WEST VIRGINIA CODE: §33-8-2

§33-8-2. Definitions.

The following terms are defined for purposes of this article:

(1) "Acceptable collateral" means:

(A) As to securities lending transactions and for the purpose of calculating counter party exposure amount, cash, cash equivalents, letters of credit, direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States or any agency of the United States, or by the federal national mortgage association or the federal home loan mortgage corporation, and as to lending foreign securities, sovereign debt rated 1 by the securities valuation office ("SVO") of the national association of Insurance Commissioners;

(B) As to repurchase transactions, cash, cash equivalents and direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States or an agency of the United States, or by the federal national mortgage association or the federal home loan mortgage corporation; and

(C) As to reverse repurchase transactions, cash and cash equivalents.

(2) "Acceptable private mortgage insurance" means insurance written by a private insurer protecting a mortgage lender against loss occasioned by a mortgage loan default and issued by a licensed mortgage insurance company, with an SVO 1 designation or a rating issued by a nationally recognized statistical rating organization equivalent to an SVO 1 designation, that covers losses to an eighty percent loan-to-value ratio.

(3) "Accident and sickness insurance" means protection which provides payment of benefits for covered sickness or accidental injury, excluding credit insurance, disability insurance, accidental death and dismemberment insurance and long-term care insurance.

(4) "Accident and sickness insurer" means a licensed life or sickness insurer or health service corporation whose insurance premiums and required statutory reserves for accident and sickness insurance constitute at least ninety-five percent of total premium considerations or total statutory required reserves, respectively.

(5) "Admitted assets" means assets permitted to be reported

as admitted assets on the statutory financial statement of the insurer most recently required to be filed with the commissioner, but excluding assets of separate accounts, the investments of which are not subject to the provisions of this article.

(6) "Affiliate" means, as to any person, another person that, directly or indirectly through

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one or more intermediaries, controls, is controlled by or is under common control with the person.

(7) "Asset-backed security" means a security or other instrument, excluding a mutual fund, evidencing an interest in, or the right to receive payments from, or payable from distributions on, an asset, a pool of assets or specifically divisible cash flows which are legally transferred to a trust or another special purpose bankruptcy-remote business entity, on the following conditions:

(A) The trust or other business entity is established solely for the purpose of acquiring specific types of assets or rights to cash flows, issuing securities and other instruments representing an interest in or right to receive cash flows from those assets or rights and engaging in activities required to service the assets or rights and any credit enhancement or support features held by the trust or other business entity; and

(B) The assets of the trust or other business entity consist solely of interest bearing obligations or other contractual obligations representing the right to receive payment from the cash flows from the assets or rights. However, the existence of credit enhancements, such as letters of credit or guarantees, or support features such as swap agreements, does not cause a security or other instrument to be ineligible as an asset-backed security.

(8) "Business entity" includes a sole proprietorship, corporation, limited liability company, association, partnership, joint stock company, joint venture, mutual fund, trust, joint tenancy or other similar form of business organization, whether organized for-profit or not-for-profit.

(9) "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.

(10) "Capital and surplus" means the sum of the capital and surplus of the insurer required to be shown on the statutory financial statement of the insurer most recently required to be filed with the commissioner.

(11) "Cash equivalents" means short-term, highly rated and

highly liquid investments or securities readily convertible to known amounts of cash without penalty and so near maturity that they present insignificant risk of change in value. Cash equivalents include government money market mutual funds and class one money market mutual funds. For purposes of this definition:

(A) "Short-term" means investments with a remaining term to maturity of ninety days or less; and

(B) "Highly rated" means an investment rated "P-1" by Moody's Investors Service, Inc., or

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"A-1" by Standard and Poor's division of the McGraw Hill Companies, Inc., or its equivalent rating by a nationally recognized statistical rating organization recognized by the SVO.

(12) "Class one bond mutual fund" means a mutual fund that

at all times qualifies for investment using the bond class one reserve factor under the purposes and procedures of the securities valuation office of the national association of Insurance Commissioners, or any successor publication.

(13) "Class one money market mutual fund" means a money market mutual fund that at all times qualifies for investment using the bond class one reserve factor under the purposes and procedures of the securities valuation office or any successor publication.

(14) "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.

(15) "Commercial mortgage loan" means a loan secured by a mortgage, other than a residential mortgage loan.

(16) "Construction loan" means a loan of less than three years in term, made for financing the cost of construction of a building or other improvement to real estate, that is secured by the real estate.

(17) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract (other than a commercial contract for goods or nonmanagement services), or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control will be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote or holds proxies representing ten percent or more of the voting securities of another person. This presumption may be rebutted by a showing that control does not exist in fact. The commissioner may determine, after furnishing all interested persons notice and an opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(18) "Counterparty exposure amount" means:

(A) The net amount of credit risk attributable to a derivative instrument entered into with a business entity other than through a qualified exchange, qualified foreign exchange, or cleared through a qualified clearinghouse ("over-the-counter derivative instrument"). The amount of credit risk equals:

(i) 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

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(ii) Zero if the liquidation of the derivative instrument would not result in a final cash payment to the insurer.

(B) If over-the-counter derivative instruments are entered into under a written master agreement which provides for netting of payments owed by the respective parties and the domiciliary jurisdiction of the counterparty is either within the United States or if not within the United States, within a foreign jurisdiction listed in the purposes and procedures of the securities valuation office as eligible for netting, the net amount of credit risk will be the greater of zero or the net sum of:

(i) The market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment to the insurer; and

(ii) The market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment by the insurer to the business entity.

(C) For open transactions, market value will be determined at the end of the most recent quarter of the insurer's fiscal year and will be reduced by the market value of acceptable collateral held by the insurer or placed in escrow by one or both parties.

(19) "Covered" means that an insurer owns or can immediately acquire, through the exercise of options, warrants or conversion rights already owned, the underlying interest in order to fulfill or secure its obligations under a call option, cap or floor it has written, or has set aside under a custodial or escrow agreement cash or cash equivalents with a market value equal to the amount required to fulfill its obligations under a put option it has written, in an income generation transaction.

(20) "Credit tenant loan" means a mortgage loan which is made primarily in reliance on the credit standing of a major tenant, structured with an assignment of the rental payments to the lender with real estate pledged as collateral in the form of a first lien.

(21) "Derivative instrument" means an agreement, option, instrument or a series or combination of those instruments:

(A) To make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests, or to make a cash settlement in lieu thereof; or that has a price, performance, value or cash flow based primarily upon the actual or expected price, level, performance, value or cash flow of one or more underlying interests.

(B) Derivative instruments include options, warrants used in a hedging transaction and not attached to another financial instrument, caps, floors, collars, swaps, forwards, futures and any other agreements, options or instruments substantially similar to those instruments or any series or combination thereof and any agreements, options or instruments permitted under rules adopted under section eight of this article. Derivative instruments does not

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include an investment authorized by sections eleven through seventeen, inclusive, nineteen and twenty-four through thirty, inclusive, of this article.

(22) "Derivative transaction" means a transaction involving the use of one or more derivative instruments.

(23) "Direct" or "directly", when used in connection with an obligation, means that the designated obligor is primarily liable on the instrument representing the obligation.

(24) "Dollar roll transaction" means two simultaneous transactions with different settlement dates no more than ninety-six days apart, so that in the transaction with the earlier settlement date, an insurer sells to a business entity, and in the other transaction the insurer is obligated to purchase from the same business entity substantially similar securities that are asset-backed securities issued, assumed or guaranteed by the government national mortgage association, the federal national mortgage association or the federal home loan mortgage corporation or their respective successors.

(25) "Domestic jurisdiction" means the United States, Canada, any state, any province of Canada or any political subdivision of any of those jurisdictions.

(26) "Equity interest" means any of the following that are

not rated credit instruments:

(A) Common stock;

(B) Preferred stock;

(C) Trust certificates;

(D) Equity investment in an investment company other than a

money market mutual fund or a class one bond mutual fund;

(E) Investment in a common trust fund of a bank regulated by a federal or state agency;

(F) An ownership interest in minerals, oil or gas, the rights to which have been separated from the underlying fee interest in the real estate where the minerals, oil or gas are located;

(G) Instruments which are mandatorily, or at the option of the issuer, convertible to equity;

(H) Limited partnership interests and those general partnership interests authorized under subdivision (4), section five of this article;

(I) Member interests in limited liability companies;

(J) Warrants or other rights to acquire equity interests that are created by the person that

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owns or would issue the equity to be acquired; or

(K) Instruments that would be rated credit instruments except for the provisions of paragraph (B), subdivision (70) of this section.

(27) "Equivalent securities" means:

(A) In a securities lending transaction, securities that are identical to the loaned securities in all features including the amount of the loaned securities, except as to certificate number if held in physical form, but if any different security will be exchanged for a loaned security by recapitalization, merger, consolidation or other corporate action, the different security shall be considered to be the loaned security;

(B) In a repurchase transaction, securities that are identical to the purchased securities in all features including the amount of the purchased securities, except as to the certificate number if held in physical form; or

(C) In a reverse repurchase transaction, securities that are identical to the sold securities in all features including the amount of the sold securities, except as to the certificate number if held in physical form.

(28) "Floor" means an agreement obligating the seller to make payments to the buyer in which each payment is based on the amount by which that a predetermined number, sometimes called the floor rate or price, exceeds a reference price, level, performance or value of one or more underlying interests.

(29) "Foreign currency" means a currency other than that of a domestic jurisdiction.

(30) "Foreign investment" means an investment in a foreign jurisdiction, or an investment in a person, real estate or asset domiciled in a foreign jurisdiction, that is substantially of the same type as those eligible for investment under this article, other than under sections seventeen and thirty of this article. An investment will not be considered to be foreign if the issuing person, qualified primary credit source or qualified guarantor is a domestic jurisdiction or a person domiciled in a domestic jurisdiction, unless:

(A) The issuing person is a shell business entity; and

(B) The investment is not assumed, accepted, guaranteed or

insured or otherwise backed by a domestic jurisdiction or a person, that is not a shell business entity, domiciled in a domestic jurisdiction.

(C) For purposes of this definition:

(i) "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

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domiciled in a foreign jurisdiction;

(ii) "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

(iii) "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.

(31) "Foreign jurisdiction" means a jurisdiction other than a domestic jurisdiction.

(32) "Forward" means an agreement (other than a future) 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.

(33) "Future" means an agreement, traded on a qualified exchange or qualified foreign 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.

(34) "Government money market mutual fund" means a money market mutual fund that at all times:

(A) Invests only in obligations issued, guaranteed or insured by the federal government of the United States or collateralized repurchase agreements composed of these obligations; and

(B) Qualifies for investment without a reserve under the purposes and procedures of the securities valuation office or any successor publication.

(35) "Government-sponsored enterprise" means a:

(A) Governmental agency; or

(B) Corporation, limited liability company, association, partnership, joint stock company, joint venture, trust or other entity or instrumentality organized under the laws of any domestic jurisdiction to accomplish a public policy or other governmental purpose.

(36) "Guaranteed or insured", when used in connection with

an obligation acquired under this article, means that the guarantor or insurer has agreed to:

(A) Perform or insure the obligation of the obligor or purchase the obligation; or

(B) Be unconditionally obligated until the obligation is repaid to maintain in the obligor a

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minimum net worth, fixed charge coverage, stockholders' equity or sufficient liquidity to enable the obligor to pay the obligation in full.

(37) "Hedging transaction" means a derivative transaction which 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 which the insurer has acquired or incurred or anticipates acquiring or incurring; or

(B) The currency exchange rate risk or the degree of exposure as to assets or liabilities which an insurer has acquired or incurred or anticipates acquiring or incurring.

(38) "High grade investment" means a rated credit instrument rated 1 or 2 by the SVO.

(39) "Income" means, as to a security, interest, accrual of discount, dividends or other distributions, such as rights, tax or assessment credits, warrants and distributions in kind.

(40) "Income generation transaction" means a derivative transaction involving the writing of covered call options, covered put options, covered caps or covered floors that is intended to generate income or enhance return.

(41) "Initial margin" means the amount of cash, securities or other consideration initially required to be deposited to establish a futures position.

(42) "Insurance future" means a future relating to an index or pool that is based on insurance-related items.

(43) "Insurance futures option" means an option on an insurance future.

(44) "Investment company" means an investment company as defined in Section 3(a) of the Investment Company Act of 1940, as amended, and a person described in Section 3(c) of that act.

(45) "Investment company series" means an investment portfolio of an investment company that is organized as a series company and to which assets of the investment company have been specifically allocated.

(46) "Investment practices" means transactions of the types described in sections sixteen, eighteen, twenty-nine or thirty-one of this article.

(47) "Investment subsidiary" means a subsidiary of an insurer engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer if each subsidiary agrees to limit its investment in any asset so that its investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations or avoid any other provisions of this article applicable to the insurer. As used in this subdivision, the total investment of the insurer shall include:

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(A) Direct investment by the insurer in an asset; and

(B) The insurer's proportionate share of an investment in an asset by an investment subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership interest in the subsidiary.

(48) "Investment strategy" means the techniques and methods used by an insurer to meet its investment objectives, such as active bond portfolio management, passive bond portfolio management, interest rate anticipation, growth investing and value investing.

(49) "Letter of credit" means a clean, irrevocable and unconditional letter of credit issued or confirmed by, and payable and presentable at, a financial institution on the list of financial institutions meeting the standards for issuing letters of credit under the purposes and procedures of the securities valuation office or any successor publication. To constitute acceptable collateral for the purposes of sections sixteen and twenty-nine of this article, a letter of credit must have an expiration date beyond the term of the subject transaction.

(50) "Limited liability company" means a business organization, excluding partnerships and ordinary business corporations, organized or operating under the laws of the United States or any state thereof that limits the personal liability of investors to the equity investment of the investor in the business entity.

(51) "Lower grade investment" means a rated credit instrument rated 4, 5 or 6 by the SVO.

(52) "Market value" means:

(A) As to cash and letters of credit, the amounts of the cash and letters of credit; and

(B) As to a security as of any date, the price for the security on that date 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 as determined in good faith by the parties to a transaction, plus accrued but unpaid income on the security to the extent not included in the price as of that date.

(53) "Medium grade investment" means a rated credit instrument rated 3 by the SVO.

(54) "Money market mutual fund" means a mutual fund that meets the conditions of 17 code of federal regulations par. 270.2a-7, under the Investment Company Act of 1940, as amended or renumbered.

(55) "Mortgage loan" means an obligation secured by a mortgage, deed of trust, trust deed or other consensual lien on real estate.

(56) "Multilateral development bank" means an international development organization of which the United States is a member.

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(57) "Mutual fund" means an investment company or, in the case of an investment company that is organized as a series company, an investment company series that, in either case, is registered with the United States securities and exchange commission under the Investment Company Act of 1940, as amended.

(58) "NAIC" means the national association of Insurance Commissioners.

(59) "Obligation" means a bond, note, debenture, trust certificate including an equipment certificate, production payment, negotiable bank certificate of deposit, bankers' acceptance, credit tenant loan, loan secured by financing net leases and other evidence of indebtedness for the payment of money (or participations, certificates or other evidences 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.

(60) "Option" means an agreement giving the buyer the right to buy or receive (a "call option"), sell or deliver (a "put option"), enter into, extend or terminate or effect a cash settlement based on the actual or expected price, level, performance or value of one or more underlying interests.

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

(62) "Potential exposure" means the amount determined in accordance with the NAIC annual statement instructions.

(63) "Preferred stock" means preferred, preference or guaranteed stock of a business entity authorized to issue the stock, that has a preference in liquidation over the common stock of the business entity.

(64) "Qualified bank" means:

(A) A national bank, state bank or trust company that at all times is no less than adequately capitalized as determined by standards adopted by United States banking regulators and that is either regulated by state banking laws or is a member of the federal reserve system; or

(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 the government and that at all times is no less than adequately capitalized as determined by the standards adopted by international banking authorities.

(65) "Qualified business entity" means a business entity that is:

(A) An issuer of obligations or preferred stock that are rated 1 or 2 by the SVO or an issuer of obligations, preferred stock or derivative instruments that are rated the equivalent of 1 or

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2 by the SVO or by a nationally recognized statistical rating organization recognized by the SVO; or

(B) A primary dealer in United States government securities, recognized by the Federal Reserve Bank of New York.

(66) "Qualified clearinghouse" means a clearinghouse for, and subject to the rules of, a qualified exchange or a qualified foreign exchange, which provides clearing services, including acting as a counterparty to each of the parties to a transaction so that the parties no longer have credit risk as to each other.

(67) "Qualified exchange" means:

(A) A securities exchange registered as a national securities exchange, or a securities market regulated under the Securities Exchange Act of 1934, as amended;

(B) A board of trade or commodities exchange designated as a contract market by the commodity futures trading commission or any successor thereof;

(C) Private offerings, resales and trading through automated linkages (PORTAL);

(D) A designated offshore securities market as defined in securities exchange commission regulation S, 17 C.F.R. part 230, as amended; or

(E) A qualified foreign exchange.

(68) "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 (CFTC) rule 30.10 (as set forth in appendix C to part 30 of the CFTC's regulations, 17 C.F.R. part 30);

(B) That is, or its members are, subject to the jurisdiction of a foreign futures authority that has received regulatory comparability relief under CFTC rule 30.10 (as set forth in appendix C to part 30 of the CFTC's regulations, 17 C.F.R. part 30) as to futures transactions in the jurisdiction where the exchange, board of trade or contract market is located; or

(C) Upon which foreign stock index futures contracts are listed that are the subject of no-action relief issued by the CFTC's office of general counsel, provided that an exchange, board of trade or contract market that qualifies as a "qualified foreign exchange" only under this subdivision shall only be a "qualified foreign exchange" as to foreign stock index futures contracts that are the subject of no-action relief.

(69) "Rated credit instrument" means:

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(A) A contractual right to receive cash or another rated credit instrument from another entity which:

(i) Is rated or required to be rated by the SVO;

(ii) In the case of an instrument with a maturity of three hundred ninety-seven days or less, is issued, guaranteed or insured by an entity that is rated by, or another obligation of the entity is rated by, the SVO or by a nationally recognized statistical rating organization recognized by the SVO;

(iii) In the case of an instrument with a maturity of ninety days or less, is issued by a qualified bank;

(iv) Is a share of a class one bond mutual fund; or

(v) Is a share of a money market mutual fund.

(B) However, "rated credit instrument" does not mean:

(i) An instrument that is mandatorily, or at the option of the issuer, convertible to an equity interest; or

(ii) A security that has a par value and whose terms provide that the issuer's net obligation to repay all or part of the security's par value is determined by reference to the performance of an equity, a commodity, a foreign currency or an index of equities, commodities, foreign currencies or combinations thereof.

(70) "Real estate" means:

(A) Real property, including: Interests in real property, such as leaseholds, minerals and oil and gas that have not been separated from the underlying fee interest; improvements and fixtures located on or in real property; and the seller's equity in a contract providing for a deed of real estate.

(B) As to a mortgage on a leasehold estate, real estate shall include the leasehold estate only if it has an unexpired term (including renewal options exercisable at the option of the lessee) extending beyond the scheduled maturity date of the obligation that is secured by a mortgage on the leasehold estate by a period equal to at least twenty percent of the original term of the obligation or ten years, whichever is greater.

(71) "Replication transaction" means a derivative transaction that is intended to replicate the performance of one or more assets that an insurer is authorized to acquire under this article. A derivative transaction that is entered into as a hedging transaction will not be considered a replication transaction.

(72) "Repurchase transaction" means a transaction in which an insurer purchases securities

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from a business entity 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.

(73) "Required liabilities" means total liabilities required to be reported on the statutory financial statement of the insurer most recently required to be filed with the commissioner.

(74) "Residential mortgage loan" means a loan primarily secured by a mortgage on real estate improved with a one-to-four family residence.

(75) "Reverse repurchase transaction" means a transaction in which an insurer sells securities to a business entity and is obligated to repurchase the sold securities or equivalent securities from the business entity at a specified price, either within a specified period of time or upon demand.

(76) "Secured location" means the contiguous real estate owned by one person.

(77) "Securities lending transaction" means a transaction in which securities are loaned by an insurer to a 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.

(78) "Series company" means an investment company that is organized as a series company, as defined in rule 18f-2(a) adopted under the Investment Company Act of 1940, as amended.

(79) "Sinking fund stock" means preferred stock that:

(A) Is subject to a mandatory sinking fund or similar arrangement that will provide for the redemption (or open market purchase) of the entire issue over a period not longer than forty years from the date of acquisition; and

(B) Provides for mandatory sinking fund installments (or open market purchases) commencing not more than ten and one-half years from the date of issue, with the sinking fund installments providing for the purchase or redemption, on a cumulative basis commencing ten years from the date of issue, of at least two and one-half percent per year of the original number of shares of that issue of preferred stock.

(80) "Special rated credit instrument" means a rated credit instrument that is:

(A) An instrument that is structured so that, if it is held until retired by or on behalf of the issuer, its rate of return, based on its purchase cost and any cash flow stream possible under the structure of the transaction, may become negative due to reasons other than the credit risk associated with the issuer of the instrument; however, a rated credit instrument will not be a special rated credit instrument under this subdivision if it is:

(i) A share in a class one bond mutual fund;

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(ii) An instrument, other than an asset-backed security, with payments of par value fixed as to amount and timing, or callable but in any event payable only at par or greater, and interest or dividend cash flows that are based on either a fixed or variable rate determined by reference to a specified rate or index;

(iii) An instrument, other than an asset-backed security, that has a par value and is purchased at a price no greater than one hundred ten percent of par;

(iv) An instrument, including an asset-backed security, whose rate of return would become negative only as a result of a prepayment due to casualty, condemnation or economic obsolescence of collateral or change of law;

(v) An asset-backed security that relies on collateral that meets the requirements of subparagraph (ii) of this paragraph, the par value of which collateral:

(I) Is not permitted to be paid sooner than one half of the remaining term to maturity from the date of acquisition;

(II) Is permitted to be paid prior to maturity only at a premium sufficient to provide a yield to maturity for the investment, considering the amount prepaid and reinvestment rates at the time of early repayment, at least equal to the yield to maturity of the initial investment; or

(III) Is permitted to be paid prior to maturity at a premium at least equal to the yield of a treasury issue of comparable remaining life; or

(vi) An asset-backed security that relies on cash flows from assets that are not prepayable at any time at par, but is not otherwise governed by subparagraph (v) of this paragraph, if the asset-backed security has a par value reflecting principal payments to be received if held until retired by or on behalf of the issuer and is purchased at a price no greater than one hundred five percent of such par amount.

(B) An asset-backed security that:

(i) Relies on cash flows from assets that are prepayable at par at any time;

(ii) Does not make payments of par that are fixed as to amount and timing; and

(iii) Has a negative rate of return at the time of acquisition if a prepayment threshold assumption is used with the prepayment threshold assumption defined as either:

(I) Two times the prepayment expectation reported by a recognized, publicly available source as being the median of expectations contributed by broker dealers or other entities, except insurers, engaged in the business of selling or evaluating the securities or assets. The prepayment expectation used in this calculation shall be, at the insurer's election, the prepayment expectation for pass-through securities of the federal national mortgage association, the federal home loan mortgage corporation, the government national mortgage

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association or for other assets of the same type as the assets that underlie the asset-backed security, in either case with a gross weighted average coupon comparable to the gross weighted average coupon of the assets that underlie the asset-backed security; or

(II) Another prepayment threshold assumption specified by the commissioner by rule promulgated under section eight of this article.

(C) For purposes of paragraph (B) of this subdivision, if the asset-backed security is purchased in combination with one or more other asset-backed securities that are supported by identical underlying collateral, the insurer shall calculate the rate of return for these specific combined asset-backed securities in combination. The insurer must maintain documentation demonstrating that the securities were acquired and are continuing to be held in combination.

(81) "State" means a state, territory or possession of the United States of America, the District of Columbia or the Commonwealth of Puerto Rico.

(82) "Substantially similar securities" means securities that meet all criteria for substantially similar specified in the NAIC accounting practices and procedures manual, as amended, and in an amount that constitutes good delivery form as determined from time to time by the public securities administration.

(83) "SVO" means the securities valuation office of the NAIC or any successor office established by the NAIC.

(84) "Swap" means an agreement to exchange or to net payments at one or more times based on the actual or expected price, level, performance or value of one or more underlying interests.

(85) "Underlying interest" means the assets, liabilities, other interests or a combination thereof underlying a derivative instrument, such as any one or more securities, currencies, rates, indices, commodities or derivative instruments.

(86) "Unrestricted surplus" means the amount by which total admitted assets exceed one hundred twenty-five percent of the insurer's required liabilities.

(87) "Warrant" means an instrument that gives the holder the right to purchase an underlying financial instrument at a given price and time or at a series of prices and times outlined in the warrant agreement. Warrants may be issued alone or in connection with the sale of other securities, for example, as part of a merger or recapitalization agreement, or to facilitate divestiture of the securities of another business entity.

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