

1. With respect to issues registered with the Securities and Exchange Commission:

i. On new issues, a prospectus describing the issue; and

ii. On existing issues, a copy of the description of the issue as contained in Moody's Manuals or in the Standard & Poor's or in any other corporation records publication or service published for the use of and accepted as reliable by investors in such obligations;

2. With respect to issues not registered with the Securities and Exchange Commission:

i. On new issues, in the case of private placements:

(1) An offering memorandum describing the terms of the issue and the business and operations of the issuer;

(2) A written approving opinion from the Attorney General to the effect that the purchase agreement is satisfactory as to form and substance;

(3) At the closing for the purchase of the private placement, legal opinions of counsel for the purchaser and counsel for the issuer, which opinions shall include a statement to the effect that the bonds are properly authorized and valid obligations of the issuer;

ii. On existing issues, in the case of issues which were originally offered to the public, a copy of the description of the issue as contained in Moody's Manuals or Standard & Poor's Corporation records or in any other publication or service published for the use of and accepted as reliable by investors in such obligations;

iii. On existing issues, in the case of issues which were originally placed privately:

(1) A copy of the original offering memorandum describing the terms of the issue and the business and operations of the issuer at the time of the original issue;

(2) A copy of the purchase agreement for the issue, together with all amendments thereto;

(3) A copy of the form 10-K of the issuer which was most recently filed with the Securities and Exchange Commission, or if the company does not file form 10-K reports, then the most recent audited financial statement;

(4) Representation, in writing, from the seller to the Division to the effect that:

(A) There are no restrictions on the sale of the bonds to funds managed by the Division;

(B) No registration of the issue with the Securities and Exchange Commission is required if the

bonds are sold to funds managed by the Division; and

(C) The seller purchased the bonds directly from the issuer when the issue was originally sold or, if other owners have intervened between the issuer and the seller, that no such intervening transaction required registration of the securities with the Securities and Exchange Commission; or

(D) In substitution for the representations in (a)2iii(4)(A)-(C) above a no-action letter of the Securities and Exchange Commission regarding any requirements to register the bonds;

(5) A written approving opinion from the Attorney General that the representations or no-action letter required by (a)2iii(4) above are satisfactory; and

(6) Approval of the State Investment Council.

SUBCHAPTER 15. BANK DEBENTURES

17:16-15.1 Permissible investments

The Director may invest and reinvest the moneys of any eligible fund in the debt securities of banks as is set forth in this subchapter.

17:16-15.2 Pension and annuity group; static group; trust group

(a) The Director may invest or reinvest the moneys of any pension and annuity fund, static group fund, trust group fund, Common Pension Fund B or, where maturities are less than a year, The State of New Jersey Cash Management Fund, in the debt securities of banks provided that:

1. The issue has been registered with the Securities and Exchange Commission, except that this requirement may be waived by the State Investment Council;

2. The obligor is incorporated under the laws of the United States or any State thereof or of the District of Columbia;

3. The total amount of debt issues purchased or acquired of any one corporation shall not exceed 10 percent of the outstanding debt of the corporation and not more than 10 percent of any one issue may be purchased at the time of issue, except that these requirements may be waived by the State Investment Council;

4. The obligor:

i. Is not in default as to the payment of principal or interest upon any of its outstanding obligations;

ii. Has common equity (including surplus and retained earnings) of at least \$200 million;

iii. The issuer, at the date of its last published balance sheet preceding the date of investment, was in conformance with all capital requirements as stipulated by:

(1) The Federal Reserve Board, in the case of United States banks; and

(2) The appropriate national regulatory body, in the case of foreign-headquartered banks.

5. Has a credit rating of A/A or higher by Moody's Investors Service, Inc. and Standard & Poor's Corporation, excepting that one rating is sufficient if only one rating is available. If a rating has not been obtained from either service, the issue may be purchased if the publicly issued outstanding debt of the issuer carries a A/A rating or higher. Subsequent to purchase, if ratings fall below A/A for such issues, they do not have to be sold, and they may be exchanged with issues of credits rated lower than A/A if the credits received in exchange are, on balance, similarly rated.

### 17:16-15.3 Legal papers

(a) Prior to any commitment to purchase obligations of the type described in this subchapter, the Director shall have obtained, in all cases, a certification signed by a member of the Division's staff and endorsed by the Director stating that, in their opinion, the security under consideration qualifies under the requisites of this subchapter and the Division shall have received:

1. With respect to issues registered with the Securities and Exchange Commission:

- i. On new issues, a prospectus describing the issue;
- ii. On existing issues, a copy of the description of the issue as contained in Moody's Manuals or in the Standard & Poor's or in any other corporation records publication or service published for the use of and accepted as reliable by investors in such obligations;

2. With respect to issues not registered with the Securities and Exchange Commission:

- i. On new issues, in the case of private placements:
  - (1) An offering memorandum describing the terms of the issue and the business and operations of the issuer;
  - (2) A written approving opinion from the Attorney General to the effect that the purchase agreement is satisfactory as to form and substance; and
  - (3) At the closing, for the purchase of the private placement, legal opinions of counsel for the purchaser and counsel for the issuer, which opinions shall include a statement to the effect that the bonds are properly authorized and valid obligations of the issuer;
- ii. On existing issues, in the case of issues which were originally offered to the public, a copy of the description of the issue as contained in Moody's Manuals or Standard & Poor's Corporation records or in any other publication or service published for the use of and accepted as reliable by investors in such obligations;

iii. On existing issues, in the case of issues which were originally placed privately;

(1) A copy of the original offering memorandum describing the terms of the issue and the business and operations of the issuer at the time of the original issue;

(2) A copy of the purchase agreement for the issue, together with all amendments thereto;

(3) A copy of the form 10-K of the issuer which was most recently filed with the Securities and Exchange Commission, or if the company does not file form 10-K reports, then the most recent audited financial statement;

(4) Representation, in writing, from the seller to the Division to the effect that:

(A) There are no restrictions on the sale of the bonds to funds managed by the Division;

(B) No registration of the issue with the Securities and Exchange Commission is required if the bonds are sold to funds managed by the Division; and

(C) The seller purchased the bonds directly from the issuer when the issue was originally sold or, if other owners have intervened between the issuer and the seller, that no such intervening transaction required registration of the securities with the Securities and Exchange Commission; or

(D) In substitution for these representations in (a)2iii(4)(A)-(C) above a no-action letter of the Securities and Exchange Commission regarding any requirements to register the bonds;

(5) A written approving opinion from the Attorney General that the representations or no-action letter required by (a)2iii(4) above are satisfactory; and

(6) Approval of the State Investment Council.

## SUBCHAPTER 16. CANADIAN OBLIGATIONS

### 17:16-16.1 Permissible investments

(a) Subject to the limitations contained in this subchapter, the Director may invest and reinvest the moneys of any pension and annuity group fund including common Pension Fund B and Common Pension Fund D in obligations issued by any company incorporated within the Dominion of Canada or which are the direct obligations of or are unconditionally guaranteed as to principal and interest by the Government of Canada, or by a province thereof and which are rated A or better by Moody's Investors Service and Standard & Poor's Corporation. All such securities must be payable as to both principal and interest in United States dollars.

**17:16-67.9 Admission date**

(a) No admission to or withdrawal from the Common Fund shall be permitted except on the basis of the principal unit value determined as described in N.J.A.C. 17:16-67.8 and no participation shall be admitted to or withdrawn from the Common Fund except on a valuation date or within 15 days thereafter, however, in the event that an admission or withdrawal occurs within the 15 day period aforementioned, it shall be based upon the principal value as of the last valuation date preceding said admission or withdrawal.

(b) All admissions or withdrawals shall be made by cash payments or in kind. The price for purchasing units, except for original units issued by the Common Fund, shall be the principal valuation per unit as determined on each valuation date pursuant to N.J.A.C. 17:16-67.8. Dividends and interest earned shall be retained within the Common Fund, but may be distributed in whole or in part to the participatory pension funds, at the direction of the State Investment Council.

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.

**17:16-67.10 Amendments**

This subchapter may be amended from time to time by the State Investment Council. Any amendment adopted by the council shall be binding upon all participating trusts and beneficiaries thereof. An amendment shall become effective on the date the adoption notice is published in the New Jersey Register. The State Investment Council may, at its discretion, postpone the effectiveness of any amendment by including an operative date in the adoption notice.

Recodified by R.1991 d.274, effective June 3, 1991.  
See: 23 N.J.R. 983(a), 23 N.J.R. 1800(b).  
Effective date and operative date provisions added.

**17:16-67.11 Distribution of realized appreciation**

(a) Subsequent to the receipt of audited financial statements for the prior fiscal year, the State Investment Council may consider the realized appreciation in the Common Fund per unit. The Council may, in its sole discretion, choose any or all of the following options:

1. Declare as income to the participating funds such percentage of said realized appreciation of principal as it may deem prudent. When such declaration is made, the percentage of such appreciation of principal declared to be income shall be deducted from the total principal in the Common Fund and added to income in the Common Fund prior to the next regular monthly valuation. Following such declaration, the amount declared as income shall be treated and distributed as income to the participating funds monthly or quarterly in cash and/or units;
2. Declare as capital gains to the participating funds such percentage of said realized appreciation of principal as it may deem prudent. When such declaration is made,

the percentage of such appreciation of principal declared shall be deducted from the total principal in the Common Fund and distributed monthly or quarterly in cash and/or units; and/or

3. Retain any or all realized appreciation for future investments within the Common Fund.

Amended by R.1994 d.328, effective July 5, 1994.  
See: 26 N.J.R. 1772(b), 26 N.J.R. 2798(d).

**17:16-67.12 Limitations**

(a) The Common Pension Fund D shall be permitted to invest in the Cash Management Fund and in such securities subject to the limitations and conditions contained in the rules of the State Investment Council, particularly N.J.A.C. 17:16-20, 44 and 81, except for the conditions as to classification of funds contained in N.J.A.C. 17:16-3.

(b) In the event that any rule contains a limitation of the assets of any pension and annuity group fund which may be invested either in one issue or a class of issues, that limitation shall be construed to apply to the combined assets of all of the pension funds and shall not restrict the total common pension fund investment in such asset or assets to those limitations for any individual pension fund. Not more than 15 percent of the market value of the assets of any pension and annuity group fund shall be represented by the market value of international common and preferred stocks and securities convertible into common stock as permitted by N.J.A.C. 17:16-41, together with the market value of international government and agency obligations, as permitted by N.J.A.C. 17:16-20, whether held directly by such pension fund or through Common Pension Fund D.

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.390, effective August 5, 1991.  
See: 23 N.J.R. 1777(b), 23 N.J.R. 2345(b).

In (b), increased from 5 to 15 percent of market value amount that may be represented by international and preferred stocks and convertible securities.

**17:16-67.13 Liquidation**

The Director, Division of Investment, subject to the approval of the State Investment Council and the State Treasurer, may, upon two months' notice, liquidate the aforementioned Common Fund. 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. 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. Distribution upon liquidation shall occur within 15 days after the valuation date and shall be based upon the principal value per unit determined upon such valuation date. No liquidation will be effectuated without the approval by the

State Investment Council of a plan of distribution of the assets of the Common Fund.

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SUBCHAPTERS 68 THROUGH 70. (RESERVED)

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SUBCHAPTER 71. REAL ESTATE EQUITY

**17:16-71.1 Permissible investment for pension and annuity group**

(a) The Director may invest the moneys of any pension and annuity fund, with the exception of the Consolidated Police and Firemen's Pension Fund, in real estate equity in any of the following ways:

1. Participation in pooled equity real estate funds, including pools holding participating mortgages, is permissible provided:

i. The Director shall submit a list of such pools to the Council for its approval under (a)1 above. Such list may be amended or enlarged from time to time subject to the Council's approval and shall be designed as "The Approval List of Real Estate Equity Investment Pools".

ii. The Director may not purchase more than 10 percent of the units of participation in such pool.

iii. The sponsor of the pool has a record of managing real estate pooled investments aggregating at least \$500 million in each of the last five years prior to purchase.

2. Participation in special pooled equity real estate investment is permissible, subject to the provision that the Division may not purchase more than 50 percent of the units of participation in such a special pool, and further provided that such special pool shall be established under the following terms and conditions:

i. The plan sponsor has a record of managing at least \$500 million of equity real estate in each of the last five years prior to purchase and has a demonstrated capacity for real estate property management.

ii. The fund shall own at least 29 percent of any property owned by the fund.

iii. The properties owned by the fund shall be developed and substantially leased and shall consist of office buildings, shopping centers or hotels and, after the initial two years of the pool's operation the appraised value of such class of property, at the time of any purchase of a property, may not exceed 60 percent of the appraised value of all properties in the pool.

iv. After the initial three years of the operation of the pool, no more than 50 percent of the book value of properties held by the fund can be in any one region of the United States, such regions being defined as (1) New England, New York, New Jersey, Pennsylvania, Ohio and Delaware; (2) Minnesota, Wisconsin, Illinois, Kentucky, Indiana, West Virginia and Michigan; (3) Virginia, Louisiana, and all states south of Kentucky and east of the Mississippi River; (4) California, Arizona, New Mexico, Texas, Oklahoma, Arkansas, Nevada and Hawaii, and (5) all other states.

v. No property in the pool may assume a mortgage in excess of 67 percent of the purchase price, and any mortgage assumed must have a fixed interest rate, provide no recourse to the equity holder and have no equity or escalation features.

vi. The pool shall pay an annual cash return to the plan participants equal to at least six and one-half percent of the aggregate book value of the units of participation in the pool.

vii. No individual real estate investment in the pool can exceed the greater of \$75 million or 20 percent of the book value of the fund and no single investment shall be less than \$10 million.

viii. Any investor in the pool may request liquidation after three years of existence of the pool of up to 25 percent of his total investment upon six months' notice and the pool sponsor will use his best efforts to honor the request. Any investor may mandate liquidation of up to 25 percent of his maximum aggregate investment upon 18 months' notice after three years of existence of the pool.

ix. Investors holding at least two-thirds of the units of participation in the fund may liquidate the fund upon five years notice.

x. The fund sponsor shall be engaged initially for five years, after which the holders of two-thirds of the units of participation in the fund may change the investment manager of the fund upon six months notice. Upon an event of default by the sponsor, the holders of one-third of the units of participation in the fund may dismiss the investment manager of the pool at any time.

xi. The fund sponsor shall pay the expenses of counsel for the purchasers, who shall be selected by investors holding a majority of the units of participation.

xii. The Director shall submit a list of such special pools to the Council for an appraisal under this paragraph. Such list may be amended or enlarged from time to time subject to the Council's approval, and shall be designated as "The Approved List of Special Real Estate Equity Pools".

3. Participation in real estate ventures consisting of commercial property, including office buildings, warehouses, and shopping centers, provided:

- i. The value of the real estate venture is at least \$150 million, and the Director has received an independent appraisal of the venture's value at the time of purchase.
- ii. The investment is recommended by the Director and approved by the Council.
- iii. Participation may consist of up to 51 percent of the equity in the venture or up to 25 percent of the venture's senior non-subordinated debt, provided that the debt contains equity characteristics consisting of cash and/or equity ownership/participation.

Recodified by R.1991 d.274, effective June 3, 1991.  
 See: 23 N.J.R. 983(a), 23 N.J.R. 1800(b).  
 Definition of eligible investment and level of ownership amended.

**17:16-71.2 Market appraisals**

The sponsor of any real estate pools or buildings purchased under N.J.A.C. 17:16-45.1 shall provide the Division of Investment independent market appraisals for all properties, on an annual basis; and shall provide annual independently audited financial statements for such pools or buildings.

**17:16-71.3 Limit on investment**

The aggregate book value of real estate investment under this subchapter, for any eligible pension fund, shall not exceed 10 percent of the book value of all assets of such pension fund.

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**SUBCHAPTERS 72 THROUGH 80. (RESERVED)**

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**SUBCHAPTER 81. PURCHASE AND SALE OF INTERNATIONAL CURRENCY**

**17:16-81.1 Permissible investments**

Subject to the limitations contained in this subchapter, the Director may enter into foreign exchange contracts for the currency of any of the countries listed on the Approved List of International Government and Agency Obligations Bonds or any other currency in which the obligations of those countries on the Approved List are denominated.

**17:16-81.2 Objectives**

(a) With respect to international bonds, the objective of the hedging program is to improve and protect the inherent returns of the international portfolio.

(b) 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.

New Rule, R.1997 d.457, effective November 3, 1997.  
 See: 29 N.J.R. 3778(a), 29 N.J.R. 4714(a).  
 Former N.J.A.C. 17:16-81.2 "Limitations", recodified to N.J.A.C. 17:16-81.3.

**17:16-81.3 Limitations**

(a) The following limitation applies to those investments permitted under N.J.A.C. 17:16-81.1:

- 1. The foreign exchange contract must be for the purpose of hedging 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.  
 Recodified from N.J.A.C. 17:16-81.2 by R.1997 d.457, effective November 3, 1997.  
 See: 29 N.J.R. 3778(a), 29 N.J.R. 4714(a).  
 Former N.J.A.C. 17:16-81.3 "Definitions", recodified to N.J.A.C. 17:16-81.4.

**17:16-81.4 Definitions**

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

"Foreign exchange contracts" means 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 U.S.-Canadian-chartered commercial bank having total assets of at least \$2,000,000,000 or its equivalent in Canadian dollars (qualified bank); any U.S. broker-dealer (or subsidiary or affiliate thereof) having a net capital of at least \$100,000,000 (qualified broker); or any other foreign exchange counterparty approved by the State Investment Council.

"Hedging" means combining a long position in an asset with a short position in the hedging instrument in order to offset fluctuations in the value of the underlying asset.

Recodified from N.J.A.C. 17:16-81.3 by R.1997 d.457, effective November 3, 1997.  
 See: 29 N.J.R. 3778(a), 29 N.J.R. 4714(a).