# CHAPTER 13-A

# INVESTMENTS OF LIFE INSURERS AND LIFE AND HEALTH INSURERS

## §1151. Scope of chapter

Except as provided in sections 1101 and 1161, this chapter applies only to a domestic life or health insurer that transacts business of a type described in section 409, subsection 3. [PL 1991, c. 385, §10 (AMD).]

SECTION HISTORY

PL 1987, c. 399, §14 (NEW). PL 1989, c. 846, §§B8,E4 (RPR). PL 1991, c. 385, §10 (AMD).

## §1151-A. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1999, c. 715, §8 (NEW).]

**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 [PL 1999, c. 715, §8 (NEW).]

B. As to foreign securities lending transactions: sovereign debt rated "1" by the Securities Valuation Office of the National Association of Insurance Commissioners. [PL 1999, c. 715, §8 (NEW).]

[PL 1999, c. 715, §8 (NEW).]

**2. Admitted assets.** "Admitted assets" means assets recognized by the superintendent pursuant to section 901-A.

[PL 2001, c. 72, §13 (AMD).]

**3. Aggregate amount of investments.** "Aggregate amount of investments" means the aggregate value of those investments, as determined in accordance with statutory accounting principles pursuant to section 901-A and any rules adopted under that section, except as provided in section 1157, subsection 5.

[PL 2001, c. 72, §13 (AMD).]

**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.

[PL 1999, c. 715, §8 (NEW).]

**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."

[PL 1999, c. 715, §8 (NEW).]

**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.
[PL 1999, c. 715, §8 (NEW).]

**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.
[PL 1999, c. 715, §8 (NEW).]

**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.
[PL 1999, c. 715, §8 (NEW).]

**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 [PL 1999, c. 715, §8 (NEW).]

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. [PL 1999, c. 715, §8 (NEW).]

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.
[PL 1999, c. 715, §8 (NEW).]

**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 [PL 1999, c. 715, §8 (NEW).]

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. [PL 1999, c. 715, §8 (NEW).]

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.
[PL 1999, c. 715, §8 (NEW).]

**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.
[PL 1999, c. 715, §8 (NEW).]

**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 [PL 1999, c. 715, §8 (NEW).]

B. Other mortgage-backed securities referred to the Secondary Mortgage Market Enhancement Act of 1984, 15 United States Code, Section 77r-1, as amended. [PL 1999, c. 715, §8 (NEW).]
[PL 1999, c. 715, §8 (NEW).]

**13. Domestic institution.** "Domestic institution" means an institution created or existing under the laws of the United States or any state, district or territory.
[PL 1999, c. 715, §8 (NEW).]

**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.
[PL 1999, c. 715, §8 (NEW).]

**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 [PL 1999, c. 715, §8 (NEW).]

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. [PL 1999, c. 715, §8 (NEW).]

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.
[PL 1999, c. 715, §8 (NEW).]

**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.
[PL 1999, c. 715, §8 (NEW).]

**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.
[PL 1999, c. 715, §8 (NEW).]

**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.
[PL 1999, c. 715, §8 (NEW).]

**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.
[PL 1999, c. 715, §8 (NEW).]

**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 [PL 1999, c. 715, §8 (NEW).]

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. [PL 1999, c. 715, §8 (NEW).]

[PL 1999, c. 715, §8 (NEW).]

**21. High-yield obligations.** "High-yield obligations" means obligations that are neither investment grade nor medium grade obligations.
[PL 1999, c. 715, §8 (NEW).]

**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.
[PL 1999, c. 715, §8 (NEW).]

**23. Institution.** "Institution" means a corporation, joint-stock association, business trust, business partnership, business joint venture or any other similar entity.
[PL 1999, c. 715, §8 (NEW).]

**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.
[PL 1999, c. 715, §8 (NEW).]

**25. Investment practices.** "Investment practices" means transactions of the types described in section 1153, subsection 4 and section 1160, subsection 6.
[PL 1999, c. 715, §8 (NEW).]

**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.
[PL 1999, c. 715, §8 (NEW).]

**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.
[PL 1999, c. 715, §8 (NEW).]

**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.
[PL 1999, c. 715, §8 (NEW).]

**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.
[PL 1999, c. 715, §8 (NEW).]

**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.
[PL 1999, c. 715, §8 (NEW).]

**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.
[PL 1999, c. 715, §8 (NEW).]

**32. Potential exposure.** "Potential exposure" means:

A. As to a futures position, the amount of initial margin required for that position; or [PL 1999, c. 715, §8 (NEW).]

B. As to swaps, collars and forwards, 0.5% times the notional amount times the square root of the remaining years to maturity. [PL 1999, c. 715, §8 (NEW).]

[PL 1999, c. 715, §8 (NEW).]

**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 [PL 1999, c. 715, §8 (NEW).]

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. [PL 1999, c. 715, §8 (NEW).]

[PL 1999, c. 715, §8 (NEW).]

**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.

[PL 1999, c. 715, §8 (NEW).]

**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 [PL 1999, c. 715, §8 (NEW).]

B. A primary dealer in United States Government securities that is recognized by the Federal Reserve Bank of New York. [PL 1999, c. 715, §8 (NEW).]

[PL 1999, c. 715, §8 (NEW).]

**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.

[PL 1999, c. 715, §8 (NEW).]

**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; [PL 1999, c. 715, §8 (NEW).]

B. A board of trade or commodities exchange designated as a contract market by the Commodity Futures Trading Commission or any successor; [PL 1999, c. 715, §8 (NEW).]

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; [PL 1999, c. 715, §8 (NEW).]

D. A designated offshore securities market as defined in Securities Exchange Commission Regulation S, 17 Code of Federal Regulations, Part 230, as amended; or [PL 1999, c. 715, §8 (NEW).]

E. A qualified foreign exchange. [PL 1999, c. 715, §8 (NEW).]
[PL 1999, c. 715, §8 (NEW).]

**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; [PL 1999, c. 715, §8 (NEW).]

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 [PL 1999, c. 715, §8 (NEW).]

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. [PL 1999, c. 715, §8 (NEW).]
[PL 1999, c. 715, §8 (NEW).]

**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.
[PL 1999, c. 715, §8 (NEW).]

**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.
[PL 1999, c. 715, §8 (NEW).]

**41. Repurchase transaction.** "Repurchase transaction" means a transaction in which an insurer sells securities to a qualified bank or a qualified business entity or to a bank or a business entity whose obligations with respect to the 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.
[PL 2021, c. 16, §11 (AMD).]

**42. Reverse repurchase transaction.** "Reverse 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.
[PL 2021, c. 16, §12 (AMD).]

**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.
[PL 1999, c. 715, §8 (NEW).]

**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.
[PL 1999, c. 715, §8 (NEW).]

**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.
[PL 1999, c. 715, §8 (NEW).]

**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.
[PL 1999, c. 715, §8 (NEW).]

**47. United States.** "United States" when used to signify place means those lands and waters under the jurisdiction of the United States.
[PL 1999, c. 715, §8 (NEW).]

**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.
[PL 1999, c. 715, §8 (NEW).]

SECTION HISTORY

PL 1999, c. 715, §8 (NEW). PL 2001, c. 72, §13 (AMD). PL 2021, c. 16, §§11, 12 (AMD).

**§1152. Eligibility of investments**

**1. Eligible investments.** Insurers shall invest in or lend their funds on the security of and shall hold as eligible investments only those as prescribed or permitted in this chapter.
[PL 1987, c. 399, §14 (NEW).]

**2. Prior investments.** Any particular investment held by an insurer on the effective date of this chapter, which was a legal investment at the time it was made, and which the insurer was legally entitled to possess immediately before the effective date of this chapter, shall be considered an eligible investment.
[PL 1987, c. 399, §14 (NEW).]

**3. Eligibility date.** Eligibility of an investment shall be determined as of the date of its making or acquisition, except as stated in subsection 2, or in section 1153, subsection 3, or in section 1156, subsection 2, paragraph H, subparagraph (4).
[PL 1987, c. 399, §14 (NEW).]

**4. Basis for limitation or diversification.** Any investment limitation or diversification requirement based upon the amount of the insurer's assets or particular funds must relate to such assets or funds as shown by the insurer's annual or quarterly statement as of the statement date immediately preceding the date of acquisition of the investment by the insurer, or as shown by a current applicable financial statement, prepared on the same basis as that annual or quarterly statement, resulting from merger with another insurer, bulk reinsurance or change in capitalization.
[PL 2017, c. 169, Pt. A, §7 (AMD).]

**5. Capital loans.** Nothing in this chapter prohibits an insurer from advancing funds to another insurer upon the type of agreement provided for in section 3415, borrowed capital funds, and subject to the terms of that section.
[PL 1987, c. 399, §14 (NEW).]

SECTION HISTORY

PL 1987, c. 399, §14 (NEW). PL 2017, c. 169, Pt. A, §7 (AMD).

**§1153. General qualifications**

**1. Eligible investments.** No investment, other than real property acquired under section 1156, subsection 2, paragraph D, and personal property incident to that real property or acquired under section 1156, subsection 2, paragraph E, and other than investments acquired under section 1156, subsection 2, paragraph H, subparagraph (2), may be eligible for acquisition unless it is interest bearing, interest accruing, entitled to dividends, if declared, or is otherwise income entitled and is not then in default in any respect and the insurer is entitled to receive for its exclusive account and benefit that interest or those dividends or that income.
[PL 1987, c. 399, §14 (NEW).]

**2. Bona fide hedging transactions.**
[PL 1999, c. 715, §9 (RP).]

**3. Permitted acquisitions.** Nothing in this chapter prohibits the acquisition by an insurer of:

A. Securities or property received as a dividend or pursuant to a lawful judicial or nonjudicial plan of reorganization or dissolution or pursuant to a lawful and bona fide agreement of bulk reinsurance, merger or consolidation or through the exercise of rights of conversion, stock warrants or stock options received by it in accordance with this subsection or section 1156; [PL 1987, c. 399, §14 (NEW).]

B. An investment permitted under section 1156 because that investment is convertible into other securities or stock in which the insurer is not permitted to invest under this chapter or because the insurer receives in connection with that investment stock warrants, whether detachable or nondetachable, stock options, shares of stock, property interests or other assets of any kind; or [PL 1987, c. 399, §14 (NEW).]

C. Real or personal property or any interest in that property received in satisfaction of a debt previously owing to that insurer. If any securities received by any insurer in accordance with paragraph A consist in whole or in part of stock or shares of any institution, as defined in section 1156, or of bonds or other obligations which do not meet the requirements specified in section 1156, then any of that stock or shares and any bond or obligation of that type so received shall be disposed of within 5 years from the time of its acquisition or before the expiration of any further period or periods of time as may be prescribed in writing by the superintendent or treated as a nonadmitted asset thereafter unless, at any time after acquisition, those securities have met the relevant requirements and the insurer has notified the superintendent of that fact. [PL 1987, c. 399, §14 (NEW).]
[PL 1987, c. 399, §14 (NEW).]

**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. [PL 1999, c. 715, §10 (NEW).]

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. [PL 1999, c. 715, §10 (NEW).]

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. [PL 1999, c. 715, §10 (NEW).]

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. [PL 1999, c. 715, §10 (NEW).]

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. [PL 1999, c. 715, §10 (NEW).]

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. [PL 1999, c. 715, §10 (NEW).]

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. [PL 1999, c. 715, §10 (NEW).]

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. [PL 1999, c. 715, §10 (NEW).]

[PL 1999, c. 715, §10 (NEW).]

SECTION HISTORY

PL 1987, c. 399, §14 (NEW). PL 1999, c. 715, §§9,10 (AMD).

**§1154. Authorization; record of investments**

**1. Authorization required.** An insurer shall not make any investment or loan, other than policy loans or annuity contract loans, unless it is authorized or approved by the insurer's board of directors or by a committee of the board of directors charged with supervision of investments and loans.
[PL 1987, c. 399, §14 (NEW).]

**2. Records.** The insurer shall maintain a full record of each investment, showing, among other things, the name of any officer, director or principal stockholder of the insurer having any direct, indirect or contingent interest in the securities, loan or property constituting the investment, or in the person in whose behalf the investment is made, and the nature of that interest.
[PL 1987, c. 399, §14 (NEW).]

SECTION HISTORY

PL 1987, c. 399, §14 (NEW).

**§1155. Diversification**

Investments of an insurer shall be subject to the following diversification requirements and limitations. [PL 1987, c. 399, §14 (NEW).]

**1. Real estate; personal property; equity interests; subsidiaries.** Not more than 40% of the insurer's assets in aggregate amount may consist of investments described in the following paragraphs:

A. Real estate, section 1156, subsection 2, paragraph D, subparagraph (1); [PL 1987, c. 399, §14 (NEW).]

B. Personal property, section 1156, subsection 2, paragraph E; [PL 1987, c. 399, §14 (NEW).]

C. Equity interests, section 1156, subsection 2, paragraph F; and [PL 1987, c. 399, §14 (NEW).]

D. Subsidiaries, section 1157, except as provided in that section. [PL 1987, c. 399, §14 (NEW).]

If, on or after the effective date of this subsection, the insurer makes investments of those types in institutions or property located within the State aggregating 1% or more of its assets, the 40% limitation in this subsection must be increased by an equal amount up to 45%, exclusive of those investments in institutions or property located within the State, thus providing for a maximum limit on the investments described in those paragraphs of 50% of the insurer's assets.
[PL 2023, c. 59, §3 (AMD).]

**2. Counter-party limitations.** Except as otherwise expressly provided, an insurer may not invest 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, with the following exceptions:

A. Government obligations pursuant to section 1156, subsection 2, paragraph A; [PL 2001, c. 524, §3 (AMD).]

B. Policy loans pursuant to section 1158; and [PL 2001, c. 524, §3 (AMD).]

C. Index mutual funds, but as to this exception, only with the prior approval of the superintendent and limited to 20% of the insurer's admitted assets. [PL 2001, c. 524, §3 (NEW).]
[PL 2023, c. 59, §3 (AMD).]

**3. Other investment limitations.** Other investment limitations are as provided in particular sections of this chapter.
[PL 2023, c. 59, §3 (AMD).]

SECTION HISTORY

PL 1987, c. 399, §14 (NEW). PL 1999, c. 715, §11 (AMD). PL 2001, c. 524, §3 (AMD). PL 2023, c. 59, §3 (AMD).

**§1156. Reserve and other investments**

**1. Standard of care.** When investing the assets of an insurer, the directors and officers of the insurer shall perform their duties in good faith and with that degree of care that an ordinarily prudent person in a like position would use under similar circumstances.
[PL 1987, c. 399, §14 (NEW).]

**2. Investment classes.** Subject to section 1155, the assets of an insurer may be invested in the following classes, subject to the percentage limitations contained in this subsection:

A. Obligations issued, assumed, guaranteed or insured by the United States or by any state or by the District of Columbia, or any other governmental unit in the United States, its territories or possessions, or by any agency or instrumentality of any of those, provided that those obligations are by law payable, as to both principal and interest, from taxes upon all property or income within the jurisdiction of that governmental unit, or from adequate special revenues pledged or appropriated or otherwise by law required to be provided for the purpose of that payment, but not including special assessments on properties benefitted by local improvements unless adequate security is evidenced by the ratio of assessment to the value of those properties, or unless the obligation is additionally secured by an adequate guaranty fund required by law; [PL 1987, c. 399, §14 (NEW).]

B. Obligations issued, assumed, guaranteed or accepted by domestic institutions or by trustees or receivers of those institutions, and preferred shares of any of those institutions, provided that without the prior approval of the superintendent, no domestic insurer may acquire any high-yield or medium grade obligations of any institution if:

(1) The aggregate amount of all medium grade obligations and all high-yield obligations then held by the insurer exceeds 20% of its admitted assets;

(2) The aggregate amount of all high-yield obligations then held by the insurer exceeds 10% of its admitted assets;

(3) The aggregate amount of all high-yield obligations rated 5 or 6 by the Securities Valuation Office of the National Association of Insurance Commissioners or, if not valued by the National Association of Insurance Commissioners, rated the equivalent of 5 or 6 by Moody's Investors Service, Inc., Standard and Poor's Corporation, Fitch Investors Service, Inc. or Duff and Phelps, Inc., exceeds 3% of admitted assets;

(4) The aggregate amount of all high-yield obligations rated 6 by the Securities Valuation Office of the National Association of Insurance Commissioners or, if not valued by the National Association of Insurance Commissioners, rated the equivalent of 6 by Moody's Investors Service, Inc., or rated D by Standard and Poor's Corporation, Fitch Investors Service, Inc., or Duff and Phelps, Inc., exceeds 1% of admitted assets;

(5) The aggregate amount of medium grade obligations issued, guaranteed or insured by any one institution then held by the insurer exceeds 1/2 of 1% of its admitted assets; or

(6) The aggregate amount of high-yield obligations issued, guaranteed or insured by any one institution then held by the insurer exceeds 1/2 of 1% of its admitted assets. [PL 1993, c. 313, §26 (RPR).]

C. Obligations secured by liens on real property or interests in 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. [PL 1999, c. 715, §12 (AMD).]

D. Investments in real property or interests therein located in the United States, held directly or evidenced by partnership interests, stock of corporations, trust certificates or other instruments and acquired:

(1) As an investment for the production of income or to be improved or developed for that investment purpose; or

(2) For the convenient accommodation of the insurer's business.

After giving effect to any of those types of investments, the aggregate amount of investments made under subparagraph (1) may not exceed 20% of the insurer's total admitted assets; the aggregate amount of investments made under subparagraph (2) may not exceed 10% of the insurer's total admitted assets; and the aggregate amount of investments made under this paragraph may not exceed 25% of the insurer's total admitted assets. Investments under subparagraph (1) in any single property, including improvements on that property, may not in the aggregate exceed 2% of the insurer's total admitted assets; [PL 1993, c. 313, §27 (AMD).]

E. Investments in personal property or interests in that property located or used wholly or in part within the United States, held directly or evidenced by partnership interests, stock of corporations, trust certificates or other instruments, provided that, after giving effect to any investment of that type, the aggregate amount of those investments will not exceed 10% of the insurer's total admitted assets and provided that investments under this paragraph in any single item of personal property will not in the aggregate exceed 1% of the insurer's total admitted assets; [PL 1987, c. 399, §14 (NEW).]

F. Investments, other than investments described in paragraph D or E and in addition to investments authorized by section 1157, in common stock, partnership interests, trust certificates or other equity interests, other than preferred shares, of domestic institutions, provided that, after giving effect to any investment of that type under this paragraph, the aggregate amount of those investments will not exceed 20% of the insurer's total admitted assets; [PL 1987, c. 399, §14 (NEW).]

F-1. Investment practices entered into under section 1153, subsection 4 or section 1160, subsection 6; [PL 2001, c. 471, Pt. D, §24 (NEW).]

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;

(3) Foreign investments in and foreign investment practices with persons domiciled in foreign jurisdictions that are substantially of the same classes as those eligible for investment under 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 [PL 1999, c. 715, §13 (AMD).]

H. Investments that do not qualify or are not permitted under any other paragraph of this subsection; as long as:

(1) After giving effect to any investment made under this paragraph, the aggregate amount of those investments does not exceed 14% of total admitted assets, except that investments made under this paragraph in institutions or property not located within the State may not exceed 10% of total admitted assets; and, if the insurer makes investments described in paragraphs A to G and elects to charge those investments against the quantitative limits in this paragraph instead of the quantitative limits in paragraphs A to G, then the aggregate amount invested under this paragraph in those types of investments may not exceed 5% of total admitted assets for any one of those types of investments;

(2) Investments that are neither interest bearing nor income entitled are subject to all of the provisions of this paragraph; and the aggregate amount of those investments held at any one time may not exceed 3% of total admitted assets;

(3) The investment limitations contained in this chapter, qualitative or otherwise, do not apply to loans or investments made or acquired under this paragraph, provided that no loan or investment made or acquired under this paragraph may be represented by any asset determined to be nonadmitted pursuant to section 901-A or rules adopted under that section; any loan or investment expressly prohibited under section 1160; or agents' balances, or amounts advanced to or owing by agents, except as to policy loans, mortgage loans and collateral loans to those agents otherwise authorized under this chapter; or

(4) The insurer shall keep a separate record of all loans and investments made or acquired under this paragraph. Any such loan or investment that, subsequent to the date of making or acquisition, has attained the standard of eligibility and qualifies under any other provision of this chapter may be considered to have been made or acquired under and in compliance with

that provision and may no longer be considered to have been made or acquired under this paragraph. [PL 2001, c. 471, Pt. A, §27 (AMD).]

[PL 2001, c. 471, Pt. A, §27 (AMD); PL 2001, c. 471, Pt. D, §24 (AMD).]

**3. Determination of eligibility.** The eligibility of any investment under any paragraph of subsection 2 must be determined at the time of acquisition, except that investments qualified under subsection 2, paragraph H, may be requalified at a later date under another provision of this chapter, if the relevant conditions are satisfied at the time of such requalification.

[PL 1993, c. 313, §28 (AMD).]

SECTION HISTORY

PL 1987, c. 399, §14 (NEW). PL 1993, c. 313, §§26-28 (AMD). PL 1999, c. 715, §§12,13 (AMD). PL 2001, c. 72, §14 (AMD). PL 2001, c. 471, §§A27,D24 (AMD).

**§1157. Investment in subsidiaries**

**1. Investment or acquisition.** Subject to the limitations contained in subsection 5, an insurer may invest in, or otherwise acquire, subsidiaries engaged or organized to engage in any businesses lawful under the laws of the jurisdictions in which those subsidiaries are organized.

[PL 1987, c. 399, §14 (NEW).]

**2. Authorization.** Except as provided in section 1153, subsection 3, investments in subsidiaries authorized by this section may not be authorized under any other section of this chapter.

[PL 1987, c. 399, §14 (NEW).]

**3. Superintendent; order of disposition.** At any time after the acquisition by the insurer of any subsidiary, other than a holding company engaged solely in the ownership or control of other subsidiaries, or a subsidiary referred to in subsection 5, paragraph B, subparagraph (1) or (2), the superintendent may order its disposition if the superintendent finds, after notice and an opportunity to be heard, that its continued retention is materially adverse to the interests of the insurer's policyholders. The insurer has at least 36 months to effect the disposition. If that disposition is not so effected, the subsidiary may not thereafter be allowed as an asset of the insurer.

[RR 2021, c. 2, Pt. A, §69 (COR).]

**4. Name.** The name of any subsidiary may not be such as to mislead or deceive the public.

[PL 1987, c. 399, §14 (NEW).]

**5. Limitations.** Subject to the exceptions in paragraph B, investments in subsidiaries of an insurer are limited as follows.

A. Except with the approval of the superintendent, that insurer may not make, directly or indirectly, an investment in any subsidiary if that investment would bring the aggregate net cost of investments in all subsidiaries to an amount in excess of the lesser of 10% of the insurer's total admitted assets or 50% of the insurer's surplus as regards policyholders or if that investment would bring the aggregate net investment in that subsidiary to an amount in excess of 2% of those total admitted assets. [PL 1993, c. 313, §29 (AMD).]

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;

(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 is not considered as an investment in a subsidiary in determining compliance with the limitations of this subsection. [PL 1999, c. 715, §14 (AMD).]

C. Subject to paragraph B, the "net cost of investment" is defined to be the sum of: The total money or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of that subsidiary; and all amounts expended in acquiring additional common stock, preferred stock, debt obligations and other securities, and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation; less returns of capital, repayments of principal and any other payments reducing the investment in the subsidiary. [PL 1987, c. 399, §14 (NEW).]

D. Investments made or acquired by subsidiaries referred to in paragraph B, subparagraph (1) are considered to be made or acquired directly by the insurer, pro rata, in the case of a subsidiary not wholly owned and, to such extent, are subject to all the provisions and limitations on the making of investments specified in this chapter with respect to investments by the insurer; must be valued in accordance with the provisions of section 901-A and any other applicable provisions of this Title and any applicable rules adopted by the superintendent; and must be located pursuant to section 3408. Those subsidiaries are subject to examination by the superintendent under section 221, subsection 1 and section 222, subsection 1-A. [PL 2013, c. 238, Pt. A, §31 (AMD); PL 2013, c. 238, Pt. A, §34 (AFF).]

E. There shall be excluded from all computations under paragraph A any investment by an insurer in any subsidiary, or by one subsidiary in another subsidiary, to the extent that such investment is reinvested in another subsidiary, but amounts so reinvested shall thereafter be included in such computations unless further excluded or exempted by this chapter. [PL 1987, c. 399, §14 (NEW).]

[PL 2013, c. 238, Pt. A, §31 (AMD); PL 2013, c. 238, Pt. A, §34 (AFF).]

**6. Valuation of subsidiary stock.** In determining the financial condition of an insurer, all investments made directly or indirectly in the stock of its subsidiaries must be valued in accordance with section 901-A and any rules adopted under that section.

[PL 2001, c. 72, §16 (AMD).]

**7. Application of law.** Except as provided in section 1155, investments in subsidiaries made pursuant to this section are not subject to any other restrictions or prohibitions contained in this chapter.

[PL 1987, c. 399, §14 (NEW).]

SECTION HISTORY

PL 1987, c. 399, §14 (NEW). PL 1993, c. 313, §29 (AMD). PL 1993, c. 502, §3 (AMD). PL 1993, c. 502, §5 (AFF). PL 1999, c. 715, §14 (AMD). PL 2001, c. 72, §§15, 16 (AMD). PL 2013, c. 238, Pt. A, §31 (AMD). PL 2013, c. 238, Pt. A, §34 (AFF). RR 2021, c. 1, Pt. B, §191 (COR). RR 2021, c. 2, Pt. A, §69 (COR).

**§1158. Policy loans**

A life insurer may lend to its policyholder, upon pledge of the policy as collateral security, any sum not exceeding the cash surrender value of the policy; or may lend against pledge or assignment of any of its supplementary contracts or other contracts or obligations, as long as the loan is adequately secured by that pledge or assignment. Loans so made are eligible investments of the insurer. [PL 1987, c. 399, §14 (NEW).]

SECTION HISTORY

PL 1987, c. 399, §14 (NEW).

**§1159. Special investments; separate accounts**

**1. Special investments.** Except as may be provided with respect to reserves for guaranteed benefits and funds referred to in subsection 2:

A. Amounts allocated to any separate account established by the insurer pursuant to section 2537, separate accounts and accumulations on those accounts may be invested and reinvested without regard to any requirements or limitations prescribed by this chapter except for the provisions of section 1156, subsection 1; and [PL 1987, c. 399, §14 (NEW).]

B. Except as provided in subsection 2, paragraph B, the investments in that separate account or accounts may not be taken into account in applying the investment limitations otherwise applicable to the investments of the insurer. [PL 1987, c. 399, §14 (NEW).]

[PL 1987, c. 399, §14 (NEW).]

**2. Separate accounts.** Except with the approval of the superintendent and under such conditions as to investments and other matters as the superintendent may prescribe, which must recognize the guaranteed nature of the benefits provided, an insurer may not guarantee the value of the assets allocated to a separate account, or any interest in that account, or the investment results of that account, or the income from that account, to a contract holder, without limitation of liability under all those guarantees to the extent of the interest of the contract holder in assets allocated to that separate account, unless:

A. To the extent that the applicable agreements provide that the assets in that separate account are not chargeable with liabilities arising out of any other business of the insurer, the assets allocated to that separate account are invested subject to the requirements and limitations on investments imposed by section 1156, subsection 2, as though the aggregate assets allocated to that separate account were the insurer's total admitted assets; or [RR 2021, c. 1, Pt. B, §192 (COR).]

B. The assets allocated to that separate account are invested subject to the requirements and limitations on investments imposed by section 1156, subsection 2, as though they were part of the general assets of the insurer. [PL 1987, c. 399, §14 (NEW).]

[RR 2021, c. 1, Pt. B, §192 (COR).]

SECTION HISTORY

PL 1987, c. 399, §14 (NEW). RR 2021, c. 1, Pt. B, §192 (COR).

**§1160. Prohibited transactions and investment underwriting**

**1. Purchase of own common stock.** A stock insurer may not purchase its own common stock, except for the purpose of mutualization under chapter 47; for retirement; or pursuant to a plan for investment or loan submitted in writing by the insurer to the superintendent in advance, and which the superintendent has not disapproved within 20 days after the submission or within any additional reasonable period as the superintendent may request, as being unfair or inequitable to the insurer's policyholders or stockholders.

[PL 1987, c. 769, Pt. A, §90 (AMD).]

**2. Underwriting.** No insurer may underwrite or participate in the underwriting of an offering of securities or property of any person. This provision may not be considered to prohibit:

A. The acquisition and ownership by the insurer of its subsidiary corporation acting as an investment adviser or principal underwriter of a management company or investment company registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940, United States Code, Title 11, Section 72 and 102, and Title 15, Sections 80a-1 to 80a-52, as amended; [PL 1987, c. 399, §14 (NEW).]

B. The registration by the insurer, under the United States Securities Act of 1933, United States Code, Title 15, Sections 77a to 77aa or other applicable law, of restricted or other securities acquired and owned by it in the regular course of business; and [PL 1987, c. 399, §14 (NEW).]

C. The underwriting by an insurer individually or on its account jointly with one or more of its subsidiaries of the securities of any company that is engaged primarily in the business of investing in or holding securities or real property and to which the insurer or any of its subsidiaries renders management, investment advisory or sales services nor from participating in sales or purchases of those securities jointly with any person in the insurer's holding company system, as defined in section 222. [PL 1987, c. 399, §14 (NEW).]

[PL 1987, c. 399, §14 (NEW).]

**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 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 does not prohibit:

A. Policy loans authorized under section 1158. [PL 1999, c. 715, §15 (AMD).]

B. [PL 1999, c. 715, §15 (RP).]

C. [PL 1999, c. 715, §15 (RP).]

[PL 1999, c. 715, §15 (AMD).]

**4. Encumbrance of securities.**

[PL 1999, c. 715, §16 (RP).]

**5. Disposition of property.** An insurer may enter into any agreement to sell or withhold from sale any of its property, as long as the insurer is not participating in a prohibited underwriting. The disposition of an insurer's property shall be the responsibility of its board of directors, in accordance with its charter and bylaws.

[PL 1987, c. 399, §14 (NEW).]

**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. [PL 1999, c. 715, §17 (NEW).]

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. [PL 1999, c. 715, §17 (NEW).]

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. [PL 1999, c. 715, §17 (NEW).]

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. [PL 1999, c. 715, §17 (NEW).]

[PL 1999, c. 715, §17 (NEW).]

SECTION HISTORY

PL 1987, c. 399, §14 (NEW). PL 1987, c. 769, §A90 (AMD). PL 1999, c. 715, §§15-17 (AMD).

**§1161. Investments of foreign insurers**

The investment portfolio of a foreign or alien insurer shall be as permitted by the laws of its domicile, if of a quality substantially equal to that required under this chapter for similar funds of like domestic insurers. [PL 1987, c. 399, §14 (NEW).]

SECTION HISTORY

PL 1987, c. 399, §14 (NEW).

**§1162. Definitions**

**(REPEALED)**

SECTION HISTORY

PL 1987, c. 399, §14 (NEW). PL 1993, c. 313, §30 (RP).

**§1162-A. Definitions**

**(REPEALED)**

## SECTION HISTORY

RR 1993, c. 1, §§57,58 (COR). PL 1993, c. 313, §31 (NEW). PL 1999, c. 715, §18 (RP).