

pursuant to N.J.A.C. 17:16-71.2(a)3 and does not apply to investments in corporations made through other investment vehicles.

Because the Division is providing a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments shall have a positive social impact, because increased overall risk-adjusted returns for the State-administered funds will benefit the funds' beneficiaries and will lessen the long-term burden on the State's taxpayers.

Economic Impact

The proposed amendments shall have a positive economic impact by providing an opportunity for increased risk-adjusted returns of the State-administered funds.

Federal Standards Statement

A Federal standards analysis is not required because the investment policy rules of the State Investment Council are not subject to any Federal requirements or standards.

Jobs Impact

The State Investment Council and the Division of Investment do not anticipate that any jobs will be generated or lost by virtue of the proposed amendments.

Agriculture Industry Impact

The proposed amendments will have no impact on the agriculture industry. While the proposed amendments will permit pension fund assets to be invested in farmland, it is unlikely that such investments will significantly impact the agriculture industry within the State of New Jersey.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required, since the proposed amendments will have no effect on small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but regulate only the Director of the Division of Investment.

Smart Growth Impact

The proposed amendments are not anticipated to have an impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The proposed amendments will have no impact on the affordability of housing in the State of New Jersey. The proposed amendments will expand the scope of permissible real asset investments and permit a higher percentage of pension fund assets to be invested in real estate.

Smart Growth Development Impact

The proposed amendments are not anticipated to have an impact on the availability of affordable housing or housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey. The proposed amendments will expand the scope of permissible real asset investments and permit a higher percentage of pension fund assets to be invested in real estate.

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

17:16-71.1 Definitions

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

...
"Real assets" mean investments in real estate, infrastructure, oil and gas, timber properties, **farmland, precious metals**, royalty trusts and commodity-linked investments. Real assets include the common and preferred stocks and issues convertible into common stock of U.S. and international corporations and U.S. and international exchange-traded funds that primarily invest in real assets.
...

17:16-71.4 Limitations

(a) At the time of initial purchase, the following conditions shall be met:

1. The aggregate market value of the investment in real estate under this subchapter shall not exceed [seven] **nine** percent of the market value of the assets of any Pension and Annuity Fund investing in Common Pension Fund E;

2. (No change.)

3. No more than [three] **five** percent of the market value of the assets of any Pension and Annuity Fund investing in Common Pension Fund E may be invested [in direct investments, co-investments and joint ventures investing] in real estate located outside the United States. This limitation shall not apply to investments in common and preferred stock, exchange-traded funds and convertible issues;

4. No more than [three] **seven** percent of the market value of the assets of any Pension and Annuity Fund investing in Common Pension Fund E may be invested in a single real estate property type, such types being defined as office, retail, apartment/multi-family, hotel, industrial and specialty use. This limitation shall not apply to investments in common and preferred stock, exchange-traded funds and convertible issues;

5. No more than [three] **five** percent of the market value of the assets of any Pension and Annuity Fund investing in Common Pension Fund E may be invested in direct investments, co-investments and joint ventures investing in real estate in any one region of the United States, such regions being defined as: East, South, Midwest, and West. This limitation shall not apply to investments in common and preferred stock, exchange-traded funds and convertible issues;

6. (No change.)

7. No more than seven percent of the market value of the assets of any eligible fund shall be invested in the common and preferred stock of any one corporation **eligible for investment pursuant to N.J.A.C. 17:16-71.2(a)3**. This seven percent limitation shall not apply to Common Pension Fund E;

8. The total amount of stock purchased or acquired of any one corporation **eligible for investment pursuant to N.J.A.C. 17:16-71.2(a)3** shall not exceed five percent of the common stock, or of any other class of stock which entitles the holder thereof to vote at all elections of directors, of such corporation; and

9. (No change.)

(b) (No change.)

(a)

STATE INVESTMENT COUNCIL

**Private Equity
Limitations**

Proposed Amendment: N.J.A.C. 17:16-90.4

Authorized By: State Investment Council, Timothy M. Walsh,
Director, Division of Investment.

Authority: N.J.S.A. 52:18A-91.

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

Proposal Number: PRN 2010-310.

Submit comments by February 4, 2011 to:

Timothy M. Walsh
Administrative Practice Officer
Division of Investment
PO Box 290
Trenton, New Jersey 08625-0290

The agency proposal follows:

Summary

N.J.A.C. 17:16-90 permits eligible funds to invest in private equity investments. N.J.A.C. 17:16-90.4(a)1 provides that the aggregate market value of private equity investments, for any eligible fund, shall not exceed seven percent of the market value of the assets of any Pension and Annuity Fund investing in Common Pension Fund E. The proposed

amendment would increase this limitation from seven percent to 12 percent in order to provide greater flexibility in making investments in private equity and an opportunity for increased risk-adjusted returns for the State-administered funds.

Within the proposed 12 percent cap, the proposed amendments include: (1) an increase in the caps on overall buyout investments and buyout investments outside of the United States from five percent and three percent, respectively, to 12 percent and seven percent, respectively, in N.J.A.C. 17:16-90.4(a)2; (2) an increase in the caps on overall venture capital investments and venture capital investments outside of the United States from three percent and two percent, respectively, to five percent and three percent, respectively in N.J.A.C. 17:16-90.4(a)3; and (3) an increase in the caps on overall debt-related investments and debt-related investments outside of the United States from three percent and two percent, respectively, to 12 percent and seven percent, respectively, in N.J.A.C. 17:16-90.4(a)4. These amendments are intended to provide for greater flexibility in making private equity investments and an opportunity for increased risk-adjusted returns for the State-administered funds.

N.J.A.C. 17:16-90.4(a)5 provides that no more than seven percent of the market value of the assets of any eligible fund shall be invested in the common and preferred stock of any one corporation. The proposed amendment clarifies that this limitation applies to direct investments in publicly traded corporations that primarily invest in private equity pursuant to N.J.A.C. 17:16-90.2(a)2 and does not apply to investments in corporations made through other investment vehicles. The proposed amendment to N.J.A.C. 17:16-90.4(a)6 clarifies that the five percent limitation of the total amount of stock purchased or acquired of any one corporation that entitles the holder to vote, applies to direct investments in publicly traded corporations that primarily invest in private equity pursuant to N.J.A.C. 17:16-90.2(a)2 and does not apply to investments in corporations made through other investment vehicles.

Because the Division is providing a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments shall have a positive social impact, because increased overall risk-adjusted returns for the State-administered funds will benefit the funds' beneficiaries and will lessen the long-term burden on the State's taxpayers.

Economic Impact

The proposed amendments shall have a positive economic impact by providing an opportunity for increased risk-adjusted returns of the State-administered funds.

Federal Standards Statement

A Federal standards analysis is not required because the investment policy rules of the State Investment Council are not subject to any Federal requirements or standards.

Jobs Impact

The State Investment Council and the Division of Investment do not anticipate that any jobs will be generated or lost by virtue of the proposed amendments.

Agriculture Industry Impact

The proposed amendments will have no impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required, since the proposed amendments will have no effect on small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but regulate only the Director of the Division of Investment.

Smart Growth Impact

The proposed amendments are not anticipated to have an impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The proposed amendments will have no impact on the affordability of housing in the State of New Jersey. The proposed amendments will permit a higher percentage of pension fund assets to be invested in private equity.

Smart Growth Development Impact

The proposed amendments are not anticipated to have an impact on the availability of affordable housing or housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey. The proposed amendments will permit a higher percentage of pension fund assets to be invested in private equity.

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

17:16-90.4 Limitations

(a) At the time of initial purchase, the following conditions shall be met:

1. The aggregate market value of private equity investments under this subchapter, for any eligible fund, shall not exceed [seven] **12** percent of the market value of the assets of any Pension and Annuity Fund investing in Common Pension Fund E;

2. No more than [five] **12** percent of the market value of the assets of any Pension and Annuity Fund investing in Common Pension Fund E may be invested in buyout investments, and no more than [three] **seven** percent of the market value of the assets of any Pension and Annuity Fund investing in Common Pension Fund E may be invested in buyout investments outside of the United States. This limitation shall not apply to investments in common and preferred stock, exchange-traded funds and convertible issues;

3. No more than [three] **five** percent of the market value of the assets of any Pension and Annuity Fund investing in Common Pension Fund E may be invested in venture capital investments, and no more than [two] **three** percent of the market value of the assets of any Pension and Annuity Fund investing in Common Pension Fund E may be invested in venture capital investments outside of the United States. This limitation shall not apply to investments in common and preferred stock, exchange-traded funds and convertible issues;

4. No more than [three] **12** percent of the market value of the assets of any Pension and Annuity Fund investing in Common Pension Fund E may be invested in debt-related investments, and no more than [two] **seven** percent of the market value of the assets of any Pension and Annuity Fund investing in Common Pension Fund E may be invested in debt-related investments outside of the United States. This limitation shall not apply to investments in common and preferred stock, exchange-traded funds and convertible issues;

5. No more than seven percent of the market value of the assets of any eligible fund shall be invested in the common and preferred stock of any one corporation **eligible for investment pursuant to N.J.A.C. 17:16-90.2(a)2**. This seven percent limitation shall not apply to Common Pension Fund E;

6. The total amount of stock purchased or acquired of any one corporation shall not exceed five percent of the common stock **eligible for investment pursuant to N.J.A.C. 17:16-90.2(a)2**, or of any other class of stock which entitles the holder thereof to vote at all elections of directors, of such corporation; and

7. (No change.)

(b) (No change.)