

MAINE STATE LEGISLATURE

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BANKING AND INSURANCE

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STATE OF MAINE
SENATE
119TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 974, L.D. 2520, Bill, "An Act to Amend Investment-related Provisions of the Maine Insurance Code"

Amend the bill in section 2 in 2nd line from the end (page 1, line 34 in L.D.) by striking out the following: "1151-A" and inserting in its place the following: '1110' and by striking out the following: "24" and inserting in its place the following: '1-A, paragraph I'

Further amend the bill by striking out all of section 3 (page 1, lines 37 to 41 in L.D.) and inserting in its place the following:

'Sec. 3. 24-A MRSA §1110, sub-§1, as amended by PL 1993, c. 313, §24, is repealed.

Sec. 4. 24-A MRSA §1110, sub-§1-A is enacted to read:

1-A. Definitions. As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Admitted assets" has the same meaning as "assets" as defined in section 901.

B. "Aggregate amount of investments" means the aggregate value of those investments as determined under sections 981 to 984, except as provided in section 1157, subsection 5.

COMMITTEE AMENDMENT

COMMITTEE AMENDMENT "A" to S.P. 974, L.D. 2520

2 C. "Asset value" is that value that may be contained in the
annual statement of the corporation filed pursuant to
4 section 423.

6 D. "Bona fide hedging transaction" means a purchase or sale
of foreign currency or of a contract, option, call, put or
8 right entered into for the purpose of offsetting changes in
foreign currency exchange rates, in the market value of
10 investments held or proposed to be acquired by the insurer
or in the market value of liabilities that the insurer has
12 or expects to incur, pursuant to a duly adopted resolution
of the insurer's board of directors and written operations
14 procedure submitted to the superintendent before making any
such purchases and sales, as long as:

16 (1) There is a high correlation between changes in the
market value of those hedging purchases and sales and
18 the market value of the assets and liabilities to be
hedged; and

20 (2) Books and records regarding all such purchases and
22 sales are maintained by the insurer in accordance with
generally accepted accounting principles.

24 The superintendent may adopt further rules regarding the
26 form and content of resolutions, operation procedures, books
and accounts and further accounting treatment and valuation
28 methods necessary to ensure compliance with this definition.

30 E. "Domestic institution" means an institution created or
existing under the laws of the United States or any state,
32 district or territory.

34 F. "Fixed charges" includes interest on funded and unfunded
debt and amortization of debt discount, but in the case of a
36 bank or trust company, interest paid by that institution
upon any deposit or any certificate or other evidence of a
38 deposit may not be deemed a fixed charge of such an
institution.

40 G. "High-yield obligations" means obligations that are
42 neither investment grade nor medium grade obligations.

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

48 I. "Investment grade obligation" means an obligation that
at the time of acquisition by the insurer is rated "1" or
50 "2" by the Securities Valuation Office of the National

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

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

22 K. "Net earnings available for fixed charges" means net
23 income after deducting operating and maintenance expenses,
24 taxes other than federal, state and other income taxes,
25 depreciation and depletion, but excluding extraordinary
26 nonrecurring items of income or expense appearing in the
27 regular financial statements of the issuing, assuming or
28 guaranteeing institutions.

29 L. "Not acquired by the insurer from an issuer, underwriter
30 or dealer" means acquired by the insurer in an exempt
31 transaction described in the United States Securities Act of
32 1933, Section 4(1) or Section 4(3), 15 United States Code,
33 Section 77d(1) or Section 77d(3), as from time to time
34 amended.

35 M. "Obligations" includes bonds, debentures, notes or other
36 evidences of indebtedness.

37 N. "Qualified broker or dealer" means a broker or dealer
38 that is organized under the laws of a state, is registered
39 under the United States Securities Exchange Act of 1934, 15
40 United States Code, Sections 78a to 78kk and has net capital
41 in excess of \$250,000,000.

42 O. "Qualified financial institution" means a bank or a
43 trust company that is organized under the laws of a state or
44 the United States, has assets in excess of \$5,000,000,000,
45 has, or its parent corporation has, senior obligations
46 in excess of \$500,000,000.

2 outstanding rated "AA" or better and has a ratio of primary
3 capital to total assets of at least 5 1/2% and a ratio of
4 total capital to total assets of at least 6%.

5 P. "Qualified for public sale" means registered under the
6 United States Securities Act of 1933, 15 United States Code,
7 Sections 77a to 77aa.

8 Q. "Subsidiary" has the same meaning as defined in section
9 222, subsection 2, paragraph F. The term "subsidiary" does
10 not include a separate account established under section
11 2537.

12 R. "United States" when used to signify place includes
13 those geographical areas and the lands and waters adjacent
14 to those geographical areas under the jurisdiction of the
15 United States.

16 **Sec. 5. 24-A MRSA §1110, sub-§3, as enacted by PL 1993, c.**
17 **313, §25, is repealed.**

18 **Sec. 6. 24-A MRSA §1115, sub-§1, ¶M, as enacted by PL 1969, c.**
19 **132, §1, is amended to read:**

20 M. Trust services with respect to funds payable or paid by
21 it under its insurance contracts, or

22 **Sec. 7. 24-A MRSA §1115, sub-§1, ¶N is enacted to read:**

23 N. A depository institution, or any company that controls
24 such an institution, that is subject to the federal
25 Gramm-Leach-Bliley Act, Sections 104(c) and 306(2), 113
26 Stat. 1338 as long as the insurer's total investment in all
27 such subsidiaries does not exceed 5% of the insurer's
28 admitted assets.'

29 Further amend the bill in section 4 by striking out all of
30 that part designated "~~§1151-A.~~" and inserting in its place the
31 following:

32 **'§1151-A. Definitions**

33 As used in this chapter, unless the context otherwise
34 indicates, the following terms have the following meanings.

35 **1. Acceptable collateral. "Acceptable collateral" means:**

36 A. As to securities lending transactions, repurchase
37 transactions and reverse repurchase transactions and for the
38 purpose of calculating counter-party exposure amount: cash,
39

2 cash equivalents, letters of credit or direct obligations
4 of, or securities that are fully guaranteed as to principal
6 and interest by the government of the United States, by any
8 agency of the United States, by the Federal National
10 Mortgage Association or by the Federal Home Loan Mortgage
12 Corporation; and

14 B. As to foreign securities lending transactions:
16 sovereign debt rated "1" by the Securities Valuation Office
18 of the National Association of Insurance Commissioners.

20 2. Admitted assets. "Admitted assets" means assets that
22 may be allowed in determining the financial condition of an
24 insurer pursuant to sections 901 and 902.

26 3. Aggregate amount of investments. "Aggregate amount of
28 investments" means the aggregate value of those investments, as
30 determined under sections 981 to 984, except as provided in
32 section 1157, subsection 5.

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

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

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

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

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

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

8
A. For an over-the-counter derivative instrument not
10 entered into pursuant to a written master agreement that
provides for netting of payments owed by the respective
12 parties:

14 (1) The market value of the over-the-counter
derivative instrument if the liquidation of the
16 derivative instrument would result in a final cash
payment to the insurer; or

18 (2) Zero if the liquidation of the derivative
20 instrument would not result in a final cash payment to
the insurer; and

22
B. For an over-the-counter derivative instrument entered
24 into pursuant to a written master agreement that provides
for netting of payments owed by the respective parties, if
26 the domiciliary jurisdiction of the counter-party is either
within the United States or within a foreign jurisdiction
28 listed as eligible for netting in the purposes and
procedures manual of the Securities Valuation Office of the
30 National Association of Insurance Commissioners or its
successor publication, the greater of zero or the net sum
32 payable to the insurer in connection with all derivative
instruments subject to the written master agreement upon
34 their liquidation in the event of default by the
counter-party pursuant to the master agreement, assuming
36 there are no conditions precedent to the obligations of the
counter-party to make such a payment and no setoff of
38 amounts payable pursuant to any other instrument or
agreement.

40
For purposes of this definition, "market value" or the "net sum
42 payable" is determined at the end of the most recent quarter of
the insurer's fiscal year and must be reduced by the market value
44 of acceptable collateral held by the insurer or a custodian on
the insurer's behalf.

46
10. Derivative instrument. "Derivative instrument" means
48 any agreement, option or instrument or any series or combination
of those agreements, options or instruments:

50

COMMITTEE AMENDMENT "A" to S.P. 974, L.D. 2520

2 A. To make or take delivery of, assume or relinquish a
4 specified amount of one or more underlying interests, or to
6 make a cash settlement in lieu thereof; or

8 B. That has a price, performance, value or cash flow based
10 primarily upon the actual or expected price, yield, level,
12 performance, value or cash flow of one or more underlying
14 interests.

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

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

12. Dollar roll transaction. "Dollar roll transaction"
means 2 simultaneous transactions with settlement dates no more
than 96 days apart so that in one transaction an insurer sells to
a counter-party and in the other transaction the insurer is
obligated to purchase from the same counter-party substantially
similar securities of the following types:

A. Mortgage-backed securities issued, assumed or guaranteed
by the Government National Mortgage Association, the Federal
National Mortgage Association, the Federal Home Loan
Mortgage Corporation or their respective successors; and

B. Other mortgage-backed securities referred to the
Secondary Mortgage Market Enhancement Act of 1984, 15 United
States Code, Section 77r-1, as amended.

13. Domestic institution. "Domestic institution" means an
institution created or existing under the laws of the United
States or any state, district or territory.

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

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

20 A. The counter-party or the issuing person is a shell
business entity; and

22 B. The investment or investment practice is not assumed,
accepted, guaranteed, insured or otherwise backed by a
24 domestic jurisdiction or a person that is not a shell
business entity, domiciled in a domestic jurisdiction.

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

40 16. Foreign jurisdiction. "Foreign jurisdiction" means a
42 jurisdiction other than the United States, any state or any
political subdivision of the United States or any state.

44 17. Forward. "Forward" means an agreement other than a
46 future to make or take delivery in the future of one or more
underlying interests, or effect a cash settlement based on the
48 actual or expected price, level, performance or value of such
underlying interests. "Forward" does not mean spot transactions

2 effected within customary settlement periods, when-issued
purchases or other similar cash market transactions.

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

8
10 19. Futures exchange. "Futures exchange" means a qualified
foreign exchange or an exchange, contract market or board of
12 trade on which trading in futures is conducted that has been
authorized for futures trading in the United States by the
14 Commodities Futures Trading Commission or its successor.

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

20 A. The risk of a change in the value, yield, price, cash
flow or quantity of assets or liabilities or a portfolio of
22 assets or liabilities that an insurer has acquired or
incurred or anticipates acquiring or incurring; or

24 B. The currency exchange rate risk related to assets or
liabilities or a portfolio of assets or liabilities that an
26 insurer has acquired or incurred or anticipates acquiring or
incurring.

28
30 21. High-yield obligations. "High-yield obligations" means
obligations that are neither investment grade nor medium grade
32 obligations.

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

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

44 24. Investment grade obligation. "Investment grade
obligation" means an obligation that at the time of acquisition
46 by the insurer is rated "1" or "2" by the Securities Valuation
Office of the National Association of Insurance Commissioners.
48 If not valued by the Securities Valuation Office of the National
Association of Insurance Commissioners, "investment grade
50 obligation" means an obligation that at the time of acquisition
by the insurer is rated the equivalent of "1" or "2" by one of

2 the following nationally recognized independent rating agencies:
3 Moody's Investors Service, Inc., Standard and Poor's Division of
4 The McGraw-Hill Companies, Inc., Fitch Investors Service, Inc. or
5 Duff and Phelps Credit Rating Company.

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

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

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

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

43 29. Option. "Option" means an agreement giving the buyer
44 the right to buy or receive, sell or deliver, enter into, extend
45 or terminate or effect a cash settlement based on the actual or
46 expected price, spread, level, performance or value of one or
47 more underlying interests, including, without limitation, an
48 option to purchase or sell securities, or an option to purchase or
49 sell securities, or an option to purchase or sell securities, or an
50 option to purchase or sell securities, or an option to purchase or

option to purchase or sell a swap at a given price and time or at a series of prices and times.

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

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

32. Potential exposure. "Potential exposure" means:

A. As to a futures position, the amount of initial margin required for that position; or

B. As to swaps, collars and forwards, 0.5% times the notional amount times the square root of the remaining years to maturity.

33. Qualified bank. "Qualified bank" means:

A. A national bank, state-chartered bank or trust company that is adequately capitalized at all times as determined by standards adopted by federal banking regulators and that either is regulated by state banking laws or is a member of the Federal Reserve System; or

B. A bank or trust company incorporated or organized under the laws of a country other than the United States that is regulated as a bank or trust company by that country's government or an agency of that country's government and that is adequately capitalized at all times as determined by standards adopted by international banking regulators.

34. Qualified broker or dealer. "Qualified broker or dealer" means a broker or dealer that is organized under the laws of a state, is registered under the United States Securities Exchange Act of 1934, 15 United States Code, Sections 78a to 78kk and has net capital in excess of \$250,000,000.

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

A. An issuer of preferred stock or obligations that are rated "1" or "2" by the Securities Valuation Office of the National Association of Insurance Commissioners or an issuer

2 of obligations, preferred stock or derivative instruments
3 that are rated the equivalent of "1" or "2" by the
4 Securities Valuation Office of the National Association of
5 Insurance Commissioners or by a nationally recognized
6 statistical rating organization recognized by the Securities
7 Valuation Office of the National Association of Insurance
8 Commissioners; or

9
10 B. A primary dealer in United States Government securities
11 that is recognized by the Federal Reserve Bank of New York.

12 **36. Qualified clearinghouse.** "Qualified clearinghouse"
13 means a clearinghouse subject to the rules of a qualified
14 exchange or a futures exchange that provides clearing services,
15 including acting as a counter-party to each of the parties to a
16 transaction such that the parties no longer have credit risk to
17 each other.

18
19 **37. Qualified exchange.** "Qualified exchange" means:

20
21 A. A securities exchange registered as a national
22 securities exchange or a securities market regulated under
23 the federal Securities Exchange Act of 1934, 15 United
24 States Code, Section 78 et seq., as amended;

25
26 B. A board of trade or commodities exchange designated as a
27 contract market by the Commodity Futures Trading Commission
28 or any successor;

29
30 C. Any computerized or Internet-based market for private
31 offerings, resales and trading of obligations or other
32 securities that is maintained under the auspices of a
33 federally regulated, self-governing securities dealers
34 organization, registered as a securities exchange or
35 regulated as a securities market under the federal
36 Securities Exchange Act of 1934, 15 United States Code,
37 Section 78 et seq., as amended;

38
39 D. A designated offshore securities market as defined in
40 Securities Exchange Commission Regulation S, 17 Code of
41 Federal Regulations, Part 230, as amended; or

42
43 E. A qualified foreign exchange.

44
45 **38. Qualified foreign exchange.** "Qualified foreign
46 exchange" means a foreign exchange, board of trade or contract
47 market located outside the United States, its territories or
48 possessions:

49
50

2 A. That has received regulatory comparability relief under
4 Commodity Futures Trading Commission Rule 30.10 as set forth
6 in Appendix C to Part 30 of the Commodity Futures Trading
8 Commission's Regulations, 17 Code of Federal Regulations,
10 Part 30, as amended;

12 B. That is, or its members are, subject to the jurisdiction
14 of a foreign futures authority that has received regulatory
16 comparability relief under Commodity Futures Trading
18 Commission Rule 30.10, as set forth in Appendix C to Part 30
20 of the Commodity Futures Trading Commission's Regulations,
22 17 Code of Federal Regulations, Part 30, as amended, as to
24 futures transactions in the jurisdiction where the exchange,
26 board of trade or contract market is located; or

28 C. Upon which foreign stock index futures contracts are
30 listed that are the subject of no-action relief issued by
32 the Commodity Futures Trading Commission's Office of General
34 Counsel; however, an exchange, board of trade or contract
36 market that qualifies as a "qualified foreign exchange" only
40 under this paragraph may only be a "qualified foreign
42 exchange" as to foreign stock index futures contracts that
44 are the subject of no-action relief.

46 **39. Qualified for public sale.** "Qualified for public sale"
48 means registered under the United States Securities Act of 1933,
50 15 United States Code, Sections 77a to 77aa.

40. Replication or synthetic asset transaction.
2 "Replication or synthetic asset transaction" means a derivative
4 transaction entered into in conjunction with other permissible
6 investments held by the insurer in order to reproduce the
8 investment characteristics of other permissible investments. A
10 derivative transaction entered into by the insurer as a hedging
12 transaction or an income generation transaction is not considered
14 a replication or synthetic asset transaction.

16 **41. Repurchase transaction.** "Repurchase transaction" means
18 a transaction in which an insurer purchases securities from a
20 counter-party that is obligated to repurchase the purchased
22 securities or equivalent securities from the insurer at a
24 specified price, either within a specified period of time or upon
26 demand.

28 **42. Reverse repurchase transaction.** "Reverse repurchase
30 transaction" means a transaction in which an insurer sells
32 securities to a qualified bank or a qualified business entity or
34 a bank or a business entity whose obligations with respect to
36 such transaction are guaranteed by a qualified bank or a
40 qualified business entity and the insurer is obligated to

2 repurchase the sold securities or equivalent securities from the
3 bank or business entity at a specified price, either within a
4 specified period of time or upon demand.

6 43. Securities lending transaction. "Securities lending
7 transaction" means a transaction in which securities are loaned
8 by an insurer to a qualified bank or a qualified business entity
9 or a bank or a business entity whose obligations with respect to
10 such transaction are guaranteed by a qualified bank or a
11 qualified business entity that is obligated to return the loaned
12 securities or equivalent securities to the insurer, either within
13 a specified period of time or upon demand.

14 44. Subsidiary. "Subsidiary" has the meaning as prescribed
15 in section 222, subsection 2, paragraph F. The term "subsidiary"
16 does not include a separate account established under section
17 2537.

18 45. Swap. "Swap" means an agreement to exchange or to net
19 payments at one or more times based on the actual or expected
20 price, yield, level, performance or value of one or more
21 underlying interests.

22 46. Underlying interest. "Underlying interest" means the
23 assets, liabilities or other interests, or a combination of those
24 assets, liabilities or interests, underlying a derivative
25 instrument, such as any one or more securities, currencies,
26 rates, indices, commodities or derivative instruments that are or
27 relate to investments or investment practices that an insurer is
28 permitted to acquire or engage in pursuant to this chapter.

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

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

36 Further amend the bill in section 6 in subsection 4 in the
37 3rd line (page 11, line 26 in L.D.) by inserting after the
38 following: "replication" the following: 'or synthetic asset'

39 Further amend the bill in section 6 in subsection 4 in
40 paragraph A in the first line (page 11, line 29 in L.D.) by
41 striking out the following: "Prior to" and inserting in its
42 place the following: 'Before'

2 Further amend the bill in section 6 in subsection 4 in
paragraph B in subparagraphs (2) in the 2nd line (page 12, line
17 in L.D.) by striking out the following: "utilized" and
4 inserting in their place the following: 'used'

6 Further amend the bill in section 6 in subsection 4 in
paragraph C in the 3rd line from the end (page 13, line 17 in
8 L.D.) by striking out the following: "such noncompliance or
such" and inserting in its place the following: 'the
10 noncompliance or'

12 Further amend the bill in section 6 in subsection 4 in
paragraph D by striking out all of subparagraphs (1) and (2)
14 (page 13, lines 25 to 35 in L.D.) and inserting in their place
the following:

16 '(1) The aggregate statutory financial statement value
18 of all outstanding caps, floors, warrants not attached
to another financial instrument and options other than
20 collars purchased by the insurer pursuant to this
subsection does not exceed 7.5% of its admitted assets;

22 '(2) The aggregate statutory financial statement value
24 of all outstanding warrants, caps, floors and options
other than collars written by the insurer pursuant to
26 this subsection does not exceed 3% of its admitted
assets; and'

28 Further amend the bill in section 6 in subsection 4 in
paragraph E in subparagraph (2) in the 3rd line (page 14, line 20
30 in L.D.) by striking out the following: "such" and inserting in
32 its place the following: 'that'

34 Further amend the bill in section 6 in subsection 4 by
striking out all of paragraphs F and G (page 15, lines 12 to 31
36 in L.D.) and inserting in their place the following:

38 'F. An insurer may enter into replication or synthetic
asset transactions in accordance with the requirements of
40 the purposes and procedures manual of the National
Association of Insurance Commissioners or its successor
42 publication concerning replication or synthetic asset
transactions on or after the date on which the National
44 Association of Insurance Commissioners adopts such
requirements.

46 'G. An insurer may purchase or sell one or more derivative
48 instruments to offset, in whole or in part, any derivative
instrument previously purchased or sold, without regard to
50 the quantitative limitations of this subsection as long as
the transaction may be recognized as an offsetting

2 transaction in accordance with generally accepted accounting
3 principles.'

4 Further amend the bill in section 6 in subsection 4 in
5 paragraph H in subparagraph (1) in the first line (page 15, line
6 35 in L.D.) by striking out the following: "securities" and
7 inserting in its place the following: 'qualified'

8 Further amend the bill in section 7 by striking out all of
9 subsection 2 (page 16, lines 4 to 17 in L.D.) and inserting in
10 its place the following:

11 '2. **Government obligations; policy loans; other**
12 **limitations.** Except as otherwise expressly provided, an insurer
13 may not invest ~~more than 10% of its assets in the securities of~~
14 ~~in or may not incur counter-party exposure to any one person if,~~
15 ~~after giving effect to those investments and that counter-party~~
16 ~~exposure, the aggregate of those investments in and that~~
17 ~~counter-party exposure to that person would exceed 10% of the~~
18 ~~insurer's admitted assets, other than investments eligible under~~
19 ~~the following sections:~~

20 A. Government obligations, section 1156, subsection 2,
21 paragraph A; and

22 B. Policy loans, section 1158.'

23 Further amend the bill in section 8 by striking out all of
24 paragraph C (page 16, lines 22 to 50 and page 17, lines 1 to 48
25 in L.D.) and inserting in its place the following:

26 'C. Obligations secured by liens on real property or
27 interests in ~~that~~ real property located within the United
28 States and not eligible under paragraph A or B; acquired
29 directly or indirectly through limited partnership
30 interests, general partnership interests, joint ventures,
31 stock of an investment subsidiary or membership interests in
32 a limited liability company, trust certificates or other
33 similar instruments if, at the time of the acquisition, the
34 obligation does not exceed:

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

39 (2) Eighty percent of the fair market value of the
40 real estate, if the mortgage loan requires immediate
41 scheduled payment in periodic installments of principal
42 and interest, has an amortization period of 30 years or

2 less and requires periodic payments made no less
4 frequently than annually. Each periodic payment must
6 be sufficient to ensure that at all times the
8 outstanding principal balance of the mortgage loan may
10 not be greater than the outstanding principal balance
12 that would be outstanding under a mortgage loan with
14 the same original principal balance, with the same
16 interest rate and requiring equal payments of principal
and interest with the same frequency over the same
amortization period. Mortgage loans that are otherwise
permitted under this subparagraph may provide for a
payment of the principal balance before the end of the
period of amortization of the loan. For residential
mortgage loans, the 80% limitation may be increased to
97% if acceptable private mortgage insurance has been
obtained; or

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

22 A mortgage loan that is secured by other than a first lien
24 may not be acquired under this paragraph unless the insurer
26 is the holder of the first lien. For purposes of this
28 paragraph, the amount of an obligation required to be
30 included in the calculation of the loan-to-value ratio may
32 be reduced to the extent the obligation is insured by the
34 Federal Housing Administration or guaranteed by the
Administrator of Veterans' Affairs, or their successors. A
mortgage loan that is acquired under this paragraph and is
restructured in a manner that meets the requirements of a
restructured mortgage loan in accordance with the National
Association of Insurance Commissioners accounting practices
and procedures manual or successor publication continues to
qualify as a mortgage loan under this paragraph.'

36
38 Further amend the bill in section 9 by striking out all of
40 paragraph G (page 18, lines 4 to 48 and page 19, lines 1 to 43 in
L.D.) and inserting in its place the following:

42 'G. The following foreign investments in and investment
practices with persons domiciled in foreign jurisdictions:

44 (1) Canadian securities and investments substantially
46 of the same classes as those eligible for investment
48 under paragraphs A to F, but the aggregate amount of
those investments that are held at any time by any
insurer may not exceed 10% of total admitted assets,
except when a greater amount is permitted pursuant to

2 subparagraph (2), in which case this subparagraph is
not applicable;

4 (2) In the case of any insurer that is authorized to
6 do business in a foreign country or possession of the
8 United States or that has outstanding insurance,
10 annuity or reinsurance contracts on lives or risks
12 resident or located in a foreign country or possession
14 of the United States, securities and investments in
16 that foreign country or possession that are
18 substantially of the same classes as those eligible for
investment under paragraphs A to F, but the aggregate
amount of such investments in a foreign country or a
possession of the United States and of cash in the
currency of that country or possession that is at any
time held by that insurer may not, except as provided
in paragraph H, exceed 1 1/2 times the amount of its
reserves and other obligations under those contracts or
the amount that that insurer is required by law to
invest in that country or possession, whichever is
greater; and

22 (3) ~~In addition to the foreign investments permitted~~
24 ~~under subparagraphs (1) and (2), securities~~ Foreign
26 investments in and investments foreign investment
practices with persons domiciled in foreign countries
jurisdictions that are substantially of the same
classes as those eligible for investment under
paragraphs A to F, but the aggregate amount of these
investments made pursuant to this subparagraph may not
exceed 1% of total admitted assets; and this chapter,
if after giving effect to the investment or transaction:

34 (a) The aggregate amount of foreign investments
36 then held by the insurer and foreign investment
practices then engaged in by the insurer under
this subparagraph does not exceed 20% of its
admitted assets; and

40 (b) The aggregate amount of foreign investments
42 then held by the insurer and foreign investment
practices then engaged in by the insurer under
this subparagraph in a single foreign jurisdiction
does not exceed 10% of its admitted assets if the
foreign jurisdiction has a sovereign debt rating
of "1" from the Securities Valuation Office of the
National Association of Insurance Commissioners or
3% of its admitted assets if the foreign
jurisdiction has a sovereign debt rating other
than "1" from the Securities Valuation Office of

2 the National Association of Insurance
3 Commissioners; and

4 (4) Investments and investment practices denominated
5 in foreign currencies whether or not they are foreign
6 investments acquired or foreign investment practices
7 engaged in pursuant to subparagraphs (1) or (3), or
8 additional foreign currency exposure as a result of the
9 termination or expiration of a hedging transaction with
10 respect to investments or investment practices
11 denominated in a foreign currency if:

12 (a) The aggregate amount of investments then held
13 by the insurer and investment practices then
14 engaged in by the insurer under this subparagraph
15 denominated in foreign currencies does not exceed
16 10% of its admitted assets; and

17 (b) The aggregate amount of investments then held
18 by the insurer and investment practices then
19 engaged in by the insurer under this subparagraph
20 denominated in the currency of a single foreign
21 jurisdiction does not exceed 10% of its admitted
22 assets if the foreign jurisdiction has a sovereign
23 debt rating of "1" from the Securities Valuation
24 Office of the National Association of Insurance
25 Commissioners or 3% of its admitted assets if the
26 foreign jurisdiction has a sovereign debt rating
27 other than "1" from the Securities Valuation
28 Office of the National Association of Insurance
29 Commissioners.

30 An investment or an investment practice is not
31 considered denominated in a foreign currency if the
32 insurer enters into one or more hedging transactions
33 permitted under section 1153, subsection 4 to hedge the
34 foreign currency exchange rate risk associated with
35 such investment or investment practice; and'

36 Further amend the bill by inserting after section 9 the
37 following:

38 '**Sec. 10. 24-A MRSA §1157, sub-§5, ¶B,** as amended by PL 1993,
39 c. 502, §3 and affected by §5, is further amended to read:

40 B. Investments made directly or indirectly in the following
41 subsidiaries are not subject to the limitations contained in
42 paragraph A or in section 1155 or 1156, nor are these
43 investments to be counted in determining compliance with
44 those limitations:

COMMITTEE AMENDMENT "A" to S.P. 974, L.D. 2520

2 (1) Subsidiaries, all of whose stock is owned by one
4 or more insurers, engaged or organized to engage
6 exclusively in the ownership or management of assets
authorized under this chapter as investments for the
insurer; and

8 (2) Subsidiaries engaged or organized to engage in the
10 kinds of business in which the insurer may engage,
provided that the aggregate net cost of the insurer's
12 investments in all such subsidiaries may not exceed 50%
of its surplus as to policyholders; and

14 (3) A subsidiary that is a depository institution, or
16 any company that controls such an institution, that is
18 subject to the federal Gramm-Leach-Bliley Act, Sections
20 104(c) and 306(2), 113 Stat. 1338, as long as the
insurer's total investment in all such subsidiaries
does not exceed 5% of the insurer's admitted assets.

22 An investment described in section 3415 may is not be
24 counted considered as an investment in a subsidiary in
determining compliance with the limitations of this
subsection.'

26 Further amend the bill in section 10 by striking out all of
28 subsection 3 (page 19, lines 48 to 50 and page 20, lines 1 to 22
in L.D.) and inserting in its place the following:

30 '3. **Investments in affiliates.** No insurer may purchase the
32 stock of or otherwise invest in or lend its funds upon the
34 security of any note or other evidence of indebtedness of any
affiliate in the insurer's holding company system, except as
36 defined-in authorized by section 222 or 1157, or lend its funds
to any director or officer of the insurer or the spouse or child
of any director or officer. This provision may does not be
38 considered-to prohibit:

40 A. Policy loans authorized under section 1158;.

42 B. ~~Investments in subsidiaries under section 1157; or~~

44 C. ~~Purchases of stock, investments or loans made in~~
46 ~~accordance with section 222 from, in or to controlling~~
48 ~~shareholders or affiliates, provided that any of these~~
~~purchases, investments or loans which exceed 1/2 of 1% of~~
~~the insurer's admitted assets shall be subject to the prior~~
~~approval of the superintendent, which approval shall be~~
~~considered given unless the superintendent objects to that~~

2 ~~transaction within 45 days of receipt of written notice of~~
3 ~~that transaction.~~

4 Further amend the bill in section 12 by striking out all of
5 subsection 6 (page 20, lines 29 to 49, page 21, lines 1 to 50 and
6 page 22, lines 1 to 15 in L.D.) and inserting in its place the
7 following:

8 '6. Encumbrance of securities. An insurer may enter into
9 securities lending transactions that are conducted directly,
10 through a custodian bank that is a qualified bank, or through an
11 agent, and may enter into repurchase transactions, reverse
12 repurchase transactions and dollar roll transactions, subject to
13 the following requirements.

14
15 A. The insurer's board of directors shall adopt a written
16 plan regarding such transactions that specifies guidelines
17 and objectives to be followed, such as:

18
19 (1) A description of how cash received will be
20 invested or used for general corporate purposes of the
21 insurer;

22
23 (2) Operational procedures to manage interest rate
24 risk, counter-party default risk, the conditions under
25 which proceeds from reverse repurchase transactions may
26 be used in the ordinary course of business and the use
27 of acceptable collateral in a manner that reflects the
28 liquidity needs of the transaction; and

29
30 (3) The extent to which the insurer may engage in
31 these transactions.

32
33 B. The insurer shall enter into a written agreement for all
34 transactions authorized in this subsection other than dollar
35 roll transactions. The written agreement must require each
36 transaction to terminate no more than one year from its
37 inception. The agreement must be made with the
38 counter-party, except that, for securities lending
39 transactions, the agreement may be through a custodian bank
40 that is a qualified bank or the agreement may be with an
41 agent acting on behalf of the insurer if the agent or the
42 guarantor of the agent's obligations under the agreement is
43 a qualified bank or a qualified business entity and if the
44 agreement with the agent requires the agent to enter into
45 separate agreements with each counter-party that are
46 consistent with the requirements of this subsection and
47 prohibits securities lending transactions under the
48 agreement with the agent or its affiliates.

49
50

2 C. Cash received in a transaction under this subsection, if
3 not used by the insurer for its general corporate purposes
4 in accordance with the plan adopted by the board of
5 directors pursuant to paragraph A, must be invested in
6 accordance with this chapter and in a manner that recognizes
7 the liquidity needs of the transaction. For so long as any
8 transaction under this subsection remains outstanding, the
9 insurer, its agent or custodian shall maintain either
10 physically or through the book entry systems of the Federal
11 Reserve, Depository Trust Company, Participants Trust
12 Company or other securities depositories approved by the
13 superintendent:

14 (1) Possession of acceptable collateral for the
15 transaction;

16 (2) A perfected security interest in acceptable
17 collateral for the transaction; or

18 (3) In the case of a foreign jurisdiction, title to,
19 or rights of a secured creditor to, acceptable
20 collateral for the transaction.

21 The amount of acceptable collateral required for the
22 purposes of subparagraphs (1), (2) and (3) is the amount
23 required pursuant to the provisions of the purposes and
24 procedures manual of the Securities Valuation Office of the
25 National Association of Insurance Commissioners or its
26 successor publication.

27 D. An insurer may not enter into a transaction under this
28 subsection if, as a result of and after giving effect to the
29 transaction:

30 (1) The aggregate amount of securities then loaned to,
31 sold to or purchased from any one counter-party under
32 this subsection would exceed 5% of its admitted
33 assets. In calculating the amount sold to or purchased
34 from a counter-party under repurchase or reverse
35 repurchase transactions, effect may be given to netting
36 provisions under a written master agreement; or

37 (2) The aggregate amount of all securities then loaned
38 to, sold to or purchased from all counter-parties under
39 this subsection would exceed 40% of its admitted
40 assets.'

41 Further amend the bill by relettering or renumbering any
42 nonconsecutive Part letter or section number to read
43 consecutively.

52

SUMMARY

2

4 This amendment clarifies that the additional definitions and
6 changes to definitions included in the bill apply to life and
8 health insurers. The amendment retains the definitions in
10 current law as they apply to property and casualty insurers. The
12 amendment authorizes life and health insurers and property and
14 casualty insurers to invest in depository institution
16 subsidiaries to the extent allowed under federal law.

10

12 The amendment also amends the provision governing insurance
14 company transactions with affiliates to address a conflict with
16 the insurance holding company law. The amendment makes the
18 holding company law the exclusive source of regulation of
20 transactions with affiliates and is consistent with the model law
22 of the National Association of Insurance Commissioners.

18

20 The amendment addresses ambiguities concerning how the
22 limits on the percentage of an insurer's assets that may be
24 pledged to secure borrowings by the insurer apply to securities
lending and repurchase and reverse repurchase transactions.

22

24 The amendment makes technical changes and other
clarifications.