

MODEL ACT ON CUSTODIAL AGREEMENTS AND THE USE OF CLEARING CORPORATIONS

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Section 1. Purpose

The purpose of this Act is to authorize domestic insurance companies to utilize modern systems for holding and transferring securities without physical delivery of securities certificates, subject to appropriate regulations of the commissioner.

Section 2. Definitions

As used in this act, the term

- A. “Clearing corporation” means a corporation as defined in [Section 8-102(a)(5) of the Uniform Commercial Code], except that with respect to securities issued by institutions organized or existing under the laws of any foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, clearing corporation may include a corporation which is organized or existing under the laws of any foreign country and is legally qualified under such laws to effect transactions in securities by computerized book-entry. Clearing corporation also includes “Treasury/Reserve Automated Debt Entry Securities System” and “Treasury Direct” book-entry securities systems established pursuant to 31 U.S.C. § 3100 *et seq.*, 12 U.S.C. pt. 391 and 5 U.S.C. pt. 301.
- B. “Custodian” means a national bank, state bank, trust company or broker/dealer which participates in a clearing corporation.
- C. “Securities” means instruments as defined in [Section 8-102(a)(15) of the Uniform Commercial Code].

Section 3. Use of Book-Entry Systems

- A. Notwithstanding any other provision of law, a domestic insurance company may deposit or arrange for the deposit of securities held in or purchased for its general account and its separate accounts in a clearing corporation. When securities are deposited with a clearing corporation, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other securities deposited with such clearing corporation by any person, regardless of the ownership of such securities, and certificates representing securities of small denominations may be merged into one or more certificates of larger denominations. The records of any custodian through which an insurance company holds securities in a clearing corporation shall at all times show that such securities are held for such insurance company and for which accounts thereof. Ownership of, and other interests in, such securities may be transferred by bookkeeping entry on the books of such clearing corporation without physical delivery of certificates representing such securities.
- B. The Commissioner of Insurance is authorized to promulgate rules and regulations governing the deposit by insurance companies of securities with clearing corporations, including establishing standards for national banks, state banks, trust companies and brokers/dealers to qualify as custodians for insurance company securities.

Section 4. Deposit of Securities by Domestic Insurance Companies

Section _____ is amended by adding thereto a new paragraph as follows:

Notwithstanding any other provision of law, the securities qualified for deposit under this section may be deposited with a clearing corporation. Securities deposited with a clearing corporation and used to meet the deposit requirements set forth in this section shall be under the control of the Commissioner and shall not be withdrawn by the insurance company without the approval of the Commissioner. Any insurance company holding securities in such manner shall provide to the Commissioner evidence issued by its custodian through which such insurance company has deposited such securities in a clearing corporation, in order to establish that the securities are actually recorded in an account in the name of the custodian and that the records of the custodian reflect that such securities are held subject to the order of the Commissioner.

Drafting Note: Certain terms used in Section 4 are defined in Section 2 of this model Act.

Section 5. Deposit of Securities by Foreign Insurance Companies

Section _____ is amended by adding thereto a new paragraph as follows:

Notwithstanding any other provision of law, securities eligible for deposit under the insurance law of this state relating to deposit of securities by an insurance company as a condition of commencing or continuing to do an insurance business in this state may be deposited with a clearing corporation. Securities deposited with a clearing corporation and used to meet the deposit requirements under the insurance laws of this state shall be under the control of the Commissioner and shall not be withdrawn by the insurance company without the approval of the Commissioner. Any insurance company holding such securities in such manner shall provide to the Commissioner evidence issued by its custodian in order to establish that the securities are actually recorded in an account in the name of the custodian and evidence that the records of the custodian reflect that such securities are held subject to the order of the Commissioner.

Drafting Note: Certain terms used in Section 5 are defined in Section 2 of this Model Act.

Section 6. Effective Date

This Act shall become effective on [insert date].

Chronological Summary of Action (all references are to the Proceedings of the NAIC).

1981 Proc. I 47, 50, 175, 245, 246, 247-249 (adopted).

1981 Proc. II 27, 35, 309, 393, 395, 412-413 (amended and reprinted).

2004 Proc. 1st Quarter 926-927, 1049 1061-1063 (amended and reprinted, adopted by parent committee).

2004 Proc. 2nd Quarter 51 (adopted by Plenary).

2008 Proc. 3rd Quarter 3-359 to 3-364 (guideline amendments adopted).

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The NAIC amended this model during the 2008 Fall National Meeting. These amendments were adopted as guidelines under the NAIC's model laws process. The 2008 3rd Quarter Guideline Amendments are highlighted in grey.

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