RULE AND REGULATION 26

USE OF CLEARING CORPORATIONS, SECURITIES BROKER-DEALERS AND FEDERAL RESERVE BOOK-ENTRY SYSTEM BY INSURANCE COMPANIES, HOSPITAL AND MEDICAL SERVICE CORPORATIONS, FARMERS MUTUAL AID ASSOCIATIONS AND HEALTH MAINTENANCE ORGANIZATIONS

SECTION 1. Purpose.
SECTION 2. Authority.
SECTION 3. Scope.
SECTION 4. Definitions.
SECTION 5. Terms Not Mutually Exclusive
SECTION 6. Use of Book-entry systems.
SECTION 7. Deposits of Securities.
SECTION 8. Custody Agreement for Banks: Requirements.
SECTION 9. Custody Agreements for Securities Broker-Dealers: Requirements.
SECTION 10. Severability.
SECTION 11. Effective Date.

SECTION 1. Purpose.

The purpose of this Emergency Rule is to authorize and to set forth the conditions and procedures for participation by insurers in modern systems for holding and transferring securities without physical delivery of securities certificates, specifically through utilization of clearing corporations, securities broker-dealers and the Federal Reserve book-entry system.

SECTION 2. Authority.

This regulation is promulgated pursuant to the authority of Ark. Code. Ann. §§ 25-15-202, 23-61-108, 23-63-601 et seq., 23-63-801 et seq., 23-73-104, 23-76-117 and 23-69-134.

SECTION 3. Scope.

This regulation applies to all domestic insurers, hospital and medical service corporations, farmers mutual aid associations and health maintenance organizations.

SECTION 4. Definitions.

When used in this regulation, the following definitions apply:

A. "Agent" shall mean a national, state bank or trust company that maintains an account in its name in a clearing corporation or which is a member of the Federal Reserve System and through which a custodian participates in a clearing corporation or the Federal

Reserve book-entry system, 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, "agent" may include a corporation which is organized or existing under the laws of any foreign country and which is legally qualified under such laws to accept custody of securities.

B. "Commissioner" shall mean the Insurance Commissioner for the State of Arkansas.

C. "Clearing Corporation" shall mean a corporation as defined in Ark. Code Ann. §4-8-102(a)(5) which is organized for the purpose of effecting transactions in securities by computerized book-entry, 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 corporations" may include a corporation which is organized or existing under the laws of any foreign country and which is legally qualified under such laws to effect transactions in securities by computerized book-entry.

D. "Custodian" shall mean a national bank, state bank or trust company which has at all times aggregate capital, surplus and undivided profits of not less than $10,000,000 and which is regulated by either state banking laws or is a member of the Federal Reserve System and which is legally qualified to accept custody of securities in accordance with the standards set forth below, 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, "custodian" may include a bank or similar institution which has at all times aggregate capital, surplus and undivided profits of not less than the equivalent of $10,000,000 and which is legally qualified to accept custody of securities. Within the sole discretion of the Commissioner, a national bank, state bank or trust company that falls short of the aforementioned monetary capital requirements can nevertheless be approved as a custodian if its parent bank holding company has a substantial net worth and issues a guarantee or letter of indemnification for all of the obligations of its subsidiary custodian. Securities broker dealers may be a custodian if approved by the Commissioner and if it meets the requirements of §23-69-134 and the definition of "securities broker-dealer" as contained herein.

E. "Direct Participant" means a bank or other institution that maintains an account in its name in a clearing corporation and through which an insurance company participates in a clearing corporation.

F. "Federal Reserve book-entry system" shall mean the computerized systems sponsored by the United States Department of the Treasury and certain agencies and instrumentalities of the United States for holding and transferring securities of the United States government and such agencies and instrumentalities, respectively, in Federal Reserve Banks through banks which are members of the Federal Reserve System or which otherwise have

access to such computerized systems.

G. "Insurer" means an insurance company, hospital and medical service corporation farmers mutual aid association or health maintenance organization.

H. "Member bank" means a national bank, state bank or trust company that is a member of the Federal Reserve System and through which an insurer participates in the Federal Reserve book-entry system.

I. "Securities" shall mean certificated securities and uncertificated securities as defined in Ark. Code Ann. §4-8-102.

J. "Securities Broker-Dealer" means any person engaged in the business of effecting transactions of securities for the account of others or for his own account with certain exclusions as set forth in §23-42-102, and, in addition, shall meet all statutory requirements set forth in §23-69-134. Securities broker-dealers must have tangible net worth equal to or greater than one hundred million dollars ($100,000,000) and regulatory net capital in an amount determined by the commissioner; or tangible net worth equal to or greater than fifty million dollars ($50,000,000), along with regulatory net capital in an amount determined by the commissioner; and Securities Investor Protection Corporation excess insurance coverage equal to and greater than the market value of the insurers' securities held by the custodian and in the form approved by the commissioner.

SECTION 5. Terms Not Mutually Exclusive

The terms defined in Section 4 herein shall not be interpreted to be mutually exclusive. For example, as regards clearing corporations, an insurer may be a "direct participant" with a clearing corporation. In all other instances the insurer must use a "custodian" in order to gain access to a clearing corporation. If the insurer uses a bank as a "custodian", that bank might be a "direct participant" with a clearing corporation; thus the bank meets two definitions, "custodian" and "direct participant". Similarly the "custodian" bank might not be a "direct participant" with a clearing institution and therefore, to participate in a clearing corporation, must use the services of an "agent" which "agent" maintains an account with a clearing corporation and thus the "agent" also meets the definition of "direct participant".

As regards the use of the Federal Reserve book-entry system, an insurer in all cases will utilize a "custodian". The "custodian" bank might also be a "member bank" and no "agent" should be necessary. If the "custodian" bank is not a "member bank" then the "custodian" bank could use the services of another bank which is a "member bank" to utilize the Federal Reserve book-entry system. Such a "member bank" would also be an "agent" as defined in Section 4 herein.

SECTION 6. Use of Book-entry systems.

With the prior approval of the Commissioner, an insurer may deposit within or outside this state or arrange for the deposit within or outside this state of securities held in or purchased

for its general account and its separate accounts in a clearing corporation or a securities broker-dealer which is registered with the U.S. Securities and Exchange Commission or in the Federal Reserve book-entry system. When securities are deposited with a clearing corporation or securities broker-dealer, 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 or securities broker-dealer with any other securities deposited with such clearing corporation or securities broker-dealer 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 insurer holds securities in the Federal Reserve book-entry system, or in a clearing corporation or by a securities broker-dealer, shall at all times show that such securities are held for such insurer 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 or securities broker-dealer or in the Federal Reserve book-entry system without, in either case, physical delivery of certificates representing such securities.

SECTION 7. Deposits of Securities.

Securities held in book-entry systems may be used for purposes of deposits required by statute or arising from voluntary agreement with the Commissioner; provided that, all such deposits must be placed through an approved custodian located in Pulaski County, Arkansas.

Securities deposited with a clearing corporation or securities broker-dealer or held in the Federal Reserve book-entry system and used to meet the deposit requirements contemplated in this Section shall be under the control of the Commissioner and shall not be withdrawn by the insurer without the approval of the Commissioner. Any insurer holding securities in such manner shall provide to the Commissioner evidence issued by its custodian through which such insurer has deposited such securities in a clearing corporation or securities broker-dealer or through which such securities are held in the Federal Reserve book-entry system 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.

The custodian may make use of an agent in placing assets into the Federal Reserve book-entry system or a clearing institution or securities broker-dealer.

SECTION 8. Custody Agreement for Banks: Requirements.

An insurer may, by written agreement with a custodian authorized by a resolution of the insurer's board of directors or an authorized committee thereof, provide for the custody of its securities with a custodian, which securities may be held by the custodian or its agent or in a clearing corporation or in the Federal Reserve book-entry system. Securities so held, whether held by the custodian or its agent or in a clearing corporation or in the Federal Reserve book-entry system, are referred to herein as "custodied securities." The terms of the custody agreement shall comply with the following:

(1) Certificated securities held by the custodian shall be held either separate from the securities of the custodian and of all of its other customers or in a fungible bulk of securities as part of a Filing of Securities by Issue (FOSBI) arrangement.

(2) Securities held in a fungible bulk by the custodian and securities in a clearing corporation or in the Federal Reserve book-entry system shall be separately identified on the custodian's official records as being owned by the insurer. Said records shall identify which custodied securities are held by the custodian or by its agent and which securities are in a clearing corporation or in the Federal Reserve book-entry system. If the securities are in a clearing corporation or in the Federal Reserve book-entry system, said records shall also identify where the securities are and the name of the agent.

(3) All securities and property shall be deposited promptly by the custodian into such accounts of the insurer as may be designated by the insurer from time to time in writing. Absent such written designation, the custodian shall promptly deposit such income in the custody account established at the securities firm for the insurer that is entitled to such Income. Each such deposit of Income shall identify the securities and property upon which the Income was distributed.

(4) The custodian shall not use any of the insurer's securities and property for the custodian's benefit, and none of the insurer's securities and property shall be loaned, pledged, or hypothecated to any person or organization.

(5) All custodied securities that are registered shall be registered in the name of the insurer or in the name of a nominee of the insurer or in the name of the custodian or its nominee or, if in a clearing corporation, in the name of the clearing corporation or its nominee.

(6) Custodied securities shall be held subject to the instructions of the insurer and shall be withdrawable upon the demand of the insurer, except that custodied securities used to meet the deposit requirements set forth in Ark. Stat. Ann. §23-63-206 shall, to the extent required by that statute, be under the control of the Commissioner and shall not be withdrawn by the insurer without the approval of the Commissioner.

(7) The custodian shall be required to send or cause to be sent to the insurer a confirmation of all transfers of custodied securities to or from the account of the insurer. In addition, the custodian shall be required to furnish the insurer with reports of holdings of custodied securities at such times and containing such information as may be reasonably requested by the insurer.

(8) During the course of the custodian's regular business hours, the Commissioner, <u>or his representative,</u> shall be entitled to examine on demand, on the premises of the custodian, the custodian's records relating to custodied securities. Any officer or employee of the insurer shall be similarly entitled, but only upon furnishing the custodian with written instructions to that effect from an appropriate officer of the insurer.

(9) The custodian and its agents shall be required to send to the insurer (A) all reports which they receive from a clearing corporation or the Federal Reserve book-entry system on their respective systems of internal accounting control and (B) any reports prepared by outside auditors on the custodians or its agent's internal accounting control of custodied securities that the insurer may reasonably request.

(10) The custodian shall maintain records sufficient to determine and verify information relating to custodied securities that may be reported in the insurer's Annual Statement or other Financial Statement filed with the Commissioner and supporting Schedules and information required in any audit of the financial statements of the insurer.

(11) The custodian shall agree to exercise the same due care with the securities and property of the insurer which is expected of a fiduciary with the responsibility for the safeguarding of the insurer's securities and property and for compliance with all provisions of the custodial agreement, whether the insurer's securities and property are in the custodian's possession or have been deposited or redeposited by the custodian with a subcustodian.

(12) The custodian shall deliver promptly to the insurer all proxies, proxy statements, authorizations, notices and stockholder reports which the custodian receives with respect to the securities and Property, and if the securities to which such proxies or other authorization relate are registered in the name of the custodian or its nominee, such proxies or other authorizations when so delivered to the insurer shall be duly executed in blank by custodian or its nominee, as the case may be.

(13) The custodian shall furnish, upon request by the insurer, or by the Commissioner, a confirmation of all purchases, sales or transfers of securities and property to or from the account of the insurer, and reports of securities and property sufficient to verify information reported in the insurer's annual statement filed with the Department, as well as supporting schedules and information required in any audit of the insurer's financial statement.

(14) The bank custodian shall provide the appropriate affidavits, substantially in the form attached hereto as Exhibits A, B, C, and D to the insurer or the Commissioner.

(15) The custodian shall be obligated to indemnify the insurer for any loss of custodied securities occasioned by the negligence or dishonesty of the custodian's officers or employees, or burglary, robbery, holdup, theft or mysterious disappearance, including loss by damage or destruction.

(16) In the event that there is a loss of custodied securities for which the custodian shall be obligated to indemnify the insurer as provided in subsection (10) above, the custodian shall notify the Commissioner in writing and shall promptly replace the securities or the value thereof and the value of any loss of rights or privileges resulting from said loss of securities.

(17) The agreement may provide that the custodian will not be liable for any failure to take any action required to be taken under the agreement in the event and to the extent that the taking of such action is prevented or delayed by war (whether declared or not and including

existing wars), revolution, insurrection, riot, civil commotion, act of God, accident, fire, explosion, stoppage of labor, strikes or other differences with employees, laws, regulations, orders or other acts of any governmental authority.

(18) In the event that the custodian gains entry in a clearing corporation or in the Federal Reserve book-entry system through an agent, there shall be an agreement between the custodian and the agent under which the agent shall be subject to the same liability for loss of custodied securities as the custodian, provided however, that, if the agent shall be subject to regulation under the laws of a jurisdiction which is different from the jurisdiction the laws of which regulate the custodian, the Commissioner of Insurance of the state of domicile of the insurer may accept a standard of liability applicable to the agent which is different from the standard of liability applicable to the custodian.

(19) If a custodian is a bank or trust company that is a member of a bank holding company and the custodian has an indemnification letter or guarantee agreement from the holding company which is approved by the Commissioner, the custodian shall provide in its custodial agreement, information advising the insurer that the custodian is indemnified by their parent corporation.

(20) The Commissioner may terminate an agreement in his discretion following fifteen (15) days notice in writing to the custodian, whenever it appears to the Commissioner that any person or company or agents thereof, subject to this agreement, has impaired the financial condition of the insurer so as to threaten its solvency or makes the further transaction of business by it hazardous to policyholders, creditors, shareholders or to the public. Upon termination of the agreement by the Commissioner, all custodied securities of the insurer subject to the agreement shall be transferred to the insurer within fifteen (15) days after the custodian receives written notice from the Commissioner terminating the agreement.

(21) The custodian and insurer understand that the agreement is permitted in the discretion of the Arkansas Insurance Commissioner ("Commissioner") under Ark. Code Ann. § 23-69-134 and that the parties are aware that the agreement may be terminated by the Commissioner at any time upon the breach or failure of the custodian or insurer to abide by any provision of their agreement or Ark. Code Ann. § 23-69-134, or other applicable insurance laws or rules.

(22) The agreement shall be governed by, and construed under, the laws of the State of Arkansas.

SECTION 9. Custody Agreements for Securities Broker-Dealers: Requirements.

A. All custodial agreements between a SBD and an insurer shall comply with the following:

(1) The agreement shall contain a clause appointing the securities firm to hold the insurer's "custodied securities" (the "Securities "), with all interest, dividends, distributions, and

other income attributable therefrom (the "Property"), and authorizes the securities firm to take such action and perform such duties on behalf of the insurer, upon the terms and conditions set forth herein, and only to the extent that such securities and property are actually delivered to the securities firm.

(2) As used in the agreement, securities shall mean certificated securities and uncertificated securities as defined in Ark. Code Ann. § 4-8-102(1)(a) and Ark. Code Ann. § 4-8-102(1)(b), and assets or investments as defined or regulated pursuant to Ark. Code Ann. § 23-63-601, et seq, and Ark. Code Ann. § 23-63-801, et seq, and does not include any securities used for deposits under Ark. Code Ann. § 23-63-206.

(3) The securities firm shall agree to exercise the same due care with the securities and property of the insurer which is expected of a fiduciary with the responsibility for the safeguarding of the insurer's securities and property and for compliance with all provisions of the custodial agreement, whether the insurer's securities and property are in the securities firm's possession or have been deposited or redeposited by the securities firm with a subcustodian.

(4) That the intent of the parties is that this Agreement shall comply with Ark. Code Ann. § 23-69-134, as amended, to constitute a written custodial agreement between a qualified broker dealer and an Insurer under Ark. Code Ann. § 23-69-134, and other applicable insurance laws or rules.

(5) The securities firm and insurer understand that the agreement is permitted in the discretion of the Arkansas Insurance Commissioner ("Commissioner") under Ark. Code Ann. § 23-69-134 and that the parties are aware that the agreement may be terminated by the Commissioner at any time upon the breach or failure of the securities firm or insurer to abide by any provision of their agreement or Ark. Code Ann. § 23-69-134, or other applicable insurance laws or rules.

(6) The agreement shall be governed by, and construed under, the laws of the State of Arkansas.

(7) The securities firm or any agent used by the securities firm shall indemnify the insurer for any loss of securities and property occasioned by the negligence or dishonesty of the security firm's officers and employees, agents, subcustodians, or officers and employees of agents or subcustodians of the securities firm. The securities firm or its designee shall indemnify the insurer for any loss of securities and property occasioned by burglary, robbery, hold-up, theft or mysterious disappearance, including loss by damage or destruction to the insurer's securities and property and must promptly replace the securities and property or the value thereof, and the value of any loss of rights or privileges resulting from the loss.

(8) If there is a loss of custodied securities for which the securities firm shall be obligated to indemnify the insurer, the securities firm shall promptly notify the Commissioner in writing of the loss and promptly replace the securities and property or the value thereof and the value of any loss of rights or privileges resulting from said loss of said securities and Property.

(9)(a) The securities firm will not be liable for any failure to take any action required to be taken under the agreement in the event and to the extent that the taking of such action is prevented or delayed by war (whether declared or not and including existing wars), revolution, insurrection, riot, civil commotion, act of God, accident, fire, explosion, stoppage of labor, strikes, or other differences with employees, laws, regulations, orders or other acts of any government authority.

(9)(b) Custodied securities shall be held subject to the instructions of the insurer and shall be withdrawable upon demand of the insurer, or demand of the Commissioner, when applicable under the agreement. However, custodied securities used to meet the deposit requirements set forth in Ark. Code Ann. § 23-63-206 shall, to the extent required by that statute, be under the control of the Commissioner and shall not be withdrawn by the insurer without the approval of the Commissioner.

(9)(c) All securities and property shall be deposited promptly by the securities firm into such accounts of the insurer as may be designated by the insurer from time to time in writing. Absent such written designation, the securities firm shall promptly deposit such Income in the custody account established at the securities firm for the insurer that is entitled to such Income. Each such deposit of Income shall identify the securities and property upon which the Income was distributed.

(9)(d) All custodied securities that are registered shall be registered in the name of the insurer, or in the name of the nominee of the insurer, or in the name of the securities firm or its nominee, or, if in a clearing corporation, in the name of the clearing corporation or its nominee.

(9)(e) The securities firm shall not use any of the insurer's securities and property for the securities firm's benefit, and none of the insurer's securities and property shall be loaned, pledged, or hypothecated to any person or organization.

(9)(f) The securities firm may utilize the services of a Federal Reserve Bank, The Depository Trust & Clearing Corporation, or any other clearing corporation which is registered as a clearing agency under the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder as the securities firm's agent (the "Depository") for the purposes of book-entry deposit and maintenance in the Depository of securities eligible to be held in book-entry form under applicable laws, regulations, and rulings, except as limited by written instructions from the insurer to the securities firm. The securities firm may authorize the Depository to hold the deposited securities, to receive the income and principal becoming due thereon, to surrender for payment maturing obligations and those called for redemption and to disburse and/or otherwise dispose of said deposited securities and the income thereof upon and pursuant to instructions given, through the securities firm, by the insurer or its designated representative. Any income received from the surrender of coupons for payment will be credited as directed by the insurer through the securities firm. Custodied federal securities usually will be held in book-entry form through a Federal Reserve Bank. The Federal Reserve Bank maintaining such book-entry federal securities shall be a custodian for the securities firm or for a custodian or depository for the securities firm.

Property held in a clearing corporation or in the Federal reserve book-entry system shall be separately identified on the securities firm's official records as being owned by the insurer. Such records, or the records of a custodian or clearing corporation for the securities firm, shall identify which deposited securities are held by the securities firm or by its subcustodian and which securities are in a clearing corporation or in the Federal Reserve book-entry system. If the securities are in a clearing corporation or in the Federal Reserve book-entry system, the records shall also identify where the securities are and if in a clearing corporation, the name of the clearing corporation and if through a subcustodian, the name of the subcustodian. The securities firm shall, upon request from the insurer, or the Commissioner, send to the insurer (a) all reports which it receives from a clearing corporation or the Federal Reserve book-entry system relating to the insurer's property and (b) any reports prepared by outside auditors on the securities firm's internal accounting control of the insurer's Property.

(9)(g) The securities firm may transfer into the name of the securities firm or its nominee or to the clearing corporation all registered securities from time to time held under this Agreement. The securities firm shall be responsible to the insurer for the acts of its nominee with respect to such securities to the same extent that it is responsible for its own acts.

To effect the transfer of registered securities into the name of the securities firm's nominee, to facilitate the collection of any payment thereon and to effect any other action in relation thereto or in order to meet any requirement thereof, the insurer authorizes the securities firm to execute in the insurer's name, and to deliver, any instrument determined by the securities firm to be appropriate in furtherance of the purposes hereof, and to guarantee in the securities firm's name as the signature of the insurer any signature so placed on such instrument.

The securities firm will not permit securities issued or issuable in bearer form to be transferred to any clearing corporation which is not the clearing corporation identified under Section 9.6 of this Agreement.

(9)(h) The securities firm may settle all securities transactions effected by the insurer through the use of an institutional delivery system. The securities firm may deliver or receive securities in accordance with appropriate trade reports or statements received through an institutional delivery system without having received written direction directly from the insurer.

(10)(a) The Commissioner, or his designee, or the insurer, shall at all times be entitled to receive copies of or examine the securities firm's records relating to the properties and securities of the insurer. In addition, the securities firm and insurer hereby agree to honor any requests made by the Arkansas Insurance Department (the "Department"), on behalf of the Commissioner, for information concerning the insurer's securities and property subject to this agreement. The securities firm and the insurer understand that the Department, from time to time, may request, and the securities firm is required to furnish, a detailed listing of the insurer's securities and property and an affidavit by the securities firm certifying the securities firm's safekeeping responsibilities relative to the securities and property of the insurer. The securities firm's response to such requests shall be made directly to the Department and shall encompass all of the insurer's securities and property held by the securities firm, or agent or subcustodian of the securities firm, under this Agreement.

(10)(b) The securities firm shall deliver promptly to the insurer all proxies, proxy statements, authorizations, notices and stockholder reports which the securities firm receives with respect to the securities and Property, and if the securities to which such proxies or other authorization relate are registered in the name of the securities firm or its nominee, such proxies or other authorizations when so delivered to the insurer shall be duly executed in blank by securities firm or its nominee, as the case may be.

(10)(c) All activities involving the insurer's securities and property shall be subject to the insurer's instructions and the securities and property shall be withdrawable upon demand by the insurer, or by the Commissioner, at any time.

(10)(d) The securities firm shall furnish, upon request by the insurer, or by the Commissioner, a confirmation of all purchases, sales or transfers of securities and property to or from the account of the insurer, and reports of securities and property sufficient to verify information reported in the insurer's annual statement filed with the Department, as well as supporting schedules and information required in any audit of the insurer's financial statement.

(10)(e) The insurer or its designee, or the Commissioner, shall at all times be entitled to examine any records maintained by the securities firm relating to the insurer's securities and property governed under this Agreement.

(11) The insurer and the securities firm hereby agree that the securities and property shall be segregated at all times from the proprietary assets of the securities firm. The securities firm's official records shall separately identify custodied securities and property owned by the insurer.

(12)(a) An Agreement may be terminated by the Commissioner for any of the following reasons following fifteen (15) days notice in writing to the securities firm: (a) the securities firm is not currently registered with the securities and Exchange Commission; (b) the securities firm is not currently a member in the Securities Investor Protection Corporation ("SIPC"); (c) the tangible net worth of the securities firm does not equal or exceed one hundred million dollars ($100,000,000.00) plus regulatory net capital as determined by the Commissioner; (d) the tangible net worth of the securities firm does not equal or exceed fifty million dollars ($50,000,000.00), and, a lack of regulatory net capital and/or the securities firm has failed to maintain excess SIPC coverage equal to or greater than the market value of the insurer's securities held by the securities firm and in the form approved by Commissioner; or (e) any other failure by the securities firm to meet its qualifications to handle or manage the assets of the insurer in Ark. Code Ann. §23-69-134(b)(4). The parties shall agree that, where any of the above requirements are not maintained by the securities firm, the Commissioner shall be provided notice in writing from the securities firm within twenty-four (24) hours from the failure of the securities firm to meet any of the above requirements.

(12)(b) The Commissioner may terminate this Agreement, in his discretion, following fifteen (15) days notice in writing to the securities firm, whenever it appears to the Commissioner, that any person or company, or agents thereof, subject to this agreement, has impaired the financial condition of the insurer so as to threaten its solvency or makes the further

transaction of business by it hazardous to policyholders, creditors, shareholders, or the public.

(12)(c) Upon termination of the agreement by the Commissioner, all custodied securities of the insurer subject to this agreement shall be transferred to the insurer within fifteen (15) days after the securities firm receives written notice from the Commissioner terminating the agreement.

(13) All notices, requests, demands and other communications under the Agreement shall be in writing and shall be deemed as having been duly given on the date of service, if served personally on the party to whom notice is to be given, or on the third business day after mailing, if mailed to the party to whom notice is to be given and properly addressed as indicated below. Notice must be provided to the Department in writing within ten (10) days before any address change takes place.

(14) The securities firm and insurer must agree to maintain "securities all risks coverage" or other insurance satisfactory to the Commissioner at levels considered reasonable and customary for the custodian banking industry covering the security firm's duties and activities as custodian for the insurer's assets. Prior to the effective date of the agreement, the securities firm or insurer shall agree to separately provide to the Department a written filing describing the nature and extent of such insurance protection. Any change in such insurance protection during the term of the custodial agreement shall be promptly disclosed to the Commissioner and insurer in writing within fifteen (15) days after a change occurs in such insurance protection.

(15) The securities firm and insurer shall agree to abide by any administrative rule or regulation promulgated by the Department which governs the handling and safekeeping of an Insurer's investments with a security broker or dealer, as may hereafter be promulgated under Ark. Code Ann. §23-69-134 (1999), as amended. If any administrative rule or regulation conflicts with this Agreement, both the securities firm and insurer shall agree to re-submit to the Department an amended custodial agreement in compliance with the rule or regulation.

B. The securities broker-dealer custodian shall provide the appropriate affidavits, substantially in the forms attached hereto.

SECTION 10. Severability.

If any section or portion of a section of this regulation or its applicability to any person or circumstance is held invalid by a court, the remainder of the regulation or the applicability of the provision to other persons or circumstances shall not be affected.

SECTION 11. Effective Date.

This Regulation shall become effective on February 22nd, 2002.

MIKE PICKENS
INSURANCE COMMISSIONER

EXHIBIT A
CUSTODIAN AFFIDAVIT

(For use by a custodian bank where securities entrusted to its care have not been redeposited elsewhere.)

STATE OF)
) SS.:
COUNTY OF)

_____, being duly sworn deposes and says that I am an officer of _____, , a banking corporation organized under and pursuant to the laws of the. _____, with its principal place of business at _____ (hereinafter called "bank");

That my duties involve supervision of activities of the bank as custodian and records relating thereto;

That the bank is custodian for certain securities of _____,with a place of business at _____ (hereinafter called "insurance company"), pursuant to an agreement between the bank and the insurance company;
I

That the schedule attached hereto is a true and complete statement of securities (other than those caused to be deposited with a clearing institution registered with the U.S. Securities and Exchange Commission or a Federal Reserve Bank under the Federal Reserve book-entry procedure) which were in the custody of the bank for the account of the insurance company as of the close of business on _____; that, unless otherwise indicated on the schedule, the next maturing and all subsequent coupons were then either attached to coupon bonds or in the process of collection; and that, unless otherwise shown on the schedule, all such securities were in bearer form or in registered form in the name of the insurance company or its nominee or a nominee of the bank, or were in the process of being registered in such form;

That the bank as custodian has the responsibility for the safekeeping of such securities as that responsibility is specifically set forth in the agreement between the bank as custodian and the insurance company; and

That, to the best of my knowledge and belief, unless otherwise shown on the schedule, said securities were the property of said insurance company and were free of all liens, claims or encumbrances whatsoever.

Subscribed and sworn to
before me this _____ day
of _____, 19_____

_____(L.S.)

_____
TYPED NAME

_____
NOTARY PUBLIC

_____
TITLE

EXHIBIT B

CUSTODIAN AFFIDAVIT

(For use in instances where a custodian bank maintains securities on deposit with a clearing institution registered with the U.S. Securities and Exchange Commission.)

STATE OF)
) SS.:
COUNTY OF)

_____, being duly sworn deposes and says that I am an officer of _____, , a banking corporation organized under and pursuant to the laws of the. _____, with its principal place of business at _____ (hereinafter called "bank");

That my duties involve supervision of activities of the bank as custodian and records relating thereto;

That the bank is custodian for certain securities of _____,with a place of business at _____ (hereinafter called "insurance company"), pursuant to an agreement between the bank and the insurance company;
I

That the bank has caused certain of such securities to be deposited with (name and address)__

_____

____(hereinafter called "_____"); and that the schedule attached hereto is a true and complete statement of the securities of the insurance company of which the bank was custodian as of the close of business on _____, and which were so deposited with _____ at such date;

That the bank as custodian has the same responsibility for the safekeeping of such securities whether in the possession of the bank or deposited with _____ as that responsibility is specifically set forth in the agreement between the bank as custodian and the insurance company; and

That, to the best of my knowledge and belief, unless otherwise shown on the schedule, said securities were the property of said insurance company and were free of all liens, claims or encumbrances whatsoever.

Subscribed and sworn to
before me this _____ day
of _____, 19_____

_____(L.S.)

_____
TYPED NAME

_____
NOTARY PUBLIC

_____
TITLE

EXHIBIT C

CUSTODIAN AFFIDAVIT

(For use where ownership is evidenced by book-entry at a Federal Reserve Bank.)

STATE OF)
) SS.:
COUNTY OF)

_____, being duly sworn deposes and says that I am an officer of _____, a banking corporation organized under and pursuant to the laws of the. _____, with its principal place of business at _____ (hereinafter called "bank");

That my duties involve supervision of activities of the bank as custodian and records relating thereto;

That the bank is custodian for certain securities of _____,with a place of business at _____ (hereinafter called "insurance company"), pursuant to an agreement between the bank and the insurance company;
I

That it has caused certain of such securities to be credited to its book-entry account with the Federal Reserve Bank of _____ under the Federal Reserve book-entry procedure; and that the schedule attached hereto is a true and complete statement of the securities of the insurance company of which the bank was custodian as of the close of business on _____, which were in a book-entry account maintained in the name of the bank on which the books and records of the Federal Reserve Bank of _____ as such date;

That the bank has the same responsibility for the safekeeping of such securities whether in the possession of the bank or in said book-entry account as that responsibility is specifically set forth in the agreement between the bank as custodian and the insurance company; and

That, to the best of my knowledge and belief, unless otherwise shown on the schedule, said securities were the property of said insurance company and were free of all liens, claims or encumbrances whatsoever.

Subscribed and sworn to
before me this _____ day
of _____, 19_____

_____
NOTARY PUBLIC

_____(L.S.)

_____
TYPED NAME

_____
TITLE

EXHIBIT D

CUSTODIAN AFFIDAVIT

(For use in instances where securities are deposited directly with a clearing corporation registered with the U.S. Securities and Exchange Commission.)

STATE OF)
) SS.:
COUNTY OF)

_____, being duly sworn deposes and says that I am an officer of _____, , a banking corporation organized under and pursuant to the laws of the. _____, with its principal place of business at _____ (hereinafter called "bank");

That my duties involve supervision of activities of _____ as custodian and records relating thereto;

That _____ is custodian for certain securities of _____, with a place of business at _____ (hereinafter called "insurance company"), pursuant to an agreement between _____ and the insurance company;

I

That the schedule attached hereto is a true and complete statement of securities which were in the custody of _____ for the account of the insurance company as of the close of business on _____;

That _____ as custodian has the responsibility for the safekeeping of such securities (whether in the possession of _____, deposited with a Federal Reserve Bank or deposited with another person acting as custodian for _____) as that responsibility is specifically set forth in the agreement between _____ as custodian and the insurance company; and

That, to the best of my knowledge and belief, unless otherwise shown on the schedule, said securities were the property of said insurance company and were free of all liens, claims or encumbrances whatsoever.

Subscribed and sworn to
before me this _____ day
of _____, 200__

_____
NOTARY PUBLIC

_____

_____
TYPED NAME

_____
TITLE