

CHAPTER 193

AN ACT concerning the investment powers of domestic insurers and amending N.J.S.17B:20-1 and 17B:20-2 and repealing N.J.S. 17B:28-13.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. N.J.S.17B:20-1 is amended to read as follows:

Investments of domestic insurers.

17B:20-1. Any domestic insurer may invest its capital, surplus and other funds, or any part thereof, in:

a. Bonds, notes, or other evidences of indebtedness or public stock issued, created, insured or guaranteed by the United States, any territory or possession thereof, this or any other state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Canada, or any of the provinces thereof, or any instrumentality, agency or political subdivision of one or more of the foregoing.

b. Real estate which may be improved or which is unimproved but acquired in accordance with a definite plan for development within not more than five years, and in the improvement, development, operation or leasing thereof; provided, that if the commissioner shall determine that the interest of such insurer's policyholders requires that any specific real estate so acquired be disposed of, then such insurer shall dispose of such real estate within such reasonable time as the commissioner shall direct; and provided further, that the sum of (1) the aggregate amount invested in such real estate (including real estate held pursuant to N.J.S.17B:18-45 of this title) and (2) the aggregate amount invested in capital stock of any subsidiary of the insurer pursuant to N.J.S.17B:20-4, engaged in a business primarily involving the owning, improving, developing, operating or leasing of real estate, shall not exceed 10% of the total admitted assets of such insurer as of December 31 next preceding. Real estate used primarily for agricultural, horticultural, ranching, mining, forestry or recreational purposes shall be deemed improved within the meaning of this subsection b. The term "real estate" as used in this chapter shall include any real property and any interest therein, including, without limitation, any interest on, above or below the surface of the land, any leasehold estate therein, and any such interest held or to be held by the insurer in cotenancy with one or more other persons and any partnership interest held by the insurer in any general or limited partnership engaged in a business primarily involving the owning, improving, developing, operating or leasing of real estate. Income produced by investment in any such leasehold shall be applied in a manner calculated to amortize the amount invested in such leasehold within a period not exceeding eight-tenths of the unexpired term of the leasehold, inclusive of enforceable options, or within 40 years, whichever is the lesser, or where the peculiar nature of the leasehold involved so dictates, within such period and subject to such other reasonable limitations as the commissioner shall by regulation impose. For the purposes of this subsection b., a mortgage loan shall not be deemed to be an investment in real estate, notwithstanding the mortgagor is an institution in which such insurer has an ownership interest as shareholder, partner, or otherwise. The commissioner may promulgate a regulation in connection with investments under this subsection b. which shall, as far as practicable, be consistent with those regulations of the department which treat with securities supported by such interests in real estate.

c. Mortgage loans on unencumbered real estate, located within the United States, any territory or possession thereof, the Commonwealth of Puerto Rico or Canada. The amount of any such loan shall not exceed 80% of the value of the real estate mortgaged unless (1) the loan is also secured by the mortgagor's interest in a lease or leases whose aggregate rentals shall be sufficient, after payment of operating expenses and fixed charges, to repay 90% of the loan with interest thereon during the initial term or terms of such lease or leases and shall be payable directly or indirectly by any governmental units, instrumentalities, agencies or political subdivisions or an institution or institutions which meet the credit standards of the insurer for an unsecured loan to such institution or institutions or (2) the loan is secured by a purchase money mortgage or like security received by the insurer upon the sale or exchange of real estate acquired pursuant to any provision of this title or (3) the excess over such 80% is insured or guaranteed or to be insured or guaranteed by the United States, any territory or possession thereof, this or any other state of the United States, the District of Columbia, the Commonwealth

of Puerto Rico, Canada or any of the provinces thereof, or any instrumentality, agency or political subdivision of one or more of the foregoing. Any mortgage loan so insured or guaranteed or to be insured or guaranteed shall not be subject to the provisions of any law of this State prescribing or limiting the interest which may be charged or taken upon any such loan.

Any such insurer may hold a participation in any such mortgage loan if (1) such participation is senior and gives the holder substantially the rights of a first mortgagee or (2) the interest of such insurer in the evidence or evidences of indebtedness is of equal priority, to the extent of such interest, with other interests therein.

Any such mortgage loan which exceeds two-thirds of the value of the real estate mortgaged shall provide for such payments of principal, whatever the period of the loan, that at no time during the period of the loan shall the aggregate payments of principal theretofore required to be made under the terms of the loan be less than would have been necessary to reduce the loan to two-thirds of such value by the end of 35 years through payments of interest only for five years and equal payments applicable first to interest and then to principal at the end of each year thereafter. The commissioner may promulgate such supplemental regulations as he deems necessary with regard to particular classes of such investments, taking into consideration the type of security and the ratio of the loan to the value of the real estate mortgaged. No loan may be made on leasehold real estate unless the terms of such loan provide for payments to be made by the borrower on the principal thereof in amounts sufficient to completely repay the loan within a period not exceeding nine-tenths of the term of the leasehold, inclusive of the term or terms which may be provided by any enforceable option or options of extension or of renewal, which is unexpired at the time the loan is made.

Real estate shall not be deemed to be encumbered within the meaning of this subsection c. by reason of the existence of taxes or assessments that are not delinquent, or encumbrances that do not adversely affect the salability of the property to a material extent or as to which the insurer is insured against loss by title insurance, or any prior mortgage or mortgages held by such insurer if the aggregate of the mortgages held shall not exceed the amount hereinbefore set forth, nor when such real estate is subject to lease in whole or in part; provided, that the security created by the mortgage on such real estate is a first lien thereon. Real estate shall not be deemed to be encumbered and the security of the mortgage thereon shall be deemed a first lien within the meaning of this subsection c., notwithstanding the mortgagor is an institution in which such insurer has an ownership interest as shareholder, partner or otherwise.

No such insurer shall, pursuant to this subsection c., invest more than 2% of its total admitted assets as of December 31 next preceding in any mortgage loan secured by any one property, nor shall its total mortgage investments pursuant to this subsection c., exclusive of any mortgage loans secured by a purchase money mortgage or like security received by the insurer upon the sale or exchange of real estate acquired pursuant to any provision of this title or insured or guaranteed or to be insured or guaranteed as hereinbefore provided, exceed 60% of such admitted assets.

d. Tangible personal property, equipment trust obligations or other instruments evidencing an ownership interest or other interest in tangible personal property where there is a right to receive determined portions of rental, purchase or other fixed obligatory payments for the use or purchase of such personal property, provided, that the aggregate of such payments, together with the estimated salvage value of such property at the end of its minimum useful life and the estimated tax benefits to the insurer resulting from ownership of such property, is adequate to return the cost of the investment in such property, and provided further, that the aggregate net investments therein shall not exceed 10% of the total admitted assets of such insurer as of December 31 next preceding; or certificates of receivers of any institution where such purchase is necessary to protect an investment in the securities of such institution theretofore made under authority of this chapter; or the capital stock, beneficial shares or other instruments evidencing an ownership interest, bonds, securities or evidences of indebtedness issued, assumed or guaranteed by any institution created or existing under the laws of the United States, any territory or possession thereof, this or any other state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Canada or any of the provinces thereof; provided, that no purchase of any evidence of indebtedness which is in default as to interest shall be made

by such insurer unless such purchase is necessary to protect an investment theretofore made under statutory authority.

The term "institution" as used in this chapter shall include any corporation, joint stock association, business trust, business joint venture, business partnership, savings and loan association, credit union or other mutual savings institution or limited liability company, limited liability partnership or any other similar entity. No purchase shall be made of the stock of any class of any corporation, except a subsidiary of the insurer pursuant to N.J.S.17B:20-4, unless (1) such corporation has paid cash dividends on such class of stock during each of the past five years preceding the time of purchase or (2) such corporation shall have earned during the period of such five years an aggregate sum available for dividends upon such stock which would have been sufficient, after all fixed charges and obligations, to pay dividends upon all shares of such class of stock outstanding during such period averaging 4% per annum computed upon the par value (or in the case of stock having no par value, upon the stated capital in respect thereof) of such stock. In the case of the stock of a corporation resulting from or formed by merger, consolidation, acquisition or otherwise less than five years prior to such purchase, each consecutive year next preceding the effective date of such merger, consolidation or acquisition during which dividends or other distributions of profits shall have been paid by any one or more of its constituent or predecessor institutions shall be deemed a year during which dividends have been paid on such class of stock and the earnings of such constituent or predecessor institutions available for dividends during each of such years may be included as earnings of the existing corporation whose stock is to be purchased for each of such years; provided, however, that nothing herein contained shall prohibit the purchase of stock of any class which is preferred, as to dividends, over any class the purchase of which is not prohibited by this section; and provided further, that no purchase of its own stock shall be made by any insurer except for the purpose of the retirement of such stock or except as specifically permitted by any law of this State applicable by its terms only to insurers.

e. Securities, properties and other investments in foreign countries, in addition to those specified in N.J.S.17B:20-5, which are substantially of the same character as prescribed for authorized investments for funds of the insurer under the preceding subsections of this section, to an amount valued at cost, not exceeding in the aggregate at any one time 20% of the total admitted assets of such insurer as of December 31 next preceding; provided, however, that the amount invested pursuant to this subsection e. in authorized investments, other than qualified foreign investments, shall not exceed in the aggregate, at any one time, 3% of such admitted assets; and provided further that the amount invested in authorized investments in any one foreign country pursuant to this subsection e. shall not exceed in the aggregate, at any one time, 10% of such admitted assets. For the purposes of this subsection e., Canada shall not be deemed to be a foreign country.

The term "qualified foreign investment" as used in this subsection e. shall include any investment in a foreign country where: (1) the issuer or obligor is (a) a jurisdiction which is rated in one of the two highest rating categories by an independent, nationally recognized United States rating agency, (b) any political subdivision or other governmental unit of any such jurisdiction, or any agency or instrumentality of any such jurisdiction, political subdivision or other governmental unit, or (c) an institution which is organized under the laws of any such jurisdiction, or, in the case of investments which are substantially of the same character as prescribed for investments under subsections b. and c. of this section, the real property is located in any such jurisdiction; and (2) if the investment is denominated in any currency other than United States dollars, the investment is effectively hedged, substantially in its entirety, against the United States dollar pursuant to contracts or agreements which are (a) issued by or traded on a securities exchange or board of trade regulated under the laws of the United States or Canada or a province thereof, (b) entered into with a United States banking institution which has assets in excess of \$5,000,000,000 and which has obligations outstanding, or has a parent corporation which has obligations outstanding, which are rated in one of the two highest rating categories by an independent, nationally recognized United States rating agency, or with a broker-dealer registered with the Securities and Exchange Commission which has net capital in excess of \$250,000,000, or (c) entered into with any other banking institution which has assets

in excess of \$5,000,000,000 and which has obligations outstanding, or has a parent corporation which has obligations outstanding, which are rated in one of the two highest rating categories by an independent, nationally recognized United States rating agency and which is organized under the laws of a jurisdiction which is rated in one of the two highest rating categories by an independent, nationally recognized United States rating agency.

Any investment qualified pursuant to paragraph (2) of the preceding definition of "qualified foreign investment" shall remain so qualified only at such time or times that the hedging requirements of paragraph (2) are met.

f. Bonds, notes, or other evidences of indebtedness, issued, insured or guaranteed or to be insured or guaranteed by the International Bank for Reconstruction and Development, or by the International Finance Corporation, or by the Inter-American Development Bank, or by the Asian Development Bank, or by the African Development Bank.

g. Collateral loans secured by a pledge of capital stock, beneficial shares or other instruments evidencing an ownership interest, bonds, securities or evidences of indebtedness qualified or permitted for investment under any of the preceding subsections of this section. The amount of any such loan shall not exceed 80% of the market value of the security pledged at the date of the loan.

h. Loans or investments which are not qualified or permitted under any of the preceding subsections of this section or which are not otherwise expressly authorized by law; provided, that the aggregate amount of such loans and investments, valued at cost, shall not exceed at any one time 10% of the total admitted assets of such insurer as of December 31 next preceding.

For the purposes of subsection c. and this subsection h., the portion of a mortgage loan on unencumbered real estate which does not exceed 80% of the value of the real estate mortgaged shall be deemed to be a permitted investment under subsection c. and the remainder of said loan may be deemed to be made under this subsection h. Any investment originally made under this subsection h. which would subsequently, if it were being made, qualify as a permitted investment under another subsection of this section shall thenceforth be deemed to be a permitted investment under such other subsection.

2. N.J.S.17B:20-2 is amended to read as follows:

Limitation of investments.

17B:20-2. The amount (excluding amounts invested in the common stock of any corporation pursuant to N.J.S.17B:20-3 and N.J.S.17B:20-4) invested by a domestic insurer (a) in the common stock of any one corporation shall not exceed 2% of the total admitted assets of such insurer as of December 31 next preceding, or (b) in the common stock of all corporations valued at cost shall not exceed 15% of such assets except that to the extent that such aggregate investment in common stock exceeds 10% of such assets, further investments shall be subject to regulation by the commissioner under a formula which shall take into consideration the actual mandatory securities valuation reserve, as defined by the Subcommittee on Valuation of Securities of the National Association of Insurance Commissioners, held by a company which is applicable to such common stock in the corresponding annual statement filed with the department. The term "common stock" shall mean any voting stock of any class of a corporation which shall not be limited to a fixed sum or percentage of par value in respect to the rights of the holders thereof to participate in dividends or in the distribution of assets upon the voluntary or involuntary liquidation, dissolution or winding up of the corporation. Neither shall the amount invested in the beneficial shares or other ownership interests (other than common stock), evidences of indebtedness (excluding amounts invested in mortgage loans pursuant to subsection c. of N.J.S.17B:20-1), preferred stock and certificates of receivers of any one institution exceed 5% of such assets of the insurer. Nothing herein contained shall prevent any such insurer from purchasing, or in any other way acquiring the voting stock of, or otherwise investing in certain corporations as hereinafter provided in N.J.S.17B:20-3 and N.J.S.17B:20-4.

The total amount of admitted assets invested in the types of investments authorized by subsections b. and c. of N.J.S.17B:20-1 shall not, in the aggregate, exceed 60% of the domestic insurer's total admitted assets.

All investments made by any such insurer shall be authorized or approved by the board of directors, or by a committee designated by the board of directors and charged with the duty of supervising such investment, or shall be made in conformity with standards or investment objectives approved by such board of directors or such committee.

No such insurer shall jointly or severally enter into any agreement to purchase the unsold amount of securities which are the subject of an offering for sale to the public or otherwise to guarantee the sale of such securities.

Nothing contained in this section shall prevent any such insurer from distributing shares of an investment company within the meaning of the Investment Company Act of 1940 for which such insurer or its subsidiary is the investment manager or investment adviser.

The term "Investment Company Act of 1940" as used in this section shall mean an Act of Congress entitled "Investment Company Act of 1940," 54 Stat. 847 (15 U.S.C. s.80a-1 et seq.) as amended from time to time, or any similar statute enacted in substitution therefor.

Repealer.

3. N.J.S.17B:28-13 is repealed.

4. This act shall take effect immediately.

Approved August 18, 2005.