

**CHAPTER 4**  
**DEPOSITORY INSTITUTIONS**

**Authority**

N.J.S.A. 17:1-8, 17:1-15e, 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.2008 d.69, effective February 26, 2008.  
See: 39 N.J.R. 4983(a), 40 N.J.R. 1826(a).

**Chapter Expiration Date**

Chapter 4, Depository Institutions, expires on February 26, 2013.

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

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).

Chapter 4, Depository Institutions, was readopted as R.2008 d.69, effective February 26, 2008. See: Source and Effective Date. See, also, section annotations.

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**SUBCHAPTER 1. CAPITAL REQUIREMENTS**

**3:4-1.1 Purpose and scope**

(a) This subchapter implements the capital requirements of the "Banking Act of 1948," N.J.S.A. 17:9A-1 et seq. and the "Savings and Loan Act (1963)," N.J.S.A. 17:12B-1 et seq.

(b) This subchapter shall apply to all depository institutions.

New Rule, R.2008 d.69, effective April 7, 2008.  
See: 39 N.J.R. 4983(a), 40 N.J.R. 1826(a).

Former N.J.A.C. 3:4-1.1, Definitions, recodified to N.J.A.C. 3:4-1.2.

**3:4-1.2 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 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".  
Recodified from N.J.A.C. 3:4-1.1 by R.2008 d.69, effective April 7, 2008.  
See: 39 N.J.R. 4983(a), 40 N.J.R. 1826(a).  
Former N.J.A.C. 3:4-1.2, Minimum leverage capital requirement, recodified to N.J.A.C. 3:4-1.3.

### 3:4-1.3 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).  
Recodified from N.J.A.C. 3:4-1.2 by R.2008 d.69, effective April 7, 2008.  
See: 39 N.J.R. 4983(a), 40 N.J.R. 1826(a).  
Former N.J.A.C. 3:4-1.3, Minimum risk-based capital requirement, recodified to N.J.A.C. 3:4-1.4.

### 3:4-1.4 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.

Recodified from N.J.A.C. 3:4-1.3 by R.2008 d.69, effective April 7, 2008.

See: 39 N.J.R. 4983(a), 40 N.J.R. 1826(a).

Former N.J.A.C. 3:4-1.4, Unsafe operations, recodified to N.J.A.C. 3:4-1.5.

### 3:4-1.5 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).  
Recodified from N.J.A.C. 3:4-1.4 by R.2008 d.69, effective April 7, 2008.  
See: 39 N.J.R. 4983(a), 40 N.J.R. 1826(a).  
Former N.J.A.C. 3:4-1.5, Unsafe condition, recodified to N.J.A.C. 3:4-1.6.

### 3:4-1.6 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).