S T A T E O F N E W Y O R K

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:

Section 1. The banking law is amended by adding a new section 100-e to read as follows:

S 100-E. AFFILIATED INVESTMENTS; TRANSACTIONS WITH AFFILIATES. 1. DEFINITIONS. AS USED IN THIS SECTION:

(A) "AFFILIATE" MEANS ANY CORPORATION OR OTHER ENTITY THAT DIRECTLY OR INDIRECTLY THROUGH ONE OR MORE INTERMEDIARIES CONTROLS, IS CONTROLLED BY OR IS UNDER COMMON CONTROL WITH THE FIDUCIARY.

(B) "AFFILIATED INVESTMENT" MEANS AN INVESTMENT FOR WHICH THE FIDUCIARY OR AN AFFILIATE OF THE FIDUCIARY ACTS AS ADVISER, ADMINISTRATOR, DISTRIBUTOR, PLACEMENT AGENT, UNDERWRITER, BROKER OR IN ANY OTHER CAPACITY FOR WHICH IT RECEIVES OR HAS RECEIVED A FEE OR COMMISSION FROM SUCH INVESTMENT OR AN INVESTMENT ACQUIRED OR DISPOSED OF IN A TRANSACTION FOR WHICH THE FIDUCIARY OR AN AFFILIATE OF THE FIDUCIARY RECEIVES OR HAS RECEIVED A FEE OR COMMISSION.

(C) "FEE OR COMMISSION" MEANS COMPENSATION PAID TO A FIDUCIARY OR AN AFFILIATE THEREOF ON ACCOUNT OF ITS SERVICES TO OR ON BEHALF OF AN INVESTMENT.

(D) "INVESTMENT" MEANS ANY SECURITY AS DEFINED IN SECTION TWO OF THE FEDERAL SECURITIES ACT OF 1933, ANY CONTRACT OF SALE OF A COMMODITY FOR FUTURE DELIVERY WITHIN THE MEANING OF SECTION TWO OF THE FEDERAL COMMODITY EXCHANGE ACT, OR ANY OTHER ASSET PERMITTED FOR FIDUCIARY ACCOUNTS PURSUANT TO SUBPARAGRAPH 4 OF PARAGRAPH (B) OF SECTION 11-2.3 OF THE ESTATES, POWERS AND TRUSTS LAW OR BY THE TERMS OF THE GOVERNING INSTRUMENT, INCLUDING, BUT NOT LIMITED TO, SHARES OR INTERESTS IN A PRIVATE 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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LIMITED PARTNERSHIP, LIMITED LIABILITY COMPANY, A STATUTORY OR COMMON LAW BUSINESS TRUST, OR A REAL ESTATE INVESTMENT TRUST), JOINT VENTURE OR OTHER GENERAL OR LIMITED PARTNERSHIP, OR AN OPEN-END OR CLOSED-END MANAGEMENT TYPE INVESTMENT COMPANY OR INVESTMENT TRUST REGISTERED UNDER THE INVESTMENT COMPANY ACT OF 1940.

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

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

3. A TRUST COMPANY SEEKING COMPENSATION PURSUANT TO SUBDIVISION TWO OF THIS SECTION SHALL DISCLOSE TO EACH PRINCIPAL IN AN AGENCY RELATIONSHIP, AND TO ALL CURRENT RECIPIENTS OF ACCOUNT STATEMENTS OF ANY OTHER FIDUCIARY ACCOUNT, ALL FEES OR COMMISSIONS PAID OR TO BE PAID BY THE ACCOUNT, OR RECEIVED OR TO BE RECEIVED BY AN AFFILIATE ARISING FROM SUCH AFFILIATED INVESTMENT OR SUCH OTHER DEALING WITH AN AFFILIATE. THE DISCLOSURE REQUIRED UNDER THIS SUBSECTION MAY BE GIVEN EITHER IN A COPY OF THE PROSPECTUS OR ANY OTHER DISCLOSURE DOCUMENT PREPARED FOR THE AFFILIATED INVESTMENT UNDER FEDERAL OR STATE SECURITIES LAWS OR IN A WRITTEN SUMMARY THAT INCLUDES ALL FEES OR COMMISSIONS RECEIVED OR TO BE RECEIVED BY THE TRUST COMPANY OR ANY AFFILIATE OF THE TRUST COMPANY AND AN EXPLANATION OF THE MANNER IN WHICH SUCH FEES OR COMMISSIONS ARE CALCULATED, EITHER AS A PERCENTAGE OF THE ASSETS INVESTED OR BY SOME OTHER METHOD. SUCH DISCLOSURE SHALL BE MADE AT LEAST ANNUALLY UNLESS THERE HAS BEEN NO INCREASE IN THE RATE AT WHICH SUCH FEES OR COMMISSIONS ARE CALCULATED SINCE THE MOST RECENT DISCLOSURE. NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SUBDIVISION, NO SUCH DISCLOSURE IS REQUIRED IF THE GOVERNING INSTRUMENT OR A COURT ORDER EXPRESSLY AUTHORIZES THE TRUST COMPANY TO INVEST THE FIDUCIARY ACCOUNT IN AFFILIATED INVESTMENTS OR OTHERWISE DEAL WITH AN AFFILIATE OR AN INTEREST IN AN AFFILIATED INVESTMENT.

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

S 2. This act shall take effect immediately.