

Article - Insurance

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§5–608.

(a) (1) In this section the following words have the meanings indicated.

(2) “Dollar roll transaction” means two simultaneous transactions with different settlement dates no more than 96 days apart, so that in the transaction with the earlier settlement date, an insurer sells to a business entity, and in the other transaction the insurer is obligated to purchase from the same business entity, substantially similar securities of the following types:

(i) asset-backed securities issued, assumed, or guaranteed by the Government National Mortgage Association, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation or their respective successors; and

(ii) other asset-backed securities referred to in Section 106 of Title I of the Secondary Mortgage Market Enhancement Act of 1984 (15 U.S.C., § 77r–1), as amended.

(3) “Fixed charges” include:

(i) interest on funded and unfunded debt amortization of debt discount; and

(ii) rentals for leased properties.

(4) “Institution” includes a corporation, joint stock association, business trust, and statutory trust.

(5) “Net earnings available for fixed charges” means net income after deducting operating and maintenance expenses, taxes other than federal and state income taxes, depreciation, and depletion, and excluding extraordinary nonrecurring items or income or expense appearing in the regular financial statements of the issuing, assuming, or guaranteeing institutions.

(6) “Obligation” includes bonds, debentures, notes, or other evidences of indebtedness.

(7) “Repurchase transaction” means a transaction in which an insurer purchases securities from a business entity that is obligated to repurchase the purchased securities or equivalent securities from the business entity at a specified price, either within a specified period of time or on demand.

(8) “Reverse repurchase transaction” means a transaction in which an insurer sells securities to a business entity and is obligated to repurchase the sold

securities or equivalent securities from the business entity at a specified price, either within a specified period of time or on demand.

(9) “Securities lending transaction” means a transaction in which securities are loaned by an insurer to a business entity that is obligated to return the loaned securities or equivalent securities to the insurer, either within a specified period of time or on demand.

(b) (1) (i) If net earnings are determined by relying on consolidated earnings statements of parent and subsidiary institutions:

1. the net earnings shall be determined after providing for the income taxes of subsidiaries and making proper allowance for any minority stock interest; and

2. except as otherwise provided in subparagraph (ii) of this paragraph, the required coverage of fixed charges shall be computed on a basis that includes fixed charges and preferred dividends of subsidiaries other than those payable by the subsidiaries to the parent corporation or to other subsidiaries.

(ii) If the minority common stock interest in the subsidiary corporation is substantial, the fixed charges and preferred dividends may be apportioned in accordance with regulations adopted by the Commissioner.

(2) (i) This paragraph applies to an issuing, assuming, or guaranteeing institution, whether or not in legal existence during the entire 5-year period immediately preceding the date of investment by the insurer, that has at any time during the 5-year period acquired the assets of another institution substantially as an entirety by purchase, merger, consolidation, or otherwise, or has been reorganized pursuant to bankruptcy law.

(ii) In applying the earnings tests under this section, the earnings of the predecessor, constituent, or reorganized institution available for interest and dividends for the part of the period that preceded the acquisition or reorganization may be included in the earnings of the issuing, assuming, or guaranteeing institution for the part of the period determined in accordance with adjusted or pro forma consolidated earnings statements covering that part of the period and giving effect to all stock outstanding and all fixed charges existing immediately after the acquisition or reorganization.

(c) The reserve investments of an insurer shall consist of the classes of assets set forth in this section, subject to any limit set for each type or class of asset.

(d) (1) The reserve investments of an insurer may include:

(i) subject to paragraph (2) of this subsection, obligations issued or guaranteed by the African Development Bank, Asian Development Bank, International Bank for Reconstruction and Development, or International Finance Corporation; and

(ii) bonds or other evidences of indebtedness that:

1. are not in default as to principal or interest;
2. are valid and legally authorized obligations issued, assumed, or guaranteed by the United States, a state, a county, city, town, village, municipality, district, or political subdivision of a state, or a civil division or public instrumentality of any of these entities;
3. by applicable statutory or other legal requirements, are payable, as to both principal and interest, from taxes levied or by law required to be levied on all taxable property or all taxable income within the jurisdiction of the governmental unit or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for the purpose of the payment of obligations; and
4. are not payable solely out of special assessments on properties benefited by local improvements.

(2) An insurer may not invest more than 5% of its total admitted assets in obligations of the African Development Bank, Asian Development Bank, International Bank for Reconstruction and Development, or International Finance Corporation.

(e) (1) This subsection does not apply to obligations eligible for investment under subsection (j), (k), or (l) of this section.

(2) The reserve investments of an insurer may include obligations that are not in default as to principal or interest, that are issued, assumed, or guaranteed by a solvent institution created or existing under the laws of the United States or a state, and that qualify under any of the following items:

(i) subject to paragraph (3) of this subsection, the obligations are secured by adequate collateral security and bear fixed interest, and, during each of any 3, including either of the last 2, of the 5 fiscal years immediately preceding the date of acquisition by the insurer, the net earnings available for fixed charges of the issuing, assuming, or guaranteeing institution must have been not less than one and one-quarter times the total of the institution's fixed charges for the year;

(ii) subject to paragraph (3) of this subsection, the obligations, at the date of acquisition by the insurer, are adequately secured and have investment qualities and characteristics in which speculative elements are not predominant;

(iii) the obligations bear fixed interest and are other than those described in item (i) of this paragraph, and the net earnings available for fixed charges of the issuing, assuming, or guaranteeing institution:

1. for a period of 5 fiscal years immediately preceding the date of acquisition by the insurer, must have averaged each year not less than one and

one-half times the institution's average annual fixed charges applicable to the period;
and

2. during the last year of the 5-year period, must have been not less than one and one-half times the institution's fixed charges for the year;
or

(iv) the obligations are adjustment, income, or other contingent interest obligations, and the net earnings available for fixed charges of the issuing, assuming, or guaranteeing institution for a period of 5 fiscal years immediately preceding the date of acquisition by the insurer:

1. must have averaged each year not less than one and one-half times the sum of the institution's average annual fixed charges plus the institution's average annual maximum contingent interest applicable to the period;
and

2. during each of the last 2 years of the 5-year period, must have been not less than one and one-half times the sum of the institution's fixed charges plus maximum contingent interest for the year.

(3) To determine the adequacy of collateral security for purposes of paragraph (2)(i) or (ii) of this subsection not more than one-third of the total value of the required collateral may include stock other than stock meeting the requirements of subsection (f) of this section.

(f) (1) In this subsection, "preferred dividends requirement" means cumulative or noncumulative dividends whether paid or unpaid.

(2) The reserve investments of an insurer may include preferred or guaranteed stock of a solvent institution, created or existing under the laws of the United States or a state, if:

(i) all prior obligations, and prior preferred stock, if any, of the institution at the date of acquisition by the insurer are eligible as investments under this article;

(ii) for preferred stock:

1. the net earnings of the institution available for fixed charges for a period of 5 fiscal years immediately preceding the date of acquisition by the insurer must have averaged each year not less than one and one-half times the sum of any average annual fixed charges, any average annual maximum contingent interest, and the average annual preferred dividend requirement applicable to the period; and

2. during either of the last 2 years of the 5-year period, the net earnings must have been not less than one and one-half times the sum of the

institution's fixed charges, contingent interest, and preferred dividend requirement for the year; and

(iii) for guaranteed stock, the assuming or guaranteeing institution meets the requirements of subsection (e)(2)(iii) of this section construed to include as a fixed charge the amounts of guaranteed dividends of the issue or the rental covering the guarantee of the dividends.

(g) The reserve investments of an insurer may include certificates, notes, or other obligations, adequately secured as to principal and interest, issued by trustees or receivers of an institution created or existing under the laws of the United States or a state, that, or the assets of which, are being administered under the direction of a court having jurisdiction.

(h) The reserve investments of an insurer may include equipment trust obligations or certificates that are adequately secured or other adequately secured instruments that evidence:

(1) an interest in transportation equipment located wholly or partly in the United States; and

(2) a right to receive determined parts of rental, purchase, or other fixed obligatory payments for the use or purchase of the transportation equipment.

(i) The reserve investments of an insurer may include bank and bankers' acceptance and other bills of exchange of the kind and maturities made eligible by law for purchase in the open market by federal reserve banks.

(j) (1) This subsection does not apply to obligations eligible for investment under subsection (e) of this section.

(2) (i) The reserve investments of an insurer may include bonds or evidences of indebtedness that are secured by first mortgages or deeds of trust on unencumbered fee-simple or improved leasehold real property located in the United States.

(ii) For purposes of subparagraph (i) of this paragraph, real property is not considered encumbered because of:

1. the existence of instruments reserving mineral, oil, or timber rights, rights-of-way, sewer rights, or rights in walls;

2. liens for taxes or assessments not yet due;

3. building restrictions or other restrictive covenants; or

4. leases on the real property under which rents or profits are reserved to the owner if the security for the loan is a first lien on the real property and

if there is no condition or right of reentry or forfeiture under which the lien may be cut off, subordinated, or otherwise disturbed.

(3) At the time of investment by the insurer, a mortgage loan made or acquired by an insurer on any one property may not exceed 80% of the value of the real property securing the loan.

(4) A mortgage loan may not be made or acquired by an insurer unless an appraisal is made by an appraiser for the purpose of the investment.

(5) A mortgage loan made or acquired by an insurer that is a participation or a part of a series of issue secured by the same mortgage or deed of trust is not a lawful investment under this subsection unless:

(i) the entire series or issue that is secured by the same mortgage or deed of trust is held by the insurer; or

(ii) the insurer holds a *pari passu* participation interest in the mortgage or deed of trust and has the rights of a first mortgagee.

(6) Except as otherwise provided in this section, an insurer may not invest in or loan on the security of any one property more than the greater of \$25,000 or 2% of its total admitted assets.

(7) The total investments of an insurer in the kinds of investments allowed under this paragraph may not exceed 40% of its total admitted assets.

(k) The reserve investments of an insurer may include purchase-money mortgages or like securities received by the insurer on the sale or exchange of real property acquired under subsection (n) of this section.

(l) (1) The reserve investments of an insurer may include bonds, notes, or other evidences of indebtedness secured by mortgages or deeds of trust that are guaranteed or insured by an instrumentality of the United States under the National Housing Act, Servicemen's Readjustment Act of 1944, or Bankhead-Jones Farm Tenant Act.

(2) The limitations of this section or any other law of the State that require security on a loan, prescribe the nature, amount, or form of security on a loan, or limit the interest rate on a loan do not apply to these insured or guaranteed mortgage loans.

(m) (1) Subject to paragraphs (2) and (3) of this subsection, the reserve investments of an insurer may include ground rents in any state.

(2) For unexpired redeemable ground rents, any premium paid must be amortized over the period between the date of acquisition and redemption date.

(3) For expired redeemable ground rents, any premium paid must be

charged off when acquired.

(4) An insurer shall carry redeemable ground rents purchased at a discount at an amount not greater than the cost of acquisition.

(n) (1) The reserve investments of an insurer may include real estate only if the real estate:

(i) consists of the land and the building on the land in which the insurer has its principal office;

(ii) is necessary for the insurer's convenient accommodation in transacting business;

(iii) is acquired to satisfy loans, mortgages, liens, judgments, decrees, or other debts previously owed to the insurer in the course of business;

(iv) is acquired as partial payment of the consideration for the sale of real property owned by the insurer if the transaction causes a net reduction in the investment of the insurer in real property; or

(v) is additional real property and equipment incident to real property that is necessary or convenient to enhance the market value of real property previously acquired or held by the insurer under item (iii) or (iv) of this paragraph.

(2) Unless the Commissioner certifies that the interests of the insurer will suffer materially by a forced sale of the real property and the Commissioner extends the time for disposal of the real property in the certificate:

(i) real property acquired under paragraph (1)(i) and (ii) of this subsection must be disposed of within 5 years after the real property ceases to be necessary for the convenient accommodation of the insurer in transacting business; and

(ii) real property acquired under paragraph (1)(iii) and (iv) of this subsection must be disposed of within 5 years after the date of acquisition.

(3) An insurer may not acquire real property under paragraph (1)(i), (ii), or (iv) or (2) of this subsection except with the approval of the Commissioner.

(o) An insurer may invest in or otherwise acquire or loan on Canadian securities and investments that are substantially of the same kinds, classes, and investment grades as those eligible for investment under this subtitle.

(p) (1) Subject to paragraph (2) of this subsection, an insurer that is authorized to do business in a foreign country or possession of the United States or that has outstanding insurance contracts or reinsurance contracts on risks located in a foreign country or possession of the United States may invest in or otherwise acquire

or loan on securities and investments in the foreign country or possession that are substantially of the same kinds, classes, and investment grades as those eligible for investment under this subtitle.

(2) The aggregate amount of the investments made under paragraph (1) of this subsection and of the currency of the foreign country or possession held by the insurer may not exceed one and one-half times the greater of:

(i) the amount of the reserves of the insurer and other obligations under any outstanding insurance contracts or reinsurance contracts in that country or possession; and

(ii) the amount that the insurer is required by law to invest in that country or possession.

(q) The reserve investments of an insurer may include stocks or debentures or both of a housing authority organized under the public housing law of the State, to the extent and on the conditions that the Commissioner authorizes, if all of the stock of the housing authority has been or will be originally issued to one or more insurers.

(r) The reserve investments of an insurer may include shares or deposits in a savings and loan association or building and loan association to the extent that the investment or account is insured by the Federal Deposit Insurance Corporation.

(s) (1) Subject to paragraph (2) of this subsection, the reserve investments of an insurer may include dividend-paying common stock of a corporation created or existing under the laws of the United States, Canada, a state, or a province of Canada.

(2) To the extent necessary to satisfy the reserve requirements of this subtitle, an insurer may not have more than:

(i) 10% of its total admitted assets in preferred stock under subsection (f) of this section;

(ii) 10% of its total admitted assets in common stock under this subsection; or

(iii) 5% of its total admitted assets in the stock of any one corporation.

(t) (1) The reserve investments of an insurer may include securities lending, repurchase, reverse repurchase, and dollar roll transactions with business entities, subject to the requirements of paragraphs (2) through (9) of this subsection.

(2) (i) The insurer's board of directors shall adopt a written plan that specifies guidelines and objectives to be followed, such as:

1. a description of how cash received will be invested or used for general corporate purposes of the insurer;

2. operational procedures to manage interest rate risk, counterparty default risk, the conditions under which proceeds from reverse repurchase transactions may be used in the ordinary course of business, and the use of acceptable collateral in a manner that reflects the liquidity needs of the transaction; and

3. the extent to which the insurer may engage in these transactions.

(ii) The insurer shall file with the Commissioner the written plan including all changes and amendments to the written plan for use in the State on or before the date the plan becomes effective.

(3) (i) The insurer shall enter into a written agreement for all transactions authorized under this subsection other than dollar roll transactions.

(ii) The written agreement shall require that each transaction terminate no more than 1 year from its inception or on the earlier demand of the insurer.

(iii) The agreement shall be with the business entity counterparty, but for securities lending transactions, the agreement may be with an agent acting on behalf of the insurer, if the agent is a qualified business entity, and if the agreement:

1. requires the agent to enter into separate agreements with each counterparty that are consistent with the requirements of this section; and

2. prohibits securities lending transactions under the agreement with the agent or its affiliates.

(4) (i) Cash received in a transaction under this subsection shall be invested in accordance with this subtitle and in a manner that recognizes the liquidity needs of the transaction or used by the insurer for its general corporate purposes.

(ii) For so long as the transaction remains outstanding, the insurer, its agent, or its custodian shall maintain, as to acceptable collateral received in a transaction under this subsection, either physically or through the book entry systems of the Federal Reserve, Depository Trust Company, Participants Trust Company, or other securities depositories approved by the Commissioner:

1. possession of the acceptable collateral;

2. a perfected security interest in the acceptable collateral; or

3. in the case of a jurisdiction outside the United States, title to, or rights of a secured creditor to, the acceptable collateral.

(5) (i) The limitations of § 5-606(a) of this subtitle do not apply to the

business entity counterparty exposure created by transactions under this subsection.

(ii) For purposes of calculations made to determine compliance with this subsection, no effect will be given to the insurer's future obligation to resell securities, in the case of a repurchase transaction, or to repurchase securities, in the case of a reverse repurchase transaction.

(iii) An insurer may not enter into a transaction under this subsection if, as a result of and after giving effect to the transaction:

1. A. the aggregate amount of securities then loaned, sold to, or purchased from any one business entity counterparty under this subsection would exceed 5% of its admitted assets; and

B. in calculating the amount sold to or purchased from a business entity counterparty under repurchase or reverse repurchase transactions, effect may be given to netting provisions under a master written agreement; or

2. the aggregate amount of all securities then loaned, sold to, or purchased from all business entities under this subsection would exceed 40% of its admitted assets.

(6) (i) In a securities lending transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to 102% of the market value of the securities loaned by the insurer in the transaction as of that date.

(ii) If at any time the market value of the acceptable collateral is less than the market value of the loaned securities, the business entity counterparty shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals 102% of the market value of the loaned securities.

(7) (i) In a reverse repurchase transaction, other than a dollar roll transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to 95% of the market value of the securities transferred by the insurer in the transaction as of that date.

(ii) If at any time the market value of the acceptable collateral is less than 95% of the market value of the securities so transferred, the business entity counterparty shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals 95% of the market value of the transferred securities.

(8) In a dollar roll transaction, the insurer shall receive cash in an amount at least equal to the market value of the securities transferred by the insurer in the transaction as of the transaction date.

(9) (i) In a repurchase transaction, the insurer shall receive as acceptable collateral transferred securities having a market value at least equal to 102% of the purchase price paid by the insurer for the securities.

(ii) If at any time the market value of the acceptable collateral is less than 100% of the purchase price paid by the insurer, the business entity counterparty shall be obligated to provide additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals 102% of the purchase price.

(iii) Securities acquired by an insurer in a repurchase transaction may not be sold in a reverse repurchase transaction, loaned in a securities lending transaction, or otherwise pledged.

(10) The provisions of this subsection that apply to insurers also apply to health maintenance organizations.

(u) The reserve investments of an insurer may include any other investments not otherwise prohibited by this subtitle if:

(1) the aggregate amount of the investments made under this subsection does not exceed 4% of the amount of the admitted assets of the insurer at the end of the previous year; and

(2) the investment does not violate any limitations on allowed investments under this section.

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