

SUBCHAPTER 90. PRIVATE EQUITY

N.J.A.C. 17:16-90

17:16-90.1 Definitions

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

"Buyout investment" means the acquisition of an established company. The transaction may or may not be leveraged.

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

"Commingled fund" means pooled investment vehicles formed for the purpose of investing in private equity. 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.

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

"Debt related investment" means the purchase of investments in debt instruments which may include equity participation.

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

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

"Funds-of-funds" means funds set up to distribute investments among a selection of fund managers, who in turn invest the capital directly.

"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. Joint ventures are usually private.

"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.

"Private equity" means investments in companies or entire business units with the intention of exercising control in order to either restructure the target company's reserve capital, management and/or organizational structure or facilitate ongoing growth of the firm. Private equity firms generally receive a return on their investment through an initial public offering, sale or merger of the company they control, or a recapitalization. Private equity may consist of buyout funds, venture capital funds and debt-related investments.

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

"Venture capital investment" means investment in the equity of a small, privately-owned, high-growth company during its early or expansion stages.

17:16-90.2 Permissible investments

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

1. Investment in buyout investments, venture capital investments and debt related investments through separate accounts, funds-of-funds, commingled funds, direct investments, co-investments and joint ventures.

2. Purchase the common stock of a U.S. or international corporation that primarily invests in private equity and whose stock is traded on a securities exchange or over-the-counter market.

3. Purchase exchange-traded funds traded on a securities exchange or the over-the-counter market that primarily invest in private equity. 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 private equity 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.

17:16-90.3 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.

17:16-90.4 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 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 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 7 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 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 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 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 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 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 private equity 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.

17:16-90.5 (Reserved)