

CHAPTER 69

AN ACT concerning banking and revising various parts of the statutory law.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 2 of P.L. 1970, c. 294 (C. 17:9A-6.2) is amended to read as follows:

C.17:9A-6.2 Certificate of amendment, procedure, filing.

2. Prior to the time when authorized or unissued shares are issued by a bank, a certificate of amendment made by two officers of the bank, one of whom shall be the president or a vice-president, shall be filed in the Department of Banking and Insurance. The certificate of amendment shall state (a) the amount of the authorized but unissued stock which will be issued; (b) the consideration which will be received by the bank on the issuance of such stock; (c) the date upon which the stock will be issued; and (d) the amount of the bank's capital stock which will be outstanding, and the amount of its surplus after giving effect to such issue. A filing shall be deemed approved on the 30th day after receipt by the commissioner, unless approved or disapproved earlier by the commissioner in writing. Upon approval pursuant to this section, the certificate of incorporation shall thereupon be amended as set forth in the certificate of amendment. The commissioner may disapprove a filing if the commissioner finds that the issuance of the stock will be in violation of law or contrary to the public interest or that the bank's original or amended certificate of incorporation does not provide for authorized but unissued stock. A certificate filed in the department pursuant to this section shall be deemed for all purposes to be an amending of the bank's certificate of incorporation with the same effect as if it had been authorized, executed, approved and filed in such department pursuant to article 19 of P.L.1948, c.67 (C.17:9A-116 et seq.).

2. Section 20 of P.L.1948, c.67 (C.17:9A-20) is amended to read as follows:

C.17:9A-20 Application for establishment of full branch office, minibranch office, communication terminal facility.

20. A. (1) Before any full branch office shall be established, the bank or savings bank shall file written application in the department for the commissioner's approval thereof. If, after such investigation or hearings, or both, as the commissioner may determine to be advisable, the commissioner shall find:

(a) That the bank or savings bank has complied with the requirements of section 19 of P.L.1948, c.67 (C.17:9A-19);

(b) That the interests of the public will be served to advantage by the establishment of such full branch office;

(c) That conditions in the locality in which the proposed full branch office is to be established afford reasonable promise of successful operation; and

(d) That the applicant has achieved sufficient compliance, as defined by the commissioner by regulation, with the "Community Reinvestment Act of 1977," 12 U.S.C. s.2901 et seq.; the commissioner shall, within 90 days after the filing of the application, approve such application.

(2) To determine if an applicant meets the requirements of subparagraph (c) of paragraph (1) of this subsection A., the commissioner shall consider only the costs of purchasing, constructing, leasing or otherwise establishing the proposed office including the costs for staffing, furniture and equipment needed therefor and the effect of these costs on the operations of the applicant as a whole.

(3) The applicant need not demonstrate an ability to operate the proposed office at a profit within a definable period of time based on the generation of new deposits from the market area to be entered except to the extent that losses suffered at the proposed office could affect the safety and soundness of the applicant's overall operations.

B. Before any minibranch office shall be established, the bank or savings bank shall file a written application on forms supplied by the commissioner. A duly adopted resolution of the board of directors or managers authorizing such application shall accompany the application. Notice of such application shall be published in accordance with procedural rules and regulations of the department. Within 20 days after said notice is published, any person or banking institution having objections to the application shall submit detailed written factual and legal

grounds for the objection to the commissioner. There shall be no hearing required to be held by the commissioner in connection with such application. The commissioner, after considering the application and written objections and such investigation as the commissioner deems advisable, shall approve the application, if the commissioner shall find

(1) That the convenience and needs of the public will be served to advantage by the establishment of such minibranch office; and

(2) That the costs of establishing such minibranch office, including (a) construction and alteration costs; (b) the cost of real property to be acquired in connection therewith or rental to be paid for space to be occupied by such office; (c) the cost of purchasing or renting and installing the equipment to be used in the operation of such office; and (d) the cost of manning such office, shall not in the aggregate exceed such sum as the commissioner shall deem reasonable, taking into consideration the capital and surplus of the bank, or the surplus of the savings bank.

C. (Deleted by amendment, P.L.1999, c.252.)

D. (Deleted by amendment, P.L.1999, c.252.)

E. A bank or savings bank shall provide insurance protection under its bonding program for transactions involving a communication terminal facility.

F. (Deleted by amendment, P.L.1996, c.17.)

G. The commissioner shall have the power to make, amend and repeal rules and regulations concerning the establishment, maintenance and operation of full branch offices, minibranch offices and communication terminal facilities not inconsistent with the provisions of this act. The regulations so made shall also be directed toward the creation, operation and maintenance of a substantial competitive parity between banking institutions and other financial institutions in all matters relating to the establishment, operation, and maintenance of branch offices and communication terminal facilities.

H. (1) In lieu of the procedures set forth in subsection A or B of this section, or in section 22 or 23 of P.L.1948, c.67 (C.17:9A-22 or C.17:9A-23), a bank or savings bank which directly or through a predecessor bank or savings bank by merger or other reorganization has been in business for at least three years, and which is well capitalized, adequately managed, and, if applicable, has received in its most recent examination under the "Community Reinvestment Act of 1977," 12 U.S.C. s.2901 et seq., a rating of not less than "satisfactory record of meeting community credit needs," or its equivalent, may apply for expedited branch office approval pursuant to this subsection. The bank or savings bank shall file written application of the proposed establishment with the commissioner and with those other persons designated by the commissioner by rule or regulation. The application shall be accompanied by or be in the form of a certification that (a) all applicable provisions of this subsection have been met, (b) the applicant requests expedited processing under this subsection, and (c) contains that other information, if any, as the commissioner may require by rule or regulation to confirm that an establishment of the branch will not adversely affect the safety and soundness of the bank or savings bank or the public interest.

(2) An application shall be deemed approved on the 30th day after receipt by the commissioner, unless approved or denied earlier by the commissioner in writing.

(3) For purposes of this subsection, "well capitalized" has the meaning given the term in 12 U.S.C. s.1831o and "well managed" means, unless otherwise determined in writing by the commissioner, (a) the achievement of a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System or an equivalent rating system, in connection with the most recent examination or subsequent review of the bank or savings bank, and (b) at least a rating of 2 for management, if such a rating is given. Nothing in this subsection shall be construed to affect the confidentiality of any rating under applicable law or regulation.

3. Section 1 of P.L.1981, c.163 (C.17:9A-24b.1) is amended to read as follows:

C.17:9A-24b.1 Exercise of powers, rights, benefits, privileges.

1. Notwithstanding the provisions of P.L.1948, c.67 (C.17:9A-1 et seq.) or any other law, banks and savings banks may exercise those powers, rights benefits or privileges now or

hereafter authorized for national or out-of-State banks or for federal or out-of-State savings banks or savings associations either directly or through a financial subsidiary or other subsidiary, to the same extent and, subject to the same limitations as national or out-of-State banks or federal or out-of-State savings banks or savings associations, may exercise those powers, rights, benefits or privileges, provided that before exercising any power, right, benefit or privilege of an out-of-State bank or out-of-State savings bank or savings association, the commissioner has adopted a regulation approving an exercise of that power, right, benefit or privilege by banks and savings banks generally or the bank or savings bank provides notice to the commissioner and on a case-by-case basis the commissioner either approves the activity or does not provide notice before the expiration of 45 days that such power, right, benefit or privilege is not appropriate for the New Jersey bank or savings bank on the grounds of safety and soundness or on other grounds designated by the commissioner by regulation. The commissioner shall have the authority to adopt rules and regulations pursuant to this section, which rules and regulations shall have as their objective the placing of banks and savings banks on a substantially competitive parity with national and out-of-State banks and federal and out-of-State savings banks and savings associations.

4. Section 8 of P.L.1979, c.226 (C.17:9A-24.9) is amended to read as follows:

C.17:9A-24.9 Additional powers of banks and savings banks.

8. Additional powers of banks and savings banks. In addition to the powers which banks and savings banks may otherwise exercise, every bank and savings bank, as defined in section 1 of "The Banking Act of 1948," P.L.1948, c.67 (C.17:9A-1), shall have power

(1) To subscribe for, purchase and hold stock of one or more insurance companies organized under the laws of this State which have been or may hereafter be limited to insure banks, savings banks and other depository institutions

(a) Against loss from the defaults of persons in positions of trust, public or private, or against loss or damage on account of neglect or breaches of duty or obligations guaranteed by the insurer; and against loss of any bills of exchange, notes, checks, drafts, acceptances of drafts, bonds, securities, evidences of debt, deeds, mortgages, documents, gold or silver, bullion, currency, money, platinum and other precious metals, refined or unrefined, and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, precious and semiprecious stones, and also against loss resulting from damage, except by fire, to the insured's premises, furnishings, fixtures, equipment, safes and vaults therein, caused by burglary, robbery, holdup, theft or larceny, or attempt thereat. No such indemnity indemnifying against loss of any property as specified herein shall indemnify against the loss of any such property occurring while in the mail or in the custody or possession of a carrier for hire for the purpose of transportation, except for the purpose of transportation by an armored motor vehicle accompanied by one or more armed guards; and

(b) Against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism or malicious mischief, or any one or more of such hazards; and against any and all kinds of loss or destruction of or damage to moneys, securities, currencies, scrip, coins, bullion, bonds, notes, drafts, acceptances of drafts, bills of exchange and other valuable papers or documents, except while in the custody or possession of and being transported by a carrier for hire or in the mail.

(2) To make loans and investments as authorized for associations by section 155 of the "Savings and Loan Act (1963)," P.L.1963, c.144 (C.17:12B-155).

(3) To make loans and investments as authorized for associations by, and subject to the limitations of, sections 157 through 160 and 162 through 164 of the "Savings and Loan Act (1963)," P.L.1963, c.144 (C.17:12B-157 through C.17:12B-160 and C.17:12B-162 through C.17:12B-164).

(4) To extend credit through the use of credit cards issued by it through an arrangement with participating vendors, and without limitation of the generality of the foregoing, to exercise all the powers permitted to associations pursuant to subsection (18) of section 48 of the "Savings and Loan Act (1963)," P.L.1963, c.144 (C.17:12B-48).

(5) To make any investment authorized for associations by section 165 of the "Savings and

Loan Act (1963)," P.L.1963, c.144 (C.17:12B-165), provided, however, that where reference is made to State associations or federal associations therein such reference for purposes of this act shall be deemed to refer to banking institutions as defined in section 1 of "The Banking Act of 1948," P.L.1948, c.67 (C.17:9A-1).

(6) To exercise any powers and activities that have been or are hereafter approved by regulation of the Board of Governors of the Federal Reserve System as being (i) financial in nature or incidental to such financial activity, (ii) complementary to a financial activity and not posing a substantial risk to the safety or soundness of depository institutions or the financial system generally, or (iii) so closely related to banking or managing or controlling banks as to be a proper activity for a bank holding company or financial holding company pursuant to the "Bank Holding Company Act of 1956," 70 Stat. 133 (12 U.S.C. s. 1841 et seq.) and regulations thereunder, to the extent that federal law does not prohibit banks or savings banks from exercising those powers or activities.

(7) To apply to the commissioner for authority, and if granted, to exercise any power or activity that has been or is hereafter deemed to be (i) financial in nature or incidental to such financial activity, (ii) complementary to a financial activity and not posing a substantial risk to the safety or soundness of depository institutions or the financial system generally, or (iii) closely related to banking under the "Bank Holding Company Act of 1956," 70 Stat. 133 (12 U.S.C. s. 1841 et seq.) and which has been permitted on an individual basis by order of the Board of Governors of the Federal Reserve System.

(8) To make loans, as defined in this subsection, pursuant to which the parties may contract for and the bank or savings bank may receive interest or other compensation at a rate or rates or in an amount that the bank or savings bank and the borrower may agree upon, notwithstanding the provisions of any other law of this State, except N.J.S.2C:21-19, which limits the interest rate or finance charge which would otherwise be applicable to the loan. A loan, for the purposes of this subsection, includes loans in the amount of \$5,000.00 or more, payable on demand or in installments, and (a) which is for the purpose of acquiring or is secured by equipment used for business or commercial purposes or (b) is secured by (i) an interest in warehouse receipts, bills of lading, or other documents of title which are subject to chapter 7 of Title 12A of the New Jersey Statutes, or (ii) by an interest in negotiable instruments or commercial paper which are subject to chapter 3 of Title 12A of the New Jersey Statutes, or (iii) by an interest in stocks, bonds, certificates of deposit or other securities which are subject to chapter 8 of Title 12A of the New Jersey Statutes, or (iv) by an interest in any combination of the foregoing.

(9) To engage in the business of providing data processing and computer services.

(10) To acquire, by purchase or otherwise, and to sell warrants, options or other similar rights to any class or classes of equity securities issued or to be issued by a corporation, if, at the time the warrants, options or other similar rights are acquired, the issuer, or its parent company, affiliate or subsidiary, is a borrower of funds loaned by the bank or savings bank, and if the acquisition by purchase or otherwise, and the sale of the warrants, options or other similar rights neither adds to the bank's or saving bank's credit risk nor increases the bank's or savings bank's financial liabilities.

The commissioner may, by regulation, prescribe the manner in which and the extent to which the powers enumerated in this section may be exercised, including whether they are to be exercised through a subsidiary corporation and may, by regulation, prescribe other powers, not otherwise expressly authorized or prohibited by law, which banks and savings banks may exercise.

5. Section 52 of P.L.1948, c.67 (C.17:9A-52) is amended to read as follows:

C.17:9A-52 Dividends on capital stock.

52. A. Dividends on the capital stock of a bank may be paid from time to time wholly in cash, or wholly in stock of the bank, or partly in cash and partly in stock of the bank as the board of directors may in its discretion determine, subject to the limitations in this section contained.

B. No dividend shall be paid by a bank on its capital stock unless, following the payment of each such dividend, the capital stock of the bank will be unimpaired, and

- (1) the bank will have a surplus of not less than 50% of its capital stock, or, if not,
- (2) the payment of such dividend will not reduce the surplus of the bank.

C. The certificate of incorporation of a bank, or an amendment thereof, may provide that dividends may be paid in stock of the bank without an amendment of the bank's certificate of incorporation pursuant to article 19, notwithstanding the payment of such dividend effects an increase in the capital stock of the bank. In such a case, dividends may be paid from time to time in the stock of the bank, at the discretion of the board of directors, without compliance with article 19; provided that, prior to the date of the payment of any such dividend, a certificate made by two officers of the bank, one of whom shall be the president or a vice-president, shall be filed in the department for the approval of the commissioner, stating

- (1) the date upon which the dividend is to be paid; and
 - (2) the amount of such dividend;
 - (3) the amount of the capital stock and the surplus of the bank after giving effect to the payment of such dividend;
 - (4) the payment of the dividend will not violate the provisions of subsection B of this section;
- and

(5) the certificate of incorporation of the bank, or an amendment thereof, authorizes the payment of dividends in stock of the bank without an amendment of the bank's certificate of incorporation pursuant to article 19.

A filing shall be deemed approved on the 30th day after receipt by the commissioner, unless approved or denied earlier by the commissioner in writing. Upon approval pursuant to this section, the certificate shall thereupon be amended as set forth in the certificate of amendment. A certificate filed in the department pursuant to this subsection shall be deemed for all purposes to be an amendment of the certificate of incorporation of the bank with the same effect as if it had been authorized, executed, approved and filed in the department pursuant to article 19.

D. When the certificate of incorporation of a bank, or an amendment thereof, does not provide that dividends may be paid in stock of the bank without an amendment of the bank's certificate of incorporation pursuant to article 19, no such dividend which results in an increase in the capital stock of the bank shall be paid unless the necessary increase in capital stock is authorized pursuant to article 19.

E. Subsections C and D of this section shall not apply to a stock dividend paid pursuant to section 212.

F. This section shall not limit the power of a bank to pay dividends on shares of preferred stock issued prior to the effective date of this act, as provided in its certificate of incorporation.

6. Section 117 of P.L.1948, c.67 (C.17:9A-117) is amended to read as follows:

C.17:9A-117 Procedure for amending certificate of incorporation.

117. Whenever the board of directors shall deem it advisable to amend the certificate of incorporation, it shall adopt a resolution setting forth the proposed amendment and fixing a date for a meeting of stockholders to take action thereon, upon notice given pursuant to section 81. If, at such meeting or at any adjournment thereof, the holders of at least two-thirds of the capital stock entitled to vote shall vote in favor of the proposed amendment or any modification thereof, a certificate thereof, setting forth the amendment in full and certifying that the amendment was made for a purpose authorized by law in the manner required by this article, shall be made and acknowledged by two officers of the bank, one of whom shall be the president or vice-president, and shall be submitted to the commissioner for approval. A filing shall be deemed approved on the 30th day after receipt by the commissioner, unless approved or denied earlier by the commissioner in writing. Upon approval pursuant to this section, the certificate of incorporation shall thereupon be amended as set forth in the certificate of amendment.

7. Section 198 of P.L.1948, c.67 (C.17:9A-198) is amended to read as follows:
C.17:9A-198 Amendment procedure.

198. A. Whenever the board of managers of any savings bank shall deem it advisable to amend the certificate of incorporation, it shall, by a vote of not less than 2/3 of the managers then in office, adopt a resolution setting forth the proposed amendment, and shall publish notice of intention to apply to the commissioner for approval of such amendment at least once a week for four successive weeks, in the manner provided in section 10. A copy of the resolution, certified by two officers, together with proof of such publication and a certified statement that the amendment was made for a purpose authorized by law in the manner specified by this section shall be submitted to the commissioner for approval. A filing shall be deemed approved on the 30th day after receipt by the commissioner, unless approved or denied earlier by the commissioner in writing. Upon approval pursuant to this section, the certificate of incorporation shall thereupon be amended as set forth in the certificate of amendment.

B. When the amendment is for the purpose specified in paragraph (2) of section 197, the commissioner shall give special consideration to the following:

(1) the needs of the community for trust services, and the probable volume of trust business which will be available to the savings bank;

(2) the condition of the savings bank, particularly the adequacy of its capital deposits, if any and surplus in relation to its deposit liabilities and other corporate responsibilities, including the proposed exercise of fiduciary powers; but no savings bank shall be authorized to make such an amendment unless its capital deposits, if any, and surplus amount to at least \$500,000.00;

(3) the general character and ability of the management of the savings bank;

(4) the nature of the supervision to be given to the proposed fiduciary activities;

(5) the qualifications, experience and character of the proposed officer or officers who will have control or supervision of the proposed fiduciary activities;

(6) whether the savings bank has available competent legal counsel to advise and pass upon trust matters whenever necessary; and

(7) any other matters which, in the discretion of the commissioner, are relevant.

17:9A-402. Amendment of certificate of incorporation

21. Whenever the board of directors of a subsidiary capital stock savings bank deems it advisable to amend the certificate of incorporation, it shall adopt a resolution setting forth the proposed amendment, which amendment shall be approved, at a meeting of the stockholders entitled to vote, by at least 2/3 of the capital stock entitled to vote. If the holders of 2/3 of the shares of capital stock entitled to vote approve the amendment, a certificate of this approval setting forth the amendment and certifying that the amendment was made for a purpose authorized by law in the manner specified by this section, shall be attested by two officers of the bank, one of whom shall be the president or vice president, and shall be submitted to the commissioner for approval. A filing shall be deemed approved on the 30th day after receipt by the commissioner, unless approved or denied earlier by the commissioner in writing. Upon approval pursuant to this section, the certificate of incorporation shall thereupon be amended as set forth in the certificate of amendment.

9. Section 24 of P.L.1963, c.144 (C.17:12B-24) is amended to read as follows:

C.17:12B-24 Establishment, operation of branch offices by State association.

24. A. No State association shall hereafter establish or operate a branch office or offices, other than as provided by law without the prior written approval of the commissioner; provided, however, that any association operating an authorized branch office at the effective date of this act may continue to do so.

(1) An association operating a branch office approved prior to the effective date of this act with conditions or restrictions imposed on its operation may upgrade such office by notifying the commissioner at least 30 days before such upgrading. A branch office is considered upgraded if the association is relieved of any of the conditions or restrictions imposed on operation of the office when it opened. If within 30 days of receipt of the notice, the commissioner does not notify the association of his objection which would require the association to submit an

application or additional information before upgrading, the association may upgrade the office.

(2) An approved, but unopened branch office as of the effective date of this amendatory act may open and operate in the same manner as a branch office approved subsequent to the effective date of this amendatory act.

(3) Any application which deals with offices of a State association filed with the commissioner prior to the effective date of this amendatory act shall continue to be processed as any application filed subsequent to the effective date of this amendatory act; however, the commissioner may request such additional information as may be necessary to comply with the requirements of this amendatory act.

B. An association may apply for a branch office regardless of the number of branch applications it has pending before the commissioner. Within 90 days after receipt of a branch application, the commissioner shall announce his decision upon such application.

C. The commissioner shall approve the application if the commissioner finds that:

(1) the State association's capital equals or exceeds the minimum capital established by the commissioner by regulation;

(2) the interests of the public will be served to advantage by the establishment of the full branch office;

(3) conditions in the locality in which the proposed full branch office is to be established afford reasonable promise of successful operation. To determine if an applicant meets this requirement, the commissioner shall consider only the costs of purchasing, constructing, leasing or otherwise establishing the proposed office, including the costs for staffing, furniture and equipment needed therefor and the effect of these costs on the operations of the applying institution as a whole. The applicant need not demonstrate an ability to operate the proposed office at a profit within a definable period of time based on the generation of new deposits from the market area to be entered except to the extent that losses suffered at the proposed office could affect the safety and soundness of the applicant's overall operations; and

(4) that the applicant has achieved sufficient compliance as defined by the commissioner by regulation with the provisions of the "Community Reinvestment Act of 1977," 12 U.S.C. s.2901 et seq.

D. (Deleted by amendment, P.L.1996, c.17.)

E. The commissioner shall conduct such investigation or hearing, or both, as the commissioner may deem advisable. The commissioner may adopt, amend, alter or rescind regulations prescribing the form of protest to applications and the procedures to be followed in the event that the commissioner elects to hold a hearing in connection with an application for a branch office, and such other regulations as the commissioner may deem necessary with respect to the provisions of this section.

F. (1) In lieu of the procedures set forth in subsections A through C and E of this section, section 89 of P.L.1996, c.17 (C.17:12B-24.1), paragraph (2) of section 28 of P.L.1963, c.144 (C.17:12B-28), or paragraph (2) of section 40 of P.L.1963, c.144 (C.17:12B-40), a State association which, directly or through a predecessor association by merger or other reorganization, has been in business for at least three years, and which is well capitalized, adequately managed, and, if applicable, has received in its most recent examination under the "Community Reinvestment Act of 1977," 12 U.S.C.s.2901 et seq., a rating of not less than "satisfactory record of meeting community credit needs," or its equivalent, may apply for expedited branch office approval pursuant to this subsection. The State association shall file written application of the proposed establishment with the commissioner and with those other persons designated by the commissioner by rule or regulation. The application shall be accompanied by or be in the form of a certification that (a) all applicable provisions of this subsection have been met, (b) the applicant requests expedited processing under this subsection, and (c) contains that other information, if any, as the commissioner may require by rule or regulation to confirm that an establishment of the branch will not adversely affect the safety and soundness of the State association or the public interest.

(2) An application shall be deemed approved on the 30th day after receipt by the commissioner, unless approved or denied earlier by the commissioner in writing.

(3) For purposes of this subsection, the term "well capitalized" has the meaning given the

term in 12 U.S.C. s.1831o and "well managed" means, unless otherwise determined in writing by the commissioner, (a) the achievement of a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System or an equivalent rating system in connection with the most recent examination or subsequent review of the State association, and (b) at least a rating of 2 for management, if such rating is given. Nothing in this subsection shall be construed to affect the confidentiality of any such rating under applicable law or regulation.

10. Section 48 of P.L.1963, c.144 (C.17:12B-48) is amended to read as follows:

C.17:12B-48 Powers of association.

48. Without limiting the generality of the foregoing, every association shall have power to:

(1) Have succession by its corporate name for the period limited in its charter or certificate of incorporation, and when no period is limited, perpetually.

(2) Sue and be sued in any court.

(3) Adopt and use a corporate seal and alter the same.

(4) Purchase and otherwise acquire, hold, mortgage, pledge, lease, exchange, sell, convey and otherwise dispose of, any real and personal property, necessary or incidental to its operations and consistent with its powers and purposes.

(5) Insure its members' accounts with the Federal Deposit Insurance Corporation, and comply with conditions necessary to obtain and maintain such insurance.

(6) Become a member of or stockholder in a Federal Home Loan Bank and to that end to comply with all conditions of membership therein.

(7) Act as agent for the United States or the State of New Jersey or any instrumentality of either of them, when designated for that purpose, and perform such reasonable duties as such agent as may be required of it.

(8) Join any cooperative league organized for the purpose of protecting and promoting the welfare of associations and their members and comply with all conditions of membership therein.

(9) Borrow money from any source in or out of the State, on the note, bond and mortgage or other obligation of the association upon such terms and conditions as the board may from time to time prescribe by resolution adopted by at least a majority of all the members of the board and duly recorded on the minutes and to pledge, assign or transfer mortgages, owned by the association and the obligations secured by such mortgages, together with the shares, if any, pledged as collateral security therefor, or any real or other personal property, as security for the repayment of money so borrowed. No association shall borrow money if by doing so the aggregate of its indebtedness for borrowed money other than to the Federal Home Loan Bank will exceed 20% of its capital, except with the approval of the commissioner.

(10) (Deleted by amendment.)

(11) Require an advance payment of interest for a period of one month on any loan; and accept advance payments of interest, if made at the option of the debtor, for any period on any loan. None of such payments shall be deemed usurious.

(12) Where shares are issued, charge an admission fee, not to exceed \$0.25 per share, which shall include the cost of membership or share certificate and account book.

(13) Impose charges upon a member for failure to make any payment to the association when due, but only as provided in this paragraph. Where the association issues installment share accounts it may impose such charge upon any member holding such an account or any borrower upon a sinking fund mortgage not in excess of 1% a month upon the amount in arrears, except for the first month's arrearage or the amount by which such first month's arrearage may be increased by subsequent arrearage, in which case a charge not in excess of 5% may be imposed. Such charges shall be subject to the further limitations that no such charge shall be deducted from any amount actually paid by a member upon an account nor shall the total of any such charges against any account in any fiscal year exceed the amount that may be charged for failure to make any payments for a six-month period nor shall any charge for default be made on a charge for default. Otherwise an association may impose a charge for failure to make any required payment to it when due upon any loan or contract for the resale of real estate to a member, not to exceed 4% of the amount of each payment in arrears, but no more than one such

charge may be made with respect to any one payment in arrears. An association may impose a reasonable service charge against any member who tenders to such association, for collection or as payment, a check or other instrument of any type which subsequently is not honored by the institution or person upon which such check or other instrument is drawn. None of such charges shall be deemed usurious.

(14) Compute interest upon any direct reduction loan, on designated payment dates, and add the same to the unpaid balance of such loan.

(15) Act as agent for any person where such agency will further the interests of the association and its members, subject to such limitations as may be prescribed by the commissioner.

(16) Upon application to and approval by the commissioner, to act as custodian or trustee within the contemplation of the Federal Self-Employed Individuals Tax Retirement Act of 1962, as amended and supplemented, and the Employee Retirement Income Security Act of 1974 as amended and supplemented, and as custodian, trustee or manager of any such investment fund the authorized investments of which include, but need not be limited to, savings accounts or real estate loans, and the beneficial interests in which may be represented by transferable shares or certificates. Associations exercising the powers authorized by this subsection shall segregate all funds held in such fiduciary capacities from the general assets of the association and shall keep a separate set of books and records showing in detail all transactions made under authority of this subsection. If individual records are kept for each self-employed individual's retirement plan and each such investment fund, then all such funds held in such fiduciary capacities by an association may be commingled for appropriate purposes of investment. No funds held in such fiduciary capacities shall be used by an association in the conduct of its business; however, such funds may be invested in savings accounts of the association in the event that the custodial, trust or other plan does not prohibit such investment. In granting or refusing the association's application the commissioner shall take into consideration the investment policies, amount, type and adequacy of reserves, fidelity bonds and any legally required deposits of the applicant and other pertinent facts and circumstances.

(17) Upon compliance with subsection (5) of this section, accept from its members accounts to be repaid upon such terms, not inconsistent with this act, as are approved by the Commissioner of Banking and Insurance, by regulation or otherwise, provided that no account shall exceed the limitations established by section 78 of P.L.1963, c.144 (C.17:12B-78), and provided further that no account shall be accepted or issued in the name of any corporation, association or partnership or in the name of any individual for use in trade or business. An association issuing such accounts may honor demands for withdrawal of such accounts in the form of negotiable checks, drafts or orders in the form of electronic fund transfers and may become a member of a clearing facility and satisfy reasonable conditions required for its qualification and pay reasonable expenses therefor. Such accounts may be either interest-bearing or noninterest-bearing; provided, however, that the payment of interest on such accounts be permitted by federal law. An association accepting accounts pursuant to this subsection shall, at all times, maintain reserves against such accounts as shall be prescribed in regulations issued by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) but such reserves shall be equal in nature and amount to those required of savings banks in this State against similar accounts. Such reserves shall be maintained in cash or deposits in one or more reserve depositories as authorized by the Commissioner of Banking and Insurance. Regulations of the commissioner may also provide that associations issuing such type of accounts maintain a general reserve account, federal insurance reserve account and undivided profits of specified minimum amounts and provide for minimum standards of office facilities in connection therewith. An insured association may impose a reasonable service charge for providing and maintaining such accounts for the benefit of its members.

(18) Issue credit cards, extend credit in connection therewith, and otherwise engage in or participate in credit card operations subject to such regulations as the commissioner may prescribe. Any such regulations shall be in substantial conformity with similar rules and regulations of the Office of Thrift Supervision.

(19) (a) Apply to the commissioner for permission to act as trustee, executor, administrator,

guardian, or in any other fiduciary capacity in which federal savings and loan associations doing business in this State are permitted to act. Associations exercising any or all of the powers enumerated in this section shall segregate all assets held in any fiduciary capacity from the general assets of the association and shall keep a separate set of books and records showing in proper detail all transactions engaged in under authority of this section. No association shall receive in its trust department deposits of current funds subject to check or the deposit of checks, drafts, bills of exchange, or other items for collection or exchange purposes. Funds deposited or held in trust by the association awaiting investment shall be carried in a separate account and shall not be used by the association in the conduct of its business unless it shall first set aside in the trust department United States bonds or other securities approved by the commissioner. In the event of the failure of such association, the owners of the funds held in trust for investment shall have a lien on the bonds or other securities so set apart, in addition to their claim against the estate of the association. Whenever the laws of this State require corporations acting in a fiduciary capacity to deposit securities with the State authorities for the protection of private or court trusts, associations so acting shall be required to make similar deposits and securities so deposited shall be held for the protection of private or court trusts, as provided by New Jersey law. Associations in such cases shall not be required to execute the bond usually required of individuals if New Jersey corporations under similar circumstances are exempt from this requirement. Associations shall have power to execute such bond when so required by the laws of New Jersey. In any case in which the laws of this State require that a corporation acting as trustee, executor, administrator, or in any capacity specified in this section shall take an oath or make an affidavit, any officer, as defined in section 65 of P.L.1963, c.144 (C.17:12B-65), of such association may take the necessary oath or execute the necessary affidavit. It shall be unlawful for any association to lend any officer, director, or employee any funds held in trust under the powers conferred by this section. Any officer, director, or employee making such loan, or to whom such loan is made, may be fined not more than \$5,000.00, or imprisoned not more than five years, or may be both fined and imprisoned, in the discretion of the court. In passing upon applications for permission to exercise the powers enumerated in this section, the commissioner may take into consideration the amount of capital and surplus of the applying association, whether or not such capital and surplus is sufficient under the circumstances of the case, the needs of the community to be served, and any other facts and circumstances that seem to him proper, and may grant or refuse the application accordingly, except that approval shall not be granted to any association having a capital and surplus less than the capital and surplus required by New Jersey law of State banks, trust companies, and corporations exercising such powers.

(b) Any association desiring to surrender its right to exercise the powers granted under this section, in order to relieve itself of the necessity of complying with the requirements of this section, or to have returned to it any securities which it may have deposited with the State authorities for the protection of private or court trusts, or for any other purpose, may file with the commissioner a certified copy of a resolution of its board of directors signifying such desire. Upon receipt of such resolution, the commissioner, after satisfying himself that such association has been relieved in accordance with State law of all duties as trustee, executor, administrator, guardian or other fiduciary, under court, private or other appointments previously accepted under authority of this section, may, in its discretion, issue to such association a certificate certifying that such association is no longer authorized to exercise the powers granted by this section. Upon the issuance of such a certificate by the commissioner, such association (i) shall no longer be subject to the provisions of this section or the regulations of the commissioner made pursuant thereto, (ii) shall be entitled to have returned to it any securities which it may have deposited with the State authorities for the protection of private or court trusts, and (iii) shall not exercise thereafter any of the powers granted by this section without first applying for and obtaining approval to exercise such powers pursuant to the provisions of this section.

(c) The commissioner is authorized and empowered to promulgate such regulations as he may deem necessary to enforce compliance with the provisions of this section and the proper exercise of the trust powers granted by this section. Any such regulations shall be in substantial conformity with similar rules and regulations of the Office of Thrift Supervision.

(20) In accordance with rules and regulations promulgated by the commissioner, issue and sell directly to subscribers or through underwriters mutual capital certificates. Such certificates shall constitute part of the general reserve and net worth of the issuing association. Such certificates--

- (a) Shall be subordinate to all savings accounts, savings certificates, and debt obligations;
- (b) Shall constitute a claim in liquidation on the general reserves, surplus, and undivided profits of the association remaining after the payment in full of all savings accounts, savings certificates, and debt obligations;
- (c) Shall be entitled to the payment of dividends; and
- (d) May have a fixed or variable dividend rate.

The commissioner is authorized and empowered to promulgate such regulations as he may deem necessary with respect to the powers granted by this section. Any such regulations shall be in substantial conformity with similar rules and regulations of the Office of Thrift Supervision. The commissioner shall provide in his regulations for charging losses to the mutual capital certificates, reserves, and other net worth accounts.

(21) Notwithstanding the provisions of P.L.1963, c.144 (C.17:12B-1 et seq.) or any other law, exercise those powers, rights, benefits or privileges now or hereafter authorized for national or out-of-State banks or for Federal or out-of-State savings banks or savings associations either directly or through a financial subsidiary or other subsidiary, to the same extent and subject to the same limitations as national or out-of-State banks or Federal or out-of-State savings banks or savings associations may exercise those powers, rights, benefits or privileges, provided that before exercising any power, right, benefit or privilege of any out-of-State bank or out-of-State savings bank or savings association, the commissioner has adopted a regulation approving an exercise of that power, right, benefit or privilege by state associations generally or the State association provides notice to the commissioner and on a case-by-case basis the commissioner either approves the activity or does not provide notice before the expiration of 45 days that such power, right, benefit or privilege is not appropriate for the State association on grounds of safety and soundness or on other grounds designated by the commissioner by regulation. The commissioner shall have the authority to adopt rules and regulations pursuant to this section, which rules and regulations shall have as their objective the placing of State associations on a substantial competitive parity with national and out-of-State banks and Federal and out-of-State savings banks and savings associations.

(22) Exercise any powers and activities that have been or are hereafter approved by regulation of the Board of Governors of the Federal Reserve System as being (i) financial in nature or incidental to such financial activity, (ii) complementary to a financial activity and not posing a substantial risk to the safety or soundness of depository institutions or the financial system generally, or (iii) so closely related to banking or managing or controlling savings associations as to be a proper activity for a bank holding company or financial holding company pursuant to the "Bank Holding Company Act of 1956," 70 Stat. 133 (12 U.S.C. s. 1841 et seq.) and regulations thereunder, to the extent that federal law does not prohibit savings associations from exercising those powers or activities.

(23) Apply to the commissioner for authority, and if granted, to exercise any power or activity that has been or is hereafter deemed to be (i) financial in nature or incidental to such financial activity, (ii) complementary to a financial activity and not posing a substantial risk to the safety or soundness of depository institutions or the financial system generally, or (iii) closely related to banking under the "Bank Holding Company Act of 1956," 70 Stat. 133 (12 U.S.C. s. 1841 et seq.) and which has been permitted on an individual basis by order of the Board of Governors of the Federal Reserve System.

11. Section 21 of P.L.1989, c.165 (C.17:12B-312) is amended to read as follows:

C.17:12B-312 Amendment of certificate of incorporation.

21. Whenever the board of directors of a subsidiary capital stock state association deems it advisable to amend the certificate of incorporation, it shall adopt a resolution setting forth the proposed amendment, which amendment shall be approved, at a meeting of the stockholders

entitled to vote, by at least 2/3 of the capital stock entitled to vote. If the holders of 2/3 of the shares of capital stock entitled to vote approve the amendment, a certificate of this approval shall be attested by two officers of the state association, one of whom shall be the president or vice president, and shall be submitted to the commissioner for approval. A filing shall be deemed approved on the 30th day after receipt by the commissioner, unless approved or denied earlier by the commissioner in writing. Upon approval pursuant to this section, the certificate of incorporation shall thereupon be amended as set forth in the certificate of amendment.

12. Section 5 of P.L.1982, c.9 (C.17:9A-8.5) is amended to read as follows:

C.17:9A-8.5 Provision for authorized but unissued stock.

5. a. A capital stock savings bank may, in its original or amended certificate of incorporation, make provision for authorized but unissued stock. This stock may, with the approval of the commissioner, be issued for those purposes, in addition to the purposes expressly authorized by law, and for any consideration which the board of directors may determine. So long as this stock remains unissued, it shall not constitute capital stock for the purposes of the act to which this act is a supplement.

b. Prior to the time when authorized but unissued shares are issued by a capital stock savings bank, a certificate of amendment made by two officers of the savings bank, one of whom shall be the president or a vice-president, shall be filed with the department. The certificate of amendment shall state: (1) the amount of the authorized but unissued stock which will be issued; (2) the consideration which will be received by the capital stock savings bank on the issuance of the stock; (3) the date the stock will be issued; (4) the amount of the capital stock which will be outstanding; and (5) the amount of surplus after giving effect to the issue. A filing shall be deemed approved on the 30th day after receipt by the commissioner, unless approved or disapproved earlier by the commissioner in writing. Upon approval pursuant to this section, the certificate of incorporation shall thereupon be amended as set forth in the certificate of amendment. The commissioner may disapprove a filing if the commissioner finds that the issuance of the stock will be in violation of law or contrary to the public interest or that the capital stock savings bank's original or amended certificate of incorporation does not provide for authorized but unissued stock. A certificate filed with the department pursuant to this section shall be deemed for all purposes to be an amendment of the certificate of incorporation.

c. A capital stock savings bank may issue preferred stock in accordance with the provisions of Article 20 of P.L.1948, c. 67 (C. 17:9A-124 to 17:9A-130).

13. Section 21 of P.L. 1974, c. 137 (C. 17:12B-250) is amended to read as follows:

C.17:12B-250 Powers available to capital stock association.

21. The powers contained in section 47 (C.17:12B-47), section 48 (C.17:12B-48) and section 130 (C.17:12B-130) of this act shall be available to capital stock associations (but the term "member" as used therein shall be deemed to refer to "depositor" or "borrower," and the term "dividends" shall be deemed to refer to "interest" as may be appropriate in the context), and in addition every capital stock association shall have the power to:

a. Amend its certificate of incorporation in the following manner:

(1) The board shall approve the proposed amendment and direct that it be submitted to a vote at a meeting of the stockholders.

(2) Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each stockholder of record entitled to vote thereon within the time and in the manner provided in this act for the giving of notice of meetings of stockholders.

(3) At such meeting a vote of the stockholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of a majority of the votes cast in person or by proxy by the stockholders.

(4) No amendment shall become effective until it shall have been submitted to the commissioner and he shall either have approved it in writing or failed to take action thereon for

a period of 30 days after it shall have been submitted to him. Approval shall not be withheld by the commissioner unless an amendment is in conflict with the provisions of this act.

b. Subject to amendment of its certificate of incorporation, authorize issuance of additional capital stock for:

(1) Payment of a consideration other than cash in connection with mergers with or purchase of assets of another association.

(2) The purpose of increasing the amount of its stated capital by sale of such additional capital stock.

(3) Capital stock options, the aggregate of which shall not exceed 10% of the amount of authorized capital stock at the time of the granting of such options and the establishment of one or more capital stock purchase plans for officers and employees of the capital stock association, which plan or plans may include provisions for partial contribution by the association.

c. Declare and distribute stock dividends without the necessity of an amendment to its certificate of incorporation, notwithstanding that the payment of such dividends will effect an increase in the capital stock of the capital stock association. In such a case, dividends may be paid from time to time on the stock of the capital stock association, at the discretion of the board, provided that prior to the date of the payment of any such dividend, a certificate shall be filed with the commissioner for the approval of the commissioner, stating:

(1) The date upon which the dividend is to be paid;

(2) The amount of such dividend; and

(3) The amount of the capital stock and the paid-in or contributed surplus of the capital stock association after giving effect to the payment of such dividend.

A filing shall be deemed approved on the 30th day after receipt by the commissioner, unless approved or disapproved earlier by the commissioner in writing. Upon approval pursuant to this section, the certificate of incorporation shall thereupon be amended as set forth in the certificate of amendment. A certificate filed in the department pursuant to this subsection shall be deemed for all purposes to be an amendment to the certificate of incorporation of the capital stock association with the same effect as if it had been authorized, executed, approved and filed in the department pursuant to subsection a. of this section.

A split-up or division of the issued shares of any class or series into a greater number of shares of the same class or series without increasing the amount of a capital stock association's stated capital shall not be construed to be a stock dividend within the meaning of this subsection and may be accomplished by amendment of the certificate of incorporation as provided in this act.

d. Fix a record date for the purpose of determining the stockholders entitled to notice of, or to vote, at any meetings of stockholders or any adjournment thereof, or to express consent to, or dissent from, any proposal without a meeting, or for the purpose of determining stockholders entitled to receive payment of any dividend or election of any right, or for the purpose of any other action, the bylaws may provide for fixing, or in the absence of such provision, the board may fix, in advance, a date as the record date for any such determination of stockholders. Such date shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 60 days prior to any other action.

e. Borrow money provided that the aggregate indebtedness for borrowed money, other than to the Federal Home Loan Bank, will not exceed 20% of its depositors' accounts, except with the approval of the commissioner.

14. Section 35 of P.L.1974, c.137 (C.17:12B-264) is amended to read as follows:

C.17:12B-264 Power to create, issue capital stock; provision for authorized but unissued stock; certificate of amendment.

35. a. Each capital stock association shall have power to create and issue the number of shares of capital stock stated in its certificate of incorporation. Such shares may consist of one class or may be divided into two or more classes and any class may be divided into one or more series. Each class and series may have such designation and such relative dividend, liquidation

and other rights, preferences and limitations as shall be stated in the certificate of incorporation, except that all shares of the same class shall be either without par value or shall have the same par value. Each class and series shall be designated so as to distinguish its shares from every other class and series.

b. A capital stock association may, in its original or amended certificate of incorporation, make provision for authorized but unissued stock. Such stock may, with the approval of the commissioner as hereinafter provided, be issued for such purposes, in addition to the purposes expressly authorized by law, and for such consideration as the board of directors may determine. So long as such stock remains unissued, it shall not constitute capital stock for the purposes of P.L.1963, c.144 (C.17:12B-1 et seq.).

c. Prior to the time when authorized or unissued shares are issued by a capital stock association, a certificate of amendment made by two officers of the capital stock association, one of whom shall be the president or a vice-president, shall be filed in the Department of Banking and Insurance. The certificate of amendment shall state (1) the amount of the authorized but unissued stock which will be issued; (2) the consideration which will be received by the capital stock association on the issuance of such stock; (3) the date upon which the stock will be issued; and (4) the amount of the capital stock association's capital stock which will be outstanding, and the amount of its surplus after giving effect to such issue. A filing shall be deemed approved on the 30th day after receipt by the commissioner, unless approved or disapproved earlier by the commissioner in writing. Upon approval pursuant to this section, the certificate of incorporation shall thereupon be amended as set forth in the certificate of amendment. The commissioner may disapprove a filing if the commissioner finds that the issuance of the stock will be in violation of law or contrary to the public interest or that the capital stock association's original or amended certificate of incorporation does not provide for authorized but unissued stock. A certificate filed in the department pursuant to this section shall be deemed for all purposes to be an amendment of the capital stock association's certificate of incorporation with the same effect as if it had been authorized, executed, approved and filed in the department pursuant to article 19 of P.L.1963, c.144 (C.17:12B-1 et seq.).

Repealer.

15. Sections 9 and 10 of P.L.1981, c.153 (C.17:9A-24a and C.17:9A-24b) and section 2 of P.L.1981, c.163 (C.17:9A-24b.2) are repealed.

16. This act shall take effect immediately.

Approved July 13, 2000.