

November 27, 1961

SUBJECT: INSURANCE

WITHDRAWN

TO ALL INSURERS AUTHORIZED TO DO BUSINESS IN THE STATE OF NEW YORK

Some insurance companies have sought to qualify under Section 81(2)(a) of the Insurance Law investments in so-called "corporate real estate obligations" in the form of bonds, notes or other obligations of corporations engaged primarily in the business of owning or holding and leasing real property or formed for the purpose of engaging in such real estate activities. These obligations are sometimes secured by one or more mortgages or other liens on real property leased in whole or in part and by the assignment of leases thereon, and, in other instances, secured only by the assignment of such leases.

A corporate obligation secured by one or more mortgages on real estate and additional security in the form of leases does not qualify as a legal investment under Section 81 of the New York Insurance Law unless (i) in accordance with subsection 6 thereof the investment does not exceed two-thirds of the value of the mortgaged real estate or (ii) in accordance with subsection 2(a) thereof the investment is "adequately secured and has investment qualities and characteristics wherein the speculative elements are not predominate".

In the absence of satisfactory evidence that an investment secured by an interest in real estate is, in fact, a corporate obligation which is "adequately secured and has investment qualities and characteristics wherein the speculative elements are not predominate", the Department will not regard such an investment as "legal" unless it qualifies under Section 81(6).

A corporate obligation secured by one or more leases, whether or not additionally secured by one or more mortgages, will be recognized as a legal investment under Section 81(2)(a) if the following conditions are observed:

(1) Any and all leases to be considered as security are assigned directly to the insurer and are non-cancellable by either party except under provisions specified in the lease and designed to give adequate protection to the insurer's investment.

(2) Aggregate rentals due under such leases are sufficient to provide (i) for all expenses (including taxes other than the borrower's income taxes) of operation of the leased property during the initial term of such leases and (ii) for amortization during the initial term of such leases of not less than 90% of the investment (or 100% thereof if the investment is not also secured by a mortgage) with interest thereon.

(3) Such leases make suitable provisions for continuation of adequate payments throughout the life of the investment.

(4) The lessee under each such lease, or any corporation or instrumentality of government which has assumed or guaranteed the lessee's performance thereunder, is such that its obligations would be eligible for investment by an insurer in accordance with the provisions of Section 81(1) or the "earnings test provisions of Section 81(2).

(5) At the time the investment is made the corporate obligor has an equity of at least 10% in the real estate which is the subject of the lease or leases and/or mortgage, unless a single corporation or instrumentality of government is relied

upon to satisfy the above requirements on a net lease basis and such lease provides for 100% amortization of the investment.

(6) The number of leases which shall be taken into account for the purpose of compliance with item (4) above shall not exceed six.

Investment in corporate obligations of the type referred to herein which does not comply with the aforesaid conditions will not be approved as a legal investment under Section 81(2)(a) unless it can be demonstrated to the satisfaction of the Superintendent that such investment in fact is adequately secured and has investment qualities and characteristics wherein the speculative elements are not predominate.

This circular letter, while setting forth standards applicable to investments in certain corporate obligations, does not relieve management of its obligation to exercise prudence and otherwise comply with the law in investing its company's assets.

Please acknowledge receipt of this letter.

Very truly yours,

[SIGNATURE]

Superintendent of Insurance