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Bulletin

No. G-13/92

- General

Guideline - Use of Canadian Depository for Securities Limited

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Background

These guidelines apply to an insurer incorporated and licensed under the laws of Ontario ("the company"). Federal insurance companies will be guided by the federal legislation.

The *Insurance Act*, Section 437(5) [formerly Section 392(5)], provides that all securities of an insurer incorporated and licensed under the laws of Ontario, shall be held at the head office of the insurer or elsewhere in Ontario and the holding of securities, wherever situated, is subject to such regulations respecting their safekeeping. As there are presently no regulations and the subject of "pledging of assets" by trust companies is under review by the regulators, these guidelines are being issued as an interim measure to give Ontario incorporated companies the opportunity to use CDS.

Application

These guidelines are for the purpose of preparing custodial/trustee agreements when the custodian intends to maintain the securities of the company with The Canadian Depository for Securities Limited (CDS). Ontario insurers will not be allowed to deal directly with CDS, but only through a custodian or trustee who is a participant of CDS.

Responsibility

The custodian arrangement is the responsibility of the management of the company. Management should determine that the agreement provides adequate protection for securing the assets of the company. The agreements are to be filed with the Ontario Insurance Commission at least 60 days prior to being finalized. Any changes to the agreement shall be filed in a similar manner with the Ontario Insurance Commission.

Qualifications of custodians

- a. a non-affiliated institution having shareholders' equity, as reported in audited financial statements for its last completed financial year, of not less than \$10 million, that is:
 - a Canadian chartered bank;
 - a trust company incorporated and licensed under the laws of Canada or a province of Canada, or;
- b. any non-affiliated financial institution dealing in securities that is a member of the Canadian Investor Protection Fund, and which provides a security bond in favour of the company issued by a licensed non-affiliated insurer for the full value of the assets managed by the custodian.

Guidelines for a custodian agreement

The custodial agreement will include the following clauses:

- a. The custodial/trust agreement should include a clause that the custodian/trustee assumes the same responsibility for securities held in safekeeping, whether in the possession of the custodian/trustee or deposited with the CDS and/or CDS's own custodian (qualified as above).
- b. No custodian/trust agreement may provide for the creation of any mortgage, pledge, hypothec, charge, security interest or other encumbrance of any nature or kind on the portfolio of securities, except in respect of:
 - (i) a claim for payment of fees/expenses of the custodian/trustee or sub-custodian as the case may be;
 - (ii) any monies/securities by the insurer in connection with the acquisition of securities.

- c. The custodian/trustee shall provide the company a minimum of 90 days following the delivery of the security account statement to verify the correctness of such statement. The custodian/trustee shall not be discharged of any liability relating to the said account, prior to this 90 day period.
- d. If the Superintendent of Insurance requires the delivery of assets pursuant to the *Insurance Act*, then the custodian will arrange the delivery or control of such assets within 48 hours.
- e. No securities of the company will be held by the custodian outside of Ontario.
- f. No securities lending will be permitted.

Enforcement of these guidelines

Sections 55(2); 55(3) and 412(2) [formerly Sections 35(3); 35(4) and 447(2)] of the *Insurance Act* could provide the mechanics for enforcing these guidelines.

Donald C. Scott

Commissioner

September 4, 1992

