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Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission:	Department of Commerce and Insurance
Division:	Insurance
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Rule Type:

Emergency Rule

Revision Type (check all that apply):

Amendment

New

Repeal

Statement of Necessity:

Pursuant to T.C.A. § 4-5-208, the Commissioner of Commerce and Insurance is authorized to promulgate emergency rules in the event that the rules are required by an enactment of the general assembly within a prescribed period of time that precludes utilization of rulemaking procedures described elsewhere in T.C.A. Title 4, Chapter 5, for the promulgation of permanent rules.

Chapter 680 of the Public Acts of 2012 (Act), amends the permissible methods insurers may hold securities. The Commissioner is authorized to promulgate rules in order to establish the standards for national banks, state banks, federal home loan banks, trust companies, and broker/dealers to qualify as custodians for insurance company securities. The Act becomes effective on July 1, 2012 and the public chapter was signed into law by the Governor on April 4, 2012. There is not enough time to go through a notice of rulemaking hearing before July 1, 2012. Furthermore, Section 5 of the Act expressly authorizes the Commissioner of Commerce and Insurance to promulgate emergency rules to implement this act.

These rules are necessary for the Commissioner of Commerce and Insurance to establish the standards for national banks, state banks, federal home loan banks, trust companies, and broker/dealers to qualify as custodians for insurance company securities after the Chapter 680 of the Public Acts of 2012 becomes effective on July 1, 2012.

The July 1, 2012 effective date did not provide adequate time to conduct a notice of rulemaking hearing before the Act becomes effective. Due to the length of time necessary to complete the rulemaking process in Chapter 680 of the Public Acts of 2012 to promulgate rules for the standards of qualified custodians, these emergency rules are required in order for the Commissioner of Commerce and Insurance to comply with the enactment of Legislature and to ensure that the Commissioner of Commerce and Insurance has the resources necessary to implement the Act. The Commissioner of Commerce and Insurance will promptly conduct a rulemaking hearing

to consider comments on the adoption of these as permanent rules.

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/RuleTitle per row)

Chapter Number	Chapter Title
0780-01-46	Permissible Methods of Holding Securities and Securities to be Deposited with the Department of Commerce and Insurance
Rule Number	Rule Title
0780-01-46-.01	Purpose
0780-01-46-.02	Definitions
0780-01-46-.03	Permissible Methods of Holding Securities
0780-01-46-.04	Securities Held on Deposit with the Commissioner
Appendix A	Custodial Agreement
Appendix B	Custodian Affidavit A
Appendix C	Custodian Affidavit B
Appendix D	Custodian Affidavit C

0780-01-46
Permissible Methods of Holding Securities and Securities to be Deposited with the Department of Commerce and Insurance
Amendment

Chapter 0780-01-46 Permissible Methods of Holding Securities and Securities to be Deposited with the Department of Commerce and Insurance is amended by deleting the current language of the Chapter in its entirety and replacing it with the language below:

0780-01-46
Regulations on Custodial Agreements and the Use of Clearing Corporations

Table of Contents

0780-01-46-.01 Definitions
0780-01-46-.02 Custody Agreement; Requirements
0780-01-46-.03 Deposit with Affiliates; Requirements
Appendix A Form A Custodian Affidavit
Appendix B Form B Custodian Affidavit
Appendix C Form C Custodian Affidavit

Rule 0780-01-46-.01 Definitions

When used in this Chapter, the term:

- (1) "Agent" means a national bank, state bank, federal home loan bank, trust company or broker/dealer that maintains an account in its name in a clearing corporation or that is a member of the Federal Reserve System and through which a custodian participates in a clearing corporation, including the Treasury/Reserve Automated Debt Entry Securities System (TRADES) or Treasury Direct systems, except that with respect to securities issued by institutions organized or existing under the laws of a 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 that is organized or existing under the laws of a foreign country and that is legally qualified under those laws to accept custody of securities.

- (2) "Clearing corporation" means a clearing corporation as defined in Section 8-102(a)(5) of the Uniform Commercial Code, as adopted by the National Conference of Commissioners on Uniform State Laws and the American Law Institute, as amended from time to time, that 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 a foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, "clearing corporation" may include a corporation that is organized or existing under the laws of a foreign country and which is legally qualified under those laws to effect transactions in securities by computerized book-entry. Clearing corporation also includes "Treasury/Reserve Automated Debt Entry Securities System" and "Treasury Direct" book-entry securities systems established pursuant to 31 U.S.C. § 3100 *et seq.*, 12 U.S.C. pt. 391 and 5 U.S.C. pt. 301.
- (3) "Custodian" means:
- (a) A national bank, state bank, federal home loan bank or trust company that shall at all times during which it acts as a custodian pursuant to this Chapter be no less than adequately capitalized as determined by the standards adopted by the regulator charged with establishing standards for, and assessing, the institution's solvency and that is regulated by either federal or state banking laws or the Federal Home Loan Bank Act, as amended, or is a member of the Federal Reserve System and that 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 a 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 trust company incorporated or organized under the laws of a country other than the United States that is regulated as such by that country's government or an agency thereof that shall at all times during which it acts as a custodian pursuant to this Chapter be no less than adequately capitalized as determined by the standards adopted by international banking authorities and that is legally qualified to accept custody of securities; or
- (b) A broker/dealer that shall be registered with and subject to jurisdiction of the Securities and Exchange Commission, maintains membership in the Securities Investor Protection Corporation, and has a tangible net worth equal to or greater than two hundred fifty million dollars (\$250,000,000).
- (4) "Custodied securities" means securities held by the custodian or its agent or in a clearing corporation, including the Treasury/Reserve Automated Debt Equity Securities System (TRADES) or Treasury Direct systems.
- (5) "Tangible net worth" means shareholders equity, less intangible assets, as reported in the broker/dealer's most recent Annual or Transition Report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (SEC Form 10-K) filed with the Securities and Exchange Commission.
- (6) "Treasury/Reserve Automated Debt Entry Securities System" ("TRADES") and "Treasury Direct" mean the book entry securities systems established pursuant to 31 U.S.C. § 3100 *et seq.*, 12 U.S.C. pt. 391 and 5 U.S.C. pt. 301. The operation of TRADES and Treasury Direct are subject to 31 C.F.R. pt. 357 *et seq.*
- (7) "Security" has the same meaning as that defined in Section 8-102(a)(15), as adopted by the National Conference of Commissioners on Uniform State Laws and the American Law Institute, of the Uniform Commercial Code, as amended from time to time.
- (8) "Securities' certificate" has the same meaning as that defined in Section 8-102(a)(16), as adopted by the National Conference of Commissioners on Uniform State Laws and the American Law Institute, of the Uniform Commercial Code, as amended from time to time.

Authority: Acts 2012, ch. 680, T.C.A. § 56-3-901, *et seq.*, T.C.A. § 56-2-301 and T.C.A. § 56-2-104.

Rule 0780-01-46-.02 Custody Agreement; Requirements

- (1) An insurance company may, by written agreement with a custodian, provide for the custody of its securities with that custodian. The securities that are the subject of the agreement may be held by the custodian or its agent or in a clearing corporation.
- (2) The agreement shall be in writing and shall be authorized by a resolution of the board of directors of the insurance company or of an authorized committee of the board. The terms of the agreement shall comply with the following:
 - (a) Securities' certificates held by the custodian shall be held separate from the securities' certificates of the custodian and of all of its other customers.
 - (b) Securities held indirectly by the custodian and securities in a clearing corporation shall be separately identified on the custodian's official records as being owned by the insurance company. The records shall identify which securities are held by the custodian or by its agent and which securities are in a clearing corporation. If the securities are in a clearing corporation, the records shall also identify where the securities are and, if in a clearing corporation, the name of the clearing corporation and if through an agent, the name of the agent.
 - (c) All custodied securities that are registered shall be registered in the name of the company or in the name of a nominee of the company 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.
 - (d) Custodied securities shall be held subject to the instructions of the insurance company and shall be withdrawable upon the demand of the insurance company except that custodied securities used to meet the deposit requirements set forth in TCA §§ 56-2-104, 56-3-904 and 56-3-905 of this Insurance Law shall, to the extent required by those sections, be under the control of the Department of Commerce and Insurance and shall not be withdrawn by the insurance company without the approval of the Department of Commerce and Insurance.
 - (e) The custodian shall be required to send or cause to be sent to the insurance company a confirmation of all transfers of custodied securities to or from the account of the insurance company. In addition, the custodian shall be required to furnish no less than monthly the insurance company with reports of holdings of custodied securities at times and containing information reasonably requested by the insurance company. The custodian's trust committee's annual reports of its review of the insurer's trust accounts shall also be provided to the insurer. Reports and verifications may be transmitted in electronic or paper form.
 - (f) During the course of the custodian's regular business hours, an officer or employee of the insurance company, an independent accountant selected by the insurance company and a representative of an appropriate regulatory body shall be entitled to examine, on the premises of the custodian, the custodian's records relating to custodied securities, but only upon furnishing the custodian with written instructions to that effect from an appropriate officer of the insurance company.
 - (g) The custodian and its agents shall be required to send to the insurance company:
 1. All reports which they receive from a clearing corporation on their respective systems of internal accounting control, and
 2. Reports prepared by outside auditors on the custodian's or its agent's internal accounting control of the custodied securities that the insurance company may reasonably request.
 - (h) The custodian shall maintain records sufficient to determine and verify information relating to custodied securities that may be reported in the insurance company's annual statement and

supporting schedules and information required in an audit of the financial statements of the insurance company.

- (i) The custodian shall provide, upon written request from an appropriate officer of the insurance company, the appropriate affidavits, substantially in the form of Forms A, B or C as found in Appendices A, B, and C of this regulation, with respect to custodied securities.
- (j) A national bank, state bank, federal home loan bank or trust company shall secure and maintain insurance protection in an adequate amount covering the bank's or trust company's duties and activities as custodian for the insurer's assets, and shall state in the custody agreement that protection is in compliance with the requirements of the custodian's banking regulator. A broker/dealer shall secure and maintain insurance protection for each insurance company's custodied securities in excess of that provided by the Securities Investor Protection Corporation in an amount equal to or greater than the market value of each respective insurance company's custodied securities. The commissioner may determine whether the type of insurance is appropriate and the amount of coverage is adequate.
- (k) The custodian shall be obligated to indemnify the insurance company 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.
- (l) In the event that there is a loss of custodied securities for which the custodian shall be obligated to indemnify the insurance company as provided in subparagraph (k) above, the custodian shall promptly replace the securities or the value thereof and the value of any loss of rights or privileges resulting from the loss of securities.
- (m) The agreement may provide that the custodian will not be liable for a failure to take an action required under the agreement in the event and to the extent that the taking of the 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, or any other cause whatever beyond its reasonable control.
- (n) In the event that the custodian gains entry in a clearing corporation 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. However, if the agent shall be subject to regulation under the laws of a jurisdiction that is different from the jurisdiction the laws of which regulate the custodian, the Commissioner of Insurance of the state of domicile of the insurance company may accept a standard of liability applicable to the agent that is different from the standard of liability applicable to the custodian.
- (o) The custodian shall provide written notification to the insurer's domiciliary commissioner if the custodial agreement with the insurer has been terminated or if 100% of the account assets in any one custody account have been withdrawn. This notification shall be remitted to the insurance commissioner within three (3) business days of the receipt by the custodian of the insurer's written notice of termination or within three (3) business days of the withdrawal of 100% of the account assets.

Authority: Acts 2012, ch. 680 and T.C.A. § 56-3-901, *et seq.*, T.C.A. § 56-2-301 and T.C.A. § 56-2-104.

Rule 0780-01-46-.03 Deposit With Affiliates; Requirements

- (1) Nothing in this Chapter shall prevent an insurance company from depositing securities with another insurance company with which the depositing insurance company is affiliated, provided that the securities are deposited pursuant to a written agreement authorized by the board of directors of the depositing insurance company or an authorized committee thereof and that the receiving insurance company is organized under the laws of one of the states of the United States of America or of the District of Columbia. If the respective states of domicile of the depositing and receiving insurance

companies are not the same, the depositing insurance company shall have given notice of the deposit to the insurance commissioner in the state of its domicile and the insurance commissioner shall not have objected to it within thirty (30) days of the receipt of the notice.

(2) The terms of the agreement shall comply with the following:

- (a) The insurance company receiving the deposit shall maintain records adequate to identify and verify the securities belonging to the depositing insurance company.
- (b) The receiving insurance company shall allow representatives of an appropriate regulatory body to examine records relating to securities held subject to the agreement.
- (c) The depositing insurance company may authorize the receiving insurance company:
 - 1. To hold the securities of the depositing insurance company in bulk, in certificates issued in the name of the receiving insurance company or its nominee, and to commingle them with securities owned by other affiliates of the receiving insurance company, and
 - 2. To provide for the securities to be held by a custodian, including the custodian of securities of the receiving insurance company or in a clearing corporation.

Authority: Acts 2012, ch. 680 and T.C.A. § 56-3-901, *et seq.*, T.C.A. § 56-2-301 and T.C.A. § 56-2-104.

APPENDIX A

FORM A

CUSTODIAN AFFIDAVIT

[For use by a custodian where securities entrusted to its care have not been redeposited elsewhere.]

STATE OF _____)
) ss.
COUNTY OF _____)

_____, being duly sworn deposes and says that he or she is _____ of _____, a corporation organized under and pursuant to the laws of the _____ with the principal place of business at _____ (hereinafter called the "corporation");

That his or her duties involve supervision of activities as custodian and records relating thereto;

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

That the schedule attached hereto is a true and complete statement of securities (other than those caused to be deposited with The Depository Trust Company or like entity or a Federal Reserve Bank under the TRADES or Treasury Direct systems) which were in the custody of the corporation 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 of the corporation or its nominee, or were in the process of being registered in such form;

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

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

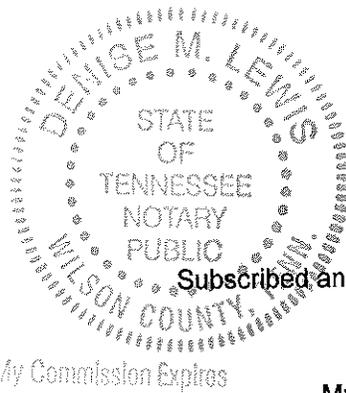
Subscribed and sworn to
before me this _____ day
of _____, 20_____

Vice President [or other authorized officer] (L.S.)

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.



Date: 6/21/12

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner

Subscribed and sworn to before me on: 6/21/12

Notary Public Signature: Denise M Lewis

My commission expires on: 2/15/2016

All emergency rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
 Robert E. Cooper, Jr.
 Attorney General and Reporter
6-27-12
 Date

Department of State Use Only

Filed with the Department of State on: 6/29/12

Effective for: 180 *days

Effective through: 12/26/12

* Emergency rule(s) may be effective for up to 180 days from the date of filing.

RECEIVED
 2012 JUN 29 PM 4: 06
 SECRETARY OF STATE
 PUBLICATIONS

Tré Hargett, by [Signature]
 Tré Hargett
 Secretary of State

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule will not have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules are amended rules to establish the standards for national banks, state banks, federal home loan banks, trust companies, and broker/dealers to qualify as custodians for insurance company securities so that insurance companies may take full advantage of the expansion of qualified custodians when Chapter 680 of the Public Acts of 2012 becomes effective on July 1, 2012.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

This emergency rule is promulgated pursuant to 2012 Public Acts, Chapter 680, and Tenn. Code Ann. §§ 56-3-901, 56-3-902, 56-3-903, 56-3-904, 56-3-905, 56-2-301 and 56-2-104.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

This rule will affect all insurance companies licensed in Tennessee and several domestic life insurance companies support this regulation because it will allow those companies to use the Federal Home Loan Bank as a qualified custodian. This regulation will also make it easier for non-domestic insurers to do business in Tennessee by allowing for broker/dealers to be qualified custodians.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

Tenn. Atty Gen. Op. No. 09-163 deals with the deposits of securities in clearing corporations under the Tenn. Code Ann. § 56-3-112(a)(1) and Tenn. Comp. R. & Reg. § 0780-01-46. Chapter 680 of the Public Acts of 2012, which becomes effective on July 1, 2012, repeals Tenn. Code Ann. § 56-3-112(a)(1). This emergency rule also repeals and replaces the current Tenn. Comp. R. & Reg. § 0780-01-46. The attorney general opinion is based only on the language of the current statutes and will not have an impact on Chapter 680 of the Public Acts of 2012 or this emergency rule.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

None.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Larry C. Knight, Jr., Assistant Commissioner for Insurance; Tony Greer, Chief Counsel for Insurance and TennCare Oversight.

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Tony Greer, Chief Counsel for Insurance and TennCare Oversight

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Eighth Floor, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243, (615) 741-2199, tony.greer@tn.gov.

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

RULES
OF
DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF INSURANCE

CHAPTER 0780-1-46
PERMISSIBLE METHODS OF HOLDING SECURITIES
AND SECURITIES TO BE DEPOSITED WITH THE
DEPARTMENT OF COMMERCE AND INSURANCE

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~~0780-1-46-.01 PURPOSE.~~

- (1) ~~The purpose of this Chapter is to expedite the verification of insurance company assets during examinations conducted by the Department; to reduce costs and simplify delivery and receipt procedures involved in security transactions by insurance companies; to reduce the exposure of securities to loss, theft, misplacement, damage, and other destruction; and to better provide for the storage, inspection, transportation, counting, and insuring of securities.~~
- (2) ~~Further purposes are to establish procedures for the verification of securities which insurance companies deposit in banks under custodial agreements; to permit insurance companies to hold securities in other than definitive certificates; to better safeguard the actual securities; to facilitate checking assets of an insurance company; and to recognize that definitive securities no longer represent the only tangible evidence of security obligations held by an insurance company.~~

~~Authority: T.C.A. § 56-3-112. Administrative History: Original rule filed October 27, 1980; effective December 11, 1980. Repeal and new rule filed April 28, 2005; effective July 12, 2005.~~

~~0780-1-46-.021 DEFINITIONS.~~

- (1) ~~The following words and terms, when used in this Chapter, shall have, unless the context clearly indicates otherwise, the following meanings:~~
- (a) ~~“Definitive Security” includes but is not limited to bonds, notes, debentures, stock certificates and other like securities.~~
- (b) ~~“Department” means the Tennessee Department of Commerce and Insurance.~~
- (c) ~~“Commissioner” means the Commissioner of the Tennessee Department of Commerce and Insurance.~~
- (d) ~~“Clearing Corporation” means a depository corporation which maintains a book entry accounting system which meets the requirements of the definition of the terms in T.C.A. § 47-8-102, including the Depository Trust Company or any other like entity which meets similar standards of depository safeguards and regulatory control.~~

~~Authority: T.C.A. § 56-3-112. Administrative History: Original rule filed October 27, 1980; effective December 11, 1980. Repeal and new rule filed April 28, 2005; effective July 12, 2005.~~

When used in this Chapter, the term:

- (1) "Agent" means a national bank, state bank, federal home loan bank, trust company or broker/dealer that maintains an account in its name in a clearing corporation or that is a member of the Federal Reserve System and through which a custodian participates in a clearing corporation, including the Treasury/Reserve Automated Debt Entry Securities System (TRADES) or Treasury Direct systems, except that with respect to securities issued by institutions organized or existing under the laws of a 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 that is organized or existing under the laws of a foreign country and that is legally qualified under those laws to accept custody of securities.
- (2) "Clearing corporation" means a clearing corporation as defined in Section 8-102(a)(5) of the Uniform Commercial Code, as adopted by the National Conference of Commissioners on Uniform State Laws and the American Law Institute, as amended from time to time, that 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 a foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, "clearing corporation" may include a corporation that is organized or existing under the laws of a foreign country and which is legally qualified under those laws to effect transactions in securities by computerized book-entry. Clearing corporation also includes "Treasury/Reserve Automated Debt Entry Securities System" and "Treasury Direct" book-entry securities systems established pursuant to 31 U.S.C. § 3100 *et seq.*, 12 U.S.C. pt. 391 and 5 U.S.C. pt. 301.
- (3) "Custodian" means:
 - (a) A national bank, state bank, federal home loan bank or trust company that shall at all times during which it acts as a custodian pursuant to this Chapter be no less than adequately capitalized as determined by the standards adopted by the regulator charged with establishing standards for, and assessing, the institution's solvency and that is regulated by either federal or state banking laws or the Federal Home Loan Bank Act, as amended, or is a member of the Federal Reserve System and that 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 a 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 trust company incorporated or organized under the laws of a country other than the United States that is regulated as such by that country's government or an agency thereof that shall at all times during which it acts as a custodian pursuant to this Chapter be no less than adequately capitalized as determined by the standards adopted by international banking authorities and that is legally qualified to accept custody of securities; or
 - (b) A broker/dealer that shall be registered with and subject to jurisdiction of the Securities and Exchange Commission, maintains membership in the Securities Investor Protection Corporation, and has a tangible net worth equal to or greater than two hundred fifty million dollars (\$250,000,000).
- (4) "Custodied securities" means securities held by the custodian or its agent or in a clearing corporation, including the Treasury/Reserve Automated Debt Equity Securities System (TRADES) or Treasury Direct systems.

- (5) “Tangible net worth” means shareholders equity, less intangible assets, as reported in the broker/dealer’s most recent Annual or Transition Report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (SEC Form 10-K) filed with the Securities and Exchange Commission.
- (6) “Treasury/Reserve Automated Debt Entry Securities System” (“TRADES”) and “Treasury Direct” mean the book entry securities systems established pursuant to 31 U.S.C. § 3100 *et seq.*, 12 U.S.C. pt. 391 and 5 U.S.C. pt. 301. The operation of TRADES and Treasury Direct are subject to 31 C.F.R. pt. 357 *et seq.*
- (7) “Security” has the same meaning as that defined in Section 8-102(a)(15), as adopted by the National Conference of Commissioners on Uniform State Laws and the American Law Institute, of the Uniform Commercial Code, as amended from time to time.
- (8) “Securities’ certificate” has the same meaning as that defined in Section 8-102(a)(16), as adopted by the National Conference of Commissioners on Uniform State Laws and the American Law Institute, of the Uniform Commercial Code, as amended from time to time.

Authority: Acts 2012, ch. 680 and T.C.A. § 56-3-901, *et seq.*, T.C.A. § 56-2-301 and T.C.A. § 56-2-104.

0780-1-46-.032 PERMISSIBLE METHODS OF HOLDING SECURITIES CUSTODY AGREEMENT; REQUIREMENTS.

- (1) ~~An insurance company may hold its securities in the following authorized manners:~~
- (a) ~~An insurance company may hold its securities in definitive certificates.~~
- (b) ~~An insurance company may hold its securities pursuant to its participation in the book entry system of the Federal Reserve through a member bank of the Federal Reserve System which, as a custodian, can transact and maintain book entry securities for the insurance company.~~
1. ~~This subparagraph shall not be interpreted so as to preclude an insurance company from participation in the Federal Reserve book entry system under a custodial agreement with a state chartered bank which has redeposited securities with a member bank for participation in the Federal Reserve book entry program.~~
- (c) ~~An insurance company may hold its securities pursuant to its participation in depository systems of clearing corporations through a custodian bank.~~
- (2) ~~All insurance companies choosing to hold its securities in the manner described in subparagraphs (1)(b) or (1)(c) of this Rule shall execute a proper custodial agreement and appropriate custodian affidavits for its securities held under custodial agreements.~~
- (a) ~~The custodial agreement required by this Rule shall contain the following:~~
1. ~~A provision stating that the standard of responsibility on the part of the custodian shall not be less than that of the responsibility of a bailee for hire or a fiduciary under statutory or case law of Tennessee;~~
2. ~~A provision stating that the securities held by the custodian are subject to instructions of the insurance company;~~

(Rule 0780-1-46-.032, continued)

- ~~3. A provision stating that the securities may be withdrawn immediately upon demand of the insurance company; and~~
- ~~4. A provision stating that the agreement is between the custodian and the insurance company, and not the parent or affiliate of the insurance company.~~
- ~~(b) Such executed affidavits as well as the underlying agreement between the insurance company and the custodian shall be available to the Commissioner upon request pursuant to examinations conducted under T.C.A. §§ 56-1-408 through 56-1-413.~~
- ~~(c) Examples of an acceptable custodial agreement as well as acceptable custodial affidavits are included in this Rule as appendices hereto.~~
- ~~(3) Each insurance company which enters into a custodial agreement must determine that the custodian maintains sufficient records to verify information which the insurance company reports on the Schedule D of the insurance company's Annual Statement blank(s).~~
- ~~(4) Failure to execute a proper custodial agreement or custodian affidavit may result in the Commissioner's non-admission of the insurance company's assets which are not held in a manner authorized by this Rule.~~

Authority: T.C.A. § 56-3-112. *Administrative History:* Original rule filed October 27, 1980; effective December 11, 1980. Repeal and new rule filed April 28, 2005; effective July 12, 2005.

- (1) An insurance company may, by written agreement with a custodian, provide for the custody of its securities with that custodian. The securities that are the subject of the agreement may be held by the custodian or its agent or in a clearing corporation.
- (2) The agreement shall be in writing and shall be authorized by a resolution of the board of directors of the insurance company or of an authorized committee of the board. The terms of the agreement shall comply with the following:
 - (a) Securities' certificates held by the custodian shall be held separate from the securities' certificates of the custodian and of all of its other customers.
 - (b) Securities held indirectly by the custodian and securities in a clearing corporation shall be separately identified on the custodian's official records as being owned by the insurance company. The records shall identify which securities are held by the custodian or by its agent and which securities are in a clearing corporation. If the securities are in a clearing corporation, the records shall also identify where the securities are and, if in a clearing corporation, the name of the clearing corporation and if through an agent, the name of the agent.
 - (c) All custodied securities that are registered shall be registered in the name of the company or in the name of a nominee of the company 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.
 - (d) Custodied securities shall be held subject to the instructions of the insurance company and shall be withdrawable upon the demand of the insurance company except that custodied securities used to meet the deposit requirements set forth in TCA §§ 56-2-104, 56-3-904 and 56-3-905 of this Insurance Law shall, to the extent required by those sections, be under the

(Rule 0780-1-46-.032, continued)

control of the Department of Commerce and Insurance and shall not be withdrawn by the insurance company without the approval of the Department of Commerce and Insurance.

- (e) The custodian shall be required to send or cause to be sent to the insurance company a confirmation of all transfers of custodied securities to or from the account of the insurance company. In addition, the custodian shall be required to furnish no less than monthly the insurance company with reports of holdings of custodied securities at times and containing information reasonably requested by the insurance company. The custodian's trust committee's annual reports of its review of the insurer's trust accounts shall also be provided to the insurer. Reports and verifications may be transmitted in electronic or paper form.
- (f) During the course of the custodian's regular business hours, an officer or employee of the insurance company, an independent accountant selected by the insurance company and a representative of an appropriate regulatory body shall be entitled to examine, on the premises of the custodian, the custodian's records relating to custodied securities, but only upon furnishing the custodian with written instructions to that effect from an appropriate officer of the insurance company.
- (g) The custodian and its agents shall be required to send to the insurance company:
1. All reports which they receive from a clearing corporation on their respective systems of internal accounting control, and
 2. Reports prepared by outside auditors on the custodian's or its agent's internal accounting control of the custodied securities that the insurance company may reasonably request.
- (h) The custodian shall maintain records sufficient to determine and verify information relating to custodied securities that may be reported in the insurance company's annual statement and supporting schedules and information required in an audit of the financial statements of the insurance company.
- (i) The custodian shall provide, upon written request from an appropriate officer of the insurance company, the appropriate affidavits, substantially in the form of Forms A, B or C as found in Appendices A, B, and C of this regulation, with respect to custodied securities.
- (j) A national bank, state bank, federal home loan bank or trust company shall secure and maintain insurance protection in an adequate amount covering the bank's or trust company's duties and activities as custodian for the insurer's assets, and shall state in the custody agreement that protection is in compliance with the requirements of the custodian's banking regulator. A broker/dealer shall secure and maintain insurance protection for each insurance company's custodied securities in excess of that provided by the Securities Investor Protection Corporation in an amount equal to or greater than the market value of each respective insurance company's custodied securities. The commissioner may determine whether the type of insurance is appropriate and the amount of coverage is adequate.
- (k) The custodian shall be obligated to indemnify the insurance company 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.
- (l) In the event that there is a loss of custodied securities for which the custodian shall be obligated to indemnify the insurance company as provided in subparagraph (k) above, the

(Rule 0780-1-46-.032, continued)

custodian shall promptly replace the securities or the value thereof and the value of any loss of rights or privileges resulting from the loss of securities.

(m) The agreement may provide that the custodian will not be liable for a failure to take an action required under the agreement in the event and to the extent that the taking of the 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, or any other cause whatever beyond its reasonable control.

(n) In the event that the custodian gains entry in a clearing corporation 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. However, if the agent shall be subject to regulation under the laws of a jurisdiction that is different from the jurisdiction the laws of which regulate the custodian, the Commissioner of Insurance of the state of domicile of the insurance company may accept a standard of liability applicable to the agent that is different from the standard of liability applicable to the custodian.

(o) The custodian shall provide written notification to the insurer's domiciliary commissioner if the custodial agreement with the insurer has been terminated or if 100% of the account assets in any one custody account have been withdrawn. This notification shall be remitted to the insurance commissioner within three (3) business days of the receipt by the custodian of the insurer's written notice of termination or within three (3) business days of the withdrawal of 100% of the account assets.

Authority: Acts 2012, ch. 680 and T.C.A. § 56-3-901, et seq., T.C.A. § 56-2-301 and T.C.A. § 56-2-104.

0780-1-46-.043 SECURITIES HELD ON DEPOSIT WITH THE COMMISSIONER DEPOSIT WITH AFFILIATES; REQUIREMENTS.

~~(1) Securities to be placed on deposit with the Commissioner, pursuant to the provisions of T.C.A. §§ 56-2-104, 56-21-102, 56-35-116 and 56-13-117 must be maintained under a separate depository agreement between the depository institution (commercial bank or clearing corporation), the insurance company and the Commissioner.~~

~~(2) The depository agreement required by this Paragraph (1) of this Rule must contain the following:~~

~~(a) A provision requiring the depository institution to provide verification of securities on deposit to the Commissioner;~~

~~(b) A provision allowing the Commissioner to require such verification from the custodian at any time the Commissioner deems that verification is appropriate. Examples of appropriate verification documents are included in this Chapter as Appendices B, C and D; and~~

~~(c) A provision requiring an authorized signature of the insurance company and the Commissioner, and/or the Commissioner's deputy, to concurrently appear on any withdrawal notices to the depository institution.~~

~~Authority: T.C.A. §§ 56-2-117 and 56-3-112. Administrative History: Original rule filed October 27, 1980; effective December 11, 1980. Repeal and new rule filed April 28, 2005; effective July 12, 2005.~~

(Rule 0780-1-46-.032, continued)

- (1) Nothing in this Chapter shall prevent an insurance company from depositing securities with another insurance company with which the depositing insurance company is affiliated, provided that the securities are deposited pursuant to a written agreement authorized by the board of directors of the depositing insurance company or an authorized committee thereof and that the receiving insurance company is organized under the laws of one of the states of the United States of America or of the District of Columbia. If the respective states of domicile of the depositing and receiving insurance companies are not the same, the depositing insurance company shall have given notice of the deposit to the insurance commissioner in the state of its domicile and the insurance commissioner shall not have objected to it within thirty (30) days of the receipt of the notice.
- (2) The terms of the agreement shall comply with the following:
 - (a) The insurance company receiving the deposit shall maintain records adequate to identify and verify the securities belonging to the depositing insurance company.
 - (b) The receiving insurance company shall allow representatives of an appropriate regulatory body to examine records relating to securities held subject to the agreement.
 - (c) The depositing insurance company may authorize the receiving insurance company:
 1. To hold the securities of the depositing insurance company in bulk, in certificates issued in the name of the receiving insurance company or its nominee, and to commingle them with securities owned by other affiliates of the receiving insurance company, and
 2. To provide for the securities to be held by a custodian, including the custodian of securities of the receiving insurance company or in a clearing corporation.

Authority: Acts 2012, ch. 680 and T.C.A. § 56-3-901, et seq., T.C.A. § 56-2-301 and T.C.A. § 56-2-104.

APPENDIX A

CUSTODIAL AGREEMENT

(For use by an insurance company which deposits its securities with a custodial depository institution.)

1. The Principal is the owner of certain securities, held on book entry with <BANK>, in the name of <BANK> and evidenced by trade orders from the <INSURANCE COMPANY> to <BANK>, delivered for the settlement of securities trades by brokers and evidenced by trade orders from <INSURANCE COMPANY> to <BANK> or received as income from assets held by <BANK> for <INSURANCE COMPANY>, some of which are subject to a separate Depository Agreement among <INSURANCE COMPANY> and the Commissioner of the Commerce and Insurance for the State of Tennessee, the terms and conditions of which take precedence over any conflicting terms and conditions in this agreement.

2. Custody of Assets

<BANK> shall hold and manage these assets for the benefit of, and at the direction of, <INSURANCE COMPANY>.

a. <BANK>, a member of the Federal Reserve System, may utilize the Federal Reserve book entry program. <BANK> shall hold such securities on deposit in an account with the name <INSURANCE COMPANY>. <BANK>, on its accounting system, will designate any securities so deposited as belonging to <INSURANCE COMPANY>.

b. <BANK> may hold any securities not eligible for book entry at <BANK> in the following manner:

(1) items eligible for book entry at the Depository Trust Company ("DTC")—an account directly with DTC or in an account with another bank or trust company who has an account at DTC, and

(2) items not eligible for book entry at DTC—in an account with another bank, trust company, or registered open end management investment company or in the <BANK>'s own vault in either registered or bearer form.

Securities so deposited will at all times be kept separate and apart from other such deposits with <BANK> so that they may be identified as belonging to <INSURANCE COMPANY>. The records of any other bank, trust company or registered open end management investment company, with which <BANK> may hold the securities (either at DTC or otherwise), shall designate the account name for which it is being held.

e. Upon request from the Department of Commerce and Insurance, <BANK> shall provide verification of securities on deposit. Examples of appropriate verification documents are Custodian Affidavits Forms A, B, and C.

d. The collection of principal cash shall be made by <BANK> in accordance with its usual and customary business practice and in accordance with the usual and customary business practices for the banking and securities industries.

3. Income Collection and Investment

Income from the securities in this account shall be deposited into the demand deposit account of <INSURANCE COMPANY> as directed from time to time by an authorized agent of <INSURANCE COMPANY>. The collection of income shall be made by <BANK> in accordance with its usual and customary business practice and in accordance with the usual and customary business practices for the banking and securities industries. <BANK> will collect all income from investments held by it for

(Rule 0780-1-46, Appendix A, continued)

~~<INSURANCE COMPANY> except any securities that are registered in the name of <INSURANCE COMPANY>.~~

4. ~~Record-keeping and Reporting~~

~~<BANK> will keep records of all income and principal entries and will review statements of assets to <INSURANCE COMPANY> at least quarterly. All records of <BANK> concerning this account with <INSURANCE COMPANY> shall be available for inspection, during regular banking hours, by any duly authorized representative of <INSURANCE COMPANY>. Any errors or corrections on statements or in the account will be reported to <BANK> by <INSURANCE COMPANY> within a reasonable time of the receipt of the statement, but not to exceed ninety (90) days. Otherwise, all actions of <BANK> as reported shall be deemed to have been approved by <INSURANCE COMPANY>. <BANK>, when it becomes aware of the following events, shall notify <INSURANCE COMPANY> of matured but uncollected principal and interest, of securities called for redemption, of the expiration of the conversion privileged, of subscription or conversion rights and of similar proceedings relating to the assets in the account.~~

5. ~~Indemnification~~

a. ~~<BANK> is obligated to indemnify <INSURANCE COMPANY> for any loss of securities of <INSURANCE COMPANY> in <BANK>'s care, whether in <BANK>'s vault or in an account of <BANK> identified as belonging to <INSURANCE COMPANY> with another bank, trust company or registered open-end management investment company, except that, unless domiciliary state law, regulation or administrative action otherwise require a stricter standard, <BANK> shall not be so obligated to the extent that such loss was caused by other than burglary, robbery, holdup, theft or mysterious disappearance, including loss by damage or destruction, or the negligence or dishonesty of <BANK>, of its agents or of any other bank, trust company or registered open-end management investment company with which <BANK> is holding securities for <INSURANCE COMPANY>.~~

b. ~~If the domiciliary state law, regulation or administrative action requires a stricter standard of liability for custodians of insurance company securities than that set forth in Section 5.a., then such stricter standard shall apply.~~

c. ~~In the event there is a loss of the securities for which <BANK> is obligated to indemnify <INSURANCE COMPANY>, the securities shall be promptly replaced or the value of the securities and the value of any loss of rights or privileges resulting from said loss of securities shall be promptly replaced.~~

d. ~~<BANK> shall not be liable for any failure to take action required to be taken hereunder 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, laws, regulations, orders or other acts of any governmental or judicial authority, or any other cause beyond <BANK>'s reasonable control.~~

e. ~~In addition to the preceding requirements of this Section 5, <BANK>'s standard of responsibility hereunder shall be that of a bailee for hire under statutory and case law of the State of Tennessee. Without limiting the generality of the foregoing, it is agreed and understood that <BANK> is not acting as a trustee and further that <BANK> is in no way responsible or liable for any decline in value of any securities.~~

6. ~~Investment Responsibility~~

~~<BANK> will have no investment responsibility or authority and will make investments only on the direction of <INSURANCE COMPANY>.~~

7. ~~Fees~~

APPENDIX ~~BA~~

CUSTODIAN AFFIDAVIT A

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

STATE OF)
) SS:
COUNTY OF)

<AUTHORIZED ~~BANK~~CORPORATION OFFICER>, being duly sworn deposes and says that he or she is the <POSITION> of <BANKCORPORATION>, a banking corporation organized under and pursuant to the laws of the <STATE> with the principal place of business at <ADDRESS> (hereinafter called the "Bankcorporation");

That ~~my~~his or her duties involve supervision of activities of the Bankcorporation as custodian and records relating thereto;

That the Bankcorporation is custodian for certain securities of <INSURANCE COMPANY>, having a place of business at <ADDRESS> (hereinafter called the "Insurance Company") pursuant to an agreement between the Bankcorporation and the Insurance Company,

That the schedule attached hereto is a true and complete statement of securities (other than those caused to be deposited with the Depository Trust Company or like entity or a Federal Reserve bank under the ~~Federal Reserve book entry procedure~~ TRADES or Treasury Direct systems) which were in the custody of the Bankcorporation for the account of the Insurance Company as of the close of business on <DATE>; 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 of the corporation or its nominee~~, or were in the process of being registered in such form;

That the Bankcorporation as custodian has the responsibility for the safekeeping of such securities as that responsibility is specifically set forth in the agreement between the Bankcorporation as custodian and the Insurance Company; and

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

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

(L.S.)
<AUTHORIZED BANK OFFICER> Vice
President [or other authorized officer]

APPENDIX CB

CUSTODIAN AFFIDAVIT B

(For use in instances where a custodian bankcorporation maintains securities on deposit with The Depository Trust Company or like entity.)

STATE OF)
) SS:
COUNTY OF)

<AUTHORIZED BANKCORPORATION OFFICER>, being duly sworn deposes and says that he or she is the <POSITION> of <BANKCORPORATION>, a banking corporation organized under and pursuant to the laws of the <STATE> with the principal place of business at <ADDRESS> (hereinafter called the "Bankcorporation");

That myhis or her duties involve supervision of activities of the Bankcorporation as custodian and records relating thereto;

That the Bankcorporation is custodian for certain securities of <INSURANCE COMPANY> withhaving a place of business at <ADDRESS> (hereinafter called the "Insurance Company") pursuant to an agreement between the Bankcorporation and the Insurance Company;

That the Bankcorporation has caused certain of such securities to be deposited with the Depository Trust Company _____, and that the schedule attached hereto is a true and complete statement of the securities of the Insurance Company of which the Bankcorporation was custodian as of the close of business on <DATE>, and which were so deposited on such date;

That the Bankcorporation as custodian has the same responsibility for the safekeeping of suchthe securities whetherboth in the possession of the Bankcorporation or deposited with _____ as that responsibility is specifically set forth in the agreement between the Bankcorporation as custodian and the Insurance Company; and

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

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

(L.S.)
<AUTHORIZED BANK OFFICER> Vice President
[or other authorized officer]

APPENDIX DC

CUSTODIAN AFFIDAVIT C

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

STATE OF)
) SS:
COUNTY OF)

<AUTHORIZED BANKCORPORATION OFFICER>, being duly sworn deposes and says that he or she is the <POSITION> of <BANKCORPORATION>, a banking corporation organized under and pursuant to the laws of the <STATE> with the principal place of business at <ADDRESS> (hereinafter called the "Bankcorporation");

That ~~my~~his or her duties involve the supervision of activities of the Bankcorporation as custodian and records relating thereto;

That the Bankcorporation is custodian for certain securities of <INSURANCE COMPANY> with a place of business at <ADDRESS> (hereinafter called the "Insurance Company") pursuant to an agreement between the Bankcorporation and the Insurance Company;

That <BANK>~~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 TRADES or Treasury Direct systems; and that the schedule attached hereto is a true and complete statement of the securities of the Insurance Company of which the Bankcorporation was custodian as of the close of business on _____ which were in a "general" book entry account maintained in the name of the Bankcorporation on the books and records of the Federal Reserve Bank of _____ at such date;

That the Bankcorporation has the ~~same~~ responsibility for the safekeeping of such securities ~~whether both~~ in the possession of the Bankcorporation or in ~~said the~~ "general" book entry account as that responsibility is specifically set forth in the agreement between the Bankcorporation as custodian and the Insurance Company; and

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

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

(L.S.)
<AUTHORIZED BANK OFFICER> Vice President
[or other authorized officer]

Authority: T.C.A. § 56-3-112. Administrative History: Original rule filed October 27, 1980; effective December 11, 1980. Repeal and new rule filed April 28, 2005; effective July 12, 2005.
Authority: Acts 2012, ch. 680 and T.C.A. § 56-3-901, et seq., T.C.A. § 56-2-301 and T.C.A. § 56-2-104.