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BANKING

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF BANKING

Governmental Unit Deposit Protection

Proposed Repeal: N.J.A.C. 3:1-4

Proposed New Rules: N.J.A.C. 3:34

Authorized By: Thomas B. Considine, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8, 8.1 and 15; N.J.S.A.17:9-41 et seq.; and P.L. 2009, c. 326.

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

Proposal Number: PRN 2010-145

Submit comments by September 17, 2010 to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) is proposing new rules at N.J.A.C. 3:34 to implement the Governmental Unit Deposit Protection Act, N.J.S.A. 17:9-41 et seq., (the Act or GUDPA), which establishes the collateral requirements for depositories that accept deposits of local New Jersey government funds. In January 2010, P.L. 2009, c. 326 was enacted and substantially amended the Act. The changes are operative on July 1, 2010. The Department has reviewed the existing Governmental Unit Deposit Protection rules in light of the statutory amendments and proposes to repeal the existing rules at N.J.A.C. 3:1-4 and propose new rules in a new chapter.

Proposed N.J.A.C. 3:34-1.1 sets forth the purpose and scope of the chapter.

Proposed N.J.A.C. 3:34-1.2 sets forth necessary definitions. Some of the terms defined are “capital funds,” “call report,” “eligible collateral,” “governmental unit,” “public depository,” “valuation date” and the various designations of capitalization of depositories.

Proposed N.J.A.C. 3:34-1.3 sets forth the general requirement on public deposits.

Proposed N.J.A.C. 3:34-1.4 requires that each public depository file reports with the Department electronically. The reports will be due the same day as the call reports which all depositories are required to file with Federal regulators. The proposed new rule also sets out information on how to file the reports.

Pursuant to the Act, at N.J.S.A. 17:9-43i, non-exempt public depositories are required to pay an annual fee to be prescribed by the Commissioner and to be dedicated to the operations of the Department in connection with the administration and enforcement of the Act. Proposed N.J.A.C. 3:34-1.5 sets forth the fees required of such public depositories. Under the proposed rule, each non-exempt public depository is required to pay an annual fee for the July 1, 2010 through June 30, 2011 period and each fiscal year thereafter. Pursuant to the Act, if a public depository pays assessments pursuant to N.J.A.C. 3:5, the dedicated funding rules, it is exempt from paying the annual fee. It is proposed that non-exempt public depositories with no uninsured public funds will pay $500.00. Non-exempt public depositories with public funds not fully insured by a Federal agency will pay an amount between $1,000 and $6,000 depending on the amount of these funds held by the public depository. The proposed new rule also requires payment to be made electronically on the date of filing the report for the June 30th valuation date, except for fiscal 2011 when it will be paid with the September 30, 2010 report. Depositories that hold no public funds at the start of a fiscal year but that join the program during a fiscal year will pay a proportional amount the first year based on time in the program.

N.J.A.C. 3:34-1.6 proposes to establish collateral obligations for public depositories holding uninsured public funds. These collateral obligations are security for the public deposits. The amount of required collateral is determined by the amount of uninsured public deposits, New Jersey capital as set out in proposed N.J.A.C. 3:34-1.6(b) and capital category as listed in proposed N.J.A.C. 3:34-1.6(a). The amount of required collateral in relation to the amount of uninsured public funds on deposit necessary for a public depository to meet the collateral requirements is measured by the average daily balance of collected, uninsured public funds on deposit during the three-month period ending on the preceding valuation date. The collateral requirements in the proposed rule are somewhat higher than the minimum amounts prescribed by the Act. The Department believes that the proposed amounts strike a balance between the business decisions that banks make and the overarching need to protect GUDPA deposits. In Bulletin 10-08 issued April 24, 2010, the Department noted the statutory collateral minimums that are effective July 1, 2010. The collateral percentages in the proposed rule represent the

Department's analysis of the possible risks and its conclusions about safety and soundness of GUDPA funds.

Proposed N.J.A.C. 3:34-1.7 sets forth the type of eligible collateral that will be permitted. It is substantially similar to current N.J.A.C. 3:1-4.13. The difference is that the current rule only permits irrevocable stand-by letter of credit from the Federal Home Loan Bank of New York and proposed N.J.A.C. 3:34-1.7 permits such letters of credit from any Federal Home Loan Bank.

Proposed N.J.A.C. 3:34-1.8 sets forth the web address that can be used to determine if a depository is an approved public depository.

Proposed N.J.A.C. 3:34-1.9 provides the scope of the terms "surplus" and "undivided profits" used in the rules. It is similar to current N.J.A.C. 3:1-4.7.

Proposed N.J.A.C. 3:34-1.10 provides for substitution of collateral. It is similar to current N.J.A.C. 3:1-4.8.

Proposed N.J.A.C. 3:34-1.11 provides for custodial depositories for collateral. It also specifies actions that the Commissioner may take in the event that safety and soundness concerns arise with respect to a public depository. It is similar to current N.J.A.C. 3:1-4.9.

Proposed N.J.A.C. 3:34-1.12 provides for a written agreement with a custodial depository. It is similar to current N.J.A.C. 3:1-4.10.

Proposed N.J.A.C. 3:34-1.13 addresses additional collateral security. It is similar to current N.J.A.C. 3:1-4.11.

Proposed N.J.A.C. 3:34-1.14 provides for records to be maintained by the Commissioner. It is similar to current N.J.A.C. 3:1-4.12.

Proposed N.J.A.C. 3:34-1.15 sets forth required information and steps for first time public depositories to accept public deposits. This consists of notifying the Department on a form found on the Department's website of its intent to accept public funds at least 15 business days prior to accepting the funds. This information enables the Commissioner to prescribe the amount of eligible collateral required to be maintained by the public depository and, upon the collateral being properly pledged, to add the depository to the Department's electronic list of public depositories. After the public depository holds the public funds for an entire three-month period and files a valuation report for that three-month period, it will be required to hold eligible collateral in the amount required by N.J.A.C. 3:34-1.6.

This 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.JA.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed new rules implement changes to GUDPA which provide an increased level of protection, beyond Federal Deposit Insurance Corporation (FDIC) insurance, to the public funds of New Jersey county and local governments, school districts and public bodies (local governmental units). In the event of a failure of a depository holding such public funds, there would be enhanced collateral to minimize the loss of public funds so that the local governmental units affected would be able to continue to provide their services to the public. The proposed new rules also provide the Department with the tools to monitor and support the program and to collect fees necessary to do so. Therefore, the proposed new rules should have a beneficial social impact.

Economic Impact

The proposed new rules will require some depositories to pay more in fees than they do under the current rules to enable the Department to maintain and monitor the program. However, the increased fees are reasonable for the value of services provided and are not burdensome to the depositories that voluntarily choose to accept public funds for deposit. Depositories that pay assessments under dedicated funding will see their current GUDPA fees eliminated.

Depositories that choose to accept public funds will have to comply with the reporting requirements, undertake the posting of any required collateral and monitor the public funds they have on deposit to ensure that the proper type and amount of collateral is maintained. The expenses incurred will be in staff time to the depository; however, depositories are generally required to maintain records and interact with their government regulators and have existing trained staff for compliance purposes. Consequently, the cost of the additional recordkeeping and reporting requirements imposed by these proposed rules will be minimal. The benefits of the system established by GUDPA and these rules are received by New Jersey local governmental units and their taxpayers because the system established by GUDPA and these rules will reduce the risk of loss of local government funds in the event of the failure of a public depository.

The Department invites commenters to submit any data or studies in the nature of a cost-benefit analysis on the proposed new rules.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules are consistent with, but do not exceed, Federal standards. Federal standards applicable to, but not exceeded, by the proposed new rules are subsection (b) of section 38 of the Federal Deposit

Insurance Act, Pub. L. 81 797 (12 U.S.C. § 1831o(b)) and subsections (q) and (r) of section 3 of the Federal Deposit Insurance Act, Pub. L. 81 797 (12 U.S.C. § 1813(q) and (r)).

Jobs Impact

The Department does not anticipate that any jobs will be lost or generated as a result of the proposed repeal and new rules. The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed repeal and new rules 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 proposed repeal and new rules.

Regulatory Flexibility Analysis

The proposed new rules impose compliance requirements on “small business.” The Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq., defines a “small business” as any business resident in this State that employs fewer than 100 full-time employees, is independently owned and operated and is not dominant in its field. Some of the depositories affected by the proposed new rules are small businesses. It is not expected that professional services will be needed to comply with the proposed new rules. Monitoring by the Department of the collateral and the overall financial condition of public depositories is necessary for the protection of local governmental unit deposits regardless of the size of the public depository. Therefore, no differing requirements based on business size have been made in these rules. However, the fee schedule and varying collateral requirements based upon the amount of public funds held by a public depository generally translate into reduced compliance requirements for smaller depositories.

Smart Growth Impact

The proposed repeal and new rules will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The proposed repeal and new rules will have no impact on affordable housing in New Jersey because the proposed repeal and new rules concern governmental unit deposit protection.

Smart Growth Development Impact

The proposed repeal and new rules will have no impact on smart growth and there is an extreme unlikelihood that the proposed repeal and new rules would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the proposed repeal and new rules concern governmental unit deposit protection.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 3:1-4.

Full text of the proposed new rules follows:

CHAPTER 34

GOVERNMENTAL UNIT DEPOSIT PROTECTION

SUBCHAPTER 1. GOVERNMENTAL UNIT DEPOSIT PROTECTION

3:34-1.1 Purpose and scope

(a) This subchapter implements N.J.S.A. 17:9-41 et seq. regarding collateral requirements for depositories that accept the deposits of local New Jersey governmental unit funds.

(b) This subchapter shall apply to all depositories that accept the deposits of local New Jersey governmental unit funds.

3:34-1.2 Definitions

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

"Act" or "GUDPA" means the Governmental Unit Deposit Protection Act, N.J.S.A. 17:9-41 et seq.

"Adequately capitalized" means, with respect to a public depository, "adequately capitalized" as the term is defined in N.J.S.A. 17:9-41.

"Association" means any State or Federally chartered savings and loan association.

"Call report" means the quarterly report on a depository's overall condition made to the appropriate Federal banking agency as defined by subsections (q) and (r) of section 3 of the Federal Deposit Insurance Act, Pub. L. 81-797 (12 U.S.C. § 1813(q) and (r)).

"Capital funds" means:

1. In the case of a State bank or national bank or capital stock savings bank, the aggregate of the capital stock, surplus and undivided profits of the bank or savings bank;

2. In the case of a mutual savings bank, the aggregate of the capital deposits, if any, and the surplus of the savings bank; and

3. In the case of an association, the aggregate of all reserves required by any law or regulation, and the undivided profits, if any, of the association.

"Commissioner" means the Commissioner of the New Jersey Department of Banking and Insurance.

"Critically undercapitalized" means, with respect to a public depository, "critically undercapitalized" as the term is defined in N.J.S.A. 17:9-41.

"Custodial depository" means the depositories specified in N.J.S.A. 17:9-44c.

"Department" means the New Jersey Department of Banking and Insurance.

"Eligible collateral" means:

1. Obligations of any of the following:

i. The United States;

ii. Any agency or instrumentality of the United States, including, but not limited to, the Student Loan Marketing Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration and the Small Business Administration;

iii. The State of New Jersey or any of its political subdivisions; or

iv. Any other governmental unit;

2. Obligations guaranteed or insured by any of the following, to the extent of that insurance or guaranty:

i. The United States;

ii. Any agency or instrumentality of the United States, including, but not limited to, the Student Loan Marketing Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration and the Small Business Administration; or

iii. The State of New Jersey or any of its political subdivisions;

3. Obligations now or hereafter authorized by law as security for public deposits;

4. Obligations in which the State, political subdivisions of the State, their officers, boards, commissions, departments and agencies may invest pursuant to an express authorization under any law authorizing the issuance of those obligations;

5. Obligations, letters of credit, or other securities or evidence of indebtedness constituting the direct and general obligation of a Federal Home Loan Bank or Federal Reserve Bank; or

6. Any other obligations as may be approved by the Commissioner by regulation or by specific approval.

"Governmental unit" means any county, municipality, school district or any public body corporate and politic created or established under any law of this State by or on behalf of any one or more counties or municipalities, or any board, commission, department or agency of any of the foregoing having custody of funds.

"Public depository" means a State or Federally chartered bank, savings bank or an association located in this State or a State or Federally chartered bank, savings bank or an association located in another state with a branch office in this State, the deposits of which are insured by the Federal Deposit Insurance Corporation and which receives or holds public funds on deposit.

"Public funds" means the funds of any governmental unit, but does not include deposits held by the State of New Jersey Cash Management Fund.

"Significantly undercapitalized" means, with respect to a public depository, "significantly undercapitalized" as the term is defined in N.J.S.A. 17:9-41.

"Undercapitalized" means, with respect to a public depository, "undercapitalized" as the term is defined in N.J.S.A. 17:9-41.

"Uninsured" means not insured by the Federal Deposit Insurance Corporation (FDIC) or by any other agency of the United States which insures deposits made in public depositories.

"Valuation date" means March 31, June 30, September 30, and December 31.

"Well capitalized" means, with respect to a public depository, "well capitalized" as the term is defined in N.J.S.A. 17:9-41.

3:34-1.3 General requirement

No deposit from a governmental unit may be received and held by any public depository unless the public depository secures such deposit in accordance with the Governmental Unit Deposit Protection Act, N.J.S.A. 17:9-41 et seq., and this subchapter.

3:34-1.4 Required reports

(a) A public depository shall file electronically with the Department a report as set out on the Department's website at www.state.nj.us/dobi/index.html. The report is due on a quarterly basis and is to be filed on or before the due date for the filing of a call report. The report shall include the following information:

1. The name and address of the reporting institution;

2. The date of report filing and the valuation date of the report;

3. The name and title of the designated GUDPA officer or contact person and that person's telephone number and e-mail address;

4. A secondary contact name and title, with telephone number and e-mail address;

5. The total capital funds;

6. New Jersey capital funds allocated pursuant to N.J.A.C. 3:34-1.6;

7. Seventy five percent of New Jersey capital funds;

8. The total average balance of New Jersey public funds during the three-month period ending prior to the current valuation date;

9. Whether a daily or four-day average was used;

10. The New Jersey public funds covered by insurance;

11. The average New Jersey public funds on deposit in excess of insurance;

12. The total average balance of New Jersey public funds during the 15-day period preceding the current valuation date;

13. The collateral requirement, and the total market value of collateral pledged;

14. A listing of collateral pledged; and, for each security, the par value, name and description, the Committee on Uniform Security Identification Procedures (CUSIP) number, the rate, the maturity date, the market value, and the collateral location;

15. The gross New Jersey public funds on deposit as of the valuation date; and

16. As of the valuation date, the depository's:

i. Capital category;

ii. Tier 1 leverage capital/average total assets;

iii. Tier 1 risk-based capital/risk-weighted assets; and

iv. Total risk-based capital/risk-weighted assets.

(b) Each public depository required to pledge collateral shall provide an electronic listing of such collateral with each report. Such listing shall be in a form prescribed by the Commissioner and made available on the Department's website.

(c) Failure to file complete and timely reports will result in the depository being removed from the approved list referenced in N.J.A.C. 3:34-1.8.

3:34-1.5 Fees

(a) Each public depository, unless exempt, shall pay a fee for the period July 1, 2010 through June 30, 2011, hereinafter "fiscal 2011," and an annual fee for each such fiscal year thereafter. With the exception of fiscal 2011, the fee will be based on the average daily public funds on deposit for the three-month reporting period ending on the June 30 valuation date of the prior fiscal year. For fiscal 2011, the fee will be based on the average daily public funds on deposit for the three-month reporting period ending on the September 30, 2010 valuation date.

(b) A public depository paying dedicated funding assessments pursuant to N.J.A.C. 3:5 shall be exempt from paying the annual fee set forth in this section.

(c) Payment shall be made by electronic means as directed by the Commissioner on the Department's website at www.state.nj.us/dobi/index.html at the time of the filing in accordance with (a) above and (d) and (e) below.

(d) The amount of the annual fee shall be:

1. $500.00 for a public depository with no uninsured public funds;

2. $1,000 for a public depository with less than $50,000,000 in uninsured public funds;

3. $2,000 for a public depository with $50,000,000 or more, but less than $100,000,000 in uninsured public funds;

4. $3,000 for a public depository with $100,000,000 or more, but less than $200,000,000 in uninsured public funds;

5. $4,000 for a public depository with $200,000,000 or more, but less than $300,000,000 in uninsured public funds;

6. $5,000 for a public depository with $300,000,000 or more, but less than $400,000,000 in uninsured public funds; or

7. $6,000 for a public depository with $400,000,000 or more in uninsured public funds.

(e) A proportional amount of the annual fee shall be charged to a public depository that accepts its first public funds deposit in a fiscal year after July 1, based on the first report filed during a fiscal year covering a full three-month period ending on a valuation date. The amount of the proportional fee will be determined by the amount of the public funds held during the first full three-month period and in which quarter of the fiscal year the public depository commenced to accept public funds for deposit, as specified in the first report filed as referenced above. For example, if a public depository first accepts public funds in December, the first full three-month period ending on a valuation date during which it would hold such funds would end on the succeeding March 31. If the average daily amount of public funds on deposit during that three-month period was $50,000,000 or more but less than $100,000,000, the fee payable by that public depository would be $1,500, determined by dividing the $2,000 full year fee for that amount by .75, since the fee would be payable for the second, third and fourth quarters of that fiscal year, which were the quarters, or parts thereof, that the public depository was authorized to hold public funds. A public depository that had previously been charged an annual fee or a proportional amount of an annual fee as set forth herein, but which subsequently ceased to hold any public funds and was not charged any fee for the fiscal year immediately preceding the fiscal year in which it renews its acceptance of public funds, shall be charged a proportional fee amount as set forth in this subsection based upon its renewed acceptance of such funds.

(f) All fees are non-refundable.

(g) Failure to timely pay fees will result in the depository being removed from the approved list referenced in N.J.A.C. 3:34-1.8.

3:34-1.6 Collateral obligations

(a) Every public depository having uninsured public funds on deposit shall maintain, in addition to collateral noted in (b) and (c) below, as security for such deposits, eligible collateral having a market value at least equal to:

1. Five percent of the uninsured public funds on deposit, if the public depository is well capitalized;

2. 50 percent of the uninsured public funds on deposit, if the public depository is adequately capitalized;

3. 75 percent of the uninsured public funds on deposit, if the public depository is undercapitalized;

4. 100 percent of the uninsured public funds on deposit, if the public depository is significantly undercapitalized; or

5. 150 percent of the uninsured public funds on deposit, if the public depository is critically undercapitalized.

(b) A public depository which receives and holds on deposit for any period exceeding 15 calendar days public funds of a governmental unit or units which in the aggregate exceed 75 percent of the capital funds of the public depository as reported on the most recent valuation date shall report such excess and describe the eligible collateral pledged to secure said excess. Such collateral shall have a market value at least equal to the amount of such excess and shall be in addition to the security required by (a) above and as reported in the most recent report filed with the Department. For purposes of this subsection, the capital funds of a public depository located in New Jersey which has branches located outside New Jersey shall be its total capital funds multiplied by the percentage of deposits located in New Jersey to total deposits of the depository.

(c) Every public depository having uninsured public funds on deposit in excess of $200,000,000, not collateralized under (b) above, shall maintain, as security for such excess uninsured public funds, eligible collateral having a market value at least equal to 100 percent of the average daily balance of those collected, uninsured public funds on deposit in excess of $200,000,000 during the three-month period ending on the immediately preceding valuation date or, at the election of the depository, at least equal to 100 percent of the average balance of those collected, uninsured public funds on deposit in excess of $200,000,000 on the first, eighth, 15th and 22nd days of each month in the three-month period ending on the immediately preceding valuation date.

(d) The amount of eligible collateral in relation to the amount of uninsured public funds on deposit necessary for a public depository to meet the collateral requirements shall be measured as:

1. The percentage, set forth under (a) above, of the average daily balance of collected, uninsured public funds on deposit during the three-month period ending on the immediately preceding valuation date; or

2. At the election of the depository, the percentage, set forth under (a) above, of the average balance of collected, uninsured public funds on deposit on the first, eighth, 15th and 22nd days of each month in the three-month period ending on the immediately preceding valuation date.

3:34-1.7 Eligible collateral

(a) All eligible collateral used to secure public funds on deposit in a public depository shall be in a form that is "readily marketable" and "liquid." The determination of "readily marketable" and "liquid" shall be made by the Commissioner based upon the existence of a substantial public market for the collateral and a high probability that the Commissioner could convert the collateral into cash promptly through existing available channels.

(b) In addition to obligations otherwise authorized in N.J.S.A. 17:9-41, eligible collateral shall also include irrevocable stand-by letters of credit issued by a Federal Home Loan Bank. The Commissioner shall review and approve the form of all such letters of credit proposed by a public depository as eligible collateral under this section. Further, the original letter of credit shall be held by the Commissioner.

3:34-1.8 Notice of approval of an eligible public depository

The Department will maintain a listing on its website at www.state.nj.us/dobi/index.html of all depositories it has approved as public depositories.

3:34-1.9 Scope of terms surplus and undivided profits

(a) As included within the definition of capital funds in N.J.S.A. 17:9-41 and N.J.A.C. 3:34-1.2:

1. The terms “surplus” and “undivided profits” shall, in the case of a State bank or national bank, include any reserve for contingency, reserve for securities and reserve for bad debts as computed for Federal income tax purposes, but shall:

i. Exclude any specifically allocated reserves or reserves for known specific charges; and

ii. Be reduced by the booked value of any intangible assets set up on the balance sheet which represent nonmaterial values over and above physical assets, such as goodwill, deferred losses and intangible assets.

2. The term “surplus” shall, in the case of a savings bank, include undivided profits, any reserve for contingency, reserve for securities and reserve for bad debts as computed for Federal income tax purposes but shall:

i. Exclude any specifically allocated reserves or reserves for known specific charges; and

ii. Be reduced by the booked value of any intangible assets set up on the balance sheet which represent nonmaterial values over and above physical assets, such as goodwill, deferred losses and intangible assets.

3. The term “undivided profits” shall, in the case of an association, include any reserve for contingency required by any law or regulation and any reserve for bad debts as computed for Federal income tax purposes, but shall:

i. Exclude any specifically allocated reserves or reserves for known specific charges; and

ii. Be reduced by the booked value of any intangible assets set up on the balance sheet which represent nonmaterial values over and above physical assets, such as goodwill, deferred losses and intangible assets.

3:34-1.10 Substitution of collateral

Public depositories shall have the right to make substitutions of eligible collateral between valuation dates without notification to and approval by the Commissioner; provided that any substituted collateral shall have a market value as of the date of substitution that is at least equal to the market value of the collateral so replaced as reported on the last valuation date. Any withdrawal of pledged collateral without replacement as aforesaid requires the prior approval of the Commissioner. A written request to the Commissioner requesting such withdrawal of collateral shall indicate the collateral to be withdrawn and the reason or reasons for such withdrawal. The Commissioner shall transmit to the public depository his or her approval or disapproval of such withdrawal in writing.

3:34-1.11 Agreement between custodial depositories and Commissioner

(a) A public depository shall not deposit collateral in a custodial depository that is a parent or subsidiary of the public depository, or is otherwise related to the public depository.

(b) A custodial depository shall be required to have a written agreement with the Commissioner authorizing such depository to hold securities as collateral for public funds under the terms and conditions enumerated therein.

(c) Should a public depository fail to meet its minimum regulatory capital requirements as established by the appropriate supervising Federal agency, or meet the criteria set forth in N.J.S.A. 17:16J-2(a), or for reasons grounded in other safety and soundness concerns, the Commissioner may:

1. Limit the authority of the public depository by prohibiting the public depository from accepting public deposits not insured by a Federal agency; and/or

2. Require that the public depository pledge only readily marketable investment grade securities, and pledge such securities to the extent of 120 percent of the amount of public funds on deposit not insured by the appropriate Federal insurance fund.

3:34-1.12 Agreement or resolution; public depository and custodial depository

Each public depository shall be required to have a written agreement with a custodial depository. Said agreement shall indicate that the collateral pledged is to be held subject to the order of the Commissioner or his or her authorized deputy and is held as security for public funds as required under the Act.

3:34-1.13 Security; State and other public deposits

The securing of public deposits as required under the Act shall not preclude any public depository from securing State or other public deposits which are otherwise required to be secured by law. The deposits which are otherwise required to be secured shall be excluded from the computation of the average balance of public funds as required in this subchapter.

3:34-1.14 Records maintained by Commissioner; eligibility

The Commissioner shall maintain such records as he or she shall deem necessary in order to determine which public depositories have complied with the Act. After receipt of each quarterly report, the Commissioner shall post a listing of public depositories eligible to act as a depository for public funds on the Department's website at www.state.nj.us/dobi/index.html.

3:34-1.15 Requirements for first time public depositories

(a) Before initially accepting public funds, a depository shall notify the Department on a form found on the Department's website at www.state.nj.us/dobi/index.html of its intent to do so at least 15 business days prior to accepting the funds. The information to be provided on the form shall be the depository's total capital funds and the name of the approved custodian. After being so notified, the Commissioner shall prescribe the amount of eligible collateral required to be maintained.

(b) Upon the Commissioner prescribing the required collateral amount and the collateral being properly pledged with the custodial depository and proof of that being provided by the custodial depository to the Department, the depository will be added to the electronic list of approved public depositories referenced in N.J.A.C. 3:34-1.8.

(c) After a public depository has held public funds for an entire three-month period and filed a valuation report for the full three-month period, it shall hold eligible collateral in the amount required by N.J.A.C. 3:34-1.6 unless otherwise ordered by the Commissioner.