

Kansas Administrative Regulations

Kansas Department of Insurance

Article 1.—General

40-1-47. Insurance companies; deposits; requirements.

(a) For the purposes of this regulation, the following terms shall be defined as follows:

(1) "Custodial account" means an account established by written agreement between a company and a custodian pursuant to K.S.A. 40-229a and amendments thereto.

(2) "Custodial agreement" means a written agreement entered into between a company and a custodian pursuant to K.S.A. 40-229a and amendments thereto.

(3) "Custodian" means an institution meeting the requirements of subsection (b) of this regulation that has entered into a custodial agreement with a company.

(4) "Custodied securities" means securities held by the custodian or held for the account of the custodian in an authorized clearing corporation, in the federal reserve bank book-entry system, or in a United States bank.

(5) "Securities" means all assets that may be used to satisfy the deposit requirements of K.S.A. 40-229a and amendments thereto, including mortgages, certificates of deposit, cash, securities of the kind or character in which the company is allowed to invest its funds, and investment income due and accrued on custodied securities that are not in default. "Securities" shall not include real estate, other than the company's interest as a mortgagee or secured party.

(b) To qualify as a custodian, pursuant to this regulation, an institution shall meet all of the following requirements:

(1) It shall be a financial institution as defined in K.S.A. 40-229a(e)(2) and amendments thereto.

(2) It shall possess a combined capital and surplus that at all times equals or exceeds \$500,000.

(3) It shall maintain blanket bond coverage relating to the custodied securities with limits satisfactory to the commissioner.

(c) Securities deposited as described in K.S.A. 40-229a, and amendments thereto, shall include an executed custodial agreement in writing that provides the following:

(1) That the custodian shall be obligated to indemnify the insurance company for any loss of securities of the insurance company in the bank or trust company's custody occasioned by the negligence or dishonesty of the bank or trust company's officers or employees, or burglary, robbery, holdup, theft, or unexplained disappearance, including losses by damage or destruction;

(2) that if there is a loss of the securities for which the bank or trust company is obligated to indemnify the insurance company, the securities shall be promptly replaced, or the value of the securities and the value of any loss of rights or privileges resulting from the loss of securities shall be promptly replaced;

(3) that the bank or trust company shall not be liable for any failure or delay in taking any action required to be taken in the event of any of the following:

(A) War, whether declared or not and including existing wars;

(B) revolution;

(C) insurrection;

(D) riot;

(E) civil commotion;

(F) act of God;

(G) accident;

(H) fire;

(I) explosion;

(J) stoppage of labor, strikes, or other differences with employees;

(K) laws, regulations, orders, or the acts of any governmental authority; or

(L) any other cause whatever beyond its reasonable control;

(4) a provision stating where the securities held in physical form are located;

(5) a provision stating that the custodian's records shall identify the following:

(A) The name of the clearing corporation, securities depository, or United States bank;

(B) the location of the securities; and

(C) if held through an agent, the name of the agent;

(6) a provision stating that all custodied securities that are registered shall be registered under the name of any of the following:

(A) The company;

(B) a nominee of the company;

(C) the custodian or its nominees, if held in a securities depository;

(D) the securities depository or its nominee; or

(E) the clearing corporation or its nominee, if held in an authorized clearing corporation as provided in K.S.A. 40-2a20 and K.S.A. 40-2b20 and amendments thereto;

(7) a provision stating that the obligations of the custodian of securities shall not be released as a result of a clearing corporation or a securities depository holding the custodied securities;

(8) a provision stating that securities may be held under a "filing of security by issuer" (FOSBI) system, in fungible or commingled form as part of a "jumbo" certificate;

(9) a provision stating that the custodian bank or trust company may utilize the federal reserve system book-entry program; and

(10) a provision stating that the custodian bank or trust company may utilize the facilities of a securities depository or an authorized clearing corporation.

(d) A company may satisfy its deposit requirement by depositing assets with a custodian bank having its principal place of business in Kansas, pursuant to a written agreement with the custodian bank. If otherwise authorized by the laws of this state, the custodian bank may utilize the services of another United States bank to physically hold custodied securities and to prepare any reports required by the custodial agreement, on behalf of the custodian. The custodian bank shall remain responsible for the safekeeping of all custodied securities, the submission of any reports required by this regulation, and compliance with all other requirements imposed by K.S.A. 40-229a, and amendments thereto, and this regulation.

(e) The custodian shall ensure the following:

(1) That the custodial account is titled to indicate that the custodied securities are held in trust for the use and benefits of the company;

(2) during the course of the custodian's regular business hours, the commissioner or the commissioner's representative and authorized employees and representatives of the company are entitled to examine on the premises of the custodian the custodian's records relating to custodied securities of the company;

(3) that the custodial agreement and all amendments to it are submitted by the company to the commissioner for the commissioner's review and approval before execution. The custodial agreement and all amendments to it shall be deemed approved unless disapproved by the commissioner within 30 days of the date of the agreement and any amendments received by the commissioner. The custodial agreement may be terminated only with the prior approval of the commissioner; and

(4) that the commissioner or his duly authorized assistant commissioner or representative may at any time inspect the securities held under a custodian agreement.

(f) The custodial agreement may contain additional provisions if these provisions are not in conflict with this regulation.

(g) In addition to the joint custody receipt arrangement recognized in K.S.A. 40-229a and amendments thereto, the custodian may utilize a custodial or controlled account arrangement pursuant to K.S.A. 40-229a and amendments thereto. Within the custodial or controlled account arrangement, the custodian shall meet the following requirements:

(1) The custodian shall not allow the company to withdraw or exchange securities that would at any time reduce the aggregate value of the securities held by the custodian in the company's custodial account to a value less than the minimum aggregate value of securities currently in effect, as determined under subsection (h) of this regulation. The aggregate value of securities on deposit with the custodian shall be determined by utilizing the same procedure for valuing securities as that used by the commissioner for valuing other deposits made pursuant to K.S.A. 40-229a and amendments thereto. The custodian may effect a transfer of securities that would reduce the aggregate value of the securities held by the custodian in the company's custodial account to a value less than the minimum aggregate value of securities

currently in effect if the securities or their proceeds are immediately transferred directly by the custodian to the commissioner for deposit pursuant to K.S.A. 40-229a and amendments thereto and the commissioner authorizes the transfer in writing.

(2) The custodian shall, within 30 days after the last day of each month, provide evidence to the commissioner in a form acceptable to the commissioner that the aggregate value of securities held by the custodian for the company on the last day of the prior month was at least equal to the minimum aggregate value of securities effective on this date, as determined under subsection (h) of this regulation. This evidence shall include the following information relevant to each type of security:

- (A) The balance in any cash account;
- (B) the name of the issuer;
- (C) a description of the security;
- (D) the number of shares;
- (E) the face value;
- (F) the form of ownership registration;
- (G) the location of the security;
- (H) the original cost;
- (I) the current market value; and
- (J) the unpaid balance.

(h) The minimum aggregate value of securities shall be stated in the original custodial agreement referred to in subsection (g) of this regulation but may be changed with the written consent of the commissioner. The company may deposit securities in, withdraw securities from, or exchange securities in the custodial account subject to the provisions of subsection (g) of this regulation.

(i) Each adjudicative proceeding conducted by the insurance commissioner shall be conducted in accordance with the Kansas administrative procedure act, K.S.A. 77-501, et seq., and amendments thereto. After providing notice and an opportunity for hearing, either or both of the following actions may be taken by the commissioner:

(1) Termination of the acceptance of deposits made with any custodian not in compliance with the requirements of this regulation; or

(2) acquisition of custody or otherwise assumption of control of the custodied securities, registration, delivery, or other disposition as may be ordered by the commissioner and deemed appropriate under the circumstances if either of the following conditions is met:

(A) The custodian fails to provide information, or the commissioner has reason to believe that the custodian may be insolvent or that the custodian's financial condition endangers the custodied securities.

(B) The custodian fails to provide the evidence of the aggregate value of the securities as described in subsection (g) of this regulation and otherwise endangers the custodied securities.

(Authorized by K.S.A. 40-103, 40-229a; implementing K.S.A. 40-229a; effective May 10, 2002.)

***** Authenticated Kansas Administrative Regulation *****