

CHAPTER 4
DEPOSITORY INSTITUTIONS

Authority

N.J.S.A. 17:1-8.1 and 15e, 17:9A-8.10, 17:9A-27.50, 17:9A-106, 17:9A-266 et seq., 17:12B-72 and 17:12B-177 et seq.

Source and Effective Date

R.2002 d.383, effective October 24, 2002.
See: 34 N.J.R. 2173(a), 34 N.J.R. 2549(b), 34 N.J.R. 3957(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 4, Depository Institutions, expires on April 21, 2008. See: 39 N.J.R. 4983(a).

Chapter Historical Note

Chapter 4, Depository Institutions, was adopted as R.1992 d.326, effective August 17, 1992. See: 24 N.J.R. 1665(a), 24 N.J.R. 2834(a).

Subchapter 2, Compensation, was adopted as R.1993 d.565, effective November 15, 1993. See: 25 N.J.R. 3586(a), 25 N.J.R. 5145(a).

Pursuant to Executive Order No. 66(1978), Chapter 4, Depository Institutions, was readopted as R.1997 d.380, effective August 15, 1997. See: 29 N.J.R. 2589(a), 29 N.J.R. 4099(b).

Subchapter 3, Reporting Requirements, was adopted as R.1997 d.470, effective November 3, 1997. See: 29 N.J.R. 3382(a), 29 N.J.R. 4678(a).

Chapter 4, Depository Institutions, was readopted as R.2002 d.383, effective October 24, 2002. See: Source and Effective Date. See, also, section annotations.

Subchapter 4, Agents of Foreign Banks, was adopted as new rules by R.2005 d.344, effective October 17, 2005. See: 36 N.J.R. 4281(a), 37 N.J.R. 3968(b).

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SUBCHAPTER 1. CAPITAL REQUIREMENTS

3:4-1.1 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.

“Capital stock association” means a capital stock association as defined in N.J.S.A. 17:12B-244.

“Capital stock savings bank” means a capital stock savings bank as defined in N.J.S.A. 17:9A-8.1.

“Classified assets” means assets, or portions thereof, which have a well defined weakness or weaknesses attributable to the unfavorable record of the obligor, insufficiency of security, or other factors noted in the examiners comments.

“Commissioner” means the Commissioner of the New Jersey Department of Banking and Insurance.

“Department” means the New Jersey Department of Banking and Insurance.

“Depository institution” means a bank, savings bank, capital stock savings bank, capital stock association or mutual association.

“Mutual association” means a mutual association as defined in N.J.S.A. 17:12B-5.

“Qualifying capital” means qualifying capital as defined in Appendix A to 12 C.F.R. Part 325.

“Risk weighted assets” for a bank and savings bank means risk weighted assets as defined in Appendix A to 12 C.F.R. Part 325, and for a savings and loan association means risk weighted assets as defined in 12 C.F.R. 567.6.

“Savings bank” means a savings bank as defined in N.J.S.A. 17:9A-1(13).

“Tier 1 capital” means Tier 1 capital as defined in 12 C.F.R. § 325.2t.

“Total assets” means total assets as defined in 12 C.F.R. § 325.2v.

Amended by R.1997 d.380, effective September 15, 1997.
See: 29 N.J.R. 2589(a), 29 N.J.R. 4099(b).

Added “Commissioner” and “Department”.
Amended by R.2002 d.383, effective November 18, 2002.
See: 34 N.J.R. 2173(a), 34 N.J.R. 2549(b), 34 N.J.R. 3957(b).

Rewrote “Bank”, “Capital stock association”, “Capital stock savings bank”, “Mutual association”, “Qualifying capital”, “Risk weighted assets”, “Savings bank”, “Tier 1 capital” and “Total assets”.

3:4-1.2 Minimum leverage capital requirement

(a) The minimum leverage capital for a depository institution shall be a ratio of Tier 1 capital to total assets of four percent.

(b) Notwithstanding (a) above, the Commissioner may establish for a depository institution a minimum ratio of Tier 1 capital total assets of more than four percent based on the following factors:

1. The financial history and condition of a depository institution, and its future earnings prospects;
2. The managerial resources of the depository institution;
3. The funding and liquidity of the depository institution;
4. The interest-rate risk exposure of the depository institution;
5. The concentration of assets of the depository institution; or
6. The volume of assets classified as substandard, doubtful or loss, or subject to special mention.

Amended by R.1997 d.380, effective September 15, 1997.
See: 29 N.J.R. 2589(a), 29 N.J.R. 4099(b).

3:4-1.3 Minimum risk-based capital requirement

A depository institution shall maintain qualifying capital of at least eight percent of its risk weighted assets. At least four percent of this qualifying capital shall be in the form of Tier 1 capital.

3:4-1.4 Unsafe operations

(a) A depository institution which has leverage capital and/or risk-based capital below the minimum required levels shall be deemed to be operating in an unsafe or unsound manner for purposes of N.J.S.A. 17:9A-266 et seq. and 17:12B-177 et seq.

(b) A depository institution which has entered into and is in compliance with a written agreement with the Department or has submitted to the Department and is in compliance with a plan approved by the Department to increase its capital ratios to such levels as the Department deems appropriate and to take such other action as may be necessary for the depository institution to be operated so as not to be engaged in such an unsafe or unsound practice will not be deemed to be engaged in an unsafe or unsound practice on account of its capital ratios.

(c) Notwithstanding (a) above, the Department is not precluded from taking any authorized action against a depository institution with capital above the minimum requirements if the specific circumstances deem such action to be appropriate.

Amended by R.1997 d.380, effective September 15, 1997.
See: 29 N.J.R. 2589(a), 29 N.J.R. 4099(b).

3:4-1.5 Unsafe condition

(a) A depository institution which has a ratio of Tier 1 capital to total assets of less than two percent shall be deemed to be in an unsafe condition for purposes of N.J.S.A. 17:9A-269 or N.J.S.A. 17:12B-179.

(b) A depository institution which has entered into and is in compliance with a written agreement with the Department to increase its capital ratios to such levels as the Department deems appropriate and to take such other action as may be necessary for the depository institution to be operated in a safe and sound manner will not be deemed to be an unsafe condition on account of its capital ratio.

(c) Notwithstanding (a) above, the Department is not precluded from taking action against a depository institution which has a ratio of Tier 1 capital to total assets equal to or greater than two percent if the depository institution is otherwise in an unsafe condition, or such action is otherwise authorized.

Amended by R.1997 d.380, effective September 15, 1997.
See: 29 N.J.R. 2589(a), 29 N.J.R. 4099(b).

3:4-1.6 Capital for interim conversion

(a) Notwithstanding any rule to the contrary, a depository institution with a ratio of Tier 1 capital to assets in excess of two percent shall be deemed to be adequately capitalized to qualify for a conversion to a bank, savings bank, capital stock savings bank, capital stock association or mutual association pursuant to N.J.S.A. 17:9A-17.1 et seq. or 17:16M-1 et seq., provided that:

1. The conversion is an interim step toward a merger or acquisition with another institution; and
2. After the merger or acquisition, the resulting depository institution will satisfy all capital maintenance requirements.

New Rule, R.1993 d.661, effective December 20, 1993.
See: 25 N.J.R. 4545(a), 25 N.J.R. 5917(c).
Amended by R.1997 d.380, effective September 15, 1997.
See: 29 N.J.R. 2589(a), 29 N.J.R. 4099(b).

SUBCHAPTER 2. COMPENSATION**3:4-2.1 Definitions**

The following words and terms, when used in the 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.

“Depository” means a bank, savings bank or savings and loan association, and includes a limited purpose trust company.

“Savings and loan association” means a capital stock association established pursuant to N.J.S.A. 17:12B-244 et seq.

“Savings bank” means a capital stock savings bank established pursuant to N.J.S.A. 17:9A-8.1 et seq.

Amended by R.1997 d.380, effective September 15, 1997.
See: 29 N.J.R. 2589(a), 29 N.J.R. 4099(b).

Deleted Public Law reference from “Bank”, “Savings and loan association” and “Savings bank”.

Amended by R.2002 d.383, effective November 18, 2002.

See: 34 N.J.R. 2173(a), 34 N.J.R. 2549(b), 34 N.J.R. 3957(b).

Rewrote “Bank”.

3:4-2.2 Stock option plans

(a) A bank may permit its directors, officers and employees to participate in a stock option plan established pursuant to N.J.S.A. 17:9A-27.50 et seq., and a savings bank may permit its directors, officers and employees to participate in a stock option plan established pursuant to N.J.S.A. 17:9A-8.10.

(b) A savings and loan association may permit its directors, officers and employees to participate in a stock option plan to the same extent as permitted for banks and savings banks so long as the association complies with N.J.S.A. 17:9A-27.50 et seq.

(c) A depository may not grant stock options to a director for less than the higher of the par value or 100 percent of the fair market value of the shares at the time the options are granted. A depository may not grant stock options to an officer or employee for less than the higher of the par value or 85 percent of the fair market value of the shares at the time the options are granted. Stock option plans may not provide for the payment of cash to directors by the depository upon cancellation of the options.

(d) A stock option plan must be adopted by the depository’s board of directors and approved by the holders of two-thirds of the capital stock of the depository entitled to vote.

SUBCHAPTER 3. REPORTING REQUIREMENTS

3:4-3.1 Purpose and scope

(a) The purpose of this subchapter is to set forth the form of report to be filed with the Department by banks and out-of-State banks with a branch office in this State as required pursuant to N.J.S.A. 17:9A-256. This subchapter further sets forth when the filing of such reports shall be waived pursuant to N.J.S.A. 17:9A-256E.

(b) This subchapter shall apply to all banks and out-of-State banks with a branch office in this State required to file reports with the Department pursuant to N.J.S.A. 17:9A-256.

3:4-3.2 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 or savings bank.

“Branch office” means a branch office as defined in N.J.S.A. 17:9A-1.

“Commissioner” means the Commissioner of the New Jersey Department of Banking and Insurance.

“Department” means the New Jersey Department of Banking and Insurance.

“Out-of-State bank” means a state bank, as defined in the Federal Deposit Insurance Act, 12 U.S.C. § 1813(a)(2), that is chartered under the laws of a state other than this state.

Amended by R.2002 d.383, effective November 18, 2002.

See: 34 N.J.R. 2173(a), 34 N.J.R. 2549(b), 34 N.J.R. 3957(b).

In “Branch office”, substituted “means a branch office” for “is”.

3:4-3.3 Call reports

(a) Pursuant to N.J.S.A. 17:9A-256, every bank and out-of-State bank with a branch office in this State shall file a semi-annual report with the Department that sets forth the bank’s assets and liabilities as of June 30 and December 31 of each year, on a form to be provided by the Commissioner. The reports shall be in the general form of report adopted by the Federal Financial Institutions Examination Council for purposes of filing by banks with the FDIC pursuant to 12 C.F.R. Part 304.4 or with the Board of Governors of the Federal Reserve System pursuant to 12 U.S.C. § 324. Such reports shall be filed with the Department within 30 days after the end of the relevant six-month period. Upon request, the Commissioner may extend the due date for not more than 10 days.

(b) The requirements in (a) above shall not apply to a bank or out-of-State bank that files reports of financial condition with the Federal Deposit Insurance Corporation pursuant to 12 C.F.R. Part 304.4 or with the Board of Governors of the Federal Reserve System pursuant to 12 U.S.C. § 324.

(c) In addition to reports required to be filed pursuant to (a) above, the Commissioner may require such additional reports from a particular bank as the Commissioner deems necessary to obtain a full and complete knowledge of such bank’s condition. Reports filed pursuant to this subsection shall be considered confidential and shall not be subject to public inspection or copying pursuant to the “Right to Know” law, N.J.S.A. 47:1A-1 et seq.

3:4-3.4 Penalties

Failure to comply with the provisions of this subchapter shall result in the imposition of penalties as authorized by law, including, but not limited to, penalties authorized by N.J.S.A. 17:9A-256D.

SUBCHAPTER 4. AGENTS OF FOREIGN BANKS**3:4-4.1 Purpose and scope**

(a) The purpose of this subchapter is to specify the activities that foreign banks and agents of foreign banks may conduct in New Jersey. It also specifies what activities are illegal for foreign banks and agents of foreign banks.

(b) This subchapter shall apply to foreign banks and agents of foreign banks that conduct business in New Jersey.

3:4-4.2 Definitions

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

“Agency Agreement” means a written agreement between a foreign bank and another person acknowledging that the other person is an agent of the foreign bank, and providing that the agent and the foreign bank shall be subject to the jurisdiction of the Department and New Jersey courts regarding the activities of the agent in the course of his or her agency activities in this State. An agency agreement is necessary for the foreign bank to conduct business in this State pursuant to N.J.S.A. 17:9A-316E.

“Agent” means a person:

1. Identified as an agent of the foreign bank in an agency agreement;
2. Who is not an employee of the foreign bank; and
3. Shall include an insured depository institution affiliate located in New Jersey which acts in New Jersey on behalf of a foreign bank.

“Affiliate” means entities that are related, directly or indirectly, through a common ownership interest of 10 percent or more.

“Commissioner” means the Commissioner of the Department of Banking and Insurance.

“Department” means the New Jersey Department of Banking and Insurance.

“Foreign bank” means a company, other than a banking institution, organized under the laws of the United States, another state or a foreign government, which is authorized by the laws under which it is organized to exercise some or all of

the powers specified in N.J.S.A. 17:9A-24(4), 25(4), (5) and (13), and 28(3) through (9).

“Insured depository institution affiliate” means any banking institution, as defined in N.J.S.A. 17:9A-1, or association, as defined in N.J.S.A. 17:12B-5, the deposits of which are insured by the Federal Deposit Insurance Corporation, that controls or is controlled by, or is under common control with a foreign bank.

“Payday loan” means an agreement with respect to which an agent, acting on behalf of the foreign bank, solicits, negotiates, facilitates or agrees to defer the presentment of a negotiable item to the foreign bank, or defer the deposit of an item for collection, or defer debiting the borrower’s account electronically or by any other means, in return for a consideration or other thing of value where the rate, fee or other consideration charged for such forbearance exceeds the limitation on usury set forth at N.J.S.A. 2C:21-19. “Payday loan” shall include, but not be limited to, such loans made:

1. In person;
2. Through an agent;
3. By electronic means (including telephone, fax, computer, internet or similar means); or
4. Through response to an advertisement or solicitation made in this State.

“Primary regulator” means the regulator that issued the charter to the foreign bank.

“Refund anticipation loan” means an agreement with respect to which an agent, acting on behalf of the foreign bank, solicits, negotiates, facilitates or loans a borrower funds, or extends any other consideration to a borrower in return for an assignment of the borrower’s tax refund or for any other agreement by the borrower to repay the loan or other consideration from the borrower’s tax refund where the rate, fee or other consideration charged for forbearance of the agent or foreign bank exceeds the limitations on usury set forth at N.J.S.A. 2C:21-19. “Refund anticipation loan” includes, but is not limited to, such loans made:

1. In person;
2. Through an agent;
3. By electronic means (including telephone, fax, computer, internet or similar means); or
4. Through response to an advertisement or solicitation made in this State.

“Retail seller” means any person selling goods or services in New Jersey and includes a retail seller as defined in N.J.S.A. 17:16C-1(c).

“Title loan” means an agreement with respect to which an agent, acting on behalf of the foreign bank, solicits, negotiates, facilitates or agrees to make a loan, secured by a

title to a motor vehicle, in return for a consideration or other thing of value where the rate, fee or other consideration of such forbearance exceeds the limitation on usury set forth at N.J.S.A. 2C:21-19. "Title loan" shall include but not be limited to, such loans made:

1. In person;
2. Through an agent;
3. By electronic means (including telephone, fax, computer, internet or similar means); or
4. Through response to an advertisement or solicitation made in this State.

3:4-4.3 Prohibited activities

(a) Except as may be permitted by (b) below and by N.J.A.C. 3:4-4.4 through 4.6 for the particular types of agents referenced therein, and by N.J.A.C. 3:4-4.7, foreign banks and their-agents are prohibited from engaging in the following activities, which constitute transacting business in this State.

1. Accepting retail deposits;
2. Soliciting loans in person or through New Jersey media;
3. Receiving or accepting loan applications;
4. Making loans, including any types of loans specifically defined in N.J.A.C. 3:4-4.2;
5. Making loan underwriting decisions; or
6. Accepting fees other than in conjunction with closings.

(b) The prohibitions in (a) above shall not apply to an insured depository institution affiliate of a foreign bank.

3:4-4.4 Permitted activities

(a) For the purposes of N.J.S.A. 17:9A-316 a foreign bank shall not be deemed to transact business or maintain an office in this State by virtue of conducting business in this State through an agent.

(b) For the purposes of N.J.S.A. 17:9A-316E, and this subchapter "conducting business" means:

1. Closing loans in New Jersey provided that:
 - i. The agent is an attorney admitted to practice in New Jersey, a New Jersey-licensed title insurance producer, or an insured depository institution affiliate; and
 - ii. The interest rate charged does not exceed the maximum permitted by N.J.S.A. 2C:21-19(a);
2. Performing appraisals on real property in New Jersey in connection with a loan, provided that the agent or

other individual who performs the appraisal is properly licensed or certified pursuant to N.J.S.A. 45:14F-1 et seq.;

3. Examining the progress of construction on real property in New Jersey that is security for a loan;
4. Soliciting the purchase, negotiating the purchase, or purchasing portfolios of loans or other instruments in the secondary market; or
5. Using the New Jersey court system to enforce the provisions of a loan, to the extent permitted by law.

3:4-4.5 Sellers of retail goods

(a) Subject to (b) below, in connection with the sale of retail goods or services by its own business, a retail seller in this State may:

1. Offer or distribute information from a foreign bank to a customer;
2. Offer or distribute an application to a customer;
3. Receive, accept for transmittal to a foreign bank, or transmit to a foreign bank a customer's application or application information; and
4. Receive fees from a customer in connection with a sale.

(b) A retail seller may engage in the activities set forth in (a) above provided that the conditions set forth below are fulfilled.

1. The foreign bank, with regard to the retail seller's activities:
 - i. Makes the underwriting decision out of State;
 - ii. Does not have an office in this State;
 - iii. Does not display signage in this State;
 - iv. Does not advertise in New Jersey-based media; and
 - v. Does not receive retail deposits from the customer through the seller; and
2. The retail seller, and relevant employees of the retail seller, are licensed in good standing to engage in the activity if a person who is not an employee of a banking institution as defined in N.J.S.A. 17:9A-1, or an entity that is not such a banking institution would be required to be licensed by this State to engage in the same activity.

3:4-4.6 Non-depository affiliates

(a) Subject to (b) below, an entity or an employee of an entity located in this State, that is not an insured depository institution affiliated with a foreign bank, may:

1. Offer or distribute information from the foreign bank to a customer;

2. Offer or distribute an application for banking products or services to a customer;

3. Transmit, or receive, or accept for transmittal to the foreign bank a customer's application or application information; and

4. Receive fees from a customer in connection with banking products or services.

(b) An entity, or an employee of an entity as described in (a) above may engage in the activities enumerated in (a) above provided that the conditions set forth below are fulfilled.

1. The foreign bank, with regard to the entity's or employee's activities:

- i. Makes the underwriting decision out of State;
- ii. Does not have an office in this State;
- iii. Does not display signage in this State;
- iv. Does not advertise in New Jersey-based media; and
- v. Does not receive retail deposits from the customer through the employee or entity. This restriction shall not, however, prohibit the receipt by a foreign bank from such an entity or an employee of such an entity of a transmittal of funds held or controlled by the affiliate in a brokerage account, mutual fund, money market or other non-depository account to a depository account in the foreign bank; and

2. The entity and employee(s) as described in (a) above are licensed in good standing to engage in the activity if a person who is not an employee of a banking institution as defined in N.J.S.A. 17:9A-1, or an entity that is not such a banking institution, would be required to be licensed by this State to engage in the same activity.

3:4-4.7 Emergency cases

(a) The Commissioner may, in emergent cases, permit agents of a foreign bank to conduct activities in this State that would otherwise be prohibited by N.J.A.C. 3:4-4.3, subject to the following conditions:

1. The primary regulator of the foreign bank shall verify to the Department that the bank presents no safety and soundness or consumer protection concerns, and shall agree to notify the Department promptly if such concerns develop during the time the agent is engaging in activities in New Jersey;

2. The primary regulator of the foreign bank shall agree to remain the primary regulator of the foreign bank;

3. The agent activities of the foreign bank in this State are conducted pursuant to the regulatory law of the primary regulator, including powers provisions, except that such activities shall be subject to the general law of New Jersey, including, but not limited to theft, fraud, and criminal law;

4. The approval granted by the Commissioner shall be limited to a specified period, not to exceed 180 days. If concluding agent activities within the specified period would constitute a substantial hardship, the foreign bank may apply to the Commissioner for one or more extensions not to exceed 180 days each;

5. The foreign bank shall agree that the Commissioner may withdraw the approval for cause, provided that the primary regulator has been given notice of such cause and has not taken effective action to correct it or otherwise address it satisfactorily; and

6. The foreign bank shall agree that the Commissioner shall have access to the institution and documents for purposes of determining its compliance with the conditions for admission to the State and whether there have been violations of general state law, provided that the Commissioner has requested documents or information from the primary regulator and has not received the same in a timely manner.

(b) Statements satisfying the conditions in (a) above shall be submitted in writing to the Commissioner as a basis for approval.

3:4-4.8 Penalties

Violation of this subchapter shall subject the foreign bank and the agent to the penalties authorized by law, including, but not limited to, those provided in N.J.S.A. 17:9A-330.