

40-2a21. Securities lending, repurchase and reverse repurchase transactions; requirements; definitions. As used in this section:

(a) (1) Acceptable collateral means:

(A) With respect to securities lending transactions, cash, cash equivalents, letters of credit, direct obligations of or securities that are fully guaranteed as to principal and interest by, the government of the United States or any agency of the United States, specifically including the federal national mortgage association and the federal home loan mortgage corporation, and with respect to lending foreign securities, sovereign debt rated 1 by the SVO, all to the extent authorized by K.S.A. 40-2a01 et seq., and amendments thereto;

(B) with respect to repurchase transactions, cash, cash equivalents and direct obligations of, or securities that are fully guaranteed as to principal and interest by the government of the United States or any agency of the United States specifically including the federal national mortgage association and the federal home loan mortgage corporation, all to the extent authorized by K.S.A. 40-2a01 et seq., and amendments thereto; and

(C) with respect to reverse repurchase transactions, cash and cash equivalents to the extent authorized by K.S.A. 40-2a01 et seq., and amendments thereto.

(2) "Cash equivalents" means short-term, highly rated and highly liquid investments or securities readily convertible to known amounts of cash without penalty and so near maturity that they present insignificant risk of change in value. For purposes of this definition:

(A) "Short-term" means investments with a remaining term to maturity of 90 days or less;

(B) "highly rated" means an investment rated "P-1" by Moody's Investor's Service, Inc. or "A-1" by Standard and Poor's, or its equivalent rating by a nationally recognized statistical rating organization recognized by the SVO; and

(C) cash equivalents include government money market mutual funds and money market mutual funds rated 1 by the SVO.

(3) "Equivalent securities" means:

(A) In a securities lending transaction, securities that are identical to the loaned securities including the amount thereof, except as to certificate number if held in physical form, provided that if any different security shall be exchanged for any loaned security by recapitalization, merger, consolidation or other corporate action, such different security shall be deemed to be the loaned security;

(B) in a repurchase transaction, securities that are identical to the purchased securities including the amount of the purchased securities, except as to certificate number if held in physical form; and

(C) in a reverse repurchase transaction, securities that are identical to the sold securities including the amount of the sold securities, except as to certificate number if held in physical form.

(4) "Letters of credit" means clean, irrevocable and unconditional letters of credit issued or confirmed by, and payable and presentable at, financial institutions on the list of financial institutions meeting the standards for issuing letters of credit pursuant to the purposes and procedures of the securities valuation office or any successor publication. To constitute acceptable collateral for the purposes of this section, a letter of credit must have an expiration date beyond the term of the subject transaction.

(5) "Market value" means for the purpose of this section:

(A) With respect to cash and letters of credit, the amounts thereof; and

(B) with respect to any security as of any date, the price for the security on that date obtained from a generally recognized source, or the most recent quotation from such a source, plus accrued but unpaid income thereon to the extent not included in such price as of that date.

(6) "Qualified business entity" means a business entity which is, or is a subsidiary or affiliate of:

(A) An issuer of obligations or preferred stock which are rated 1 or 2 by the SVO or an issuer of obligations, preferred stock or derivative instruments which are rated the equivalent of 1 or 2 by the SVO or by a nationally recognized statistical rating organization recognized by the SVO; or

(B) a primary dealer in United States government securities, as recognized by the federal reserve bank of New York.

(7) "Repurchase transaction" means a transaction in which an insurer purchases securities from a business entity which is obligated to repurchase the purchased securities or equivalent securities from the insurer at a specified price, and either within a specified period of time or upon demand.

(8) "Reverse repurchase transaction" means a transaction in which an insurer sells securities to a business entity and is obligated to repurchase the sold securities or equivalent securities from the business entity at a specified price and either within a specified period of time or upon demand.

(9) "Securities lending transaction" means a transaction in which securities are loaned by an insurer to a business entity which is obligated to return the loaned securities or equivalent securities to the insurer, within a specified period of time or upon demand.

(10) "Substantially similar securities" means securities that meet all the criteria for substantially similar securities specified in the NAIC accounting practices and procedures manual, as amended, and in an amount that constitutes good delivery form.

(11) "SVO" means the securities valuation office of the national association of insurance commissioners or any successor office established by the national association of insurance commissioners.

(b) Any property and casualty insurance company organized under any law of this state may enter into securities lending, repurchase and reverse repurchase transactions, subject to the following requirements:

(1) The insurer's board of directors shall adopt a resolution authorizing investments under this section and a written plan which specifies guidelines and objectives to be followed, such as:

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

(B) operational procedures to manage interest rate risk, counterparty default risk and the use of acceptable collateral in a manner that reflects the liquidity needs of the transaction; and

(C) the extent to which an insurer may engage in these transactions.

(2) The insurer shall enter into a written agreement for all transactions authorized in this section. Such agreement shall adequately identify each security to which the agreement applies and shall require that each transaction terminate on a specified date no more than one year from its inception or upon earlier demand of the insurer. In a repurchase transaction, the agreement must also state that in the event of default by the party agreeing to repurchase the securities described in the agreement at the terms contained in the agreement, title to the

described securities must pass immediately to the insurance company without recourse. Such agreement shall be with the counterparty business entity. For securities lending transactions the agreement may be with an agent acting on behalf of the insurer, if such agent is a qualified business entity, and if such agreement:

(A) Requires the agent to enter into separate agreements with each counterparty that are consistent with the requirements of this section; and

(B) prohibits securities lending transactions under the agreement with the agent or its affiliates.

(3) Cash received in a transaction under this section shall be invested in accordance with K.S.A. 40-2a01 et seq., and amendments thereto, and in a manner that recognizes the liquidity needs of the transaction, or shall be used by the insurer for its general corporate purposes. For so long as the transaction remains outstanding, the insurer, its agent or custodian shall maintain, in the United States, as to acceptable collateral received in a transaction under this section, either physically or through book entry systems of the federal reserve or through a clearing corporation as permitted by K.S.A. 40-2a20, and amendments thereto: (A) Possession of the acceptable collateral; or (B) a perfected security interest in the acceptable collateral.

(4) For purposes of calculating the limitations of K.S.A. 40-2a01 et seq., and amendments thereto, securities lending, repurchase and reverse repurchase transactions shall not be considered investments in the counterparty, or in any issue of securities issued by the counterparty, or in the jurisdiction in which the counterparty is located. For purposes of calculations made to determine compliance with this part 4 of subsection (b), no effect will be given to the insurer's future obligation to resell securities in the case of a repurchase transaction, or to repurchase securities in the case of a reverse repurchase transaction. An insurer may not enter into a transaction under this section if, as a result of and after giving effect to the transaction:

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

(B) the aggregate amount of all securities then loaned or sold to, or purchased from, all business entities under this section, without the effect of netting referred to in subpart (A), would exceed 40% of its admitted assets.

(5) In a securities lending transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to 102% of the market value of the securities loaned by the insurer in such transaction as of that date. If at any time the market value of such acceptable collateral is less than the market value of the loaned securities, the business entity to which the securities are loaned shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, equals at least 102% of the market value of the loaned securities.

(6) In a reverse repurchase transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to 95% of the market value of the securities transferred by the insurer in such transaction as of that date. If at any time the market value of such acceptable collateral is less than 95% of the market value of the securities so transferred, the business entity shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals 95% of the market value of the transferred securities.

(7) In a repurchase transaction, the insurer shall receive as acceptable collateral transferred securities having a market value at least equal to 102% of the purchase price paid by the insurer for such securities. If at any time the market value of such acceptable collateral is less than 100% of the purchase price paid by the insurer, the business entity shall be obligated to provide additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, equals at least 102% of such purchase price. Securities acquired by an insurer in a repurchase transaction shall not be sold in a reverse repurchase transaction, loaned in a securities lending transaction, or otherwise pledged.

(c) Unless otherwise specified, an investment limitation computed on the basis of an insurer's admitted assets or capital and surplus shall relate to the amount required as shown on the insurer's last annual report as filed with the commissioner of insurance or a more recent quarterly financial statement as filed with the commissioner, on a form prescribed by the national association of insurance commissioners, within 45 days following the end of the calendar quarter to which the interim statement pertains. For purposes of computing any limitation based upon admitted assets, the insurer shall deduct from the amount of its admitted assets the amount of the liability recorded on such statutory balance sheet for:

(1) The return of acceptable collateral received in a reverse repurchase or a securities lending transaction; and

(2) the amount reported as borrowed money in the most recently filed financial statement to the extent not included in subpart (1).

History: L. 1982; ch. 201, § 2; L. 1996, ch. 27, § 1; July 1.