

§1109. Investment grade obligations

An insurer may invest in obligations, other than those eligible for investment under section 1124 (mortgage loans), issued, assumed or guaranteed by any solvent institution created or existing under the laws of the United States or of Canada, or of any state, province, district or territory thereof, provided that the obligations are not in default as to principal or interest, are investment grade obligations as defined in section 1110, subsection 1-A, paragraph I, and are qualified under any of the following. [PL 1999, c. 715, §2 (AMD).]

1. Obligations secured by adequate collateral security and bearing fixed interest and if during each of any 3, including either of the last 2, fiscal years of a period of not less than 3 nor more than 5 fiscal years next preceding the date of acquisition by the insurer, the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges, as defined in section 1110, shall have been not less than $1\frac{1}{4}$ times the total of its fixed charges for such year, or obligations which, at the date of acquisition by the insurer, are adequately secured and have investment qualities and characteristics wherein the speculative elements are not predominant. In determining the adequacy of collateral security, not more than $\frac{1}{3}$ of the total value of such required collateral shall consist of stock other than stock meeting the requirements of section 1112 (preferred or guaranteed stock). [PL 1969, c. 132, §1 (NEW).]

2. Obligations secured by one or more leases, whether or not additionally secured by one or more mortgages, provided the following conditions are met:

A. The leases are assigned to the insurer or to a trustee acting on behalf of the insurer and are noncancellable by either party, except under provisions specified in the leases and designed to give adequate protection to the insurer's investment. [PL 1979, c. 458, §2 (AMD).]

B. The aggregate rentals due under all such leases are sufficient to provide

(1) For all expenses (including taxes other than the borrower's income tax) of operation of the leased property during the initial term of such leases and

(2) For amortization during the initial term of such leases of not less than 90% of the investment (or 100% thereof if the investment is not also secured by a mortgage) with interest thereon. [PL 1969, c. 132, §1 (NEW).]

C. The leases make suitable provisions for continuation of adequate payments throughout the life of the investment. [PL 1969, c. 132, §1 (NEW).]

D. The lessees under such leases, or any corporation or instrumentality of government which has assumed or guaranteed the lessees' performance thereunder is such that its obligations would be eligible for investment by an insurer in accordance with section 1107 or the aggregate net earnings of such lessees available for fixed charges, as defined in section 1110, is at least equal to that required by subsection 1. [RR 2009, c. 2, §66 (COR).]

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3. Fixed interest bearing obligations, other than those described in subsection 1, if the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges for a period of 5 fiscal years next preceding the date of acquisition by the insurer have averaged per year not less than $1\frac{1}{2}$ times its annual fixed charges applicable to such period and if during either of the last 2 years of such period such net earnings have been not less than $1\frac{1}{2}$ times its fixed charges for such year. [PL 1969, c. 132, §1 (NEW).]

4. Adjustment, income or other contingent interest obligations if the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges for a period of 5 fiscal years next preceding the date of acquisition by the insurer have averaged per year not less than $1\frac{1}{2}$ times the sum of its average annual fixed charges and its average annual maximum contingent interest applicable

to such period and if during either of the last 2 years of such period such net earnings have been not less than 1 1/2 times the sum of its fixed charges and maximum contingent interest for such year.

[PL 1969, c. 132, §1 (NEW).]

5. Fixed interest bearing obligations, other than those described in subsections 1 and 3, if:

A. Net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges for a period of 5 fiscal years next preceding the date of acquisition by the insurer have averaged per year not less than 1 1/4 times its average annual fixed charges applicable to such period and if during each of any 4 fiscal years of such period such net earnings have been not less than 1 1/4 times its fixed charges for such year; [PL 1969, c. 132, §1 (NEW).]

B. The net earnings of such institution available for its fixed charges during a period of not less than 7 nor more than 10 fiscal years next preceding the date of acquisition by the insurer have been such that for each of any 7 fiscal years of such period such net earnings have been not less than 1 1/4 times its fixed charges for such year; and [PL 1969, c. 132, §1 (NEW).]

C. The liquid assets of such institution have been not less than 105% of its liabilities, other than capital stock and surplus. For the purposes of this subsection, "liquid assets" and "liabilities" shall be determined in reliance upon the latest regular financial statement of the issuing, assuming or guaranteeing institution prepared as of a date not more than 15 months prior to the date of acquisition by the insurer; if net earnings are determined in reliance upon consolidated earnings statements of parent and subsidiary institutions, "liquid assets" and "liabilities" shall be determined in reliance upon a consolidated financial statement of parent and subsidiary institutions after treating any minority stock interest in such subsidiary institutions as a liability; and the term "liquid assets" shall mean the sum of cash, receivables or portions thereof, as the case may be, payable on demand or not more than 10 years after the date as of which the determination thereof is made for the purposes of this subsection, and readily marketable securities, in each case less applicable reserves and unearned income. [PL 1969, c. 132, §1 (NEW).]

[PL 1969, c. 132, §1 (NEW).]

6. Fixed interest bearing obligations of financial companies, other than those eligible under subsections 1, 3 and 5, if either:

A.

(1) Net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges during each of the 5 fiscal years next preceding the date of acquisition by that insurer shall not have been less than 1 1/4 times its fixed charges for that year; and

(2) The liquid assets of that institution as of the end of the fiscal year covered in the latest regular financial statement of that institution prepared as of a date not more than 15 months prior to the date of acquisition by that insurer and as of the end of each of the 4 fiscal years next preceding that fiscal year shall have not been less than 95% of its liabilities, other than deferred income taxes, deferred investment tax credits, capital stock and surplus; or [PL 1979, c. 458, §3 (NEW).]

B.

(1) Net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges during each of the 5 fiscal years next preceding the date of acquisition by that insurer shall have been not less than 1.15 times its fixed charges for that year; and

(2) The liquid assets of that institution as of the end of the fiscal year covered in the latest regular financial statement of that institution prepared as of a date not more than 15 months prior to the date of acquisition by that insurer and as of the end of each of the 4 fiscal years next preceding that fiscal year shall have been not less than 105% of its liabilities, other than

deferred income taxes, deferred investment tax credits, capital stock and surplus. [PL 1979, c. 458, §3 (NEW).]

A "financial company" is one having an average of at least 50% of its net income, including income derived from subsidiaries, over its last 5 fiscal years next preceding the date of acquisition by that insurer derived from the business of wholesale, retail, installment, mortgage, commercial, industrial or consumer financing, or from banking or factoring or similar or related lines of business.

For purposes of paragraph A, subparagraph (2) and paragraph B, subparagraph (2), if net earnings are determined in reliance upon consolidated financial statements of parent and subsidiary institutions, "liquid assets" and "liabilities" shall be determined in reliance upon a consolidated financial statement of parent and subsidiary institution after treating any minority stock interest in that subsidiary institution as a liability; and the term "liquid assets" shall mean the sum of cash, receivables or portions thereof, as the case may be, payable on demand or not more than 12 years following the close of the applicable fiscal year, and readily marketable securities, in each case less applicable reserves and unearned income.

[PL 1979, c. 458, §3 (NEW).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1979, c. 458, §§2,3 (AMD). PL 1989, c. 846, §§B6,E4 (AMD). PL 1993, c. 313, §22 (AMD). PL 1999, c. 715, §2 (AMD). RR 2009, c. 2, §66 (COR).

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