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**BULLETIN NO. 14-01**

TO: ALL NEW JERSEY DOMESTIC INSURERS  
FROM: KENNETH E. KOBYLowski, COMMISSIONER  
RE: SAFEKEEPING OF THE SECURITIES OF DOMESTIC INSURERS

The purpose of this Bulletin is to set forth the manner in which New Jersey domestic insurers can ensure compliance with N.J.S.A. 17:24-12, which provides the requirements applicable to the safekeeping of domestic insurers' securities. Generally, N.J.S.A. 17:24-12 requires that,

[a]ll securities of domestic insurers shall be held for safekeeping within the geographical limits of this State, except that: a. Securities deposited with public officials of other states, the District of Columbia, the U.S. Government . . . ; b. Securities required as collateral for loans or as security for the performance of contracts; c. Mortgages and evidences of indebtedness . . . held for safekeeping in one or more offices operated by and under the direct control of an officer of the company; d. Stock or other securities representing stock or convertible into stock, and options, warrants, or rights to acquire stock; e. Debt securities with a maturity of less than one year; f. Securities issued or guaranteed by the U.S. or any department or agency or instrumentality thereof; and g. As long as there are held for safekeeping within the geographical limits of this State securities having a value of not less than \$50,000,000.00, any other debt securities which are publicly traded.

The statute also provides additional exceptions to the "in-state" requirement including, but not limited to, the deposit of securities pursuant to N.J.S.A. 17:24-3, the holding of securities in the names of nominees of the insurer's board of directors, and the lending of securities upon adequate collateral.

Securities trading has evolved over the years with the majority of transactions being processed electronically by companies, such as the Depository Trust Company ("DTC"), that provide clearing and settlement services for securities transactions. N.J.S.A. 17:24-12 reflects this trend and provides that securities may be held outside of the State in the DTC or "any other

depository institution approved by the Commissioner of Insurance, of securities which comprise all or part of a custodial account for which the fiduciary is a qualified bank pursuant to N.J.S.A. 17:9A-28 or is an association authorized to exercise fiduciary powers pursuant to N.J.S.A. 17:12B-48(19).”

The following guidance is hereby being provided to address how domestic insurers can comply with the custodian requirements in N.J.S.A. 17:24-12. Although most securities transactions are being processed by clearing and settlement service companies, without paper records, and therefore the electronic “location” of the security is in those companies, domestic insurers have traditionally selected New Jersey chartered banks, or out-of-State and national banks that have at least one branch office in this State, to satisfy the requirements of this insurance law. This continues to be the least complex method of compliance.

N.J.S.A. 17:24-12 also permits domestic insurers to use an out-of-State or national bank that does not have a New Jersey branch office as its approved custodian, but the statute requires the out-of-State or national bank to be approved by the Commissioner as a qualified bank pursuant to N.J.S.A. 17:9A-28. Specifically, New Jersey insurance law requires that the domestic insurer’s selected custodian must at a minimum be considered a qualified bank under this State’s banking laws by being able to exercise the trustee powers necessary for the safekeeping of the domestic insurers’ securities under N.J.S.A. 17:9A-28(4). Without a New Jersey branch office, a foreign bank (out-of-State or national bank) can be approved as a qualified bank under N.J.S.A. 17:9A-28, and therefore satisfy the requirements of the insurance laws of this State, by obtaining a certificate of authority to transact trust business pursuant to N.J.S.A. 17:9A-316B and N.J.A.C. 3:6-14.3. N.J.S.A. 17:9A-316B provides that “a foreign bank organized under the laws of the U.S. or another state may not transact business in this State other than trust business,” and that a certificate of authority is required to transact such trust business. The authority to transact trust business includes the ability to perform any of the services of a trustee or fiduciary in N.J.S.A. 17:9A-28(3) through (9) (see N.J.S.A. 17:9A-316D(2)), and thus satisfies the qualified bank requirements in N.J.S.A. 17:24-12 that are applicable to domestic insurers.

Accordingly, pursuant to N.J.S.A. 17:24-12, all domestic insurers are hereby reminded that to act as a custodian of a domestic insurer’s securities one of the following must apply: 1) the custodian must be a New Jersey chartered bank or savings and loan association; 2) the custodian must be a foreign bank with a New Jersey branch office; 3) the custodian must be a foreign bank with the authority to transact trust business in this State pursuant to N.J.S.A. 17:9A-316B; or 4) one of the other security and/or transaction specific exceptions in N.J.S.A. 17:24-12 must apply.

January 24, 2014

Date



Kenneth E. Kobylowski  
Commissioner