

.01 Definitions.

ALL NEW

A. For the purposes of this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Actuarially calculated ultimate loss liability" means the sum of open claim reserves plus an estimate of incurred but not reported losses on open and closed claims through the cutoff date for the estimate in accordance with generally accepted actuarial principles.

(2) "Adequate consideration" has the meaning set forth in the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1108(17)(B).

(3) "Administrator" means a person or entity designated by the Board of Trustees for a purpose authorized by this regulation.

(4) "Board of Trustees" means the elected governing body of a governmental group self-insurance fund.

(5) "Elect" means either:

(a) Direct election by the members of the governmental group fund;

(b) Appointment by the Board of Directors of a governmental entity member organization;

or

(c) Appointment by the Board of Directors of the governmental group or sponsoring organization.

(6) "Exchange traded fund" or "ETF" means an equity fund or bond fund designed to replicate the performance of a major broad market United States, international, or global index and publicly traded on an American Stock Exchange.

(7) "Fiduciary" means:

(a) An individual or group of individuals as defined in the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1102(21)(A);

(b) A member of the Board of Trustees;

(c) A member of an investment committee of the Board of Trustees; and

(d) An administrator.

(8) "Fiscal agent" means the entity employed by the Board of Trustees to hold the monies of the Fund.

(9) "Fund" means the governmental self-insurance group fund established pursuant to Labor and Employment Article, §9-404, Annotated Code of Maryland, and this chapter.

(10) "Party in interest" means:

(a) An administrator;

(b) A fiduciary;

(c) A member of the Fund, any of whose employees are covered by the Fund;

(d) A service company;

(e) A trustee;

(f) A fiscal agent;

(g) A spouse, ancestor, lineal descendent, or spouse of a lineal descendent of a person set forth in §B(9)(a) — (f) of this regulation;`

(h) A corporation, partnership, trust or estate of which 50 percent is owned directly or indirectly by a person set forth in §B(9)(a) — (f) of this regulation;

(i) An employee, officer, director or 10 percent or more shareholder of an entity or person set forth in §B(9)(a) — (f) of this regulation; and

(j) A 10 percent or more partner or joint venturer of an entity or person set forth in §B(9)(a) — (f) of this regulation.

(11) "SEC" means the United States Securities and Exchange Commission.

(12) "Service company" means an organization, company or person hired to perform a function of the Fund's day-to-day operations including, but not limited to:

(a) Adjusting claims;

(b) Performing safety engineering;

(c) Compiling statistics and preparing premium, loss, and tax reports;

(d) Preparing other required fund reports;

(e) Developing members' premiums and fees;

(f) Managing the investment of all or part of the Fund's assets; and

(g) Providing advisory services, including advice on investment objectives, asset allocation, manager search, and performance monitoring.

(13) "Sponsoring organization" means the governmental group that has been approved for joint self-insurance coverage under Labor and Employment Article, §9-404, Annotated Code of Maryland.

(14) "Surplus monies not needed to meet current obligations (surplus monies)" means monies not needed to pay current Fund:

(a) Expenses;

(b) Obligations;

(c) Open claim reserves; and

(d) Incurred, but not reported, claim reserves.

END ALL NEW

.05 Trustee Responsibilities.

[A. To ensure the financial stability of the operations of each governmental group self-insurers' fund, the board of trustees of each fund shall be responsible for all operations of the fund. trustees shall be elected or appointed by a governmental self-insurer's group for stated terms of office, to direct the administration of a fund, and whose duties shall include responsibility for approving application for new members of the fund. A trustee may not be an owner, officer, or employee of the service agent. For purposes of these regulations the term "elected", as applied to self-insured funds of governmental entities, means either direct election by the members of the group or appointment by the Board of Directors of a membership organization of those entities.

B. The board of trustees of each fund shall take all necessary precautions to safeguard the assets of the fund, including, but not limited to, all of the following:

(1) Designation of a fiscal agent or administrator, or both, to administer the financial affairs of the fund, who, as obligee, shall furnish a fidelity bond with the governmental group fund in an amount sufficient to protect the fund against the misappropriation or misuse of any monies or securities. The amount of the bond shall be determined by the Commission and evidence of this bond shall be filed, the bond being one of the conditions required for approval of the establishment and continued operation of a governmental group self-insurers' fund. The fiscal agent or administrator may not be an owner, officer, or employee of the service company.

(2) Retain control of all monies collected or disbursed from the fund. Segregate all monies into a claims fund and trustee fund. The amount allocated to the claims fund shall be sufficient to

cover payment of the entire aggregate loss fund as defined in the aggregate excess policy. All administrative costs and other disbursements shall be made from the trustee fund. The administrator of the fund shall establish a revolving fund for use by the authorized service company or its staff, if administered by the governmental group fund, which will be replenished from time to time from the claims fund. The service company or its employees shall be covered by a fidelity bond, with the governmental group fund as obligee in an amount sufficient to protect all monies placed in the revolving fund.

(3) Audit of the accounts and records of the fund annually are required. Audits shall be made by certified public accountants. Copies of audits prepared by those other than Commission personnel shall be filed within 5 months after the close of the fund year.

(4) The trustees shall be without authority to extend credit to individual members for payment of premium other than normal premium payment plans.

(5) The board of trustees or its fiscal agent or administrator may not utilize any of the monies collected as premiums for any purpose unrelated to a worker's compensation. Further, it may not borrow any monies from the fund or in the name of the fund without advising the Commission of the nature and purpose of the loan and obtaining the prior approval of the Commission. The board of trustees may, at its discretion, invest any surplus monies not needed for current obligations, but these investments shall be limited to those authorized for counties or municipalities pursuant to Article 95, §22, Annotated Code of Maryland, or any successor statute, US Government Bonds, US Treasury Notes, investment shares accounts in any savings and loan association whose deposits are insured by a federal agency, and certificates of deposit issued by a duly chartered commercial bank. Deposits in savings and loan associations and commercial banks shall be limited to institutions in this State and may not exceed the federally insured amount in any one account, except that the federally insured amount on any one account may be exceeded if the amount involved in the account does not exceed either of the following two factors:

(a) Five percent of the combination of surplus and undivided profits and reserves as currently reported for each bank in this State in the banking division annual report of the Financial Institution Bureau of the Department of Commerce (banking control);

(b) \$500,000 per institution.

C. Delegation of Authority.

(1) The board of trustees may delegate authority for specific functions to the administrator of the governmental group self-insurers' fund. The functions which may be delegated include, but are not limited to, such matters as:

(a) Contracting with a service agent and providers;

(b) Determining the premium charged to and refunds payable to members subject to the restrictions of the Commission;

(c) Investing surplus monies subject to the restrictions set forth in §B(5) of this regulation; and

(d) Approving applications for membership.

(2) All delegated authority shall be specifically defined in the written minutes of the Trustees' meeting and shall be subject to final approval of the Commission.]

ALL NEW

A. Trustee Election.

(1) Trustees shall be elected or appointed for a stated term of office.

(2) A trustee may not be an owner, officer or employee of a service company with which the Board of Trustees contracts for a purpose authorized by this chapter, except that a Trustee may be an employee of the governmental group or sponsoring organization.

B. Delegation of Authority to Administrator.

(1) Subject to final approval by the Commission, the Board of Trustees may delegate authority to perform specific functions to an Administrator including, but not limited to, the authority to:

(a) Contract with a service company and other providers;

(b) Determine the premium charged to and refunds payable to members subject to the restrictions of the Commission;

(c) Invest surplus monies subject to the restrictions set forth in this regulation; and

(d) Approve applications for membership.

(2) The Board of Trustees shall include in the written minutes of trustee meetings the specific authority delegated to an administrator pursuant to this section.

(3) The Board of Trustees shall submit a copy of the minutes under §B(2) of this regulation to the Commission for approval.

(4) An Administrator designated by the Board of Trustees:

(a) May not be an owner, officer, or employee of a service company with which the Board of Trustees has contracted for a purpose authorized by this chapter, except that the Administrator may be an employee of the governmental group or sponsoring organization; and

(b) Shall furnish a fidelity bond, with the Fund as obligee, in an amount, as determined by the Commission, sufficient to protect the Fund against misappropriation or misuse of any monies or securities.

C. Authority of Board of Trustees.

(1) The Board of Trustees may not:

(a) Extend credit to individual members for payment of premiums other than normal premium payment plans;

(b) Utilize any of the monies collected as premiums for any purpose unrelated to the Fund's workers' compensation program;

(c) Borrow any monies from the Fund or in the name of the Fund:

(i) Without obtaining the prior approval of the Commission; or

(ii) For the purpose of engaging in an investment activity pursuant to this chapter.

(2) The Board of Trustees may:

(a) Direct the administration of the Fund;

(b) Approve applications for membership in the Fund;

(c) Invest surplus monies subject to the restrictions set forth in Labor and Employment Article, §9-404(a), Annotated Code of Maryland and this chapter; and

(d) Contract with a service company or other provider for a purpose authorized by this chapter.

(3) The Board of Trustees shall:

(a) Retain control of monies collected or disbursed from the Fund;

(b) Establish a claims fund sufficient to cover payment of the entire aggregate loss fund as defined in any aggregate excess policy required by the Commission;

(c) Establish a trustee fund sufficient to pay the administrative costs of the Fund and from which all administrative costs and other disbursements shall be made;

(d) Establish a revolving fund, to be replenished from time to time from the claims fund, for use by the Fund's staff or an authorized service company;

(e) Arrange for the annual audit of the accounts and records of the Fund by an independent certified public accountant, copies of which shall be filed with the Commission no later than five months after the close of the Fund fiscal year; and

(f) Determine the premiums charged to and refunds payable to members.

D. Use of Service Company.

(1) The Board of Trustees may contract with a service company to perform any function not specifically reserved to the Board of Trustees.

(2) Prior to entering into a contract with a service company or other provider for a purpose authorized by this chapter, the Board of Trustees or Administrator shall provide to the Commission satisfactory proof that the service company or provider:

(a) Is covered by a fidelity bond, with the Fund as obligee, in an amount sufficient to protect monies over which the service company or provider exercises control;

(b) Maintains fiduciary liability insurance, and if not, how the Fund's interests are protected;

(c) Possesses experience and expertise relevant to the activity that the service company or provider has been contracted to provide;

(d) Holds the qualifications required by the state or federal agency responsible for regulating the activity that the service company or provider has been contracted to provide; and

(e) Is licensed, registered or exempt from licensing or registration, with the state or federal agency responsible for regulating the activity that the service company or provider has been contracted to provide.

E. Prohibited Transactions.

(1) Except as provided in §E(3), a fiduciary with respect to the Fund may not cause the Fund to engage in a transaction, if the fiduciary knows or should know that such transaction constitutes a direct or indirect:

(a) Sale, exchange, or leasing of a property between the Fund and a party in interest;

(b) Lending of money or other extension of credit between the Fund and a party in interest;

(c) Furnishing of goods, services or facilities between the Fund and a party in interest;

(d) Transfer to, or use by or for the benefit of, a party in interest, of an asset of the Fund;

(e) Engage in investment, or other activity not provided for in the approved annual investment plan, this chapter, or Labor and Employment Article, §9-404(a).

(2) Except as provided in §E(3) of this regulation, a fiduciary may not:

(a) Deal with Fund assets in the fiduciary's own interest or for the fiduciary's own account;

(b) Act in a transaction involving the Fund on behalf of a party whose interests are adverse to the interest of the Fund or its members; or

(c) Receive any consideration for the fiduciary's own personal account from a person dealing with the Fund in connection with a transaction involving the assets of the Fund.

(3) The prohibitions in §E(1) and (2) of this regulation do not apply to the following transactions:

(a) Contracting or making reasonable arrangements with a party in interest for office space, or legal, accounting, or other services necessary for the establishment or operation of the

Fund and its workers' compensation insurance program, if not more than reasonable compensation is paid for those services;

(b) Transactions described in §E(1) and (2) of this regulation between the Fund and a person that is a party in interest, other than a fiduciary, who has or exercises any discretionary authority or control with respect to the investment of the Fund assets involved in the transaction, or who renders investment advice, within the meaning of regulation .01B(7)(a) of this Chapter, with respect to those assets, solely by reason of providing services to the plan or solely by reason of a relationship to such a service provider, but only if in connection with such transaction the Fund receives no less, nor pays no more, than adequate consideration as defined in regulation .01A(2) of this Chapter.

(4) Upon application, the Commission may authorize other exemptions for fiduciaries or transactions.

END ALL NEW

.08 [Request for Hearing Before the Commission.

Upon notice of denial or termination of self-insurance status, a party may request a formal hearing by the Commission in accordance with COMAR 14.09.10.09.]

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Investments Authorized.

A. Conditions to Investing.

(1) Prior to engaging in an investment activity under this chapter, the Board of Trustees shall:

(a) Fully fund the actuarially calculated ultimate loss liability of the Fund; and

(b) Submit to the Commission for approval an "Annual Investment Plan" that satisfies the requirements of this regulation.

(2) The "Annual Investment Plan" submitted to the Commission shall include:

(a) A statement of investment policy and current year objectives;

(b) A complete asset allocation study;

(c) Projected investment activity for the coming year by asset allocation group; and

(d) A signed acknowledgement from any fiduciary acknowledging his or her fiduciary responsibilities and the prohibited transactions set forth in regulation .06E of this Chapter.

B. Investing of Surplus Monies in Insured and Government Obligations.

(1) The Board of Trustees may invest all surplus monies not needed to meet current obligations in:

(a) Investments authorized by State Finance and Procurement Article, §6-222, Annotated Code of Maryland;

(b) United States Government Bonds or Treasury Notes;

(c) Investment shares accounts in any savings and loan association whose deposits are insured by a federal agency; and

(d) Certificates of deposit issued by a duly chartered commercial bank.

(2) Except as provided in §B(3) of this regulation, the Board of Trustees:

(a) Shall limit deposits in savings and loan associations and commercial banks to institutions in this State; and

(b) May not deposit more than the federally insured amount in any one account.

(3) Notwithstanding §B(2) of this regulation, the Board of Trustees may deposit more than the federally insured amount in any one account if the amount does not exceed:

(a) 5 percent of the combination of surplus and undivided profits and reserves as currently reported for each bank in this State in the banking division annual report of the Financial Institution Bureau of the Department of Commerce (banking control); or

(b) \$500,000 per institution.

C. Investing of Surplus Monies in Equities.

(1) The Board of Trustees may, subject to the requirements of this chapter, invest a maximum of 30 percent of surplus monies not needed to meet current obligations in equities.

(2) Of the monies that may be invested in equities pursuant to §C(1) of this regulation, the Board of Trustees may not invest more than:

(a) 33⅓ percent, at cost, or 50 percent at market value, in any single equity fund, bond fund or ETF, including any single country, commodity or sector fund; and

(b) 5 percent, at cost, or 8 percent at market value, in any single listed equity, right, depositary receipt or convertible security.

(3) Notwithstanding the investment allocation restrictions in §C(2) of this regulation, in the case of an equity investment whose weighting is greater than 5 percent of the applicable benchmark index, the Board of Trustees may be permitted to equal-weight the equity investment at cost and hold a market value weighting not to exceed one and one-half times the equity investment's index weighting.

(4) The Board of Trustees may invest in only the following equities:

(a) Preferred stock of a solvent institution that is:

(i) Not in default of dividend, principal or interest payments on any preferred stock or debt instrument; and

(ii) Created or existing under the laws of the United States, Canada, a state, or a province of Canada.

(b) Common stock of a solvent corporation created or existing under the laws of the United States, Canada, a state, or a province of Canada that is:

(i) Not in default of dividend, principal or interest payments on any preferred stock or debt instrument;

(ii) Publicly traded on an American stock exchange; and

(iii) Subject to the rules and regulation of the SEC.

(c) Common Stock Mutual Funds and Bond Mutual Funds created by investment managers that are formed and operated under the laws of the United States, Canada, a state, or a province of Canada that are:

(i) Publicly traded and readily marketable;

(ii) Offered for purchase and redemption to the public; and

(iii) Are subject to the rules and regulation of the SEC and the existing laws and regulations of a State, province, or nation in which they reside; and

(d) An ETF that is formed and operated under the laws of the United States, Canada, a state or a province of Canada that is:

(i) Readily marketable;

(ii) Offered for purchase and redemption to the public; and

(iii) Subject to the rules and regulation of the SEC and the existing laws and regulations of a State, province, or nation in which it resides.

.09 Reporting Requirements and Corrective Action Plans.

A. The Board of Trustees shall:

(1) Submit quarterly reports regarding the status or condition of investments made pursuant to this chapter, including quarterly investment statements;

(2) Submit any additional information requested by the Commission under §B of this regulation.

B. The Commission may direct the Board of Trustees to submit to the Commission:

(1) A written explanation of its investment strategy and performance,

(2) A written proposed corrective action plan; and

(3) Any additional information concerning these investments that the Commission deems relevant.

C. The Commission may order the Board of Trustees to implement a corrective action plan, to convert its investments to the investments authorized in regulation .07B of this Chapter, and to take any other action the Commission deems necessary.

D. The Commission shall serve an order issued under §C of this regulation on the Board of Trustees by certified and regular mail.

E. If aggrieved by a decision of the Commission under this regulation, the Board of Trustees may request a hearing before the Commission in accordance with Regulation .10 of this chapter.

F. The Commission may terminate a fund from participation in the governmental group self-insurance program for failing to comply with an order of the Commission under this chapter.

.10 Request for Hearing Before the Commission and Appeals.

A. A Board of Trustees aggrieved by a decision of the Commission under this chapter may request a hearing before the Commission within 15 days of the date the decision is mailed.

(1) A hearing shall be set as soon as practicable but no sooner than 20 days after the request is received by the Commission.

(2) The Board of Trustees may:

(a) Submit a written statement, 15 copies of which shall be served on the Commission at least five days before the hearing; and

(b) Appear and present oral argument and evidence on the issues contained in the hearing notice.

(3) The Board of Trustees bears the burden of persuasion in a hearing held under §A(1) of this regulation.

(4) The Commission shall issue a decision, which shall be served on the Board of Trustees by certified mail, return receipt requested.

B. The Board of Trustees may appeal an adverse decision pursuant to Labor and Employment Article, §9-409, Annotated Code of Maryland.

END ALL NEW