WEST VIRGINIA CODE CHAPTER 33 ARTICLE 8

WV Legislature

§33-8-1. Purpose and scope.

(a) The purpose of this article is to protect the interests

of insureds by promoting insurer solvency and financial strength. This will be accomplished through the application of investment standards that facilitate a reasonable balance of the following objectives:

(1) To preserve principal;

(2) To assure reasonable diversification as to type of investment, issuer and credit quality; and

(3) To allow insurers to allocate investments in a manner consistent with principles of prudent investment management to achieve an adequate return so that obligations to insureds are adequately met and financial strength is sufficient to cover reasonably foreseeable contingencies.

(b) This article applies only to investments and investment practices of domestic insurers and United States branches of alien insurers entered through this state. This article does not apply to separate accounts of an insurer except as provided in article thirteen-a of this chapter.

(c) This recodification of former article eight preserves and continues prior limitations contained in section 106(a)(1) or (2) of the Secondary Mortgage Market Enhancement Act of 1984 ("SMMEA"), an act of the Congress of the United States adopted by the acts of the Legislature in 1991 albeit under separate sections of the same article. Pursuant to section 106(b) of SMMEA, this section prohibits domestic insurers from exercising the investment authority granted any person, trust, corporation, partnership, association, business trust or business entity pursuant to section 106(a)(1) or (2) of that act.

WV Legislature

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

WV Legislature

(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 "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.

WV Legislature

(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

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

WV Legislature

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

WV Legislature

(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 owns or would issue the equity to be acquired; or

(K) Instruments that would be rated credit instruments except for the provisions of

WV Legislature

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 domiciled in a foreign jurisdiction;

(ii) "Qualified guarantor" means a guarantor against which an insurer has a direct claim for

www.legislature

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

WV Legislature

(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:

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

WV Legislature

(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.

(57) "Mutual fund" means an investment company or, in the case of an investment company

WV Legislature

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

WV Legislature

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:

WV Legislature

(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

WV Legislature

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;

WV Legislature

(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

WV Legislature

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.

WV Legislature

§33-8-3. General investment qualifications.

(a) Insurers shall acquire, hold or invest in investments or engage in investment practices as set forth in this article. Investments not conforming to this article will not be admitted assets.

(b) Subject to subsection (c) of this section, an insurer may not acquire or hold an investment as an admitted asset unless at the time of acquisition it is:

(1) Eligible for the payment or accrual of interest or discount (whether in cash or other securities), eligible to receive dividends or other distributions or is otherwise income producing; or

(2) Acquired under subsection (c), section fifteen of this article; sections sixteen, eighteen or twenty of this article; subsection (c), section twenty-eight of this article; sections twenty-nine, thirty-one or thirty-two of this article; or under the authority of sections of the code other than this article.

(c) An insurer may acquire or hold as admitted assets investments that do not otherwise qualify as provided in this article if the insurer has not acquired them for the purpose of circumventing any limitations contained in this article, if the insurer acquires the investments in the following circumstances and the insurer complies with the provisions of sections five and seven of this article as to the investments:

(1) As payment on account of existing indebtedness or in connection with the refinancing, restructuring or workout of existing indebtedness, if taken to protect the insurer's interest in that investment;

(2) As realization on collateral for an obligation;

(3) In connection with an otherwise qualified investment or investment practice, as interest on or a dividend or other distribution related to the investment or investment practice or in connection with the refinancing of the investment, in each case for no additional or only nominal consideration;

(4) Under a lawful and bona fide agreement of recapitalization or voluntary or involuntary reorganization in connection with an investment held by the insurer; or

(5) Under a bulk reinsurance, merger or consolidation transaction approved by the commissioner if the assets constitute admissible investments for the ceding, merged or consolidated companies.

(d) An investment or portion of an investment acquired by an insurer under subsection (c) of this section shall become a nonadmitted asset three years (or five years in the case of mortgage loans and real estate) from the date of its acquisition, unless within that period the investment has become a qualified investment under a section of this article other than

WV Legislature

subsection (c) of this section, but an investment acquired under an agreement of bulk reinsurance, merger or consolidation may be qualified for a longer period if so provided in the plan for reinsurance, merger or consolidation as approved by the commissioner. Upon application by the insurer and a showing that the nonadmission of an asset held under said subsection would materially injure the interests of the insurer, the commissioner may extend the period for admissibility for an additional reasonable period of time.

(e) Except as provided in subsections (f) and (h) of this section, an investment shall qualify under this article if, on the date the insurer committed to acquire the investment or on the date of its acquisition, it would have qualified under this article. For the purposes of determining limitations contained in this article, an insurer shall give appropriate recognition to any commitments to acquire investments.

(f) Investments held and investment transactions entered into before the effective date of this article are valid as follows:

(1) An investment held as an admitted asset by an insurer on the effective date of this article which qualified under applicable law in effect before the effective date remains qualified as an admitted asset under this article; and

(2) Each specific transaction constituting an investment practice of the type described in this article that was lawfully entered into by an insurer and was in effect on the effective date of this article continues to be permitted under this article until its expiration or termination under its terms;

(g) Unless otherwise specified, an investment limitation computed on the basis of an insurer's admitted assets or capital and surplus relates to the amount required to be shown on the statutory balance sheet of the insurer most recently required to be filed with the commissioner. For purposes of computing any limitation based upon admitted assets, the insurer shall deduct from the amount of its admitted assets the amount of the liability recorded on its statutory balance sheet for:

(1) The return of acceptable collateral received in a reverse repurchase transaction or a securities lending transaction;

(2) Cash received in a dollar roll transaction; and

(3) The amount reported as borrowed money in the most recently filed financial statement to the extent not included in subdivisions (1) and (2) of this subsection.

(h) An investment qualified, in whole or in part, for acquisition or holding as an admitted asset may be qualified or requalified at the time of acquisition or a later date, in whole or in part, under any other section, if the relevant conditions contained in the other section are satisfied at the time of qualification or requalification.

(i) An insurer shall maintain documentation demonstrating that investments were acquired

WV Legislature

in accordance with this article, and specifying the section of this article under which they were acquired.

(j) An insurer may not enter into an agreement to purchase securities in advance of their issuance for resale to the public as part of a distribution of the securities by the issuer or otherwise guarantee the distribution, except that an insurer may acquire privately placed securities with registration rights.

(k) Notwithstanding the provisions of this article, the commissioner, for good cause, may order under the state's administrative procedures or equivalent, an insurer to nonadmit, limit, dispose of, withdraw from or discontinue an investment or investment practice. The authority of the commissioner under this subsection is in addition to any other authority of the commissioner.

(l) Insurance futures and insurance futures options are not considered investments or investment practices for purposes of this article.

WV Legislature

§33-8-4. Authorization of investments by the board of directors.

(a) An insurer's board of directors shall adopt a written plan for acquiring and holding investments and for engaging in investment practices that specifies guidelines as to the quality, maturity and diversification of investments and other specifications including investment strategies intended to assure that the investments and investment practices are appropriate for the business conducted by the insurer, its liquidity needs and its capital and surplus. The board shall review and assess the insurer's technical investment and administrative capabilities and expertise before adopting a written plan concerning an investment strategy or investment practice.

(b) Investments acquired and held under this article shall be acquired and held under the supervision and direction of the board of directors of the insurer. The board of directors shall evidence by formal resolution, at least annually, that it has determined whether all investments have been made in accordance with delegations, standards, limitations and investment objectives prescribed by the board or a committee of the board charged with the responsibility to direct its investments.

(c) On no less than a quarterly basis, and more often if considered appropriate, an insurer's board of directors or committee of the board of directors shall:

(1) Receive and review a summary report on the insurer's investment portfolio, its investment activities and investment practices engaged in under delegated authority, in order to determine whether the investment activity of the insurer is consistent with its written plan; and

(2) Review and revise, as appropriate, the written plan.

(d) In discharging its duties under this section, the board of directors shall require that records of any authorizations or approvals, other documentation as the board may require and reports of any action taken under authority delegated under the plan referred to in subsection (a) of this section shall be made available on a regular basis to the board of directors.

(e) In discharging their duties under this section, the directors of an insurer shall perform their duties in good faith and with that degree of care that ordinarily prudent individuals in like positions would use under similar circumstances.

(f) If an insurer does not have a board of directors, all references to the board of directors in this article shall be considered to be references to the governing body of the insurer having authority equivalent to that of a board of directors.

WV Legislature

§33-8-5. Prohibited investments.

An insurer may not, directly or indirectly:

(a) Invest in an obligation or security or make a guarantee for the benefit of or in favor of an officer or director of the insurer, except as provided in section six of this article;

(b) Invest in an obligation or security, make a guarantee for the benefit of or in favor of, or make other investments in a business entity of which ten percent or more of the voting securities or equity interests are owned directly or indirectly by or for the benefit of one or more officers or directors of the insurer, except as authorized in article twenty-seven of this chapter or provided in section six of this article;

(c) Engage on its own behalf or through one or more affiliates in a transaction or series of transactions designed to evade the prohibitions of this article;

(d) Invest in a partnership as a general partner, except that an insurer may make an investment as a general partner:

(1) If all other partners in the partnership are subsidiaries of the insurer;

(2) For the purpose of meeting cash calls committed to prior to the effective date of this article, completing those specific projects or activities of the partnership in which the insurer was a general partner as of the effective date of this article that had been undertaken as of that date, or making capital improvements to property owned by the partnership on the effective date of this article if the insurer was a general partner as of that date; or

(3) In accordance with subsection (c), section three of this article, this paragraph does not prohibit a subsidiary or other affiliate of the insurer from becoming a general partner; or

(e) Invest in or lend its funds upon the security of shares of its own stock, except that an insurer may acquire shares of its own stock for the following purposes, but the shares may not be admitted assets of the insurer:

(1) Conversion of a stock insurer into a mutual or reciprocal insurer or a mutual or reciprocal insurer into a stock insurer;

(2) Issuance to the insurer's officers, employees or agents in connection with a plan approved by the commissioner for converting a publicly held insurer into a privately held insurer or in connection with other stock option and employee benefit plans; or

(3) In accordance with any other plan approved by the commissioner.

WV Legislature

§33-8-6. Loans to officers and directors.

(a) Except as provided in subsection (b) of this section, an insurer may not, without the prior written approval of the commissioner, directly or indirectly:

(1) Make a loan to or other investment in an officer or director of the insurer or a person in which the officer or director has any direct or indirect financial interest;

(2) Make a guarantee for the benefit of or in favor of an officer or director of the insurer or a person in which the officer or director has any direct or indirect financial interest; or

(3) Enter into an agreement for the purchase or sale of property from or to an officer or director of the insurer or a person in which the officer or director has any direct or indirect financial interest.

(b) For purposes of this section, an officer or director may not be determined to have a financial interest by reason of an interest that is held directly or indirectly through the ownership of equity interests representing less than two percent of all outstanding equity interests issued by a person that is a party to the transaction, or solely by reason of that individual's position as a director or officer of a person that is a party to the transaction.

(c) This subsection does not permit an investment that is prohibited by section five of this article.

(d) This subsection does not apply to a transaction between an insurer and any of its subsidiaries or affiliates that is entered into in compliance with article twenty-seven of this chapter, other than a transaction between an insurer and its officer or director.

(e) An insurer may make, without the prior written approval of the commissioner:

(1) Policy loans in accordance with the terms of the policy or contract and section nineteen of this article;

(2) Advances to officers or directors for expenses reasonably expected to be incurred in the ordinary course of the insurer's business or guarantees associated with credit or charge cards issued or credit extended for the purpose of financing these expenses;

(3) Loans secured by the principal residence of an existing or new officer of the insurer made in connection with the officer's relocation at the insurer's request, if the loans comply with the requirements of section fifteen or twenty-eight of this article and the terms and conditions otherwise are the same as those generally available from unaffiliated third parties;

(4) Secured loans to an existing or new officer of the insurer made in connection with the officer's relocation at the insurer's request, if the loans:

wv Legislature

(A) Do not have a term exceeding two years;

(B) Are required to finance mortgage loans outstanding at the same time on the prior and new residences of the officer;

(C) Do not exceed an amount equal to the equity of the officer in the prior residence; and

(D) Are required to be fully repaid upon the earlier of the end of the two-year period or the sale of the prior residence; and

(5) Loans and advances to officers or directors made in compliance with state or federal law specifically related to the loans and advances by a regulated noninsurance subsidiary or affiliate of the insurer in the ordinary course of business and on terms no more favorable than available to other customers of the entity.

WV Legislature

§33-8-7. Valuation of investments.

For the purposes of this article, the value or amount of an investment acquired or held, or an investment practice engaged in, under this article, unless otherwise specified in this code, is the value at which assets of an insurer are required to be reported for statutory accounting purposes as determined in accordance with procedures prescribed in published accounting and valuation standards of the NAIC, including the purposes and procedures of the securities valuation office, the valuation of securities manual, the accounting practices and procedures manual, the annual statement instructions or any successor valuation procedures officially adopted by the NAIC.

WV Legislature

§33-8-8. Rules.

The commissioner may, in accordance with article one, chapter twenty-nine-a of this code, promulgate rules implementing the provisions of this article.

WV Legislature

§33-8-9. Life and health insurers - Applicability.

Sections ten through twenty, inclusive, of this article apply to the investments and investment practices of life and health insurers, subject to the provisions of subsection (b), section one of this article.

WV Legislature

§33-8-10. Same - General three percent diversification, medium and lower grade investments and Canadian investments.

(a) Except as otherwise specified in this article, an insurer may not acquire, directly or indirectly through an investment subsidiary, an investment under this article if, as a result of and after giving effect to the investment, the insurer would hold more than three percent of its admitted assets in investments of all kinds issued, assumed, accepted, insured or guaranteed by a single person, or five percent of its admitted assets in investments in the voting securities of a depository institution or any company that controls the institution.

(b) This three-percent limitation does not apply to the aggregate amounts insured by a single financial guaranty insurer with the highest generic rating issued by a nationally recognized statistical rating organization.

(c) Asset-backed securities are not subject to the limitations of subsection (a) of this section, however, an insurer may not acquire an asset-backed security if, as a result of and after giving effect to the investment, the aggregate amount of asset-backed securities secured by or evidencing an interest in a single asset or single pool of assets held by a trust or other business entity, then held by the insurer would exceed three percent of its admitted assets.

(d) Medium and lower grade investments. --

An insurer may not acquire, directly or indirectly through an investment subsidiary, an investment under sections eleven, fourteen and seventeen of this article or counterparty exposure under subsection (d), section eighteen of this article if, as a result of and after giving effect to the investment:

(1) The aggregate amount of medium and lower grade investments then held by the insurer would exceed twenty percent of its admitted assets;

(2) The aggregate amount of lower grade investments then held by the insurer would exceed ten percent of its admitted assets;

(3) The aggregate amount of investments rated 5 or 6 by the SVO then held by the insurer would exceed three percent of its admitted assets;

(4) The aggregate amount of investments rated 6 by the SVO then held by the insurer would exceed one percent of its admitted assets; or

(5) The aggregate amount of medium and lower grade investments then held by the insurer that receive as cash income less than the equivalent yield for treasury issues with a comparative average life, would exceed one percent of its admitted assets.

(e) An insurer may not acquire, directly or indirectly through an investment subsidiary, an investment under sections eleven, fourteen and seventeen of this article or counterparty exposure under subsection (d), section eighteen of this article if, as a result of and after

WV Legislature

giving effect to the investment:

(1) The aggregate amount of medium and lower grade investments issued, assumed, guaranteed, accepted or insured by any one person or, as to asset-backed securities secured by or evidencing an interest in a single asset or pool of assets, then held by the insurer would exceed one percent of its admitted assets;

(2) The aggregate amount of lower grade investments issued, assumed, guaranteed, accepted or insured by any one person or, as to asset-backed securities secured by or evidencing an interest in a single asset or pool of assets, then held by the insurer would exceed one half of one percent of its admitted assets; or

(3) If an insurer attains or exceeds the limit of any one rating category referred to in this subsection, the insurer will not be precluded from acquiring investments in other rating categories subject to the specific and multicategory limits applicable to those investments.

(f) Canadian investments. --

An insurer may not acquire, directly or indirectly through an investment subsidiary, a Canadian investment authorized by this article if, as a result of and after giving effect to the investment, the aggregate amount of these investments then held by the insurer would exceed forty percent of its admitted assets, or if the aggregate amount of Canadian investments not acquired under subdivision (2), section eleven of this article then held by the insurer would exceed twenty-five percent of its admitted assets.

(g) However, as to an insurer that is authorized to do business in Canada or that has outstanding insurance, annuity or reinsurance contracts on lives or risks resident or located in Canada and denominated in Canadian currency, the limitations of subsection (f) of this section shall be increased by the greater of:

(1) The amount the insurer is required by Canadian law to invest in Canada or to be denominated in Canadian currency; or

(2) One hundred fifteen percent of the amount of its reserves and other obligations under contracts on lives or risks resident or located in Canada.

WV Legislature

§33-8-11. Same - Rated credit instruments.

(a) Subject to the limitations of subsection (b) of this section, an insurer may acquire rated credit instruments:

(1) Subject to the limitations of subsection (b), section ten of this article, but not to the limitations of subsection (a), section ten of this article, an insurer may acquire rated credit instruments issued, assumed, guaranteed or insured by:

(A) The United States; or

(B) A government-sponsored enterprise of the United States, if the instruments of the government-sponsored enterprise are assumed, guaranteed or insured by the United States or are otherwise backed or supported by the full faith and credit of the United States.

(2) Subject to the limitations of subsection (b), section ten of this article, but not to the limitations of subsection (a) of said section, an insurer may acquire rated credit instruments issued, assumed, guaranteed or insured by:

(A) Canada; or

(B) A government-sponsored enterprise of Canada, if the instruments of the government-sponsored enterprise are assumed, guaranteed or insured by Canada or are otherwise backed or supported by the full faith and credit of Canada. However, an insurer may not acquire an instrument under this subdivision if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this subdivision would exceed forty percent of its admitted assets.

(3) Subject to the limitations of subsection (b), section ten of this article, but not to the limitations of subsection (a) of said section, an insurer may acquire rated credit instruments, excluding asset-backed securities:

(A) Issued by a government money market mutual fund, a class one money market mutual fund or a class one bond mutual fund;

(B) Issued, assumed, guaranteed or insured by a government-sponsored enterprise of the United States other than those eligible under subsection (a) of this section;

(C) Issued, assumed, guaranteed or insured by a state, if the instruments are general obligations of the state; or

(D) Issued by a multilateral development bank. However, an insurer may not acquire an instrument of any one fund, any one enterprise or entity or any one state under this subdivision if, as a result of and after giving effect to the investment, the aggregate amount of investments then held in any one fund, enterprise or entity or state under this subdivision would exceed ten percent of its admitted assets.

WV Legislature

(4) Subject to the limitations of section ten of this article, an insurer may acquire preferred stocks that are not foreign investments and that meet the requirements of rated credit instruments if, as a result of and after giving effect to the investment:

(A) The aggregate amount of preferred stocks then held by the insurer under this subdivision does not exceed twenty percent of its admitted assets; and

(B) The aggregate amount of preferred stocks then held by the insurer under this subdivision which are not sinking fund stocks or rated P1 or P2 by the SVO does not exceed ten percent of its admitted assets.

(5) Subject to the limitations of section ten of this article, in addition to those investments eligible under subdivisions (1), (2), (3) and (4) of this section, an insurer may acquire rated credit instruments that are not foreign investments.

(b) An insurer may not acquire special rated credit instruments under this section if, as a result of and after giving effect to the investment, the aggregate amount of special rated credit instruments then held by the insurer would exceed five percent of its admitted assets.

WV Legislature

§33-8-12. Same - Insurer investment pools.

(a) An insurer may acquire investments in investment pools that:

(1) Invest only in:

(A) Obligations that are rated 1 or 2 by the SVO or have an equivalent of an SVO 1 or 2 rating (or, in the absence of a 1 or 2 rating or equivalent rating, the issuer has outstanding obligations with an SVO 1 or 2 or equivalent rating) by a nationally recognized statistical rating organization recognized by the SVO and have:

(i) A remaining maturity of three hundred ninety-seven days or less or a put that entitles the holder to receive the principal amount of the obligation which may be exercised through maturity at specified intervals not exceeding three hundred ninety-seven days; or

(ii) A remaining maturity of three years or less and a floating interest rate that resets no less frequently than quarterly on the basis of a current short-term index (federal funds, prime rate, treasury bills, London interbank offered rate (LIBOR) or commercial paper) and is subject to no maximum limit, if the obligations do not have an interest rate that varies inversely to market interest rate changes;

(B) Government money market mutual funds or class one money market mutual funds; or

(C) Securities lending, repurchase and reverse repurchase transactions that meet all the requirements of section sixteen of this article, except the quantitative limitations of subdivision (4), section sixteen of this article; or

(2) Invest only in investments which an insurer may acquire under this article, if the insurer's proportionate interest in the amount invested in these investments does not exceed the applicable limits of this article.

(b) For an investment in an investment pool to be qualified under this article, the investment pool may not:

(1) Acquire securities issued, assumed, guaranteed or insured by the insurer or an affiliate of the insurer;

(2) Borrow or incur any indebtedness for borrowed money, except for securities lending and reverse repurchase transactions that meet the requirements of section sixteen of this article except the quantitative limitations of subdivision (4), section sixteen of this article; or

(3) Permit the aggregate value of securities then loaned or sold to, purchased from or invested in any one business entity under this section to exceed ten percent of the total assets of the investment pool.

(c) The limitations of subsection (a), section ten of this article do not apply to an insurer's

WV Legislature

investment in an investment pool, however, an insurer may not acquire an investment in an investment pool under this section if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this section:

(1) In any one investment pool would exceed ten percent of its admitted assets;

(2) In all investment pools investing in investments permitted under subdivision (2), subsection (a) of this section would exceed twenty-five percent of its admitted assets; or

(3) In all investment pools would exceed thirty-five percent of its admitted assets.

(d) For an investment in an investment pool to be qualified under this article, the manager of the investment pool shall:

(1) Be organized under the laws of the United States or a state and designated as the pool manager in a pooling agreement;

(2) Be the insurer, an affiliated insurer or a business entity affiliated with the insurer, a qualified bank, a business entity registered under the Investment Advisors Act of 1940, as amended, or, in the case of a reciprocal insurer or interinsurance exchange, its attorney-in-fact, or in the case of a United States branch of an alien insurer, its United States manager or affiliates or subsidiaries of its United States manager;

(3) Compile and maintain detailed accounting records setting forth:

(A) The cash receipts and disbursements reflecting each participant's proportionate investment in the investment pool;

(B) A complete description of all underlying assets of the investment pool (including amount, interest rate, maturity date (if any) and other appropriate designations); and

(C) Other records which, on a daily basis, allow third parties to verify each participant's investment in the investment pool; and

(4) Maintain the assets of the investment pool in one or more accounts, in the name of or on behalf of the investment pool, under a custody agreement with a qualified bank. The custody agreement shall:

(A) State and recognize the claims and rights of each participant;

(B) Acknowledge that the underlying assets of the investment pool are held solely for the benefit of each participant in proportion to the aggregate amount of its investments in the investment pool; and

(C) Contain an agreement that the underlying assets of the investment pool may not be commingled with the general assets of the custodian qualified bank or any other person.

WV Legislature

(e) The pooling agreement for each investment pool shall be in writing and shall provide that:

(1) An insurer and its affiliated insurers or, in the case of an investment pool investing solely in investments permitted under subdivision (1), subsection (a) of this section, the insurer and its subsidiaries, affiliates or any pension or profit sharing plan of the insurer, its subsidiaries and affiliates or, in the case of a United States branch of an alien insurer, affiliates or subsidiaries of its United States manager, shall, at all times, hold one hundred percent of the interests in the investment pool;

(2) The underlying assets of the investment pool may not be commingled with the general assets of the pool manager or any other person;

(3) In proportion to the aggregate amount of each pool participant's interest in the investment pool:

(A) Each participant owns an undivided interest in the underlying assets of the investment pool; and

(B) The underlying assets of the investment pool are held solely for the benefit of each participant;

(4) A participant, or in the event of the participant's insolvency, bankruptcy or receivership, its trustee, receiver or other successor-in-interest, may withdraw all or any portion of its investment from the investment pool under the terms of the pooling agreement;

(5) Withdrawals may be made on demand without penalty or other assessment on any business day, but settlement of funds shall occur within a reasonable and customary period thereafter not to exceed five business days. Distributions under this subdivision shall be calculated in each case net of all then applicable fees and expenses of the investment pool. The pooling agreement shall provide that the pool manager shall distribute to a participant, at the discretion of the pool manager:

(A) In cash, the then fair market value of the participant's pro rata share of each underlying asset of the investment pool;

(B) In kind, a pro rata share of each underlying asset; or

(C) In a combination of cash and in kind distributions, a pro rata share in each underlying asset; and

(6) The pool manager shall make the records of the investment pool available for inspection by the commissioner.

WV Legislature

§33-8-13. Same - Equity interests.

(a) Subject to the limitations of section ten of this article, an insurer may acquire equity interests in business entities organized under the laws of any domestic jurisdiction.

(b) An insurer may not acquire an investment under this section if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this section would exceed twenty percent of its admitted assets, or the amount of equity interests then held by the insurer that are not listed on a qualified exchange would exceed five percent of its admitted assets. An accident and sickness insurer, health maintenance organization, hospital service corporation, medical service corporation, dental service corporation, or health service corporation is not subject to this section but is subject to the same aggregate limitation on equity interests as a property and casualty insurer under section twenty-six of this article and also to the provisions of section twenty-two of this article.

(c) An insurer may not acquire under this section any investments that the insurer may acquire under section fifteen of this article.

(d) An insurer may not short sell equity investments unless the insurer covers the short sale by owning the equity investment or an unrestricted right to the equity instrument exercisable within six months of the short sale.

WV Legislature

§33-8-14. Same - Tangible personal property under lease.

(a) Subject to the limitations of section ten of this article, an insurer may acquire tangible personal property or equity interests in tangible personal property located or used wholly, or in part, within a domestic jurisdiction either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by subdivision (4), section five of this article, joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates or other similar instruments.

(b) Investments acquired under subsection (a) of this section are eligible only if:

(1) The property is subject to a lease or other agreement with a person whose rated credit instruments in the amount of the purchase price of the personal property the insurer could then acquire under section eleven of this article; and

(2) The lease or other agreement provides the insurer the right to receive rental, purchase or other fixed payments for the use or purchase of the property, and the aggregate value of the payments, together with the estimated residual value of the property at the end of its useful life and the estimated tax benefits to the insurer resulting from ownership of the property, shall be adequate to return the cost of the insurer's investment in the property, plus a return considered adequate by the insurer.

(c) The insurer shall compute the amount of each investment under this section on the basis of the out-of-pocket purchase price and applicable related expenses paid by the insurer for the investment, net of each borrowing made to finance the purchase price and expenses, to the extent the borrowing is without recourse to the insurer.

(d) An insurer may not acquire an investment under this section if, as a result of and after giving effect to the investment, the aggregate amount of all investments then held by the insurer under this section would exceed:

(1) Two percent of its admitted assets; or

(2) One half of one percent of its admitted assets as to any single item of tangible personal property.

(e) For purposes of determining compliance with the limitations of section ten of this article, investments acquired by an insurer under this section shall be aggregated with those acquired under section eleven of this article, and each lessee of the property under a lease referred to in this section shall be considered the issuer of an obligation in the amount of the investment of the insurer in the property determined as provided in subsection (c) of this section.

(f) Nothing in this section is applicable to tangible personal property lease arrangements between an insurer and its subsidiaries and affiliates under a cost sharing arrangement or

WV Legislature

agreement permitted under article twenty-seven of this chapter.

WV Legislature

§33-8-15. Same - Mortgage loans and real estate.

(a) Subject to the limitations of section ten of this article, an insurer may acquire, either directly, indirectly through limited partnership interests and general partnership interests not otherwise prohibited by subsection (d), section five of this article, joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates, or other similar instruments, obligations secured by mortgages on real estate situated within a domestic jurisdiction, but a mortgage loan which is secured by other than a first lien may not be acquired unless the insurer is the holder of the first lien. The obligations held by the insurer and any obligations with an equal lien priority may not, at the time of acquisition of the obligation, exceed:

(1) Ninety percent of the fair market value of the real estate, if the mortgage loan is secured by a purchase money mortgage or like security received by the insurer upon disposition of the real estate;

(2) Eighty percent of the fair market value of the real estate, if the mortgage loan requires immediate scheduled payment in periodic installments of principal and interest, has an amortization period of thirty years or less and periodic payments made no less frequently than annually. Each periodic payment shall be sufficient to assure that at all times the outstanding principal balance of the mortgage loan is not greater than the outstanding principal balance that would be outstanding under a mortgage loan with the same original principal balance, with the same interest rate and requiring equal payments of principal and interest with the same frequency over the same amortization period. Mortgage loans permitted under this subsection are permitted notwithstanding the fact that they provide for a payment of the principal balance prior to the end of the period of amortization of the loan. For residential mortgage loans, the eighty percent limitation may be increased to ninety-seven percent if acceptable private mortgage insurance has been obtained; or

(3) Seventy-five percent of the fair market value of the real estate for mortgage loans that do not meet the requirements of subdivision (1) or (2) of this subsection.

(b) For purposes of subsection (a) of this section, the amount of an obligation required to be included in the calculation of the loan-to-value ratio may be reduced to the extent the obligation is insured by the federal housing administration or guaranteed by the administrator of Veterans Affairs, or their successors.

(c) A mortgage loan that is held by an insurer under subsection (f), section three of this article or acquired under this section and is restructured in a manner that meets the requirements of a restructured mortgage loan in accordance with the NAIC accounting practices and procedures manual or successor publication continues to qualify as a mortgage loan under this article.

(d) Subject to the limitations of section ten of this article, credit lease transactions that do not qualify for investment under section eleven of this article with the following

WV Legislature

characteristics are exempt from the provisions of subsection (a) of this section:

(1) The loan amortizes over the initial fixed lease term at least in an amount sufficient so that the loan balance at the end of the lease term does not exceed the original appraised value of the real estate;

(2) The lease payments cover or exceed the total debt service over the life of the loan;

(3) A tenant or its affiliated entity whose rated credit instruments have an SVO 1 or 2 designation or a comparable rating from a nationally recognized statistical rating organization recognized by the SVO has a full faith and credit obligation to make the lease payments;

(4) The insurer holds or is the beneficial holder of a first lien mortgage on the real estate;

(5) The expenses of the real estate are passed through to the tenant, excluding exterior, structural, parking and heating, ventilation and air conditioning replacement expenses, unless annual escrow contributions, from cash flows derived from the lease payments, cover the expense shortfall; and

(6) There is a perfected assignment of the rents due pursuant to the lease to, or for the benefit of, the insurer.

(e) An insurer may acquire, manage and dispose of real estate situated in a domestic jurisdiction either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by subsection (d), section five of this article, joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates or other similar instruments. The real estate shall be income producing or intended for improvement or development for investment purposes under an existing program (in which case the real estate shall be considered to be income producing).

(f) Income producing real estate that is acquired, managed or disposed of pursuant to subsection (e) of this section may be subject to mortgages, liens or other encumbrances, the amount of which may, to the extent that the obligations secured by the mortgages, liens or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with subsections (i) and (j) of this section.

(g) An insurer may acquire, manage, and dispose of real estate for the convenient accommodation of the insurer's (which may include its affiliates) business operations, including home office, branch office and field office operations, as follows:

(1) Real estate acquired under this subsection may include excess space for rent to others, if the excess space, valued at its fair market value, would otherwise be a permitted investment under subsection (e) of this section and is qualified by the insurer;

WV Legislature

(2) The real estate acquired under this subsection may be subject to one or more mortgages, liens or other encumbrances, the amount of which may, to the extent that the obligations secured by the mortgages, liens or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with subsection (k) of this section; and

(3) For purposes of this subsection, business operations may not include that portion of real estate used for the direct provision of health care services by an accident and sickness insurer for its insureds. An insurer may acquire real estate used for these purposes under subsection (e) of this section.

(h) An insurer may not acquire an investment under subsection (a) of this section if, as a result of and after giving effect to the investment, the aggregate amount of all investments then held by the insurer under subsection (a) of this section would exceed:

(1) One percent of its admitted assets in mortgage loans covering any one secured location;

(2) One quarter of one percent of its admitted assets in construction loans covering any one secured location; or

(3) Two percent of its admitted assets in construction loans in the aggregate.

(i) An insurer may not acquire an investment under subsections (e) and (f) of this section if, as a result of and after giving effect to the investment and any outstanding guarantees made by the insurer in connection with the investment, the aggregate amount of investments then held by the insurer under subsections (e) and (f) of this section plus the guarantees then outstanding would exceed:

(1) One percent of its admitted assets in one parcel or group of contiguous parcels of real estate, except that this limitation may not apply to that portion of real estate used for the direct provision of health care services by an accident and sickness insurer for its insureds, such as hospitals, medical clinics, medical professional buildings or other health facilities used for the purpose of providing health services; or

(2) Fifteen percent of its admitted assets in the aggregate, but not more than five percent of its admitted assets as to properties that are to be improved or developed.

(j) An insurer may not acquire an investment under subsection (a) or (e) of this section if, as a result of and after giving effect to the investment and any guarantees made by the insurer in connection with the investment, the aggregate amount of all investments then held by the insurer under subsections (a) and (e) of this section plus the guarantees then outstanding would exceed forty-five percent of its admitted assets. However, an insurer may exceed this limitation by no more than thirty percent of its admitted assets if:

(1) This increased amount is invested only in residential mortgage loans;

WV Legislature

(2) The insurer has no more than ten percent of its admitted assets invested in mortgage loans other than residential mortgage loans;

(3) The loan-to-value ratio of each residential mortgage loan does not exceed sixty percent at the time the mortgage loan is qualified under this increased authority and the fair market value is supported by an appraisal no more than two years old, prepared by an independent appraiser;

(4) A single mortgage loan qualified under this increased authority may not exceed one half of one percent of its admitted assets;

(5) The insurer files with the commissioner, and receives approval from the commissioner for, a plan that is designed to result in a portfolio of residential mortgage loans that is sufficiently geographically diversified; and

(6) The insurer agrees to file annually with the commissioner records that demonstrate that its portfolio of residential mortgage loans is geographically diversified in accordance with the plan.

(k) The limitations of section ten of this article do not apply to an insurer's acquisition of real estate under subsection (g) of this section. An insurer may not acquire real estate under said subsection if, as a result of and after giving effect to the acquisition, the aggregate amount of real estate then held by the insurer under said subsection would exceed ten percent of its admitted assets. With the permission of the commissioner, additional amounts of real estate may be acquired under said subsection.

WV Legislature

§33-8-16. Same - Securities lending, repurchase, reverse repurchase and dollar roll transactions.

(a) An insurer may enter into securities lending, repurchase, reverse repurchase and dollar roll transactions with business entities, subject to the following requirements:

(1) The insurer's board of directors shall adopt a written plan that is consistent with the requirements of the written plan in subsection (a), section four of this article that specifies guidelines and objectives to be followed, such as:

(A) A description of how cash received will be invested or used for general corporate purposes of the insurer;

(B) Operational procedures to manage interest rate risk, counterparty default risk, the conditions under which proceeds from reverse repurchase transactions may be used in the ordinary course of business and the use of acceptable collateral in a manner that reflects the liquidity needs of the transaction; and

(C) The extent to which the insurer may engage in these transactions.

(2) The insurer shall enter into a written agreement for all transactions authorized in this section other than dollar roll transactions. The written agreement shall require that each transaction terminate no more than one year from its inception or upon the earlier demand of the insurer. The agreement shall be with the business entity counterparty, but for securities lending transactions, the agreement shall be with an agent acting on behalf of the insurer, if the agent is a qualified business entity, and if the agreement:

(A) Requires the agent to enter into separate agreements with each counterparty that are consistent with the requirements of this section; and

(B) Prohibits securities lending transactions under the agreement with the agent or its affiliates.

(3) Cash received in a transaction under this section shall be invested in accordance with this article and in a manner that recognizes the liquidity needs of the transaction or used by the insurer for its general corporate purposes. For so long as the transaction remains outstanding, the insurer, its agent or custodian shall maintain, as to acceptable collateral received in a transaction under this section, either physically or through the book entry systems of the federal reserve, depository trust company, participants trust company or other securities depositories approved by the commissioner:

(A) Possession of the acceptable collateral;

(B) A perfected security interest in the acceptable collateral; or

(C) In the case of a jurisdiction outside of the United States, title to, or rights of a secured

WV Legislature

creditor to, the acceptable collateral.

(4) In a securities lending transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to one hundred two percent of the market value of the securities loaned by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than the market value of the loaned securities, the business entity counterparty shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals one hundred two percent of the market value of the loaned securities.

(5) In a reverse repurchase transaction, other than a dollar roll transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to ninety-five percent of the market value of the securities transferred by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than ninety-five percent of the market value of the securities so transferred, the business entity counterparty is obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals ninety-five percent of the market value of the transferred securities.

(6) In a dollar roll transaction, the insurer shall receive cash in an amount at least equal to the market value of the securities transferred by the insurer in the transaction as of the transaction date.

(7) In a repurchase transaction, the insurer shall receive as acceptable collateral transferred securities having a market value at least equal to one hundred two percent of the purchase price paid by the insurer for the securities. If at any time the market value of the acceptable collateral is less than one hundred percent of the purchase price paid by the insurer, the business entity counterparty is obligated to provide additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals one hundred two percent of the purchase price. Securities acquired by an insurer in a repurchase transaction may not be sold in a reverse repurchase transaction, loaned in a securities lending transaction or otherwise pledged.

(b) The limitations of sections ten and seventeen of this article do not apply to the business entity counterparty exposure created by transactions under this section. For purposes of calculations made to determine compliance with this subsection, no effect will be given to the insurer's future obligation to resell securities, in the case of a repurchase transaction, or to repurchase securities, in the case of a reverse repurchase transaction. An insurer may not enter into a transaction under this section if, as a result of and after giving effect to the transaction:

(1) The aggregate amount of securities then loaned, sold to or purchased from any one

WV Legislature

business entity counterparty under this section would exceed five percent of its admitted assets. In calculating the amount sold to or purchased from a business entity counterparty under repurchase or reverse repurchase transactions, effect will be given to netting provisions under a master written agreement; or

(2) The aggregate amount of all securities then loaned, sold to or purchased from all business entities under this section would exceed forty percent of its admitted assets.

WV Legislature

§33-8-17. Same - Foreign investments and foreign currency exposure.

(a) Subject to the limitations of section ten of this article, an insurer may acquire foreign investments, or engage in investment practices with persons of or in foreign jurisdictions, of substantially the same types as those that an insurer is permitted to acquire under this article, other than of the type permitted under section twelve of this article, if, as a result and after giving effect to the investment:

(1) The aggregate amount of foreign investments then held by the insurer under this subsection does not exceed twenty percent of its admitted assets; and

(2) The aggregate amount of foreign investments then held by the insurer under this subsection in a single foreign jurisdiction does not exceed ten percent of its admitted assets as to a foreign jurisdiction that has a sovereign debt rating of SVO 1 or three percent of its admitted assets as to any other foreign jurisdiction.

(b) Subject to the limitations of section ten of this article, an insurer may acquire investments, or engage in investment practices denominated in foreign currencies, whether or not they are foreign investments acquired under subsection (a) of this section, or additional foreign currency exposure as a result of the termination or expiration of a hedging transaction with respect to investments denominated in a foreign currency, if:

(1) The aggregate amount of investments then held by the insurer under this subsection denominated in foreign currencies does not exceed ten percent of its admitted assets; and

(2) The aggregate amount of investments then held by the insurer under this subsection denominated in the foreign currency of a single foreign jurisdiction does not exceed ten percent of its admitted assets as to a foreign jurisdiction that has a sovereign debt rating of SVO 1 or three percent of its admitted assets as to any other foreign jurisdiction; an investment will not be considered denominated in a foreign currency if the acquiring insurer enters into one or more contracts in transactions permitted under section eighteen of this article and the business entity counterparty agrees under the contract or contracts to exchange all payments made on the foreign currency denominated investment for United States currency at a rate which effectively insulates the investment cash flows against future changes in currency exchange rates during the period the contract or contracts are in effect.

(c) In addition to investments permitted under subsections (a) and (b) of this section, an insurer that is authorized to do business in a foreign jurisdiction, and that has outstanding insurance, annuity or reinsurance contracts on lives or risks resident or located in that foreign jurisdiction and denominated in foreign currency of that jurisdiction, may acquire foreign investments respecting that foreign jurisdiction, and may acquire investments denominated in the currency of that jurisdiction, subject to the limitations of section ten of this article. However, investments made under this subsection in obligations of foreign governments, their political subdivisions and government-sponsored enterprises will not be subject to the limitations of section ten of this article if those investments carry an SVO

WV Legislature

rating of 1 or 2. The aggregate amount of investments acquired by the insurer under this subsection may not exceed the greater of:

(1) The amount the insurer is required by the law of the foreign jurisdiction to invest in the foreign jurisdiction; or

(2) One hundred fifteen percent of the amount of its reserves, net of reinsurance, and other obligations under the contracts on lives or risks resident or located in the foreign jurisdiction.

(d) In addition to investments permitted under subsections (a) and (b) of this section, an insurer that is not authorized to do business in a foreign jurisdiction, but which has outstanding insurance, annuity or reinsurance contracts on lives or risks resident or located in that foreign jurisdiction and denominated in foreign currency of that jurisdiction, may acquire foreign investments respecting that foreign jurisdiction, and may acquire investments denominated in the currency of that jurisdiction subject to the limitations of section ten of this article. However, investments made under this subsection in obligations of foreign governments, their political subdivisions and government-sponsored enterprises are not subject to the limitations of section ten of this article if those investments carry an SVO rating of 1 or 2. The aggregate amount of investments acquired by the insurer under this subsection may not exceed one hundred five percent of the amount of its reserves, net of reinsurance, and other obligations under the contracts on lives or risks resident or located in the foreign jurisdiction.

(e) Investments acquired under this section shall be aggregated with investments of the same types made under all other sections of this article, and in a similar manner, for purposes of determining compliance with the limitations, if any, contained in the other sections. Investments in obligations of foreign governments, their political subdivisions and government-sponsored enterprises of these persons, except for those exempted under subsections (c) and (d) of this section, are subject to the limitations of section ten of this article.

WV Legislature

§33-8-18. Same - Derivative transactions.

(a) An insurer may, directly or indirectly through an investment subsidiary, engage in derivative transactions under this section under the following conditions:

(1) An insurer may use derivative instruments under this section to engage in hedging transactions and certain income generation transactions, as these terms may be further defined in rules promulgated by the commissioner.

(2) An insurer shall be able to demonstrate to the commissioner the intended hedging characteristics and the ongoing effectiveness of the derivative transaction or combination of the transactions through cash flow testing or other appropriate analyses.

(b) An insurer may enter into hedging transactions under this section if, as a result of and after giving effect to the transaction:

(1) The aggregate statement value of options, caps, floors and warrants not attached to another financial instrument purchased and used in hedging transactions does not exceed seven and one-half percent of its admitted assets;

(2) The aggregate statement value of options, caps and floors written in hedging transactions does not exceed three percent of its admitted assets; and

(3) The aggregate potential exposure of collars, swaps, forwards and futures used in hedging transactions does not exceed six and one-half percent of its admitted assets.

(c) An insurer may only enter into the following types of income generation transactions if as a result of and after giving effect to the transactions, the aggregate statement value of the fixed income assets that are subject to call or that generate the cash flows for payments under the caps or floors, plus the face value of fixed income securities underlying a derivative instrument subject to call, plus the amount of the purchase obligations under the puts, does not exceed ten percent of its admitted assets:

(1) Sales of covered call options on noncallable fixed income securities, callable fixed income securities if the option expires by its terms prior to the end of the noncallable period or derivative instruments based on fixed income securities;

(2) Sales of covered call options on equity securities, if the insurer holds in its portfolio, or can immediately acquire through the exercise of options, warrants or conversion rights already owned, the equity securities subject to call during the complete term of the call option sold;

(3) Sales of covered puts on investments that the insurer is permitted to acquire under this article, if the insurer has escrowed, or entered into a custodian agreement segregating, cash or cash equivalents with a market value equal to the amount of its purchase obligations under the put during the complete term of the put option sold; or

WV Legislature

(4) Sales of covered caps or floors, if the insurer holds in its portfolio the investments generating the cash flow to make the required payments under the caps or floors during the complete term that the cap or floor is outstanding.

(d) An insurer shall include all counterparty exposure amounts in determining compliance with the limitations of section ten of this article.

(e) Pursuant to rules promulgated under section eight of this article, the commissioner may approve additional transactions involving the use of derivative instruments in excess of the limits of subsection (b) of this section or for other risk management purposes under rules promulgated by the commissioner, but replication transactions may not be permitted for other than risk management purposes.

WV Legislature

§33-8-19. Same - Policy loans.

A life insurer may lend to a policyholder on the security of the cash surrender value of the policyholder's policy a sum not exceeding the legal reserve that the insurer is required to maintain on the policy.

WV Legislature

§33-8-20. Same - Additional investment authority.

(a) Solely for the purpose of acquiring investments that exceed the quantitative limitations of sections ten through seventeen, inclusive, of this article, an insurer may acquire under this subsection an investment, or engage in investment practices described in section sixteen of this article, but an insurer may not acquire an investment, or engage in investment practices described in said section, under this subsection if, as a result of and after giving effect to the transaction:

(1) The aggregate amount of investments then held by an insurer under this subsection would exceed three percent of its admitted assets; or

(2) The aggregate amount of investments as to one limitation in sections ten through seventeen, inclusive, of this article then held by the insurer under this subsection would exceed one percent of its admitted assets.

(b) In addition to the authority provided under subsection (a) of this section, an insurer may acquire under this subsection an investment of any kind, or engage in investment practices described in section sixteen of this article, that are not specifically prohibited by this article, without regard to the categories, conditions, standards or other limitations of sections ten through seventeen, inclusive, of this article if, as a result of and after giving effect to the transaction, the aggregate amount of investments then held under this subsection would not exceed the lesser of:

(1) Ten percent of its admitted assets; or

(2) Seventy-five percent of its capital and surplus. However, an insurer may not acquire any investment or engage in any investment practice under this subsection if, as a result of and after giving effect to the transaction, the aggregate amount of all investments in any one person then held by the insurer under this subsection would exceed three percent of its admitted assets.

(c) In addition to the investments acquired under subsections (a) and (b) of this section, an insurer may acquire under this subsection an investment of any kind, or engage in investment practices described in section sixteen of this article, that are not specifically prohibited by this article without regard to any limitations of sections ten through seventeen, inclusive, of this article if:

(1) The commissioner grants prior approval;

(2) The insurer demonstrates that its investments are being made in a prudent manner and that the additional amounts will be invested in a prudent manner; and

(3) As a result of and after giving effect to the transaction the aggregate amount of investments then held by the insurer under this subsection does not exceed the greater of:

WV Legislature

(A) Twenty-five percent of its capital and surplus; or

(B) One hundred percent of capital and surplus less ten percent of its admitted assets.

(d) An investment prohibited under section five of this article, not permitted under section eighteen of this article or additional derivative instruments acquired under said section may not be acquired under this section.

WV Legislature

§33-8-21. Property and casualty, financial guaranty and mortgage guaranty insurers - Applicability.

Sections twenty-two through thirty-two, inclusive, of this article apply to the investments and investment practices of property and casualty, financial guaranty and mortgage guaranty insurers, subject to the provisions of subsection (b), section one of this article.

WV Legislature

§33-8-22. Same - Reserve requirements.

(a) Subject to all other limitations and requirements of this article, a property and casualty, financial guaranty, mortgage guaranty or accident and sickness insurer shall maintain an amount at least equal to one hundred percent of adjusted loss reserves and loss adjustment expense reserves, one hundred percent of adjusted unearned premium reserves and one hundred percent of statutorily required policy and contract reserves in:

(1) Cash and cash equivalents;

(2) High and medium grade investments that qualify under section twenty-four or twenty-five of this article;

(3) Equity interests that qualify under section twenty-six of this article and that are traded on a qualified exchange;

(4) Investments of the type set forth in section thirty of this article if the investments are rated in the highest generic rating category by a nationally recognized statistical rating organization recognized by the SVO for rating foreign jurisdictions and if any foreign currency exposure is effectively hedged through the maturity date of the investments;

(5) Qualifying investments of the type set forth in subdivision (2), (3) or (4) of this subsection that are acquired under section thirty-two of this article;

(6) Interest and dividends receivable on qualifying investments of the type set forth in subdivisions (1) through (5), inclusive, of this subsection; or

(7) Reinsurance recoverable on paid losses.

(b) For purposes of determining the amount of assets to be maintained under subsection (a) of this section, the calculation of adjusted loss reserves and loss adjustment expense reserves, adjusted unearned premium reserves and statutorily required policy and contract reserves shall be based on the amounts reported as of the most recent annual or quarterly statement date.

(1) Adjusted loss reserves and loss adjustment expense reserves shall be equal to the sum of the amounts derived from the following calculations:

(A) The result of each amount reported by the insurer as losses and loss adjustment expenses unpaid for each accident year for each individual line of business; multiplied by

(B) The discount factor that is applicable to the line of business and accident year published by the internal revenue service under Section 846 of the Internal Revenue Code, as amended, for the calendar year that corresponds to the most recent annual statement of the insurer; minus

WV Legislature

(C) Accrued retrospective premiums discounted by an average discount factor. The discount factor shall be calculated by dividing the losses and loss adjustment expenses unpaid after discounting (the product of subparagraphs (i) and (ii) of this paragraph) by loss and loss adjustment expense reserves before discounting subparagraph (i) of this paragraph.

(D) For purposes of these calculations, the losses and loss adjustment expenses unpaid shall be determined net of anticipated salvage and subrogation, and gross of any discount for the time value of money or tabular discount.

(2) Adjusted unearned premium reserves shall be equal to the result of the following calculation:

(A) The amount reported by the insurer as unearned premium reserves; minus

(B) The admitted asset amounts reported by the insurer as:

(i) Premiums in and agents' balances in the course of collection, accident and sickness premiums due and unpaid and uncollected premiums for accident and sickness premiums;

(ii) Premiums, agents' balances and installments booked but deferred and not yet due; and

(iii) Bills receivable, taken for premium.

(3) Statutorily required policy and contract reserves also include, in the case of a financial guaranty insurer, or a mortgage guaranty insurer the contingency reserves, and with respect to accident and sickness insurers the additional or contingency reserves, prescribed by the NAIC in the accounting practices and procedures manual as amended.

(c) Monitoring and reporting. --

A property and casualty, financial guaranty, mortgage guaranty or accident and health sickness insurer shall supplement its annual statement with a reconciliation and summary of its assets and reserve requirements as required in subsection (a) of this section. A reconciliation and summary showing that an insurer's assets as required in said subsection are greater than or equal to its undiscounted reserves referred to in said subsection are sufficient to satisfy this requirement. Upon prior notification, the commissioner may require an insurer to submit a reconciliation and summary with any quarterly statement filed during the calendar year.

(d) If a property and casualty, financial guaranty, mortgage guaranty or accident and sickness insurer's assets and reserves do not comply with subsections (a) and (b) of this section, the insurer shall notify the commissioner immediately of the amount by which the reserve requirements exceed the annual statement value of the qualifying assets, explain why the deficiency exists and within thirty days of the date of the notice propose a plan of action to remedy the deficiency.

WV Legislature

(e) If the commissioner determines that an insurer is not in compliance with subsection (a) of this section, the commissioner shall require the insurer to eliminate the condition causing the noncompliance within a specified time from the date the notice of the commissioner's requirement is mailed or delivered to the insurer. If an insurer fails to comply with the commissioner's requirement the insurer is considered to be in hazardous financial condition, and the commissioner may take one or more of the actions authorized by law as to insurers in hazardous financial condition.

WV Legislature

§33-8-23. Same - General five percent diversification, medium and lower grade investments and Canadian investments.

(a) Except as otherwise specified in this article, an insurer may not acquire directly or indirectly through an investment subsidiary an investment under this article if, as a result of and after giving effect to the investment, the insurer would hold more than five percent of its admitted assets in investments of all kinds issued, assumed, accepted, insured or guaranteed by a single person.

(b) The five percent limitation set forth in subsection (a) of this section does not apply to the aggregate amounts insured by a single financial guaranty insurer with the highest generic rating issued by a nationally recognized statistical rating organization.

(c) Asset-backed securities are not subject to the limitations of subsection (a) of this section, however an insurer may not acquire an asset-backed security if, as a result of and after giving effect to the investment, the aggregate amount of asset-backed securities secured by or evidencing an interest in a single asset or single pool of assets held by a trust or other business entity, then held by the insurer would exceed five percent of its admitted assets.

(d) An insurer may not acquire, directly or indirectly through an investment subsidiary, an investment under sections twenty-four, twenty-seven and thirty of this article or counterparty exposure under subsection (d), section thirty-one of this article if, as a result of and after giving effect to the investment:

(1) The aggregate amount of all medium and lower grade investments then held by the insurer would exceed twenty percent of its admitted assets;

(2) The aggregate amount of lower grade investments then held by the insurer would exceed ten percent of its admitted assets;

(3) The aggregate amount of investments rated 5 or 6 by the SVO then held by the insurer would exceed five percent of its admitted assets;

(4) The aggregate amount of investments rated 6 by the SVO then held by the insurer would exceed one percent of its admitted assets; or

(5) The aggregate amount of medium and lower grade investments then held by the insurer that receive as cash income less than the equivalent yield for treasury issues with a comparative average life, would exceed one percent of its admitted assets.

(e) An insurer may not acquire, directly or indirectly through an investment subsidiary, an investment under section twenty-four, twenty-seven or thirty of this article or counterparty exposure under subsection (d), section thirty-one of this article if, as a result of and after giving effect to the investment:

(1) The aggregate amount of medium and lower grade investments issued, assumed,

WV Legislature

guaranteed, accepted or insured by any one person or, as to asset-backed securities secured by or evidencing an interest in a single asset or pool of assets, then held by the insurer would exceed one percent of its admitted assets; or

(2) The aggregate amount of lower grade investments issued, assumed, guaranteed, accepted or insured by any one person or, as to asset-backed securities secured by or evidencing an interest in a single asset or pool of assets, then held by the insurer would exceed one half of one percent of its admitted assets.

(f) If an insurer attains or exceeds the limit of any one rating category referred to in subsection (d) or (e) of this section, the insurer may not be precluded from acquiring investments in other rating categories subject to the specific and multicategory limits applicable to those investments.

(g) An insurer may not acquire, directly or indirectly through an investment subsidiary, any Canadian investments authorized by this article, if as a result of and after giving effect to the investment, the aggregate amount of these investments then held by the insurer would exceed forty percent of its admitted assets, or if the aggregate amount of Canadian investments not acquired under subsection (b), section twenty-four of this article then held by the insurer would exceed twenty-five percent of its admitted assets. However, as to an insurer that is authorized to do business in Canada or that has outstanding insurance, annuity or reinsurance contracts on lives or risks resident or located in Canada and denominated in Canadian currency, the limitations of this subsection shall be increased by the greater of:

(1) The amount the insurer is required by Canadian law to invest in Canada or to be denominated in Canadian currency; or

(2) One hundred twenty-five percent of the amount of its reserves and other obligations under contracts on risks resident or located in Canada.

WV Legislature

§33-8-24. Same - Rated credit instruments.

(a) Subject to the limitations of subsection (b), section twenty-three of this article, but not to the limitations of subsection (a) of said section, an insurer may acquire rated credit instruments issued, assumed, guaranteed or insured by:

(1) The United States; or

(2) A government-sponsored enterprise of the United States, if the instruments of the government-sponsored enterprise are assumed, guaranteed or insured by the United States or are otherwise backed or supported by the full faith and credit of the United States.

(b) Subject to the limitations of subsections (d), (e) and (f), section twenty-three of this article, but not to the limitations of subsections (a), (b) and (c) of said section, an insurer may acquire rated credit instruments issued, assumed, guaranteed or insured by:

(1) Canada; or

(2) A government-sponsored enterprise of Canada, if the instruments of the government-sponsored enterprise are assumed, guaranteed or insured by Canada or are otherwise backed or supported by the full faith and credit of Canada; however, an insurer may not acquire an instrument under this subdivision if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this subsection would exceed forty percent of its admitted assets.

(c) Subject to the limitations of subsections (d), (e) and (f), section twenty-three of this article, but not to the limitations of subsections (a), (b) and (c) of said section, an insurer may acquire rated credit instruments, excluding asset-backed securities:

(1) Issued by a government money market mutual fund, a class one money market mutual fund or a class one bond mutual fund;

(2) Issued, assumed, guaranteed or insured by a government-sponsored enterprise of the United States other than those eligible under subsection (a) of this section;

(3) Issued, assumed, guaranteed or insured by a state, if the instruments are general obligations of the state; or

(4) Issued by a multilateral development bank. However, an insurer may not acquire an instrument of any one fund, any one enterprise or entity, or any one state under this subsection if, as a result of and after giving effect to the investment, the aggregate amount of investments then held in any one fund, enterprise or entity or state under this subsection would exceed ten percent of its admitted assets.

(d) Subject to the limitations of section twenty-three of this article, an insurer may acquire preferred stocks that are not foreign investments and that meet the requirements of rated

WV Legislature

credit instruments if, as a result of and after giving effect to the investment:

(1) The aggregate amount of preferred stocks then held by the insurer under this subsection does not exceed twenty percent of its admitted assets; and

(2) The aggregate amount of preferred stocks then held by the insurer under this subsection which are not sinking fund stocks or rated P1 or P2 by the SVO does not exceed ten percent of its admitted assets.

(e) Subject to the limitations of section twenty-three of this article in addition to those investments eligible under subsections (a), (b), (c) and (d) of this section, an insurer may acquire rated credit instruments that are not foreign investments.

(f) An insurer may not acquire special rated credit instruments under this section if, as a result of and after giving effect to the investment, the aggregate amount of special rated credit instruments then held by the insurer would exceed five percent of its admitted assets.

WV Legislature

§33-8-25. Same - Insurer investment pools.

(a) An insurer may acquire investments in investment pools that:

(1) Invest only in:

(A) Obligations that are rated 1 or 2 by the SVO or have an equivalent of an SVO 1 or 2 rating (or, in the absence of a 1 or 2 rating or equivalent rating, the issuer has outstanding obligations with an SVO 1 or 2 or equivalent rating) by a nationally recognized statistical rating organization recognized by the SVO and have:

(i) A remaining maturity of three hundred ninety-seven days or less or a put that entitles the holder to receive the principal amount of the obligation which put may be exercised through maturity at specified intervals not exceeding three hundred ninety-seven days; or

(ii) A remaining maturity of three years or less and a floating interest rate that resets no less frequently than quarterly on the basis of a current short-term index (federal funds, prime rate, treasury bills, LIBOR or commercial paper) and is subject to no maximum limit, if the obligations do not have an interest rate that varies inversely to market interest rate changes;

(B) Government money market mutual funds or class one money market mutual funds; or

(C) Securities lending, repurchase and reverse repurchase transactions that meet all the requirements of section twenty-nine of this article, except the quantitative limitations of subsection (b), section twenty-nine of this article; or

(2) Invest only in investments which an insurer may acquire under this article, if the insurer's proportionate interest in the amount invested in these investments does not exceed the applicable limits of this article.

(b) For an investment in an investment pool to be qualified under this article, the investment pool may not:

(1) Acquire securities issued, assumed, guaranteed or insured by the insurer or an affiliate of the insurer;

(2) Borrow or incur any indebtedness for borrowed money, except for securities lending and reverse repurchase transactions that meet the requirements of section twenty-nine of this article except the quantitative limitations of subsection (b), section twenty-nine of this article; or

(3) Permit the aggregate value of securities then loaned or sold to, purchased from or invested in any one business entity under this section to exceed ten percent of the total assets of the investment pool.

(c) The limitations of subsection (a), section twenty-three of this article do not apply to an

wv legislature

insurer's investment in an investment pool, however an insurer may not acquire an investment in an investment pool under this section if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this section:

(1) In any one investment pool would exceed ten percent of its admitted assets;

(2) In all investment pools investing in investments permitted under subdivision (2), subsection (a) of this section would exceed twenty-five percent of its admitted assets; or

(3) In all investment pools would exceed forty percent of its admitted assets.

(d) For an investment in an investment pool to be qualified under this article, the manager of the investment pool shall:

(1) Be organized under the laws of the United States or a state and designated as the pool manager in a pooling agreement;

(2) Be the insurer, an affiliated insurer or a business entity affiliated with the insurer, a qualified bank, a business entity registered under the Investment Advisors Act of 1940, as amended, or, in the case of a reciprocal insurer or interinsurance exchange, its attorney-in-fact, or in the case of a United States branch of an alien insurer, its United States manager or affiliates or subsidiaries of its United States manager;

(3) Compile and maintain detailed accounting records setting forth:

(A) The cash receipts and disbursements reflecting each participant's proportionate investment in the investment pool;

(B) A complete description of all underlying assets of the investment pool (including amount, interest rate, maturity date (if any) and other appropriate designations); and

(C) Other records which, on a daily basis, allow third parties to verify each participant's investment in the investment pool; and

(4) Maintain the assets of the investment pool in one or more accounts, in the name of or on behalf of the investment pool, under a custody agreement with a qualified bank. The custody agreement shall:

(A) State and recognize the claims and rights of each participant;

(B) Acknowledge that the underlying assets of the investment pool are held solely for the benefit of each participant in proportion to the aggregate amount of its investments in the investment pool; and

(C) Contain an agreement that the underlying assets of the investment pool may not be

WV Legislature

commingled with the general assets of the custodian qualified bank or any other person.

(e) The pooling agreement for each investment pool shall be in writing and shall provide that:

(1) An insurer and its affiliated insurers or, in the case of an investment pool investing solely in investments permitted under subdivision (1), subsection (a) of this section, the insurer and its subsidiaries, affiliates or any pension or profit sharing plan of the insurer, its subsidiaries and affiliates or, in the case of a United States branch of an alien insurer, affiliates or subsidiaries of its United States manager, shall, at all times, hold one hundred percent of the interests in the investment pool;

(2) The underlying assets of the investment pool may not be commingled with the general assets of the pool manager or any other person;

(3) In proportion to the aggregate amount of each pool participant's interest in the investment pool:

(A) Each participant owns an undivided interest in the underlying assets of the investment pool; and

(B) The underlying assets of the investment pool are held solely for the benefit of each participant;

(4) A participant, or in the event of the participant's insolvency, bankruptcy or receivership, its trustee, receiver or other successor-in-interest, may withdraw all or any portion of its investment from the investment pool under the terms of the pooling agreement;

(5) Withdrawals may be made on demand without penalty or other assessment on any business day, but settlement of funds shall occur within a reasonable and customary period thereafter not to exceed five business days. Distributions under this subdivision shall be calculated in each case net of all then applicable fees and expenses of the investment pool. The pooling agreement shall provide that the pool manager shall distribute to a participant, at the discretion of the pool manager:

(A) In cash, the then fair market value of the participant's pro rata share of each underlying asset of the investment pool;

(B) In kind, a pro rata share of each underlying asset; or

(C) In a combination of cash and in kind distributions, a pro rata share in each underlying asset; and

(6) The pool manager shall make the records of the investment pool available for inspection by the commissioner.

WV Legislature

§33-8-26. Same - Equity interests.

(a) Subject to the limitations of section twenty-three of this article, an insurer may acquire equity interests in business entities organized under the laws of any domestic jurisdiction.

(b) An insurer may not acquire an investment under this section if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this section would exceed the greater of twenty-five percent of its admitted assets or one hundred percent of its surplus as regards policyholders: Provided, That the aggregate investments of a health maintenance organization may not exceed the greater of thirty percent of its admitted assets or one hundred percent of its total capital and surplus.

(c) An insurer may not acquire under this section any investments that the insurer may acquire under section twenty-eight of this article.

(d) An insurer may not short sell equity investments unless the insurer covers the short sale by owning the equity investment or an unrestricted right to the equity instrument exercisable within six months of the short sale.

WV Legislature

§33-8-27. Same - Tangible personal property under lease.

(a) Subject to the limitations of section twenty-three of this article, an insurer may acquire tangible personal property or equity interests therein located or used, wholly or in part, within a domestic jurisdiction either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by subdivision (d), section five of this article, joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates or other similar instruments.

(b) Investments acquired under subsection (a) of this section are eligible only if:

(1) The property is subject to a lease or other agreement with a person whose rated credit instruments in the amount of the purchase price of the personal property the insurer could then acquire under section twenty-four of this article; and

(2) The lease or other agreement provides the insurer the right to receive rental, purchase or other fixed payments for the use or purchase of the property, and the aggregate value of the payments, together with the estimated residual value of the property at the end of its useful life and the estimated tax benefits to the insurer resulting from ownership of the property, is adequate to return the cost of the insurer's investment in the property, plus a return considered adequate by the insurer.

(c) The insurer shall compute the amount of each investment under this section on the basis of the out-of-pocket purchase price and applicable related expenses paid by the insurer for the investment, net of each borrowing made to finance the purchase price and expenses, to the extent the borrowing is without recourse to the insurer.

(d) An insurer may not acquire an investment under this section if, as a result of and after giving effect to the investment, the aggregate amount of all investments then held by the insurer under this section would exceed:

(1) Two percent of its admitted assets; or

(2) One half of one percent of its admitted assets as to any single item of tangible personal property.

(e) For purposes of determining compliance with the limitations of section twenty-three of this article, investments acquired by an insurer under this section shall be aggregated with those acquired under section twenty-four of this article, and each lessee of the property under a lease referred to in this section shall be considered the issuer of an obligation in the amount of the investment of the insurer in the property determined as provided in subsection (c) of this section.

(f) Nothing in this section is applicable to tangible personal property lease arrangements between an insurer and its subsidiaries and affiliates under a cost sharing arrangement or agreement permitted under this article.

WV Legislature

§33-8-28. Same - Mortgage loans and real estate.

(a) Subject to the limitations of section twenty-three of this article, an insurer may acquire, either directly, indirectly through limited partnership interests and general partnership interests not otherwise prohibited by subdivision (4), section five of this article, joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates, or other similar instruments, obligations secured by mortgages on real estate situated within a domestic jurisdiction, but a mortgage loan which is secured by other than a first lien may not be acquired unless the insurer is the holder of the first lien. The obligations held by the insurer and any obligations with an equal lien priority, may not, at the time of acquisition of the obligation, exceed:

(1) Ninety percent of the fair market value of the real estate, if the mortgage loan is secured by a purchase money mortgage or like security received by the insurer upon disposition of the real estate;

(2) Eighty percent of the fair market value of the real estate, if the mortgage loan requires immediate scheduled payment in periodic installments of principal and interest, has an amortization period of thirty years or less and periodic payments made no less frequently than annually. Each periodic payment shall be sufficient to assure that at all times the outstanding principal balance of the mortgage loan is not greater than the outstanding principal balance which would be outstanding under a mortgage loan with the same original principal balance, with the same interest rate and requiring equal payments of principal and interest with the same frequency over the same amortization period. Mortgage loans permitted under this subsection are permitted notwithstanding the fact that they provide for a payment of the principal balance prior to the end of the period of amortization of the loan. For residential mortgage loans, the eighty percent limitation may be increased to ninety-seven percent if acceptable private mortgage insurance has been obtained; or

(3) Seventy-five percent of the fair market value of the real estate for mortgage loans that do not meet the requirements of subdivision (1) or (2) of this subsection.

(b) For purposes of subsection (a) of this section, the amount of an obligation required to be included in the calculation of the loan-to-value ratio may be reduced to the extent the obligation is insured by the federal housing administration or guaranteed by the administrator of Veterans Affairs, or their successors.

(c) A mortgage loan that is held by an insurer under subsection (f), section three of this article or acquired under this section and is restructured in a manner that meets the requirements of a restructured mortgage loan in accordance with the NAIC accounting practices and procedures manual or successor publication continues to qualify as a mortgage loan under this article.

(d) Subject to the limitations of section twenty-three of this article, credit lease transactions that do not qualify for investment under section twenty-four of this article with the following

WV Legislature

characteristics are exempt from the provisions of subsection (a) of this section:

(1) The loan amortizes over the initial fixed lease term at least in an amount sufficient so that the loan balance at the end of the lease term does not exceed the original appraised value of the real estate;

(2) The lease payments cover or exceed the total debt service over the life of the loan;

(3) A tenant or its affiliated entity whose rated credit instruments have a SVO 1 or 2 designation or a comparable rating from a nationally recognized statistical rating organization recognized by the SVO has a full faith and credit obligation to make the lease payments;

(4) The insurer holds or is the beneficial holder of a first lien mortgage on the real estate;

(5) The expenses of the real estate are passed through to the tenant, excluding exterior, structural, parking and heating, ventilation and air conditioning replacement expenses, unless annual escrow contributions, from cash flows derived from the lease payments, cover the expense shortfall; and

(6) There is a perfected assignment of the rents due pursuant to the lease to, or for the benefit of, the insurer.

(e) An insurer may acquire, manage and dispose of real estate situated in a domestic jurisdiction either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by subsection (d), section five of this article, joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates, or other similar instruments. The real estate shall be income producing or intended for improvement or development for investment purposes under an existing program (in which case the real estate shall be considered to be income producing).

(f) The income producing real estate that is acquired, managed or disposed of pursuant to subsection (e) of this section may be subject to mortgages, liens or other encumbrances, the amount of which may, to the extent that the obligations secured by the mortgages, liens or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with subsections (i) and (j) of this section.

(g) Real estate for the accommodation of business. --

An insurer may acquire, manage, and dispose of real estate for the convenient accommodation of the insurer's (which may include its affiliates) business operations, including home office, branch office and field office operations, as follows:

(1) Real estate acquired under this subsection may include excess space for rent to others, if

WV Legislature

the excess space, valued at its fair market value, would otherwise be a permitted investment under subsection (e) of this section and is qualified by the insurer;

(2) The real estate acquired under this subsection may be subject to one or more mortgages, liens or other encumbrances, the amount of which may, to the extent that the obligations secured by the mortgages, liens or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with subsection (k) of this section; and

(3) For purposes of this subsection, business operations may not include that portion of real estate used for the direct provision of health care services by an insurer 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. An insurer may acquire real estate used for these purposes under subsection (e) of this section.

(h) An insurer may not acquire an investment under subsection (a) of this section if, as a result of and after giving effect to the investment, the aggregate amount of all investments then held by the insurer under subsection (a) of this section would exceed:

(1) One percent of its admitted assets in mortgage loans covering any one secured location;

(2) One quarter of one percent of its admitted assets in construction loans covering any one secured location; or

(3) One percent of its admitted assets in construction loans in the aggregate.

(i) An insurer may not acquire an investment under subsections (e) and (f) of this section if, as a result of and after giving effect to the investment and any outstanding guarantees made by the insurer in connection with the investment, the aggregate amount of investments then held by the insurer under subsections (e) and (f) of this section plus the guarantees then outstanding would exceed:

(1) One percent of its admitted assets in any one parcel or group of contiguous parcels of real estate, except that this limitation may not apply to that portion of real estate used for the direct provision of health care services by an insurer whose insurance premiums and required statutory reserves for accident and sickness constitute at least ninety-five percent of total premium considerations or total statutory required reserves, respectively, such as hospitals, medical clinics, medical professional buildings or other health facilities used for the purpose of providing health services; or

(2) The lesser of ten percent of its admitted assets or forty percent of its surplus as regards policyholders in the aggregate, except for an insurer 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,

WV Legislature

respectively, this limitation shall be increased to fifteen percent of its admitted assets in the aggregate.

(j) An insurer may not acquire an investment under subsection (a) or (b) of this section if, as a result of and after giving effect to the investment and any guarantees it has made in connection with the investment, the aggregate amount of all investments then held by the insurer under subsections (a) and (b) of this section plus the guarantees then outstanding would exceed twenty-five percent of its admitted assets.

(k) The limitations of section twenty-three of this article do not apply to an insurer's acquisition of real estate under subsection (g) of this section. An insurer may not acquire real estate under said subsection if, as a result of and after giving effect to the acquisition, the aggregate amount of all real estate then held by the insurer under said subsection would exceed ten percent of its admitted assets. With the permission of the commissioner, additional amounts of real estate may be acquired under said subsection.

WV Legislature

§33-8-29. Same - Securities lending, repurchase, reverse repurchase and dollar roll transactions.

(a) An insurer may enter into securities lending, repurchase, reverse repurchase and dollar roll transactions with business entities, subject to the following requirements:

(1) The insurer's board of directors shall adopt a written plan that is consistent with the requirements of the written plan in subsection (a), section four of this article that specifies guidelines and objectives to be followed, such as:

(A) A description of how cash received will be invested or used for general corporate purposes of the insurer;

(B) Operational procedures to manage interest rate risk, counterparty default risk, the conditions under which proceeds from reverse repurchase transactions may be used in the ordinary course of business and the use of acceptable collateral in a manner that reflects the liquidity needs of the transaction; and

(C) The extent to which the insurer may engage in these transactions.

(2) The insurer shall enter into a written agreement for all transactions authorized in this section other than dollar roll transactions. The written agreement shall require that each transaction terminate no more than one year from its inception or upon the earlier demand of the insurer. The agreement shall be with the business entity counterparty, but for securities lending transactions, the agreement shall be with an agent acting on behalf of the insurer, if the agent is a qualified business entity, and if the agreement:

(A) Requires the agent to enter into separate agreements with each counterparty that are consistent with the requirements of this section; and

(B) Prohibits securities lending transactions under the agreement with the agent or its affiliates.

(3) Cash received in a transaction under this section shall be invested in accordance with this article and in a manner that recognizes the liquidity needs of the transaction or used by the insurer for its general corporate purposes. For so long as the transaction remains outstanding, the insurer, its agent or custodian shall maintain, as to acceptable collateral received in a transaction under this section, either physically or through the book entry systems of the federal reserve, depository trust company, participants trust company or other securities depositories approved by the commissioner:

(A) Possession of the acceptable collateral;

(B) A perfected security interest in the acceptable collateral; or

(C) In the case of a jurisdiction outside of the United States, title to, or rights of a secured

WV Legislature

creditor to, the acceptable collateral.

(4) In a securities lending transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to one hundred two percent of the market value of the securities loaned by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than the market value of the loaned securities, the business entity counterparty shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals one hundred two percent of the market value of the loaned securities.

(5) In a reverse repurchase transaction, (other than a dollar roll transaction), the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to ninety-five percent of the market value of the securities transferred by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than ninety-five percent of the market value of the securities transferred, the business entity counterparty is obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals ninety-five percent of the market value of the transferred securities.

(6) In a dollar roll transaction, the insurer shall receive cash in an amount at least equal to the market value of the securities transferred by the insurer in the transaction as of the transaction date.

(7) In a repurchase transaction, the insurer shall receive as acceptable collateral transferred securities having a market value at least equal to one hundred two percent of the purchase price paid by the insurer for the securities. If at any time the market value of the acceptable collateral is less than one hundred percent of the purchase price paid by the insurer, the business entity counterparty is obligated to provide additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals one hundred two percent of the purchase price. Securities acquired by an insurer in a repurchase transaction may not be sold in a reverse repurchase transaction, loaned in a securities lending transaction or otherwise pledged.

(b) The limitations of sections twenty-three and thirty of this article do not apply to the business entity counterparty exposure created by transactions under this section. For purposes of calculations made to determine compliance with this subdivision, no effect will be given to the insurer's future obligation to resell securities, in the case of a repurchase transaction, or to repurchase securities, in the case of a reverse repurchase transaction. An insurer may not enter into a transaction under this section if, as a result of and after giving effect to the transaction:

(1) The aggregate amount of securities then loaned, sold to or purchased from any one

WV Legislature

business entity counterparty under this section would exceed five percent of its admitted assets. In calculating the amount sold to or purchased from a business entity counterparty under repurchase or reverse repurchase transactions, effect will be given to netting provisions under a master written agreement; or

(2) The aggregate amount of all securities then loaned, sold to or purchased from all business entities under this section would exceed forty percent of its admitted assets but the limitation of this subdivision does not apply to reverse repurchase transactions for so long as the borrowing is used to meet operational liquidity requirements resulting from an officially declared catastrophe and subject to a plan approved by the commissioner.

WV Legislature

§33-8-30. Same - Foreign investments and foreign currency exposure.

(a) Subject to the limitations of section twenty-three of this article, an insurer may acquire foreign investments, or engage in investment practices with persons of or in foreign jurisdictions, of substantially the same types as those that an insurer is permitted to acquire under this article, other than of the type permitted under section twenty-five of this article, if, as a result and after giving effect to the investment:

(1) The aggregate amount of foreign investments then held by the insurer under this subsection does not exceed twenty percent of its admitted assets; and

(2) The aggregate amount of foreign investments then held by the insurer under this subsection in a single foreign jurisdiction does not exceed ten percent of its admitted assets as to a foreign jurisdiction that has a sovereign debt rating of SVO 1 or five percent of its admitted assets as to any other foreign jurisdiction.

(b) Subject to the limitations of section twenty-three of this article, an insurer may acquire investments, or engage in investment practices denominated in foreign currencies, whether or not they are foreign investments acquired under subsection (a) of this section, or additional foreign currency exposure as a result of the termination or expiration of a hedging transaction with respect to investments denominated in a foreign currency, if:

(1) The aggregate amount of investments then held by the insurer under this subsection denominated in foreign currencies does not exceed fifteen percent of its admitted assets; and

(2) The aggregate amount of investments then held by the insurer under this subsection denominated in the foreign currency of a single foreign jurisdiction does not exceed ten percent of its admitted assets as to a foreign jurisdiction that has a sovereign debt rating of SVO 1 or five percent of its admitted assets as to any other foreign jurisdiction. However, an investment will not be considered denominated in a foreign currency if the acquiring insurer enters into one or more contracts in transactions permitted under section thirty-one of this article and the business entity counterparty agrees under the contract or contracts to exchange all payments made on the foreign currency denominated investment for United States currency at a rate which effectively insulates the investment cash flows against future changes in currency exchange rates during the period the contract or contracts are in effect.

(c) In addition to investments permitted under subsections (a) and (b) of this section, an insurer that is authorized to do business in a foreign jurisdiction, and that has outstanding insurance, annuity or reinsurance contracts on lives or risks resident or located in that foreign jurisdiction and denominated in foreign currency of that jurisdiction, may acquire foreign investments respecting that foreign jurisdiction, and may acquire investments denominated in the currency of that jurisdiction, subject to the limitations of section twenty-three of this article. However, investments made under this subsection in obligations of foreign governments, their political subdivisions and government-sponsored enterprises are

WV Legislature

not subject to the limitations of section twenty-three of this article if those investments carry an SVO rating of 1 or 2. The aggregate amount of investments acquired by the insurer under this subsection may not exceed the greater of:

(1) The amount the insurer is required by law to invest in the foreign jurisdiction; or

(2) One hundred twenty-five percent of the amount of its reserves, net of reinsurance, and other obligations under the contracts.

(d) In addition to investments permitted under subsections (a) and (b) of this section, an insurer that is not authorized to do business in a foreign jurisdiction but which has outstanding insurance, annuity or reinsurance contracts on lives or risks resident or located in a foreign jurisdiction and denominated in foreign currency of that jurisdiction, may acquire foreign investments respecting that foreign jurisdiction and may acquire investments denominated in the currency of that jurisdiction subject to the limitations set forth in section twenty-three of this article. However, investments made under this subsection in obligations of foreign governments, their political subdivisions and government-sponsored enterprises are not subject to the limitations of section twenty-three of this article if those investments carry an SVO rating of 1 or 2. The aggregate amount of investments acquired by the insurer under this subsection may not exceed one hundred five percent of the amount of its reserves, net of reinsurance, and other obligations under the contracts on risks resident or located in the foreign jurisdiction.

(e) Investments acquired under this section shall be aggregated with investments of the same types made under all other sections of this article, and in a similar manner, for purposes of determining compliance with the limitations, if any, contained in the other sections. Investments in obligations of foreign governments, their political subdivisions and government-sponsored enterprises of these persons, except for those exempted under subsections (c) and (d) of this section, are subject to the limitations of section twenty-three of this article.

WV Legislature

§33-8-31. Same - Derivative transactions.

(a) An insurer may, directly or indirectly through an investment subsidiary, engage in derivative transactions under this section under the following conditions:

(1) An insurer may use derivative instruments under this section to engage in hedging transactions and certain income generation transactions, as these terms may be further defined in rules promulgated by the commissioner.

(2) An insurer must be able to demonstrate to the commissioner the intended hedging characteristics and the ongoing effectiveness of the derivative transaction or combination of transactions through cash flow testing or other appropriate analyses.

(b) An insurer may enter into hedging transactions under this section if, as a result of and after giving effect to the transaction:

(1) The aggregate statement value of options, caps, floors and warrants not attached to another financial instrument purchased and used in hedging transactions does not exceed seven and one-half percent of its admitted assets;

(2) The aggregate statement value of options, caps and floors written in hedging transactions does not exceed three percent of its admitted assets; and

(3) The aggregate potential exposure of collars, swaps, forwards and futures used in hedging transactions does not exceed six and one-half percent of its admitted assets.

(c) An insurer may only enter into the following types of income generation transactions if as a result of and after giving effect to the transactions, the aggregate statement value of the fixed income assets that are subject to call plus the face value of fixed income securities underlying a derivative instrument subject to call, plus the amount of the purchase obligations under the puts, does not exceed ten percent of its admitted assets:

(1) Sales of covered call options on noncallable fixed income securities, callable fixed income securities if the option expires by its terms prior to the end of the noncallable period or derivative instruments based on fixed income securities;

(2) Sales of covered call options on equity securities, if the insurer holds in its portfolio, or can immediately acquire through the exercise of options, warrants or conversion rights already owned, the equity securities subject to call during the complete term of the call option sold; or

(3) Sales of covered puts on investments that the insurer is permitted to acquire under this article, if the insurer has escrowed, or entered into a custodian agreement segregating, cash or cash equivalents with a market value equal to the amount of its purchase obligations under the put during the complete term of the put option sold.

WV Legislature

(d) An insurer shall include all counterparty exposure amounts in determining compliance with the limitations of section twenty-three of this article.

(e) Pursuant to rules promulgated under section eight of this article, the commissioner may approve additional transactions involving the use of derivative instruments in excess of the limits of subsection (b) of this section or for other risk management purposes under rules promulgated by the commissioner, but replication transactions may not be permitted for other than risk management purposes.

WV Legislature

§33-8-32. Same - Additional investment authority.

(a) An insurer may acquire under this section investments, or engage in investment practices, of any kind that are not specifically prohibited by this article, or engage in investment practices, without regard to any limitation in sections twenty-three through thirty of this article, but an insurer may not acquire an investment or engage in an investment practice under this section if, as a result of and after giving effect to the transaction, the aggregate amount of the investments then held by the insurer under this section would exceed the greater of:

(1) Its unrestricted surplus; or

(2) The lesser of:

(A) Ten percent of its admitted assets; or

(B) Fifty percent of its surplus as regards policyholders.

(b) An insurer may not acquire any investment or engage in any investment practice under subdivision (2), subsection (a) of this section if, as a result of and after giving effect to the transaction the aggregate amount of all investments in any one person then held by the insurer under that subsection would exceed five percent of its admitted assets.

WV Legislature