WEST VIRGINIA CODE: §33-8-25

§33-8-25. Same - Insurer investment pools.

(a) An insurer may acquire investments in investment pools that:

(1) Invest only in:

(A) Obligations that are rated 1 or 2 by the SVO or have an equivalent of an SVO 1 or 2 rating (or, in the absence of a 1 or 2 rating or equivalent rating, the issuer has outstanding obligations with an SVO 1 or 2 or equivalent rating) by a nationally recognized statistical rating organization recognized by the SVO and have:

(i) A remaining maturity of three hundred ninety-seven days or less or a put that entitles the holder to receive the principal amount of the obligation which put may be exercised through maturity at specified intervals not exceeding three hundred ninety-seven days; or

(ii) A remaining maturity of three years or less and a floating interest rate that resets no less frequently than quarterly on the basis of a current short-term index (federal funds, prime rate, treasury bills, LIBOR or commercial paper) and is subject to no maximum limit, if the obligations do not have an interest rate that varies inversely to market interest rate changes;

(B) Government money market mutual funds or class one money market mutual funds; or

(C) Securities lending, repurchase and reverse repurchase transactions that meet all the requirements of section twenty-nine of this article, except the quantitative limitations of subsection (b), section twenty-nine of this article; or

(2) Invest only in investments which an insurer may acquire under this article, if the insurer's proportionate interest in the amount invested in these investments does not exceed the applicable limits of this article.

(b) For an investment in an investment pool to be qualified under this article, the investment pool may not:

(1) Acquire securities issued, assumed, guaranteed or insured by the insurer or an affiliate of the insurer;

(2) Borrow or incur any indebtedness for borrowed money, except for securities lending and reverse repurchase transactions that meet the requirements of section twenty-nine of this article except the quantitative limitations of subsection (b), section twenty-nine of this article; or

(3) Permit the aggregate value of securities then loaned or sold to, purchased from or invested in any one business entity under this section to exceed ten percent of the total

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assets of the investment pool.

(c) The limitations of subsection (a), section twenty-three of this article do not apply to an insurer's investment in an investment pool, however an insurer may not acquire an investment in an investment pool under this section if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this section:

(1) In any one investment pool would exceed ten percent of its admitted assets;

(2) In all investment pools investing in investments permitted under subdivision (2), subsection (a) of this section would exceed twenty-five percent of its admitted assets; or

(3) In all investment pools would exceed forty percent of its admitted assets.

(d) For an investment in an investment pool to be qualified under this article, the manager of the investment pool shall:

(1) Be organized under the laws of the United States or a state and designated as the pool manager in a pooling agreement;

(2) Be the insurer, an affiliated insurer or a business entity affiliated with the insurer, a qualified bank, a business entity registered under the Investment Advisors Act of 1940, as amended, or, in the case of a reciprocal insurer or interinsurance exchange, its attorney-in-fact, or in the case of a United States branch of an alien insurer, its United States manager or affiliates or subsidiaries of its United States manager;

(3) Compile and maintain detailed accounting records setting forth:

(A) The cash receipts and disbursements reflecting each participant's proportionate investment in the investment pool;

(B) A complete description of all underlying assets of the investment pool (including amount, interest rate, maturity date (if any) and other appropriate designations); and

(C) Other records which, on a daily basis, allow third parties to verify each participant's investment in the investment pool; and

(4) Maintain the assets of the investment pool in one or more accounts, in the name of or on behalf of the investment pool, under a custody agreement with a qualified bank. The custody agreement shall:

(A) State and recognize the claims and rights of each participant;

(B) Acknowledge that the underlying assets of the investment pool are held solely for the benefit of each participant in proportion to the aggregate amount of its investments in the

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investment pool; and

(C) Contain an agreement that the underlying assets of the investment pool may not be commingled with the general assets of the custodian qualified bank or any other person.

(e) The pooling agreement for each investment pool shall be in writing and shall provide that:

(1) An insurer and its affiliated insurers or, in the case of an investment pool investing solely in investments permitted under subdivision (1), subsection (a) of this section, the insurer and its subsidiaries, affiliates or any pension or profit sharing plan of the insurer, its subsidiaries and affiliates or, in the case of a United States branch of an alien insurer, affiliates or subsidiaries of its United States manager, shall, at all times, hold one hundred percent of the interests in the investment pool;

(2) The underlying assets of the investment pool may not be commingled with the general assets of the pool manager or any other person;

(3) In proportion to the aggregate amount of each pool participant's interest in the investment pool:

(A) Each participant owns an undivided interest in the underlying assets of the investment pool; and

(B) The underlying assets of the investment pool are held solely for the benefit of each participant;

(4) A participant, or in the event of the participant's insolvency, bankruptcy or receivership, its trustee, receiver or other successor-in-interest, may withdraw all or any portion of its investment from the investment pool under the terms of the pooling agreement;

(5) Withdrawals may be made on demand without penalty or other assessment on any business day, but settlement of funds shall occur within a reasonable and customary period thereafter not to exceed five business days. Distributions under this subdivision shall be calculated in each case net of all then applicable fees and expenses of the investment pool. The pooling agreement shall provide that the pool manager shall distribute to a participant, at the discretion of the pool manager:

(A) In cash, the then fair market value of the participant's pro rata share of each underlying asset of the investment pool;

(B) In kind, a pro rata share of each underlying asset; or

(C) In a combination of cash and in kind distributions, a pro rata share in each underlying asset; and

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(6) The pool manager shall make the records of the investment pool available for inspection by the commissioner.

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