§1160. Prohibited transactions and investment underwriting

1. Purchase of own common stock. A stock insurer may not purchase its own common stock, except for the purpose of mutualization under chapter 47; for retirement; or pursuant to a plan for investment or loan submitted in writing by the insurer to the superintendent in advance, and which the superintendent has not disapproved within 20 days after the submission or within any additional reasonable period as the superintendent may request, as being unfair or inequitable to the insurer's policyholders or stockholders.
[PL 1987, c. 769, Pt. A, §90 (AMD).]

2. Underwriting. No insurer may underwrite or participate in the underwriting of an offering of securities or property of any person. This provision may not be considered to prohibit:

A. The acquisition and ownership by the insurer of its subsidiary corporation acting as an investment adviser or principal underwriter of a management company or investment company registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940, United States Code, Title 11, Section 72 and 102, and Title 15, Sections 80a-1 to 80a-52, as amended; [PL 1987, c. 399, §14 (NEW).]

B. The registration by the insurer, under the United States Securities Act of 1933, United States Code, Title 15, Sections 77a to 77aa or other applicable law, of restricted or other securities acquired and owned by it in the regular course of business; and [PL 1987, c. 399, §14 (NEW).]

C. The underwriting by an insurer individually or on its account jointly with one or more of its subsidiaries of the securities of any company that is engaged primarily in the business of investing in or holding securities or real property and to which the insurer or any of its subsidiaries renders management, investment advisory or sales services nor from participating in sales or purchases of those securities jointly with any person in the insurer's holding company system, as defined in section 222. [PL 1987, c. 399, §14 (NEW).]
[PL 1987, c. 399, §14 (NEW).]

3. Investments in affiliates. No insurer may purchase the stock of or otherwise invest in or lend its funds upon the security of any note or other evidence of indebtedness of any affiliate in the insurer's holding company system, except as authorized by section 222 or 1157, or lend its funds to any director or officer of the insurer or the spouse or child of any director or officer. This provision does not prohibit:

A. Policy loans authorized under section 1158. [PL 1999, c. 715, §15 (AMD).]

B. [PL 1999, c. 715, §15 (RP).]

C. [PL 1999, c. 715, §15 (RP).]
[PL 1999, c. 715, §15 (AMD).]

4. Encumbrance of securities.
[PL 1999, c. 715, §16 (RP).]

5. Disposition of property. An insurer may enter into any agreement to sell or withhold from sale any of its property, as long as the insurer is not participating in a prohibited underwriting. The disposition of an insurer's property shall be the responsibility of its board of directors, in accordance with its charter and bylaws.
[PL 1987, c. 399, §14 (NEW).]

6. Encumbrance of securities. An insurer may enter into securities lending transactions that are conducted directly, through a custodian bank that is a qualified bank, or through an agent, and may enter into repurchase transactions, reverse repurchase transactions and dollar roll transactions, subject to the following requirements.

A. The insurer's board of directors shall adopt a written plan regarding such transactions that specifies guidelines and objectives to be followed, such as:

(1) A description of how cash received will be invested or used for general corporate purposes of the insurer;

(2) Operational procedures to manage interest rate risk, counter-party default risk, the conditions under which proceeds from reverse repurchase transactions may be used in the ordinary course of business and the use of acceptable collateral in a manner that reflects the liquidity needs of the transaction; and

(3) The extent to which the insurer may engage in these transactions. [PL 1999, c. 715, §17 (NEW).]

B. The insurer shall enter into a written agreement for all transactions authorized in this subsection other than dollar roll transactions. The written agreement must require each transaction to terminate no more than one year from its inception. The agreement must be made with the counter-party, except that, for securities lending transactions, the agreement may be through a custodian bank that is a qualified bank or the agreement may be with an agent acting on behalf of the insurer if the agent or the guarantor of the agent's obligations under the agreement is a qualified bank or a qualified business entity and if the agreement with the agent requires the agent to enter into separate agreements with each counter-party that are consistent with the requirements of this subsection and prohibits securities lending transactions under the agreement with the agent or its affiliates. [PL 1999, c. 715, §17 (NEW).]

C. Cash received in a transaction under this subsection, if not used by the insurer for its general corporate purposes in accordance with the plan adopted by the board of directors pursuant to paragraph A, must be invested in accordance with this chapter and in a manner that recognizes the liquidity needs of the transaction. For so long as any transaction under this subsection remains outstanding, the insurer, its agent or custodian shall maintain either physically or through the book entry systems of the Federal Reserve, Depository Trust Company, Participants Trust Company or other securities depositories approved by the superintendent:

(1) Possession of acceptable collateral for the transaction;

(2) A perfected security interest in acceptable collateral for the transaction; or

(3) In the case of a foreign jurisdiction, title to, or rights of a secured creditor to, acceptable collateral for the transaction.

The amount of acceptable collateral required for the purposes of subparagraphs (1), (2) and (3) is the amount required pursuant to the provisions of the purposes and procedures manual of the Securities Valuation Office of the National Association of Insurance Commissioners or its successor publication. [PL 1999, c. 715, §17 (NEW).]

D. An insurer may not enter into a transaction under this subsection if, as a result of and after giving effect to the transaction:

(1) The aggregate amount of securities then loaned to, sold to or purchased from any one counter-party under this subsection would exceed 5% of its admitted assets. In calculating the amount sold to or purchased from a counter-party under repurchase or reverse repurchase transactions, effect may be given to netting provisions under a written master agreement; or

(2) The aggregate amount of all securities then loaned to, sold to or purchased from all counter-parties under this subsection would exceed 40% of its admitted assets. [PL 1999, c. 715, §17 (NEW).]

[PL 1999, c. 715, §17 (NEW).]

SECTION HISTORY

PL 1987, c. 399, §14 (NEW). PL 1987, c. 769, §A90 (AMD). PL 1999, c. 715, §§15-17 (AMD).