

CHAPTER 26

AN ACT concerning the standards for prudent investing by fiduciaries of certain trust estates and of certain funds by the Director of the Division of Investment and revising parts of the statutory law.

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

C.3B:2-11.1 Short title.

1. Sections 1 through 12 of this 1997 amendatory and supplementary act shall be known and may be cited as the "Prudent Investor Act."

C.3B:20-11.2 Compliance by fiduciary with prudent investor rule.

2. a. Except as provided in subsection b. of this section, a fiduciary who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule, as set forth in this act.

b. The prudent investor rule is a default rule that may be expanded, restricted, eliminated, or otherwise altered by express provisions of the trust instrument. A fiduciary is not liable to a beneficiary to the extent that the fiduciary acted in reasonable reliance on those express provisions. Nothing herein shall affect the jurisdiction of the Superior Court to order or authorize a fiduciary to deviate from the express terms or provisions of a trust instrument for the causes, in the manner, and to the extent otherwise provided by law.

C.3B:20-11.3 Investments management of trust assets by fiduciary.

3. a. A fiduciary shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the fiduciary shall exercise reasonable care, skill, and caution.

b. A fiduciary's investment and management decisions respecting individual assets shall not be evaluated in isolation, but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

c. Subject to the standards established in this act, a fiduciary may invest in any kind of property or type of investment. No specific investment or course of action is inherently imprudent.

d. Among the circumstances that the fiduciary shall consider in investing and managing trust assets are those of the following as are relevant to the trust and its beneficiaries:

- (1) general economic conditions;
- (2) the possible effect of inflation or deflation;
- (3) the expected tax consequences of investment decisions or strategies;
- (4) the role that each investment or course of action plays within the overall trust portfolio;
- (5) the expected total return from income and the appreciation of capital;
- (6) other resources of the beneficiaries;
- (7) the need for liquidity, for regularity of income, and for preservation or appreciation of capital; and
- (8) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries as, for example, an interest in a closely-held enterprise, tangible and intangible personalty, or real estate.

e. The fiduciary shall take reasonable steps to verify facts relevant to the investment and management of trust assets and may rely and be fully protected in relying upon statistical, financial, corporate or other information as to a particular investment, and upon ratings or other opinion as to the financial or other status thereof, contained in or offered by any financial, statistical, investment, rating or other publication or service published for the use of and accepted as reliable by investors in like investments or upon a copy of the prospectus prepared and filed with the Securities and Exchange Commission in connection with a new issue.

f. A fiduciary who has special skills or expertise, or is named fiduciary in reliance upon representations of special skills or expertise, has a duty to use those special skills or expertise.

C.3B:20-11.4 Diversification of investments.

4. A fiduciary shall diversify the investments of the trust unless the fiduciary reasonably determines that, because of special circumstances, the purposes of the trust are better served

without diversifying.

C.3B:20-11.5 Assets to be managed in interest of beneficiaries.

5. A fiduciary shall invest and manage the trust assets solely in the interest of the beneficiaries.

C.3B:20-11.6 Impartiality of fiduciary.

6. If a trust has two or more beneficiaries, the fiduciary shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

C.3B:20-11.7 Review of trust assets.

7. Within six months after accepting trust assets, the fiduciary shall review the trust assets and shall make and implement decisions concerning the retention and disposition of assets received at the inception of the trust, in order to bring the trust portfolio into compliance with the provisions of the trust instrument or with the requirements of this act.

C.3B:20-11.8 Incurrence of costs by fiduciary.

8. In investing and managing trust assets, a fiduciary may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the fiduciary. A fiduciary who delegates investment and management functions pursuant to section 10 of P.L.1997, c.26 (C.3B:20-11.10) shall control the overall costs of the delegation, including making a reduction in the amount of corpus commissions otherwise allowable to the fiduciary with respect to the trust assets for which investment responsibility has been delegated, which reduction shall take account of the duties and responsibilities retained by the fiduciary with respect to such assets.

C.3B:20-11.9 Rule expresses standard of conduct.

9. The prudent investor rule expresses a standard of conduct, not outcome. Compliance with the rule is determined in light of the facts and circumstances existing at the time of the fiduciary's decision or action.

C.3B:20-11.10 Delegation of investment, management functions by fiduciary.

10. a. A fiduciary may delegate investment and management functions that a prudent fiduciary of comparable skills could properly delegate under the circumstances. The fiduciary shall exercise reasonable care, skill, and caution in:

(1) selecting an agent with special investment skills and expertise and of sound financial standing;

(2) establishing the scope and terms of the delegation consistent with the purpose and terms of the trust instrument; and

(3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

b. In performing a delegated function, the agent shall owe to the trustee and the beneficiaries the same duties as the fiduciary and shall be held to the same standards as the fiduciary.

c. The fiduciary who complies with the requirements of subsection a. of this section shall not be liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

d. By accepting the delegation of a trust function from the fiduciary of a trust that is subject to the law of New Jersey, the agent submits to the jurisdiction of the courts of New Jersey, even if the delegation agreement provides otherwise.

e. If there are two or more fiduciaries serving, only one of whom has special investment and management skills or expertise or has been named in reliance upon representations of such special skills or expertise, then the fiduciary or fiduciaries not possessed of such special skills or expertise may, pursuant to this section, delegate investment and management functions to the other fiduciary as if such other fiduciary were an agent selected in accordance with this section and subject to the provisions of this section.

f. A fiduciary shall provide reasonable advance written notice on each occasion upon which the fiduciary intends to delegate investment and management functions pursuant to this section, including the identity of the agent, to the beneficiary or beneficiaries eligible to receive income from the trust on the date of the intended delegation. Upon providing such notice, the fiduciary shall be authorized to delegate investment and management functions pursuant to this section.

C.3B:20-11.11 Construction of terms.

11. The following terms or comparable language in a trust instrument, unless otherwise limited or modified by that instrument, shall be construed as authorizing any investment or strategy permitted under this act: "investments permissible by law for investment of trust funds," "legal investment," "authorized investments," "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."

C.3B:20-11.12 Applicability of act.

12. This act shall apply to and govern trusts existing on and created after its effective date. As applied to trusts existing on its effective date, this act governs only actions or omissions occurring after that date.

13. N.J.S.3B:20-1 is amended to read as follows:

Definitions.

3B:20-1. Definitions. As used in this chapter:

- a. "Trust instrument" means and includes a will, deed, agreement, court order or other instrument pursuant to which money or other property is entrusted to a fiduciary;
- b. "Fiduciary" means an individual or corporation that is authorized to act as or acts as a trustee, personal representative, conservator, guardian, and every other individual or corporation charged with the duty of administering a trust estate;
- c. "Trust estate" or "trust assets" means money or other property entrusted to a fiduciary;
- d. (Deleted by amendment, P.L.1997, c.26.)
- e. "Beneficiary" means an individual or corporation for whose benefit a fiduciary acts or is authorized to act.

14. N.J.S.3B:20-7 is amended to read as follows:

Directions of court concerning the sale, conversion or retention of investments.

3B:20-7. Directions of court concerning the sale, conversion or retention of investments. When securities or other property come into possession of a fiduciary as part of the assets of the trust estate the fiduciary is to administer or manage, the fiduciary may apply to the court for direction as to the sale, conversion or retention of the securities or property.

The court shall make an order as it shall deem most advantageous to the trust estate and the interests of persons entitled to share therein.

15. N.J.S.3B:20-8 is amended to read as follows:

protection afforded fiduciary continuing investments under court order.

3B:20-8. Protection afforded fiduciary continuing investments under court order. A fiduciary shall not be held accountable for any loss by reason of continuing to hold the trust assets in accordance with an order pursuant to N.J.S.3B:20-7.

16. N.J.S.3B:20-9 is amended to read as follows:

Application to court upon change in conditions.

3B:20-9. Application to court upon change in conditions. If, as a result of a change in conditions which occurs or which may be reasonably foreseen, the objects of the trust estate may be defeated in whole or in part by the investment or retention of investments of the trust estate in property to which the fiduciary is limited by the trust instrument, the fiduciary or any beneficiary of the trust may apply to the court to secure authority permitting or directing the

fiduciary to invest all or any part of the trust estate in accordance with the provisions of N.J.S.3B:20-1 et seq.

17. N.J.S.3B:20-10 is amended to read as follows:

Investments by court order upon change in conditions.

3B:20-10. Investments by court order upon change in conditions. If the court finds that by reason of a change in conditions which has occurred since the creation of the trust or which may be reasonably foreseen, the objects of the trust estate may be defeated in whole or in part by the investment or retention of the trust estate in property to which the fiduciary is limited by the trust instrument and that the objects of the trust estate and those interested in it would be promoted by the investment of all or part of the trust estate otherwise, the court shall authorize or direct the fiduciary to invest the whole of the trust estate or that part of it as shall be designated, in accordance with the provisions of N.J.S.3B:20-1 et seq.

18. N.J.S.3B:20-18 is amended to read as follows:

Authority to exchange or convert securities.

3B:20-18. Authority to exchange or convert securities. Except as otherwise provided in the trust instrument, a fiduciary who holds securities in a trust estate issued by a corporation which has been recapitalized or reorganized, or which has been a party to a merger or consolidation, may exchange or convert the securities so held for or into other securities issued by the corporation as an incident of its recapitalization, reorganization, merger or consolidation, or issued by the corporation's successor corporation as an incident of the merger or consolidation.

19. N.J.S.3B:20-19 is amended to read as follows:

Fiduciary as issuing corporation.

3B:20-19. Fiduciary as issuing corporation. An exchange or conversion of securities may be made pursuant to this article notwithstanding that the fiduciary which holds the securities in a trust estate is the same corporation which issued the securities.

20. N.J.S.3B:20-23 is amended to read as follows:

Banking institution acting as fiduciary.

3B:20-23. Banking institution acting as fiduciary. An exchange or conversion of shares may be made pursuant to this article notwithstanding that the fiduciary which holds the shares in the trust estate is the banking institution which issued them.

21. N.J.S.3B:20-25 is amended to read as follows:

Application of article.

3B:20-25. Application of article. This article shall not apply where a trust instrument contains provisions inconsistent with or contrary to the provisions of this article.

22. N.J.S.3B:20-27 is amended to read as follows:

3B:20-27. Definitions. As used in this article:

- a. (Deleted by amendment, P.L.1997, c.26).
- b. "Securities" means instruments which are commonly dealt with on securities exchanges or markets or commonly recognized in any area in which they are issued or dealt with as a medium for investment, and which are subject to the provisions of chapter 8, "Uniform Commercial Code-Investment Securities" (chapter 8, Title 12A of the New Jersey Statutes);
- c. "Clearing corporation" means a corporation as defined in N.J.S.12A:8-102.

23. N.J.S.3B:20-34 is amended to read as follows:

Application of article.

3B:20-34. Application of article. This article shall apply to any fiduciary holding securities in its fiduciary capacity, and to any banking institution holding securities as a custodian, managing agent or custodian for a fiduciary, acting on January 2, 1974, or who thereafter may act regardless of the date of the trust instrument by which the fiduciary is appointed and regardless of whether or not the fiduciary or the banking institution acting as custodian, managing agent or custodian for a fiduciary owns capital stock of the clearing corporation.

24. Section 38 of P.L.1948, c.67 (C.17:9A-38) is amended to read as follows:

C.17:9A-38 Effect of trust instruments.

38. Effect of trust instruments.

A. Except as otherwise provided by subsection B of this section, where the trust instrument defines, limits, or specifies the investments which may be made of a trust estate, any common trust fund in which all or any part of such trust estate is invested shall consist only of the investments defined, limited, or specified in such trust instrument.

B. Where the trust instrument makes no provision governing the investments which may be made of a trust estate, or where the trust instrument directs that an estate be invested in "legal investments" or in "investments in which a fiduciary may by law invest" or in "legal investments for trustees," or uses words of similar import, investment of such trust estate may be made, in whole or in part, in a common trust fund, consisting of property in which fiduciaries of trust estates in this State may invest pursuant to chapter 20 of Title 3B of the New Jersey Statutes.

C. (Deleted by amendment.)

D. In making investments as provided in this section a bank shall exercise the standard of care required of a fiduciary of trust assets in New Jersey pursuant to chapter 20 of Title 3B of the New Jersey Statutes.

25. Section 1 of P.L.1959, c.17 (C.52:18A-88.1) is amended to read as follows:

C.52:18A-88.1 Investment, reinvestment of moneys on behalf of specified agencies.

1. The Director of the Division of Investment, in addition to other investments, presently or from time to time hereafter authorized by law, shall have authority to invest and reinvest the moneys in, and to acquire for or on behalf of the funds of the following enumerated agencies:

The Consolidated Police and Firemen's Pension Fund Commission;

The Police and Firemen's Retirement System of New Jersey;

The Prison Officers' Pension Commission;

The Public Employees' Retirement System of New Jersey;

The State Police Retirement System;

The Teachers' Pension and Annuity Fund;

The Judicial Retirement System of New Jersey;

The Trustees for the Support of Public Schools;

and all other funds in the custody of the State Treasurer, unless otherwise provided by law;

such investments which shall be authorized or approved for investment by regulation of the State Investment Council.

26. Section 11 of P.L.1950, c.20 (C.52:18A-89) is amended to read as follows:

C.52:18A-89 Limitations, conditions, restrictions continued; authorization of investments.

11. a. Limitations, conditions and restrictions contained in any law concerning the kind or nature of investment of any of the moneys of any of the funds or accounts referred to herein shall continue in full force and effect; provided, however, that subject to any acceptance required, or limitation or restriction contained herein: the Director of the Division of Investment shall at all times have authority to invest and reinvest any such moneys in investments as defined in subsection c. of this section and, for or on behalf of any such fund or account, to sell or exchange any such investments.

b. In investing and reinvesting any and all money and property committed to the director's investment discretion from any source whatsoever, and in acquiring, retaining, selling, exchanging and managing investments, the Director of the Division of Investment shall exercise the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. In making each investment, the director may, depending on the nature and objectives of the portfolio, consider the whole portfolio, provided that, in making each investment, the director shall act with the reasonable expectation that the return on each investment shall be commensurate with the risk associated with each investment. The director shall be under a duty to manage and invest the portfolio solely in the interests of the beneficiaries of the portfolio and for the exclusive purpose of providing financial benefits to the beneficiaries of the portfolio.

c. For the purposes of this section, "investments" means and includes property of every nature, real, personal and mixed, tangible and intangible, and specifically includes, solely by way of description and not by way of limitation, bonds, debentures and other corporate obligations, direct and indirect investments in equity real estate, mortgages and other direct or indirect interests in real estate or investments secured by real estate, capital stocks, common stocks, preferred stocks, diversified pools of venture capital which otherwise could be made consistent with the standard of care required by subsection b. of this section, common trust funds as defined in and regulated by sections 36 through 46 of P.L.1948, c.67 (C.17:9A-36 through 17:9A-46), repurchase agreements, securities loan transactions secured by cash, securities issued by the United States government or its agencies, or irrevocable bank letters of credit, whether directly or through a bank or similar financial institution acting as agent or trustee, mutual funds, and any other security issued by an investment company or investment trust, whether managed or not by third parties, registered under the "Investment Company Act of 1940," 15 U.S.C.s.80a-1 et seq. No investment that is otherwise permissible under this subsection shall be considered to be unlawful solely because the investment is made indirectly or through a partnership, trust, or other

legal entity.

Repealer.

27. The following are repealed:

N.J.S.3B:20-2;

N.J.S.3B:20-6;

N.J.S.3B:20-11 through N.J.S.3B:20-17 inclusive;

N.J.S.3B:20-20; and

N.J.S.3B:20-24.

28. This act shall take effect 90 days after enactment.

Approved March 7, 1997.