

**CHAPTER 6
GENERAL PROVISIONS**

Authority

N.J.S.A. 17:1-8 and 8.1; 17:9A-24, 24a, 24b, 24b.1, 28.2, 31, 43, 62H, 71, 182.1, 195, 256A, 333, 334, 377 and 379.

Source and Effective Date

R.1996 d.244, effective May 20, 1996.
See: 28 N.J.R. 1331(a), 28 N.J.R. 2544(a).

Executive Order No. 66(1978) Expiration Date

Chapter 6, General Provisions, expires on May 20, 2001.

Chapter Historical Note

Subchapter 1, containing rules concerning the report of 10-year dormant accounts was repealed, effective October 7, 1980 by R.1980 d.435. See: 12 N.J.R. 502(b), 12 N.J.R. 627(c). Subchapter 1, Savings Bank Parity, was adopted as R.1981 d.352, effective September 10, 1981. See: 13 N.J.R. 383(b), 13 N.J.R. 551(b).

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

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

Subchapter 4, Action Upon Detection or Discovery of Crime, was completely amended pursuant to authority of N.J.S.A. 17:1-8.1 and became effective January 19, 1988 as R.1988 d.28. See: 19 N.J.R. 1595(a), 20 N.J.R. 183(a).

Subchapter 6, Short Term Investment of Cash in Fiduciary Accounts, was adopted pursuant to authority delegated at N.J.S.A. 17:9A-43, and was filed and became effective June 15, 1971 as R.1971 d.10. See: 2 N.J.R. 98(a), 3 N.J.R. 19(d).

Subchapter 7, Investment Restatement Accounting, was filed and became effective September 7, 1982 as R.1982 d.307. See: 14 N.J.R. 676(a), 14 N.J.R. 988(a). Amendments were filed and became effective June 18, 1984 as R.1984 d.224. See: 16 N.J.R. 783(a), 16 N.J.R. 1479(a). Subchapter 7, Investment Restatement Accounting, was repealed and a new Subchapter 7 was adopted, effective December 17, 1984 as R.1984 d.577. See: 16 N.J.R. 2712(a), 16 N.J.R. 3427(a). Subchapter 7 was repealed by R. 1991 d.171, effective April 1, 1991. See: 23 N.J.R. 147(a), 23 N.J.R. 998(a).

Subchapter 8, Savings Banks; Deposits, became effective October 7, 1980 as R.1980 d.435 pursuant to authority of N.J.S.A. 17:9A-184C(e). See 12 N.J.R. 502(b), 12 N.J.R. 627(c). Pursuant to Executive Order No. 66(1978), Subchapter 8, Savings Banks; Deposits, expired on April 9, 1985. Subchapter 8, Conversions of Savings Banks, became effective June 17, 1991 as R.1991 d.294. See: 23 N.J.R. 929(b), 23 N.J.R. 1919(b).

Subchapter 9, containing rules concerning small-business loan interest rates was filed as R.1980 d.204, effective May 9, 1980. See: 12 N.J.R. 302(d). Subchapter 9 was repealed by R.1982 d.126, effective April 19, 1982. See 14 N.J.R. 182(a), 14 N.J.R. 383(b). Subchapter 9, Capital Stock Savings Bank: Change in Control, was adopted by R.1988 d.404, effective August 15, 1988. See: 19 N.J.R. 1762(a), 20 N.J.R. 2052(c).

Subchapter 10 became effective December 31, 1980 as R.1980 d.559. See: 12 N.J.R. 563(b), 13 N.J.R. 62(c). Pursuant to Executive Order No. 66(1978), Subchapter 10 expired on December 31, 1985 and a new

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

Subchapter 11 became effective December 31, 1980 as R.1980 d.560. See: 12 N.J.R. 563(c), 13 N.J.R. 62(d). Pursuant to Executive Order No. 66(1978), Subchapter 11 expired on December 31, 1980 and a new Subchapter 11, Short-Term Investments for Trust Cash, was adopted as R.1986 d.49, effective March 3, 1986. See: 17 N.J.R. 2937(a), 18 N.J.R. 477(b).

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

Subchapter 13, Automated Teller Machines, was adopted by R.1983 d.286, effective July 18, 1983. See: 15 N.J.R. 190(a), 15 N.J.R. 1179(a). Subchapter 13, Automated Teller Machines, was repealed by R.1991 d.244, effective May 6, 1991. See: 23 N.J.R. 642(a), 23 N.J.R. 1408(b).

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

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

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

Chapter 6, General Provisions, was readopted pursuant to Executive Order No. 66(1978) as R.1991 d.171, effective March 1, 1991. See: 23 N.J.R. 147(a), 23 N.J.R. 998(a). Pursuant to Executive Order No. 66(1978), Chapter 6, General Provisions, expired on March 1, 1996.

Chapter 6, General Provisions, was adopted as new rules by R.1996 d.244, effective May 20, 1996. See: Source and Effective Date. Subchapter 4, Action Upon Detection or Discovery of Crime, as proposed at 28 N.J.R. 1331(a), was not adopted by R.1996 d.244. See, also, section annotations.

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SUBCHAPTER 1. SAVINGS BANK PARITY

3:6-1.1 Savings banks parity with Federally chartered savings banks

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

Amended by R.1991 d.171, effective April 1, 1991.
See: 23 N.J.R. 147(a), 23 N.J.R. 998(a).

Changed name of Federal Home Loan Bank Board to Office of Thrift Supervision.
Amended by R.1996 d.244, effective May 20, 1996.
See: 28 N.J.R. 1331(a), 28 N.J.R. 2544(a).

**SUBCHAPTER 2. APPROVED DEPOSITARIES
FOR INVESTMENTS COMPRISING
SECURITY FUNDS**

3:6-2.1 Approved depositaries

The following institutions are approved as depositaries for investments comprising security funds created pursuant to Section 31 of the Banking Act of 1948, as amended: Banks, savings banks and national banking associations domiciled in New Jersey having total capital stock and surplus of at least \$2,000,000 which are authorized to do a fiduciary business.

Amended by R.1979 d.23, effective January 17, 1979.
See: 10 N.J.R. 527(b), 11 N.J.R. 58(b).

SUBCHAPTER 3. EXECUTIVE OFFICER PARTICIPATION IN MAJOR POLICY- MAKING FUNCTIONS OF A BANK

3:6-3.1 Definition of executive officer

The following word, when used in Article 15 of N.J.S.A. 17:9-A, shall have the following meaning unless the context clearly indicates otherwise and a person so designated shall be deemed to be participating in the policy-making functions of a bank for the purpose of that Article.

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

As amended, R.1982 d.244, effective August 2, 1982.
See: 14 N.J.R. 491(a), 14 N.J.R. 834(c).
Amended definition of executive officer.

3:6-3.2 Limitation on loans to an executive officer

The \$10,000 maximum loan limitation prescribed in N.J.S.A. 17:9A-72B(2) on loans to an executive officer is increased to an aggregate amount not to exceed at any one time 2.5 percent of the capital funds of the bank, as defined in N.J.S.A. 17:9A-60, or \$25,000 whichever is greater, but in no event more than \$100,000.

R.1983 d.606, effective January 3, 1984.
See: 15 N.J.R. 1786(a), 16 N.J.R. 45(a).

3:6-3.3 Exclusion

Loans to finance the education of an executive officer's children, which exceed the \$20,000 amount provided in N.J.S.A. 17:9A-74B(5), are excluded from the limitations set out in N.J.A.C. 3:6-3.2.

R.1983 d.606, effective January 3, 1984.
See: 15 N.J.R. 1786(a), 16 N.J.R. 45(a).

SUBCHAPTER 4. (RESERVED)

SUBCHAPTER 5. FEDERAL FUNDS TRANSACTIONS

3:6-5.1 Exclusion from limitation on liability

(a) In “sales of Federal funds”, the liability of a transferee bank to a transferor bank shall not be subject to any limitation on liability to a bank imposed by Article 13 of the Banking Act of 1948, as amended.

(b) In “sales of Federal funds”, the liability of a transferal bank to a transferor savings bank shall not be subject to any limitation on liability to the savings bank.

R.1970 d.51, May 11, 1970.
See: 2 N.J.R. 30(b), 2 N.J.R. 46(a).
Amended by R.1974 d.27, eff. February 1, 1974.
See: 6 N.J.R. 2(b), 6 N.J.R. 97(b).

3:6-5.2 Definition

(a) As used in this subchapter, “bank” includes banks as defined in Article 1 of the Banking Act of 1948, as amended, and also includes all other corporations, regardless of the jurisdiction of their incorporation, which are authorized to transact the business of banking.

(b) As used in this subchapter, “savings bank” includes savings bank as defined in Article 1 of The Banking Act of 1948, as amended.

R.1970 d.51, eff. May 11, 1970.
See: 2 N.J.R. 30(b), 2 N.J.R. 46(a).
R.1974 d.27, eff. February 1, 1974.
See: 6 N.J.R. 2(b), 6 N.J.R. 97(b).

3:6-5.3 Sales of Federal funds by State member banks, State nonmember banks and savings banks

(a) As used in this subchapter, in the case of State banks which are members of the Federal Reserve System, “sales of Federal funds” include transactions which involve the temporary transfer and sale of immediately available funds either from one member bank in the Federal Reserve System to another member bank in the Federal Reserve System or to another bank not in the Federal Reserve System.

(b) In the case of a State bank which is not a member of the Federal Reserve System, “sales of Federal funds” include transactions which involve the temporary transfer and sale of immediately available funds from the nonmember bank to another nonmember bank or to a member bank.

(c) In the case of a savings bank, “sales of Federal funds” include transactions which involve the temporary transfer and sale of immediately available funds from the savings bank to a nonmember bank or to a member bank.

Amended by R.1974 d.27, eff. February 1, 1974.
See: 6 N.J.R. 2(b), 6 N.J.R. 97(b).

SUBCHAPTER 6. SHORT-TERM INVESTMENT OF CASH IN FIDUCIARY ACCOUNTS

3:6-6.1 Type of investment

Cash held for various fiduciary accounts may be invested on a short term basis in a variable account note of a single borrower by a bank defined in N.J.S.A. 17:9A-36(2). Participating accounts will thus be provided with a readily accessible medium for short-term investment of their cash balances.

3:6-6.2 Provisions of note

(a) Under this arrangement, the borrower delivers his note to evidence the amount of the loan outstanding from time to time.

(b) The note may be a demand obligation or have a fixed maturity (in which case it is understood that the borrower will renew the note at maturity) and may set forth provisions concerning the rate and payment of interest in the note or in a separate agreement to which reference is made in the note.

(c) The note must be payable to the order of the bank or to a nominee of the bank and may be repayable by the borrower in whole or in part at any time, and should contain columns for entering changes in the amount of the loan outstanding, the dates of such changes, and the initial of an employee of the bank authorized by the borrower to make such entries.

(d) While it is preferable that all entries affecting the balance of the note shall be recorded thereon, it is satisfactory for such entries to be recorded separately, provided adequate documentation is maintained in regard to all such entries.

(e) All notes must be kept in the custody of duly authorized employees of the bank.

3:6-6.3 Fluctuations in participations

The amount of the loan may be subject to daily fluctuations as the participants increase or decrease their participations. The net amount of any such increase or decrease depends initially upon the particular requirements of the participants. If it is desired to participate an account in the loan or to increase its existing participation therein, a "buy" order is prepared for the dollar amount of the planned participation. If it is desired to reduce or withdraw an account's participation, a "sell" order is prepared. All buy and sell orders must be combined at the end of each day's business when the net amount of any proposed increase or decrease in the loan is determined.

3:6-6.4 Confirmation of changes in loan; provision for interest rate

On the following business day, the net figure referred to in Section 6.3 (Fluctuations in participations) of this Chapter must be communicated to the borrower by telephone. If the figure indicates a proposed increase in the loan, this communication is an offer to lend the amount of the increase which the borrower may either accept in whole or in part, or reject. If the figure indicates a proposed reduction in the loan, communication constitutes a demand for payment of the amount of the reduction. The resulting increase or decrease in the loan and the new balance due must be then recorded by making appropriate entries on the note. The balance so entered, when confirmed by the borrower in writing, should be understood to constitute conclusive evidence of the balance owing on the loan. The net amount of any increase (or decrease) in the loan must be promptly credited to (or charged against) the borrower's account with the bank. Interest must be paid monthly on the daily amount of the loan outstanding during the preceding month at a rate which is mutually agreed upon by the bank and the borrower and specified in the note or related agreement, but such rate shall not be less than that which will yield simple interest equivalent to the discount rate currently being paid by the borrower on his 180-day paper. If any change in the 180-day rate is established by the borrower, the rate of interest paid on the variable amount loan must be changed simultaneously, unless a rate higher than the 180-day rate has been agreed upon and is being paid.

3:6-6.5 Maintenance of loan records in bank's trust department

(a) Participations of each account in the loan must be reflected in the securities record of each account in the bank's trust department.

(b) A participation record for each account must be also maintained and a check must be made each time a change in the amount of the loan occurs to assure that these participation records are in balance with the outstanding amount of the note.

(c) The bank may not participate in the loan for its own account, nor may it acquire such a participation.

3:6-6.6 Authorization to invest in this type of collective investment

(a) Where collective investments of the type described in this subchapter are not specifically authorized by the governing instruments of the various participating accounts, such investments may be made pursuant to N.J.S.A. 17:9A-37 and in such case:

1. Participation in such investment shall be restricted to accounts in which the bank is acting in a fiduciary capacity specified in paragraphs (5),(6)(9) and (10) of N.J.S.A. 17:9A-28;

2. The written variable note duly executed by the parties and a written outline of the procedure, as above set forth, controlling participation in such investment or a written incorporation by reference of the above-mentioned procedure shall constitute the written plan in accordance with the provisions of N.J.S.A. 17:9A-37(E);

3. The requirements of N.J.S.A. 17:9A-39(b) shall be deemed satisfied provided that the note is of a borrower whose commercial paper is rated at least A-1 by the financial periodicals rating commercial paper (for example, Standard and Poor) and such note is either payable on demand or at the call of the bank;

4. The determination of whether such collective investment shall constitute a legal common trust fund or a discretionary common trust fund shall be determined in accordance with the provisions of N.J.S.A. 17:9A-36.

3:6-6.7 Parity provision

This regulation is issued to enable banks to establish and maintain common trust funds on an equal basis with common trust funds established and maintained by national banking associations.

SUBCHAPTER 7. (RESERVED)

SUBCHAPTER 8. CONVERSIONS OF SAVINGS BANKS

3:6-8.1 Definitions

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

“Capital stock association” shall have the meaning ascribed to it in N.J.S.A. 17:12B-244.

“Capital stock savings bank” shall have the meaning ascribed to it in N.J.S.A. 17:9A-8.1.

“Mutual savings bank” means any savings bank organized pursuant to N.J.S.A. 17:9A-1 et seq. without capital stock.

“Savings bank” shall have the meaning ascribed to it in N.J.S.A. 17:9A-1.

“State association” and “mutual association” shall have the meanings ascribed to those terms in N.J.S.A. 17:12B-5.

3:6-8.2 Authorization for conversion

(a) Any mutual savings bank may apply to the Commissioner to convert itself to a mutual association by organizing

and transferring its assets and liabilities to a newly-chartered capital stock association, and any capital stock savings bank may apply to the Commissioner to convert itself to a bank by organizing and transferring its assets and liabilities to a newly-chartered bank.

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

(c) After the board of directors has adopted a resolution, a meeting of the members or stockholders shall be held upon not less than 10 days’ written notice. The notice shall contain a statement of the time, place and purpose for which such meeting is called. At this meeting, the members or shareholders shall vote on whether the savings bank shall convert to an association or bank, as the case may be. An affirmative vote of at least two-thirds of the members present, or shares eligible to be voted which are represented at the meeting, either in person or by proxy, may approve the conversion.

Amended by R.1994 d.208, effective May 2, 1994.
See: 26 N.J.R. 286(a), 26 N.J.R. 1827(a).

3:6-8.3 Application for conversion

(a) An application for a conversion from a savings bank to an association or bank shall contain the following:

1. A certified copy of the resolution of the board of directors authorizing the conversion;
2. A certified copy of the resolution adopted by the stockholders or members relating to the plan of conversion, containing the following information:
 - i. The total number of votes eligible to be cast;
 - ii. The total number of votes represented in person or by proxy at the special meeting;
 - iii. The total number of votes cast in favor and against each matter; and
 - iv. The percentage of votes cast in favor and against each matter.
3. A certificate of incorporation for the new association or bank;
4. Biographical information for each of the incorporators and/or directors on forms approved by the Commissioner;
5. A completed form from the New Jersey State Police requesting criminal history record information for each director and/or incorporator, along with a cashier’s check, certified check or money order for the applicable amount, payable to the State Police, stapled to the front of each form;

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

7. Financial projections for the converted association or bank for the next three years. Projections shall include a consolidated average balance sheet and a profit and loss statement at the end of each year. This financial information shall include projections of all relevant regulatory capital requirements as well as appropriate income ratios;

8. A business plan for three years;

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

10. The application fee for the conversion.

(b) The Department may, in its discretion, waive any of the application requirements of (a) above based on the following:

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

Amended by R.1994 d.208, effective May 2, 1994.
See: 26 N.J.R. 286(a), 26 N.J.R. 1827(a).

SUBCHAPTER 9. CAPITAL STOCK SAVINGS BANK: CHANGE IN CONTROL

3:6-9.1 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 subsection (1) of section 1 of P.L. 1948, c.67 (N.J.S.A. 17:9A-1), a national banking association having its principal office in this State and a bank holding company.

"Bank holding company" means a bank holding company subject to the "Bank Holding Company Act of 1956," 70 Stat.133 (12 U.S.C. § 1841 et seq.).

"Beneficial owner":

1. Includes any person who, directly or indirectly through any contract, arrangement, understanding, relationship or otherwise, has or shares:

- i. Voting power which includes the power to vote, or to direct the voting of shares; or
- ii. Investment power which includes the power to dispose, or to direct the disposition of shares;

2. Includes any person who directly or indirectly creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement or device with the purpose or effect of divesting the person of beneficial ownership of shares or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the provisions of this subchapter.

3. Includes any person who has the right to acquire beneficial ownership of the shares as defined herein within 60 days, including, but not limited to, any right to acquire:

- i. Through the exercise of any option, warrant or right;
- ii. Through the conversion of a security;
- iii. Pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or

iv. Pursuant to the automatic termination of a trust, discretionary account or similar arrangement; except that, any person who acquires a security or power specified in 3i, ii or iii above, with the purpose or effect of changing or influencing the control of the issuer, or in connection with or as a participation in any transaction having such effect or purpose, immediately upon the acquisition shall be deemed to be the beneficial owner of the shares which may be acquired through the exercise or conversion of such security or power. Any securities not outstanding which are subject to these options, warrants, rights or conversion privileges shall be deemed to be outstanding for the purpose of computing the percentage of outstanding securities of the class owned by the person but shall not be deemed to be outstanding for the purpose of computing the percentage of the class owned by any other person;

4. Does not include:

- i. Any member of a national securities exchange who holds shares directly or indirectly on behalf of another person solely because the member is the record holder of the securities and, pursuant to the rules of the exchange, may direct the vote of the shares without instruction on other than contested matters or matters that may affect substantially the rights or privileges of the holders of these shares to be voted, but is otherwise precluded by the rules of the exchange from voting without instruction; or

ii. Any person who in the ordinary course of business is a pledgee of securities under a written pledge agreement until the pledgee had taken all formal steps necessary which are required to declare a default and determines that the power to vote or direct a vote or to dispose or to direct the disposition of pledged shares will be exercised, provided that the pledge agreement is bona fide and was not entered into with the purpose or the effect of changing or influencing the control of the issuer, or in connection with any transaction having any such purpose or effect including any transaction subject to this subchapter; and the pledge agreement prior to default does not grant to the pledgee the power to vote or to direct the vote of the pledged securities, or the power to dispose or to direct the disposition of the pledged securities other than the grant of this power pursuant to a pledged agreement under which credit is extended subject to Regulation T of the Federal Reserve Board, 12 C.F.R. 220, and in which the pledgee is a broker or dealer registered under section 15 of the "Securities and Exchange Act of 1934," 48 Stat. 896 (15 U.S.C. § 780); or

iii. Any person engaged in business as an underwriter of securities who acquires shares through participation in good faith in a firm commitment underwriting of shares registered under the "Securities Act of 1933," 48 Stat. 74 (15 U.S.C. § 77a et seq.), or under the "Securities Exchange Act of 1934," 48 Stat. 881 (15 U.S.C. § 78a et seq.), until the expiration of 40 days after the date of the acquisition;

5. All securities of the same class beneficially owned by a person, regardless of the forms the beneficial ownership takes, shall be aggregated in calculating the number of shares beneficially owned by the person.

"Capital stock savings bank" means any savings bank chartered pursuant to the provisions of P.L. 1982, c.9 (N.J.S.A. 17:9A-8.1 et seq.).

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

"Control of a capital stock savings bank" includes:

1. Owning, beneficially or otherwise, controlling, or having power to vote 25 percent or more of the outstanding shares of any class of voting securities of a capital stock savings bank, directly or indirectly, or acting through one or more persons;

2. Controlling in any manner the election of a majority of the directors of a capital stock savings bank;

3. Exercising or having the power to exercise directly or indirectly a controlling influence over the management or policies of a capital stock savings bank; or

4. Conditioning in any manner the transfer of 25 percent or more of any class of voting securities of a capital stock savings bank.

"Control of a capital stock savings bank" does not include a director or officer of a capital stock savings bank acting in the capacity of performing his duties or responsibilities of office.

"Market maker" means any dealer acting in the capacity of a block positioner and any dealer who, with respect to the voting stock of a capital stock savings bank, holds him or herself out as being willing to buy and sell such stock for his or her own account on a regular and continuous basis.

"Person" means an individual, bank, corporation, savings bank, savings and loan association, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any form of entity.

"Voting power" means that a person has or shares, directly or indirectly, through any option, contract, arrangement, understanding, conversion right or relationship, or by acting jointly or in concert or otherwise, the power to vote, or to direct the voting of voting shares.

Amended by R.1996 d.244, effective May 20, 1996.
See: 28 N.J.R. 1331(a), 28 N.J.R. 2544(a).

3:6-9.2 Filing of application

(a) An application for approval of the following transactions shall be filed with the Commissioner, on forms provided by the Commissioner, by any person:

1. Proposing to obtain or exercise control of a capital stock savings bank;

2. Offering to acquire beneficial ownership or control of any voting shares of a capital stock savings bank, if, after the acquisition, the person would beneficially own or control more than 25 percent of the then outstanding voting shares of the capital stock savings bank; or

3. Acquiring beneficial ownership or control of any voting shares of a capital stock savings bank, if, after the acquisition, the person would beneficially own or control more than 25 percent of the then outstanding voting shares of the capital stock savings bank.

Amended by R.1996 d.244, effective May 20, 1996.
See: 28 N.J.R. 1331(a), 28 N.J.R. 2544(a).

3:6-9.3 Notice of application

(a) The Commissioner shall give the following notices after receipt of a completed application:

1. Notification to the applicant of the date the completed application has been filed and the date of the hearing relative to the application. The hearing date shall be within 60 days of the filing date;

2. Notification to the capital stock savings bank that is the subject of the proposed change of control within five days of the filing date that an application has been filed and the date set for a hearing on the application; and

3. Within the same five day period set forth in (a)2 above, the Commissioner shall forward to the capital stock savings bank a copy of the completed application.

3:6-9.4 Public notice of hearing

(a) The applicant shall publish a notice of its filing of a change of control application relative to a stock savings bank within 10 days of the date on which the Commissioner indicates a completed application has been filed. Within 10 days thereafter, the applicant shall send a copy of the published notice and the publisher's affidavit of publication to the Commissioner of Banking.

(b) The notice shall be published in a newspaper of general circulation in the county in which the capital stock savings bank has its principal office.

(c) The notice shall contain:

1. The name of the applicant;
2. The address of the applicant;
3. The name of the capital stock savings bank that is the subject of the change of control application;
4. The address of the principal office of the capital stock savings bank;
5. The date the completed application was filed in the Department;
6. The time, date and place of the scheduled hearing on the application, if a hearing is scheduled by the Commissioner;
7. A statement as to the purpose of the application which shall reflect the form of change of control being proposed, as outlined in section 2 of P.L. 1987, c.201. The notice shall reflect the percentage of the voting shares of the capital stock savings bank presently beneficially owned or controlled and the percentage that would be beneficially owned or controlled if the proposed transaction is approved; and
8. This notice shall contain the following statement:

"Any person may object to this application and, if a hearing is scheduled, make a request for permission to make an oral presentation at the designated hearing by filing his or her comments in writing with the Commissioner of Banking at the Trenton office (address of the Department of Banking) within 17 days following the date on which the application was filed in the Department. Requests for oral presentation may only be perfected by complying with the provisions of N.J.A.C. 3:6-9.5".

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

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

3:6-9.5 Objections to the application

(a) Objections to the application must:

1. Be in writing;
2. Disclose the grounds therefor;
3. Be filed in the Department and with the applicant within 17 days of the date on which the application was filed in the Department; and
4. Disclose whether the objector intends to file a comprehensive objection detailing the factual and legal bases of objection.

(b) Each comprehensive objection must:

1. Be filed in the Department and served upon the applicant within 29 days of the date on which the application was filed in the Department;
2. Be on a completed current objection form which may be obtained from the Department;
3. Be supplemented with any and all other documentation the objector wishes the Department to consider; and
4. Be accompanied by the required objection fee and proof of service upon the applicant of a copy of the comprehensive objection.

(c) The applicant, upon receipt of a notice that an objection has been filed, shall within two days of such receipt, forward and deliver copies of the application and all supportive data submitted relative to the application to the objector. Proof of delivery to and receipt by an objector shall be filed immediately with the Department.

(d) The applicant may, within 36 days of the date the application was filed in the Department, file and serve upon the objector a reply to the comprehensive objection. The reply must be limited to the data set forth in the comprehensive objection.

(e) If the Commissioner shall find that the applicant or objector has not filed sufficient data, information or material in support of or in opposition to the application, the applicant or objector may be required to file supplementary data, information or material.

(f) If the objector fails to comply with any of the provisions of this section, the Commissioner may dismiss the objection and/or comprehensive objection.

(g) All papers required to be filed must be received in the Department by the close of business on the date due. If the due date falls on a weekend or holiday then the filing must be effected by the close of business on the next business day.

(h) Both applicant and objector may only raise issues and present information at the hearing if the same issues and information have been affirmatively raised in the application, the objection, or the comprehensive objection. All other matters will be excluded unless the Commissioner rules otherwise.

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

3:6-9.6 Hearing procedures

(a) The Commissioner may, within his or her discretion, hold a hearing on a change of control application when such a hearing would be helpful or necessary. If the Commissioner decides to hold a hearing on the application, the Commissioner shall notify the applicant as to the date of the hearing within five business days of the date the Commissioner receives the completed application. Only the applicant and any persons who have filed comprehensive objections shall be permitted to participate in the hearing.

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

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

(d) The applicant and the objector(s) shall each be permitted to make an opening statement, and may then present witnesses, materials and data. Witnesses shall be sworn and may be cross-examined. Questions may be addressed to the applicant, objector(s) and witnesses by the Commissioner. The applicant and objector(s) may then concisely summarize their positions.

(e) In any instance where the Commissioner shall determine that any of the requirements or procedures of (b), (c) and (d) above are unwarranted, inapplicable, unreasonable, unnecessary or not required, the Commissioner may relax or dispense with such requirements or procedures.

Amended by R.1996 d.244, effective May 20, 1996.
See: 28 N.J.R. 1331(a), 28 N.J.R. 2544(a).

3:6-9.7 Fees

(a) The following fees shall be paid to the Commissioner relative to the application called for in N.J.A.C. 3:6-9.2:

1. Filing of application: \$2,500;
2. Filing fee with every comprehensive objection: \$750.00;

3. The applicant and objectors shall bear a pro rata share of the transcript costs relative to the hearing. In the event there are no comprehensive objections filed, the applicant shall bear the costs of the hearing transcript.

SUBCHAPTER 10. SAVINGS BANKS; UNSECURED DAYS FUNDS TRANSACTIONS

3:6-10.1 Description; unsecured days funds

Unsecured days funds transactions represents the sale of excess funds, usually on an unsecured basis, for a period longer than overnight or a weekend. Such transactions are commonly referred to as "term federal funds". Sales are restricted to an insured bank which is defined as being a commercial bank whose deposits are insured by the Federal Deposit Insurance Corporation.

3:6-10.2 Limitation on such investments

A savings bank may sell unsecured days funds (term federal funds) to any insured bank, as defined in N.J.A.C. 3:6-10.1, provided the total amount sold to any one insured bank does not exceed 15 percent of the surplus of the savings bank as reported in the latest consolidated report of condition on file with the Department of Banking.

Amended by R.1991 d.171, effective April 1, 1991.
See: 23 N.J.R. 147(a), 23 N.J.R. 998(a).
Changed from 10 percent to 15 percent.

SUBCHAPTER 11. SHORT-TERM INVESTMENTS FOR TRUST CASH

3:6-11.1 Type of investment

Cash held for various fiduciary accounts may be invested on a short term basis utilizing the cost method in determining the value of property and investments of the common trust fund.

3:6-11.2 Provisions for cost valuation

(a) Investments must be limited largely to bonds, notes or other evidences of indebtedness which are payable on demand (including variable amount notes) or which have a maturity date not exceeding 91 days from the date of purchases. However, 20 percent of the value of the fund may be invested in longer term obligations.

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

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

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

SUBCHAPTER 12. STATE BANK PARITY

3:6-12.1 State bank parity with national banks

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

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

In addition to other authority granted by law, and unless contrary to State law, a bank may exercise any power, right, benefit or privilege which is now or hereafter authorized by statute or regulation for a state chartered bank chartered in a state other than New Jersey, provided that the bank provides notice to the Commissioner prior to exercising this power, right, benefit or privilege and the Commissioner either specifically approves the activity or does not provide notice before the expiration of 45 days that the power, right, benefit or privilege is not appropriate for New Jersey institutions. In deciding whether the power, right, benefit or privilege is appropriate for New Jersey institutions, the Commissioner shall consider the effect on the safety and soundness of the institution and the consumer benefit or detriment of permitting institutions to engage in the activity, if any.

New Rule, R.1996 d.483, effective October 7, 1996.
See: 28 N.J.R. 2661(a), 28 N.J.R. 4417(b).

SUBCHAPTER 13. (RESERVED)

SUBCHAPTER 14. FOREIGN BANKS

3:6-14.1 Biennial fee

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

R.1983 d.42, eff. March 7, 1983.

See: 15 N.J.R. 6(a), 15 N.J.R. 330(a).

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

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

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

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

Biennial fee increased to \$1,000.

3:6-14.2 Miscellaneous fees

(a) A foreign bank shall pay to the Commissioner the following fees:

1. For filing a copy of its certificate of incorporation, or an amendment or change to the certificate \$100.00;
2. For filing a statement of its financial condition \$50.00;
3. For filing a power of attorney \$25.00;
4. For each substitution of securities, pursuant to N.J.S.A. 17:9A-320B \$100.00.

New Rule, R.1989 d.449, effective August 21, 1989.

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

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

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

Fees increased from \$50.00 to \$100.00 for filing copy of certificate of incorporation or an amendment or change and for each substitution of securities.

SUBCHAPTER 15. SAVINGS BANKS: OFFICERS AND MANAGERS PERMITTED LOANS

3:6-15.1 Definitions

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

“Board of Managers” of a savings bank includes the board of trustees or board of directors of a savings bank and where reference is made to the board of directors of a bank it shall be deemed to the board of managers of a savings bank.

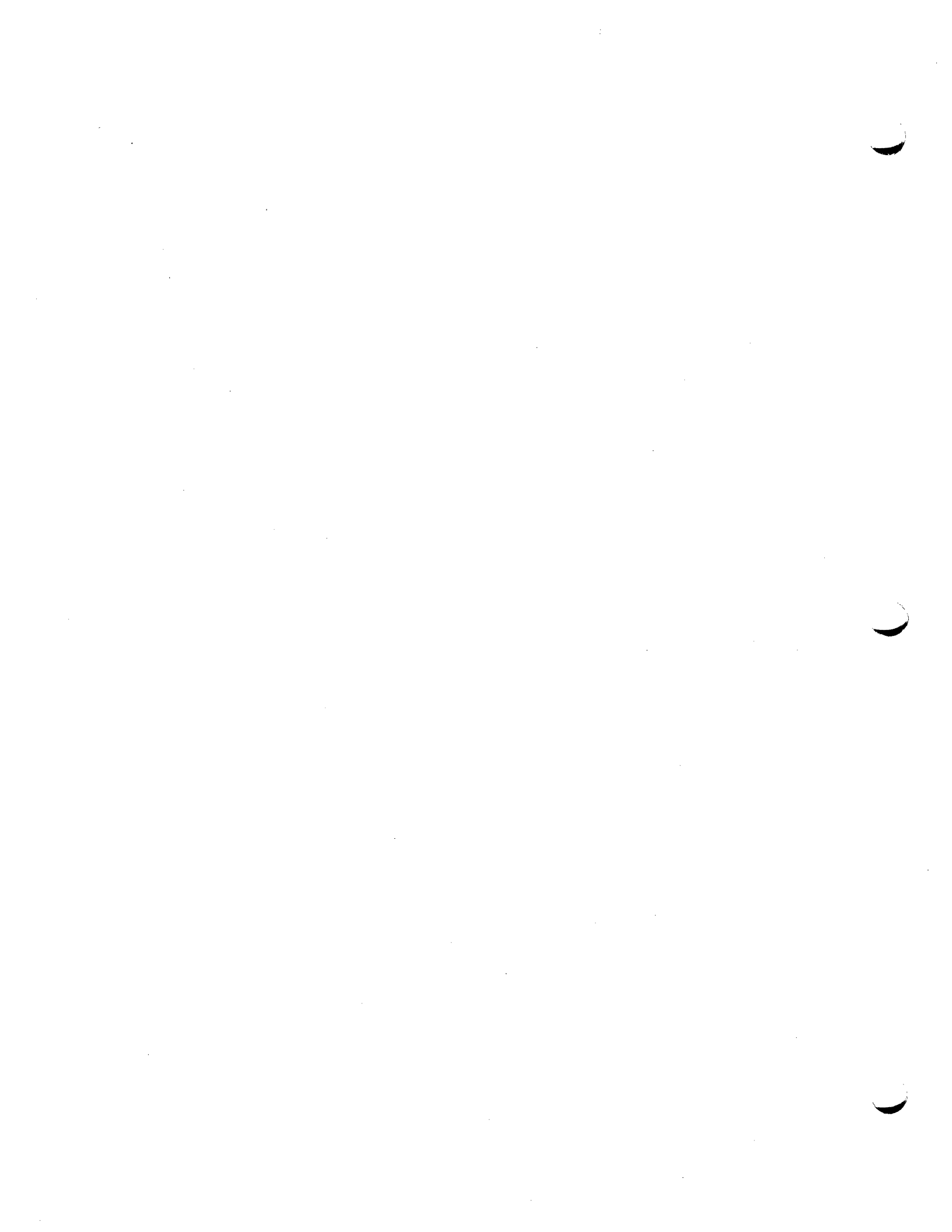
“Capital funds” of a savings bank are deemed to include capital notes of the savings banks for purposes of computing lending limitations.

“Manager” of a savings bank includes a trustee or director of a savings bank and where reference is made to a

director of a bank it shall be deemed to refer to the manager of a savings bank.

3:6-15.2 Terms and conditions

(a) A savings bank may permit its officers and managers and their families and affiliates to become liable to the savings bank only under the same terms and conditions and to the same degree of liability as a bank permits its directors, officers or the corporations or partnerships of the officers or directors of a bank to become liable to a bank under the provision of Article 15 of The Banking Act of 1948 (N.J.S.A. 17:9A-71 et seq.) and under N.J.S.A. 17:9A-104, and the regulations issued pursuant to both.



(b) A savings bank may not permit its officers and managers and their families and affiliates to become liable to the savings bank pursuant to the authority of N.J.A.C. 3:6-1.1.

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

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

SUBCHAPTER 16. QUALIFIED BANK ACQUISITION OF UNDERWRITTEN SECURITIES

3:6-16.1 Definitions

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

“Trust account” means any account, relationship or arrangement administered by a qualified bank acting in any capacity as defined by N.J.S.A. 17:9A-28.

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

“Issuer” means a qualified bank which acts either by itself or with others as an underwriter of securities.

“Qualified bank” means a qualified bank as defined in subsection (12), Section 1 of The Banking Act of 1948.

“Securities” means:

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

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

(a) A qualified bank may acquire securities, for one or more of its trust accounts, from itself, another member of the underwriting syndicate of the security, or from an affiliate bank, when the qualified bank or affiliate holds the security or securities as a result of its being the underwriter

or a member of the underwriting syndicate of the security, provided the following conditions are met with respect to each acquisition:

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

3:6-16.3 Limitations

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

3:6-16.4 Required records

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

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

3:6-16.5 Exemption provision

Nothing contained within the provisions of this subchapter shall be deemed to prohibit a qualified bank from acquiring any securities as permitted by other applicable law or regulation.

SUBCHAPTER 17. CONVERSIONS OF BANKS

3:6-17.1 Definitions

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

"Bank" shall have the meaning ascribed to it in N.J.S.A. 17:19A-1.

"Capital stock savings bank" shall have the meaning ascribed to it in N.J.S.A. 17:9A-8.1.

3:6-17.2 Authorization for conversion

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

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

(c) After the board of directors has adopted a resolution, a meeting of the members or stockholders shall be held upon not less than 10 days' written notice. The notice shall contain a statement of the time, place and purpose for which such meeting is called. At this meeting, the members or shareholders shall vote on whether the bank shall convert to a capital stock savings bank. An affirmative vote of at least two-thirds of the members present, or shares eligible to be voted which are represented at the meeting, either in person or by proxy, may approve the conversion.

3:6-17.3 Application for conversion

(a) An application for a conversion from a bank to a capital stock savings bank shall contain the following:

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

3. A certificate of incorporation for the new capital stock savings bank;

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

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

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

7. Financial projections for the converted capital stock savings bank for the next three years. Projections shall include a consolidated average balance sheet and a profit and loss statement at the end of each year. This financial information should include projections of all relevant regulatory capital requirements as well as appropriate income ratios;

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

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

10. The application fee for the conversion.

(b) The Department may, in its discretion, waive any of the application requirements of this rule based on the following:

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