Ohio Revised Code

Section 3907.14 Investment of capital, surplus, and accumulations.

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

The capital, surplus, and all accumulations of every domestic life insurance company shall be invested as follows:

(A) A domestic company may acquire, hold, and convey real estate:

(1) Which has been acquired or is acquired for its principal offices, or which is used in connection therewith, provided that it shall not invest more than five per cent of its admitted assets on the preceding thirty-first day of December in such real estate;

(2) Which has been mortgaged to it in good faith by way of security for loans previously contracted or for money due;

(3) Which has been conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or which it may receive in or on account of an exchange for real estate acquired in its operations;

(4) Which it has purchased at sales under mortgages and on any legal process in connection with its investments or under decrees obtained or made for such debts;

(5) Which is acquired, owned, or held for the purpose of developing, improving, or otherwise utilizing such real estate for the production of income, without restriction or limitation as to time, and may acquire, lease, hold, and manage personal property used in connection therewith. No investments in real estate to be used primarily for recreational, agricultural, or mining purposes shall be made under authority of division (A)(5) of this section and except for investments authorized under divisions (A)(1), (2), (3), and (4) of this section, no domestic life insurance company shall invest in real estate under divisions (A)(5) and (R) of this section a sum exceeding in the aggregate ten per cent of its admitted assets on the preceding thirty-first day of December.

All real estate specified in divisions (A)(3) and (4) of this section, which is not necessary for its accommodation in the convenient transaction of its business, shall be sold by the company and disposed of within five years after it has acquired the title to such real estate or within five years after such real estate has ceased to be necessary for the accommodation of its business, unless the company procures the certificate of the superintendent of insurance that its interests will suffer materially by a forced sale of the real estate, in which event the time for the sale may be extended to such time as the superintendent directs in such certificate.

(B) 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.

(C) In loans and liens upon the security of its own policies, not exceeding the reserve or present value of the policies, computed according to any standard authorized by law or according to such higher standard as the company has adopted and maintains on the policy, the reserve being the amount of debts of the life insurance company by reason of its outstanding policies in gross, which may be so treated in the returns for taxation made by it;

(D) In bankers' acceptances and bills of exchange of the kinds and maturities made eligible by law for rediscount with federal reserve banks, provided that such acceptances and bills of exchange 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;

(E) 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 the debt obligation is secured by a first lien on tangible personal property which is purchased or secured for payment thereof and the 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;

(F) In bonds issued by or for federal land banks and any debentures issued by or for federal intermediate credit banks under the "Federal Farm Loan Act of 1916," 39 Stat. 360, 12 U.S.C.A. 641 as amended; any debentures issued by or for banks for cooperatives under the "Farm Credit Act

of 1933," 48 Stat. 257, 12 U.S.C.A. 131 as amended;

(G) In bonds issued under the "Home Owners' Loan Act of 1933," 48 Stat. 128, 12 U.S.C.A. 1461;

(H) In notes, bonds, debentures, or other such obligations issued by the federal housing administrator;

(I)(1)(a) In 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, by 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;

(b) 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 supplying water, gas, sewage disposal facility, or electricity, or any or all of them, 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;

(c) In any bonds or obligations payable from and secured by revenues of the United States, the Commonwealth of Puerto Rico, or any state or instrumentality of any of them, or of the District of Columbia or of any commission, board, or other instrumentality of one or more of them, provided there is a specific pledge of revenues, and provided that there is adequate provision for payment of interest prior to completion of construction and that rates, fees, tolls, or charges fixed are, after completion of construction, sufficient to pay all expenses of operation and maintenance and the principal and interest when due.

(2) In legally authorized and executed bonds, notes, warrants, and securities which are the direct obligation of or are guaranteed 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 municipality of Canada having a population of fifty thousand or more by the latest official census, and which are not in default as to principal or interest;

(3) In bonds or other evidence 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, or by the District of Columbia, if by statutory or other legal requirements such obligations are payable, as to both principal and interest, from selective taxes levied by such governmental unit.

(J)(1) In mortgage bonds which are the direct obligation of a railroad, and which are the first lien on a substantial portion of its property, situated wholly in the United States or partly in the United States and partly in Canada, the average net yearly earnings of which, after deducting proper charges for maintenance of way and equipment, for the five fiscal years preceding such investments, have been at least one and one-half times the average yearly interest for the same period on its mortgages, bonds, and funded debts, and in the junior mortgage bond issues of such railroad corporations of the same character and under the same conditions where the average net yearly earnings for the five fiscal years preceding such investment, after deducting proper charges for maintenance of way and equipment, have been at least three times the average yearly interest charges on such issues and all prior liens; or in the mortgage bonds of any incorporated railroad company which have been assumed or guaranteed, both as to principal and interest, by any incorporated railroad company whose bonds constitute a legal investment under division (J)(1) of this section. In applying the earnings test to any issuing, assuming, or guaranteeing company, whether or not in legal existence during the whole of such five years next preceding the date of investment by such insurer, which has at any time during such five-year period acquired the assets of any other company by purchase, merger, consolidation, or otherwise, substantially as an entirety, or has been reorganized pursuant to the bankruptcy law, the earnings of such other predecessor or constituent companies, or of the company so reorganized, available for interest for such portion of such period that has preceded such acquisition, or such reorganization, may be included in the earnings of such issuing, assuming, or guaranteeing company for such portion of such period as is

determined in accordance with adjusted or pro forma consolidated earnings statements covering such portion of such period. In such cases the requirements as to earnings shall be based upon the mortgages, bonds, and funded debts as they exist immediately after such acquisitions or such reorganizations.

(2) In mortgage bonds or other interest-bearing obligations of terminal companies organized under the laws of the United States or any state thereof, provided such bonds or obligations have been assumed or guaranteed jointly or severally by two or more railroad corporations whose bonds constitute legal investments under division (J)(1) of this section;

(3) In 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.A. 693, as amended, provided such guaranteed loans are liens upon real estate;

(4) In mortgage bonds which are the direct obligation of and first lien upon the property of a corporation engaged directly and primarily in the production and sale of, or in the purchase and sale of electricity or gas, or in the operation of telephone or telegraph systems or waterworks, or in some combination of them, and situated wholly in the United States, or the Commonwealth of Puerto Rico, or partly in the United States and partly in Canada, the average net yearly earnings of which, after deducting proper charges for replacements, depreciation, and obsolescence, for the five fiscal years preceding such investment, have been at least one and one-half times the average yearly interest for the same period on its mortgages, bonds, and funded debts;

(5) Any such corporation, or any of its predecessors, constituent, or successor corporations, must have been in business not less than ten years prior to the date of the purchase of such bonds, and must not have defaulted on the interest or principal of any of its bonds or funded debts outstanding during the five years immediately preceding the date of purchase, provided that division (J)(5) of this section does not preclude investments in mortgage bonds of railroads reorganized through purchase of assets, merger, consolidation, bankruptcy proceedings, or otherwise if such bonds are eligible for investment under division (J)(1) of this section;

(6) No investment shall be made under division (J)(1), (2), (4), or (5) of this section if such railroad or other utility corporation and its business, and its issue of bonds, funded debts, and stocks are not

under the supervision and control of an authorized state or federal official or commission, provided that division (J)(6) of this section does not apply to the mortgage bonds or other interest-bearing obligations of companies engaged in the operation of telephone or telegraph systems.

(K)(1) In bonds or notes secured by mortgages or deeds of trust which are a first lien upon unencumbered fee simple real estate in any state, the Commonwealth of Puerto Rico, the District of Columbia, or Canada, provided the amount loaned does not exceed eighty per cent of the actual market value of such property.

The actual market value of any such property shall be shown by a valuation and appraisement in writing by a qualified land appraiser.

In the event the amount loaned under division (K)(1) of this section exceeds eighty per cent of the actual market value of the land, the structures on the land must be insured by an authorized fire insurance company or covered by other comparable indemnification, and the policies or indemnifications shall be payable or assigned to the mortgagee or to a trustee in its behalf and shall be held by the mortgagee or an agent of the mortgagee or by such trustee; or in lieu of holding such policies or indemnifications, 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 fire insurance company or other comparable source, insurance or indemnification.

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

(3) In bonds or notes secured by mortgages or deeds of trust which are a first lien on leasehold estates in wholly or partly improved real property, unencumbered, except rentals accruing from the property to the owner of the fee, provided that any loan secured by a leasehold estate must provide for amortization by repayment of principal at least once in each year in amounts sufficient to repay the loan within a period of four-fifths of the unexpired term of the leasehold but within a period of not more than thirty years, and further provided that the amount loaned on the leasehold estate does not exceed seventy-five per cent of total market value of the leasehold estate determined by appraisements in writing made under oath by two real estate owners, residents of the county or local district in which the real estate is located, or by a qualified land appraiser; if the amount loaned

exceeds seventy-five per cent of the value of that portion of the leasehold estate represented by the value of the land, exclusive of improvements on the land, such improvements shall be insured against fire for the benefit of the mortgagee in an amount not less than the difference between seventy-five per cent of the value of such land, exclusive of buildings, and the amount loaned; the policies for such amount shall be payable to and held by the mortgagee or a trustee named in the lease who shall be required by the terms of said lease to use and apply the proceeds of such insurance for repairing, restoring, or rebuilding such buildings;

(4) The following shall not be considered as prior liens or encumbrances in the construction and application of this section: leasehold estates of any duration, rights-of-way, servitudes, joint driveways, easements, party wall agreements, current taxes and assessments not delinquent, and restrictions as to building, use, and occupancy.

(5) This section does not prohibit a domestic life insurance company from renewing or extending a loan for the original or a lesser amount nor does it prohibit a company from accepting as part payment for real estate sold by it a mortgage on the real estate for a greater percentage of the purchase price of the real estate than is otherwise permitted by this section.

(L) In bonds, notes, or other evidences of indebtedness of corporations, trusts, partnerships, or similar business entities organized under the laws of the United States, or any state thereof, the Commonwealth of Puerto Rico, the District of Columbia, or Canada or any province of Canada, secured by assignment of lease or leases or the rentals payable under such leases, of real or personal property or both to (1) the United States or any instrumentality thereof, or any state of the United States, the Commonwealth of Puerto Rico, or the District of Columbia, or any county, city, town, school, or water district, authority, or other political subdivision in any such government, or Canada, any province of Canada, or any municipal corporation of Canada that has a population of fifty thousand or more by the latest official census; or (2) one or more corporations, trusts, partnerships, or similar business entities organized under the laws of the United States, any state thereof, the Commonwealth of Puerto Rico, the District of Columbia, or Canada or any province of Canada, provided that (a) the fixed rentals assigned shall be sufficient to repay the indebtedness within the unexpired term of the lease, exclusive of the term which may be provided by an enforceable option of renewal; (b) such lessee has not defaulted in payment of interest or principal on any of its bonds, notes, debentures, or other evidences of indebtedness during the five years

immediately preceding the date of the investment, and provided the average net earnings available for fixed charges of such lessee under division (L)(2) of this section for not less than five fiscal years preceding such investment have been at least one and one-half times average fixed charges for that period and during either of the last two years of such period, the net earnings available for fixed charges shall have been not less than one and one-half times fixed charges for such year, except that railroad companies and utility companies may qualify as lessees herein by application of the earnings test provided for railroads under division (J)(1) of this section and for utilities under division (J)(4) of this section; and (c) a first lien on the interest of the lessor in the unencumbered property so leased shall be obtained as additional security for the indebtedness;

(M) In ground rents, land trust certificates, or fee ownership certificates representing or evidencing beneficial ownership of or interest in improved real estate under lease for not less than twenty-five years from the date of such lease, in which it must be provided that the lessee shall pay all taxes and assessments levied on or assessed against said real estate, shall maintain the improvements on the real estate in good repair, and shall provide and maintain fire insurance in an amount equal to the insurable value of the building on the real estate; provided:

(1) The value of the land and improvements shall be evidenced by an appraisement made under oath by a disinterested appraiser resident in and the owner of real estate in the city in which the property is situated, and such appraisement shall not be less than one and sixty-seven hundredths times the amount of such land trust certificates, which amount shall be not less than twenty times the net annual rental distributable to holders of outstanding certificates;

(2) Such beneficial interests shall only be in properties on which actual earning records for five years immediately preceding are available;

(3) Such declaration of trust or other trust instrument shall provide for a depreciation or other similar fund, in an amount which is not less than nine per cent of the net annual distributable rental, for the benefit of the holders of outstanding certificates.

(N)(1) In certificates of deposit or other evidence of indebtedness of a savings and loan association provided the certificates or other evidence of deposit 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;

(2) In interest-bearing obligations, including savings accounts and time certificates of deposit of a national bank or state bank provided such bank is a member of the federal deposit insurance corporation created pursuant to the "Banking Act of 1933," 92 Stat. 624, 12 U.S.C.A. 624, as amended.

(O) In 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 other similar development bank in which the president, as authorized by congress and on behalf of the United States, has accepted membership;

(P)(1) In the preferred stocks of any company organized under the laws of the United States or of any state thereof engaged directly and primarily in the production and sale of, or in the purchase and sale of electricity or gas, or in the operation of telephone or telegraph systems or water works, or in some combination of them, if the average annual net earnings of such company, for not less than five fiscal years preceding purchase thereof, after deduction of interest on all mortgages, bonds, debentures, and funded debts and after deduction of the proper charges for replacements, depreciation, and obsolescence, have been at least two times the average yearly amount which is required to pay the dividends or distributions on all preferred stocks; and in which the mortgages, bonds, debentures, funded debts, and preferred stocks shall not in the aggregate exceed seventy per cent of the total capitalization of such company, including mortgages, bonds, debentures, funded debts, and preferred and common stocks;

(2) In the preferred stocks of any other company organized under the laws of the United States, or of any state thereof if the average annual net earnings of such company for a period of not less than five fiscal years preceding purchase thereof, after deduction of interest on all mortgages, bonds, debentures, and funded debts and after deduction of the proper charges for replacements, depreciation, and obsolescence, have been at least four times the amount which is required to pay the dividends or distributions on all preferred stocks, and in which the mortgages, bonds, debentures, funded debts, and preferred stocks shall not in the aggregate exceed sixty per cent of the total capitalization of such company, including mortgages, bonds, debentures, funded debts, and

preferred and common stocks;

(3) A domestic life insurance company shall not purchase any preferred stocks when the total market values of such stocks then owned with those purchased exceed in the aggregate of book values and purchase price the capital, surplus, and contingency funds, excluding all reserves required by law, of such company on the thirty-first day of December preceding the date of such purchase, or contemplated purchase, provided that in case of appreciations in values of stocks owned the cost rather than the market values shall be used in arriving at such aggregate; the purpose being to restrict the investments of such company in all preferred stocks to capital, surplus, and contingency funds.

(4) In the bonds, notes, debentures, or other evidences of indebtedness of a solvent corporation, trust, partnership, or similar business entity existing under the laws of the United States, of any state thereof, the Commonwealth of Puerto Rico, or Canada or any province of Canada, provided that either:

(a) The bonds, notes, debentures, or other evidences of indebtedness of such corporation, trust, partnership, or similar business entity are rated 1 or 2 by the securities valuation office of the national association of insurance commissioners;

(b) The corporation, trust, partnership, or similar business entity has not defaulted in payment of interest or principal on any of its bonds, notes, debentures, or other evidences of indebtedness during the five years immediately preceding the date of purchase, and the average annual net earnings of such corporation, trust, partnership, or similar business entity that are available for fixed charges for not less than five fiscal years preceding such purchase have been at least one and one-half times the average fixed charges of such corporation, trust, partnership, or similar business entity for that period and during either of the last two years of such period, the net earnings available for fixed charges shall have been not less than one and one-half times the fixed charges of such corporation, trust, partnership, or similar business entity for such year.

(5) In common stocks or shares of any solvent incorporated company organized under the laws of the United States, or of any state, district, or territory thereof, or the Commonwealth of Puerto Rico, provided that a dividend or distribution has been paid by the corporation in the preceding twelve

months upon such stock to be purchased, or that such corporation, together with its predecessor corporation or corporations, has been in existence for a period of at least five years. No domestic company shall invest in common stock or shares under divisions (P)(5) and (R) of this section a sum exceeding in the aggregate ten per cent of its admitted assets on the preceding thirty-first day of December.

(6) In the stocks, limited liability company membership interests, limited partnership interests, or limited liability partnership interests of insurance, financial, investment, and 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 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, but no domestic life insurance company shall invest in such stocks, limited liability company membership interests, or limited liability partnership interests under division (P)(6) of this section, exclusive of its investments in stocks or limited liability company membership interests of insurance company subsidiaries or subsidiaries engaged exclusively in the ownership of insurance company subsidiaries, a sum exceeding the lesser of fifty per cent of its policyholder surplus or ten per cent of its admitted assets as of the preceding thirty-first day of December unless the approval of the superintendent of insurance is first obtained. 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.

(7)(a) 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 interest, or partnership interest 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 (P)(7) 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 (P)(7)(a) 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.

(b) 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 ten 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.

(c) As used in division (P)(7) of this section, "foreign currency" means a currency other than that of the United States.

(8) An insurer may invest without limitation in investments of government money market funds. As used in division (P)(8) of this section, "government money market fund" means a mutual 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 these 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.

(Q) In loans upon the pledge of any securities in which such companies are authorized by this section to invest, provided that any loan upon such a pledge shall not exceed eighty per cent of the cash market value of the collateral at the time of the making of such loan and at the end of each twelve-month period thereafter, and such company, through the collateral pledged to it, shall not exceed the amounts which it may, under this section, invest in one corporation so that, in the stocks and securities which may be owned and those which are pledged to it, the limitations in this section might be indirectly evaded;

(R)(1) Any domestic legal reserve life insurance company may loan or invest its funds, to an extent not exceeding in the aggregate five per cent of its total admitted assets, in loans or investments not permitted under this section. Any such company may also invest up to an additional five per cent of its total admitted assets, 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 (R) 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 provisions of division (R) of this section, an investment is determined to have become qualified as an investment for a domestic life insurance company as provided for in this section, the company may consider such investment as held under the applicable provisions of the foregoing divisions (A) to (Q) of this section and such investment shall no longer be considered as having been made under the provisions of this division.

(S)(1) No domestic life insurance company shall subscribe to or participate in any underwriting for the purchase or sale of securities or property, nor shall it enter into any such transaction for purchase or sale on account of said company jointly with any other person, nor shall any such company enter into any agreement to withhold from sale any of its property, but the disposition of its property shall be at all times within the control of its board of directors. Nothing contained in division (S)(1) of this section shall be construed to invalidate or prohibit an agreement by an insurance company for the purchase for its own account of an entire issue of the securities of a corporation or to invalidate or prohibit an agreement by an insurance company and one or more other investors to join and share in the purchase of investments for their individual accounts and for bona fide investment purposes.

(2) In the determination of capitalization in this section the value of all bonds, debentures, and funded debts, and nonconvertible or nonparticipating preferred stocks shall be figured at par. Participating or convertible preferred shares shall be figured at par or market on the preceding thirty-first day of December, whichever is higher, and the value of all common shares shall be figured at the market on the preceding thirty-first day of December.

(3) As used in this section:

(a) "Funded debt" means all interest-bearing obligations maturing in more than one year from their issuance and all guaranteed or assumed interest-bearing obligations or stock. Securities or stock of a corporation pledged to secure other funded debt of the corporation are not included in the funded debt.

(b) "Fixed charges" include actual interest incurred in each year on funded and unfunded debt and annual apportionment of debt discount or premium. Where interest is partially or entirely

contingent upon earnings, "fixed charges" include contingent interest payments.

(c) "Net earnings available for fixed charges" means income after deducting operating and maintenance expenses, taxes other than income taxes, depreciation, and depletion. Extraordinary, nonrecurring items of income or expense shall be excluded.

(4) Except as provided in a plan of mutualization adopted pursuant to the provisions of sections 3913.01 to 3913.10 of the Revised Code, no domestic life insurance company may invest in or loan upon its own stock, either directly or indirectly.

(5) If the investments of any domestic life insurance company are at the time of the making thereof or on October 13, 1953, otherwise than as authorized in this section, such investments shall not be admitted or accepted as authorized investments for such company.

(6) Any earnings test provided for in this section shall be deemed to have been met if the requirements of such earnings test are met by any company which assumes or guarantees the investment or which assumes or guarantees the performance of any lease which is the security for the investment. In applying any such earnings test, the operations of a company's predecessor companies, if any, for the stipulated period shall be included.

(7) No domestic life insurance company shall at any time have invested in or loaned upon the security of the obligations, property, or securities of a particular corporation, trust, partnership, or similar business entity a sum exceeding the greater of two per cent of its admitted assets as of the preceding thirty-first day of December or twenty-five per cent of that portion of its capital and surplus, or its surplus in the case of a mutual company, that exceeds the minimum required capital and surplus under section 3907.05 of the Revised Code unless the approval of the superintendent of insurance is first obtained. The restrictions of division (S)(7) of this section do not apply to divisions (C), (F), (G), (H), (P)(6), and (R) of this section or to any valid obligation issued, assumed, or guaranteed by the United States, or any state thereof, the Commonwealth of Puerto Rico, the District of Columbia, or Canada or any province of Canada. For purposes of division (S)(7) of this section, such company may, at its option, consider either the lessor or the lessee under division (L) of this section to be the person to whom any such investment or loan is made.

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

(T) A domestic life insurance company 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.

(U) As used in divisions (U) and (V) 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 interests, 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.

(V)(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 in 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 (V) 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.