

2596

2013-2014 Regular Sessions

I N   S E N A T E

January 22, 2013

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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 FOUR 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.