

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

HOUSE BILL 2153

AN ACT

AMENDING SECTIONS 20-157.01, 20-158, 20-481.19, 20-532, 20-536 AND 20-552, ARIZONA REVISED STATUTES; AMENDING TITLE 20, CHAPTER 3, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 20-552.01 AND 20-560; RELATING TO FINANCIAL PROVISIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 20-157.01, Arizona Revised Statutes, is amended to
3 read:

4 20-157.01. Insurer claim files; access by director; definition

5 A. Pursuant to the director's authority under sections 20-156, 20-157,
6 20-160 and 20-466, an insurer shall comply with a request to produce any
7 documents, reports or other materials, whether maintained in written or
8 electronic format, from an insurer's claim file.

9 B. Any documents, reports or other materials that are provided to the
10 director pursuant to this section are confidential and are not subject to
11 disclosure, including discovery or subpoena, unless the subpoena is issued by
12 the attorney general or a county attorney or by a court at the request of the
13 attorney general, a county attorney or any other law enforcement agency. The
14 director may only disclose the information to a state or federal agency or
15 officer pursuant to a lawful request, subpoena or formal discovery procedure.
16 If the requesting party cannot warrant confidentiality pursuant to section
17 20-158, subsection ~~F~~ I, the information that is provided pursuant to
18 discovery, subpoena or lawful request as provided for in this subsection
19 remains confidential. The director shall make reasonable efforts to notify
20 an insurer of any request for a subpoena for documents, reports or other
21 materials in an insurer claim file or record that are produced by the insurer
22 pursuant to this section so that the insurer may assert, in a court of
23 competent jurisdiction, any applicable privileges.

24 C. The director may use the documents, reports or other materials in
25 the furtherance of any regulatory action brought by the director or in
26 actions brought against the director.

27 D. For the purposes of this section, "insurer claim file" includes
28 medical records, repair estimates, adjuster notes, insurance policy
29 provisions, recordings or transcripts of witness interviews and any other
30 records regarding coverage, settlement, payment or denial of a claim asserted
31 under an insurance policy.

32 Sec. 2. Section 20-158, Arizona Revised Statutes, is amended to read:

33 20-158. Report of examinations by director; information sharing

34 A. The director shall make a full written report of each examination.
35 The director or the examiner in charge of the examination shall certify the
36 report.

37 B. The director shall provide a copy of the report to the person
38 examined not less than ten days before filing the report. If the person
39 makes a request in writing within the ten day period, the director shall
40 consider any objections the person may have to the proposed report and shall
41 not file the report until after making any amendments the director deems
42 proper.

43 C. The report, when filed, is admissible in evidence in any action or
44 proceeding brought by the director against the person examined, or its
45 officers or agents. The director or the director's examiners may at any time

1 testify and offer other proper evidence as to information secured during the
2 course of an examination, whether or not a written report of the examination
3 has at that time been either made, served or filed in the director's office.

4 D. The director may withhold from public inspection any examination or
5 investigation report for as long as the director deems prudent.

6 E. The director may disclose the nonpublic content of a report of
7 examination, a preliminary report or any other matter relating to a report to
8 the insurance department of any other state or jurisdiction, to law
9 enforcement officials of this or any other state or jurisdiction or to an
10 agency of the federal government if the agency or official receiving the
11 report or information agrees in writing to hold the information confidential.

12 F. EXCEPT AS PROVIDED IN SUBSECTIONS E AND I OF THIS SECTION,
13 DOCUMENTS, MATERIALS OR OTHER INFORMATION, INCLUDING ALL WORKING PAPERS AND
14 COPIES THEREOF, CREATED, PRODUCED OR OBTAINED BY OR DISCLOSED TO THE DIRECTOR
15 OR THE DIRECTOR'S DEPUTIES, ASSISTANTS OR EXAMINERS IN THE COURSE OF AN
16 EXAMINATION OR IN THE COURSE OF ANALYSIS OF THE FINANCIAL CONDITION OR MARKET
17 CONDUCT OF AN INSURER ARE CONFIDENTIAL AND PRIVILEGED, ARE NOT SUBJECT TO
18 TITLE 39, CHAPTER 1, ARTICLE 2, ARE NOT SUBJECT TO SUBPOENA AND ARE NOT
19 SUBJECT TO DISCOVERY OR ADMISSIBLE IN EVIDENCE IN A PRIVATE CIVIL ACTION.
20 THE DIRECTOR MAY USE THE DOCUMENTS, MATERIALS OR OTHER INFORMATION IN THE
21 FURTHERANCE OF ANY REGULATORY OR LEGAL ACTION BROUGHT AS PART OF THE
22 DIRECTOR'S OFFICIAL DUTIES.

23 G. DOCUMENTS, MATERIALS OR OTHER INFORMATION, INCLUDING ALL WORKING
24 PAPERS AND COPIES THEREOF, IN THE POSSESSION OR CONTROL OF THE NATIONAL
25 ASSOCIATION OF INSURANCE COMMISSIONERS OR ITS AFFILIATES ARE CONFIDENTIAL AND
26 PRIVILEGED, ARE NOT SUBJECT TO TITLE 39, CHAPTER 1, ARTICLE 2, ARE NOT
27 SUBJECT TO SUBPOENA AND ARE NOT SUBJECT TO DISCOVERY OR ADMISSIBLE IN
28 EVIDENCE IN ANY PRIVATE CIVIL ACTION IF THE DOCUMENTS, MATERIALS OR
29 INFORMATION ARE EITHER:

30 1. CREATED, PRODUCED OR OBTAINED BY OR DISCLOSED TO THE NATIONAL
31 ASSOCIATION OF INSURANCE COMMISSIONERS OR ITS AFFILIATES IN THE COURSE OF
32 ASSISTING THE DIRECTOR IN THE EXAMINATION OR ANALYSIS OF THE FINANCIAL
33 CONDITION OR MARKET CONDUCT OF AN INSURER UNDER THIS TITLE.

34 2. DISCLOSED TO THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS OR
35 ITS AFFILIATES BY THE DIRECTOR UNDER SUBSECTION E OR I OF THIS SECTION.

36 H. THE DIRECTOR, THE DIRECTOR'S DEPUTIES, ASSISTANTS OR EXAMINERS AND
37 REPRESENTATIVES OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS OR ITS
38 AFFILIATES ARE PROHIBITED FROM TESTIFYING IN ANY PRIVATE CIVIL ACTION
39 CONCERNING DOCUMENTS, MATERIALS OR OTHER INFORMATION THAT ARE CONFIDENTIAL
40 AND PRIVILEGED PURSUANT TO SUBSECTION F OR G OF THIS SECTION.

41 ~~F.~~ I. The director may:

42 1. Share nonpublic documents, materials or other information with
43 other state, federal and international regulatory agencies, with the national
44 association of insurance commissioners and its affiliates and subsidiaries
45 and with state, federal and international law enforcement authorities if the

1 recipient agrees and warrants that it has the authority to maintain the
2 confidentiality and privileged status of the documents, materials or other
3 information.

4 2. Receive documents, materials and other information from the
5 national association of insurance commissioners and its affiliates and
6 subsidiaries and from regulatory and law enforcement officials of other
7 jurisdictions and shall maintain as confidential or privileged any document,
8 material or other information received with notice or the understanding that
9 it is confidential or privileged under the laws of the jurisdiction that is
10 the source of the document, material or other information.

11 3. Enter into agreements that govern the sharing and use of documents,
12 materials and other information and that are consistent with this section.

13 ~~G.~~ J. A disclosure to or by the director pursuant to this section or
14 as a result of sharing information pursuant to subsection ~~F~~ I OF THIS
15 SECTION is not a waiver of any applicable privilege or claim of
16 confidentiality in the documents, materials or other information disclosed or
17 shared.

18 Sec. 3. Section 20-481.19, Arizona Revised Statutes, is amended to
19 read:

20 20-481.19. Extraordinary dividend or distribution; time;
21 notice; definition; approval by director

22 A. No insurer subject to registration under section 20-481.09 shall
23 pay an extraordinary dividend or make any other extraordinary distribution to
24 its shareholders until thirty days after the director has received notice of
25 the declaration thereof and has not within such period disapproved such
26 payment, or the director shall have approved such payment. NOTICE OF THE
27 DECLARATION SHALL BE PROVIDED TO THE DIRECTOR NO MORE THAN FIVE BUSINESS DAYS
28 AFTER THE DECLARATION.

29 B. For THE purposes of this section, an extraordinary dividend or
30 distribution includes any dividend or distribution of cash or other property
31 whose fair market value together with that of other dividends or
32 distributions made within the preceding twelve months exceeds the ~~lesser~~
33 GREATER of either ten per cent of such insurer's surplus as regards
34 policyholders as of ~~the thirty first day of~~ December 31 next preceding, or
35 the net gain from operations of such insurer, if such insurer is a life
36 insurer, or the net investment income, if such insurer is not a life insurer,
37 for the twelve month period ending ~~the thirty first day of~~ December 31 next
38 preceding, but shall not include pro rata distributions of any class of the
39 insurer's own securities.

40 C. Notwithstanding any other ~~provision of~~ law to the contrary, an
41 insurer may declare an extraordinary dividend or distribution which is
42 conditional upon the approval of the director, and such a declaration shall
43 confer no rights upon shareholders until the director has either approved the
44 payment of such dividend or distribution or has not disapproved such payment
45 within thirty days after the notice of such declaration has been received.

1 Sec. 4. Section 20-532, Arizona Revised Statutes, is amended to read:
2 20-532. Eligible investments

3 A. Insurers shall invest in or loan their funds on the security of,
4 and shall hold as assets, only eligible investments as prescribed in this
5 article.

6 B. Any particular investment that was held by an insurer on January 1,
7 1955, that was a legal investment at the time it was made and that the
8 insurer was legally entitled to possess immediately before January 1, 1955 is
9 an eligible investment.

10 C. The eligibility of an investment shall be determined as of the date
11 of its making or acquisition.

12 D. Any investment limitation based on the amount of the insurer's
13 assets or particular funds shall relate to assets or funds as shown by the
14 insurer's annual statement as of the December 31 last preceding date of
15 investment **OR ON THE INSURER'S MOST RECENTLY REQUIRED STATUTORY BALANCE SHEET**
16 **FILED WITH THE DIRECTOR**, unless the accounting practices and procedures
17 manual adopted by the national association of insurance commissioners
18 prescribes the use of a ~~more-current~~ **DIFFERENT** financial statement.

19 E. Any investment shall not be disqualified solely because it is held
20 in a security depository if the director has approved the depository.

21 Sec. 5. Section 20-536, Arizona Revised Statutes, is amended to read:
22 20-536. Investments; type; limitations

23 A. Every insurer may invest and maintain invested funds in cash and in
24 the securities and investments described in this article without limitation
25 unless a limitation for the securities and investments is otherwise
26 prescribed in this article.

27 B. Except with the director's consent, an insurer shall not have
28 invested at any one time more than twenty per cent of its assets in the
29 classes of securities described in any one of the following sections of this
30 article:

31 1. Section 20-546, exclusive of common stocks of public utilities and
32 common stocks acquired under section 20-481.01.

33 2. Section 20-557.

34 3. **SECTION 20-552.**

35 C. Except with the director's consent, an insurer shall not have
36 invested at any one time more than ten per cent of its assets in the classes
37 of securities described in any one of the following sections of this article:

38 1. Section 20-548.

39 2. Section 20-547.

40 3. Section 20-543.

41 4. Section 20-555.

42 ~~5. Section 20-552.~~

1 Sec. 6. Section 20-552, Arizona Revised Statutes, is amended to read:
2 20-552. Foreign securities

3 A. An insurer may make investments in securities of or in a foreign
4 country possessing characteristics and of a quality similar to those required
5 pursuant to this article for investments in the United States.

6 B. AFTER GIVING EFFECT TO AN INVESTMENT IN SECURITIES OF OR IN A
7 FOREIGN COUNTRY, THE AGGREGATE AMOUNT OF SUCH INVESTMENTS THEN HELD BY AN
8 INSURER UNDER THIS SECTION IN A SINGLE FOREIGN JURISDICTION SHALL NOT EXCEED
9 TEN PER CENT OF THE INSURER'S ADMITTED ASSETS AS TO A FOREIGN JURISDICTION
10 THAT HAS A SOVEREIGN DEBT RATING OF SVO 1 OR THREE PER CENT OF THE INSURER'S
11 ADMITTED ASSETS AS TO ANY OTHER FOREIGN JURISDICTION. FOR THE PURPOSES OF
12 THIS SUBSECTION, "SVO" MEANS THE SECURITIES VALUATION OFFICE OF THE NATIONAL
13 ASSOCIATION OF INSURANCE COMMISSIONERS OR ANY SUCCESSOR OFFICE ESTABLISHED BY
14 THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.

15 C. FOR THE PURPOSES OF THE QUANTITATIVE LIMITATIONS SET FORTH IN THIS
16 ARTICLE, INVESTMENT IN SECURITIES OF OR IN A FOREIGN COUNTRY UNDER THIS
17 SECTION SHALL NOT INCLUDE A CANADIAN INVESTMENT UNDER SECTION 20-552.01.

18 Sec. 7. Title 20, chapter 3, article 2, Arizona Revised Statutes, is
19 amended by adding sections 20-552.01 and 20-560, to read:

20 20-552.01. Canadian investments; definition

21 A. AN INSURER MAY MAKE INVESTMENTS IN SECURITIES OF OR IN CANADA
22 POSSESSING CHARACTERISTICS AND OF A QUALITY SIMILAR TO THOSE REQUIRED
23 PURSUANT TO THIS ARTICLE FOR INVESTMENTS IN THE UNITED STATES.

24 B. SUBJECT TO SUBSECTIONS C, D AND E OF THIS SECTION, AN INSURER SHALL
25 NOT ACQUIRE, DIRECTLY OR INDIRECTLY THROUGH AN INVESTMENT SUBSIDIARY, A
26 CANADIAN INVESTMENT OTHERWISE PERMITTED UNDER THIS ARTICLE, IF AFTER GIVING
27 EFFECT TO THE INVESTMENT, THE AGGREGATE AMOUNT OF CANADIAN INVESTMENTS THEN
28 HELD BY THE INSURER WOULD EXCEED TWENTY-FIVE PER CENT OF ITS ADMITTED ASSETS.

29 C. AS TO AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN CANADA OR
30 THAT HAS OUTSTANDING INSURANCE, ANNUITY OR REINSURANCE CONTRACTS ON LIVES OR
31 RISKS RESIDENT OR LOCATED IN CANADA AND DENOMINATED IN CANADIAN CURRENCY, THE
32 LIMITATIONS OF SUBSECTION B OF THIS SECTION SHALL BE INCREASED BY THE GREATER
33 OF:

34 1. THE AMOUNT THE INSURER IS REQUIRED BY APPLICABLE CANADIAN LAW TO
35 INVEST IN CANADA OR TO BE DENOMINATED IN CANADIAN CURRENCY.

36 2. ONE HUNDRED FIFTEEN PER CENT OF THE AMOUNT OF THE INSURER'S
37 RESERVES AND OTHER OBLIGATIONS UNDER CONTRACTS ON LIVES OR RISKS RESIDENT OR
38 LOCATED IN CANADA.

39 D. AN INSURER SHALL NOT ACQUIRE AN INVESTMENT IN CANADIAN COMMON
40 STOCK, OR SHARES OF ANY SOLVENT INSTITUTION CREATED OR EXISTING UNDER THE
41 LAWS OF CANADA, ANY PROVINCE OF CANADA, OR ANY POLITICAL SUBDIVISION OF
42 CANADA OR A PROVINCE OF CANADA IF, AFTER GIVING EFFECT TO THE INVESTMENT, THE
43 AGGREGATE AMOUNT OF THE INVESTMENTS THEN HELD BY THE INSURER WOULD EXCEED
44 TWENTY PER CENT OF ITS ADMITTED ASSETS.

1 E. AN INSURER SHALL NOT ACQUIRE AN INVESTMENT IN BONDS, NOTES OR OTHER
2 EVIDENCES OF INDEBTEDNESS THAT ARE SECURED BY SECOND MORTGAGES OR DEEDS OF
3 TRUST ON IMPROVED REAL PROPERTY LOCATED IN CANADA IF, AFTER GIVING EFFECT TO
4 THE INVESTMENT, THE AGGREGATE AMOUNT OF SUCH INVESTMENTS THEN HELD BY THE
5 INSURER WOULD EXCEED TWENTY PER CENT OF ITS ADMITTED ASSETS.

6 F. FOR THE PURPOSES OF THIS SECTION, UNLESS THE CONTEXT OTHERWISE
7 REQUIRES, "INVESTMENT SUBSIDIARY" MEANS A SUBSIDIARY OF AN INSURER ENGAGED OR
8 ORGANIZED TO ENGAGE EXCLUSIVELY IN THE OWNERSHIP AND MANAGEMENT OF ASSETS
9 AUTHORIZED AS INVESTMENTS FOR THE INSURER IF EACH SUBSIDIARY AGREES TO LIMIT
10 ITS INVESTMENT IN ANY ASSET SO THAT ITS INVESTMENTS WILL NOT CAUSE THE AMOUNT
11 OF THE TOTAL INVESTMENT OF THE INSURER TO EXCEED ANY OF THE INVESTMENT
12 LIMITATIONS OR AVOID ANY OTHER PROVISIONS OF THIS ARTICLE APPLICABLE TO THE
13 INSURER. FOR THE PURPOSES OF THIS SUBSECTION, "TOTAL INVESTMENT OF THE
14 INSURER" INCLUDES:

15 1. DIRECT INVESTMENT BY THE INSURER IN AN ASSET.

16 2. THE INSURER'S PROPORTIONATE SHARE OF AN INVESTMENT IN AN ASSET BY
17 AN INVESTMENT SUBSIDIARY OF THE INSURER, WHICH SHALL BE CALCULATED BY
18 MULTIPLYING THE AMOUNT OF THE SUBSIDIARY'S INVESTMENT BY THE PERCENTAGE OF
19 THE INSURER'S OWNERSHIP INTEREST IN THE SUBSIDIARY.

20 20-560. Derivative transactions; definitions

21 A. AN INSURER, DIRECTLY OR INDIRECTLY THROUGH AN INVESTMENT
22 SUBSIDIARY, MAY USE DERIVATIVE INSTRUMENTS TO ENGAGE IN HEDGING TRANSACTIONS,
23 INCOME GENERATION TRANSACTIONS AND REPLICATION TRANSACTIONS PURSUANT TO THIS
24 SECTION.

25 B. AN INSURER MAY ENTER INTO HEDGING TRANSACTIONS IF, AFTER GIVING
26 EFFECT TO SUCH TRANSACTIONS, ALL OF THE FOLLOWING APPLY:

27 1. THE AGGREGATE STATEMENT VALUE OF OPTIONS, CAPS, FLOORS AND WARRANTS
28 NOT ATTACHED TO ANOTHER FINANCIAL INSTRUMENT PURCHASED AND USED IN HEDGING
29 TRANSACTIONS DOES NOT EXCEED SEVEN AND ONE-HALF PER CENT OF ITS ADMITTED
30 ASSETS.

31 2. THE AGGREGATE STATEMENT VALUE OF OPTIONS, CAPS AND FLOORS WRITTEN
32 IN HEDGING TRANSACTIONS DOES NOT EXCEED THREE PER CENT OF ITS ADMITTED
33 ASSETS.

34 3. THE AGGREGATE POTENTIAL EXPOSURE OF COLLARS, SWAPS, FORWARDS AND
35 FUTURES USED IN HEDGING TRANSACTIONS DOES NOT EXCEED SIX AND ONE-HALF PER
36 CENT OF ITS ADMITTED ASSETS.

37 C. AN INSURER MAY ENTER INTO THE FOLLOWING TYPES OF INCOME GENERATION
38 TRANSACTIONS IF AFTER GIVING EFFECT TO THE TRANSACTIONS THE AGGREGATE
39 STATEMENT VALUE OF THE FIXED INCOME ASSETS THAT ARE SUBJECT TO CALL OR THAT
40 GENERATE THE CASH FLOWS FOR PAYMENTS UNDER THE CAPS OR FLOORS, PLUS THE FACE
41 VALUE OF FIXED INCOME SECURITIES UNDERLYING A DERIVATIVE INSTRUMENT SUBJECT
42 TO CALL, PLUS THE AMOUNT OF THE PURCHASE OBLIGATIONS UNDER THE PUTS, DOES NOT
43 EXCEED TEN PER CENT OF ITS ADMITTED ASSETS:

44 1. SALES OF COVERED CALL OPTIONS ON NONCALLABLE FIXED INCOME
45 SECURITIES, CALLABLE FIXED INCOME SECURITIES IF THE OPTION EXPIRES BY ITS

1 TERMS BEFORE THE END OF THE NONCALLABLE PERIOD OR DERIVATIVE INSTRUMENTS
2 BASED ON FIXED INCOME SECURITIES.

3 2. SALES OF COVERED CALL OPTIONS ON EQUITY SECURITIES, IF THE INSURER
4 HOLDS IN ITS PORTFOLIO OR CAN IMMEDIATELY ACQUIRE THROUGH THE EXERCISE OF
5 OPTIONS, WARRANTS OR CONVERSION RIGHTS ALREADY OWNED, THE EQUITY SECURITIES
6 SUBJECT TO CALL DURING THE COMPLETE TERM OF THE CALL OPTION SOLD.

7 3. SALES OF COVERED PUTS ON INVESTMENTS THAT THE INSURER IS PERMITTED
8 TO ACQUIRE UNDER THIS ARTICLE, IF THE INSURER HAS ESCROWED OR ENTERED INTO A
9 CUSTODIAN AGREEMENT SEGREGATING, CASH OR CASH EQUIVALENTS WITH A MARKET VALUE
10 EQUAL TO THE AMOUNT OF ITS PURCHASE OBLIGATIONS UNDER THE PUT DURING THE
11 COMPLETE TERM OF THE PUT OPTION SOLD.

12 4. SALES OF COVERED CAPS OR FLOORS, IF THE INSURER HOLDS IN ITS
13 PORTFOLIO THE INVESTMENTS GENERATING THE CASH FLOW TO MAKE THE REQUIRED
14 PAYMENTS UNDER THE CAPS OR FLOORS DURING THE COMPLETE TERM THAT THE CAP OR
15 FLOOR IS OUTSTANDING.

16 D. AN INSURER MAY ENTER INTO REPLICATION TRANSACTIONS WITH THE PRIOR
17 WRITTEN APPROVAL OF THE DIRECTOR IF BOTH OF THE FOLLOWING APPLY:

18 1. THE INSURER WOULD OTHERWISE BE AUTHORIZED TO INVEST ITS FUNDS UNDER
19 THIS ARTICLE IN THE ASSET BEING REPLICATED.

20 2. THE ASSET BEING REPLICATED IS SUBJECT TO ALL THE PROVISIONS OF THIS
21 ARTICLE RELATING TO THE MAKING OF INVESTMENTS BY THE INSURER IN THAT TYPE OF
22 ASSET AS IF THE TRANSACTION CONSTITUTED A DIRECT INVESTMENT BY THE INSURER IN
23 THE REPLICATED ASSET.

24 E. THE DIRECTOR MAY APPROVE OF ADDITIONAL TRANSACTIONS INVOLVING THE
25 USE OF DERIVATIVE INSTRUMENTS IN EXCESS OF THE LIMITS OF SUBSECTION B OF THIS
26 SECTION OR FOR OTHER RISK MANAGEMENT PURPOSES, EXCEPT THAT REPLICATION
27 TRANSACTIONS SHALL BE PERMITTED ONLY FOR RISK MANAGEMENT PURPOSES.

28 F. EACH DERIVATIVE INSTRUMENT SHALL BE ONE OF THE FOLLOWING:

29 1. TRADED ON A QUALIFIED EXCHANGE.

30 2. ENTERED INTO WITH OR GUARANTEED BY A BUSINESS ENTITY.

31 3. ISSUED OR WRITTEN WITH THE ISSUER OF THE UNDERLYING INTEREST ON
32 WHICH THE DERIVATIVE INSTRUMENT IS BASED.

33 4. ENTERED INTO WITH A QUALIFIED FOREIGN EXCHANGE.

34 G. FOR THE PURPOSES OF THIS SECTION, UNLESS THE CONTEXT OTHERWISE
35 REQUIRES:

36 1. "BUSINESS ENTITY" INCLUDES A SOLE PROPRIETORSHIP, CORPORATION,
37 LIMITED LIABILITY COMPANY, ASSOCIATION, PARTNERSHIP, JOINT STOCK COMPANY,
38 JOINT VENTURE, MUTUAL FUND, TRUST, JOINT TENANCY OR OTHER SIMILAR FORM OF
39 BUSINESS ORGANIZATION, WHETHER ORGANIZED FOR-PROFIT OR NOT-FOR-PROFIT.

40 2. "CAP" MEANS AN AGREEMENT OBLIGATING THE SELLER TO MAKE PAYMENTS TO
41 THE BUYER, WITH EACH PAYMENT BASED ON THE AMOUNT BY WHICH A REFERENCE PRICE
42 OR LEVEL OR THE PERFORMANCE OR VALUE OF ONE OR MORE UNDERLYING INTERESTS
43 EXCEEDS A PREDETERMINED NUMBER, SOMETIMES CALLED THE STRIKE RATE OR STRIKE
44 PRICE.

- 1 3. "COLLAR" MEANS AN AGREEMENT TO RECEIVE PAYMENTS AS THE BUYER OF AN
2 OPTION, CAP OR FLOOR AND TO MAKE PAYMENTS AS THE SELLER OF A DIFFERENT
3 OPTION, CAP OR FLOOR.
- 4 4. "DERIVATIVE INSTRUMENT":
- 5 (a) MEANS AN AGREEMENT, OPTION OR INSTRUMENT OR A SERIES OR
6 COMBINATION THAT EITHER:
- 7 (i) REQUIRES A PARTY TO MAKE OR TAKE DELIVERY OF, OR ASSUME OR
8 RELINQUISH, A SPECIFIED AMOUNT OF ONE OR MORE UNDERLYING INTERESTS, OR TO
9 MAKE A CASH SETTLEMENT IN LIEU THEREOF.
- 10 (ii) HAS A PRICE, PERFORMANCE, VALUE OR CASH FLOW BASED PRIMARILY ON
11 THE ACTUAL OR EXPECTED PRICE, LEVEL, PERFORMANCE, VALUE OR CASH FLOW OF ONE
12 OR MORE UNDERLYING INTERESTS.
- 13 (b) INCLUDES OPTIONS, WARRANTS USED IN A HEDGING TRANSACTION AND NOT
14 ATTACHED TO ANOTHER FINANCIAL INSTRUMENT, CAPS, FLOORS, COLLARS, SWAPS,
15 FORWARDS, FUTURES AND ANY OTHER AGREEMENTS, OPTIONS OR INSTRUMENTS
16 SUBSTANTIALLY SIMILAR THERETO OR ANY SERIES OR COMBINATION THEREOF AND ANY
17 AGREEMENTS, OPTIONS OR INSTRUMENTS PERMITTED UNDER RULES ADOPTED TO CARRY OUT
18 THE PROVISIONS OF THIS ARTICLE.
- 19 (c) DOES NOT INCLUDE AN INVESTMENT AUTHORIZED BY SECTIONS 20-537
20 THROUGH 20-548, 20-550 THROUGH 20-558, 20-561 AND 20-562.
- 21 5. "DERIVATIVE TRANSACTION" MEANS A TRANSACTION INVOLVING THE USE OF
22 ONE OR MORE DERIVATIVE INSTRUMENTS.
- 23 6. "FLOOR" MEANS AN AGREEMENT OBLIGATING THE SELLER TO MAKE PAYMENTS
24 TO THE BUYER IN WHICH EACH PAYMENT IS BASED ON THE AMOUNT BY WHICH A
25 PREDETERMINED NUMBER EXCEEDS A REFERENCE PRICE, LEVEL, PERFORMANCE OR VALUE
26 OF ONE OR MORE UNDERLYING INTERESTS.
- 27 7. "FORWARD" MEANS AN AGREEMENT, OTHER THAN A FUTURE, TO MAKE OR TAKE
28 DELIVERY OF, OR EFFECT A CASH SETTLEMENT BASED ON THE ACTUAL OR EXPECTED
29 PRICE, LEVEL, PERFORMANCE OR VALUE OF, ONE OR MORE UNDERLYING INTERESTS.
- 30 8. "FUTURE" MEANS AN AGREEMENT, TRADED ON A QUALIFIED EXCHANGE OR
31 QUALIFIED FOREIGN EXCHANGE, TO MAKE OR TAKE DELIVERY OF, OR EFFECT A CASH
32 SETTLEMENT BASED ON THE ACTUAL OR EXPECTED PRICE, LEVEL, PERFORMANCE OR VALUE
33 OF, ONE OR MORE UNDERLYING INTERESTS.
- 34 9. "HEDGING TRANSACTION" MEANS A DERIVATIVE TRANSACTION THAT IS
35 ENTERED INTO AND MAINTAINED TO REDUCE EITHER:
- 36 (a) THE RISK OF A CHANGE IN THE VALUE, YIELD, PRICE, CASH FLOW OR
37 QUANTITY OF ASSETS OR LIABILITIES THAT THE INSURER HAS ACQUIRED OR INCURRED
38 OR ANTICIPATES ACQUIRING OR INCURRING.
- 39 (b) THE CURRENCY EXCHANGE RATE RISK OR THE DEGREE OF EXPOSURE AS TO
40 ASSETS OR LIABILITIES THAT AN INSURER HAS ACQUIRED OR INCURRED OR ANTICIPATES
41 ACQUIRING OR INCURRING.
- 42 10. "INCOME GENERATION TRANSACTION" MEANS A DERIVATIVE TRANSACTION
43 INVOLVING THE WRITING OF COVERED CALL OPTIONS, COVERED PUT OPTIONS, COVERED
44 CAPS OR COVERED FLOORS THAT IS INTENDED TO GENERATE INCOME OR ENHANCE RETURN.

1 11. "OPTION" MEANS AN AGREEMENT GIVING THE BUYER THE RIGHT TO BUY OR
2 RECEIVE, REFERRED TO AS A "CALL OPTION", TO SELL OR DELIVER, REFERRED TO AS A
3 "PUT OPTION", TO ENTER INTO, EXTEND OR TERMINATE, OR TO EFFECT A CASH
4 SETTLEMENT BASED ON THE ACTUAL OR EXPECTED PRICE, SPREAD, LEVEL, PERFORMANCE
5 OR VALUE OF ONE OR MORE UNDERLYING INTERESTS.

6 12. "QUALIFIED EXCHANGE" MEANS:

7 (a) A SECURITIES EXCHANGE REGISTERED AS A NATIONAL SECURITIES
8 EXCHANGE, OR A SECURITIES MARKET REGULATED UNDER THE SECURITIES EXCHANGE ACT
9 OF 1934, AS AMENDED.

10 (b) A BOARD OF TRADE OR COMMODITIES EXCHANGE DESIGNATED AS A CONTRACT
11 MARKET BY THE COMMODITY FUTURES TRADING COMMISSION OR ANY SUCCESSOR THEREOF.

12 (c) PRIVATE OFFERINGS, REALES AND TRADING THROUGH AUTOMATED LINKAGES.

13 (d) A DESIGNATED OFFSHORE SECURITIES MARKET AS DEFINED IN SECURITIES
14 EXCHANGE COMMISSION REGULATIONS, 17 CODE OF FEDERAL REGULATIONS PART 230, AS
15 AMENDED.

16 (e) A QUALIFIED FOREIGN EXCHANGE.

17 13. "QUALIFIED FOREIGN EXCHANGE" MEANS A FOREIGN EXCHANGE, BOARD OF
18 TRADE OR CONTRACT MARKET LOCATED OUTSIDE THE UNITED STATES OR ITS TERRITORIES
19 OR POSSESSIONS IF ONE OF THE FOLLOWING APPLIES:

20 (a) THE EXCHANGE, BOARD OF TRADE OR CONTRACT MARKET HAS RECEIVED
21 REGULATORY COMPARABILITY RELIEF UNDER COMMODITY FUTURES TRADING COMMISSION
22 RULE 30.10, AS SET FORTH IN APPENDIX C TO 17 CODE OF FEDERAL REGULATIONS
23 PART 30.

24 (b) THE EXCHANGE, BOARD OF TRADE OR CONTRACT MARKET IS, OR ITS MEMBERS
25 ARE, SUBJECT TO THE JURISDICTION OF A FOREIGN FUTURES AUTHORITY THAT HAS
26 RECEIVED REGULATORY COMPARABILITY RELIEF UNDER COMMODITY FUTURES TRADING
27 COMMISSION RULE 30.10, AS SET FORTH IN APPENDIX C TO 17 CODE OF FEDERAL
28 REGULATIONS, PART 30, AS TO FUTURES TRANSACTIONS IN THE JURISDICTION WHERE
29 THE EXCHANGE, BOARD OF TRADE OR CONTRACT MARKET IS LOCATED.

30 (c) FOREIGN STOCK INDEX FUTURES CONTRACTS ARE LISTED ON THE EXCHANGE,
31 BOARD OF TRADE OR CONTRACT MARKET AND THE CONTRACTS ARE THE SUBJECT OF
32 NO-ACTION RELIEF ISSUED BY THE COMMODITY FUTURES TRADING COMMISSION OFFICE OF
33 GENERAL COUNSEL IF THE EXCHANGE, BOARD OF TRADE OR CONTRACT MARKET THAT
34 QUALIFIES AS A QUALIFIED FOREIGN EXCHANGE UNDER THIS SUBDIVISION IS A
35 QUALIFIED FOREIGN EXCHANGE ONLY AS TO FOREIGN STOCK INDEX FUTURES CONTRACTS
36 THAT ARE THE SUBJECT OF NO-ACTION RELIEF.

37 14. "REPLICATION TRANSACTION":

38 (a) MEANS A DERIVATIVE TRANSACTION THAT IS INTENDED TO REPLICATE THE
39 PERFORMANCE OF ONE OR MORE ASSETS THAT AN INSURER IS AUTHORIZED TO ACQUIRE
40 UNDER THIS ARTICLE.

41 (b) DOES NOT INCLUDE A DERIVATIVE TRANSACTION THAT IS ENTERED INTO AS
42 A HEDGING TRANSACTION.

43 15. "SWAP" MEANS AN AGREEMENT TO EXCHANGE OR TO NET PAYMENTS AT ONE OR
44 MORE TIMES BASED ON THE ACTUAL OR EXPECTED PRICE, LEVEL, PERFORMANCE OR VALUE
45 OF ONE OR MORE UNDERLYING INTERESTS.

1 16. "UNDERLYING INTEREST" MEANS THE ASSETS, LIABILITIES, OTHER
2 INTERESTS OR A COMBINATION THEREOF UNDERLYING A DERIVATIVE INSTRUMENT,
3 INCLUDING ANY SECURITIES, CURRENCIES, RATES, INDICES, COMMODITIES OR
4 DERIVATIVE INSTRUMENTS.
5 17. "WARRANT" MEANS AN INSTRUMENT THAT GIVES THE HOLDER THE RIGHT TO
6 PURCHASE AN UNDERLYING FINANCIAL INSTRUMENT AT A GIVEN PRICE AND TIME OR AT A
7 SERIES OF PRICES AND TIMES OUTLINED IN THE WARRANT AGREEMENT. WARRANTS MAY
8 BE ISSUED ALONE OR IN CONNECTION WITH THE SALE OF OTHER SECURITIES, INCLUDING
9 AS PART OF A MERGER OR RECAPITALIZATION AGREEMENT OR TO FACILITATE
10 DIVESTITURE OF THE SECURITIES OF ANOTHER BUSINESS ENTITY.