

**31A-37a-304 Securities.**

- (1)
  - (a) A special purpose financial captive insurance company may:
    - (i) subject to the prior approval of the commissioner, account for the proceeds of a surplus note issued by the special purpose financial captive insurance company as surplus; and
    - (ii) except as provided in Subsection (1)(b), submit for prior approval of the commissioner a periodic written request for authorization to make a payment of interest on or a repayment of principal of a surplus note or other debt obligation issued by the special purpose financial captive insurance company.
  - (b)
    - (i) The commissioner may not approve a payment described in Subsection (1)(a)(i) if the commissioner determines that the payment would jeopardize the ability of the special purpose financial captive insurance company or another person to fulfill its respective obligations pursuant to a special purpose financial captive insurance company insurance securitization agreement, reinsurance contract, or a related transaction.
    - (ii) In lieu of approval of a periodic written request for authorization to make a payment of interest on or repayment of principal of a surplus note or other debt obligation issued by the special purpose financial captive insurance company, the commissioner may approve a formula or plan for payment of interest, principal, or both with respect to the surplus note or debt obligation.
    - (iii) A special purpose financial captive insurance company shall include a formula or plan approved under Subsection (1)(b)(ii) in the special purpose financial captive insurance company's plan of operation.
- (2) In addition to Section 31A-37-302, a special purpose financial captive insurance company may not declare or pay a dividend or distribution if the dividend or distribution jeopardizes the ability of the special purpose financial captive insurance company or another person to fulfill the special purpose financial captive insurance company's or other person's respective obligations pursuant to a special purpose financial captive insurance company insurance securitization agreement, a reinsurance contract, or a related transaction.
- (3)
  - (a) A special purpose financial captive insurance company security is not subject to regulation as an insurance or reinsurance contract.
  - (b) An investor in a special purpose financial captive insurance company security or a holder of a special purpose financial captive insurance company security may not be considered to be transacting the business of insurance in this state solely by reason of having an interest in the security.
  - (c) The following people involved in an insurance securitization by a special purpose financial captive insurance company may not be considered to be an insurance producer or broker, or to be conducting business as an insurer, reinsurer, insurance agency, brokerage, intermediary, advisory, or consulting business solely by virtue of the person's underwriting activities in connection with the insurance securitization:
    - (i) an underwriter's placement;
    - (ii) a selling agent; or
    - (iii) a partner, commissioner, officer, member, manager, employee, agent, representative, or advisor of a person listed in Subsection (3)(c)(i) or (ii).

Enacted by Chapter 302, 2008 General Session