

BANKING  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF BANKING

General Provisions  
State Bank and Savings Bank Parity

Reproposed Repeal and New Rule: N.J.A.C. 3:6-12.1

Reproposed Repeals: N.J.A.C. 3:6-12.2 and 12.3

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and 17:9A-24b.1

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2003-300

Submit comments by October 3, 2003 to:

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The agency proposal follows:

**Summary**

The Department is responsible for promoting the safety and soundness, as well as the growth and efficiency, of State-chartered depositories. Because our depositories have strong Federal and out-of-State competitors which also operate in New Jersey, it is important that they be allowed to compete fairly

with their counterparts, and that a level playing field between the institutions with different types of charters be preserved. In the past, such a competitive arrangement has contributed to the ability of State-chartered depositories to provide a full range of financial services to the citizens of this State. It has produced a dynamic, innovative market in the financial services industry, an environment that has served consumers well by making readily available a wide variety of products and services. Thus, this parity proposal is intended to maintain the ability of New Jersey banks and savings banks to effectively compete with Federal and non-New Jersey state-chartered banking institutions in this State.

The Department of Banking and Insurance (Department) proposes to repeal N.J.A.C. 3:6-12.1 and replace it with a new rule to implement the parity provisions enacted in P.L. 2000, c. 69, §3 (herein referred to as the "Parity Act" and codified at N.J.S.A. 17:9A-24b.1), and to repeal N.J.A.C. 3:6-12.2 and 12.3, which are current parity provisions superseded by this proposal. The Department published a proposal on this topic on April 15, 2002 (34 N.J.R. 1491(a)) and received 55 comments. The Department carefully considered these comments and decided to incorporate many of them into the rule. Because the changes in the original proposal were substantial, the Department now repropose the new rule and repeals.

The Department received comments on its initial proposal from David McMillin, Legal Services of New Jersey, Inc.; Geoffrey Connor and Robert Jaworski, N.J. State Bar Association; Dennis Casale, Pepper Hamilton, LLP;

Samuel J. Damiano, N.J. League of Community Bankers; Warner A. Knobe, The Bank – Hometown Banking; Thomas C. Gregor and Ralph L. Straw, Jr., United Trust; Steven A. Reichman, Professional Insurance Agents of N.J.; and Allen G. Braithwaite, III, Merrill Lynch Bank & Trust Co. In addition, the Department received comments from the following on behalf of Hudson United Bank: Lynn Van Borkulo-Nuzzo, Esq., James T. Rudgers, Thomas J. Shara, Dorothy Johnson Simon, Gary Kalmer, Richard Shaw, Dawn Tolomeo, Lily Smith, Karen M. Robinson, Mary Anton, Constance M. Russo-Martin, Cinthia Davila, Alisa S. Joseph, Janet M. Gerrity, Stephanie G. Moore, Pamela S. Norman, Maureen S. Michulski, Anna Padilla, Charles Meisse, Beth Berkenfeld, Andy Blecher, Joann Burgess, Jacqueline Cahill, Karen G. Bergen, Deanna Cresta, George Litzas, Simon Lee, Pat Langone, Susan Labar, Julius Kwaim, Henry T. Kogenisaski, Sean Kirrane, Matthew Hurley, William A. Houlihan, Lisa D. Green, Danielle Gallinelli, Carl Ferraro, Oladee Efurkyn, Colleen V. Cross, Maria L. Cruz, Thomas Meyer, Paul J. Pfeffeerkorn, Madeline Sales, Ronald J. Wood, Lameka Blash, Richard Alban, and James R. Mayo.

1. COMMENT: One commenter objected to the proposal generally, saying that it would place State chartered institutions at a competitive disadvantage with their Federally chartered counterparts.

RESPONSE: The Department shares the commenter's concern about maintaining the competitiveness of the State charter. Upon review of the prior proposal, the Department has made substantial revisions in order to

assure that the reproposed new rule and repeals do not disadvantage State chartered institutions.

2. COMMENT: One commenter recommended restructuring the proposal so that it defines "powers, rights, benefits or privileges" rather than carving out specific exceptions to the parity power granted in the statute.

RESPONSE: The Department has chosen not to define the term "powers, rights, benefits or privileges." It has taken this course in this proposal because, while the term is commonly used in the banking industry, there are no New Jersey statutes or rules that define it and there is no Federal definition. The Department has chosen not to undertake such a definition in the first instance. However, the Department does provide guidance by specifying certain activities which, as of this time, it has identified as not being "powers, rights, benefits or privileges." As the banking and financial services industries evolve, the Department may revise and/or supplement this delineation of activities that are not considered a "power, right, benefit or privilege."

3. COMMENT: Several commenters recommended withdrawing the proposal except to the extent that it deletes the current "not contrary to law" language in N.J.A.C. 3:6-12.1.

RESPONSE: The Department disagrees. In its current form, the reproposed new rule and repeals are consistent with common usage of the term "powers, rights, benefits and privileges" and serve an important purpose in

clarifying the meaning of those terms for our regulated institutions. Furthermore, the provisions are necessary to protect the regulatory authority of the Department and to protect consumers. The Department believes that the repropoed new rule and repeals reflect the legislative intent behind the Parity Act.

4. COMMENT: Several commenters stated their opinion that many of the proposed provisions are beyond the authority of the Department to adopt because there is no authority in the Parity Act to specify exceptions to the parity power that was granted by that statute.

RESPONSE: In the repropoed new rule and repeals, the Department uses an approach that is consistent with the established authority of the Department to provide guidance to regulated entities concerning the statutes it administers.

5. COMMENT: One commenter objected to the proposed rule's provisions that would have preserved State statutes regarding insurance and real estate licensing. The commenter thought that this was contrary to the Gramm-Leach-Bliley Act and created an uneven playing field between State and Federally-chartered institutions.

RESPONSE: The Department disagrees that the prior proposal was contrary to the Gramm-Leach Bliley Act (GLB). The Department recognizes

the 13 “safe harbors” under GLB as well as the general strengthening of the state regulatory structure that functional regulation under GLB involves.

The repropoed rule provides that if, under Federal law, the exercise of a power, right, benefit or privilege is subject to compliance with state law in the state in which the national bank, Federal savings bank or Federal savings association exercises the power, right, benefit or privilege, then the exercise of the power, right, benefit, or privilege in this State shall be subject to New Jersey law. This language, the Department believes, fulfills the intent of the parity statute to provide a level playing field for State-chartered institutions while providing appropriate protections for New Jersey consumers.

Finally, the repropoed rule would require that when parity with a State-chartered institution is used, the entity and individuals who will engage in the activity must be licensed in New Jersey if New Jersey law requires such licensure.

6. COMMENT: One commenter expressed support for the provisions providing that parity could not be used to avoid the requirements of New Jersey's insurance and real estate licensing laws.

RESPONSE: The Department appreciates the expression of support for the proposal. The repropoed rule continues those protections by requiring licensing in New Jersey in connection with the exercise of parity with out-of-State state-chartered institutions. In the future, if regulatory or consumer

protection issues arise with regard to insurance or real estate licensing, the Department will consider amendments to the rule in light of those issues.

7. COMMENT: Several commenters objected to the provision that would have prohibited the use of parity with regard to loans-to-one-borrower and investment limits. They argued that these activities are within the commonly accepted meaning of "powers, rights, benefits or privileges." In addition, they noted that the section of the Banking Act of 1948 (N.J.S.A. 17:9A-62H) that addresses investment limitations contains a provision directing that the goal of any regulations adopted in this area shall be to create and maintain substantial equality between State-chartered banks and savings banks and their Federally-chartered counterparts.

RESPONSE: The Department agrees. The provision has been removed in the repropoed new rule and repeals.

8. COMMENT: One commenter objected to the provision that would have prevented a State-chartered bank or savings bank from using parity to avoid compliance with New Jersey law concerning safety and soundness because he believes that the provision is overly broad. He noted that "virtually everything" in the Banking Act of 1948, N.J.S.A. 17:9A-1 et seq., is related to safety and soundness in some way.

RESPONSE: The Department agrees and in the repropoed rule has eliminated the provision concerning New Jersey laws pertaining to safety and

soundness. Note, however, that a related provision remains that would preserve the Department's supervisory authority to prohibit or otherwise regulate, on an individual basis, any activities of a New Jersey State-chartered bank or savings bank that adversely impact safety and soundness. The Department regards this authority as fundamental to its regulatory mission.

9. COMMENT: One commenter objected to the provision in the prior proposal that would prohibit a State-chartered bank or savings bank from using parity to engage in activities beyond those listed in the Department's leeway regulation, N.J.A.C. 3:11-11.5, because, according to the commenter, this provision would have the effect of creating an uneven playing field between State chartered banks and savings banks and Federally chartered institutions.

RESPONSE: The Department agrees. The Department shares the commenter's concern about unequal treatment of State-chartered banks and savings banks compared to their Federal counterparts. Furthermore, the Department believes that it can address any safety and soundness concerns it might have on an individual basis through its supervisory authority. Therefore, the Department has removed the provision in the repropose new rule pertaining to leeway investments.

10. COMMENT: One commenter objected to the provision that would prohibit State chartered banks and savings banks from using parity to avoid the requirements of the Department's mortgage processing regulations,



N.J.A.C. 3:1-16. As an example, the commenter noted that Federally-chartered depositories are able to charge a pre-qualification fee for conducting a credit report, while New Jersey State-chartered banks and savings banks are not able to do so because that fee is not permitted by the mortgage processing regulations. The commenter believes that this creates an uneven competitive environment for those State-chartered depositories.

RESPONSE: The Department shares the commenter's concern with the uneven playing field between certain State and Federal depositories that may have been created by the prior proposal. Federal regulators have taken the position that the New Jersey mortgage processing regulations do not apply to their institutions. In light of these opinions, the Department has, in the repropose new rule, eliminated the provision referring to the mortgage processing regulations.

For these same reasons, the Department eliminated the reference in the prior proposal to the State's prohibition on prepayment penalties (N.J.S.A. 46:10B-2).

11. COMMENT: One commenter believes that the parity statute does not have the effect of repealing "all important New Jersey State consumer protection laws in effect now and in the future." The commenter favors a general comprehensive provision that would purport to protect all consumer protection laws rather than specifying a list of items not reachable through parity as the Department did in the prior proposal.

RESPONSE: The Department agrees with the commenter's concern about the effects of parity on New Jersey consumer protection law, but the Department disagrees with adding a general provision regarding consumer protection. The difficulty with taking the commenter's approach is that almost all banking laws enforced by the Department are consumer protective in a general sense, even those that would seem to apply only to the Department's direct regulation of the depository, such as the laws pertaining to safety and soundness. Such a broad interpretation of which laws are consumer protective would have the effect of encompassing almost all banking law and that was clearly not the intention of the Legislature when it enacted the Parity Act. The fundamental goal of the Legislature was to create a level playing field between State-chartered and Federally-chartered institutions.

In creating this level playing field, the Legislature did not, the Department believes, intend to preempt criminal law, the New Jersey Consumer Checking Account law, the New Jersey Homeowners Security Act, or laws authorizing activities falling outside the common meaning of "powers, rights, benefits, or privileges." To identify these, the Department has opted, in the repropoed new rule and repeals, to utilize a specific list so as to provide the clearest possible guidance regarding whether a particular activity is reachable by parity. In the future, the Department will propose amendments to the rule if they are needed as a result of new legislative action.

12. COMMENT: One commenter read the prior proposal to require Departmental approval before a "power, right, benefit or privilege" authorized for a Federally-chartered bank, savings bank or savings association may be exercised by a State-chartered bank or savings bank. This parity, the commenter believes, is automatic under the Parity Act.

RESPONSE: The Department disagrees with the commenter's reading of the prior proposal. The Department agrees with the commenter that parity with Federally-chartered institutions is automatic under the Parity Act, provided that it concerns a "power, right, benefit or privilege" as delineated in the repropose new rule and repeals. In addition, the Department reminds its regulated depositories that it has the authority to bar individual State-chartered institutions from engaging in activities if the Department determines, in the exercise of its supervisory judgment, that engaging in the activity adversely impacts the safety and soundness of the institution. The Department may also set limitations on the depository's engagement in such activities.

13. COMMENT: One commenter recommended that the Department clarify when a Federally-chartered bank, savings bank or savings association would be "authorized" to engage in an activity. The commenter stated activities should only be deemed "authorized" for those Federally-chartered institutions through statutory preemption, court decision or rule-making by a Federal regulatory agency.

RESPONSE: The Department does not think additional language is needed as the indicators of Federal authorization that are cited by the commenter are commonly accepted. The Department notes that court decisions, other than so called “common law” decisions, are based on the court's interpretation of law (that is, an underlying statute, or rule), and do not, in a strict sense, authorize particular activities on their own. The laws on which the decisions are based are the true support for the activity. The same analysis applies to opinion letters issued by Federal regulatory agencies.

14. COMMENT: One commenter wants the Department to make public all applications to exercise a power, right, benefit or privilege authorized for an out-of-State, state chartered bank, savings bank, a savings association, by placing them on the Department's website.

RESPONSE: The Department will post a notice of all applications to exercise a power, right, benefit or privilege exercised by an out-of-State bank, savings bank or savings association on the Department's website and will mail a copy of the notice to the New Jersey Bankers Association and the New Jersey League of Community Bankers. The website or notice, however, would exclude proprietary information. Furthermore, under the New Jersey Right to Know Law, N.J.S.A. 47:1A-1 et seq., and the repropoed new rule and repeals, applications are available to the public except for proprietary information and personal financial information.

The repropoed new rule and repeals would clarify the concept of a “power, right, benefit or privilege.” Because the grant of parity contained in the Parity Act applies only to “powers, rights, benefits or privileges” that are possessed by Federally-chartered or out-of-State state banks, savings banks or savings associations, the rule has the effect of clarifying which powers are reachable through parity for New Jersey State-chartered banks and savings banks.

The purpose of the Parity Act is to preserve a level playing field for New Jersey State-chartered banks, savings banks and savings associations so they can continue to compete effectively with their Federally chartered counterparts and to provide a full range of innovative services to New Jersey consumers. The Department has chosen not to define the term “powers, rights, benefits or privileges.” It has taken this course in this proposal because the term is in common use in the banking industry and the Department’s research has disclosed no New Jersey statutes or rules that define it, and no Federal definition. The Department chose not to undertake such a definition in the first instance. However, the Department has noted what is excluded from the term “powers, rights, benefits or privileges” based on common usage and practice, as interpreted by the Department.

Consistent with the Parity Act, the repropoed new rule addresses both New Jersey State chartered bank and savings bank parity with Federally-chartered and out-of-State state-chartered banks, savings banks, and savings associations. Any such power shall be exercised upon the same terms and

subject to the same conditions as are authorized for Federally-chartered or out-of-State, state-chartered banks, savings banks, and savings associations.

To exercise a power, right, benefit, or privilege authorized for an out-of-State, state-chartered bank, savings bank, or savings association, a New Jersey State-chartered bank or savings bank would be required to submit a notice of intent to the Department, supported by information specified in the repropoed new rule. Within 45 days, the Commissioner may approve, disapprove, or condition the exercise of the activity based on safety and soundness grounds, failure to comply with New Jersey licensing requirements or on any other ground established by administrative rule.

The repropoed new rule and repeals would clarify that certain areas of this State's regulation of banks and savings banks are not reached by the Parity Act because they are not "powers, rights, benefits or privileges." These proposed limitations apply to a State-chartered bank or savings bank's ability to exercise a power, right, benefit or privilege authorized for either Federal or out-of-state, State-chartered institutions.

The Department notes, for example, that some national banks operating in New Jersey have claimed that they are exempt from the requirement of offering New Jersey Consumer Checking Accounts established in N.J.S.A. 17:16N-1 et seq. Consumer Checking Accounts are low cost personal checking accounts that require only minimal amounts of money to open and maintain. The accounts provide a substantial benefit to young, low income, and elderly people. The Department does not believe that the Legislature intended to

permit New Jersey State chartered banks and savings banks to use parity to avoid their responsibilities to comply with this consumer protection law. Accordingly, in the repropose new rule, the Department has identified this law as one that may not be avoided through the use of parity.

Similarly, the repropose new rule would provide that State-chartered banks and savings banks may not use parity to avoid the limitations set forth in the New Jersey Criminal Code, N.J.S.A. 2C:1-1 et seq., including but not limited to limitations on criminal usury set forth at N.J.S.A. 2C:21-19. The Department does not believe that avoiding a state's criminal law is properly regarded as a "power, right, benefit or privilege"; hence, the provision in the repropose new rule that would preserve the State's criminal usury limitation.

The Department has concluded that the Legislature did not intend to allow as a "power, right, benefit, or privilege" activities that would violate the New Jersey Home Ownership Security Act of 2002, P.L. 2003, c.64. In reaching this conclusion, the Department is sensitive to the subject matter of the act, to the public concern over predatory lending, to the fact that the law is a general, consumer protection law of the state rather than a financial services law, and accepted usage of the term "power, right, benefit or privilege."

The repropose new rule also establishes grounds for disapproving an application to exercise, or conditioning the exercise of a power, right, benefit or privilege in the case of parity with a State-chartered depository, in accordance with rulemaking authority specifically granted in the Parity Act. The grounds

established are safety and soundness, and a failure to comply with New Jersey licensing requirements.

A 60-day comment period is provided in this notice of proposal and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the notice is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

#### **Social Impact**

The repropose new rule and repeals would apply to all New Jersey State-chartered banks and savings banks, providing them substantially competitive parity with their Federal and out-of-State counterparts. The repropose new rule and repeals will permit the Department to continue to require banks and savings banks to adhere to safe and sound banking practices and certain key consumer protections. The repropose new rule and repeals should therefore have a beneficial social impact on the banking industry and on consumers. Consumers should gain access to a wider variety of financial services and products, and should benefit from a more innovative banking system.

#### **Economic Impact**

The Department expects that the ability of State-chartered banks and savings banks to exercise powers, rights, benefits, and privileges authorized now or in the future for Federally-chartered or out-of-State, state-chartered institutions will have a positive economic impact. New Jersey banks and



savings banks will be able to offer services and products that are not specifically authorized by New Jersey statutes and rules, but which may enable New Jersey banks and savings banks to better serve their customers. In so doing, they should increase their competitiveness with their Federal and out-of-State counterparts and, depending upon the efficiency of their operations, their market share and profitability.

Banks and savings banks that seek to exercise parity with out-of-State, state-chartered institutions will incur costs in order to submit a notice of intent with the required supporting information. The Department expects that associated administrative costs will be minimal. Consumers should benefit economically from resulting increases in service and product options and marketplace competition.

#### **Federal Standards Analysis**

Banks and savings banks may, in the future, become subject to Federal standards pursuant to a proper exercise of parity in accordance with the repropose new rule and repeals. While the Federal standards applicable in such cases cannot be identified at this time, there will be no applicable State standards that may exceed them because parity with Federal institutions may only be exercised pursuant to the pertinent Federal standards.

The repropose new rule and repeals, however, also provide that certain State statutory and regulatory consumer protection requirements may not be avoided through parity, for example, state criminal usury limitations,

protections against predatory lending and the requirement to offer New Jersey Consumer Checking Accounts. In some cases, these limitations on activities by State-chartered banks and savings banks may exceed Federal standards applicable to Federally-chartered banks, savings banks, and savings associations. The limitations in the repropoed new rule may restrict New Jersey banks and savings banks from certain types or levels of activity in which their Federal counterparts may conceivably be permitted to engage at the present or in the future. Notwithstanding these proposed limitations, State-chartered banks and savings banks would, because of parity, be able to offer many new services and products to New Jersey consumers not specifically authorized by applicable New Jersey statutes and rules, and reap the resulting economic benefits.

The Department views the proposed limitations as reasonable and necessary to discharge the Commissioner's statutory responsibility to promulgate rules for the appropriate regulation of New Jersey State-chartered banks and savings banks. Specifically, the Department is required to implement the legislative authorization in the Parity Act to promulgate rules with the objective of achieving substantially competitive parity between State-chartered and Federally-chartered institutions, with the goal of maintaining a vigorous dual banking system. Solid benefits will be afforded to New Jersey consumers by the continued viability of laws addressing consumer checking accounts, criminal law including usury, and high cost residential mortgages.

Finally, the Department sees no technological obstacle to the regulated industry's continued compliance with these limitations.

### **Jobs Impact**

The Department does not anticipate that any jobs will be lost as a result of the repropoed new rule and repeals. If banks or savings banks increase their business or market share as a result of the parity permitted by the repropoed new rule and repeals, additional jobs may be generated.

The Department invites commenters to submit any data or studies concerning the jobs impact of the repropoed new rule and repeals together with their written comments on other aspects of this proposal.

### **Agriculture Industry Impact**

The Department does not expect any agriculture industry impact from the repropoed new rule and repeals.

### **Regulatory Flexibility Analysis**

Some New Jersey banks and savings banks are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The repropoed new rule and repeals would impose compliance requirements on these entities if they seek to exercise a power, right, benefit or privilege authorized for out-of-State, state-chartered banks, savings banks or savings associations. The bank or savings bank would be required to provide notice to

the Commissioner of its intent to exercise such power, right, benefit or privilege and to provide a description of the intended activity, a copy of the regulatory authority that governs the class of the out-of-State institution that the bank or savings bank proposes as the basis of parity, and a business plan and statement describing the general or specific experience of the bank or savings bank indicating how the proposed exercise of parity will be conducted in a manner consistent with safe and sound banking practices. The Department believes that this information is necessary in all cases for it to perform its supervisory function.

If banks or savings banks seek to exercise parity with out-of-State banks, savings banks or savings associations, professional assistance in the form of attorneys and accountants may be necessary. The cost of compliance will vary from professional to professional depending on the services needed.

The repropoed new rule and repeals will grant New Jersey banks and savings banks flexibility, yet require them to operate in a manner that is responsible to the industry, its customers and the general public. The Department does not believe that the compliance requirements are unduly burdensome and finds that they are consistent with prudent banking practices. The purpose of these requirements does not vary based upon business size. Accordingly, no differentiation based on business size is provided.

### **Smart Growth Impact**

The repropoed new rule and repeals have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposed repeals of N.J.A.C. 3:6-12.2 and 12.3 may be found in the New Jersey Administrative Code at N.J.A.C. 3:6-12.2 and 12.3.

Full text of the repropoed repeal and new rule at N.J.A.C. 3:6-12.1 follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

3:6-12.1 State bank **and savings bank** parity with [national banks] **Federal and out-of-State institutions**

[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 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 and Insurance 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 New Jersey Bankers Association and the New Jersey League Community and Savings Bankers, and/or their successor organizations, if any, for publication. The Commissioner of Banking and Insurance 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.]

**(a) Banks and savings banks may exercise those powers, rights, benefits or privileges authorized as of (the effective date of this rule) and thereafter for national banks, Federal savings banks or Federal savings associations, either directly or through a financial subsidiary or other subsidiary, to the same extent and subject to the same limitations as national banks, Federal savings bank or Federal savings associations may exercise those powers, rights, benefits or privileges. Pursuant to P.L. 2000 c. 69, § 3 (N.J.S.A. 17:9A-24b.1), banks and savings banks may exercise such powers, rights, benefits or privileges, consistent with (c) below, notwithstanding the provisions of N.J.S.A. 17:9A-1 et seq. or any other law. If, under Federal law, the exercise of a power, right, benefit or privilege is subject to compliance with state law in the state in which the national bank, Federal savings bank or Federal savings association exercises the power, right, benefit or privilege, then the exercise of the**

power, right, benefit, or privilege in this State shall be subject to New Jersey law.

(b) Banks and savings banks may exercise those powers, rights, benefits or privileges as of (the effective date of this rule) and thereafter authorized for out-of-State banks, savings banks or savings associations either directly or through a financial subsidiary or other subsidiary, to the same extent and subject to the same limitations as out-of-State banks, savings banks or savings associations may exercise those powers, rights, benefits or privileges, provided that before exercising any such power, right, benefit or privilege, the Commissioner has approved, by rule, the exercise of such a power, right, benefit or privilege by banks and savings banks generally, or the bank or savings bank provides notice of its intent to exercise such a power, right, benefit or privilege to the Commissioner and, on a case by case basis, the Commissioner either approves the activity or does not determine, within 45 days of his or her receipt of such notice, that the power, right, benefit or privilege is not to be exercised by the bank or savings bank on one or more of the grounds specified in (d) below. Pursuant to P.L. 2000 c. 69, § 3 (N.J.S.A. 17:9A-24b.1), banks and savings banks may exercise such powers, rights, benefits or privileges, consistent with (c) and (d) below, notwithstanding the provisions of N.J.S.A. 17:9A-1 et seq. or any other law. If the exercise of a power, right, benefit or privilege is subject to compliance with state licensing law in the state to which the institution looks for the authority

to exercise the power, right, benefit or privilege, then the exercise of the power, right, benefit, or privilege in this State shall be subject to applicable New Jersey licensing law regulating the conduct in which the bank or savings bank seeks to engage.

(c) "Power, right, benefit or privilege" shall not mean any activity that would fail to comply with or would violate:

1. The New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq., including, but not limited to, the criminal usury limits established at N.J.S.A. 2C:21-19 as applied to loan products;

2. New Jersey statutes and rules providing for the structure and corporate governance of banks and savings banks, including, but not limited to, statutes and rules governing amendments of certificates of incorporation, adoptions of bylaws, rights of shareholders or members, membership of boards of directors, closing of branch offices, establishing of de novo branch offices by foreign banks, applications where there is a supervisory concern, and requests for approvals or no objection opinions where there is a supervisory concern;

3. New Jersey statutes and rules providing the Department with supervisory powers over banks and savings banks with regard to safety and soundness and other matters, including, but not limited to, the power to issue orders and apply for relief from a court of competent jurisdiction established at N.J.S.A. 17:9A-266 et seq., and the power to require reports



and examination by the Department pursuant to N.J.S.A. 17:9A-252 et seq. and similar law;

4. The provisions of N.J.S.A. 17:16N-1 et seq. and any rules regarding Consumer Checking Accounts; and

5. The New Jersey Homeownership Security Act of 2002 (P.L. 2003 c. 64).

(d) Prior to the exercise of any power, right, benefit, or privilege exercised by an out-of-State bank, savings bank, or savings association, a bank or savings bank shall submit a notice of intent for the Commissioner's approval. Such notice of intent shall include: a description of the intended activity; a copy of the statutory or regulatory authority, including any pertinent regulatory interpretation of such authority, that governs the out-of-State institution that the applicant bank or savings bank proposes as the basis for such exercise of parity; and a business plan and statement of the general or specific experience of the applicant that establishes how such exercise of parity would be conducted in a manner consistent with safe and sound banking practices. The items submitted as part of the business plan and the statement of experience shall be treated as confidential by the Department and shall not be public records pursuant to N.J.S.A. 47:1A-1 et seq. The Commissioner may disapprove the exercise of any power, right, benefit or privilege on the grounds of: an incomplete notice of intent, safety and soundness, failure to comply with New Jersey licensing requirements, or other grounds as

**provided in this rule. The Commissioner may condition the exercise of any power, right, benefit or privilege on the grounds of safety and soundness, compliance with New Jersey licensing requirements, or on other grounds as provided in this subchapter.**

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