WEST VIRGINIA CODE: §33-8A-6

§33-8A-6. Custody agreements; requirements.

(a) An insurance company may, by written agreement with a custodian, provide for the custody of its securities with a custodian. The securities may be held by the custodian or its agent or in a clearing corporation or in the federal reserve book-entry system. Securities so held, whether held by the custodian or its agent or in a clearing corporation or in the federal reserve book-entry system, are referred to herein as "custodied securities".

(b) The agreement shall be in writing and shall be authorized by a resolution of the board of directors of the insurance company or of an authorized committee of the board. The terms of the agreement shall comply with the following:

(1) Certificated securities held by the custodian shall be held either separate from the securities of the custodian and of all of its other customers or in a fungible bulk of securities as part of a filing of securities by issue (FOSBI) arrangement.

(2) Securities held in a fungible bulk by the custodian and securities in a clearing corporation or in the federal reserve book-entry system shall be separately identified on the custodian's official records as being owned by the insurance company. The records shall identify which custodied securities are held by the custodian or by its agent and which securities are in a clearing corporation or in the federal reserve book-entry system. If the securities are in a clearing corporation or in the federal reserve book-entry system, the records shall also identify where the securities are and if in a clearing corporation, the name of the clearing corporation and, if through an agent, the name of the agent.

(3) All custodied securities that are registered shall be registered in the name of the company or in the name of a nominee of the company or in the name of the custodian or its nominee or, if in a clearing corporation, in the name of the clearing corporation or its nominee.

(4) Custodied securities shall be held subject to the instructions of the insurance company and shall be withdrawable upon the demand of the insurance company, except that custodied securities used to meet the deposit requirements set forth in section six, article three of this chapter shall, to the extent required by said section, be under the control of the state Treasurer and shall not be withdrawn by the insurance company without the approval of the Insurance Commissioner.

(5) The custodian shall be required to send or cause to be sent to the insurance company a confirmation of all transfers of custodied securities to or from the account of the insurance company. In addition, the custodian shall be required to furnish no less than monthly the insurance company with reports of holdings of custodied securities at times and containing information reasonably requested by the insurance company. The custodian's trust

WV Legislature

committee's annual reports of its review of the insurer's trust accounts shall also be provided to the insurer. Reports and verifications may be transmitted in electronic or paper form.

(6) During the course of the custodian's regular business hours, an officer or employee of the insurance company, an independent accountant selected by the insurance company and a representative of an appropriate regulatory body shall be entitled to examine, on the premises of the custodian, the custodian's records relating to custodied securities, but only upon furnishing the custodian with written instructions to that effect from an appropriate officer of the insurance company.

(7) The custodian and its agents shall be required to send to the insurance company:

(A) All reports which they receive from a clearing corporation or the federal reserve book-entry system on their respective systems of internal accounting control; and

(B) Reports prepared by outside Auditors on the custodians or its agent's internal accounting control of custodied securities that the insurance company may reasonably request.

(8) The custodian shall maintain records sufficient to determine and verify information relating to custodied securities that may be reported in the insurance company's annual statement and supporting schedules and information required in an audit of the financial statements of the insurance company.

(9) The custodian shall provide, upon written request from an appropriate officer of the insurance company, the appropriate affidavits, substantially in the form attached to this regulation, with respect to custodied securities.

(10) The custodian shall secure and maintain insurance protection in an adequate amount covering the custodian's duties and activities as custodian for the insurer's assets and shall state in the custody agreement that protection is in compliance with the requirements of the custodian's banking regulator. The commissioner may determine whether the type of insurance is appropriate and the amount of coverage is adequate.

(11) The custodian shall be obligated to indemnify the insurance company for any loss of custodied securities occasioned by the negligence or dishonesty of the custodian's officers or employees, or burglary, robbery, holdup, theft or mysterious disappearance, including loss by damage or destruction.

(12) In the event that there is a loss of custodied securities for which the custodian shall be obligated to indemnify the insurance company as provided in subdivision (11) of this subsection, the custodian shall promptly replace the securities or the value thereof and the value of any loss of rights or privileges resulting from the loss of securities.

(13) The agreement may provide that the custodian will not be liable for a failure to take an action required under the agreement in the event and to the extent that the taking of the action is prevented or delayed by war (whether declared or not and including existing wars),

WV Legislature

revolution, insurrection, riot, civil commotion, act of God, accident, fire, explosion, stoppage of labor, strikes or other differences with employees, laws, regulations, orders or other acts of any governmental authority, or any other cause whatever beyond its reasonable control.

(14) In the event that the custodian gains entry in a clearing corporation or in the federal reserve book-entry system through an agent, there shall be an agreement between the custodian and the agent under which the agent shall be subject to the same liability for loss of custodied securities as the custodian. However, if the agent shall be subject to regulation under the laws of a jurisdiction that is different from the jurisdiction the laws of which regulate the custodian, the Insurance Commissioner of the state of domicile of the insurance company may accept a standard of liability applicable to the agent that is different from the standard of liability applicable to the custodian.

(15) The custodian shall provide written notification to the insurer's domiciliary commissioner if the custodial agreement with the insurer has been terminated or if one hundred percent of the account assets in any one custody account have been withdrawn. This notification shall be remitted to the Insurance Commissioner within three business days of the receipt by the custodian of the insurer's written notice of termination or within three business days of the withdrawal of one hundred percent of the account assets.

WV Legislature