

BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING

Conversions of Associations

Proposed Readoption with Amendments: N.J.A.C. 3:32

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

Authority: N.J.S.A. 17:1-8, 8.1 and 15e, 17:12B-1 et seq. and 17:12B-319.

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

Proposal Number: PRN 2003-454

Submit comments by: January 16, 2004 to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to readopt and amend N.J.A.C. 3:32, which is scheduled to expire on April 27, 2004 pursuant to N.J.S.A. 52:14B-5.1c. The Department of Banking and Insurance has reviewed Chapter 32 and, subject to the amendments noted below, has determined that the rules set forth therein are necessary, reasonable and proper for the purpose for which they were originally promulgated.

Chapter 32 implements the Savings and Loan Act (1963), N.J.S.A. 17:12B-1 et seq., which regulates savings and loan associations. Subchapter 1 provides the procedure by which an insured mutual association may convert to a capital stock association. Applications and other forms provided by and filed with the Office of Thrift Supervision, a Federal agency, are required to be forwarded to the Commissioner as part of the application process for preliminary approval, together with the required fee.

Subchapter 1 also requires a mutual association making such a conversion to comply with certain specified conditions and procedures. A mutual association applying for conversion must adopt a

resolution to that effect, approved by a two-thirds vote of its board of directors. In addition, the conversion plan must be fair and equitable to all members and include sufficient provisions to protect the interests of the depositors of the prospective capital stock association. If the Commissioner approves the preliminary application, he or she is required to issue a notice of "intent to approve," subject to the affirmative vote of a majority of eligible members and compliance with applicable law.

Subchapter 1 also sets forth parameters for members' entitlement to vote, times when special meetings may be called, and the manner in which voting may take place concerning the conversion, the adoption of bylaws and the election of officers, in person or by proxy. In addition, this subchapter defines persons eligible to purchase shares of stock, the price of stock, and designates qualifications for independent persons who will establish the prices of the stock. N.J.A.C.3:32-1.4(d) is proposed to be amended to require that specific information regarding the special meeting about the conversion be provided to the Department. The Department believes that its receipt of the information will enable it to review the results of the meeting in a more effective manner. N.J.A.C. 3:32-1.6 is proposed to be amended to require that the date of determination of an eligible account holder be increased from 90 days to one year prior to the approval of the plan of conversion. This amendment is proposed because it reduces the incidence of speculation in the new stock to be issued by a converting association. In addition, the Department notes that the one year limit is consistent with Federal law regarding converting Federal associations. N.J.A.C. 3:32-1.10 is proposed to be amended to update the reference to the fee schedule in Chapter 1, which was revised as part of the recent readoption of that chapter.

Subchapter 2 sets forth at N.J.A.C. 3:32-2.3(a) the information that must be included in the application of an association or mutual association applying to convert to a savings bank. This consists of the following: a certified copy of the resolution of the board of directors authorizing the conversion; a certified copy of the resolution adopted by the stockholders or members; a certificate of incorporation for the converted institution; copies of all applications for Federal regulatory approval and all approvals required in connection with the conversion, or a statement or opinion of counsel for the association that no Federal regulatory approvals are required; and an application fee as set forth in N.J.A.C. 3:1-2.24. N.J.A.C. 3:32-2.3 is proposed to be amended to update the reference to the fee schedule in Chapter 1 which was amended during the recent readoption of that chapter.

Subchapter 3 sets forth the rules pertaining to mutual state association holding companies. Such an entity is defined at N.J.A.C. 3:32-3.1 as being formed by a mutual state association pursuant to N.J.S.A. 17:12B-298 through 17:12B-318 and having its principal office of business in New Jersey. A definition of "subsidiary holding company" is proposed to be added to the definitions at N.J.A.C. 3:32-3.1. Such a company may be used in the ownership structure of a mutual state association, and the Department felt it was appropriate to define it with clarity at this point in time. The methods that may be followed by the board of directors of an organizing mutual state association in applying to the Commissioner to form a mutual state association holding company are set forth at N.J.A.C. 3:32-3.2. This section is also proposed to be amended to add another method of forming a mutual state association holding company. A new paragraph at N.J.A.C. 3:32-3.2(a)4 is proposed to be added to accomplish this addition. The Department believes that the additional method will give applicants more flexibility in choosing a business form, while allowing the Department to properly supervise such a new entity. A new N.J.A.C. 3:32-3.2(b) is proposed to be added that would impose the requirements of N.J.S.A. 17:12B-261 and N.J.A.C. 3:32 in cases where the conversion provides for minority stock issuance by either the subsidiary holding company or by the capital stock state association. This establishes procedural protections for conversions involving mutual state association holding companies.

Application requirements are detailed at N.J.A.C. 3:32-3.3. Information that must be included in the application consists of the following: a description of the proposed formation of the mutual state association holding company; a certified copy of the resolution of the board of directors of the organizing mutual state association authorizing the application by a two-thirds vote of the board; a certificate of incorporation for the mutual state association holding company containing specified information; proposed by-laws of the surviving subsidiary capital stock state association and mutual state association holding company; copies of any applications for establishment of a mutual state association holding company filed with any Federal regulator; and an application fee of \$10,000.

Criteria for approval of the application by the Commissioner is stated at N.J.A.C. 3:32-3.4. N.J.A.C. 3:32-3.5 governs the filing of certificates of incorporation for any subsidiary capital stock state association. Provisions relating to the board of directors and officers of mutual state association holding companies are set forth at N.J.A.C. 3:32-3.6 and 3.7, respectively. N.J.A.C. 3:32-3.8 provides for the

division and distribution of any surplus that is deemed by the board of directors of the mutual state association holding company or the Commissioner to be in excess of the amount required for the operation of the holding company.

The Department's rule proposal provides for a comment period of 60 days, and therefore, pursuant to N.J.A.C. 1:30-3.3(a)5 is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The rules proposed for readoption with amendments continue to provide a mechanism for a mutual savings and loan association to convert to a stock savings and loan association and also for the conversion of associations to savings banks. The rules are intended to ensure that, upon such conversion, the depository remains in place with no adverse impact on the community it serves.

The mutual holding company form of ownership promotes the expansion of institutions by authorizing and facilitating their ability to acquire and sell subsidiary depositories. In addition, it provides another method for an institution to attract capital, thereby adding to the safety and soundness of the institution. These rules proposed for readoption, therefore have a beneficial social impact.

The proposed amendments to N.J.A.C. 3:32-1.4 and 1.6 provide additional consumer protection and protection of small depositors. They also foster confidence in transactions involving mutual state associations. These amendments therefore have a beneficial social impact. The amendments proposed at N.J.A.C. 3:32-3 provide alternate ways to form mutual state association holding companies. They encourage options and give these entities more flexibility in the current market place. Therefore they have a beneficial social impact.

Economic Impact

The rules proposed for readoption with amendments makes no change in the previously established fees for conversions. Such fees remain necessary to reimburse the Department for the administrative costs incurred in reviewing the application and performing other statutory responsibilities. The application fee for forming a mutual state association holding company continues to be \$10,000. This fee is necessary to reimburse the Department for the administrative expenses of processing the

application. Some institutions may use attorneys and/or accountants to assist in a conversion application. Costs will vary based on the professional chosen and the services requested.

The proposed amendments impose a small additional economic impact on mutual associations that are converting to a capital stock association in that an additional certified statement concerning certain information regarding the vote on the conversion together with a copy of the resolution relating to the plan of conversion must be supplied to the Department. Existing staff handling the conversion can gather and prepare this additional information and documents. The proposed amendment at N.J.A.C. 3:32-1.6 regarding the "eligibility record date" which, increases from 90 days to one year prior to the approval of the plan of conversion, would preserve the status of the long time depositors and would help their stock from being diluted by those who speculate in associations that are about to convert from mutual to stock associations. This would be a positive economic effect for long time depositors. There would be no economic impact from the proposed amendments to N.J.A.C. 3:32-3.2.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for re adoption with amendments are not contrary to or in excess of requirements imposed by the Federal Office of Thrift Supervision, United States Department of the Treasury, in particular 12 C.F.R 563b relating to conversions from mutual to stock form.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the rules proposed for re adoption with amendments.

Agriculture Industry Impact

The rules proposed for re adoption with amendments have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments impose compliance requirements on savings banks and associations applying for conversion, and on mutual state associations seeking to form mutual state association holding companies. In particular, certain rules proposed for readoption with amendments require applicants to file detailed applications with the Department.

A majority of these institutions are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B:16 et seq. It is essential that the Department receive the information required from all applicants in order that it may confirm compliance with statutory requirements. In addition, the information permits the Department to review the soundness of the institution and the competence of its management. In some instances, the professional services of attorneys and outside accounting firms may be needed in the development of applications. Costs are discussed in the Economic Impact. Since this review is necessary for all institutions, no differentiation is made based on the size of the institution.

Certain rules proposed for readoption with amendments continue the imposition of application fees that are set forth at N.J.A.C. 3:1-2.24. These fees reimburse the Department for its administrative costs incurred in reviewing applications. The costs are incurred regardless of the size of the institution. Therefore, no differentiation on the basis of the size of the depository is made in these rules.

Smart Growth Impact

The rules proposed for readoption with amendments would have no impact on smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:32.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. CONVERSION OF A MUTUAL ASSOCIATION TO A CAPITAL STOCK ASSOCIATION

3:32-1.4 Meeting of members

(a) – (c) (No change.)

(d) Upon affirmative vote of a majority of the members present either in person or by proxy determining to convert the mutual association into a capital stock association, the board of directors shall within 45 days file with the Commissioner the following documents:

1. A copy of the minutes of the proceedings of such meeting;

2. A certified copy of the resolution adopted by the stockholders or members relating to the plan of conversion, and a certified statement signed by two officers, one of whom shall be the president or a vice-president, containing the following information with regard to the resolution:

i. The total number of votes eligible to be cast;

ii. The total number of votes represented in person or by proxy at the special meeting; and

iii. The total number of votes cast in favor and against the resolution and each matter related to the resolution including, but not limited to, adopted and defeated amendments.

Recodify existing 2. - 4. as **3. – 5.** (No change in text.)

3:32-1.6 Stock purchase rights

(a) – (b) (No change.)

(c) An “eligible account holder” means any person holding a savings account in a converting association on the eligibility record date established by the [commissioner] **Commissioner** which shall be not less than [90 days] **one year** prior to the approval of the plan of conversion by the board of directors.

3:32-1.10 Fees; conversion from mutual to capital stock association

An application fee as set forth in N.J.A.C. 3:1-[2.25] **2.24** shall accompany every application for the conversion of a mutual association to a capital stock association.

SUBCHAPTER 2. CONVERSION OF AN ASSOCIATION TO A SAVINGS BANK

3:32-2.3 Application for conversion

(a) An application for a conversion from an association to a savings bank shall contain the following:

1. – 4. (No change.)
5. The application fee for the conversion as set forth at N.J.A.C. 3:1-[2.25.] **2.24**.

(b) The Commissioner may require the applicant to supply one or more of the following items:

1. (No change.)
2. A completed form from the New Jersey State Police requesting criminal history record information for any director and/or incorporator, along with a cashier's check, certified check or money order for the applicable amount, payable to the "Division of State Police- S.B.I.";
3. – 4. (No change.)

SUBCHAPTER 3. MUTUAL STATE ASSOCIATION HOLDING COMPANIES

3:32-3.1 Definitions

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

"Subsidiary holding company" means a mid-tier stock holding company, controlled by a mutual stock association holding company, that owns the stock of a savings association whose depositors have membership rights in the parent mutual holding company.

3:32-3.2 Formation of mutual state association holding company

(a) The board of directors of an organizing mutual state association may apply to the Commissioner to form a mutual state association holding company in any of the following ways:

1. – 2. (No change.)

3. Plan 3: The board of directors may apply to form a mutual state association holding company by incorporating a subsidiary capital stock state association and by transferring a substantial part of the assets and liabilities of the organizing mutual state association to the newly formed capital stock state association in return for a majority of its capital stock, [or]

4. Plan 4: The board of directors may apply to incorporate a mutual state association holding company that will hold a controlling interest (51 percent or more) in a newly formed subsidiary holding company, which in turn will hold 100 percent of the outstanding stock of the capital stock state association that has been formed by one of the methods set forth in Plans 1 through 3; or

[4.] **5.** (No change in text.)

(b) In the event the proposed mutual state association holding company reorganization provides for a minority stock issuance by either the subsidiary holding company or capital stock state association, the procedural and substantive requirements set forth in N.J.S.A. 17:12B-261 et seq. and N.J.A.C. 3:32 regarding the conversion from mutual to stock form of ownership shall apply, unless clearly inapplicable.