WEST VIRGINIA CODE CHAPTER 33 ARTICLE 8A

WV Legislature

§33-8A-1. Purpose.

The purpose of this article is to authorize domestic insurance companies to utilize modern systems for holding and transferring securities without physical delivery of securities certificates, subject to appropriate regulation of the commissioner.

WV Legislature

§33-8A-2. Definitions.

As used in this article, the term:

(1) "Agent" means a national bank, state bank, trust company or broker-dealer that maintains an account in its name in a clearing corporation or that is a member of the federal reserve system and through which a custodian participates in a clearing corporation or the federal reserve book-entry system, including the Treasury/Reserve Automated Debt Entry Securities System (TRADES) or Treasury Direct Systems, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country, "agent" may include a corporation that is organized or existing under the laws of a foreign country and that is legally qualified under those laws to accept custody of securities;

(2) "Clearing corporation" has the same meaning set forth in subdivision (5), subsection (a), section one hundred two, article eight, chapter forty-six of this code, except that with respect to securities issued by institutions organized or existing under the laws of any foreign country, clearing corporation may include a corporation which is organized or existing under the laws of any foreign country and is legally qualified under such laws to effect the transactions in securities by computerized book entry. Clearing corporation also includes the Treasury/Reserve Automated Debt Entry Securities System (TRADES) or Treasury Direct Book-Entry Systems established pursuant to 31 C.F.R., Part 357;

(3) "Custodian" means:

(A) A national bank, state bank or trust company that shall at all times during which it acts as a custodian pursuant to this article be no less than adequately capitalized as determined by the standards adopted by United States banking regulators and that is regulated by either state banking laws or is a member of the Federal Reserve System and that is legally qualified to accept custody of securities in accordance with the standards set forth below, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country, "custodian" may include a bank or trust company incorporated or organized under the laws of a country other than the United States that is regulated as such by that country's government or an agency thereof that shall at all times during which it acts as a custodian pursuant to this article be no less than adequately capitalized as determined by the standards adopted by international banking authorities and that is legally qualified to accept custody of securities; or

(B) A broker-dealer that is registered with and subject to the jurisdiction of the Securities and Exchange Commission, maintains membership in the Securities Investor Protection Corporation, and has a tangible net worth equal to or greater than $250 million. For the purposes of this subdivision, "tangible net worth" means shareholders' equity, less intangible assets, as reported in the broker-dealer's most recent annual or transition report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 filed with the Securities and Exchange Commission (15 U.S.C. §78m or §78o(d));

WV Legislature

(4) "Custodied securities" means securities held by the custodian or its agent or in a clearing corporation, including the Treasury/Reserve Automated Debt Entry Securities Systems (TRADES) or Treasury Direct Systems;

(5) "Direct participant" means a bank, trust company or other institution or other custodian which maintains an account in its name in a clearing corporation and through which an insurance company participates in a clearing corporation;

(6) "Federal reserve book-entry system" means the computerized systems sponsored by the United States Department of the Treasury and certain agencies and instrumentalities of the United States for holding and transferring securities of the United States government and such agencies and instrumentalities, respectively, in federal reserve banks and through banks which are members of the Federal Reserve System or which otherwise have access to such computerized systems;

(7) "Member bank" means a national bank, state bank or trust company which is a member of the Federal Reserve System and through which an insurance company participates in the federal reserve book-entry system;

(8) "Securities" means certificated securities as defined in subdivision (4), subsection (a), section one hundred two, article eight, chapter forty-six of this code and uncertificated securities as defined in subdivision (18) of subsection (a), section one hundred two, article eight, chapter forty-six; and

(9) "Security certificate" has the same meaning set forth in subdivision (16), subsection (a), section one hundred two, article eight, chapter forty-six of this code.

WV Legislature

§33-8A-3. Use of book-entry systems and clearing corporations.

(a) Notwithstanding any other provision of law, a domestic insurance company may deposit or arrange for the deposit of securities held in or purchased for its general account and its separate accounts in a clearing corporation or the federal reserve book-entry system. When securities are deposited with a clearing corporation, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of the clearing corporation with any other securities deposited with the clearing corporation by any person, regardless of the ownership of the securities, and certificates representing securities of small denominations may be merged into one or more certificates of larger denominations. The records of any custodian through which an insurance company holds securities in the federal reserve book-entry system or a clearing corporation shall at all times show that the securities are held for the insurance company and for which accounts. Ownership of, and other interests in, the securities may be transferred by bookkeeping entry on the books of such clearing corporation or in the federal reserve book-entry system without, in either case, physical delivery of certificates representing the securities.

(b) The Commissioner is authorized to promulgate rules governing the deposit of securities by insurance companies and custodians with clearing corporations and in the federal reserve book-entry system.

WV Legislature

§33-8A-4. Deposit of securities by domestic insurance companies.

Notwithstanding any other provision of law, the securities qualified for deposit under this section may be deposited with a clearing corporation or held in the federal reserve book-entry system. Securities deposited with a clearing corporation or held in the federal reserve book-entry system and used to meet the deposit requirements set forth in this section shall be under the control of the commissioner and may not be withdrawn by the insurance company without the approval of the commissioner. An insurance company holding securities in this manner shall provide to the commissioner evidence issued by its custodian or member bank through which the insurance company has deposited the securities in a clearing corporation or through which the securities are held in the federal reserve book-entry system, respectively, in order to establish that the securities are actually recorded in an account in the name of the custodian or other direct participant or member bank and that the records of the custodian, other participant or member bank reflect that the securities are held subject to the order of the commissioner.

WV Legislature

§33-8A-5. Deposit of securities by foreign insurance companies.

Notwithstanding any other provision of law, securities eligible for deposit under the insurance law of this state relating to deposit of securities by an insurance company as a condition of commencing or continuing to do an insurance business in this state may be deposited with a clearing corporation or held in the federal reserve book-entry system. Securities deposited with a clearing corporation or held in the federal reserve book-entry system and used to meet the deposit requirements under the insurance laws of this state shall be under the control of the commissioner and shall not be withdrawn by the insurance company without the approval of the commissioner. An insurance company holding securities in this manner shall provide to the commissioner evidence issued by its custodian or a member bank through which the insurance company has deposited securities with a clearing corporation or held in the federal reserve book-entry system, respectively, in order to establish that the securities are actually recorded in an account in the name of the custodian or other direct participant or member bank and evidence that the records of the custodian, other participant or member bank reflect that the securities are held subject to the order of the commissioner.

WV Legislature

§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 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.

WV Legislature

(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), 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

WV Legislature

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

§33-8A-7. Deposit with affiliates; requirements.

(a) Nothing in this regulation shall prevent an insurance company from depositing securities with another insurance company with which the depositing insurance company is affiliated, provided that the securities are deposited pursuant to a written agreement authorized by the board of directors of the depositing insurance company or an authorized committee thereof and that the receiving insurance company is organized under the laws of one of the states of the United States of America or of the District of Columbia. If the respective states of domicile of the depositing and receiving insurance companies are not the same, the depositing insurance company shall have given notice of the deposit to the Insurance Commissioner in the state of its domicile and the Insurance Commissioner shall not have objected to it within thirty days of the receipt of the notice.

(b) The terms of the agreement shall comply with the following:

(1) The insurance company receiving the deposit shall maintain records adequate to identify and verify the securities belonging to the depositing insurance company.

(2) The receiving insurance company shall allow representatives of an appropriate regulatory body to examine records relating to securities held subject to the agreement.

(3) The depositing insurance company may authorize the receiving insurance company:

(A) To hold the securities of the depositing insurance company in bulk, in certificates issued in the name of the receiving insurance company or its nominee, and to commingle them with securities owned by other affiliates of the receiving insurance company; and

(B) To provide for the securities to be held by a custodian, including the custodian of securities of the receiving insurance company or in a clearing corporation or the federal reserve book-entry system.

WV Legislature

§33-8A-8.

Repealed.

Acts, 2005 Reg. Sess., Ch. 138.

WV Legislature