

§1156. Reserve and other investments

1. Standard of care. When investing the assets of an insurer, the directors and officers of the insurer shall perform their duties in good faith and with that degree of care that an ordinarily prudent person in a like position would use under similar circumstances.

[PL 1987, c. 399, §14 (NEW).]

2. Investment classes. Subject to section 1155, the assets of an insurer may be invested in the following classes, subject to the percentage limitations contained in this subsection:

A. Obligations issued, assumed, guaranteed or insured by the United States or by any state or by the District of Columbia, or any other governmental unit in the United States, its territories or possessions, or by any agency or instrumentality of any of those, provided that those obligations are by law payable, as to both principal and interest, from taxes upon all property or income within the jurisdiction of that governmental unit, or from adequate special revenues pledged or appropriated or otherwise by law required to be provided for the purpose of that payment, but not including special assessments on properties benefitted by local improvements unless adequate security is evidenced by the ratio of assessment to the value of those properties, or unless the obligation is additionally secured by an adequate guaranty fund required by law; [PL 1987, c. 399, §14 (NEW).]

B. Obligations issued, assumed, guaranteed or accepted by domestic institutions or by trustees or receivers of those institutions, and preferred shares of any of those institutions, provided that without the prior approval of the superintendent, no domestic insurer may acquire any high-yield or medium grade obligations of any institution if:

(1) The aggregate amount of all medium grade obligations and all high-yield obligations then held by the insurer exceeds 20% of its admitted assets;

(2) The aggregate amount of all high-yield obligations then held by the insurer exceeds 10% of its admitted assets;

(3) The aggregate amount of all high-yield obligations rated 5 or 6 by the Securities Valuation Office of the National Association of Insurance Commissioners or, if not valued by the National Association of Insurance Commissioners, rated the equivalent of 5 or 6 by Moody's Investors Service, Inc., Standard and Poor's Corporation, Fitch Investors Service, Inc. or Duff and Phelps, Inc., exceeds 3% of admitted assets;

(4) The aggregate amount of all high-yield obligations rated 6 by the Securities Valuation Office of the National Association of Insurance Commissioners or, if not valued by the National Association of Insurance Commissioners, rated the equivalent of 6 by Moody's Investors Service, Inc., or rated D by Standard and Poor's Corporation, Fitch Investors Service, Inc., or Duff and Phelps, Inc., exceeds 1% of admitted assets;

(5) The aggregate amount of medium grade obligations issued, guaranteed or insured by any one institution then held by the insurer exceeds 1/2 of 1% of its admitted assets; or

(6) The aggregate amount of high-yield obligations issued, guaranteed or insured by any one institution then held by the insurer exceeds 1/2 of 1% of its admitted assets. [PL 1993, c. 313, §26 (RPR).]

C. Obligations secured by liens on real property or interests in real property located within the United States and not eligible under paragraph A or B acquired directly or indirectly through limited partnership interests, general partnership interests, joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates or other similar instruments if, at the time of the acquisition, the obligation does not exceed:

- (1) Ninety percent of the fair market value of the real estate, if the mortgage loan is secured by a purchase money mortgage or like security received by the insurer upon disposition of the real estate;
- (2) Eighty percent of the fair market value of the real estate, if the mortgage loan requires immediate scheduled payment in periodic installments of principal and interest, has an amortization period of 30 years or less and requires periodic payments made no less frequently than annually. Each periodic payment must be sufficient to ensure that at all times the outstanding principal balance of the mortgage loan may not be greater than the outstanding principal balance that would be outstanding under a mortgage loan with the same original principal balance, with the same interest rate and requiring equal payments of principal and interest with the same frequency over the same amortization period. Mortgage loans that are otherwise permitted under this subparagraph may provide for a payment of the principal balance before the end of the period of amortization of the loan. For residential mortgage loans, the 80% limitation may be increased to 97% if acceptable private mortgage insurance has been obtained; or
- (3) Seventy-five percent of the fair market value of the real estate for mortgage loans that do not meet the requirements of subparagraph (1) or (2).

A mortgage loan that is secured by other than a first lien may not be acquired under this paragraph unless the insurer is the holder of the first lien. For purposes of this paragraph, the amount of an obligation required to be included in the calculation of the loan-to-value ratio may be reduced to the extent the obligation is insured by the Federal Housing Administration or guaranteed by the Administrator of Veterans' Affairs, or their successors. A mortgage loan that is acquired under this paragraph and is restructured in a manner that meets the requirements of a restructured mortgage loan in accordance with the National Association of Insurance Commissioners accounting practices and procedures manual or successor publication continues to qualify as a mortgage loan under this paragraph. [PL 1999, c. 715, §12 (AMD).]

D. Investments in real property or interests therein located in the United States, held directly or evidenced by partnership interests, stock of corporations, trust certificates or other instruments and acquired:

- (1) As an investment for the production of income or to be improved or developed for that investment purpose; or
- (2) For the convenient accommodation of the insurer's business.

After giving effect to any of those types of investments, the aggregate amount of investments made under subparagraph (1) may not exceed 20% of the insurer's total admitted assets; the aggregate amount of investments made under subparagraph (2) may not exceed 10% of the insurer's total admitted assets; and the aggregate amount of investments made under this paragraph may not exceed 25% of the insurer's total admitted assets. Investments under subparagraph (1) in any single property, including improvements on that property, may not in the aggregate exceed 2% of the insurer's total admitted assets; [PL 1993, c. 313, §27 (AMD).]

E. Investments in personal property or interests in that property located or used wholly or in part within the United States, held directly or evidenced by partnership interests, stock of corporations, trust certificates or other instruments, provided that, after giving effect to any investment of that type, the aggregate amount of those investments will not exceed 10% of the insurer's total admitted assets and provided that investments under this paragraph in any single item of personal property will not in the aggregate exceed 1% of the insurer's total admitted assets; [PL 1987, c. 399, §14 (NEW).]

F. Investments, other than investments described in paragraph D or E and in addition to investments authorized by section 1157, in common stock, partnership interests, trust certificates or other equity interests, other than preferred shares, of domestic institutions, provided that, after giving effect to any investment of that type under this paragraph, the aggregate amount of those investments will not exceed 20% of the insurer's total admitted assets; [PL 1987, c. 399, §14 (NEW).]

F-1. Investment practices entered into under section 1153, subsection 4 or section 1160, subsection 6; [PL 2001, c. 471, Pt. D, §24 (NEW).]

G. The following foreign investments in and investment practices with persons domiciled in foreign jurisdictions:

(1) Canadian securities and investments substantially of the same classes as those eligible for investment under paragraphs A to F, but the aggregate amount of those investments that are held at any time by any insurer may not exceed 10% of total admitted assets, except when a greater amount is permitted pursuant to subparagraph (2), in which case this subparagraph is not applicable;

(2) In the case of any insurer that is authorized to do business in a foreign country or possession of the United States or that has outstanding insurance, annuity or reinsurance contracts on lives or risks resident or located in a foreign country or possession of the United States, securities and investments in that foreign country or possession that are substantially of the same classes as those eligible for investment under paragraphs A to F, but the aggregate amount of such investments in a foreign country or a possession of the United States and of cash in the currency of that country or possession that is at any time held by that insurer may not, except as provided in paragraph H, exceed 1 1/2 times the amount of its reserves and other obligations under those contracts or the amount that that insurer is required by law to invest in that country or possession, whichever is greater;

(3) Foreign investments in and foreign investment practices with persons domiciled in foreign jurisdictions that are substantially of the same classes as those eligible for investment under this chapter, if after giving effect to the investment or transaction:

(a) The aggregate amount of foreign investments then held by the insurer and foreign investment practices then engaged in by the insurer under this subparagraph does not exceed 20% of its admitted assets; and

(b) The aggregate amount of foreign investments then held by the insurer and foreign investment practices then engaged in by the insurer under this subparagraph in a single foreign jurisdiction does not exceed 10% of its admitted assets if the foreign jurisdiction has a sovereign debt rating of "1" from the Securities Valuation Office of the National Association of Insurance Commissioners or 3% of its admitted assets if the foreign jurisdiction has a sovereign debt rating other than "1" from the Securities Valuation Office of the National Association of Insurance Commissioners; and

(4) Investments and investment practices denominated in foreign currencies whether or not they are foreign investments acquired or foreign investment practices engaged in pursuant to subparagraphs (1) or (3), or additional foreign currency exposure as a result of the termination or expiration of a hedging transaction with respect to investments or investment practices denominated in a foreign currency if:

(a) The aggregate amount of investments then held by the insurer and investment practices then engaged in by the insurer under this subparagraph denominated in foreign currencies does not exceed 10% of its admitted assets; and

(b) The aggregate amount of investments then held by the insurer and investment practices then engaged in by the insurer under this subparagraph denominated in the currency of a

single foreign jurisdiction does not exceed 10% of its admitted assets if the foreign jurisdiction has a sovereign debt rating of "1" from the Securities Valuation Office of the National Association of Insurance Commissioners or 3% of its admitted assets if the foreign jurisdiction has a sovereign debt rating other than "1" from the Securities Valuation Office of the National Association of Insurance Commissioners.

An investment or an investment practice is not considered denominated in a foreign currency if the insurer enters into one or more hedging transactions permitted under section 1153, subsection 4 to hedge the foreign currency exchange rate risk associated with such investment or investment practice; and [PL 1999, c. 715, §13 (AMD).]

H. Investments that do not qualify or are not permitted under any other paragraph of this subsection; as long as:

(1) After giving effect to any investment made under this paragraph, the aggregate amount of those investments does not exceed 14% of total admitted assets, except that investments made under this paragraph in institutions or property not located within the State may not exceed 10% of total admitted assets; and, if the insurer makes investments described in paragraphs A to G and elects to charge those investments against the quantitative limits in this paragraph instead of the quantitative limits in paragraphs A to G, then the aggregate amount invested under this paragraph in those types of investments may not exceed 5% of total admitted assets for any one of those types of investments;

(2) Investments that are neither interest bearing nor income entitled are subject to all of the provisions of this paragraph; and the aggregate amount of those investments held at any one time may not exceed 3% of total admitted assets;

(3) The investment limitations contained in this chapter, qualitative or otherwise, do not apply to loans or investments made or acquired under this paragraph, provided that no loan or investment made or acquired under this paragraph may be represented by any asset determined to be nonadmitted pursuant to section 901-A or rules adopted under that section; any loan or investment expressly prohibited under section 1160; or agents' balances, or amounts advanced to or owing by agents, except as to policy loans, mortgage loans and collateral loans to those agents otherwise authorized under this chapter; or

(4) The insurer shall keep a separate record of all loans and investments made or acquired under this paragraph. Any such loan or investment that, subsequent to the date of making or acquisition, has attained the standard of eligibility and qualifies under any other provision of this chapter may be considered to have been made or acquired under and in compliance with that provision and may no longer be considered to have been made or acquired under this paragraph. [PL 2001, c. 471, Pt. A, §27 (AMD).]

[PL 2001, c. 471, Pt. A, §27 (AMD); PL 2001, c. 471, Pt. D, §24 (AMD).]

3. Determination of eligibility. The eligibility of any investment under any paragraph of subsection 2 must be determined at the time of acquisition, except that investments qualified under subsection 2, paragraph H, may be requalified at a later date under another provision of this chapter, if the relevant conditions are satisfied at the time of such requalification.

[PL 1993, c. 313, §28 (AMD).]

SECTION HISTORY

PL 1987, c. 399, §14 (NEW). PL 1993, c. 313, §§26-28 (AMD). PL 1999, c. 715, §§12,13 (AMD). PL 2001, c. 72, §14 (AMD). PL 2001, c. 471, §§A27,D24 (AMD).

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