

## SUBCHAPTER 71. REAL ASSETS

### N.J.A.C. 17:16-71

#### 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:

"Co-investment" means two parties (usually the limited partner and the general partner of a fund) invest alongside each other in the same company, portfolio or property. If a limited partner in a fund has co-investment rights, it can invest directly in a company, portfolio or property in which the fund also invests. The institution, therefore, ends up with two separate stakes – one indirectly through the fund; one directly in the company, portfolio or property. Co-investment may also include multiple like-minded institutional investors investing in a specific company, portfolio or property.

"Commingled funds" means all open-end and closed-end pooled investment vehicles designed primarily for institutional tax-exempt investors. A commingled fund may be organized as a group trust, partnership, corporation, insurance company separate account, or other multiple ownership entity. An investment in a commingled fund may take the form of an investment in the trustee, general partner, or other managing member of such fund.

"Commodity-linked investments" means investments from which all or a portion of the return is linked to the price of a particular commodity or equity security, or to an index of such prices. These include commodity-indexed deposits, loans, debt issues, and derivative products, such as forwards, options, and swaps. In these transactions, the interest, principal, or both, or payment streams in the case of swaps, are linked to the price of a commodity.

"Common stocks" mean shares of stock, other than preferred stocks, representing ownership in a corporation.

"Core real estate" means equity investments in existing, stabilized (meaning at least 80 percent occupied), well-leased assets.

"Direct investment" means the purchase of an interest in a company or venture directly by an eligible fund, rather than through an investment vehicle.

"East" means Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New Jersey, New York, Pennsylvania, Delaware, Kentucky, Maryland, North Carolina, South Carolina, Virginia, Washington D.C. and West Virginia.

"Exchange-traded funds" mean mutual funds that track a predetermined index and can be traded like shares of common stock.

"Joint venture" means a contractual agreement joining two or more parties for the purpose of executing a particular undertaking. All parties agree to share in the profits and losses of the enterprise.

"Midwest" means Illinois, Indiana, Michigan, Ohio, Wisconsin, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota and South Dakota.

"Non-core real estate" means equity investments in value-added or opportunistic strategies, including direct property investment with lease-up, development or redevelopment risk. Non-core real estate includes recapitalizations across capital structures and property types and access to niche markets.

"Preferred stocks" mean shares of stock which provide a specific dividend that is paid before any dividends are paid to holders of common stock and additional rights above and beyond those conferred by common stock.

"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.

"Real estate" includes core real estate and non-core real estate.

"Royalty trust" means equity investments that generate an income stream for investors; these primarily include natural resource assets, and pharmaceuticals and medical devices.

"Separate account" means ownership is segregated and kept in the investor's name.

"South" means Alabama, Florida, Georgia, Mississippi, Tennessee, Arkansas, Louisiana, Oklahoma and Texas.

"West" means Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming, Alaska, California, Hawaii, Oregon and Washington.

## 17:16-71.2 Permissible investments

(a) Subject to the limitations contained in this subchapter, the Director may invest and reinvest the moneys of any eligible fund in real assets in any of the following ways:

1. Investment in real estate assets through direct investments, separate accounts, commingled funds, co-investments and joint ventures.
2. Investments in real assets other than real estate.
3. Purchase the common stock of a U.S. or international corporation that primarily invests in real assets and whose stock is traded on a securities exchange or over-the-counter market.
4. Purchase exchange-traded funds traded on a securities exchange or the over-the-counter market that primarily invest in real assets. Exchange-traded funds shall have a minimum market capitalization of \$100 million. For the purposes of this subchapter, exchange-traded funds shall be considered as common stock in determining all applicable limitations contained in this subchapter. Subsequent to purchase, if capitalization falls below \$100 million, the investment does not have to be sold.

(b) Notwithstanding the restrictions contained in (a) above, the Council may approve the purchase of real assets on a case-by-case basis.

(c) Notwithstanding the restrictions in (a) above, the Director may:

1. Exercise the conversion privileges into the common stock of any security acquired under this subchapter;
2. Purchase the preferred stock, whether convertible or not, of a company, the common stock of which qualifies for investment under this subchapter;
3. Purchase the convertible issue of a company, the common stock of which qualifies for investment under this subchapter;
4. Purchase stock in new public offerings of companies without prior approval of the Council, provided, however, approval will be sought at the next regularly scheduled Council meeting in the event the security does not subsequently meet the requirements of this subchapter. If approval is not granted, the securities will be sold within three months of the Council's disapproval; and
5. Retain any distribution received as a result of a corporate action or distribution by a fund, even if the security does not meet the requirements of this subchapter.

## 17:16-71.3 Eligible funds

(a) For purposes of this subchapter, eligible funds shall include:

1. Police and Firemen's Retirement System;
2. Public Employees' Retirement System;
3. State Police Retirement System;
4. Teachers' Pension and Annuity Fund;
5. Judicial Retirement System of New Jersey; and
6. Common Pension Fund E.

## 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 nine percent of the market value of the assets of any Pension and Annuity Fund investing in Common Pension Fund E;

2. The maximum consolidated principal amount of leverage within the real estate portfolio of Common Pension Fund E shall not exceed 50 percent and 75 percent of Common Pension Fund E's share of the gross market value of Common Pension Fund E's investment in core real estate and non-core real estate, respectively. This limitation shall not apply to investments in common and preferred stock, exchange-traded funds and convertible issues;

3. No more than 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 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 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 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 more than 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 real assets other than real estate;

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 more than seven percent of the market value of the assets of any eligible fund shall be invested in exchange-traded funds that invest in commodities or assets other than corporate equity securities.

(b) If, subsequent to initial purchase, the limitations in (a) above are exceeded, then the Council shall be notified at the next regularly scheduled meeting of the Council. The Division may be granted a six-month period of grace to reduce the level of participation below the maximum levels, except that the period of grace may be extended for additional four-month periods with the approval of the Council.

17:16-71.5 (Reserved)