

February 1, 1977

SUBJECT: INSURANCE

Circular Letter No. 2 (1977)

(Addendum to Circular Letter No. 1 (3/14/75) and Circular Letter No. 13(5/5/76))

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

RE: Federal Reserve "Book-Entry" Program and The Depository Trust Company Program

As stated in Circular Letter No. 1 (March 14, 1975), 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 sets forth the revised custodian affidavits which the Department will require to be executed on its examination of insurance companies:

Attachment A - former custodian affidavit discontinued and no longer to be used;

Attachment B - for use by a custodian bank where securities entrusted to its care have not been redeposited elsewhere;

Attachment C - for use in instances where a custodian bank maintains securities on deposit with The Depository Trust Company;

Attachment D - for use where ownership is evidenced by book-entry at Federal Reserve Bank of New York;

Attachment E - for use in instances where securities are deposited directly with The Depository Trust Company.

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

The revised custodian affidavits (Attachments B, C, D and E) do not specifically prescribe the obligation of the custodian to the insurance company in regard to lost, misplaced, stolen, damaged or otherwise destroyed securities, but provide that the responsibility for the safekeeping of such securities shall be specifically set forth in the agreements between the respective custodian and insurance company. While it is not the intent of the Insurance Department to interfere with or determine the contractual rights between the parties, it is the obligation of the management of an insurer to require that the respective custodian agreements provide for such a standard of responsibility on the part of the custodian that will not be less than the responsibility of a bailee for hire and/or a fiduciary under the statutory and case law of the State of New York.

With respect to the participation in the Federal Reserve "book-entry" program, Circular Letter No. 1 (March 14, 1975) and Circular Letter No. 13 (May 5, 1976) indicated that an insurance company could participate-in said program only through a member bank in the Federal Reserve System. The use of the word "only" in said Circular Letters was not intended to restrict New York State Chartered Banks, not members of the Federal Reserve System, from acting as

custodians and re-depositing securities with a member bank for participation in the Federal Reserve "book-entry" program.

The use of the revised custodian affidavit forms (attachments B, C, D and E) is to take effect with all Department examinations made as of December 31, 1976 and thereafter.

Very truly yours,

[SIGNATURE]

Thomas A. Harnett

Superintendent of Insurance

Attachment A to Circular Letter No. 2 (1977)

CUSTODIAN AFFIDAVIT

(Discontinued and replaced by revised custodian affidavit Attachment B)

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.2 (1977)

CUSTODIAN AFFIDAVIT

(For use by a custodian bank where securities entrusted to its care have not been re-deposited 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 \_\_\_\_\_(hereinafter called the "bank");

That his duties involve supervision of activities of the bank as custodian and records relating thereto;

That the bank is custodian for certain securities of \_\_\_\_\_, having a place of business at \_\_\_\_\_ (hereinafter called the "insurance company") pursuant to an agreement between the bank 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 the Federal Reserve Bank of New York under the Federal Reserve book entry procedure) which were in the custody of the bank 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 a nominee of the bank, or were in the process of being registered in such form;

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

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

Subscribed and sworn to before me this    day of    197

\_\_\_\_\_(L.S.)

Attachment C to Circular Letter No. 2 (1977)

CUSTODIAN AFFIDAVIT

(For use in instances where a custodian bank maintains securities on deposit 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 \_\_\_\_\_(hereinafter called the "bank");



property of said insurance company and were free of all liens, claims or encumbrances whatsoever.

Subscribed and sworn to before me this day of 197.

\_\_\_\_\_(L.S.)

Attachment E to Circular Letter No. 2 (1977)

CUSTODIAN AFFIDAVIT

(For use in instances where securities are deposited directly with The Depository Trust Company.)

STATE OF )

) SS:

COUNTY OF )

\_\_\_\_\_, being duly sworn deposes and says that he is \_\_\_\_\_ of The Depository Trust Company a limited purpose trust company organized under and pursuant to the laws of the State of New York with its principal place of business at 55 Water Street, New York, New York (hereinafter called "DTC"):

That his duties involve supervision of activities of DTC as custodian and records relating thereto:

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

That the schedule attached hereto is a true and complete statement of securities which were in the custody of DTC for the account of the insurance company as of the close of business on \_\_\_\_\_;

That DTC as custodian has the responsibility for the safekeeping of such securities (whether in the possession of DTC, deposited with the Federal Reserve Bank of New York or deposited with another person acting as custodian for DTC) as that responsibility is specifically set forth in the agreement between DTC as custodian and the insurance company.

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

Subscribed and sworn to before me this day of 197.

\_\_\_\_\_(L.S.)