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AS PASSED BY THE

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J.S. McCarthy Company
Augusta, Maine
2000

CHAPTER 715

S.P. 974 - L.D. 2520

An Act to Amend Investment-related Provisions of the Maine Insurance Code

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 24 MRSA §2301, sub-§9-A, ¶E, as enacted by PL 1993, c. 702, Pt. A, §1, is amended to read:

E. Notwithstanding any provisions of this section and Title 24-A, chapter 13-A allowing other investments, a corporation subject to this chapter shall maintain cash or investment grade obligations, as defined in Title 24-A, section ~~1162-A~~ 1151-A, that at all times have a fair market value of not less than 100% of the corporation's liability for claims payable, incurred, but not reported, claims payable, unpaid claims adjustment expenses, unearned premiums and, as applicable, any statutory, special or additional reserves provided by the corporation for the benefit of subscribers as of the close of the corporation's most recent calendar quarter prepared on the basis of statutory accounting principles. If the corporation's liability for these enumerated items increases more than 10% prior to the end of the calendar quarter, the corporation must, within 10 days of the determination, reallocate its investments to ensure compliance with this paragraph.

Sec. 2. 24-A MRSA §1109, first ¶, as amended by PL 1993, c. 313, §22, is further amended to read:

An insurer may invest in obligations, other than those eligible for investment under section 1124 (mortgage loans), issued, assumed or guaranteed by any solvent institution created or existing under the laws of the United States or of Canada, or of any state, province, district or territory thereof, provided that the obligations are not in default as to principal or interest, are investment grade ~~corporate~~ obligations as defined in section ~~1162-A~~ 1110, subsection ~~7~~ 1-A, paragraph I, and are qualified under any of 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Sec. 3. 24-A MRSA §1110, sub-§1, as amended by PL 1993, c. 313, §24, is repealed.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.

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

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

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

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

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

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

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

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

H. "Institution" means a corporation, a joint-stock association, a business trust, a business

partnership, a business joint venture or any other similar entity.

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

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

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

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

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

N. "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.

O. "Qualified financial institution" means a bank or a trust company that is organized under the laws of a state or the United States, has assets in excess of $5,000,000,000, has, or its parent corporation has, senior obligations outstanding rated "AA" or better and has a ratio of primary capital to total assets of at least 5 1/2% and a ratio of total capital to total assets of at least 6%.

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

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

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

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

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

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

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

N. A depository institution, or any company that controls such an institution, that is subject to the federal Gramm-Leach-Bliley Act, Sections 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.

Sec. 8. 24-A MRSA §1151-A is enacted to read:

§1151-A. Definitions

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

1. Acceptable collateral. "Acceptable collateral" means:

A. As to securities lending transactions, repurchase transactions and reverse repurchase transactions and for the purpose of calculating counter-party exposure amount: cash, cash equivalents, letters of credit or direct obligations of, or securities that are fully guaranteed as to principal and interest by the government of the

United States, by any agency of the United States, by the Federal National Mortgage Association or by the Federal Home Loan Mortgage Corporation; and

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

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

3. Aggregate amount of investments. "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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.

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

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

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

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

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

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

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

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

19. Futures exchange. "Futures exchange" means a qualified foreign exchange or an exchange, contract market or board of trade on which trading in futures is conducted that has been authorized for

futures trading in the United States by the Commodities Futures Trading Commission or its successor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37. Qualified exchange. "Qualified exchange" means:

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

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

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

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

E. A qualified foreign exchange.

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

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

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

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

"qualified foreign exchange" as to foreign stock index futures contracts that are the subject of no-action relief.

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

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

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

42. Reverse repurchase transaction. "Reverse repurchase transaction" means a transaction in which an insurer sells securities to a qualified bank or a qualified business entity or a bank or a business entity whose obligations with respect to such transaction are guaranteed by a qualified bank or a qualified business entity and the insurer is obligated to repurchase the sold securities or equivalent securities from the bank or business entity at a specified price, either within a specified period of time or upon demand.

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

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

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

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

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

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

Sec. 9. 24-A MRSA §1153, sub-§2, as enacted by PL 1987, c. 399, §14, is repealed.

Sec. 10. 24-A MRSA §1153, sub-§4 is enacted to read:

4. Derivative transactions. This chapter does not prohibit an insurer from engaging in hedging transactions, income generation transactions and replication or synthetic asset transactions under the following conditions.

A. Before entering into any derivative transaction, the board of directors of the insurer shall determine that the insurer, directly or through an investment management subsidiary or affiliate, has adequate professional personnel, technical expertise and systems to implement investment practices involving derivative transactions and approve a derivative instruments use plan that:

(1) Describes investment objectives and risk constraints, such as counter-party exposure amounts;

(2) Defines permissible transactions including identification of the risks that may be hedged, the assets or liabilities that may be replicated and permissible types of income generation transactions; and

(3) Requires compliance with internal control procedures.

B. The insurer shall establish written internal control procedures that provide for:

(1) A quarterly report to the board of directors that reviews:

(a) All derivative transactions entered into, outstanding or closed out;

(b) The results and effectiveness of the insurer's implementation of its derivative instruments use plan; and

(c) The credit risk exposure to each counter-party for over-the-counter derivative transactions based upon the counter-party exposure amount;

(2) A system for determining whether hedging, income generation or replication strategies used by the insurer have been effective;

(3) A system of regular reports on at least a monthly basis to management that include:

(a) A description of all derivative transactions entered into, outstanding or closed out during the period since the last report;

(b) The purpose of each outstanding derivative transaction;

(c) A performance review of the derivative instruments program; and

(d) The counter-party exposure amounts for over-the-counter derivative transactions;

(4) Written authorizations that identify the responsibilities and limitations of authority of persons authorized to effect and maintain derivative transactions; and

(5) Documentation appropriate for each transaction including:

(a) The purpose of the transaction;

(b) The assets or liabilities to which the transaction relates;

(c) The specific derivative instrument used in the transaction;

(d) For over-the-counter derivative instrument transactions, the name of the counter-party and the counter-party exposure amount; and

(e) For exchange-traded derivative instruments, the name of the exchange and the name of the firm that handled the transaction.

C. Whenever the derivative transactions entered into under this subsection are not in compliance with this subsection or, if continued, may now or subsequently create a hazardous financial condition of the insurer that affects its policyholders, creditors or the general public, the superintendent may, after notice and an opportunity for a hearing, order the insurer to take such action as may be reasonably necessary to rectify the noncompliance or hazardous financial condition or prevent an impending hazardous financial condition from occurring.

D. An insurer may enter into hedging transactions under this subsection if as a result of and after giving effect to each such transaction:

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

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

(3) The aggregate potential exposure of all outstanding collars, swaps, forwards and futures entered into or acquired by the insurer pursuant to this subsection does not exceed 6.5% of its admitted assets.

With respect to hedging transactions, an insurer shall demonstrate to the superintendent upon request the intended hedging characteristics and effectiveness of the hedging transaction or combination of hedging transactions through cash-flow testing, duration analysis or other appropriate analysis.

E. An insurer may enter into an income generation transaction if:

(1) As a result of and after giving effect to the transaction, the aggregate statutory financial statement value of admitted assets that are then subject to call or that generate the cash flows for payments required to be made by the insurer under caps and floors sold by the insurer and then outstanding under this paragraph, plus the statutory financial statement value of admitted assets underlying derivative instruments then subject to calls sold by the insurer and outstanding under this paragraph, plus the purchase price of assets subject to puts then outstanding under this paragraph does not exceed 10% of its admitted assets; and

(2) The transaction is one of the following types and meets the other requirements specified in this subparagraph that are applicable to that type of transaction:

(a) Sales of call options on assets, if the insurer holds or has a currently exercisable right to acquire the underlying assets during the entire period that the option is outstanding;

(b) Sales of put options on assets, if the insurer holds sufficient cash, cash equivalents or interests in a short-term investment pool to purchase the underlying assets upon exercise during the entire period that the option is outstanding, and has the ability to hold the underlying assets in its portfolio. If the total market value of all put options sold by the insurer exceeds 2% of the insurer's admitted assets, the insurer shall set aside pursuant to a custodial or escrow agreement cash or cash equivalents having a market value equal to the amount of its put option obligations in excess of 2% of the insurer's admitted assets during the entire period the option is outstanding;

(c) Sales of call options on derivative instruments if the insurer holds or has a currently exercisable right to acquire assets generating the cash flow to make any payments for which the insurer is liable pursuant to the underlying derivative instruments during the entire period that the call options are outstanding and has the ability to enter into the underlying derivative transactions for its portfolio; or

(d) Sales of caps and floors, if the insurer holds or has a currently exercisable right to acquire assets generating the cash flow to make any payments for which the insurer is liable pursuant to the caps and floors during the entire period that the caps and floors are outstanding.

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

G. An insurer may purchase or sell one or more derivative instruments to offset, in whole or in part, any derivative instrument previously purchased or sold, without regard to the quantitative limitations of this subsection as long as the transaction may be recognized as an offsetting transaction in accordance with generally accepted accounting principles.

H. Each derivative instrument must be:

(1) Traded on a qualified exchange;

(2) Entered into with, or guaranteed by, a qualified bank or a qualified business entity;

(3) Issued or written by or entered into with the issuer of the underlying interest on which the derivative instrument is based; or

(4) In the case of futures, traded through a broker that is registered as a futures commission merchant under the federal Commodity Exchange Act or that has received exemptive relief from such registration under rule 30.10 promulgated under the federal Commodity Exchange Act.

Sec. 11. 24-A MRSA §1155, sub-§2, as enacted by PL 1987, c. 399, §14, is amended to read:

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

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

B. Policy loans, section 1158.

Sec. 12. 24-A MRSA §1156, sub-§2, ¶C, as enacted by PL 1987, c. 399, §14, is amended to read:

C. Obligations secured by liens on real property or interests in ~~that~~ real property located within the United States and not eligible under paragraph A or B~~;~~ acquired directly or indirectly through limited partnership interests, general partnership interests, joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates or other similar instruments if, at the time of the acquisition, the obligation does not 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 30 years or less and requires periodic payments made no less frequently than annually. Each periodic payment must be sufficient to ensure that at all times the outstanding principal balance of the mortgage loan may not be 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 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

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

A mortgage loan that is secured by other than a first lien may not be acquired under this paragraph unless the insurer is the holder of the first lien. For purposes of this paragraph, 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. 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.

Sec. 13. 24-A MRSA §1156, sub-§2, ¶G, as amended by PL 1993, c. 313, §27, is further amended to read:

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

(1) Canadian securities and investments substantially of the same classes as those eligible for investment 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 subparagraph (2), in which case this subparagraph is not applicable;

(2) In the case of any insurer that is authorized to do business in a foreign country or possession of the United States or that has outstanding insurance, annuity or reinsurance contracts on lives or risks resident or located in a foreign country or possession of the United States, securities and investments in that foreign country or possession that are 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~~

(3) ~~In addition to the foreign investments permitted under subparagraphs (1) and (2), securities~~ Foreign 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 those 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:

(a) The aggregate amount of foreign investments 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

(b) The aggregate amount of foreign investments 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 the National Association of Insurance Commissioners; and

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

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

(b) The aggregate amount of investments then held by the insurer and investment practices then engaged in by the insurer under this subparagraph denominated in the currency of 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 the National Association of Insurance Commissioners.

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

Sec. 14. 24-A MRSA §1157, sub-§5, ¶B, as amended by PL 1993, c. 502, §3 and affected by §5, is further amended to read:

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

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

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

(3) A subsidiary that is a depository institution, or any company that controls such an institution, that is subject to the federal Gramm-Leach-Bliley Act, Sections 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.

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

Sec. 15. 24-A MRSA §1160, sub-§3, as enacted by PL 1987, c. 399, §14, is amended to read:

3. Investments in affiliates. No insurer may purchase the stock of or otherwise invest in or lend its funds upon the security of any note or other evidence of indebtedness of any affiliate in the insurer's holding company system, except as ~~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 considered to~~ prohibit:

A. Policy loans authorized under section 1158~~;~~.

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

~~C. Purchases of stock, investments or loans made in accordance with section 222 from, in or to controlling shareholders or affiliates, provided that any of those 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 transaction within 45 days of receipt of written notice of that transaction.~~

Sec. 16. 24-A MRSA §1160, sub-§4, as enacted by PL 1987, c. 399, §14, is repealed.

Sec. 17. 24-A MRSA §1160, sub-§6 is enacted to read:

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

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

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

(2) Operational procedures to manage interest rate risk, counter-party 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

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

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

C. Cash received in a transaction under this subsection, if not used by the insurer for its general corporate purposes in accordance with the plan adopted by the board of directors pursuant to paragraph A, must be invested in accordance with this chapter and in a manner that recognizes the liquidity needs of the transaction. For so long as any transaction under this subsection remains outstanding, the insurer, its agent or custodian shall maintain 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 superintendent:

(1) Possession of acceptable collateral for the transaction;

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

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

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

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

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

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

Sec. 18. 24-A MRSA §1162-A, as corrected by RR 1993, c. 1, §§57 and 58, is repealed.

Sec. 19. 24-A MRSA §4204, sub-§3-A, ¶D, as enacted by PL 1993, c. 702, Pt. A, §12, is amended to read:

D. Notwithstanding any provisions of this section and chapter 13-A allowing other investments, a health maintenance organization shall maintain cash or investment grade obligations, as defined in section ~~1162-A~~ 1151-A, that at all times have a fair market value of not less than 100% of the organization's liability for claims payable and incurred, but not reported, claims, unearned premiums, unpaid claims adjustment expenses and, as applicable, any statutory, special or additional reserves provided by the health maintenance organization for the benefit of members as of the most recent calendar quarter prepared on the basis of statutory accounting principles. If the organization's liability for claims payable and incurred, but not reported, claims increased more than 10% prior to the end of the calendar quarter, the organization must, within 10 days of the determination, reallocate its investments to ensure compliance with this paragraph. The investments required by this paragraph constitute admitted assets of the organization.

See title page for effective date.

CHAPTER 716

H.P. 1756 - L.D. 2462

An Act to Amend the Control of the Revenue Generated by Games of Chance at the Agricultural Fairs

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the agricultural fair season starts prior to 90 days after the adjournment of the second regular session; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 17 MRSA §332, sub-§4, ¶A, as amended by PL 1993, c. 410, Pt. PP, §1, is further amended to read:

A. An agricultural society or a bona fide nonprofit organization may operate a game of chance on the grounds of ~~the~~ an agricultural society and during the annual fair of the agricultural society.

Sec. 2. 17 MRSA §335, sub-§1, as amended by PL 1993, c. 45, §5, is further amended to read:

1. Prohibition. Proceeds of any games of chance may not be used to provide salaries, wages or other remuneration to members, officers or employees of any organization authorized to conduct games of chance under this chapter, except that an organization licensed to operate beano or bingo and Lucky 7 games in conjunction with beano or bingo and agricultural societies licensed to operate games of chance on the grounds of the agricultural society and during the annual fair of the agricultural society may use the proceeds or part of the proceeds to pay salaries, wages or remuneration to any person directly involved in operating the beano, bingo ~~or,~~ Lucky 7 games or games of chance operated by an agricultural society on the grounds of the agricultural society and during the annual fair of the agricultural society. Payments to persons directly involved in operating beano, bingo or Lucky 7 games may not exceed 20% of the revenue generated by the games. Payments by an agricultural society to persons directly involved in the operation of games of chance operated by agricultural societies during the annual fair of the agricultural society may not exceed 300% of the minimum wage as established pursuant to Title 26, section 664, subsection 1.

Sec. 3. 17 MRSA §335, sub-§2-B is enacted to read:

2-B. Exceptions for agricultural fairs. Agricultural fairs licensed to conduct games of chance may pay wages and salaries subject to the limitations set out in subsection 1 to operators of games of chance hired by the agricultural fair society.

Sec. 4. 17 MRSA §336, sub-§1-A is enacted to read:

1-A. Records required by agricultural fairs. The treasurer of the agricultural fair society conducting a game of chance that is operated by a member of the agricultural fair society, or the treasurer's designee, shall keep a record as required by subsection 1. An agricultural fair society that employs operators who are not members of the agricultural fair society and that is required to use tokens as provided by section 341, subsection 3, shall keep a record of all tokens, tickets or other devices used to play games of chance, sold and redeemed for cash. The records must include the exact amount of income from the sale of tokens, tickets or other devices used to play games of chance and the exact amount paid towards the redemption of the tokens, tickets or other devices used to play games