

BANKING
DEPARTMENT OF BANKING AND INSURANCE
OFFICE OF DEPOSITORIES

Procedural Rules
Minimum and Maximum Stock Subscriptions

Adopted Amendment: N.J.A.C. 3:1-2.19

Proposed: November 20, 2006 at 38 N.J.R. 4777(a).

Adopted: April 3, 2007 by Steven M. Goldman, Commissioner, Department of Banking and Insurance.

Filed: April 3, 2007 as R. 2007, d.130, with a technical change not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:9A-1 et seq. and 17:9A-409 et seq.

Effective Date: May 7, 2007.

Expiration Date: June 8, 2011.

Summary of Public Comment and Agency Response:

The Department of Banking and Insurance timely received one written comment from the law firm of Pepper Hamilton (on behalf of Citizens Community Bank).

COMMENT: The commenter expressed concern with the rule and believed that it is ambiguous whether the Commissioner of Banking and Insurance (Commissioner) must find that each factor listed in proposed N.J.A.C. 3:1-2.19(d) has been satisfied in order to find that the stock ownership in excess of the 24.9 percent limit will not be detrimental to the safety and soundness of the depository, or whether satisfaction of a majority of the factors is sufficient. In addition, the commenter believed that it is unclear whether the Commissioner retains discretion, exclusive of the enumerated factors, to approve stock ownership in excess of the 24.9 percent limit on a case-by-case basis. The commenter believed that requiring all

nine factors to be met would be overly restrictive to potential investors and, therefore, inhibit investment in New Jersey institutions. The commenter suggested that the rule be amended to allow the Commissioner to exercise his or her discretion to allow stock subscriptions in excess of the limit where a majority of the factors are satisfied or, regardless of the factors, to allow for the exercise of discretion if the Commissioner finds that exceeding the limit would not be contrary to the safety and soundness of the institution.

Further, the commenter stated that N.J.A.C. 3:1-2.19(d)2, which provides as one of the factors, whether there is a plan by which the individual will reduce his or her ownership to 24.9 percent or less over time, could pose detrimental, and perhaps fatal, consequences for the institution, in the event that all of the factors set forth in the rule are required. Divestiture by a major stockholder would signal to potential stockholders that the institution is no longer a viable investment, which would create difficulties for the institution in raising additional capital. The commenter suggested that the factor at N.J.A.C. 3:1-2.19(d)2 should be eliminated or, in the alternative, should not be a mandatory consideration.

The commenter further stated that inclusion of a stock divestiture plan as a condition of waiving strict compliance with the stock purchase limits would put New Jersey-chartered institutions at a competitive disadvantage with national banks and Federal savings and loan associations. The commenter cited as examples rules promulgated by the Office of the Comptroller of the Currency (OCC) at 12 CFR §5.50(e)(3) and (4). The commenter noted that the OCC does not include stock divestiture as a condition to be imposed or considered in determining whether to approve or deny an application to exceed the 24.9 percent limit. The commenter thus suggested that, given the safety and soundness risks inherent in forced divestiture and the effectiveness of restrictions on control present in placing stock into a

voting trust, the Department should eliminate any divestiture requirement where a voting trust is in effect.

RESPONSE: Upon review of the commenter's concerns, the Department has determined that no change is required. The rule lists those factors that the Commissioner shall consider, either singly or in combination, in determining whether such ownership would be detrimental to the depository. In addition, the Commissioner may consider factors beyond those expressly listed, as is noted by the phrase "without limitation." Accordingly, the Department believes that the rule as drafted does not mandate the results envisioned by the commenter and indeed addresses the commenter's concerns. Finally, the Department is sensitive to the issues raised by the commenter regarding the possible negative impact of an ordered divestiture. The Department will consider such possible impact in evaluating each plan for shareholder divestiture.

COMMENT: The commenter suggested that, if the restriction on ownership of stock in excess of 24.9 percent is eliminated in its entirety or where the divestiture requirement is eliminated, the Commissioner reevaluate prior instances in which an individual was permitted to exceed the 24.9 percent limit as a condition of chartering the subject institution, to determine whether application of the new standard would warrant modification or elimination of previously imposed restrictions on ownership.

RESPONSE: This comment appears to be moot for the reasons substantially set forth above. Where specific owners are under restrictions with regard to the amount of their stock ownership by virtue of an order or decision of the Department or other banking regulatory agency, those restrictions are not affected by these amendments.

Federal Standards Statement

Federal requirements and standards are not applicable to the requirements addressed by these adopted amendments. The adopted amendments relate to applications from entities for a charter as a New Jersey State-chartered depository pursuant to Title 17 of the New Jersey Statutes and subsequent ownership thereof.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

3:1-3.19 Minimum and maximum stock subscriptions

(a) – (c) (No change.)

(d) On or after *[the effective date of these amendments)]* ***May 7, 2007***, no individual may subscribe, directly or indirectly (which term shall include, but not be limited to, ownership of a holding company that owns a depository institution, and ownership through the individual's spouse, children, siblings or parents, or business associates acting in concert), for stock in excess of 24.9 percent of the total voting shares of the depository institution, either at formation of the depository or any time subsequent thereto, except where the acquisition is made pursuant to N.J.S.A. 17:9A-411b. Notwithstanding this restriction, the Commissioner may approve the direct or indirect ownership by an individual of more than 24.9 percent of the voting shares of a depository institution if he or she finds that such ownership will not be detrimental to the safety and soundness and proper corporate

governance of the depository. In making this determination, the Commissioner shall consider, without limitation, whether:

1. – 9. (No change from proposal.)

(e) (No change from proposal.)

jc07-04/inoregs