

March 14, 1975

SUBJECT: INSURANCE

Circular Letter No. 1 (1975)

TO: ALL INSURERS AUTHORIZED TO WRITE INSURANCE IN THE STATE OF NEW YORK

This letter is being issued to inform you that the Insurance Department has approved the participation of insurance companies in the "certificateless society" programs of the Federal Reserve System and of The Depository Trust Company (DTC). This letter also sets forth the custodian affidavits which the Department will require on its examination of insurance companies.

The Federal Reserve "book-entry" program and the DTC program are both designed to immobilize security certificates. This immobilization would have several important beneficial results. It would eliminate many clerical steps involved in the delivery and receipt of securities; reduce costs and problems related to the storage, inspection, transportation, counting and insuring of securities; and reduce the exposure of certificates to theft or loss.

Under the Federal Reserve program, all eligible United States Government and Agency securities "held" in custody by Federal Reserve Banks for member banks, for their own account or for account of their customers, together with purchases, sales, maturities, and interest payments related thereto, are recorded by computer. No definitive certificates are issued unless expressly requested. The Federal Reserve Banks furnish each depositing member bank with daily transaction advices and periodic statements of the balances held in the bank's account. In turn, the bank generally reports to the purchaser on a weekly or monthly basis, depending upon degree of activity, the exact status of the book-entry securities owned by the purchaser.

An insurance company can participate in the Federal Reserve book-entry program only through a member bank in the Federal Reserve System which, as a custodian, can transact and maintain book-entry securities for the insurance company.

The DTC program operates in a somewhat similar fashion. DTC, a wholly-owned subsidiary of the New York Stock Exchange, accepts the deposit of certain corporate securities which it consolidates in a single certificate or certificates registered in the name of its nominee, and performs various other related custodial functions. Securities deposited with DTC are initially credited to the depositor's account. Thereafter, the securities may be pledged (as collateral for loans), released from pledge, transferred to other depositors, or re-transferred within DTC by a computerized book-entry system without the movement of the certificates representing the securities.

Securities deposited with DTC are registered in the name of Cede & Co., DTC's nominee. Each DTC depositor is identified by an account, which reflects the securities it has on deposit with DTC at any time as a result of physical deposits, withdrawals and computerized book-entry transactions. An insurance company can participate in DTC's program either directly or through a custodian bank.

DTC is regulated by the Securities and Exchange Commission, the New York State Banking Department and the Federal Reserve System.

The Department, after an extensive review of both the Federal Reserve and the DTC programs, has determined that insurance company participation in either is not prohibited by the New York State Insurance Law and that both

programs appear proper for insurance company participation.

Accordingly, the Insurance Department has approved the participation by insurance companies in both programs. This approval extends to securities held in accounts under Section 227 of the Insurance Law and to securities held in subsidiaries, provided that the affidavits prescribed in the attachments to this Circular Letter are received for each such separate account and subsidiary.

In reviewing these programs, the Department has also reviewed the custodian affidavit (Attachment A), which the Department has required on the examination of an insurance company. Unless the affidavit was obtained, the Department would not recognize as admitted assets insurance company owned securities under the control of the custodian.

The Department has determined that the present affidavit should be strengthened to prescribe a clear obligation on behalf of the custodian to the insurance company if its securities are lost. The Department has also determined that a similar affidavit stating the same clear obligation of the custodian to the insurance company in regard to lost securities, should be required of a custodian which re-deposits securities with the DTC, and of a custodian through which an insurance company participates in Federal Reserve "book-entry" system. Accordingly, the Department has adopted three new affidavits to be used in the following circumstances:

- where securities are deposited directly with The Depository Trust Company or with a custodian bank that does not re-deposit securities elsewhere (Attachment B).
- where a custodian bank has re-deposited securities with The Depository Trust Company (Attachment C), and
- where ownership is evidenced by a credit on the books of account and records of the Federal Reserve Bank (Attachment D).

Unless such affidavits are provided on the Department's examination of an insurance company, the Department will not recognize affected securities as admitted assets.

On examination, Department examiners will also look beyond the affidavits to determine if underlying custodian agreements, rules or procedures are in conformance with the statement of obligations contained in the affidavits, that custodian held securities are held subject to the instructions of the insurance company, and that they may be withdrawn immediately upon its demand.

The new special affidavits for custodians which re-deposit securities with the DTC (Attachment C) and for custodians through which an insurance company participates in the Federal Reserve "book-entry" program (Attachment D) will be required on all Department examinations of insurance companies with determination dates after the date of this Circular Letter. The new affidavit for the usual custodial arrangements (Attachment B) will not be required immediately, however, except where an insurance company deposits securities directly with the DTC. Instead, the old custodian affidavit (Attachment A) may continue to be used for Department examinations with "as of" dates of December 31, 1975 or earlier where securities are deposited with a custodian bank other than DTC. The new affidavit (Attachment B) will be required for all examinations with "as of" dates after the end of 1975. This affidavit is not being required immediately except in the case of DTC, to afford to custodian banks a reasonable opportunity to conform existing custodian relationships, where necessary, to satisfy the strengthened requirements of the new affidavit.

Finally, the Department will require custodians to maintain records sufficient to verify information reported in Schedule D of the Annual Statement Blanks. The maintenance of these records will be required of custodian banks, including the DTC where it deals directly with an insurance company. The Department's review of the DTC program indicates that it will be able to satisfy this requirement. All custodians must meet this requirement effective

immediately.

Very truly yours,

[SIGNATURE]

Lawrence O. Monin

Acting Superintendent of Insurance

Attachment A to Circular Letter No. 1 (1975)

CUSTODIAN AFFIDAVIT

STATE OF)

) SS:

COUNTY OF)

_____, being duly sworn deposes and says that he is _____ of _____, a corporation organized under and pursuant to the laws of the _____ with the principal place of business at _____.

That his duties involve the supervision of securities in custody of said _____ and records relating thereto.

That said _____ has in custody certain securities for the account of _____, a corporation organized under and pursuant to the laws of _____ with its principal place of business at _____.

That the schedule hereto attached is a true and complete statement of all securities which were held in custody by said _____ for the account of said insurance company as of the close of business on _____; that the schedule sets forth the names of registered holders and, if no such name is shown, the security is in bearer form; and that unless otherwise indicated, the next-maturing and all subsequent coupons are either attached to coupon bonds or are in the process of collection.

That each and every name other than that of the company in which such securities are registered is that of a nominee of said _____.

That to the best of his knowledge and belief the said securities were held for the said insurance company free of all liens, claims, or encumbrances whatsoever, and were not held as security for any loan, except _____.

Subscribed and sworn to before me this day of 197.

_____(L.S.)

Attachment B to Circular Letter No. 1 (1975)

CUSTODIAN AFFIDAVIT

(For use where securities are deposited directly with DTC or with a custodian bank that does not redeposit securities elsewhere)

STATE OF)
) SS:
COUNTY OF)

_____, being duly sworn deposes and says that he is _____ of _____, a banking corporation organized under and pursuant to the laws of the _____ with the principal place of business at _____;

That his duties involve the supervision of securities in the custody of said bank and records relating thereto;

That the said bank has in custody certain securities for the account of _____, a corporation organized under and pursuant to the laws of _____ with its principal place of business at _____;

That said bank is obligated, in the event that a loss of such securities shall occur, promptly to replace the securities or the value thereof and the value of any loss of rights or privileges resulting from the loss of these securities, and to make available to the said insurance company any securities or amounts so replaced;

That said bank shall take prompt action to discharge its obligations;

That the schedule hereto attached is a true and complete statement of all securities which were held in custody by _____ for the account of said insurance company as of the close of business on _____; that the schedule sets forth the names of registered holders and, if no such name is shown, the security is in bearer form; and that unless otherwise indicated, the next maturing and all subsequent coupons are either attached to coupon bonds or are in the process of collection;

That each and every name other than that of the company in which such securities are registered is that of a nominee of _____; and

That to the best of his knowledge and belief the said securities were held for the said insurance company free of all liens, claims or encumbrances whatsoever, and were not held as security for any loan, except _____.

Subscribed and sworn to before me this _____ day of 197_____.

_____ (L.S.)

Attachment C to Circular Letter No. 1 (1975)

CUSTODIAN AFFIDAVIT

(For use in instances where a custodian bank has re-deposited securities with The Depository Trust Company)

STATE OF)
) SS:
COUNTY OF)

_____, being duly sworn deposes and says that he is _____ of the _____, a banking corporation organized under and pursuant to the laws of the _____ with its principal place of business at _____;

securities included among the total of such securities held in a "General" book-entry account maintained in the name of the said bank on the books and records of the Federal Reserve Bank as of the close of business on _____;

That said bank shall take prompt action to discharge its obligations; and

That, to the best of his knowledge and belief such securities were owned by the said insurance company and were free and clear of all liens, claims or encumbrances whatsoever and do not constitute security for any loan, except_____.

Subscribed and sworn to before me this day of , 197.

_____ (L.S.)

That said bank is also obligated in the event that a loss of any such securities shall occur, promptly to assert any and all rights it may have against The Depository Trust Company to obtain replacement of the lost securities or the value thereof and the value of any loss of rights or privileges resulting from the loss of these securities, and to make available to the said insurance company any securities or amounts so obtained from The Depository Trust Company until all such losses shall have been made good to the said insurance company;

That the said bank shall take prompt action to discharge its obligations;

That, to the best of his knowledge and belief the said securities were owned by the said insurance company and were held free and clear of all liens, claims or encumbrances whatsoever, and were not held as security for any loan, except_____; and

That each and every name in which the securities are registered, other than that of said insurance company or the Superintendent of Insurance pursuant to the provisions of Section 98 of the New York Insurance Law, is that of a nominee of The Depository Trust Company.

Subscribed and sworn to before me this day of , 197.

_____ (L.S.)