

BANKS—Trust Funds, Stockholders, and Officers—Amendments to the Banking Act of 1948—N.J. Stat. Ann. §§ 17:9A-35, -79, -81, -96, -111 (West Supp. 1987).

On December 10, 1986 the New Jersey Legislature amended and supplemented the Banking Act of 1948 [the Act].¹ These revisions, (the amendatory Act) are designed to modernize the Act in two ways. First, the amendments establish standards which “qualified banks,”² which are banks, and savings banks with trust powers³ are required to follow in the sweeping⁴ of trust accounts. Secondly, the amendments revise the Act as it relates to election of corporate officers, notification of stockholders’ meetings and allowing certain stockholder action without a meeting but with the written consent of all stockholders. In an effort to modernize the corporate governance provisions of the Act, the legislature brought the Banking Act of 1948 into conformity the New Jersey Business Corporations Act.⁵

The amendatory Act allows the qualified banks to invest the funds held in trust accounts on an interim basis. These funds can be invested by the bank itself or can be deposited with another qualified bank. The funds eligible for such investment can be either income or principal and which are being held for future investment or disbursement. They cannot be subject to the direction of a trust instrument as to investment nor can they be held for distribution on a monthly basis. The bank must invest any amount in excess of \$100 within seven days of the account receiving or accumulating \$100 or more. The bank’s investments or deposits must comply with the New Jersey Prudent Investment Law,⁶ and produce for the trust customer the prevailing short

¹ N.J. STAT. ANN. §§ 17:9A-1 to -381 (West 1984).

² *Id.* §§ 17:9A-28 to -35.

³ *Id.* §§ 19:9A-28(5) to -28(10).

⁴ Sweeping is the process by which qualified banks identify trust moneys which are awaiting distribution or more permanent investment and invest them on an interim basis. It is made possible by computerized programs and results in an increased return to trust customers. SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE, STATEMENT TO SENATE, No. 2109, 202 Leg., 2d Sess. (1986).

⁵ N.J. STAT. ANN. §§ 14A:1-1 to :18-12 (West 1969).

⁶ *Id.* §§ 3B:20-12 to -17 (West 1983) (describing the standard of care required of a fiduciary in investing trust funds).

term market rate of return.⁷ Additionally, this legislation authorizes qualified banks which are legally able to invest in United States Government obligations to do so by buying shares in mutual funds which are composed of such obligations only.⁸ Finally, qualified banks are required to give written notification of the service charge to trust customers who are to receive the sweeping service within thirty days of its institution. Once proper notice is given to the trust customer, the qualified bank is permitted to receive a reasonable service charge to be paid from the income on the investment or deposit in addition to its trust fee.

The amendatory Act changes several sections of the Act to make it more modern and efficient. Absent a governing by law provision, the annual meeting of the stockholders has been changed to the fourth Tuesday in March from the fourth Tuesday in January. Stockholders may now act on matters without a meeting if there is unanimous written consent to the action. Formerly, a meeting was required. Although the minimum time limit for notification of stockholders' meetings remains ten days, the maximum time limit has been increased to sixty days in advance of the meeting.

The amendatory Act allows the board of directors to fix a record date, or the date for determination of stockholder status, ninety days prior to the meeting. Previously, the maximum period between the meeting and record date was thirty-five days. Furthermore, this legislation provides that, in the absence of a fixed record date, the only stockholders who shall be informed of the meeting and entitled to vote at it will be those who are of record at the close of business sixty-five days preceding the meeting. This provision too is an extension of the prior law which

⁷ The amendatory Act does not direct qualified banks to sweep the trust funds into a particular short-term investment. Generally, short-term United States Government obligations with maturities of one year or less provide the liquidity and safety which banks require for the interim investment which is from thirty to sixty days.

⁸ This Act allows qualified banks to invest in United States Government obligations through the vehicle of any "open-end or closed-end management investment company or investment trust registered under the Investment Company Act of 1940." 15 U.S.C. §§ 80a-1 to -64 (1982). An open-end investment company is commonly referred to as a mutual fund. *See* Investment Co. Inst. v. Camp, 401 U.S. 617, 625 (1971).

provided that only stockholders of record at the close of business on the thirty-fifth day prior to the meeting were entitled to vote.

The amendatory Act removed the requirement that if the chairman of the board and president were the same person, a director must be vice-president. If a person holds more than one office and if more than one officer's signature is required, he cannot sign for the bank in any more than one official capacity.

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