

CHAPTER 11
INVESTMENTS

Authority

N.J.S.A. 17:2-10; 17:9A-24.13, 25(12), 25.3, 26(7),
60, 62H, and 182.1 through 182.3.

Source and Effective Date

R.1994 d.377, effective July 18, 1994.
See: 26 N.J.R. 1909(a), 26 N.J.R. 2892(a).

Executive Order No. 66(1978) Expiration Date

Chapter 11, Investments, expires on July 18, 1999.

Chapter Historical Note

Unless otherwise indicated the provisions of Chapter 11, Investments, became effective prior to September 1, 1969.

Subchapter 1, Loan and Investment Approval, became effective May 1, 1973 as R.1973 d.116. See: 5 N.J.R. 77(a), 5 N.J.R. 136(b). Pursuant to Executive Order No. 66(1978), Subchapter 1 was readopted effective June 14, 1983 as R.1983 d.264. See: 15 N.J.R. 658(b), 15 N.J.R. 1094(a).

Subchapter 5, originally contained rules entitled Limitation on Investment, Commissioner Approval and Additional Power of Commissioner. These rules were repealed and new rules became effective pursuant to Executive Order No. 66(1978) effective March 19, 1984 as R.1984 d.69. See: 15 N.J.R. 1787(a), 16 N.J.R. 520(b).

Subchapter 7, Limitation of Liability to a Bank, was originally filed and became effective March 1, 1973 as R.1973 d.58. See: 5 N.J.R. 32(b), 5 N.J.R. 103(b).

Subchapter 9, Standby Letters of Credit, originally filed and became effective October 1, 1976 as R.1976 d.306. See: 8 N.J.R. 411(a), 8 N.J.R. 499(c).

Subchapter 10, Savings Banks: Credit Cards, was originally filed and became effective March 10, 1981 as R.1981 d.91. See: 13 N.J.R. 61(b), 13 N.J.R. 185(b). Subchapter 10 was readopted pursuant to Executive Order No. 66(1978) effective March 19, 1986 as R.1986 d.93. See: 18 N.J.R. 241(a), 18 N.J.R. 639(a).

Subchapter 11, Restriction of Leeway Investments, was originally filed and became effective July 7, 1986 as R.1986 d.245. See: 18 N.J.R. 132(a), 18 N.J.R. 1370(b).

Subchapter 12, Savings Banks: Commercial Loans, was originally filed and became effective May 16, 1988 as R.1988 d.230. See: 19 N.J.R. 1679(b), 20 N.J.R. 1075(a).

Pursuant to Executive Order No. 66(1978), Chapter 11 expired on March 19, 1989, and subsequently was adopted as new rules by R.1989 d.236, effective May 1, 1989. See: 21 N.J.R. 367(a), 21 N.J.R. 1121(a).

Pursuant to Executive Order No. 66(1978), Chapter 11 expired on May 1, 1994, and subsequently was adopted as new rules by R.1994 d.377. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. LOAN AND INVESTMENT APPROVAL**3:11-1.1 Approval to exceed 10 percent limitation**

(a) Persons which may become liable to a bank or obligations in which a bank may invest in an unlimited amount subject only to the exercise of prudent banking judgment.

1. General obligations of any State of the United States or any political subdivision thereof.

2. Such other individual obligations as the Commissioner may from time to time prescribe. A list of these individual obligations shall be kept on file in the office of the Commissioner of Banking.

i. Following is the current listing of obligations subject to the provisions of this paragraph:

- (1) Banks for Cooperatives;
- (2) Commodity Credit Corporation;
- (3) Export-Import Bank (Participation Certificates or Debentures);

(4) Farmers Home Administration;

(5) Federal Farm Credit Banks Consolidated Systemwide Bonds and Discount Notes;

(6) Federal Home Loan Bank System;

(7) Federal Intermediate Credit Banks;

(8) Federal Land Bank;

(9) Federal National Mortgage Association;

(10) Government National Mortgage Association;

(11) New Jersey Health Care Facilities Financing Authority (Provided that no more than 10 percent may be invested in one obligor (individual hospital) which is responsible for the payment of the particular issue);

(12) New Jersey Economic Development Authority (Provided that no more than 10 percent may be invested in bonds issued on behalf of one person. Such bonds, exclusive of any portion that may be guaranteed by the Authority, will be aggregated with any other obligations of that person at the bank for determining the 10 percent limitation. The obligations should be classified as loans and will be reported as such in the Department's examination report).

(b) Persons which may become liable to a bank or obligations in which a bank may invest in excess of 10 percent, but not in excess of 25 percent of the capital funds of such bank subject to the exercise of prudent banking judgment.

1. A list of such obligations as the Commissioner may from time-to-time prescribe shall be kept on file in the office of the Commissioner of Banking.

i. The following is the current listing of obligations subject to the provisions of this paragraph:

- (1) Delaware River and Bay Authority;
- (2) Delaware River Port Authority;
- (3) New Jersey Highway Authority (non-guaranteed issues);
- (4) New Jersey Housing Finance Agency;
- (5) New Jersey Mortgage Finance Agency;
- (6) New Jersey Sports and Exposition Authority;
- (7) New Jersey Turnpike Authority;
- (8) Port Authority of New York and New Jersey (secured by general reserve fund only).

(c) Definitions concerning this subchapter include the following:

1. Political subdivision of any state includes a county, city, town or other municipal corporation, a public authority, and generally any publicly owned entity which is an instrumentality of the state or of a municipal corporation.

2. General obligation of any state or any political subdivision thereof means an obligation supported by the full faith and credit of an obligor possessing general powers of taxation, including property taxation. It includes an obligation payable from a special fund or by an obligor not possessing general powers of taxation when an obligor possessing general powers of taxation, including property taxation, has unconditionally promised to make payments into the fund or otherwise available for the payment of the obligation of amounts which (together with any other funds available for the purpose) will be sufficient to provide for all required payments in connection with the obligation.

(d) Prudent banking judgment requires that every bank shall maintain in its files credit information adequate to demonstrate that it has exercised prudence in making the determination to invest in a particular obligation.

(e) Request for addition of an obligation to the listings noted in (a) or (b) above may be made by any bank to the commissioner. Such request should be supported by information in sufficient detail to enable the commissioner to make the necessary determination and should include the bank's appraisal of the information furnished.

Amended by R.1974 d.93, effective April 16, 1974.

See: 6 N.J.R. 168(b).

Amended by R.1978 d.221, effective July 6, 1978.

See: 10 N.J.R. 316(a).

Amended by R.1979 d.298, effective August 6, 1979.

See: 11 N.J.R. 315(d), 11 N.J.R. 429(c).

Amended by R.1994 d.377, effective July 18, 1994.

See: 26 N.J.R. 1909(a), 26 N.J.R. 2892(a).

SUBCHAPTER 2. APPROVED SUBSIDIARIES

3:11-2.1 Exclusion from liabilities of controlling corporation

(a) A list of subsidiaries which have capital, surplus and undivided profits aggregating \$5,000,000 or more, and are approved as subsidiaries whose total liabilities to a bank shall be excluded from the total liabilities to the bank of the corporation which owns or controls a majority of the outstanding capital stock entitled to vote for the election of directors of such subsidiaries, shall be kept on file in the office of the Commissioner of Banking. The total liabilities of such controlling corporation may also be excluded from the total liabilities of such subsidiaries when considering limitations on liability to the bank.

(b) A list of subsidiaries approved under the above subsection follows:

1. General Motors Acceptance Corporation; and
2. Sears Roebuck Acceptance Corporation.

Amended by R.1975 d.226, effective August 1, 1975.

See: 7 N.J.R. 290(c), 7 N.J.R. 400(b).

Amended by R.1980 d.240, effective June 3, 1980.

See: 12 N.J.R. 248(c), 12 N.J.R. 383(a).

Amended by R.1981 d.516, effective January 18, 1982.

See: 13 N.J.R. 799(a), 14 N.J.R. 101(d).

New (b)7 added; (b)14 deleted; old (b)7 through 13 renumbered as (b)8 through 14.

Amended by R.1983 d.108, effective April 18, 1983.

See: 15 N.J.R. 110(a), 15 N.J.R. 622(a).

In (b) added new 15. Renumbered old 15-17 as new 16-18.

Amended by R.1994 d.377, effective July 18, 1994.

See: 26 N.J.R. 1909(a), 26 N.J.R. 2892(a).

SUBCHAPTER 3. ORGANIZATION AND OPERATION OF SMALL BUSINESS INVESTMENT COMPANIES

3:11-3.1 Terms of organization

(a) Banks are authorized to organize or to participate in the organization and to operate, in accordance with subsection A of section 27 of the Banking Act of 1948, as amended, small business investment companies formed under the Small Business Investment Act of 1958 (Public Law 699 of the 85th Congress), as amended, under the following terms and conditions:

1. No bank shall hold shares of stock in more than one such company without prior approval of the Commissioner of Banking;

2. A bank shall in no event hold shares of stock in any such company in an amount aggregating more than five percent of the capital funds of the bank;

3. No bank shall make a loan or advance to or purchase debentures of any such company if the aggregate of such loans, advances and purchases, together with the stock investment of the bank in such company, will exceed more than 10 percent of the capital funds of the bank;

4. No bank shall make a loan to any individual, partnership, corporation or association when the amount of that loan together with the following will exceed more than 10 percent of the capital funds of the bank:

- i. The amount of the liabilities of any nature of that individual, partnership, corporation or association to any small business investment company; and

- ii. The acquisition cost of any shares of that corporation owned by the small business investment company in which the bank has controlling interest.

As amended, R.1976 d.416, eff. December 16, 1976.

See: 8 N.J.R. 498(b), 9 N.J.R. 4(b).

As amended, R.1977 d.23, eff. January 28, 1977.

See: 9 N.J.R. 3(b), 9 N.J.R. 112(c).

3:11-3.2 Violations

The Commissioner of Banking may direct a bank to divest its ownership in any small business investment company for failing to comply with the terms, conditions and limitations required by section 1 of this subchapter.

R.1977 d.23, eff. January 28, 1977.

See: 9 N.J.R. 3(b), 9 N.J.R. 112(c).

3:11-3.3 Definitions

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

"Capital funds" is as defined in section 60 of the Banking Act of 1948, as amended, and includes any effective regulations pursuant to same.

"Controlling interest" is as defined in section 71 of the Banking Act of 1948, as amended.

R.1977 d.23, eff. January 28, 1977.

See: 9 N.J.R. 3(b), 9 N.J.R. 112(c).

SUBCHAPTER 4. INVESTMENT BY BANK IN CAPITAL STOCK OF BANK PRINCIPALLY ENGAGED IN INTERNATIONAL OR FOREIGN BANKING

3:11-4.1 Authorization

(a) Banks are authorized to subscribe for purchase and hold stock of one or more banks or corporations chartered or incorporated under the laws of the United States or of any state thereof, and principally engaged in international or foreign banking, as defined and authorized under section 25(a) of the Federal Reserve Act, provided that:

1. Qualification to invest: The total capital stock and surplus of the bank making such investment or investments shall not be less than \$1,000,000;

2. Limitations on investment: The total amount invested in all such banks or corporations shall not exceed 10 percent of the total capital stock and surplus of the bank.

SUBCHAPTER 5. INVESTMENT BY BANK IN CAPITAL STOCK OF DOMESTIC OPERATING SUBSIDIARIES

3:11-5.1 Operational subsidiaries

(a) With the prior approval of the Commissioner of Banking, a bank may engage in activities, which are a part of the business of banking or incidental thereto, by means of an operating subsidiary corporation. In order to qualify as an operating subsidiary hereunder, at least 80 percent of the voting stock of the subsidiary must be owned by the bank. An application to conduct business as an operating subsidiary shall be accompanied by a \$100.00 application fee. In addition, the Department shall impose a per diem charge, as required.

(b) An operating subsidiary may perform any business function which the parent bank is permitted to perform.

(c) The Department considers an application for the establishment of a domestic operating subsidiary to be primarily a business decision of the applicant, however, the Commissioner must be satisfied that the general condition of the applicant is satisfactory. The existence of conditions warranting special supervisory attention by the Banking Department normally will preclude approval. A bank should not have an undue amount of criticized assets, particularly in relation to capital; serious or frequent violations of law; inadequate liquidity; adverse operating trends; poor internal controls or other significant problems. Capital, earnings and retention of earnings should be sufficient to support the current level of operations as well as the proposed expansion. In determining the applicant's capacity to support the proposed subsidiary, the estimated cost of establishing or acquiring the subsidiary and the volume and scope of anticipated business will be considered. If the application is for the acquisition of an existing business, the Commissioner will also take into account the public interest factor, similar to the requirement for this consideration on mergers as called for in N.J.S.A. 17:9A-136.

(d) Transactions between the parent bank and the operating subsidiaries are not subject to the limitations in N.J.S.A. 17:9A-62.

(e) Except as otherwise permitted by statute or regulation, all provisions of State banking laws applicable to the operations of the parent bank shall be equally applicable to the operations of its operational subsidiaries.

(f) Unless otherwise provided by statute or regulation, pertinent book figures of the parent bank and its operating subsidiaries shall be consolidated for the purpose of applying applicable statutory limitations.

(g) Each operating subsidiary shall be subject to examination and supervision by the Commissioner of Banking in the same manner and to the same extent as the parent bank. If upon examination, the Commissioner shall ascertain that the subsidiary is created or operated in violation of law or regulation or that the manner of operation is detrimental to the business of the parent bank and its depositors, he may order the bank to dispose of all or part of such subsidiary upon such terms as he may deem proper. The cost of an examination into the condition of an existing business proposed to be acquired and operated as an operating subsidiary shall be paid by the applicant as will any subsequent examinations of an approved subsidiary.

(h) Prior to the disposition of an operating subsidiary, the parent bank shall inform the Commissioner of Banking, by letter, of the terms of the transaction.

Emergency amendment, R.1989 d.406, effective July 3, 1989 (expires September 1, 1989).

See: 21 N.J.R. 2397(a).

Amended by R.1989 d.449, effective August 21, 1989.

See: 21 N.J.R. 1601(b), 21 N.J.R. 2473(b).

Application fee and per diem charge added.

Authority

N.J.S.A. 17:9A-25.2, 17:9A-25.3

SUBCHAPTER 6. APPROVED STOCK INVESTMENT

3:11-6.1 Approval of limited investment in Minbanc Capital Corporation

(a) Banks are authorized to subscribe for, purchase and hold common stock in the Minbanc Capital Corporation.

(b) Such investment shall not exceed two percent of the total capital stock and surplus of the bank.

R.1971 d.235, eff. December 30, 1971.

See: 4 N.J.R. 18(b), 3 N.J.R. 242(b).

3:11-6.2 Surplus defined

Surplus as defined in this regulation shall include surplus, undivided profits, reserve for contingencies, other capital reserves and capital notes and debentures.

R.1971 d.235, eff. December 30, 1971.

See: 4 N.J.R. 18(b), 3 N.J.R. 242(b).

Authority

N.J.S.A. 17:9A-25.2, 17:19A-25.3

3:11-6.3 Approval of investment in Student Loan Marketing Association

(a) Banks are authorized to subscribe for, purchase and hold common stock in the Student Loan Marketing Association.

(b) Savings banks are authorized to subscribe for, purchase and hold common stock in the Student Loan Marketing Association.

R.1973 d.250, eff. September 10, 1973.

See: 5 N.J.R. 256(b), 5 N.J.R. 328(c).

Authority

N.J.S.A. 17:9A-25.2, 17:9A-25.3, 17:9A-182.1, 17:9A-182.2

SUBCHAPTER 7. LIMITATION OF LIABILITY TO A BANK

3:11-7.1 Definition of capital funds

Capital funds are defined in Section 60 of N.J.S.A. 17:9A is expanded to include contingent reserves.

3:11-7.2 Definition of contingent reserves

(a) Contingent reserves of a bank is defined to include:

1. Reserve for loan losses or bad debts;
2. Valuation reserves for securities;
3. Reserve for contingencies; and
4. Any other capital accounts excluding specifically allocated reserves or reserves for known specific charges.

Amended by R.1983 d.133, effective May 2, 1983.

See: 15 N.J.R. 192(a), 15 N.J.R. 688(a).

In (a)1., deleted "less amount of tax payable to the tax free portion of the reserve."

Authority

N.J.S.A. 17:9A-60(a).

3:11-7.3 Limitations on obligations as endorser or guarantor of installment consumer paper

Obligations as endorser or guarantor of installment consumer paper which carries a full resource endorsement, repurchase agreement or other unconditional guaranty by the seller may exceed 10 percent but not 25 percent of the capital funds of the bank.

Authority
N.J.S.A. 17:9A-62H

3:11-7.4 Exclusion of obligations from 25 percent limitation

If the bank's files or the knowledge of its officers of the financial condition of each maker of such obligations is reasonably adequate, and upon certification by an officer of the bank designated for that purpose by the board of directors of the bank that the responsibility of each maker of such obligations has been evaluated and the bank is relying primarily upon each such maker for the payment of such obligations, the limitations of N.J.S.A. 17:9A-62 as to the obligations of each such maker shall be the sole applicable loan limitation.

3:11-7.5 Retention of certification

The bank officer certification required under section 4 of this subchapter shall be in writing and shall be retained as part of the records of such bank.

3:11-7.6 Accommodation endorser or guarantor

(a) The liability of an endorser or guarantor who does not receive any of the proceeds of a loan from a bank is not to be considered as an obligation of such endorser or guarantor for purposes of computing his limitation on liability to a bank under N.J.S.A. 17:9A-62.

(b) The liability of an endorser or guarantor is to be considered as an obligation of such endorser or guarantor when he has obtained a loan or has sold or discounted the paper.

Authority
N.J.S.A. 17:9A-62(h).

3:11-7.7 Exclusion of time balances on deposits from 10 percent limitation

Time balances on deposit with an approved reserve depository, or in any other bank or national banking association located outside of New Jersey whose deposits equal or exceed three billion dollars and are insured by the Federal Deposit Insurance Corporation, may exceed 10 percent but not 25 percent of the capital funds of the bank.

Amended by R.1982 d.263, eff. August 16, 1982.
See: 14 N.J.R. 608(b), 14 N.J.R. 909(a).
Added out of state banks with deposits of \$3B.

3:11-7.8 General lending limitations

(a) The total liabilities, including investment securities, of any person which are not fully secured, as determined in a manner consistent with (b) below, by collateral having a market value at least equal to the amount of the liability shall not exceed 15 percent of the capital funds of a bank. The 10 percent limitations prescribed in N.J.S.A. 17:9A-62A and 17:9A-62F are increased pursuant to N.J.S.A. 17:9A-62H.

(b) The total liabilities of any person secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at

least equal to the amount of the funds outstanding shall not exceed 10 percent of the capital funds of the bank. This limitation shall be separate from and in addition to the limitation contained in (a) above.

(c) A liability based on the limitation contained in (b) above shall be secured by readily marketable collateral having a current market value of at least 100 percent of the amount of the loan or extension of credit at all times. "Current market value" means the bid or closing price listed for an item in a regularly published listing or an electronic reporting service.

(d) For purposes of this section, "readily marketable collateral" means financial instruments and bullion which are salable under ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions on an auction or a similarly available daily bid and ask price market. "Financial instruments" include stocks, notes, bonds, and debentures traded on a national securities exchange, "OTC margin stocks" (as defined in Regulation U of the Federal Reserve Board), negotiable certificates of deposit, commercial paper, bankers' acceptances and shares in money market and mutual funds of the type which issues shares in which banks may perfect a security interest.

(e) Financial instruments may be denominated in foreign currencies which are freely convertible to United States dollars. If collateral is denominated and payable in a currency other than that of the loan or extension of credit which it secures, the collateral must be revalued at least monthly, using appropriate foreign exchange rates, in addition to being repriced at current market value.

(f) Each bank must institute adequate procedures to ensure that the collateral value fully secures the outstanding loan at all times. If collateral values fall below 100 percent of the outstanding loan, to the extent that the loan is no longer in conformance with this section and exceeds the general 15 percent limitation, the loan must be brought into conformance within five business days, except where judicial proceedings, regulatory actions or other extraordinary occurrences prevent the bank from taking action.

(g) The total liabilities of any person secured by a segregated deposit account in the lending bank shall not be subject to any limitation based on the capital funds of the bank.

New Rule, R.1983 d.133, effective May 2, 1983.
See: 15 N.J.R. 192(a), 15 N.J.R. 688(a).
Amended by R.1995 d.245, effective May 15, 1995.
See: 27 N.J.R. 794(a), 27 N.J.R. 1967(a).

3:11-7.9 Loans to financial institutions with the approval of the Commissioner of Banking

(a) Loans or extensions of credit to any financial institution or to any receiver, conservator, superintendent of banks, or other agent in charge of the business and property of such financial institution, when such loans or extensions of credit are approved by the Commissioner of Banking, shall not be subject to any limitation based on capital funds.

(b) For purposes of this section, "financial institution" means a commercial bank, savings bank, trust company, savings and loan association, or credit union.

(c) This exception is intended to apply only in emergency situations where a bank is called upon to provide assistance to another financial institution.

New Rule, R.1983 d.133, effective May 2, 1983.
See: 15 N.J.R. 192(a), 15 N.J.R. 688(a).

3:11-7.10 Borrowing limitation of a director, executive officer and/or related interests

(a) The 10 percent liability limitation prescribed in N.J.S.A. 17:9A-72B(4) is increased so that a bank may extend credit to a director or to a corporation in which such director or an executive officer has a controlling interest, or in which such director or executive officer together with one or more other directors or executive officers has a controlling interest, or to a partnership in which such director or executive officer is a partner, if the proposed liability will not cause the total of the liabilities of the director or executive officer, and the liabilities of each corporation in which such director has a controlling interest, or in which such director or executive officer together with one or more other directors or executive officers has a controlling interest, and the liabilities of each partnership in which such director or executive officer is a partner, to exceed 25 percent of the amount of capital funds of the bank, as defined in Section 60 of P.L. 1948, c.67 (N.J.S.A. 17:9A-60) and the rules adopted pursuant thereto; provided, however, that all amounts in excess of 15 percent of the capital funds of the bank shall be fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of funds outstanding in excess of said 15 percent.

(b) The maximum liability of an executive officer, exclusive of the corporate and partnership liabilities set out in (a) above are as limited in N.J.A.C. 3:6-3.2.

New Rule, R.1987 d.369, effective September 8, 1987.
See: 19 N.J.R. 1124(a), 19 N.J.R. 1641(b).

3:11-7.11 Disqualification of directors

(a) A director of a bank who defaults for 30 days in payment of an undisputed obligation to the bank shall cease to be a director, and shall not be eligible for reappointment to the board until the next annual meeting.

(b) For purposes of (a) above, the following obligations shall constitute obligations of the director:

1. Obligations of the director; and
2. Obligations of a corporation or partnership which is controlled by the director.

(c) A director controls a corporation when the director has the power to directly or indirectly vote 25 percent or more of the voting stock, has the ability to control in any manner the election of a majority of the directors, or has the ability to exercise a controlling influence over the management and policies of the corporation. A director who is a general partner of a partnership controls that partnership for purposes of this section.

New Rule, R.1994 d.397, effective August 1, 1994.
See: 25 N.J.R. 3586(b), 26 N.J.R. 3163(a).

SUBCHAPTER 8. SAVINGS BANKS INVESTMENT SECURITIES

Statutory References

N.J.S.A. 17:9A-182.3

3:11-8.1 Investment securities

(a) In addition to investments otherwise authorized in Article 25 of the Banking Act of 1948, as amended, savings banks are further authorized to invest in the following securities:

1. Bonds, debentures, notes or other obligations of any business corporation, except bank holding companies, which are defined in (a)3 below, organized under the laws of the United States or any state therein; provided, however, such investment security has received a quality rating in any of the first three quality classifications issued by Moody's Investors Service, Inc., Standard & Poor's Corporation, or Fitch Investors Service, Inc., or has received a quality rating in the first seven quality classifications issued by Duff and Phelps, Inc. If such investment security shall be of a type commonly denominated as "commercial paper" such obligation shall have received a quality rating of P-1 by Moody's Investors Service, Inc., A-1 by Standard & Poor's Corporation, F-1 by Fitch Investors Service, Inc., or Duff 1 plus or minus.

2. Bonds, debentures, notes and bankers acceptances issued by any banking institution, excluding a savings bank, as defined in section 1(2) of N.J.S.A. 17:9A, which banking institution at the date of its last published statement preceding the date of investment had a combined total of capital stock, surplus, reserve for contingencies and undivided profits equal to at least \$40 million and also equal to at least five percent of its aggregated deposit liability;

3. Bonds, debentures, notes and bankers acceptances issued by any bank holding company authorized to do business in New Jersey which is registered as a bank holding company under the provisions of the act of Congress, known as the Bank Holding Company Act of 1956 (act of May 9, 1956, 70 stat. 133), as amended. Such holding company must have as of the date of its last published statement preceding the date of investment a combined total of capital stock, surplus, reserve for contingencies and undivided profits equal to at least \$40 million and also equal to at least five percent of its aggregate deposit liability;

4. Bonds, notes, debentures or other obligations issued or insured or guaranteed by any agency, authority, instrumentality or corporate body created by and for the United States Government whether or not such obligations are guaranteed by the United States;

5. Bonds, notes, debentures or other obligations issued or insured or guaranteed by any agency, authority, instrumentality or corporated body created by and for the State of New Jersey whether or not such obligations are guaranteed by the State of New Jersey.

(b) All investments by savings banks pursuant to the provisions of this subchapter shall be subject to the following conditions and limitations:

1. No savings bank shall make an investment in any investment security issued by an individual business corporation when the making of such investment will cause the aggregate liability of such corporation to such savings bank in any capacity to exceed five percent of the total indebtedness of such corporation, or two percent of the assets of such savings bank, whichever amount is lesser;

2. The board of managers shall at all times exercise reasonable discretion in the acquisition, retention and disposition of any investment security;

3. This subchapter shall not be deemed to authorize any savings bank to acquire any investment which contravenes the specific provisions contained in N.J.S.A. 17:9A-26.1;

4. If an investment would be authorized both by this subchapter and N.J.S.A. 17:9A-174-180, then such investment shall be deemed to have been made under such section of N.J.S.A. 17:9A and all limitations applicable to such section shall apply.

R.1974 d.145, eff. June 14, 1974.

See: 6 N.J.R. 167(b), 6 N.J.R. 256(a).

As amended, R.1984 d.38, eff. February 21, 1984.

See: 15 N.J.R. 2087(a), 16 N.J.R. 365(a).

Duff and Phelps, Inc. added as rating company.

3:11-8.2 Approved foreign obligations

(a) Pursuant to N.J.S.A. 17:2-10, savings banks are authorized to invest in the development bonds of foreign governments and obligations of international development banks provided:

1. The principal and interest of the individual issue is payable in United States dollars;

2. The aggregate total of all such investments made pursuant to this subchapter shall not exceed five percent of the institution's capital deposits, surplus and reserves; and

3. Such obligations are approved by the comptroller of the currency for investment by national banks.

(b) A list of obligations approved for such investment shall be kept on file in the office of the Commissioner of Banking and will be available upon written request.

R.1977 d.238, eff. July 7, 1977.

See: 9 N.J.R. 251(c), 9 N.J.R. 355(b).

Statutory References

N.J.S.A. 17:2-10

SUBCHAPTER 9. STANDBY LETTERS OF CREDIT

3:11-9.1 Standby letters of credit defined

(a) A standby letter of credit is any letter of credit, or similar arrangement however named or described, which represents an obligation to the beneficiary on the part of the issuer:

1. To repay money borrowed by or advanced to or for the account of the account party; or

2. To make payment on account of any indebtedness undertaken by the account party; or

3. To make payment on account of any default by the account party in the performance of an obligation.

(b) As defined in (a) above, the term "standby letter of credit" does not include commercial or traveler's letter of credit issued pursuant to section 25(3) of the Banking Act of 1948, such as:

1. Letter of credit used to facilitate the purchase and sale of goods;

2. Where the issuing bank has obtained, or will obtain, documents of title covering the goods; or

3. Where the credit is reasonably related to the actual value of the goods at the time of purchase and sale.

Case Notes

Letter found to qualify as a standby letter of credit; statutory one year limitation with respect to letters of credit does not restrict letter's duration but is addressed to the time period during which a draft may be drawn against it. *New Jersey Bank (National Association) v. Palladino*, 77 N.J. 33, 389 A.2d 454 (1978).

3:11-9.2 Investment limitation

(a) A standby letter of credit shall be subject to liability limitations prescribed in article 13, section 62, of the Banking Act of 1948, and must be combined with any other nonexempt extension of credit unless prior to or at the time of issuance:

1. The issuing bank is paid an amount equal to the bank's maximum liability under the standby letter of credit; or

2. The issuing bank has set aside sufficient funds in a segregated deposit account, clearly earmarked for that purpose, to cover the bank's maximum liability under the standby letter of credit.

Case Notes

Letter found to qualify as a standby letter of credit; statutory one year limitation with respect to letters of credit does not restrict letter's duration but is addressed to the time period during which a draft may be drawn against it. *New Jersey Bank (National Association) v. Palladino*, 77 N.J. 33, 389 A.2d 454 (1978).

3:11-9.3 Authority to issue standby letters of credit

(a) A bank may issue a standby letter of credit on behalf of its customers in the normal course of business:

1. Provided that the bank's undertaking contains a specified expiration date or be for a definite term; and
2. The bank's liability is limited to a stated amount.

Case Notes

Duration of a letter of credit is a matter for agreement between the parties thereto. *National Surety Corp. v. Midland Bank*, 551 F.2d 21 (3rd Cir.1977).

Letter found to qualify as a standby letter of credit; statutory one year limitation with respect to letters of credit does not restrict letter's duration but is addressed to the time period during which a draft may be drawn against it. *New Jersey Bank (National Association) v. Palladino*, 77 N.J. 33, 389 A.2d 454 (1978) and dissenting opinion.

3:11-9.4 Parity provision

This subchapter is directed toward the creation and maintenance of a substantial parity between banks and national banks in accordance with section 25.2 of the Banking Act of 1948.

Case Notes

The maintenance of parity between state and national banks is a significant factor to be weighed in the promulgation of banking rules. *National Surety Corp. v. Midland Bank*, 551 F.2d 21 (3rd Cir.1977).

SUBCHAPTER 10. SAVINGS BANKS: CREDIT CARDS**3:11-10.1 Credit card operations**

A savings bank may issue credit cards, extend credit in connection therewith, and otherwise engage in or participate in credit card operations.

3:11-10.2 Parity provisions

(a) This subchapter is issued in accordance with the authority granted to the Commissioner of Banking to place savings banks on a substantial competitive parity with federally chartered savings and loan associations which currently have the authority to participate in credit card operations.

(b) It is further provided that savings banks may operate such credit card programs upon the same terms and conditions as the Federal Home Loan Bank Board may prescribe

from time to time for such federally chartered savings and loan associations.

SUBCHAPTER 11. RESTRICTIONS OF LEEWAY INVESTMENTS**3:11-11.1 Definitions**

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

"Bank" means a bank as defined in N.J.S.A. 17:9A-1(1) and a savings bank as defined in N.J.S.A. 17:9A-1(13).

"Control" means the power to directly or indirectly vote 25 percent or more of the voting stock of a subsidiary company, the ability to control in any manner the election of a majority of a subsidiary company's directors or trustees, or the ability to exercise a controlling influence over the management and policies of a subsidiary company.

"Equity securities" means:

1. Shares of common or preferred stock registered on a national securities exchange or quoted on the National Association of Securities Dealers Automated Quotation System; and

2. Equity securities issued by a corporation, partnership or joint venture engaged exclusively in activities which are part of or incidental to the business of the institution.

3. Equity securities does not mean securities issued by a subsidiary company.

"Capital funds" means capital, surplus, reserves, undivided profits and capital notes.

"Subsidiary company" means any corporation, partnership, association, joint venture or other business entity directly or indirectly controlled by a bank.

"Total liabilities" means total liabilities as defined in N.J.S.A. 17:9A-60(3), 60(6) and 60(8).

3:11-11.2 Type of investment

(a) Only to the extent and upon the conditions that have been authorized by N.J.S.A. 17:9A-24.12 and in accordance with the procedures and limitations contained in this subchapter:

1. A bank, by resolution of its board of directors, and without prior approval of the commissioner, may invest:

- i. In equity securities;

ii. In subsidiary companies which engage in the activities prescribed in this subchapter; and

iii. Directly in those activities which are prescribed in this subchapter for subsidiary companies; and

2. A bank, by resolution of its board of directors, may apply to the commissioner for approval to make other investments. The application procedure and approval process shall be as provided in N.J.A.C. 3:11-11.9 and N.J.A.C. 3:11-11.10.

3:11-11.3 Equity security investments

(a) A bank shall be prohibited from investing, pursuant to N.J.S.A. 17:9A-24.12, in stocks, preferred or common, issued by a corporation in which it has made a stock investment under some other provision of law.

(b) A bank may invest in equity securities under N.J.S.A. 17:9A-24.12 provided that no bank shall make an investment in the stock of any corporation pursuant to this subchapter, except as otherwise provided by this subchapter, at any time when the total ownership of any one class of equity securities of such corporation exceeds or if the making of such investment would cause such investment to exceed two percentum of any one class of the outstanding equity securities of such corporation. In addition the aggregate amount invested in all classes of the outstanding equity securities of any one corporation shall not exceed three percentum of the capital funds of the bank. A bank, by resolution of its board of directors, may apply to the Commissioner for approval to make an investment in equity securities beyond the maximum amount provided above. The application procedure and approval process shall be as provided in N.J.A.C. 3:11-11.9 and N.J.A.C. 3:11-11.10.

(c) This subchapter shall not prohibit a bank from making loans or incurring liabilities authorized by a provision of law other than N.J.S.A. 17:9A-24.12 to any corporation in which the bank has invested in the equity securities pursuant to this subchapter. The total liabilities, not including equity investments made pursuant to this subchapter, of any person incurred by virtue of any provision of law, including this subchapter, are subject to the total liability limitations in N.J.S.A. 17:9A-62.

3:11-11.4 Subsidiary companies

(a) A bank shall be prohibited from contributing to the capital or investing in the capital stock of a subsidiary company, pursuant to N.J.S.A. 17:9A-24.12, in which it has a capital or stock investment pursuant to some other provision of law.

(b) A bank may contribute to the capital or invest in the capital stock of only those subsidiary companies which:

1. Engage in the activities prescribed in this subchapter; and/or
2. Are specifically approved by the commissioner.

(c) This subchapter shall not prohibit a bank from making loans or incurring liabilities authorized by a provision of law, other than N.J.S.A. 17:9A-24.12, to any subsidiary company in which the bank has contributed to the capital or invested in the capital stock pursuant to this subchapter. The total liabilities, not including capital investments made pursuant to this subchapter, of any one subsidiary company to the bank incurred by virtue of any provision of law, including this subchapter, are subject to the total liability limitations in N.J.S.A. 17:9A-62.

3:11-11.5 Permissible activities

(a) A subsidiary company may engage in the following activities:

1. Originating, investing in, selling, purchasing (including purchasing participations in), servicing, or otherwise dealing in loans of any type which may be made by a bank;
2. Provide services primarily for other financial institutions (for example, accounting, auditing, clerical, consulting, data processing, investment advisory, managerial);
3. Acquiring improved or unimproved real property for the purpose of subdividing, developing, constructing improvements thereon, and reselling, leasing or operating such property for the production of income;
4. Providing real estate services (for example, brokerage, appraisal, inspection, property management, relocation services);
5. Providing equity and debt investments in corporations or projects designed primarily to promote community welfare, such as economic rehabilitation and development of low income areas by providing housing, services, or jobs for residents;
6. Providing travel agency and tax preparation services;
7. Providing insurance brokerage or agency services;
8. Providing securities services (for example, brokerage, investment advice);
9. Issuing letters of credit;
10. Issuing credit cards and engaging in credit card operations;
11. Acquiring personal property for the purpose of leasing such property;
12. Acting as underwriter for credit life insurance and credit accident and health insurance that is directly related to an extension of credit by the bank.
13. Acquiring capital stock of, or becoming a member of, any stock or mutual insurance company whose primary purpose is to provide or underwrite liability or casualty insurance for banks located in the United States of America.

3:11-11.6 Subsidiary company compliance with law

Except as otherwise permitted by statute or regulation, all provisions of State banking laws applicable to the operations of the bank shall be equally applicable to the operations of its subsidiary company.

3:11-11.7 Prohibition against tie-in requirements

A bank, who invests in subsidiary companies pursuant to this subchapter or engages directly in those activities which are prescribed in this subchapter for subsidiary companies, shall not directly or indirectly condition any extension of credit, lease or sale of property of any kind, or furnish any service on the requirement that the customer shall obtain some other credit, property, or service from the bank or any subsidiary company of the bank, other than a loan, discount, deposit, or trust service.

3:11-11.8 Examination of subsidiary companies

(a) Each subsidiary company shall be subject to examination and supervision by the Commissioner of Banking in the same manner and to the same extent as the bank. If upon examination the Commissioner shall ascertain that the subsidiary company is created or operated in violation of law or regulation or that the manner of operation is detrimental to the business of the bank and its depositors, the Commissioner may order the bank to dispose of all or part of such subsidiary upon such terms as he may deem proper. The cost of an examination into the condition of an existing business proposed to be acquired and operated as a subsidiary company shall be paid by the bank. The cost of any subsequent examinations of a subsidiary company shall be borne by the subsidiary company or the bank.

(b) A bank shall file a letter agreement with the Department of Banking, signed by both the bank and the subsidiary company, authorizing the Banking Department to conduct such examinations of the records of the subsidiary company that relate to the bank's leeway investment as the Commissioner deems appropriate.

3:11-11.9 Approval procedures for other investments

(a) A bank which seeks to make an investment or engage in any activity requiring the specific approval of the Commissioner shall submit a written application, accompanied by a \$100.00 application fee. In addition, the Department shall impose a per diem charge, as required. Within 30 days of the filing of such application, the Commissioner shall notify the applicant in writing either that all information required by this section has been filed or that additional specified information must be filed. The Commissioner shall, within 60 days of the date of written notice that all required information has been filed, endorse thereon his approval or disapproval.

(b) A bank which makes an application to the Commissioner as specified in this subchapter shall submit the following information:

1. The total amount, in dollars and as a percentage of assets and capital funds, of investments that the applicant seeks to make;
2. An identification of the applicant's investment thresholds as determined in accordance with N.J.S.A. 17:9A-24.12;
3. A description and quantification, as a dollar amount and as a percentage of assets and capital funds, of the applicant's outstanding investments pursuant to this subchapter;
4. A business plan which describes the proposed specific investment (including any existing investment made pursuant to other laws or regulations) and its anticipated financial impact on the applicant; and
5. Such other information as may be requested in writing by the Commissioner.

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

See: 21 N.J.R. 2397(a).

Amended by R.1989 d.449, effective August 21, 1989.

See: 21 N.J.R. 1601(b), 21 N.J.R. 2473(b).

Application fee and per diem charge added.

3:11-11.10 Criteria for approval

In determining whether to approve or deny any application for prior approval under this subchapter, the Commissioner shall consider the financial and managerial resources and future prospects of the bank and the investment involved, including the financial capability of the bank to make the proposed investment under this subchapter, conflicts of interest, unsafe and unsound banking practices and any other matter the Commissioner deems to be in the public interest.

3:11-11.11 Record keeping requirements

(a) For the purpose of monitoring the bank's diversification of investments made under the leeway provision (N.J.S.A. 17:9A-24.12) and to determine if the investments are in accordance with the applicable investment limitations, the bank is required to maintain records which will identify all such investments made under the leeway provision:

1. These records shall contain a description of each leeway investment. The description should contain, but not be limited to the name of the person, partnership, corporation, other business entity, association or body politic (leeway entity) that the bank has invested in; its business address and the amount and form of the investment;

2. These records shall also contain a detailed listing of any other investments or loans made to each leeway entity pursuant to other provisions of the law. Any other investments or loans shall include, but not be limited to, any loan or extension of credit by the bank to the leeway entity; the purchase by the Bank of securities, other assets, or obligations of the leeway entity under repurchase agreement; the discount by the Bank of promissory notes, bills of exchange, conditional sales contracts, or similar paper, with or without recourse, issued by the leeway entity and discounted for a third party; acceptances of securities issued by a leeway entity as collateral for any loan, and issuance of a guarantee, acceptance, or letter of credit on behalf of a leeway entity;

3. These records shall be kept up to date in order that they tie into the bank's daily statement of condition.

3:11-11.12 Existing investments

A bank whose existing leeway investments would not conform to the requirements of this subchapter shall not be prohibited solely for that reason from maintaining such investments and making investments to which it was legally committed to prior to July 7, 1986. However, no new leeway investments may be entered into after July 7, 1986 other than in compliance with this subchapter.

SUBCHAPTER 12. SAVINGS BANKS: COMMERCIAL LOANS

3:11-12.1 Definitions

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

"Commercial loans" means any secured or unsecured loan for commercial, corporate, business or agricultural purpose, other than any loans which may otherwise be authorized by law.

"Commissioner" means the Commissioner of the Department of Banking of New Jersey.

"Savings bank" means a savings bank as defined in N.J.S.A. 17:9A-1(13), a capital stock savings bank as defined in N.J.S.A. 17:9A-8.1 and a subsidiary capital stock savings bank as defined in N.J.S.A. 17:9A-382.

"Total assets" means the total asset figure reported in "Schedule RC-K-Quarterly Averages" submitted with the most recent Consolidated Report of Condition for Savings Banks filed with the Federal Deposit Insurance Corporation. In the event the specified schedule is redesignated, the total asset figure reported in the substituted schedule, as designated by the New Jersey Department of Banking, is to be used.

3:11-12.2 Commercial loan limitation

As prescribed in N.J.S.A. 17:9A-26(7), a savings bank may make commercial loans in an aggregate amount that may not exceed 10 percent of the savings bank's total assets without the Commissioner's approval.

3:11-12.3 Application to exceed commercial loan limitation

A savings bank may apply to the Commissioner for approval to exceed the 10 percent commercial loan limitation provided in N.J.S.A. 17:9A-26(7). The application shall be submitted on forms prescribed by the Commissioner. The application shall contain a request by the savings bank to have the Commissioner approve the savings bank's granting commercial loans up to a specific percentage limitation, beyond the statutorily authorized 10 percent, or in an unlimited amount, as the board of the savings bank may by resolution specify. A certified copy of the board resolution shall be submitted with the application. The application shall contain such data as the Commissioner may require in order to make the findings called for in N.J.S.A. 17:9A-26(7) and N.J.A.C. 3:11-12.4.

3:11-12.4 Commissioner approval

(a) Within 30 days of receipt of a completed application, the Commissioner shall approve the application and designate the limited or unlimited amount approved, provided it is found that:

1. The savings bank is being operated in a safe and sound manner;
2. The savings bank has capital equal to that required from time to time by the Board of Governors of the Federal Reserve System for a bank chartered under the laws of a state of the United States which is a member of the Federal Reserve System and said capital shall be calculated in accordance with generally accepted accounting principles as applied to banks;
3. The savings bank is competently managed; and
4. The savings bank has demonstrated satisfactory experience and expertise in making commercial loans.