

3. On investments of less than \$50 million, the Director shall provide an informational memorandum to the Council of every investment made, which shall be provided on a regular basis subsequent to the date such investment has been made.

4. In any given calendar year, and at any point within such year, at least 80 percent of the number of investments which are approved and 80 percent of the dollar amount of total investment commitments must be eligible for a report by the Investment Committee to the Council. For investments under \$50 million, so long as such investments constitute no more than 20 percent of the number of investments approved and 20 percent of the total investment dollars committed, the Director shall provide an informational memorandum to the Council pursuant to (a)3 above. Once the Division has exceeded its 20 percent "exemption" in any given year, all proposed investments will be subject to the Investment Committee providing a report to the Council until the number and dollar value of "exempt" investment again falls below the 20 percent threshold.

(b) After the Director has made binding commitments aggregating an amount between \$2 billion and \$5 billion, not more than 10 percent of the market value of the assets of Common Pension Fund E, plus outstanding commitments, may be committed to any one partnership or investment, without the prior written approval of the Council. After the Director has made binding commitments aggregating an amount of \$5 billion or more, not more than five percent of the market value of the assets of Common Pension Fund E, plus outstanding commitments, may be committed to any one partnership or investment, without the prior written approval of the Council.

(c) The investments in Common Pension Fund E cannot comprise more than 20 percent of any one investment manager's total assets.

(d) Not more than 38 percent of the market value of the assets of any fund shall be represented by the market value of investments as permitted by N.J.A.C. 17:16-71, 90 and 100, whether held directly by such fund or through Common Pension Fund E. If the market value exceeds 38 percent, then the Council shall be notified at the next regularly scheduled meeting of the Council. The Division may be granted a six-month period of grace to reduce the level of participation of the fund below the 38 percent level, except that the period of grace may be extended for additional four-month periods with the approval of the Council.

(e) Unless otherwise specifically provided therein, in the event that any subchapter contains a limitation on the percentage of assets of any Pension and Annuity Fund which may be invested in an investment or class of investments, that limitation shall be construed to apply to the percentage of combined assets of all of the Pension and Annuity Funds participating in Common Pension Fund E and shall not restrict the total investment by Common Pension Fund E in such

investment or class of investments to the percentage limitations applicable to any individual Pension and Annuity Fund.

(f) Unless otherwise specifically provided therein, in the event that any subchapter contains a limitation on the percentage of an investment or class of investment in which the Director may invest, that limitation shall be construed to exclude investments purchased on behalf of Common Pension Fund E.

Recodified from N.J.A.C. 17:16-69.12 and amended by R.2006 d.317, effective September 5, 2006.

See: 38 N.J.R. 2039(a), 38 N.J.R. 3632(a).

Rewrote the section. Former N.J.A.C. 17:16-69.9, Admission date, recodified to N.J.A.C. 17:16-69.6.

Amended by R.2007 d.264, effective August 20, 2007.

See: 39 N.J.R. 1469(a), 39 N.J.R. 3550(d).

In the introductory paragraph of (a), inserted "(other than the State of New Jersey Cash Management Fund, United States Treasury Obligations and commercial paper)".

Amended by R.2008 d.241, effective August 18, 2008.

See: 40 N.J.R. 2094(b), 40 N.J.R. 4825(a).

In the introductory paragraph of (a), substituted a comma for "and" following "Obligations" and inserted ", common and preferred stocks and issues convertible into common stock and exchange-traded funds"; in (a)1, deleted "due diligence" preceding "report for each such" and inserted a comma following "include"; in (a)2 and (a)3, substituted "memorandum" for "due diligence report"; and in (d), substituted "28" for "18" three times.

Amended by R.2008 d.396, effective December 15, 2008.

See: 40 N.J.R. 4695(a), 40 N.J.R. 7001(a).

In the introductory paragraph of (a), substituted a comma for "and" following "stocks", and inserted ", direct bank loans, and credit default swap transactions".

Amended by R.2011 d.123, effective April 18, 2011.

See: 42 N.J.R. 2933(a), 43 N.J.R. 1037(a).

In (a)4, substituted "the Director shall provide an informational memorandum to the Council pursuant to (a)3 above" for "the Investment Committee will not issue a report to the Council"; and in (d), substituted "38" for "28" throughout.

Amended by R.2012 d.020, effective January 17, 2012.

See: 43 N.J.R. 2286(a), 44 N.J.R. 176(a).

In the introductory paragraph of (a), substituted "forward, option and" for "credit default".

17:16-69.10 Liquidation

(a) The Director, subject to the approval of the Council and the Treasurer, may, upon two months' notice, liquidate Common Pension Fund E.

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

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

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

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

Recodified from N.J.A.C. 17:16-69.13 and amended by R.2006 d.317, effective September 5, 2006.

See: 38 N.J.R. 2039(a), 38 N.J.R. 3632(a).

Rewrote (a); and in (e), deleted “State Investment” preceding “Council”. Former N.J.A.C. 17:16-69.10, Amendments, recodified to N.J.A.C. 17:16-69.7.

Amended by R.2012 d.020, effective January 17, 2012.

See: 43 N.J.R. 2286(a), 44 N.J.R. 176(a).

In (d), substituted “net asset” for “principal”.

17:16-69.11 (Reserved)

Recodified to N.J.A.C. 17:16-69.8 by R.2006 d.317, effective September 5, 2006.

See: 38 N.J.R. 2039(a), 38 N.J.R. 3632(a).

Section was “Distribution of realized appreciation”.

17:16-69.12 (Reserved)

Recodified to N.J.A.C. 17:16-69.9 by R.2006 d.317, effective September 5, 2006.

See: 38 N.J.R. 2039(a), 38 N.J.R. 3632(a).

Section was “Limitations”.

17:16-69.13 (Reserved)

Recodified to N.J.A.C. 17:16-69.10 by R.2006 d.317, effective September 5, 2006.

See: 38 N.J.R. 2039(a), 38 N.J.R. 3632(a).

Section was “Liquidation”.

SUBCHAPTER 70. (RESERVED)

SUBCHAPTER 71. REAL ASSETS

17:16-71.1 Definitions

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

“Co-investment” means two parties (usually the limited partner and the general partner of a fund) invest alongside each other in the same company, portfolio or property. If a limited partner in a fund has co-investment rights, it can invest directly in a company, portfolio or property in which the fund also invests. The institution, therefore, ends up with two separate stakes — one indirectly through the fund; one directly in the company, portfolio or property. Co-investment may also include multiple like-minded institutional investors investing in a specific company, portfolio or property.

“Commingled funds” means all open-end and closed-end pooled investment vehicles designed primarily for institutional tax-exempt investors. A commingled fund may be organized as a group trust, partnership, corporation, insurance company separate account, or other multiple ownership entity. An investment in a commingled fund may take the form of an investment in the trustee, general partner, or other managing member of such fund.

“Commodity-linked investments” means investments from which all or a portion of the return is linked to the price of a particular commodity or equity security, or to an index of such prices. These include commodity-indexed deposits, loans, debt issues, and derivative products, such as forwards, options, and swaps. In these transactions, the interest, principal, or both, or payment streams in the case of swaps, are linked to the price of a commodity.

“Common stocks” means shares of stock, other than preferred stocks, representing ownership in a corporation.

“Core real estate” means equity investments in existing, stabilized (meaning at least 80 percent occupied), well-leased assets.

“Direct investment” means the purchase of an interest in a company or venture directly by an eligible fund, rather than through an investment vehicle.

“East” means Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New Jersey, New York, Pennsylvania, Delaware, Kentucky, Maryland, North Carolina, South Carolina, Virginia, Washington D.C. and West Virginia.

“Exchange-traded funds” means mutual funds that track a predetermined index and can be traded like shares of common stock.

“Joint venture” means a contractual agreement joining two or more parties for the purpose of executing a particular undertaking. All parties agree to share in the profits and losses of the enterprise.

“Midwest” means Illinois, Indiana, Michigan, Ohio, Wisconsin, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota and South Dakota.

“Non-core real estate” means equity investments in value-added or opportunistic strategies, including direct property investment with lease-up, development or redevelopment risk. Non-core real estate includes recapitalizations across capital structures and property types and access to niche markets.

“Preferred stocks” means shares of stock which provide a specific dividend that is paid before any dividends are paid to holders of common stock and additional rights above and beyond those conferred by common stock.

“Real assets” mean investments in real estate, infrastructure, oil and gas, timber properties, farmland, precious metals, royalty trusts and commodity-linked investments. Real assets include the common and preferred stocks and issues convertible into common stock of U.S. and international corporations and U.S. and international exchange-traded funds that primarily invest in real assets.

“Real estate” includes core real estate and non-core real estate.

“Royalty trust” means equity investments that generate an income stream for investors; these primarily include natural resource assets, and pharmaceuticals and medical devices.

“Separate account” means ownership is segregated and kept in the investor’s name.

“South” means Alabama, Florida, Georgia, Mississippi, Tennessee, Arkansas, Louisiana, Oklahoma and Texas.

“West” means Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming, Alaska, California, Hawaii, Oregon and Washington.

Amended by R.2006 d.219, effective June 19, 2006.
See: 38 N.J.R. 1176(a), 38 N.J.R. 2731(b).

In definition “Co-investment”, inserted “portfolio or property” at the end of the first and third sentences, substituted “portfolio or property in which the fund also invests” for “that is also backed by a fund” in the second sentence, deleted “in the company” following “stakes” in the third sentence and added new fourth sentence; inserted “primarily” in the first sentence of definition “Commingled funds”; in first sentence in definition “Commodity-linked investments”, substituted “from” for “in” following “investments” and “to” for “in” following “linked”; added definitions “Core real estate” and “Non-core real estate”; substituted

“directly by Common Pension Fund E, rather than through an investment vehicle” for “that has enough influence to direct the course of the investment. Direct investment usually avoids intermediaries between the buyer and the seller” in definition “Direct investment”; substituted “Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island” for “New England” in definition “East”; deleted last sentence in definition “Joint venture”; and inserted “Indiana” in definition “Midwest”.

Amended by R.2006 d.317, effective September 5, 2006.
See: 38 N.J.R. 2039(a), 38 N.J.R. 3632(a).

In definition “Real assets” deleted “(excluding publicly traded real estate investment trusts)” following “real estate”; and added definition “Real estate”.

Amended by R.2008 d.242, effective August 18, 2008.
See: 40 N.J.R. 2095(a), 40 N.J.R. 4825(b).

In definition “Commingled funds”, inserted the last sentence; added definitions “Common stocks”, “Exchange-traded funds” and “Preferred stocks”; in definition “Direct investment”, substituted “an eligible fund” for “Common Pension Fund E”; and in definition “Real assets”, inserted “infrastructure,” and inserted the last sentence.

Amended by R.2011 d.124, effective April 18, 2011.

See: 42 N.J.R. 2934(a), 43 N.J.R. 1038(a).

In definition “Real assets”, inserted “farmland, precious metals,”.

17:16-71.2 Permissible investments

(a) Subject to the limitations contained in this subchapter, the Director may invest and reinvest the moneys of any eligible fund in real assets in any of the following ways:

1. Investment in real estate assets through direct investments, separate accounts, commingled funds, co-investments and joint ventures.
2. Investments in real assets other than real estate.
3. Purchase the common stock of a U.S. or international corporation that primarily invests in real assets and whose stock is traded on a securities exchange or over-the-counter market.
4. Purchase exchange-traded funds traded on a securities exchange or the over-the-counter market that primarily invest in real assets. Exchange-traded funds shall have a minimum market capitalization of \$100 million. For the purposes of this subchapter, exchange-traded funds shall be considered as common stock in determining all applicable limitations contained in this subchapter. Subsequent to purchase, if capitalization falls below \$100 million, the investment does not have to be sold.

(b) Notwithstanding the restrictions contained in (a) above, the Council may approve the purchase of real assets on a case-by-case basis.

(c) Notwithstanding the restrictions in (a) above, the Director may:

1. Exercise the conversion privileges into the common stock of any security acquired under this subchapter;
2. Purchase the preferred stock, whether convertible or not, of a company, the common stock of which qualifies for investment under this subchapter;
3. Purchase the convertible issue of a company, the common stock of which qualifies for investment under this subchapter;
4. Purchase stock in new public offerings of companies without prior approval of the Council, provided, however, approval will be sought at the next regularly scheduled Council meeting in the event the security does not subsequently meet the requirements of this subchapter. If approval is not granted, the securities will be sold within three months of the Council's disapproval; and
5. Retain any distribution received as a result of a corporate action or distribution by a fund, even if the security does not meet the requirements of this subchapter.

Amended by R.2006 d.219, effective June 19, 2006.
 See: 38 N.J.R. 1176(a), 38 N.J.R. 2731(b).
 Rewrote (a)1i; and added (b).
 Amended by R.2006 d.317, effective September 5, 2006.
 See: 38 N.J.R. 2039(a), 38 N.J.R. 3632(a).
 Rewrote the section.
 Amended by R.2007 d.265, effective August 20, 2007.
 See: 39 N.J.R. 1469(b), 39 N.J.R. 3551(a).
 Added (b).
 Amended by R.2008 d.242, effective August 18, 2008.
 See: 40 N.J.R. 2095(a), 40 N.J.R. 4825(b).

In (a)2, substituted "other than real estate" for "such as oil and gas, timber, royalty trusts and commodity-linked investment vehicles"; and added (a)3, (a)4 and (c).

17:16-71.3 Eligible funds

(a) For purposes of this subchapter, eligible funds shall include:

1. Police and Firemen's Retirement System;
2. Public Employees' Retirement System;
3. State Police Retirement System;
4. Teachers' Pension and Annuity Fund;
5. Judicial Retirement System of New Jersey; and
6. Common Pension Fund E.

Amended by R.2006 d.317, effective September 5, 2006.
 See: 38 N.J.R. 2039(a), 38 N.J.R. 3632(a).

Section was "Eligible funds". Rewrote introductory paragraph of (a); in (a)4, deleted "and" from end; in (a)5, substituted ";" and "and" for a period at the end; and added (a)6.

17:16-71.4 Limitations

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

1. The aggregate market value of the investment in real estate under this subchapter shall not exceed nine percent of the market value of the assets of any Pension and Annuity Fund investing in Common Pension Fund E;
2. The maximum consolidated principal amount of leverage within the real estate portfolio of Common Pension Fund E shall not exceed 50 percent and 75 percent of Common Pension Fund E's share of the gross market value of Common Pension Fund E's investment in core real estate and non-core real estate, respectively. This limitation shall not apply to investments in common and preferred stock, exchange-traded funds and convertible issues;
3. No more than five percent of the market value of the assets of any Pension and Annuity Fund investing in Common Pension Fund E may be invested in real estate located outside the United States. This limitation shall not apply to investments in common and preferred stock, exchange-traded funds and convertible issues;
4. No more than seven percent of the market value of the assets of any Pension and Annuity Fund investing in Common Pension Fund E may be invested in a single real estate property type, such types being defined as office, retail, apartment/multi-family, hotel, industrial and specialty use. This limitation shall not apply to investments in common and preferred stock, exchange-traded funds and convertible issues;
5. No more than five percent of the market value of the assets of any Pension and Annuity Fund investing in Common Pension Fund E may be invested in direct investments, co-investments and joint ventures investing in real estate in any one region of the United States, such regions being defined as: East, South, Midwest, and West. This limitation shall not apply to investments in common and

preferred stock, exchange-traded funds and convertible issues;

6. No more than seven percent of the market value of the assets of any Pension and Annuity Fund investing in Common Pension Fund E may be invested in real assets other than real estate;

7. No more than seven percent of the market value of the assets of any eligible fund shall be invested in the common and preferred stock of any one corporation eligible for investment pursuant to N.J.A.C. 17:16-71.2(a)3. This seven percent limitation shall not apply to Common Pension Fund E;

8. The total amount of stock purchased or acquired of any one corporation eligible for investment pursuant to N.J.A.C. 17:16-71.2(a)3 shall not exceed five percent of the common stock, or of any other class of stock which entitles the holder thereof to vote at all elections of directors, of such corporation; and

9. No more than seven percent of the market value of the assets of any eligible fund shall be invested in exchange-traded funds that invest in commodities or assets other than corporate equity securities.

(b) If, subsequent to initial purchase, the limitations in (a) above are exceeded, then the Council shall be notified at the next regularly scheduled meeting of the Council. The Division may be granted a six-month period of grace to reduce the level of participation below the maximum levels, except that the period of grace may be extended for additional four-month periods with the approval of the Council.

Amended by R.2006 d.317, effective September 5, 2006.
See: 38 N.J.R. 2039(a), 38 N.J.R. 3632(a).

Rewrote the section.

Amended by R.2008 d.242, effective August 18, 2008.
See: 40 N.J.R. 2095(a), 40 N.J.R. 4825(b).

In (a)1, deleted a comma following "subchapter"; in (a)1, (a)3, (a)4, and (a)5, inserted the second occurrence of "Pension"; in (a)2 through (a)5, inserted the last sentence; in (a)4, inserted "hotel," a period at the end of the first sentence, and the last sentence, and substituted "specialty" for "mixed"; in (a)5, in the region list, deleted the Roman numeral designations, substituted commas for the semicolons and substituted a period for "; and" following "West"; in (a)6, substituted "other than real estate;" for "such as oil and gas, timber, royalty trusts and commodity-linked investment vehicles.;" and added (a)7 through (a)9.

Amended by R.2011 d.124, effective April 18, 2011.
See: 42 N.J.R. 2934(a), 43 N.J.R. 1038(a).

In (a)1, substituted "nine" for "seven"; in (a)3 and (a)5, substituted "five" for "three"; in (a)4, substituted "seven" for "three"; and in (a)7 and (a)8, inserted "eligible for investment pursuant to N.J.A.C. 17:16-71.2(a)3".

17:16-71.5 (Reserved)

Repealed by R.2006 d.317, effective September 5, 2006.
See: 38 N.J.R. 2039(a), 38 N.J.R. 3632(a).

Section was "Legal papers".

SUBCHAPTERS 72 THROUGH 80. (RESERVED)

SUBCHAPTER 81. FOREIGN EXCHANGE CONTRACTS

17:16-81.1 Definitions

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

"Foreign exchange contracts" mean forward contracts to sell or buy a specified amount of a specified foreign currency at a rate fixed at the time of the transaction but with delivery at a specified future time, entered into with any commercial bank chartered in the United States or Canada having total assets of at least \$US 2 billion; any United States broker-dealer (or subsidiary or affiliate thereof) having a net capital of at least \$100 million; or any other foreign exchange counterparty approved by the Council.

"Hedging" means combining a long position in an asset denominated in a currency other than United States dollars with a short position in the international currency in which the asset is denominated in order to offset fluctuations in the value of the underlying asset attributable to international currency fluctuations.

New Rule, R.2006 d.317, effective September 5, 2006.
See: 38 N.J.R. 2039(a), 38 N.J.R. 3632(a).

Former N.J.A.C. 17:16-81.1, Permissible investments, recodified to N.J.A.C. 17:16-81.2.

17:16-81.2 Permissible investments

(a) Subject to the limitations contained in this subchapter, the Director may enter into foreign exchange contracts for the purpose of hedging a fund's international portfolio. Such foreign exchange contracts may involve the purchase or sale of international currency.

(b) Notwithstanding the restrictions contained in (a) above, the Council may approve the entering into foreign exchange contracts on a case-by-case basis.

Amended by R.2006 d.260, effective July 17, 2006.
See: 38 N.J.R. 1412(a), 38 N.J.R. 3066(a).

Added designation (a); rewrote (a); and added (b) and (c).
Recodified from N.J.A.C. 17:16-81.1 and amended by R.2006 d.317, effective September 5, 2006.
See: 38 N.J.R. 2039(a), 38 N.J.R. 3632(a).

Deleted former (b); and recodified former (c) as present (b).

17:16-81.3 Limitations

With respect to international stocks, the portfolio should be unhedged, except in such instances in which the Director believes that unusual circumstances exist in which hedging would serve to improve and protect the inherent returns of the international portfolio.

Recodified by R.1991 d.274, effective June 3, 1991.
See: 23 N.J.R. 983(a), 23 N.J.R. 1800(b).

Citations corrected.

Amended by R.1991 d.391, effective August 5, 1991.
See: 23 N.J.R. 1778(a), 23 N.J.R. 2345(c).

In (a) deleted 2 requiring 75 percent of portfolio be hedged.