Ohio Revised Code

Section 3925.08 Investment of accumulated funds or surplus.

Effective: September 4, 2014
Legislation: Senate Bill 140 - 130th General Assembly

Funds accumulated in the course of business, or surplus money above the capital stock, of any company organized under any law of this state, for the purpose provided in section 3925.01 of the Revised Code, shall only be loaned or invested in the securities listed in sections 3925.05 and 3925.06 of the Revised Code, or in the following:

(A)(1) Bonds and mortgages on unencumbered real estate within this or any other state worth twenty-five per cent more than the sum loaned thereon, exclusive of buildings, unless such buildings are insured in some company authorized to do business in this state, and the policy is transferred to the company making the investment; or, in lieu of transferring such policies, the mortgagee may purchase a policy or policies of mortgage protection insurance, payable to the mortgagee or a trustee in its behalf, insuring the mortgagee against loss resulting from the failure of the mortgagor to acquire and maintain, from such an authorized insurance company, insurance in the amount required by this section;

(2) Bonds or notes secured by mortgages insured by the federal housing administrator;

(3) Loans to veterans guaranteed in whole or in part by the United States pursuant to Title III of the "Servicemen's Readjustment Act of 1944," 58 Stat. 284, 38 U.S.C. 693, as amended, provided such guaranteed loans are liens upon real estate.

(B)(1) Legally authorized and executed bonds, notes, warrants, and securities which are the direct obligation of or are guaranteed as to both principal and interest by Canada, or which are the direct obligation of or are guaranteed as to both principal and interest by any province of Canada, or which are the direct obligation of or are guaranteed as to both principal and interest by any municipal corporation of Canada having a population of one hundred thousand or more by the latest official census, and which are not in default as to principal or interest;

(2) Obligations issued, assumed, or guaranteed by the international finance corporation or by the

international bank for reconstruction and development, the Asian development bank, the inter-American development bank, the African development bank, or similar development bank in which the president, as authorized by congress and on behalf of the United States, has accepted membership.

(C) Bonds or other evidences of indebtedness, not in default as to principal or interest, which are valid obligations issued, assumed, or guaranteed by the United States, by any state thereof, the Commonwealth of Puerto Rico, by any territory or insular possession of the United States, or by the District of Columbia, or which are valid obligations issued, assumed, or guaranteed by any county, municipal corporation, district, or political subdivision, or by any civil division or public instrumentality of such governmental units, if by statutory or other legal requirements such obligations are payable, as to both principal and interest, from taxes levied upon all taxable property within the jurisdiction of such governmental unit, or in bonds or other obligations issued by or for account of any such governmental unit having a population of five thousand or more by the latest official federal or state census, which are payable as to both principal and interest from revenues or earnings from the whole or any part of a publicly owned utility, provided that by statute or other applicable legal requirements, rates from the service or operation of such utility must be fixed, maintained, and collected at all times so as to produce sufficient revenues or earnings to pay both principal and interest of such bonds or obligations as they become due, and in any bonds or obligations issued or guaranteed by the United States, any state, the District of Columbia, the Commonwealth of Puerto Rico, any county, municipal corporation, district, political subdivision, civil division, commission, board, authority, agency, or other instrumentality of one or more of them, provided there is a specific pledge of revenues, earnings, or other adequate security and provided that no prior or parity obligation of the same issuer, payable from revenues or earnings from the same source, has been in default as to principal or interest during the five years next preceding the date of such investment, but such issuer need not have been in existence for that period, and obligations acquired under this section may be newly issued, and further provided that there is adequate provision for payment of expenses of operation and maintenance and the principal and interest on all obligations when due;

(D)(1) Bonds or other evidences of indebtedness, bearing or accruing interest, issued, assumed, or guaranteed by any solvent corporation, trust, partnership, or similar business entity organized and existing under the laws of this or any other state, or of the United States, the Commonwealth of

Puerto Rico, or of the District of Columbia, or of Canada or any province of Canada, upon which there is no existing interest or principal default, provided that either:

(a) The bonds or other evidences of indebtedness are rated 1 or 2 by the securities valuation office of the national association of insurance commissioners;

(b) The corporation, together with its predecessor corporation or corporations, or the trust, partnership, or similar business entity, has been in existence for a period of at least five years.

(2) Stocks, limited liability company membership interests, limited partnership interests, or limited liability partnership interests of any insurance, financial, investment, or investment management companies, which investment management companies are registered with the securities and exchange commission under the "Investment Company Act of 1940," 54 Stat. 789, 15 U.S.C. 80a-1, as amended, or the stocks, limited liability company membership interests, limited partnership interests, or limited liability partnership interests in an entity wholly owned by a domestic company or by a domestic company and its affiliates, that is formed and maintained to acquire or hold specific assets or liabilities for bankruptcy remoteness or limitation of liability purposes, except its own stock, and stocks, limited liability company membership interests, limited partnership interests, limited liability partnership interests, bonds, notes, and debentures of any company which is organized for, and limited in its operations to, the financing of insurance premiums, upon approval of such investments by the superintendent of insurance; except that approval shall not be required for the purchase of the outstanding stocks, limited liability company membership interests, limited partnership interests, or limited liability partnership interests of any such company, if investment in each such company does not exceed in the aggregate two and one-half per cent of the total admitted assets of the company making the investment as of the preceding thirty-first day of December. Whenever the superintendent has reason to believe that the retention, investment, or acquisition of the stock, limited liability company membership interest, limited partnership interest, or limited liability partnership interest of any such company substantially lessens competition generally in the business of insurance or creates a monopoly therein the superintendent shall proceed under section 3901.13 of the Revised Code to cause such domestic insurance company to divest itself of such stock, limited liability company membership interest, limited partnership interest, or limited liability partnership interest.

(3) Other stocks, limited liability company membership interests, or limited partnership interests, or limited liability partnership interests of any solvent corporation organized under the laws of this or any other state, or of the United States, or of the District of Columbia, or of Canada or any province of Canada, provided that a dividend or distribution has been paid by the business entity in the preceding twelve months upon the stock, membership interest, or partnership interest to be purchased or such business entity, together with its predecessor entity or entities, has been in existence for a period of at least five years.

(4) A domestic company may acquire, hold, and convey tangible personal property or interests therein for the production of income, provided no domestic company shall invest in excess of two per cent of its admitted assets as of the preceding thirty-first day of December under this division.

(5) In equipment trust obligations or certificates, security agreements, or other evidences of indebtedness entered into directly or guaranteed by any company operating wholly or partly within the United States or Canada, provided that such debt obligation is secured by a first lien on tangible personal property which is purchased or secured for payment thereof and such debt obligation is repayable within twenty years from the date of issue in annual, semiannual, or more frequent installments beginning not later than the first year after such date.

(6) An insurer may invest without limitation in investments of government money market funds. As used in division (D)(6) of this section, "government money market fund" means a fund that at all times invests in obligations issued, guaranteed, or insured by the federal government of the United States or collateralized repurchase agreements comprised of such obligations, and that qualifies for investment without a reserve pursuant to the purposes and procedures of the securities valuation office of the national association of insurance commissioners.

(E) Negotiable promissory notes maturing in not more than six months from the date thereof, secured by collateral security through the transfer of any of the classes of securities described in this section or in sections 3925.05 and 3925.06 of the Revised Code, with absolute power of sale within twenty days after default in payment at maturity;

(F)(1) Repurchase agreements with, and interest-bearing obligations, including savings accounts and time certificates of deposit of, a national bank of the United States, a commonwealth bank of Puerto

Rico, a chartered bank of Canada, or a state bank, provided such bank is either a member of the federal deposit insurance corporation created pursuant to the "Banking Act of 1933," as amended, or the Canada deposit insurance corporation created pursuant to the act of parliament known as the "Canada Deposit Insurance Corporation Act," as amended.

(2) Certificates of deposit, savings share accounts, investment share accounts, stock deposits, stock certificates, or other evidences of indebtedness of a savings and loan association, provided all such evidences of indebtedness are insured pursuant to the "Financial Institutions Reform, Recovery, and Enforcement Act of 1989," 103 Stat. 183, 12 U.S.C.A. 1811, as amended;

(3) Bankers' acceptances and bills of exchange of the kinds and maturities made eligible by law for rediscount with the federal reserve banks, provided that the same are accepted by a bank or trust company incorporated under the laws of the United States or of this state or any other bank or trust company which is a member of the federal reserve system.

(G) Any securities issued as a result of any reorganization, or capital or debt adjustment, in whole or in part, in exchange for securities acquired by it prior to such reorganization, or capital or debt adjustment;

(H)(1) In bonds, notes, debentures, or other evidences of indebtedness issued, assumed, or guaranteed by a solvent corporation, trust, or partnership formed or existing under the laws of a foreign jurisdiction, provided each such foreign investment is of the same kind and quality as United States investments authorized under this section; or in common or preferred stock, shares, membership interests, or partnership interests of any solvent business entity formed or existing under the laws of a foreign jurisdiction, provided each such foreign investment is of the same kind and quality as United States investments authorized under this section; or in bonds or other evidences of indebtedness issued, assumed, or guaranteed by a foreign jurisdiction.

An insurer shall not invest in foreign investments under division (H) of this section, including investments denominated in foreign currency, a sum exceeding in the aggregate fifteen per cent of its admitted assets as of the preceding thirty-first day of December. The aggregate amount of investments held by an insurer in a single foreign jurisdiction shall not exceed three per cent of its admitted assets as of the preceding thirty-first day of December.

As used in division (H)(1) of this section, "foreign jurisdiction" means a jurisdiction outside the United States, Puerto Rico, or Canada whose bonds are rated 1 by the securities valuation office of the national association of insurance commissioners.

(2) An insurer may acquire investments denominated in foreign currency whether or not they are foreign investments.

An insurer shall not invest in investments denominated in foreign currency a sum exceeding in the aggregate fifteen per cent of its admitted assets as of the preceding thirty-first day of December. The aggregate amount of investments denominated in a single foreign currency held by an insurer shall not exceed three per cent of an insurer's admitted assets as of the preceding thirty-first day of December.

(3) As used in division (H) of this section, "foreign currency" means a currency other than that of the United States.

(I)(1) Any securities or other property not permitted under section 3925.05, 3925.06, 3925.08, or 3925.20 of the Revised Code to an extent not exceeding in the aggregate six per cent of the total admitted assets of such company on the preceding thirty-first day of December, within the limitations prescribed in division (J) of this section. Any such company may also invest up to an additional five per cent of the total admitted assets of such company on the preceding thirty-first day of December, within the limitations prescribed in division (J) of this section, in loans or investments in small businesses having more than half of their assets or employees in this state and in venture capital firms having an office within this state, provided that, as a condition of a company making an investment in a venture capital firm, the firm must agree to use its best efforts to make investments, in an aggregate amount at least equal to the investment to be made by the company in that venture capital firm, in small businesses having their principal offices within this state and having either more than one-half of their assets within this state or more than one-half of their employees employed within this state.

As used in division (I) of this section:

(a) "Small businesses" means any corporation, partnership, proprietorship, or other entity that either does not have more than four hundred employees, or would qualify as a small business for the purpose of receiving financial assistance from small business investment companies licensed under the "Small Business Investment Act of 1958," 72 Stat. 689, 15 U.S.C.A. 661, as amended, and rules of the small business administration.

(b) "Venture capital firms" means any corporation, partnership, proprietorship, or other entity, the principal business of which is or will be the making of investments in small businesses.

(c) "Investments" means any equity investment, including limited partnership interests and other equity interests in which liability is limited to the amount of the investment, but does not include general partnership interests or other interests involving general liability.

(2) In the event that, subsequent to being made under this division, a loan or investment is determined to have become qualified as a loan or investment under any of the divisions (A) to (F) of this section or under section 3925.05, 3925.06, or 3925.20 of the Revised Code, the company may consider such loan or investment as held under such other statutory provision and such loan or investment shall no longer be considered as having been made under this division.

(J) No domestic insurance company shall at any time have invested a sum exceeding five per cent of its admitted assets as of the preceding thirty-first day of December in the bonds, notes, debentures, other evidences of indebtedness, and stocks of a particular corporation, trust, partnership, or similar business entity, except for investments authorized under divisions (A) and (D)(2) of this section, and no domestic insurance company together with its subsidiary, if any, shall at any time own directly or indirectly more than twenty-five per cent of the outstanding bonds, notes, debentures, other evidences of indebtedness, and stocks of any corporation, except for investments authorized under divisions (A) and (D)(2) of this section.

This section does not affect the propriety or legality of an investment made by such domestic insurance company which was in accordance with the laws in force at the time of the making of the investment.

A business entity organized for the purpose provided in section 3925.01 of the Revised Code may

seek permission from the superintendent of insurance to invest funds under Chapter 3906. of the Revised Code and may invest funds under that chapter if such permission is granted.

(K) As used in divisions (K) and (L) of this section:

(1) "Covered" means that an insurer owns, or can immediately acquire through the exercise of options, warrants, or conversion rights already owned, the underlying interest in order to fulfill or secure its obligation under the option, cap, or floor it has written.

(2)(a) "Derivative instrument" means an agreement, option, instrument, or a series or combination thereof of either of the following types:

(i) To make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interest, or to make a cash settlement in lieu thereof;

(ii) That has a price, performance, value, or cash flow based primarily upon the actual or expected price, level, performance, value, or cash flow of one or more underlying interests.

(b) Derivative instruments include options, warrants, caps, floors, collars, swaps, forwards, futures, and any other agreements, options, or instruments substantially similar thereto or any series or combination thereof.

(3) "Derivative transaction" means a transaction involving the use of one or more derivative instruments.

(4) "Hedging transaction" means a derivative transaction that is entered into and maintained to reduce either of the following:

(a) The risk of economic loss due to a change in the value, yield, price, cash flow, or quantity of assets or liabilities that the insurer has acquired or incurred or anticipates acquiring or incurring;

(b) The currency exchange rate risk or the degree of exposure as to assets or liabilities that an insurer has acquired or incurred or anticipates acquiring or incurring.

(5) "Income generation" means a derivative transaction involving the writing of covered options, caps, or floors that is intended to generate income or enhance return.

(6) "Replication transaction" means a derivative transaction that is intended to replicate the performance of one or more assets that an insurer is authorized to acquire under this chapter. "Replication transaction" does not include a derivative transaction that is entered into as a hedging transaction.

(L)(1) Prior to an insurer entering into derivative transactions, the board of directors of the insurer shall approve a derivative use plan.

(2) An insurer shall notify the superintendent of insurance in writing within three days after identifying either of the following:

(a) Any event or occurrence related to an insurer's derivatives use that may lead to a material change to the insurer's policyholder surplus;

(b) Any event or occurrence related to an insurer's derivatives use that, with the passage of time, may lead to a material change to the insurer's policyholder surplus.

(3) Prior to entering into derivative transactions, an insurer shall file with the superintendent a copy of its derivative use plan and internal controls, for informational purposes. The insurer shall keep current the copy of its derivative use plan and internal controls filed with the superintendent. The insurer shall not enter into derivative transactions until thirty calendar days after the date on which the derivative use plan and internal controls is filed with the superintendent. This thirty-calendar-day period is to begin on the date that the superintendent receives the derivative use plan and internal controls.

(4) The superintendent may adopt rules prescribing the form and content of derivative use plans, as well as any internal controls the superintendent considers necessary.

(5) An insurer that engages in hedging transactions or replication transactions shall do both of the

following:

(a) Maintain its position in any outstanding derivative instrument used as part of a hedging transaction or replication transaction for as long as the hedging transaction or replication transaction continues to be effective;

(b) Demonstrate to the superintendent, upon request, that any derivative transaction entered into and involving hedging transaction or replication transaction is an effective hedging transaction or replication transaction. The insurer must be able to demonstrate this at the time the derivative transaction is entered into, and for as long as the transaction continues to be in place.

(6) An insurer may not invest in, or use, a derivative instrument for any purpose other than a hedging transaction, income generation, or replication.

(7) An insurer shall not invest in, or use a derivative instrument for purposes of income generation a sum exceeding in the aggregate five per cent of its admitted assets, as of the preceding thirty-first day of December.

(8) All documents provided to the superintendent under division (L) of this section shall be deemed trade secrets and shall be provided with trade secret protection. Such documents shall also be considered work papers of the superintendent that are subject to section 3901.48 of the Revised Code and are confidential and privileged and shall not be considered a public record, as defined in section 149.43 of the Revised Code. The original documents and any copies of them shall not be subject to subpoena and shall not be made public by the superintendent or any other person, except as otherwise provided in section 3901.48 of the Revised Code.