgage powers as enumerated in N.J.A.C. 3:1-3.3 Emergency mortgage powers exercisable by financial institutions.

(c) The Commissioner shall authorize the exercise of such emergency mortgage powers by declaring this subchapter to be immediately operative and effective and said declaration shall be announced publicly and circulated in newspapers and financial publications throughout the State.

(d) When any financial institution shall exercise or use any emergency mortgage powers, as enumerated in this subchapter, the Commissioner shall ascertain and determine in connection with and as part of the usual examinations and audits conducted by the Department of Banking concerning the affairs, conditions and status of such financial institutions, whether such financial institution has complied with the requirements enumerated in N.J.A.C. 3:1-3.3.

Amended by R.1991 d.48, effective February 4, 1991.

See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

Internal cites corrected.

### 3:1-3.3 Emergency mortgage powers exercisable by financial institutions

(a) When at any time the Commissioner, pursuant to N.J.A.C. 3:1-3.2, has declared that this Subchapter shall become operative and effective, a financial institution may exercise and use the emergency mortgage powers enumerated in (b) below.

(b) The emergency mortgage powers which a financial institution may exercise and use pursuant to this subchapter shall consist only of the following:

1. If the security of a mortgage loan, when made originally, consisted of real property improved by a one-family dwelling, an additional mortgage loan may be made. The total of such additional mortgage loan, together with the unpaid or unamortized principal balance due upon the existing mortgage loan or loans shall not exceed 160 percent of the appraised value of the real property, according to the appraisal certification on file with the financial institution.

2. If the security of a mortgage loan, when made originally, consisted of real property improved by either a two-family dwelling, three-family dwelling, or four-family dwelling, an additional mortgage loan may be made. The total of such additional mortgage loan, together with the unpaid or unamortized principal balance due upon the existing mortgage loan or loans shall not exceed 100 percent of the appraised value of the real property according to the appraisal certification on file with the financial institution.

3. If a mortgage loan is secured by real property which, when originally made was represented by improvements other than those described in (b)1 and 2 above, a financial institution may make an additional mortgage loan. The total of any such additional mortgage loan, together with the unpaid or unamortized principal balance due upon the existing mortgage loan or loans, shall not exceed 133 $\frac{1}{3}$  percent of the appraised value according to the appraisal certification on file with the financial institution.

**3:1-6.2 Assessments**

(a) Every bank as defined in N.J.S.A. 17:9A-1(1), every savings bank as defined in N.J.S.A. 17:9A-1(13) and every State association as defined in N.J.S.A. 17:12B-5(1) shall be assessed a yearly fee of 0.44 of one cent per \$100.00 of total assets, except that trust assets shall be assessed a yearly fee in accordance with the following schedule:

Trust Assets of each type	Discretionary (cents per \$100 of assets)	Non-Discretionary (cents per \$100 of assets)
0-\$4,999,999,999	.03	.02
\$5 billion-\$20 billion	.02	.01
more than \$20 billion	.01	0

(b) The fee shall be assessed at one-half the yearly rate as of December 31 and one-half the yearly rate as of June 30 of each calendar year.

Emergency amendment, R.1989 d.407, effective July 3, 1989 (expires September 1, 1989).

See: 21 N.J.R. 2398(a).

Fee per \$100 of total assets raised from 0.30 to 0.36; fee per \$100 of total assets raised from 0.15 to 0.18.

Adopted concurrent proposal R.1989 d.510, effective August 31, 1989.

See: 21 N.J.R. 2398(a), 21 N.J.R. 3082(a).

Provisions of emergency amendment R.1989 d.407 readopted without change.

Amended by R.1991 d.195, effective April 15, 1991.

See: 23 N.J.R. 254(a), 23 N.J.R. 1125(a).

N.J.A.C. 3:1-6.1 and 6.2 are combined as new 6.2(a) and (b); fees and assessments increased.

Amended by R.1991 d.350, July 1, 1991.

See: 23 N.J.R. 1073(b), 23 N.J.R. 2028(a).

Established fee schedule at (a); one-half yearly rate as of December 31 and as of June 30.

**3:1-6.3 Payment dates**

The fee so assessed shall be made payable to the Treasurer of the State of New Jersey and paid on or before March 31 and September 30 of each calendar year. The payment on or before March 31 shall apply to the fees assessed for the first half of the calendar year. The payment on or before September 30 shall apply to the fees assessed for the second half of the calendar year.

**3:1-6.4 Effective date**

The fees assessed pursuant to this regulation will first apply to the first half of calendar 1978.

**3:1-6.5 Annual review**

The fees assessed by this regulation shall be reviewed at least annually and if necessary shall be increased or decreased in accordance with the services performed by the Department of Banking.

**3:1-6.6 Examination charge**

(a) The individual per hour per person examination charge for an examination of a bank, savings bank, savings and loan association or holding company shall be \$38.00, plus \$15.00 per day for travel expenses.

(b) The individual per hour per person examination charge for an examination of a licensee, credit union, trust company or trust department of a bank, savings bank or savings and loan association, or any person not specified in this section shall be \$42.00, plus \$15.00 per day for travel expenses.

(c) The Department shall bill institutions in (a) and (b) above in increments of one-half hour.

New Rule, R.1991 d.195, effective April 5, 1991.

See: 23 N.J.R. 245(a), 23 N.J.R. 1125(a).

Amended by R.1991 d.350, effective July 1, 1991.

See: 23 N.J.R. 1073(b), 23 N.J.R. 2028(a).

Increased examination fees on trust companies and trust departments from \$30 0.00 to \$325.00.

Amended by R.1992 d.250, effective June 15, 1992.

See: 24 N.J.R. 1420(a), 24 N.J.R. 2242(a).

Amended by R.1996 d.384, effective August 5, 1996.

See: 28 N.J.R. 2106(a), 28 N.J.R. 3780(a).

Changed from per diem to per hour charges.

**3:1-6.7 Failure to pay license and examination charges**

(a) If a licensee pays an examination charge, application fee, license fee or any other fee or charge with a check which is returned for insufficient funds or is not paid for any other reason, the Department shall advise the licensee by letter. The licensee shall have 20 days from the date of such letter to provide the Department with a certified or cashiers check payable to the State of New Jersey for the amount of the dishonored check plus \$10.00. If the Department does not receive a certified or cashiers check within 20 days of the date of this letter, the Department shall suspend the license of the licensee until payment by certified or cashiers check is received.

(b) If a licensee fails to pay an examination charge within 30 days after the bill is sent, the Department shall send a second billing. The licensee shall have 20 days from the date of such letter to provide the Department with payment of the fee. If the licensee fails to provide such payment within 20 days, the Department shall suspend the license of the licensee until payment is received.

New Rule, R.1995 d.208, effective April 17, 1995.

See: 27 N.J.R. 20(b), 27 N.J.R. 1576(a).

**SUBCHAPTER 7. MISCELLANEOUS FEES**

**3:1-7.1 Name change**

(a) Every licensee who shall change its name at any time shall, within 30 days of such change, submit proof of the name change to the Commissioner, shall surrender its license or licenses for endorsement of such change and pay to the Department of Banking the fee or fees provided in schedule A of this subchapter.

1. Schedule A:

- i. Motor vehicle installment seller—\$75.00;
- ii. Sales finance company—\$75.00;
- iii. Home repair contractor—\$75.00;
- iv. Home financing agency—\$75.00;
- v. Consumer loan licensee—\$75.00;
- vi. Pawnbroker—\$75.00;
- vii. Foreign money remitter—\$75.00;
- viii. Licensed cashier of checks—\$75.00;
- ix. Foreign banks—\$75.00;
- x. Secondary mortgage loan license—\$75.00;
- xi. Insurance premium finance company—\$75.00;
- xii. Licensed seller of checks—\$75.00;
- xiii. Mortgage banker or broker—\$75.00.

(b) For all licensees with more than one office, the Department shall impose a \$25.00 fee for each license at a branch office affected by the name change.

Emergency amendment, R.1989 d.407, effective July 3, 1989 (expires September 1, 1989).

See: 21 N.J.R. 2398(a).

Fees raised at (a)1; mortgage banker fees added at (a)1xiii.

Branch office fees added at (b).

Adopted concurrent proposal R.1989 d.510, effective August 31, 1989.

See: 21 N.J.R. 2398(a), 21 N.J.R. 3082(a).

Provisions of emergency amendment R.1989 d.407 readopted without change.

### 3:1-7.2 Duplicate licenses and certificates

(a) A licensee may request a duplicate license or certificate when the original license or certificate issued has been lost or destroyed.

(b) The request for the issuance of such duplicate license or certificate will be made on forms supplied by the Department of Banking.

(c) The licensee shall pay to the Department of Banking the fee, or fees provided in schedule B of this subchapter for such licenses or certificates.

#### 1. Schedule B:

- i. Motor vehicle installment seller—\$25.00;
- ii. Sales finance company—\$25.00;
- iii. Home repair contractor—\$25.00;
- iv. Home financing agency—\$25.00;
- v. Consumer loan licensee—\$25.00;
- vi. Pawnbroker—\$25.00;
- vii. Foreign money remitter—\$25.00;
- viii. Licensed cashier of checks—\$25.00;

- ix. Foreign banks—\$25.00;
- x. Secondary mortgage loan licensees—\$25.00;
- xi. Home repair salesmen—\$25.00;
- xii. Insurance premium finance company—\$25.00;
- xiii. Licensed seller of checks—\$25.00;
- xiv. Mortgage banker or mortgage broker—\$25.00.

Emergency amendment, R.1989 d.407, effective July 3, 1989 (expires September 1, 1989).

See: 21 N.J.R. 2398(a).

Fees increased; mortgage banker or broker added.

Adopted concurrent proposal R.1989 d.510, effective August 31, 1989.

See: 21 N.J.R. 2398(a), 21 N.J.R. 3082(a).

Provisions of emergency amendment R.1989 d.407 readopted without change.

### 3:1-7.3 Requests for licensee standing and locations

(a) The Department of Banking may furnish, upon written request, information concerning a licensee's standing and location. The information provided shall be in a form prescribed by the Department of Banking.

(b) A requester shall pay to the Department of Banking the fee or fees provided in schedule C of this subchapter.

#### 1. Schedule C:

- i. Motor vehicle installment seller—\$15.00;
- ii. Sales finance company—15.00;
- iii. Home repair contractor—15.00;
- iv. Home financing agency—15.00;
- v. Small loan licensee—15.00;
- vi. Pawnbroker—15.00;
- vii. Foreign money remitter—15.00;
- viii. Licensed cashier of checks—15.00;
- ix. Foreign banks—15.00;
- x. Secondary mortgage loan licensee—15.00;
- xi. Home repair salesmen—15.00;
- xii. Insurance premium finance company—15.00;
- xiii. Licensed seller of checks—15.00;
- xiv. Individual group listings—0.20 per item.

### 3:1-7.4 Address change

Every licensee referenced in Schedule A or B which changes a licensed business address at any time shall, within 20 days of the change, submit information relative to the address change to the Commissioner, surrender the affected license or licenses for endorsement of the change; and pay to the Department an address change of \$75.00. Motor vehicle installment sellers, sales finance companies, home repair salesmen, home repair contractors and home financing agencies are exempt from the \$75.00 fee.

Emergency amendment (new rule), R.1989 d.407, effective July 3, 1989  
(expires September 1, 1989).  
See: 21 N.J.R. 2398(a).

Adopted concurrent proposal R.1989 d.510, effective August 31, 1989.  
See: 21 N.J.R. 2398(a), 21 N.J.R. 3082(a).

(c) If the Commissioner adopts either in whole or in part the report and recommendation of the presiding officer, it shall not be necessary for him or her to repeat those facts and conclusions in his or her order, and they shall automatically be considered part thereof.

As amended, R.1983 d.85, eff. March 21, 1983.

See: 15 N.J.R. 4(a), 15 N.J.R. 439(b).

Recodified from N.J.A.C. 3:1-9.15.

Amended by R.1991 d.48, effective February 4, 1991.

See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

Language changed to clarify first level of hearings is investigatory.

### 3:1-9.16 Continued violation of Act; penalty

(a) A depository institution which continues to violate the provisions of the Act or N.J.A.C. 3:1-9.7 after being ordered by the Commissioner to cease such practices shall be liable to a penalty of \$5,000 for each offense. Such penalty shall be in addition to and not in lieu of any other provisions of law applicable upon a depository institution's failure to comply with an order of the Commissioner.

(b) If the Commissioner determines that a depository institution is continuing to violate the provisions of the Act or N.J.A.C. 3:1-9.7 after being ordered to cease such practices, he or she shall issue and serve such depository institution by certified mail, return receipt requested, an order to pay the applicable penalties assessed against the depository institution.

As amended, R.1979 d.415, eff. October 18, 1979.

See: 11 N.J.R. 426(b), 11 N.J.R. 534(b).

As amended, R.1983 d.85, eff. March 21, 1983.

See: 15 N.J.R. 4(a), 15 N.J.R. 439(b).

Recodified from N.J.A.C. 3:1-9.16.

Amended by R.1991 d.48, effective February 4, 1991.

See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

Cite corrected and non-sexist language added.

### 3:1-9.17 Notice of charges; continued violation of Act

(a) If it appears to the Commissioner that a depository institution, other than a national bank, is continuing to violate the provisions of the Act or N.J.A.C. 3:1-9.7 of this subchapter after being ordered to cease such practices, he shall issue and serve upon such depository institution by certified mail, return receipt requested, a notice of such charges.

(b) The notice shall include:

1. The particular sections of the statutes and rules involved; and
2. A copy of the detailed statement of facts constituting the basis of the alleged violation.

3. A statement that the depository institution has the right to request a hearing on the charges by submitting a written request for a hearing within 10 days of receipt of the charges; however, the time period may be extended at the discretion of the Commissioner. The hearing shall be conducted in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

Amended by R.1991 d.48, effective February 4, 1991.

See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

Added provisions for requests for and the holding of hearings.

### 3:1-9.18 through 3:1-9.19 (Reserved)

## SUBCHAPTER 10. RESTRICTIONS ON REAL PROPERTY TRANSACTIONS

### 3:1-10.1 Definitions

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

“Affiliated person” means the following:

1. A director, manager or executive officer of an institution;
2. A spouse of a director, manager or executive officer of an institution;
3. A member of the immediate family of a director, manager or executive officer of an institution or an affiliate of an institution;
4. Any corporation or organization of which a director, manager or executive officer of such institution is an officer or partner or is, directly or indirectly either alone or with his spouse, the owner of 10 percent or more of any class of equity securities or the owner with other directors, managers and executive officers of such institution and their spouses of 25 percent or more of any class of equity securities;
5. Any trust or other estate in which a director, manager or executive officer of such institution or the spouse of such person has a substantial beneficial interest or as to which such person or his spouse serves as trustee or in a similar fiduciary capacity.

“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 institution, 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, the president, every vice president, the cashier, the

secretary, the treasurer and the comptroller are considered to be executive officers, unless by resolution of the board of directors or by the bylaws of the institution 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.

“Immediate family” of any natural person means the following (whether by the full or half blood or by adoption):

1. Such person’s spouse, father, mother, children, brothers, sisters and grandchildren;
2. The father, mother, brothers and sisters of such person’s spouse; and
3. The spouse of a child, brother or sister of such person.

“Institution” means a bank as defined in N.J.S.A. 17:9A-1(1), a savings bank as defined in N.J.S.A. 17:9A-1(13) and a State association as defined in N.J.S.A. 17:12B-5(1).

As amended, R.1982 d.242, eff. August 2, 1982.  
See: 14 N.J.R. 490(a), 14 N.J.R. 834(a).  
Amended definition of “Executive officer”.

### 3:1-10.2 Application required on real property transactions

When an institution files an application for a branch, minibranch, limited facility branch, branch relocation, auxiliary or new charter and intends to purchase or lease, directly or indirectly, the premises applied for from an affiliated person, it shall simultaneously file a detailed real estate application concerning the proposed transaction with the Commissioner for his approval. In the event an institution desires to enter into such a transaction on an existing office it must file a detailed real estate application concerning the proposed transaction with the Commissioner for his approval.

### 3:1-10.3 Approval or denial of real estate applications

(a) The real estate application concerning a transaction with an affiliated person will be denied unless the applicant shall establish to the Commissioner’s satisfaction that:

1. The terms and conditions of the proposed transaction are in the best interests of the institution; and
2. The terms and conditions of the proposed transaction are equal to or better than those which the institution would have obtained had the premises been purchased or leased in an arm’s length transaction with a non-affiliated third party.

### 3:1-10.4 Objectors and hearings

The Commissioner’s deliberations on the acceptability of a real estate transaction shall be made pursuant to his examination powers and shall be confidential pursuant to N.J.S.A. 17:9A-264. However, this shall not preclude objectors from raising similar and/or parallel issues in written or oral objections which may relate to the applicable statutory criteria for the particular application involved.

## SUBCHAPTER 11. RESTRICTIONS ON LOANS INVOLVING AFFILIATED PERSONS

### 3:1-11.1 Definitions

The following words or terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

“Affiliate” means a corporation, association, partnership or any type of business organization whatsoever, in which the banking institution, association or holding company owns at least 20 percent of the outstanding common stock unless the banking institution, association or holding company can rebut the presumption of the exercising of significant influence.

“Affiliated person” means the following:

1. Any corporation or organization (other than the bank or a majority-owned subsidiary of the bank) of which such person is an officer or partner or is directly or indirectly, either alone or together with one or more members of his immediate family, the beneficial owner of 10 percent or more of any class or equity securities;
2. Any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as a trustee or in a similar fiduciary capacity;
3. A spouse of a director, manager or executive officer of an institution or an affiliate of an institution.
4. A member of the immediate family of a director, manager or executive officer of an institution or an affiliate of an institution.

“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 institution, whether or not: the person has an official title; the title contains a designation of assistant; the person is serving without salary or other compensation. The chairman of the board, the president, every vice president, the cashier, the secretary, the treasurer and the comptroller are considered to be executive officers, unless by resolution of the board of directors or by the bylaws of the institution 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.

**3:1-16.10 Special rules for brokers**

(a) No broker shall charge or collect from a borrower on its own behalf any fees other than an application fee and discount points or fractions thereof. A broker may collect a fee on behalf of a lender provided that the entire amount of the fee is transmitted to the lender.

(b) Before accepting any loan application, the broker shall make written disclosure to the borrower in a separate service agreement setting forth:

1. The amount of the broker's application fee, if any;
2. Whether and under what circumstances all or any part of the broker's application fee may be refundable;
3. The amount of any discount points which are payable to the broker for its services;
4. A statement advising of the provisions of (c) below;
5. A detailed listing of the specific services that will be provided or performed by the broker, together with a statement that all fees which are payable to the broker will be refunded if the broker does not perform the services indicated; and
6. Whether the broker places loans exclusively with any three or fewer lenders and, if so, the name(s) of such lender(s).

(c) No broker may execute a lock-in agreement or issue a commitment on its own behalf or on behalf of any lender or guarantee acceptance into any particular loan program or promise any specific loan terms or conditions.

(d) No broker may accept a lender's lock-in agreement from a borrower or any lock-in fee in connection therewith unless the lock-in agreement contains all of the disclosures required in N.J.A.C. 3:1-16.4(a).

(e) The disclosures required in (b) above shall be acknowledged in writing by the borrower and maintained by the broker and a copy of such acknowledgement shall be given to the borrower.

Amended by R.1992 d.149, effective April 6, 1992 (Operative for Federally-chartered financial institutions is June 5, 1992).  
See: 23 N.J.R. 2613(b), 24 N.J.R. 3(a), 24 N.J.R. 1380(a).  
Revised (a) and (b).  
Old section 16.10 "Compliance with Federal laws" was repealed.

**Case Notes**

Mortgage was subject to Mortgage Bankers and Brokers Act (MBBA). *Trico Mortg. Co., Inc. v. Forero*, 275 N.J.Super. 91, 645 A.2d 793 (A.D.1994), certification denied 139 N.J. 186, 652 A.2d 174.

**3:1-16.11 Operative date**

This subchapter shall become operative on July 16, 1989, and shall apply to all applications taken on or after that date. The amendments to this subchapter which were adopted effective April 6, 1992 shall take effect immediately

on that date, except that such amendments shall not apply to Federally-chartered financial institutions until June 5, 1992.

Amended by R.1992 d.149, effective April 6, 1992 (operative for Federally-chartered financial institutions is June 5, 1992).  
See: 23 N.J.R. 2613(b), 24 N.J.R. 3(a), 24 N.J.R. 1380(a).

Recodified with revisions from 3:1-16.12. Old section 3:1-11 was "Special rules for brokers."

**3:1-16.12 (Reserved)**

## SUBCHAPTER 17. AUTOMATED TELLER MACHINES (ATM)

**3:1-17.1 Definitions**

The following words and terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Automated teller machine" means an automated facility or terminal owned or rented by a bank, savings bank or savings and loan association at which a customer may do one or more of the following:

1. Make deposits;
2. Obtain disbursements from a deposit or loan account; or
3. Transfer money from a deposit or loan account.

Included within this definition is a communication terminal branch office as defined in N.J.S.A. 17:9A-1(17), and a remote service unit as defined in N.J.S.A. 17:12B-8(e).

"Bank," "savings bank," "savings and loan association" and "credit union" means State chartered institutions having their principal offices in New Jersey, unless otherwise indicated.

"Foreign financial institution" means a State or Federally chartered bank, savings bank, savings and loan association or credit union with principal offices outside of New Jersey.

"Sharing access" means the ability of financial institutions, other than the institution owning or renting the automated teller machine, to allow their customers to use the machine to consummate transactions, make deposits, initiate inquiries or otherwise conduct business with such financial institutions.

**3:1-17.2 On site location**

A bank, savings bank or savings and loan association may establish, maintain or operate an automated teller machine or machines on the premises, or within 200 feet of the premises, of its principal office or any of its branch or auxiliary offices, without filing an application with the Department. The 200 feet shall be measured from the portion of the property line of the office or branch closest to the automated teller machine.

**3:1-17.3 Off site location**

(a) Before establishing an automated teller machine more than 200 feet from its premises, a bank, savings bank or savings and loan association must file an application with the Commissioner containing the following:

1. The proposed location of the automated teller machine or machines;
2. A listing of all other New Jersey institutions which will share access to the machine or machines, or all state, regional and national networks with which the machine or machines will be associated;
3. The anticipated charges to be made for access to the unit;
4. The number of machines to be established at the location; and
5. Such other information as required by the Commissioner.

(b) The following items must accompany each application:

1. The filing fee of \$500.00; and
2. A certified copy of a resolution of the board of the applying institution authorizing the application.

**3:1-17.4 Shared ownership**

If any bank, savings bank or savings and loan association shares in the ownership, costs of installation or maintenance of an automated teller machine, either directly or indirectly (on other than a transactional fee basis), then this shall be indicated in the application. In addition, the application shall include a certified board resolution from each financial institution sharing in the ownership, costs of installation or maintenance. The application fee shall only be paid by the applying institution, but the machine shall be a branch of every institution sharing the ownership or costs of installation or maintenance.

**3:1-17.5 Interstate access**

(a) No foreign financial institution shall establish, operate, maintain or share ownership of an automated teller machine anywhere within the State of New Jersey, except that a foreign financial institution may share access to such a machine.

(b) No automated teller machine in this State shall bear any identification of a foreign financial institution, except that a generic name or display identifying or associated with a regional or national network of automated teller machines is not prohibited.

(c) A customer having an account in a foreign financial institution may make deposits to that account from an automated teller machine located in New Jersey.

---

**SUBCHAPTER 18. FOREIGN BANKS AND ASSOCIATIONS; REGISTRATION OF SERVICE FACILITIES**

**3:1-18.1 Definitions**

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

“Back office operation” shall mean only the following activities:

1. Data processing;
2. Recordkeeping;
3. Accounting;
4. Check and deposit sorting and posting;
5. Computation and posting of interest;
6. Clerical and statistical activities which are similar to the activities in paragraphs 1 through 5 above; and
7. Producing and mailing correspondence and other documents, provided that the correspondence and documents do not include the address of the service facility.

“Back office operation” shall not mean:

1. Making loans;
2. Making underwriting decisions;
3. Receiving payments or signed loan documents directly from customers whether by mail, wire transfer, delivery service, or other means;
4. Accepting deposits;
5. Maintaining credit balances;
6. Advertising or otherwise soliciting business; and
7. Transacting business between a service facility and the foreign financial institution’s customers or the general public.

“Foreign association” shall have the meaning which that term has in N.J.S.A. 17:12B-213.

"Foreign bank" shall have the meaning which that term has in N.J.S.A. 17:9A-315.

"Foreign financial institution" shall include a foreign bank, a foreign association, and an entity which is affiliated in ownership, either directly or indirectly, with a foreign bank or a foreign association, but shall not include an entity which is affiliated, either directly or indirectly, with a foreign bank or foreign association, and which is licensed to transact financial services under New Jersey law, provided that the entity limits its activities to those conferred by its license.

### 3:1-18.2 Registration requirement

(a) Prior to engaging in back office operations in this State, a foreign financial institution shall register a service facility with the Department.

(b) Notwithstanding (a) above, an affiliate of a foreign bank or foreign association which is conducting back office operations in this State on July 1, 1991 may continue to conduct such operations until August 30, 1991 without becoming registered.

### 3:1-18.3 Registration process

(a) A foreign financial institution may request to register a service facility by mailing to the Department the following:

1. A letter requesting registration of a service facility to conduct back office operations, which letter shall include the name of the foreign financial institution and the address of its principal United States office, the address of the proposed service facility, and the name and address of the foreign financial institution agent in this State for service of process; and

2. The required registration fee.

### 3:1-18.4 Registration fee

(a) A foreign financial institution shall submit a registration fee of \$500.00 to the Department with its request to become registered, except if the initial registration of the service facility has occurred in the second year of the biennial period, the registration fee shall be \$250.00.

(b) After becoming registered, a foreign financial institution which intends to continue operating a service facility in this State shall submit to the Department biennially a registration renewal fee of \$500.00.

(c) The first biennial period shall end August 31, 1992.

### 3:1-18.5 Notification of registration or deficiency by the Department

(a) The Department shall, within 30 days of receipt of the materials specified in N.J.A.C. 3:1-18.3, notify the foreign financial institution that the service facility is registered by the Department or, in the event the request for registration

is incomplete, the Department shall, within 30 days of receipt of the incomplete request, notify the foreign financial institution of the nature of the deficiency.

(b) The registration of the service facility shall not become effective until the foreign financial institution has received notification from the Department, except that, if the foreign financial institution has not received notification of registration from the Department within 30 days of the Department's receipt of all of the materials specified in N.J.A.C. 3:1-18.3, or notification of deficiency within 30 days of the Department's receipt of an incomplete request, such request for registration shall be deemed to have been granted by the Department.

(c) Nothing in this rule shall prohibit a foreign financial institution from purchasing or leasing office space in this State for use as a service facility, or from preparing such office space for use as a service facility prior to notification of registration by the Department.

(d) A foreign financial institution may register more than one service facility, but shall submit a separate request for registration, with the required fee, for each service facility and shall receive notification of that registration prior to engaging in back office operations at that service facility.

### 3:1-18.6 Permitted activities at service facilities

(a) A foreign bank or foreign association may conduct only back office operations at a service facility.

(b) Back office operations conducted by foreign financial institutions in this State may be conducted only at service facilities.

### 3:1-18.7 Examination of service facilities

(a) A service facility shall be subject to examination by the Department to determine whether the foreign financial institution is operating the service facility in accordance with State law.

(b) The cost for the examination of a service facility shall be paid by the foreign financial institution and shall be billed at the Department's per diem rate for examinations of depository institutions (see: N.J.A.C. 3:1-6.6).

### 3:1-18.8 Hearing to close service facilities

The Commissioner may, upon notice and a hearing, order a foreign financial institution to close a service facility operated in violation of law. Such hearing shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1.

SUBCHAPTER 19. NEW JERSEY CONSUMER  
CHECKING ACCOUNTS

**3:1-19.1 Definitions**

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Account agreement” means the agreement governing a New Jersey Consumer Checking Account.

“ATM” means automated teller machine.

“Check” means any check as defined in N.J.S.A. 12A:3-104, share draft, negotiable order of withdrawal, or similar means of making payment or transfers to third parties, the customer, or others, which is drawn on an account in a depository institution and is payable on demand. It shall not include debits to the account for maintenance charges, fees, printing checks, pre-arranged automatic withdrawals, and other similar services.

“Consumer” means a natural person who resides in this State, except that a credit union may require that the natural person be a member of the credit union in accordance with the credit union’s rules of membership.

“Customer” means a consumer who has a New Jersey Consumer Checking Account.

“New Jersey Consumer Checking Account” or “account” means a deposit account established pursuant to N.J.S.A. 17:16N-3 and with respect to which the account holder is permitted to make payments to third parties or others by check.

“Non-conforming account” means a New Jersey Consumer Checking Account which does not contain the characteristics set forth in N.J.A.C. 3:1-19.2 but has been individually approved by the Commissioner pursuant to N.J.A.C. 3:1-19.3.

**3:1-19.2 Features of New Jersey Consumer Checking Accounts**

(a) A New Jersey Consumer Checking Account which is subject to subsection c of N.J.S.A. 17:16N-3 shall have all of the following features:

1. The account agreement shall not require more than \$50.00 as an initial deposit amount;
2. The account agreement shall not require the customer to maintain a minimum balance of more than \$1.00 in order to maintain the account;

3. The account agreement shall allow the customer to make at least eight withdrawals by check per periodic cycle from the account without charge. For the purpose of this paragraph, the withdrawal shall be deemed made when paid by the depository institution. This minimum number of withdrawals is based on the assumption that the periodic cycle is approximately 30 days. If the periodic cycle is substantially longer or shorter than 30 days, the minimum number shall be adjusted accordingly;

4. The account agreement shall not authorize a charge exceeding \$0.50 for each transaction in excess of the number required by (a)3 above;

5. The account agreement shall allow a customer, of a depository institution which permits withdrawals to be made from checking accounts by means of withdrawal slips, to make unlimited withdrawals by withdrawal slip from the account without charge;

6. The account agreement shall allow a customer to make unlimited deposits into the account without charge;

7. The account agreement shall not authorize a charge for maintaining the account which exceeds \$3.00 per periodic cycle. Also, the maximum amount of the charge is based on the assumption that the periodic cycle is approximately 30 days. If the periodic cycle is substantially longer or shorter than 30 days, the maximum amount shall be adjusted accordingly;

8. The account agreement shall not authorize a charge to the customer for printing checks for the account which is more than its charge to its regular checking account holders for that service; and

9. The account agreement may provide that the depository institution may charge customers for ATM usage and for banking services not specified in this chapter if, and to the same degree that, it charges its regular checking account holders for that usage and services.

**3:1-19.3 Non-conforming accounts**

(a) A depository institution may apply to the Commissioner for approval of any account, which does not conform to the criteria set forth in N.J.A.C. 3:1-19.2, as a New Jersey Consumer Checking Account.

(b) Each application for approval of a non-conforming account shall provide:

1. The initial deposit amount necessary to open the account;
2. The minimum balance required to maintain the account;
3. The maximum number of checks that may be written per month without charge;
4. The maximum number of non-check withdrawals per month without charge;
5. The maximum maintenance charge per month;
6. The maximum number of deposits which may be made per month without charge;