



**STATE OF NEW YORK
INSURANCE DEPARTMENT**
25 BEAVER STREET
NEW YORK, NEW YORK 10004

David A. Paterson
Governor

James J. Wynn
Superintendent

OGC Op. No. 09-09-06

The Office of General Counsel issued the following opinion on September 30, 2009 representing the position of the New York State Insurance Department.

Re: N.Y. Ins. Law § 1401(b) and Regulation 114 Trusts

Question Presented:

Do the requirements set forth in New York Ins. Law § 1401(b) apply in the case of assets contained in a Regulation 114 Trust?

Conclusion:

Yes. The requirements set forth in N.Y. Ins. Law § 1401(b) apply in the case of assets contained in a Regulation 114 Trust.

Facts:

The inquirer reports that his organization manages the investments of insurance companies, including the assets held in Regulation 114 Trusts. He notes that Regulation 114 is silent as to the point in time at which the requisite rating requirement is applied with respect to assets contained in the trust and asks whether N.Y. Ins. Law § 1401(b) applies to assets held in a Regulation 114 Trust.

Analysis:

Regulation 114 governs the funding and operation of credit for reinsurance trusts. The regulation, at 11 NYCRR § 126.5(a)(2), limits the types of assets that may be contained in Regulation 114 Trusts to cash (United States legal tender), certificates of deposit, and investments of the types listed N. Y. Ins. Law § 1404 (a) (1), (2), (3), (8) and (10). N.Y. Ins. Law § 1404(a)(2)(A)(ii) in turn requires that investments in the obligations of American institutions must be rated the equivalent of "A" or higher by a securities rating agency recognized by the Superintendent in order to be acceptable. The inquirer correctly notes that nothing in Regulation 114 specifies the point in time in which the rating requirement is measured.

Article 14 of the N. Y. Insurance Law contains the rules governing investments by insurers. N.Y. Ins. Law § 1401 sets forth definitions and the rules of general application for Article 14. N.Y. Ins. Law § 1401 (b) addresses the inquirer's specific issue, providing as follows:

(b) All financial tests and other requirements for the making of any investment are satisfied if complied with on the date of acquisition by the insurer, except as otherwise permitted by this chapter or by regulation.

As is clear from the statute's language, absent any express legal or regulatory authorization to the contrary, any financial requirement (such as the rating of a given security) is measured as of the date of the acquisition of the security. Accordingly, because nothing in Regulation 114 or elsewhere in the Insurance Law specifies otherwise, any assets contributed to a Regulation 114 trust must meet any applicable statutory rating requirement as of the asset's acquisition date.

For further information you may contact Supervising Attorney Michael Campanelli at the New York City Office.