

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

**Authority**

N.J.S.A. 17:1-8.1.

**Source and Effective Date**

R.1992 d.326, effective August 17, 1992.  
See: 24 N.J.R. 1665(a), 24 N.J.R. 2834(a).

**Executive Order No. 66(1978) Expiration Date**

Chapter 4, Depository Institutions, expires on August 17, 1997.

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

“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.

“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.

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

“Mutual association” shall have the meaning ascribed to it in N.J.S.A. 17:12B-5.

“Qualifying capital” shall have the same meanings ascribed to it in Appendix A to 12 C.F.R. Part 325.

“Risk weighted assets” for a bank and savings bank shall have the meaning ascribed to it in Appendix A to 12 C.F.R. Part 325, and for a savings and loan association shall have the meaning ascribed to it in 12 C.F.R. 567.6.

“Savings bank” shall have the meaning ascribed to it in N.J.S.A. 17:9A-1(13).

“Tier 1 capital” shall have the meaning ascribed to it in 12 C.F.R. § 325.2(m).

“Total assets” shall have the meaning ascribed to it in 12 C.F.R. § 325.2(n).

**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 to 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; and/or
6. The volume of assets classified as substandard, doubtful or loss, or subject to special mention.

**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 N.J.S.A. 17:12B-177 et seq.

(b) A depository institution which has entered into and is in compliance with a written agreement with the Department of Banking or has submitted to the Department of Banking and is in compliance with a plan approved by the Department of Banking 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 of Banking 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.

### 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 of Banking 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 of Banking 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.

### 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. and/or N.J.S.A. 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).

## SUBCHAPTER 2. COMPENSATION

### Authority

N.J.S.A. 17:1-8.1, 17:9A-8.10, 27.50 and 106; and 17:12B-72.

### Source and Effective Date

R.1993 d.565, effective November 15, 1993.  
See: 25 N.J.R. 3586(a), 25 N.J.R. 5145(a).

### 3:4-2.1 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 same definition as provided in section 1 of P.L. 1948, c.67 (N.J.S.A. 17:9A-1).

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

“Savings and loan association” shall mean a capital stock association established pursuant to L.1974, c.137 (17:12B-244 et seq.).

“Savings bank” shall mean a capital stock savings bank established pursuant to L.1982, c.9 (N.J.S.A. 17:9A-8.1 et seq.).

### 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.