

5472

2011-2012 Regular Sessions

I N S E N A T E

May 25, 2011

Introduced by Sen. GRIFFO -- read twice and ordered printed, and when printed to be committed to the Committee on Banks

AN ACT to amend the banking law, in relation to authorizing trust companies to make affiliated investments

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The banking law is amended by adding a new section 100-e to
2 read as follows:
3 S 100-E. AFFILIATED INVESTMENTS; TRANSACTIONS WITH AFFILIATES. 1.
4 DEFINITIONS. AS USED IN THIS SECTION:
5 (A) "AFFILIATE" MEANS ANY CORPORATION OR OTHER ENTITY THAT DIRECTLY OR
6 INDIRECTLY THROUGH ONE OR MORE INTERMEDIARIES CONTROLS, IS CONTROLLED BY
7 OR IS UNDER COMMON CONTROL WITH THE FIDUCIARY.
8 (B) "AFFILIATED INVESTMENT" MEANS AN INVESTMENT FOR WHICH THE FIDUCI-
9 ARY OR AN AFFILIATE OF THE FIDUCIARY ACTS AS ADVISER, ADMINISTRATOR,
10 DISTRIBUTOR, PLACEMENT AGENT, UNDERWRITER, BROKER OR IN ANY OTHER CAPAC-
11 ITY FOR WHICH IT RECEIVES OR HAS RECEIVED A FEE OR COMMISSION FROM SUCH
12 INVESTMENT OR AN INVESTMENT ACQUIRED OR DISPOSED OF IN A TRANSACTION FOR
13 WHICH THE FIDUCIARY OR AN AFFILIATE OF THE FIDUCIARY RECEIVES OR HAS
14 RECEIVED A FEE OR COMMISSION.
15 (C) "FEE OR COMMISSION" MEANS COMPENSATION PAID TO A FIDUCIARY OR AN
16 AFFILIATE THEREOF ON ACCOUNT OF ITS SERVICES TO OR ON BEHALF OF AN
17 INVESTMENT.
18 (D) "INVESTMENT" MEANS ANY SECURITY AS DEFINED IN SECTION TWO OF THE
19 FEDERAL SECURITIES ACT OF 1933, ANY CONTRACT OF SALE OF A COMMODITY FOR
20 FUTURE DELIVERY WITHIN THE MEANING OF SECTION TWO OF THE FEDERAL COMMOD-
21 ITY EXCHANGE ACT, OR ANY OTHER ASSET PERMITTED FOR FIDUCIARY ACCOUNTS
22 PURSUANT TO SUBPARAGRAPH 4 OF PARAGRAPH (B) OF SECTION 11-2.3 OF THE
23 ESTATES, POWERS AND TRUSTS LAW OR BY THE TERMS OF THE GOVERNING INSTRU-
24 MENT, INCLUDING, BUT NOT LIMITED TO, SHARES OR INTERESTS IN A PRIVATE
25 INVESTMENT FUND (INCLUDING A PRIVATE INVESTMENT FUND ORGANIZED AS A

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 LIMITED PARTNERSHIP, LIMITED LIABILITY COMPANY, A STATUTORY OR COMMON
2 LAW BUSINESS TRUST, OR A REAL ESTATE INVESTMENT TRUST), JOINT VENTURE OR
3 OTHER GENERAL OR LIMITED PARTNERSHIP, OR AN OPEN-END OR CLOSED-END
4 MANAGEMENT TYPE INVESTMENT COMPANY OR INVESTMENT TRUST REGISTERED UNDER
5 THE INVESTMENT COMPANY ACT OF 1940.

6 (E) "TRUST COMPANY" MEANS ANY TRUST COMPANY, ANY BANK, INCLUDING ANY
7 PRIVATE BANK, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, AND CREDIT
8 UNION, DULY AUTHORIZED TO EXERCISE FIDUCIARY POWERS, AND ANY NATIONAL
9 BANK, FEDERAL SAVINGS BANK, OR FEDERAL SAVINGS AND LOAN ASSOCIATION
10 HAVING A PRINCIPAL, BRANCH OR TRUST OFFICE IN THIS STATE AND DULY
11 AUTHORIZED TO EXERCISE FIDUCIARY POWERS.

12 2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A TRUST COMPANY MAY
13 PURCHASE, SELL, HOLD OR OTHERWISE DEAL WITH AN AFFILIATE OR AN INTEREST
14 IN AN AFFILIATED INVESTMENT AND, UPON SATISFACTION OF THE CONDITIONS
15 STATED IN SUBDIVISION THREE OF THIS SECTION, SUCH TRUST COMPANY MAY
16 RECEIVE FIDUCIARY COMPENSATION FROM SUCH ACCOUNT AT THE SAME RATE AS THE
17 TRUST COMPANY WOULD OTHERWISE BE ENTITLED TO BE COMPENSATED.

18 3. A TRUST COMPANY SEEKING COMPENSATION PURSUANT TO SUBDIVISION TWO OF
19 THIS SECTION SHALL DISCLOSE TO EACH PRINCIPAL IN AN AGENCY RELATIONSHIP,
20 AND TO ALL CURRENT RECIPIENTS OF ACCOUNT STATEMENTS OF ANY OTHER FIDUCI-
21 ARY ACCOUNT, ALL FEES OR COMMISSIONS PAID OR TO BE PAID BY THE ACCOUNT,
22 OR RECEIVED OR TO BE RECEIVED BY AN AFFILIATE ARISING FROM SUCH AFFIL-
23 IATED INVESTMENT OR SUCH OTHER DEALING WITH AN AFFILIATE. THE DISCLOSURE
24 REQUIRED UNDER THIS SUBSECTION MAY BE GIVEN EITHER IN A COPY OF THE
25 PROSPECTUS OR ANY OTHER DISCLOSURE DOCUMENT PREPARED FOR THE AFFILIATED
26 INVESTMENT UNDER FEDERAL OR STATE SECURITIES LAWS OR IN A WRITTEN SUMMA-
27 RY THAT INCLUDES ALL FEES OR COMMISSIONS RECEIVED OR TO BE RECEIVED BY
28 THE TRUST COMPANY OR ANY AFFILIATE OF THE TRUST COMPANY AND AN EXPLANA-
29 TION OF THE MANNER IN WHICH SUCH FEES OR COMMISSIONS ARE CALCULATED,
30 EITHER AS A PERCENTAGE OF THE ASSETS INVESTED OR BY SOME OTHER METHOD.
31 SUCH DISCLOSURE SHALL BE MADE AT LEAST ANNUALLY UNLESS THERE HAS BEEN NO
32 INCREASE IN THE RATE AT WHICH SUCH FEES OR COMMISSIONS ARE CALCULATED
33 SINCE THE MOST RECENT DISCLOSURE. NOTWITHSTANDING THE FOREGOING
34 PROVISIONS OF THIS SUBDIVISION, NO SUCH DISCLOSURE IS REQUIRED IF THE
35 GOVERNING INSTRUMENT OR A COURT ORDER EXPRESSLY AUTHORIZES THE TRUST
36 COMPANY TO INVEST THE FIDUCIARY ACCOUNT IN AFFILIATED INVESTMENTS OR
37 OTHERWISE DEAL WITH AN AFFILIATE OR AN INTEREST IN AN AFFILIATED INVEST-
38 MENT.

39 4. A TRUST COMPANY THAT HAS COMPLIED WITH SUBDIVISION THREE OF THIS
40 SECTION, WHETHER BY MAKING THE APPLICABLE DISCLOSURE OR BY RELYING ON
41 THE TERMS OF A GOVERNING INSTRUMENT OR COURT ORDER, SHALL HAVE FULL
42 AUTHORITY TO ADMINISTER AN AFFILIATED INVESTMENT, INCLUDING THE AUTHORI-
43 TY TO VOTE PROXIES THEREON, WITHOUT REGARD TO THE AFFILIATION BETWEEN
44 THE TRUST COMPANY AND THE INVESTMENT.

45 S 2. This act shall take effect immediately.