



capitalized as determined by the standards adopted by international banking authorities and that is legally qualified to accept custody of securities; or

- (2) A broker/dealer that shall be registered with and subject to 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 two hundred fifty million dollars (\$250,000,000).
- D. "Custodied securities" means securities held by the custodian or its agent or in a clearing corporation, including the Treasury/Reserve Automated Debt Equity Securities System (TRADES) or Treasury Direct systems.
  - E. "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 (S.E.C. Form) filed with the Securities and Exchange Commission.
  - F. "Treasury/Reserve Automated Debt Entry Securities System" ("TRADES") and "Treasury Direct" mean the book entry securities systems established pursuant to 31 U.S.C. § 3100, et seq. U.S.C. pt. 391 and 5 U.S.C. pt. 301. The operation of TRADES and Treasury Direct are subject to

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- (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) A national bank, state bank or trust company shall secure and maintain insurance protection in an adequate amount covering the bank or trust company'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. A broker/dealer shall secure and maintain insurance protection for each insurance company's custodied securities in excess of that provided by the Securities Investor Protection Corporation in an amount equal to or greater than the market value of each respective insurance company's custodied securities. The commissioner may determine whether the type of insurance is appropriate and the amount of coverage is adequate.

Drafting Note The following subsections provide alternate .3 (n)-0ateneuar ( al)3.4 (t)2Td [(-0.6 (6 (uar (9.6 (6 (s(o)-9.6 (vc6 (s)-et)



FORM A

CUSTODIAN AFFIDAVIT

[For use by a custodian where securities entrusted to its care have not been redeposited elsewhere.]

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, being duly sworn deposes and says that he or she is \_\_\_\_\_ of \_\_\_\_\_, a corporation organized under and pursuant to the laws of the \_\_\_\_\_ with the principal place of business at \_\_\_\_\_ (hereinafter called the "corporation"):

That his or her duties involve supervision of activities as custodian and records relating thereto;

That the corporation is custodian for certain securities of \_\_\_\_\_ having a place of business at \_\_\_\_\_ (hereinafter called the "insurance company") pursuant to an agreement between the corporation and the insurance company;

That the schedule attached hereto is a true and ~~plete~~ <sup>correct</sup> statement of securities (other than those caused to be deposited with The Depository Trust Company or like entity or a Federal Reserve Bank under the TRADES or Treasury Direct systems) which were in the custody of the corporation for the account of ~~the~~ <sup>the</sup> insurance company as of the close of business on \_\_\_\_\_; that, unless otherwise indicated on the schedule, the next maturing and all subsequent coupons were then either attached to coupon bonds or in the process of collection; and that unless otherwise shown on the schedule, all such securities were in bearer form or in registered form in the name of the insurance company or its nominee or of the corporation or its nominee, or were in the process of being registered in such form;

That the corporation as custodian has the responsibility for the safekeeping of such securities as that responsibility is specifically set forth in the agreement between the corporation as custodian and the insurance company; and

That, to the best of his or ~~her~~ knowledge and belief, unless otherwise shown on the schedule, the securities were the property of the insurance company and were free of all liens, claims or encumbrances whatsoever.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
(L.S.)  
Vice President [or other authorized officer]









foreign country, or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, "custodian" may include a bank or trust company incorporated or organized under the laws of a country other than



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) A national bank, state bank, federal home loan bank or trust company shall secure and maintain insurance protection in an adequate amount covering the bank's or trust company'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. A broker/dealer shall secure and maintain insurance protection for each insurance company's custodied securities in excess of that provided by the Securities Investor Protection Corporation in an amount equal to or greater than the market value of each respective insurance company's custodied securities. The commissioner may determine whether the type of insurance is appropriate and the amount of coverage is adequate.

**Drafting Note:** The following subsections provide alternate standards of custodial liability. The standard in the first alternative is equivalent to that of a bailee for hire under New York law. The second alternative is more strict.

- (11) The custodian shall be obligated to indemnify the insurance company for any loss of custodied securities, except that the custodian shall not be so obligated to the extent that the loss was caused by other than the negligence or dishonesty of the custodian.
- (12) 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.]
- (13) 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 Paragraph (11) above, 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.
- (14) 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 defeated by war (whether declared or not).

- (16) The custodian shall provide written notification to the insurer's domiciliary commissioner if the custodial agreement with the insurer has been terminated or if 100% of the account assets in any one custody account have been withdrawn. This notification shall be remitted to the insurance commissioner within three (3) business days of the receipt by the custodian of the insurer's written notice of termination or within three (3) business days of the withdrawal of 100% of the account assets.

**Section 3. 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 (30) 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 dep.7 (ta)14-0.7 (g.2 (e)-3 ( d)2.3 (e)-3 (p)13.1 (o)-6.6 (s 9 04

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\_\_\_\_\_, being duly sworn deposes and says that he or she is \_\_\_\_\_ of \_\_\_\_\_, a corporation organized under and pursuant to the laws of the \_\_\_\_\_ with the principal place of business at \_\_\_\_\_ (hereinafter called the "corporation"):

That his or her duties involve supervision of activities as custodian and records relating thereto;

That the corporation is custodian for certain securities of \_\_\_\_\_ having a place of business at \_\_\_\_\_ (hereinafter called the "insurance company") pursuant to an agreement between the corporation and the insurance company;

That the schedule attached hereto is a true and complete statement of securities (other than those caused to be deposited with The Depository Trust Company or like entity or a Federal Reserve Bank under the TRADES or Treasury Direct systems) which were in the custody of the corporation for the account of the insurance company as of the close of business on \_\_\_\_\_; that, unless otherwise indicated on the schedule, the next maturing and all subsequent coupons were then either attached to coupon bonds or in the process of collection; and that, unless otherwise shown on the schedule, all such securities were in bearer form or in registered form in the name of the insurance company or its nominee or of the corporation or its nominee, or were in the process of being registered in such form;

That the corporation as custodian has the responsibility for the safekeeping o.6 (r)11p2.86ianat, s.6r adpsuss cmhesp(o)-6.6 (r



