

§1151-A. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1999, c. 715, §8 (NEW).]

1. Acceptable collateral. "Acceptable collateral" means:

A. As to securities lending transactions, repurchase transactions and reverse repurchase transactions and for the purpose of calculating counter-party exposure amount: cash, cash equivalents, letters of credit or direct obligations of, or securities that are fully guaranteed as to principal and interest by the government of the United States, by any agency of the United States, by the Federal National Mortgage Association or by the Federal Home Loan Mortgage Corporation; and [PL 1999, c. 715, §8 (NEW).]

B. As to foreign securities lending transactions: sovereign debt rated "1" by the Securities Valuation Office of the National Association of Insurance Commissioners. [PL 1999, c. 715, §8 (NEW).]

[PL 1999, c. 715, §8 (NEW).]

2. Admitted assets. "Admitted assets" means assets recognized by the superintendent pursuant to section 901-A.

[PL 2001, c. 72, §13 (AMD).]

3. Aggregate amount of investments. "Aggregate amount of investments" means the aggregate value of those investments, as determined in accordance with statutory accounting principles pursuant to section 901-A and any rules adopted under that section, except as provided in section 1157, subsection 5.

[PL 2001, c. 72, §13 (AMD).]

4. Business entity. "Business entity" means a sole proprietorship, corporation, limited liability company, association, general or limited partnership, joint stock company, joint venture, mutual fund, bank, trust, real estate investment trust, joint tenancy or other similar form of business organization, whether organized as a for-profit or nonprofit organization.

[PL 1999, c. 715, §8 (NEW).]

5. Cap. "Cap" means an agreement obligating the seller to make payments to the buyer with each payment based on the amount by which a reference price or level or the performance or value of one or more underlying interests exceeds a predetermined number, sometimes called the "strike rate" or "strike price."

[PL 1999, c. 715, §8 (NEW).]

6. Cash equivalents. "Cash equivalents" means highly rated, highly liquid and readily marketable obligations that are readily convertible into known amounts of cash without a penalty and have a remaining term to maturity of one year or less. For purposes of this definition, "highly rated" means an investment rated "P-1" by Moody's Investors Service, Inc., "A-1" by the Standard and Poor's Division of The McGraw-Hill Companies, Inc., or an equivalent rating by a nationally recognized statistical rating organization recognized by the Securities Valuation Office of the National Association of Insurance Commissioners.

[PL 1999, c. 715, §8 (NEW).]

7. Collar. "Collar" means an agreement to receive payments as the buyer of an option, cap or floor and to make payments as the seller of a different option, cap or floor.

[PL 1999, c. 715, §8 (NEW).]

8. Counter-party. "Counter-party" means a business entity that is the other party to an investment practices transaction with an insurer or, as to a securities lending transaction, the custodian bank or agent, if any, acting on behalf of an insurer.

[PL 1999, c. 715, §8 (NEW).]

9. Counter-party exposure; counter-party exposure amount. "Counter-party exposure" or "counter-party exposure amount" means:

A. For an over-the-counter derivative instrument not entered into pursuant to a written master agreement that provides for netting of payments owed by the respective parties:

- (1) The market value of the over-the-counter derivative instrument if the liquidation of the derivative instrument would result in a final cash payment to the insurer; or
- (2) Zero if the liquidation of the derivative instrument would not result in a final cash payment to the insurer; and [PL 1999, c. 715, §8 (NEW).]

B. For an over-the-counter derivative instrument entered into pursuant to a written master agreement that provides for netting of payments owed by the respective parties, if the domiciliary jurisdiction of the counter-party is either within the United States or within a foreign jurisdiction listed as eligible for netting in the purposes and procedures manual of the Securities Valuation Office of the National Association of Insurance Commissioners or its successor publication, the greater of zero or the net sum payable to the insurer in connection with all derivative instruments subject to the written master agreement upon their liquidation in the event of default by the counter-party pursuant to the master agreement, assuming there are no conditions precedent to the obligations of the counter-party to make such a payment and no setoff of amounts payable pursuant to any other instrument or agreement. [PL 1999, c. 715, §8 (NEW).]

For purposes of this definition, "market value" or the "net sum payable" is determined at the end of the most recent quarter of the insurer's fiscal year and must be reduced by the market value of acceptable collateral held by the insurer or a custodian on the insurer's behalf.

[PL 1999, c. 715, §8 (NEW).]

10. Derivative instrument. "Derivative instrument" means any agreement, option or instrument or any series or combination of those agreements, options or instruments:

- A. To make or take delivery of, assume or relinquish a specified amount of one or more underlying interests, or to make a cash settlement in lieu thereof; or [PL 1999, c. 715, §8 (NEW).]
- B. That has a price, performance, value or cash flow based primarily upon the actual or expected price, yield, level, performance, value or cash flow of one or more underlying interests. [PL 1999, c. 715, §8 (NEW).]

For purposes of this definition, "derivative instrument" includes options, warrants not attached to another financial instrument purchased by the insurer, caps, floors, collars, swaps, forwards, futures and any other substantially similar agreements, options or instruments, or any series or combinations of those agreements, options or instruments. "Derivative instrument" does not include collateralized mortgage obligations, other asset-backed securities, principal-protected structured securities, floating rate securities or instruments in which an insurer is otherwise authorized to invest or that an insurer is otherwise authorized to receive under this chapter other than under section 1153, subsection 4, and any debt obligations of the insurer.

[PL 1999, c. 715, §8 (NEW).]

11. Derivative transaction. "Derivative transaction" means a transaction involving the use of one or more derivative instruments. For purposes of section 1153, subsection 4, dollar roll transactions, repurchase transactions, reverse repurchase transactions and securities lending transactions are not considered derivative transactions.

[PL 1999, c. 715, §8 (NEW).]

12. Dollar roll transaction. "Dollar roll transaction" means 2 simultaneous transactions with settlement dates no more than 96 days apart so that in one transaction an insurer sells to a counter-party

and in the other transaction the insurer is obligated to purchase from the same counter-party substantially similar securities of the following types:

A. Mortgage-backed securities issued, assumed or guaranteed by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation or their respective successors; and [PL 1999, c. 715, §8 (NEW).]

B. Other mortgage-backed securities referred to the Secondary Mortgage Market Enhancement Act of 1984, 15 United States Code, Section 77r-1, as amended. [PL 1999, c. 715, §8 (NEW).]
[PL 1999, c. 715, §8 (NEW).]

13. Domestic institution. "Domestic institution" means an institution created or existing under the laws of the United States or any state, district or territory.
[PL 1999, c. 715, §8 (NEW).]

14. Floor. "Floor" means an agreement obligating the seller to make payments to the buyer in which each payment is based on the amount by which a predetermined number, sometimes called the "floor rate" or "price," exceeds a reference price, level, performance or value of one or more underlying interests.
[PL 1999, c. 715, §8 (NEW).]

15. Foreign investment; foreign investment practice. "Foreign investment" or "foreign investment practice" means an investment or investment practice in a foreign jurisdiction, an investment practice with a person domiciled in a foreign jurisdiction or an investment in a person, real estate or asset domiciled in a foreign jurisdiction. An investment or investment practice is not considered a foreign investment or foreign investment practice if the issuing person, counter-party, qualified primary credit source or qualified guarantor is a domestic jurisdiction or a person domiciled in a domestic jurisdiction unless:

A. The counter-party or the issuing person is a shell business entity; and [PL 1999, c. 715, §8 (NEW).]

B. The investment or investment practice is not assumed, accepted, guaranteed, insured or otherwise backed by a domestic jurisdiction or a person that is not a shell business entity, domiciled in a domestic jurisdiction. [PL 1999, c. 715, §8 (NEW).]

For purposes of this subsection, "shell business entity" means a business entity having no economic substance, except as a vehicle for owning interests in assets issued, owned or previously owned by a person domiciled in a foreign jurisdiction; "qualified guarantor" means a guarantor against which an insurer has a direct claim for full and timely payment, evidenced by a contractual right for which an enforcement action can be brought in a domestic jurisdiction; and "qualified primary credit source" means the credit source to which an insurer looks for payment as to an investment and against which an insurer has a direct claim for full and timely payment, evidenced by a contractual right for which an enforcement action can be brought in a domestic jurisdiction.

[PL 1999, c. 715, §8 (NEW).]

16. Foreign jurisdiction. "Foreign jurisdiction" means a jurisdiction other than the United States, any state or any political subdivision of the United States or any state.
[PL 1999, c. 715, §8 (NEW).]

17. Forward. "Forward" means an agreement other than a future to make or take delivery in the future of one or more underlying interests, or effect a cash settlement based on the actual or expected price, level, performance or value of such underlying interests. "Forward" does not mean spot transactions effected within customary settlement periods, when-issued purchases or other similar cash market transactions.

[PL 1999, c. 715, §8 (NEW).]

18. Future. "Future" means an agreement traded on a futures exchange to make or take delivery of or effect a cash settlement based on the actual or expected price, level, performance or value of one or more underlying interests.

[PL 1999, c. 715, §8 (NEW).]

19. Futures exchange. "Futures exchange" means a qualified foreign exchange or an exchange, contract market or board of trade on which trading in futures is conducted that has been authorized for futures trading in the United States by the Commodities Futures Trading Commission or its successor.

[PL 1999, c. 715, §8 (NEW).]

20. Hedging transaction. "Hedging transaction" means a derivative transaction that is entered into and maintained to reduce:

A. The risk of a change in the value, yield, price, cash flow or quantity of assets or liabilities or a portfolio of assets or liabilities that an insurer has acquired or incurred or anticipates acquiring or incurring; or [PL 1999, c. 715, §8 (NEW).]

B. The currency exchange rate risk related to assets or liabilities or a portfolio of assets or liabilities that an insurer has acquired or incurred or anticipates acquiring or incurring. [PL 1999, c. 715, §8 (NEW).]

[PL 1999, c. 715, §8 (NEW).]

21. High-yield obligations. "High-yield obligations" means obligations that are neither investment grade nor medium grade obligations.

[PL 1999, c. 715, §8 (NEW).]

22. Income generation transaction. "Income generation transaction" means a derivative transaction that is entered into to generate income. A derivative transaction that is entered into as a hedging transaction or a replication or synthetic asset transaction is not considered an income generation transaction.

[PL 1999, c. 715, §8 (NEW).]

23. Institution. "Institution" means a corporation, joint-stock association, business trust, business partnership, business joint venture or any other similar entity.

[PL 1999, c. 715, §8 (NEW).]

24. Investment grade obligation. "Investment grade obligation" means an obligation that at the time of acquisition by the insurer is rated "1" or "2" by the Securities Valuation Office of the National Association of Insurance Commissioners. If not valued by the Securities Valuation Office of the National Association of Insurance Commissioners, "investment grade obligation" means an obligation that at the time of acquisition by the insurer is rated the equivalent of "1" or "2" by one of the following nationally recognized independent rating agencies: Moody's Investors Service, Inc., Standard and Poor's Division of The McGraw-Hill Companies, Inc., Fitch Investors Service, Inc. or Duff and Phelps Credit Rating Company.

[PL 1999, c. 715, §8 (NEW).]

25. Investment practices. "Investment practices" means transactions of the types described in section 1153, subsection 4 and section 1160, subsection 6.

[PL 1999, c. 715, §8 (NEW).]

26. Market value. "Market value" means the price for the security or derivative instrument obtained from a generally recognized source or the most recent quotation from such a source or, to the extent no generally recognized source exists, the price for the security or derivative instrument as determined pursuant to the terms of the instrument or in good faith by the insurer as can be reasonably demonstrated to the superintendent upon request, plus accrued but unpaid income thereon to the extent not included in the price as of the date that market value is determined.

[PL 1999, c. 715, §8 (NEW).]

27. Medium grade obligation. "Medium grade obligation" means an obligation that at the time of acquisition by the insurer is rated by the Securities Valuation Office of the National Association of Insurance Commissioners as Class "3" quality. If not valued by the Securities Valuation Office of the National Association of Insurance Commissioners, "medium grade obligation" means an obligation that at the time of acquisition by the insurer is rated the equivalent of "3" by Moody's Investors Service, Inc., Standard and Poor's Division of The McGraw-Hill Companies, Inc., Fitch Investors Service, Inc. or Duff and Phelps Credit Rating Company.

[PL 1999, c. 715, §8 (NEW).]

28. Obligation. "Obligation" means a bond, note, debenture, trust certificate including an equipment certificate, production payment, negotiable bank certificate of deposit, banker's acceptance, credit tenant loan as that term is defined in the practices and procedures manual of the National Association of Insurance Commissioners or its successor publication, loan secured by financing net leases and other evidence of indebtedness for the payment of money, or participations, certificates or other evidence of an interest in any of the foregoing, whether constituting a general obligation of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment.

[PL 1999, c. 715, §8 (NEW).]

29. Option. "Option" means an agreement giving the buyer the right to buy or receive, sell or deliver, enter into, extend or terminate or effect a cash settlement based on the actual or expected price, spread, level, performance or value of one or more underlying interests, including, without limitation, an option to purchase or sell a swap at a given price and time or at a series of prices and times.

[PL 1999, c. 715, §8 (NEW).]

30. Over-the-counter derivative instrument. "Over-the-counter derivative instrument" means a derivative instrument entered into with a counter-party other than through a qualified exchange or futures exchange or cleared through a qualified clearinghouse.

[PL 1999, c. 715, §8 (NEW).]

31. Person. "Person" means an individual, business entity, multilateral development bank or a government or quasi-governmental body, such as a political subdivision or a government-sponsored enterprise.

[PL 1999, c. 715, §8 (NEW).]

32. Potential exposure. "Potential exposure" means:

A. As to a futures position, the amount of initial margin required for that position; or [PL 1999, c. 715, §8 (NEW).]

B. As to swaps, collars and forwards, 0.5% times the notional amount times the square root of the remaining years to maturity. [PL 1999, c. 715, §8 (NEW).]

[PL 1999, c. 715, §8 (NEW).]

33. Qualified bank. "Qualified bank" means:

A. A national bank, state-chartered bank or trust company that is adequately capitalized at all times as determined by standards adopted by federal banking regulators and that either is regulated by state banking laws or is a member of the Federal Reserve System; or [PL 1999, c. 715, §8 (NEW).]

B. A bank or trust company incorporated or organized under the laws of a country other than the United States that is regulated as a bank or trust company by that country's government or an agency of that country's government and that is adequately capitalized at all times as determined by standards adopted by international banking regulators. [PL 1999, c. 715, §8 (NEW).]

[PL 1999, c. 715, §8 (NEW).]

34. Qualified broker or dealer. "Qualified broker or dealer" means a broker or dealer that is organized under the laws of a state, is registered under the United States Securities Exchange Act of 1934, 15 United States Code, Sections 78a to 78kk and has net capital in excess of \$250,000,000. [PL 1999, c. 715, §8 (NEW).]

35. Qualified business entity. "Qualified business entity" means:

A. An issuer of preferred stock or obligations that are rated "1" or "2" by the Securities Valuation Office of the National Association of Insurance Commissioners or an issuer of obligations, preferred stock or derivative instruments that are rated the equivalent of "1" or "2" by the Securities Valuation Office of the National Association of Insurance Commissioners or by a nationally recognized statistical rating organization recognized by the Securities Valuation Office of the National Association of Insurance Commissioners; or [PL 1999, c. 715, §8 (NEW).]

B. A primary dealer in United States Government securities that is recognized by the Federal Reserve Bank of New York. [PL 1999, c. 715, §8 (NEW).]
[PL 1999, c. 715, §8 (NEW).]

36. Qualified clearinghouse. "Qualified clearinghouse" means a clearinghouse subject to the rules of a qualified exchange or a futures exchange that provides clearing services, including acting as a counter-party to each of the parties to a transaction such that the parties no longer have credit risk to each other.
[PL 1999, c. 715, §8 (NEW).]

37. Qualified exchange. "Qualified exchange" means:

A. A securities exchange registered as a national securities exchange or a securities market regulated under the federal Securities Exchange Act of 1934, 15 United States Code, Section 78 et seq., as amended; [PL 1999, c. 715, §8 (NEW).]

B. A board of trade or commodities exchange designated as a contract market by the Commodity Futures Trading Commission or any successor; [PL 1999, c. 715, §8 (NEW).]

C. Any computerized or Internet-based market for private offerings, resales and trading of obligations or other securities that is maintained under the auspices of a federally regulated, self-governing securities dealers organization, registered as a securities exchange or regulated as a securities market under the federal Securities Exchange Act of 1934, 15 United States Code, Section 78 et seq., as amended; [PL 1999, c. 715, §8 (NEW).]

D. A designated offshore securities market as defined in Securities Exchange Commission Regulation S, 17 Code of Federal Regulations, Part 230, as amended; or [PL 1999, c. 715, §8 (NEW).]

E. A qualified foreign exchange. [PL 1999, c. 715, §8 (NEW).]
[PL 1999, c. 715, §8 (NEW).]

38. Qualified foreign exchange. "Qualified foreign exchange" means a foreign exchange, board of trade or contract market located outside the United States, its territories or possessions:

A. That has received regulatory comparability relief under Commodity Futures Trading Commission Rule 30.10 as set forth in Appendix C to Part 30 of the Commodity Futures Trading Commission's Regulations, 17 Code of Federal Regulations, Part 30, as amended; [PL 1999, c. 715, §8 (NEW).]

B. That is, or its members are, subject to the jurisdiction of a foreign futures authority that has received regulatory comparability relief under Commodity Futures Trading Commission Rule 30.10, as set forth in Appendix C to Part 30 of the Commodity Futures Trading Commission's Regulations, 17 Code of Federal Regulations, Part 30, as amended, as to futures transactions in the

jurisdiction where the exchange, board of trade or contract market is located; or [PL 1999, c. 715, §8 (NEW).]

C. Upon which foreign stock index futures contracts are listed that are the subject of no-action relief issued by the Commodity Futures Trading Commission's Office of General Counsel; however, an exchange, board of trade or contract market that qualifies as a "qualified foreign exchange" only under this paragraph may only be a "qualified foreign exchange" as to foreign stock index futures contracts that are the subject of no-action relief. [PL 1999, c. 715, §8 (NEW).]
[PL 1999, c. 715, §8 (NEW).]

39. Qualified for public sale. "Qualified for public sale" means registered under the United States Securities Act of 1933, 15 United States Code, Sections 77a to 77aa.
[PL 1999, c. 715, §8 (NEW).]

40. Replication or synthetic asset transaction. "Replication or synthetic asset transaction" means a derivative transaction entered into in conjunction with other permissible investments held by the insurer in order to reproduce the investment characteristics of other permissible investments. A derivative transaction entered into by the insurer as a hedging transaction or an income generation transaction is not considered a replication or synthetic asset transaction.
[PL 1999, c. 715, §8 (NEW).]

41. Repurchase transaction. "Repurchase transaction" means a transaction in which an insurer sells securities to a qualified bank or a qualified business entity or to a bank or a business entity whose obligations with respect to the transaction are guaranteed by a qualified bank or a qualified business entity and the insurer is obligated to repurchase the sold securities or equivalent securities from the bank or business entity at a specified price, either within a specified period of time or upon demand.
[PL 2021, c. 16, §11 (AMD).]

42. Reverse repurchase transaction. "Reverse repurchase transaction" means a transaction in which an insurer purchases securities from a counter-party that is obligated to repurchase the purchased securities or equivalent securities from the insurer at a specified price, either within a specified period of time or upon demand.
[PL 2021, c. 16, §12 (AMD).]

43. Securities lending transaction. "Securities lending transaction" means a transaction in which securities are loaned by an insurer to a qualified bank or a qualified business entity or a bank or a business entity whose obligations with respect to such transaction are guaranteed by a qualified bank or a qualified business entity that is obligated to return the loaned securities or equivalent securities to the insurer, either within a specified period of time or upon demand.
[PL 1999, c. 715, §8 (NEW).]

44. Subsidiary. "Subsidiary" has the meaning as prescribed in section 222, subsection 2, paragraph F. The term "subsidiary" does not include a separate account established under section 2537.
[PL 1999, c. 715, §8 (NEW).]

45. Swap. "Swap" means an agreement to exchange or to net payments at one or more times based on the actual or expected price, yield, level, performance or value of one or more underlying interests.
[PL 1999, c. 715, §8 (NEW).]

46. Underlying interest. "Underlying interest" means the assets, liabilities or other interests, or a combination of those assets, liabilities or interests, underlying a derivative instrument, such as any one or more securities, currencies, rates, indices, commodities or derivative instruments that are or relate to investments or investment practices that an insurer is permitted to acquire or engage in pursuant to this chapter.
[PL 1999, c. 715, §8 (NEW).]

47. United States. "United States" when used to signify place means those lands and waters under the jurisdiction of the United States.

[PL 1999, c. 715, §8 (NEW).]

48. Warrant. "Warrant" means an instrument that gives the holder the right to purchase or sell the underlying interest at a given price and time or at a series of prices and times outlined in the warrant agreement.

[PL 1999, c. 715, §8 (NEW).]

SECTION HISTORY

PL 1999, c. 715, §8 (NEW). PL 2001, c. 72, §13 (AMD). PL 2021, c. 16, §§11, 12 (AMD).

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