ENROLLED ORIGINAL

AN ACT

Codification District of Columbia Official Code

2001 Edition

2003 Supp.

West Group Publisher

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To apply investment standards to preserve insurer assets, assure reasonable diversification as to type of investment, issuer and credit quality, and to allow insurers to allocate investments in a manner consistent with principles of prudent investment management to achieve an adequate return so that obligations to insureds are adequately met and financial strength is sufficient to cover reasonably foreseeable contingencies; to repeal section 23 of Chapter II and sections 35, 40, and 41(g) and (l)(2) of Chapter III of the Life Insurance Act of 1934; to repeal sections 16, 18, and 26 of Chapter II of the Fire and Casualty Act of 1940; to repeal An Act To regulate marine insurance in the District of Columbia, and for other purposes; and to make conforming amendments to section 16 of the Hospital and Medical Services Corporation Regulatory Act of 1996 and section 12 of the Captive Insurance Company Act of 2000.

New Chapter 13A, Title 31

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Investments of Insurers Act of 2002".

New § 31-1371.01

TITLE I. GENERAL PROVISIONS.

Sec. 101. Application.

This act shall apply only to investments and investment practices of domestic insurers and United States branches of non-U.S. insurers that are authorized to use the District of Columbia as a state of entry to transact insurance through its United States branch under section 3 of the State of Entry Act of 1996, effective May 24, 1996 (D.C. Law 11-128; D.C. Official Code § 31-2202). This act shall not apply to separate accounts of an insurer pertaining to variable or modified guaranteed contracts.

New § 31-1371.02

Sec. 102. Definitions.

For the purposes of this act, the term:

(1) "Acceptable collateral" means:

(A) As to securities lending transactions, and for the purpose of calculating the counterparty exposure amount, cash, cash equivalents, letters of credit, direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States, any agency of the United States, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation;

(B) As to foreign lending securities transactions, investments set forth in subparagraph (A) of this paragraph and sovereign debt rated 1 by the SVO;

(C) As to repurchase transactions, cash, cash equivalents and direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States, an agency of the United States, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation; and

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

(2) "Acceptable private mortgage insurance" means insurance written by a private insurer protecting a mortgage lender against loss occasioned by a mortgage loan default and issued by a licensed mortgage insurance company, with an SVO 1 designation or a rating issued by a nationally recognized statistical rating organization equivalent to an SVO 1 designation, that covers losses to an 80% loan-to-value ratio.

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

(4) "Accident and health insurer" means a licensed life or health insurer or health service corporation whose insurance premiums and required statutory reserves for accident and health insurance constitute at least 95% of total premium considerations or total statutory required reserves, respectively.

(5) "Admitted assets" means assets having economic value which can be used to fulfill policy obligations and permitted, as allowed in the National Association of Insurance Commissioners Accounting Practices and Procedures Manual, to be reported as admitted assets on the statutory financial statement of the insurer most recently required to be filed with the Commissioner, but excluding assets of separate accounts, the investments of which are not subject to the provisions of this act.

(6) "Affiliate" means, as to any person, another person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person.

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

(A) The trust or other business entity is established solely for the purpose

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

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

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

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

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

(11) "Cash equivalents" means short-term, highly rated, and highly liquid investments or securities readily convertible to known amounts of cash without penalty. Cash equivalents shall include government money market mutual funds and class one money market mutual funds. For the purposes of this definition:

(A) "Short-term" means investments with a remaining term to maturity of 90 days or less.

(B) "Highly rated" means an investment rated P-1 by Moody's Investors Services, Inc., A-1 by the Standard and Poor's division of The McGraw Hill Companies, Inc., or its equivalent rating by a nationally recognized statistical rating organization recognized by the SVO.

(12) "Class one bond mutual fund" means a bond mutual fund that at all times qualifies for investment using the bond class one reserve factor under the *Purposes and Procedures of the Securities Valuation Office* or any successor publication.

(13) "Class one money market mutual fund" means a money market mutual fund that at all times qualifies for investment using the bond class one reserve factor under the *Purposes and Procedures of the Securities Valuation Office* or any successor publication.

(14) "Code" means the laws relating to insurance which are codified in Title 31 of the District of Columbia Official Code.

(15) "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.

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

(17) "Construction loan" means a loan with a term of less than 3 years made for financing the cost of construction of a building or other improvement to real estate and secured by the real estate to be improved.

(18) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract (other than a commercial contract for goods or non-management services), or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10% or more of the voting securities of another person. This presumption may be rebutted by a showing that control does not exist in fact. The Commissioner may determine, after furnishing all interested persons notice and an opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

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

(B)(i) The net amount of credit risk equals:

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

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

(ii) If over-the-counter derivative instruments are entered into under a written master agreement which provides for netting of payments owed by the respective parties, and the domiciliary jurisdiction of the counterparty is either within the United States or, if not within the United States, within a foreign jurisdiction listed in the *Purposes and Procedures of the Securities Valuation Office* as eligible for netting, the net amount of credit risk shall be the greater of zero or the net sum of:

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

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

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

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

(21) "Credit tenant loan" means a mortgage loan which is made primarily in reliance on the credit standing of a major tenant, structured with an assignment of the rental payments to the lender, and is secured by a first lien on the real estate.

(22)(A) "Derivative instrument" means an agreement, option, instrument, or a series or combination thereof:

(i) To make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests;

(ii) To make a cash settlement in lieu thereof; or

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

(B) Derivative instruments shall include options, warrants used in a hedging transaction and not attached to another financial instrument, caps, floors, collars, swaps, forwards, and futures; any other agreements, options, or instruments substantially similar thereto, or any series or combination thereof; and any agreements, options, or instruments permitted under regulations adopted under section 314. Derivative instruments shall not include an investment authorized by sections 203 through 209, 211, and 304 through 310.

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

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

(25) "Dollar roll transaction" means 2 simultaneous transactions with different settlement dates no more than 96 days apart, where, in the first transaction, an insurer sells to a business entity and, in the second transaction, the insurer is obligated to purchase from the same business entity, substantially similar securities of the following types:

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

(B) Other asset-backed securities referred to in section 106 of the Secondary Mortgage Market Enhancement Act of 1984, approved October 3, 1984 (98

Stat.1691; 15 U.S.C. § 77r-1).

(26) "Domestic jurisdiction" means the United States, Canada, the District of Columbia, any state, any province of Canada, or any political subdivision of any of the foregoing.

(27) "Equity interest" means any of the following that are not rated credit instruments:

(A) Common stock;

(B) Preferred stock;

(C) Trust certificate;

(D) Equity investment in an investment company other than a money market mutual fund or a class one bond mutual fund;

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

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

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

(H) Limited partnership interests and those general partnership interests authorized under section 105(d);

(I) Member interests in limited liability companies;

(J) Warrants or other rights to acquire equity interests that are created by the person that owns or would issue the equity to be acquired; or

(K) Instruments that would be rated credit instruments except as excluded by paragraph (71)(B) of this section.

(28) "Equivalent securities" means:

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

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

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

(29) "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.

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

(31)(A) "Foreign investment" means an investment in a foreign jurisdiction, or any investment in a person, real estate, or asset domiciled in a foreign jurisdiction, that is substantially of the same type as those eligible for investment under this act, other than under sections 209 or 310. An investment shall not be a foreign investment if the issuing person, qualified primary credit source, or qualified guarantor is a domestic jurisdiction or a person domiciled in a domestic jurisdiction, unless:

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

(ii) The investment 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.

(B) For the purposes of this definition:

(i) "Shell business entity" means a business entity having no economic substance except as a vehicle for owning interests in assets issued, owned, or previously owned by a person domiciled in a foreign jurisdiction.

(ii) "Qualified guarantor" means a guarantor against which an insurer has a direct claim under contract for full and timely payment for which an enforcement action can be brought in a domestic jurisdiction.

(iii) "Qualified primary credit source" means the credit source to which an insurer looks for payment as to an investment and against which an insurer has a direct claim under contract for full and timely payment for which an enforcement action can be brought in a domestic jurisdiction.

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

(33) "Forward" means an agreement (other than a future) to make or take delivery of, or effect a cash settlement based on the actual or expected price, level, performance, or value of, one or more underlying interests.

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

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

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

(B) Qualified for investment without a reserve under the *Purposes and Procedures of the Securities Valuation Office* or any successor publication.

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

(A) Governmental agency; or

(B) Corporation, limited liability company, association, partnership, joint stock company, joint venture, trust, or other entity or instrumentality organized under the laws of any domestic jurisdiction to accomplish a public policy or other governmental purpose; provided, that this subparagraph shall not apply to any entity or instrumentality which qualifies for exemption under section 501(c)(3) of the Internal Revenue Code of 1986, approved October 26, 1986 (68A Stat. 163; 26 U.S.C. § 501(c)(3)).

(37) "Guaranteed or insured", when used in connection with an obligation acquired under this act, means that the guarantor or insurer has agreed to:

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

(B) Be unconditionally obligated until the obligation is repaid to maintain in the obligor a minimum net worth, fixed charge coverage, minimum stockholders' equity, or sufficient liquidity to enable the obligor to pay the obligation in full.

(38) "Hedging transaction" means a derivative transaction which is entered into and maintained to reduce:

(A) The risk of a change in the value, yield, price, cash flow, or quantity of assets or liabilities which the insurer has acquired or incurred or anticipates acquiring or incurring; or

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

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

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

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

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

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

(44) "Insurance futures option" means an option on an insurance futures contract.

(45) "Investment company" means an investment company as defined in section 3(a)(1) of the Investment Company Act of 1940, approved August 20, 1940 (56 Stat. 867; 15 U.S.C. § 80a-3(a)(1)), and a person described in section 3(c) of the Investment Company Act of

1940, approved August 20, 1940 (56 Stat. 867; 15 U.S.C.§ 80a-3(c)).

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

(47) "Investment practices" means transactions of the types described in sections 208, 210, 309, or 311.

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

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

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

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

(50) "Letter of credit" means a clean, irrevocable, and unconditional letter of credit issued or confirmed by, and payable and presentable at, a financial institution on the list of financial institutions meeting the standards for issuing letters of credit under the *Purposes and Procedures of the Securities Valuation Office*, or any successor publication. To constitute acceptable collateral for the purposes of sections 208 and 302**,** a letter of credit shall have an expiration date beyond the term of the subject transaction.

(51) "Limited liability company" means an entity that is an unincorporated association, having perpetual duration, having one or more members that is organized and existing under the Limited Liability Act of 1994, effective July 23, 1994 (D.C. Law 10-138; D.C. Official Code § 29-1001 *et seq*.), or under the laws of the United States or any state thereof that limits the personal liability of each member to the equity investment of the member in the business entity.

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

(53) "Market value" means:

(A) As to cash and a letter of credit, the amount thereof; and

(B) As to a security, as of any date, the price of the security on that date obtained from a generally recognized source or the most recent quotation from such a source or, to the extent no generally recognized source exists, the price for the security as determined in

good faith by the parties to a transaction, plus accrued but unpaid income thereon to the extent not included in the price as of that date.

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

(55) "Modified guaranteed contracts" means a modified guaranteed annuity or modified guaranteed life insurance policy or contract.

(56) "Money market mutual fund" means a mutual fund that meets the conditions of 17 C.F.R. § 270.2a-7.

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

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

(59) "Mutual fund" means an investment company or, in the case of an investment company that is organized as a series company, an investment company series, that is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940, approved August 20, 1940 (56 Stat. 789;15 U.S.C. § 80a-1 *et seq.*).

(60) "NAIC" means the National Association of Insurance Commissioners.

(61) "Obligation" means a bond, note, debenture, trust certificate, including an equipment certificate, production payment, negotiable bank certificate of deposit, bankers' acceptance, credit tenant loan, loan secured by financing, net leases and other evidence of indebtedness for the payment of money (or participations, certificates, or other evidences of an interest in any of the foregoing), whether constituting a general obligation of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment.

(62)(A) "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, level, performance, or value of one or more underlying interests.

(B) "Call option" means the right of the buyer to buy or receive the option.

(C) "Put option" means the right of the buyer to sell or deliver the option.

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

(64) "Potential exposure" means the amount determined in accordance with the NAIC Annual Statement Instructions.

(65) "Preferred stock" means stock of a business entity, which stock has a preference in liquidation over the common stock of the business entity.

(66) "Qualified bank" means:

(A) A national bank, state bank, or trust company that at all times is no

less than adequately capitalized as determined by standards adopted by United States banking regulators and that is either regulated by state banking laws or is a member of the Federal Reserve System; or

(B) A bank or trust company incorporated or organized under the laws of a country other than the United States that is regulated as a bank or trust company by that country's government or an agency thereof and that at all times is no less than adequately capitalized as determined by the standards adopted by international banking authorities.

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

(A) An issuer of obligations or preferred stock that are rated 1 or 2 by the SVO or an issuer of obligations, preferred stock, or derivative instruments that are rated the equivalent of 1 or 2 by the SVO or by a nationally recognized statistical rating organization recognized by the SVO; or

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

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

(69) "Qualified exchange" means:

(A) A securities exchange registered as a national securities exchange or a securities market regulated under the Securities Exchange Act of 1934 approved June 6, 1934 (48 Stat. 881; 15 U.S.C. § 78 *et seq.*);

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

(C) Private Offerings, Resales and Trading through Automated Linkages (PORTAL);

(D) A designated offshore securities market as defined in 17 C.F.R. § 230.902(b); or

(E) A qualified foreign exchange.

(70) "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 Rule 30.10, Appendix C, 17 C.F.R. Part 30 ("Rule 30.10");

(B) That is, or its members are, subject to the jurisdiction of a foreign futures authority that has received regulatory comparability relief under Rule 30.10 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 Office of General Counsel of the Commodity Futures

Trading Commission; provided, that an exchange, board of trade, or contract market that is a qualified foreign exchange under this subparagraph shall only be a qualified foreign exchange as to foreign stock index futures contracts that are the subject of no-action relief.

(71)(A) "Rated credit instrument" means a contractual right to receive cash or another rated credit instrument from another entity which instrument:

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

(ii) In the case of an instrument with a maturity not exceeding 397 days, is issued, guaranteed, or insured by an entity that is rated by, or another obligation of such entity is rated by, the SVO or by a nationally recognized statistical rating organization recognized by the SVO;

(iii) In the case of an instrument with a maturity not exceeding 90 days, is issued by a qualified bank;

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

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

(B) The term "rated credit instrument" shall not mean:

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

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

(72)(A) "Real estate" means:

(i) Real property;

(ii) Interests in real property, such as leaseholds, minerals, and oil and gas that have not been separated from the underlying fee interest;

(iii) Improvements and fixtures located on or in real property; or

(iv) The seller's equity in a contract providing for a deed of real estate.

(B) As to a mortgage on a leasehold estate, real estate shall include the leasehold estate only if it has an unexpired term, including renewal options exercisable at the option of the lessee, extending beyond the scheduled maturity date of the obligation that is secured by a mortgage on the leasehold estate by a period equal to the greater of 20% of the original term of the obligation or 10 years.

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

(74) "Repurchase transaction" means a transaction in which an insurer purchases securities from a business entity that is obligated to repurchase the purchased securities or

equivalent securities from the insurer at a specified price, either within a specified period of time or upon demand.

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

(76) "Residential mortgage loan" means a loan primarily secured by a mortgage on real estate improved with a residence for up to 4 families.

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

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

(79) "Securities lending transaction" means a transaction in which securities are loaned by an insurer to a business entity that is obligated to return the loaned securities or equivalent securities to the insurer, either within a specified period of time or upon demand.

(80) "Series company" means an investment company that is organized as a series company, as defined in SEC Rule 18f-2(a), 17 C.F.R. § 270.18f-2.

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

(A) Is subject to a mandatory sinking fund or similar arrangement that will provide for the redemption or open market purchase of the entire issue over a period not longer than 40 years from the date of acquisition; and

(B) Provides for mandatory sinking fund installments or open market purchases commencing not more than 10.5 years from the date of issue, with the sinking fund installments providing for the purchase or redemption, on a cumulative basis commencing 10 years from the date of issue, of at least 2.5% per year of the original number of shares of that issue of preferred stock.

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

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

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

(ii) An instrument, other than an asset-backed security, which:

(I) Has payments of par value fixed as to amount and timing or is callable;

(II) Is payable only at par or greater; and

(III) Has interest or dividend cash flows that are based on either a fixed or variable rate determined by reference to a specified rate or index;

(iii) An instrument, other than an asset-backed security, that has a par value and is purchased at a price no greater than 110% of par value;

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

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

(I) Is not permitted to be paid sooner than ½ of the remaining term to maturity from the date of acquisition;

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

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

(vi) An asset-backed security that relies on cash flows from assets that are not prepayable at any time at par value, but is not otherwise governed by sub-subparagraph (v) of this subparagraph, if the asset-backed security has par value reflecting principal payments to be received if held until retired by or on behalf of the issuer and is purchased at a price not greater than 105% of such par amount; or

(B)(i) An asset-backed security that:

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

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

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

(aa) Twice the prepayment expectation reported by a recognized, publicly available source as being the median of expectations contributed by broker-dealers or other entities, except insurers, engaged in the business of selling or evaluating such securities or assets. The prepayment expectation used in this calculation shall be, at the insurer's election, the prepayment expectation for pass-through securities of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or for other assets of the same type as the assets that underlie the asset-backed security, in either case which has a gross weighted average coupon comparable to the gross weighted average coupon of the assets that underlie the asset-backed security; or

(bb) Another prepayment threshold assumption specified by the Commissioner by regulation promulgated under section 501.

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

(83) "State" means any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the U. S. Virgin Islands, Guam, American Samoa, and the Commonwealth of Northern Mariana Islands.

(84) "Substantially similar securities" means securities that meet all criteria for substantially similar specified in the NAIC *Accounting Practices and Procedures Manual*, and in an amount that constitutes good delivery form as determined from time to time by the Public Securities Administration.

(85) "SVO" means the Securities Valuation Office of the NAIC, or any successor office established by the NAIC.

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

(87) "Variable contracts" means a variable annuity or a variable life insurance policy.

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

(89) "Unrestricted surplus" means the amount by which total admitted assets exceed 125% of the insurer's required liabilities.

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

Sec. 103. General investment qualifications.

(a) Domestic insurers may acquire, hold, or invest in investments or engage in investment practices as set forth in this act. In addition to investments conforming to this act, domestic insurers may also invest in securities of one or more subsidiaries of the insurer to the extent permitted by section 3 of the Holding Company System Act of 1993, effective October 21, 1993 (D.C. Law 10-44; D.C. Official Code § 31-702).

New § 31-1371.03

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

(1) Eligible for the payment or accrual of interest or discount, whether in cash or

other securities; eligible to receive dividends or other distributions; or is otherwise income-producing; or

(2) Acquired under sections 207(c), 208, 210, 212**,** 308(c), 309, 311, or 312, or under other provisions of District of Columbia law other than this act.

(c) An insurer may acquire or hold as admitted assets investments that do not otherwise qualify as provided in this act if the insurer has not acquired them for the purpose of circumventing any limitations contained in this act, the insurer complies with the provisions of sections 104 and 106 as to the investments, and the insurer acquires the investments in the following circumstances:

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

(2) As realization on collateral for an obligation;

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

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

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

(d) Unless within the period the investment has become a qualified investment under a section of this act other than subsection(c) of this section, an investment, or portion of an investment, acquired by an insurer under subsection (c) of this section shall become a nonadmitted asset 3 years (or 5 years in the case of mortgage loans and real estate) from the date of its acquisition; provided, that an investment acquired under an agreement of bulk reinsurance, merger, or consolidation may be qualified for a long period if so provided in the plan for reinsurance, merger, or consolidation as approved by the Commissioner. Upon application by the insurer and a showing that the nonadmission of an asset held under subsection (c) of this section would materially injure the interests of the insurer, the Commissioner may extend the period for admissibility for an additional reasonable period of time.

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

(f)(1) An investment held as an admitted asset by an insurer on the effective date of this act which qualified under section 35 of Chapter III of the Life Insurance Act, approved June 19,

1934 (48 Stat. 1152; D.C. Official Code § 31-4435), and section 18 of the Fire and Casualty Act, approved October 9, 1940 (54 Stat. 1072; D.C. Official Code § 31-2502.18), shall remain qualified as an admitted asset under this act.

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

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

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

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

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

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

(i) An insurer shall maintain documentation demonstrating that investments were acquired in accordance with this act and specifying the section of this act under which they were acquired.

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

(k) Notwithstanding any provision of this act, the Commissioner may, by rule or order, permit an insurer to nonadmit, limit, dispose of, withdraw from, or discontinue an investment or investment practice to the extent the Commissioner finds that the investment or investment practice endangers the solvency of the insurer or is otherwise hazardous to policyholders, creditors, or the public in the District of Columbia. The authority of the Commissioner under this subsection shall be in addition to any other authority of the Commissioner.

(l) Insurance future and insurance futures options shall not be considered investments or investment practices for purposes of this act.

Sec. 104. Authorization of investments by the board of directors.

New § 31-1371.04

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

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

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

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

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

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

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

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

Sec. 105. Prohibited investments.

New § 31-1371.05

(a) An insurer shall not, directly or indirectly:

(1) Invest in an obligation or security or make a guarantee for the benefit of or in favor of an officer or director of the insurer, except as provided in section 106;

(2) Invest in an obligation or security, make a guarantee for the benefit of or in favor of, or make other investments in a business entity of which 10% or more of the voting securities or equity interests are owned, directly or indirectly, by or for the benefit of one or

more officers or directors of the insurer, except as authorized in the Holding Company System Act of 1993, effective October 21, 1993 (D.C. Law 10-44; D.C. Official Code § 31-701), or provided in section 106;

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

(4) Invest in a partnership as a general partner; provided, that an insurer may make an investment as a general partner:

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

(B) For the purpose of:

(I) Meeting cash calls committed to prior to the effective date of this act;

(ii) Completing those specific projects or activities of the partnership in which the insurer was a general partner as of the effective date of this act that had been undertaken as of that date; or

(iii) Making capital improvements to property owned by the partnership on the effective date of this act if the insurer was a general partner as of that date; or

(C) In accordance with section 103(c); or

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

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

(B) Issuance to the insurer's officers, employees, or agents in connection with a plan approved by the Commissioner for converting a publicly-held insurer into a privately-held insurer under section 4 of the Insurance Demutualization Act of 1996, effective May 24, 1996 (D.C. Law 11-126; D.C. Official Code § 31-903), or in connection with other stock option and employee benefit plans; or

(C) In accordance with any other plan approved by the Commissioner.

(b) Subsection (a)(3) of this section shall not prohibit a subsidiary or other affiliate of the insurer from becoming a general partner.

Sec. 106. Loans to officers and directors.

New § 31-1371.06

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

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

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

(3) Enter into an agreement for the purchase or sale of property from or to an

officer to director of the insurer or a person in which the officer or director has any direct or indirect financial interest.

(b)(1) For purposes of this section, an officer or director shall not be deemed to have a financial interest by reason of:

(A) An interest that is held directly or indirectly through the ownership of equity interests representing less than 2% of all outstanding equity interests issued by a person that is a party to the transaction; or

(B) The individual's position as a director or officer of a person that is a party to the transaction.

(2) Paragraph (1) of this subsection shall not:

(A) Permit an investment that is prohibited by section 105; or

(B) Apply to a transaction between an insurer and any of its subsidiaries or affiliates that is entered into in connection with the Holding Company System Act of 1993, effective October 21, 1993 (D.C. Law 10-44; D.C. Official Code § 31-701), other than a transaction between an insurer and its officer or director.

(c) An insurer may make, without the prior written approval of the Commissioner:

(1) Policy loans in accordance with the terms of the policy or contract and section 211;

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

(3) Loans secured by the principal residence of an existing or new officer of the insurer made in connection with the officer's relocation at the insurer's request, if the loans comply with the requirements of section 207 or 308 and the terms and conditions otherwise are the same as those generally available from unaffiliated third parties;

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

(A) Do not have a term exceeding 2 years;

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

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

(D) Are required to be fully repaid upon the earlier of the end of the 2-year period or the sale of the prior residence; or

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

Sec. 107. Valuation of investments.

New § 31-1371.07

For the purposes of this act, the value or amount of an investment acquired or held, or any investment practice engaged in, under this act, unless otherwise specified in this code, shall be the value at which assets of an insurer are required to be reported for statutory accounting purposes as determined in accordance with procedures prescribed in published accounting and valuation standards of the NAIC, including the *Purposes and Procedures of the Securities Valuation Office,* the *Valuation of Securities,* the *Accounting Practices and Procedures,* the *Annual Statement Instructions,* or any successor valuation procedures officially adopted by the NAIC.

TITLE II. LIFE INSURERS.

Sec. 201. Application of title.

New § 31-1372.01

This title shall apply to the investments and investment practices of life insurers subject to the provisions of this act pursuant to section 101.

Sec. 202. General 3% diversification, medium and lower grade investments, and Canadian investments.

New § 31-1372.02

(a)(1) Except as otherwise specified in this act, an insurer shall not acquire, directly or indirectly through an investment subsidiary, an investment under this act if, as a result of and other giving effect to the investment, the insurer would hold more than 3% of its admitted assets in investments of all kinds issued, assumed, accepted, insured, or guaranteed by a single person.

(2) The 3% limitation shall not apply to the aggregate amounts insured by a single financial guaranty insurer with the highest generic rating issued by a nationally recognized statistical rating organization.

(3) Asset-backed securities shall not be subject to the limitations of paragraph (1) of this subsection; provided, that an insurer shall not acquire an asset-backed security if, as a result of and after giving effect to the investment, the aggregate amount of asset-backed securities secured by or evidencing an interest in a single asset or single pool of assets held by a trust or other business entity held by the insurer would exceed 3% of its admitted assets.

(b)(1) An insurer shall not acquire, directly or indirectly through an investment subsidiary, an investment under sections 203, 206, or 209, or counterparty exposure under section 210(d) if, as a result of and after giving effect to the investment:

(A) The aggregate amount of medium and lower grade investments then held by the insurer would exceed 20% of its admitted assets;

(B) The aggregate amount of lower grade investments then held by the insurer would exceed 10% of its admitted assets;

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

(D) The aggregate amount of investments rated 6 by the SVO then held

by the insurer would exceed one percent of its admitted assets; or

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

(2) An insurer shall not acquire, directly or indirectly through an investment subsidiary, an investment under section 203, 206, or 209, or counterparty exposure under section 210(d) if, as a result of and after giving effect to the investment:

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

(B) The aggregate amount of lower grade investments issued, assumed, guaranteed, accepted, or insured by any one person or, as to asset-backed securities secured by or evidencing an interest in a single asset or pool of assets, then held by the insurer would exceed 0.5% of its admitted assets.

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

(c)(1) An insurer shall not acquire, directly or indirectly through an investment subsidiary, a Canadian investment authorized by this act if, as a result of and after giving effect to the investment, the aggregate amount of these investments then held by the insurer would exceed 40% of its admitted assets or if the aggregate amount of Canadian investments not acquired under section 203(b) held by the insurer would exceed 25% of its admitted assets.

(2) For an insurer that is authorized to do business in Canada or that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in Canada and denominated in Canadian currency, the limitations of paragraph (1) of this subsection shall be increased by the greater of:

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

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

Sec. 203. Rated credit instruments.

New § 31-1372.03

(a) Subject to the limitations of section 202(b) and subsection (f) of this section, but not to the limitations of section 202(a), an insurer may acquire rated credit instruments issued, assumed, guaranteed, or insured by:

(1) The United States; or

(2) A government-sponsored enterprise of the United States if the instruments of the government-sponsored enterprise are assumed, guaranteed, or insured by the United States

or are otherwise backed or supported by the full faith and credit of the United States.

(b)(1) Subject to the limitations of section 202(b) and paragraph (2) of this subsection, but not the limitations of section 202(a), an insurer may acquire rated credit instruments issued, assumed, guaranteed, or insured by:

(A) Canada; or

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

(2) An insurer shall not acquire an instrument under this subsection if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this subsection would exceed 40% of its admitted assets.

(c)(1) Subject to the limitations of section 202(b) and paragraph (2) of this subsection, but not to the limitations of section 202(a), an insurer may acquire rated credit instruments, excluding asset-backed securities:

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

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

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

(D) Issued by a multilateral development bank.

(2) An insurer shall not acquire an instrument of any fund, enterprise or entity, or state under this subsection if, as a result of and after giving effect to the investment, the aggregate amount of investments then held in any one fund, enterprise or entity, or state under this subsection would exceed 10% of its admitted assets.

(d) Subject to the limitations of section 202, an insurer may acquire preferred stocks that are not foreign investments and that meet the requirements of rated credit instruments if, as a result of and after giving effect to the investment:

(1) The aggregate amount of preferred stock then held by the insurer under this subsection does not exceed 20% of its admitted assets; and

(2) The aggregate amount of preferred stock then held by the insurer under this subsection which are not sinking fund stocks or rated P1 or P2 by the SVO does not exceed 10% of its admitted assets.

(e) Subject to the limitations of section 202, in addition to those investments eligible under subsections (a), (b),(c), and (d) of this section, an insurer may acquire rated credit instruments that are not foreign investments.

(f) Notwithstanding any other provision of this section, an insurer shall not acquire special rated credit instruments under this section if, as a result of and after giving effect to the investment, the aggregate amount of special rated credit instruments held by the insurer would

exceed 5% of its admitted assets.

(g) For purposes of this section, obligations of the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or other mortgage-backed or mortgage-related securities as defined in section 106 of the Secondary Mortgage Market Enhancement Act of 1984, approved October 3, 1984 (98 Stat. 1691; 15 U.S.C. § 77r-1), may be acquired to the same extent as allowed under subsection (a) of this section, whether or not they are rated credit instruments authorized in subsection (a) of this section.

Sec. 204. Insurer investment pools. **New § 31-1372.04**

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

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

(A) A remaining maturity not exceeding 397 days or a put that entitles the holder to receive the principal amount of the obligation, which put may be exercised through maturity at specified intervals not exceeding 397 days; or

(B) A remaining maturity not exceeding 3 years, a floating interest rate that resets no less frequently than quarterly on the basis of a current short-term index (including federal funds, prime rate, treasury bills, London InterBank Offered Rate, or commercial paper), and is subject to no maximum limit if the obligations do not have an interest rate that varies inversely to market interest rate changes;

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

(3) Securities lending, repurchase, and reverse repurchase transactions that meet all the requirements of section 208, except the quantitative limitations of section 208(d); or

(4) Investments which an insurer may acquire under this act if the insurer's proportionate interest in the amount invested in these investments does not exceed the applicable limits of this act.

(b) For an investment in an investment pool to be qualified, the investment pool shall not:

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

(2) Borrow or incur any indebtedness for borrowed money, except for securities lending and reverse repurchase transactions that meet the requirements of section 208 other than the quantitative limitations of section 208(d); or

(3) Permit the aggregate value of securities then loaned or sold to, purchased from, or invested in any one business entity under this section to exceed 10% of the total assets of the investment pool.

(c) The limitations of section 202(a) shall not apply to an insurer's investment in an investment pool; provided, that an insurer shall not acquire an investment in an investment pool under this section if, as a result of and after giving effect to the investment, the aggregate amount of investments held by the insurer under this section:

(1) In any one investment pool would exceed 10% of its admitted assets;

(2) In all investment pools investing in investments permitted under subsection (a)(2) of this section, would exceed 25% of its admitted assets; or

(3) In all investment pools would exceed 35% of its admitted assets.

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

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

(2)(A) Be the insurer; an affiliated insurer or a business entity affiliated with the insurer; a qualified bank; or a business entity registered under the Investment Advisors Act of 1940, approved August 22, 1984 (54 Stat. 789; 15 U.S.C. § 80a-1 *et seq.*);

(B) In the case of a reciprocal insurer or interinsurance exchange, be its attorney-in-fact; or

(C) In the case of a United States branch of non-U.S. insurer, be its United States manager or affiliates or subsidiaries of its United States manager;

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

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

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

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

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

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

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

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

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

(1) An insurer and its affiliated insurers; in the case of an investment pool

investing solely in investments permitted under subsection (a)(1) of this section, the insurer and its subsidiaries, affiliates, or any pension or profit-sharing plan of the insurer, its subsidiaries, and affiliates; and, in the case of a United States branch of a non-U.S. insurer, the affiliates or subsidiaries of its United States manager, shall, at all times, hold 100% of the interests in the investment pool;

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

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

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

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

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

(5) Withdrawals may be made on demand without penalty or other assessment on any business day; provided, that settlement of funds shall occur within a reasonable and customary period thereafter not to exceed five 5 business days.

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

(f) Distributions under subsection (e)(5) of this section shall be calculated net of all then applicable fees and expenses of the investment pool. The pooling agreement shall provide that the pool manager may distribute to a participant, at the discretion of the pool manager:

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

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

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

Sec. 205. Equity interests.

New § 31-1372.05

(a) Subject to the limitations of section 202, an insurer may acquire equity interests in business entities organized under the laws of any domestic jurisdiction.

(b) An insurer shall not acquire an investment under this section if, as a result of and after giving effect to the investment, the aggregate amount of investments held by the insurer under this section would exceed 20% of its admitted assets or the amount of equity interests held by the insurer that are not listed on a qualified exchange would exceed 5% of its admitted assets. An accident and health insurer shall not be subject to this section, but shall be subject to the same aggregate limitation on equity interests as a fire, casualty, and marine insurer under section 306

and to the provisions of section 302.

(c) An insurer shall not acquire under this section any investments that the insurer may acquire under section 207.

(d) An insurer shall not short sell equity investments unless the insurer covers the short sale by owning the equity investment or an unrestricted right to the equity instrument exercisable within 6 months of the short sale.

Sec. 206. Tangible personal property under lease.

New § 31-1372.06

(a)(1) Subject to the limitations of section 202, an insurer may acquire tangible personal property or equity interests therein, which property or interests are located or used wholly or in part within a domestic jurisdiction, directly or indirectly through:

(A) Limited partnership interests and general partnership interests not otherwise prohibited by section 105(d);

(B) Joint ventures;

(C) Stock of an investment subsidiary;

(D) Membership interests in a limited liability company;

(E) Trust certificates; or

(F) Other similar instruments.

(2) Investments acquired under paragraph (1) of this subsection shall be eligible only if:

(A) The property is subject to a lease or other agreement with a person whose rated credit instruments the insurer could acquire under section 203 for a price equal to the purchase price of the personal property; and

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

(b) The insurer shall compute the amount of each investment under this section on the basis of the cash purchase price and applicable related expenses paid by the insurer for the investment, net of each borrowing made to finance the purchase price and expenses to the extent the borrowing is nonrecourse to the insurer.

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

(1) Two percent of its admitted assets; or

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

(d) For purposes of determining compliance with the limitations of section 202:

(1) Investments acquired by an insurer under this section shall be aggregated with those acquired under section 203; and

(2) Each lessee of the property under a lease referred to in this section shall be deemed the issuer of an obligation in the amount of the investment of the insurer in the property determined as provided under subsection (b) of this section.

(e) This section shall not be applicable to a lease of tangible personal property between an insurer and its subsidiaries or affiliates under a cost sharing arrangement or agreement permitted under the Holding Company System Act of 1993, effective October 21, 1993 (D.C. Law 10-44; D.C. Official Code § 31-701 *et seq*.).

Sec. 207. Mortgage loans and real estate.

New § 31-1372.07

(a)(1) Subject to the limitations of section 202, an insurer may acquire, directly or indirectly, through limited partnership interests and general partnership interests not otherwise prohibited by section 105(d), joint ventures, stock of an investment subsidiary, membership interests in a limited liability company, trust certificates, or other similar instruments, obligations secured by a first mortgage on real estate situated within a domestic jurisdiction; provided, that a mortgage loan which is secured by a subordinate lien may be acquired if the insurer is the holder of the first lien. The obligations held by the insurer and any obligations with an equal lien priority, shall not, at the time of acquisition of the obligations, exceed:

(A) 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;

(B) 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 not exceeding 30 years, and periodic payments made no less frequently than annually; provided, that:

(i) Each periodic payment shall be sufficient to assure that at all times the outstanding principal balance of the mortgage loan shall be not greater than the outstanding principal balance that would be outstanding under a mortgage loan with the same original principal balance, with the same interest rate, and requiring equal payments of principal and interest with the same frequency over the same amortization period;

(ii) Mortgage loans permitted under this paragraph shall be permitted notwithstanding the fact that they provide for a payment of the principal balance prior to the end of the period of amortization of the loan; and

(iii) For residential mortgage loans, the 80% limitation shall be 97% if acceptable private mortgage insurance has been obtained; or

(C) Seventy-five percent of the fair market value of the real estate for mortgage loans that do not meet the requirements of subparagraphs (A) or (B) of this paragraph.

(2) For purposes of paragraph (1) of this subsection, 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.

(3) A mortgage loan that is held by an insurer under section 103(f) or acquired under this section and is restructured in a manner that meets the requirements of a restructured mortgage loan in accordance with the NAIC *Accounting Practices and Procedures Manual*, or successor publication, shall continue to qualify as a mortgage loan.

(4) Subject to the limitations of section 202, credit lease transactions that do not qualify for investment under section 203 shall be exempt from the provisions of paragraph (1) of this subsection if their terms are as follows:

(A) The loan balance at the end of the initial term of the lease will not exceed the original appraised value of the real estate;

(B) The lease payments equal or exceed the total debt service over the term of the loan;

(C) A tenant or its affiliated entity whose rated credit instruments have a SVO 1 or 2 designation or a comparable rating from a nationally recognized statistical rating organization recognized by the SVO is obligated to make the lease payments;

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

(E) The expenses of the maintenance and operation of the real estate, excluding exterior repairs, structural repairs, parking, and heating, ventilation and air conditioning replacement expenses, are passed through to the tenant, or annual escrow contributions from the lease payments equal or exceed any deficiency in such expenses; and

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

(b)(1) An insurer may acquire, manage, and dispose of real estate situated in a domestic jurisdiction, directly or indirectly, through limited partnership interests and general partnership interests not otherwise prohibited by section 105(d), joint ventures, stock of an investment subsidiary, membership interests in a limited liability company, trust certificates, or other similar instruments. The real estate shall be income-producing or intended for improvement or development for investment purposes under an existing program.

(2) The real estate may be subject to mortgages, liens, or other encumbrances, the amount of which shall, to the extent that the obligations secured by the mortgages, liens, or encumbrances are nonrecourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with subsection (d)(2) and (d)(3) of this section.

(c)(1) An insurer may acquire, manage, and dispose of real estate for the convenient accommodation of the business operations, including home office, branch office, and field office

operations of the insurer, its affiliates, or subsidiaries.

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

(3) The real estate acquired under this subsection may be subject to one or more mortgages, liens, or other encumbrances, the amount of which shall, to the extent that the obligations secured by the mortgages, liens, or encumbrances are nonrecourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with subsection (d)(4) of this section.

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

(d)(1) An insurer shall not acquire an investment under subsection (a) of this section if, as a result of and after giving effect to the investment, the aggregate amount of all investments held by the insurer under subsection (a) of this section would exceed:

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

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

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

(2) An insurer shall not acquire an investment under subsection (b) of this section if, as a result of and after giving effect to the investment and any outstanding guarantees made by the insurer in connection with the investment, the aggregate amount of investments held by the insurer under subsection (b) of this section and the guarantees then outstanding would exceed:

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

(B) Fifteen percent of its admitted assets in the aggregate, but not more than 5% of its admitted assets, as to properties that are to be improved or developed.

(3) An insurer shall not acquire an investment under subsection (a) or (b) of this section if, as a result of and after giving effect to the investment and any guarantees made by the insurer in connection with the investment, the aggregate amount of all investments held by the insurer under subsections (a) and (b) of this section and the guarantees then outstanding would exceed 45% of its admitted assets; provided, that an insurer may exceed this limitation by no more than 30% of its admitted assets if:

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

(B) The insurer has not more than 10% of its admitted assets invested in mortgage loans other than residential mortgage loans;

(C)) The loan-to-value ratio of each residential mortgage loan does not exceed 60% at the time the mortgage loan is qualified and the fair market value is supported by an appraisal no more than 2 years old, prepared by an independent appraiser;

(D) A single mortgage loan qualified does not exceed 0.5% of its admitted assets;

(E) The insurer receives approval from the Commissioner for a plan that is designed to result in a portfolio of residential mortgage loans that is sufficiently geographically diversified; and

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

(4) The limitations of section 202 shall not apply to an insurer's acquisition of real estate under subsection(c) of this section. An insurer shall not acquire real estate under subsection (c) of this section if, as a result of and after giving effect to the acquisition, the aggregate amount of real estate held by the insurer under subsection(c) of this section would exceed 10% of its admitted assets. With the permission of the Commissioner, additional amounts of real estate may be acquired under subsection (c) of this section.

Sec. 208. Securities lending, repurchase, reverse repurchase, and dollar roll transactions.

New § 31-1372.08

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

(b) The insurer's board of directors shall adopt a written plan that is consistent with the requirements of the written plan in section 104(a) 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) Operations procedures to manage interest rate risk and counterparty default risk, the conditions under which proceeds from reverse repurchase transactions may be used in the ordinary course of business, and the use of acceptable collateral in a manner that reflects the liquidity needs of the transaction; and

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

(c) The insurer shall enter into a written agreement for all transactions authorized in this section other than dollar roll transactions. The written agreement shall require that each transaction terminate no more than one year from its inception or upon the earlier demand of the insurer. The agreement shall be with the business entity counterparty; provided, that for

securities lending transactions, the agreement may be with an agent acting on behalf of the insurer if:

(1) The agent is a qualified business entity; and

(2) The agreement:

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

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

(d) Cash received in a transaction under this section shall be invested in accordance with this act and in a manner that recognizes the liquidity needs of the transaction or used by the insurer for its general corporate purposes. As long as the transaction remains outstanding, the insurer, its agent, or custodian shall maintain, as to acceptable collateral received in a transaction under this section, either physically or through the book entry systems of the Federal Reserve, Depository Trust Company, Participants Trust Company, or other securities depositories approved by the Commissioner:

(1) Possession of the acceptable collateral;

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

(3) In the case of a jurisdiction outside of the United States, title, or rights of a secured creditor, to the acceptable collateral.

(e) The limitations of sections 202 and 209 shall not apply to the business entity counterparty exposure created by transactions under this section. For purposes of calculations made to determine compliance with this subsection, no effect shall be given to the insurer's future obligation to resell securities in the case of a repurchase transaction or to repurchase securities in the case of a reverse repurchase transaction. An insurer shall not enter into a transaction under this section if, as a result of and after giving effect to the transaction:

(1) The aggregate amount of securities loaned to, sold to, or purchased from any one business entity counterparty under this section would exceed 5% of its admitted assets; provided, that in calculating the amount sold to or purchased from a business entity counterparty under repurchase or reverse repurchase transactions, effect may be given to netting provisions under a master written agreement; or

(2) The aggregate amount of all securities then loaned to, sold to, or purchased from all business entities under this section would exceed 40% of its admitted assets.

(f) In a securities lending transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to 102% of the market value of the securities loaned by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than the market value of the loaned securities, the business entity counterparty shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral held in connection with the transaction, at least equals 102% of the market value of the loaned securities.

(g) In a reverse repurchase transaction, other than a dollar roll transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to 95% of the market value of the securities transferred by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than 95% of the market value of the securities transferred, the business entity counterparty shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral held in connection with the transaction, equals at least 95% of the market value of the transferred securities.

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

(i) In a repurchase transaction, the insurer shall receive as acceptable collateral transferred securities having a market value at least equal to 102% of the purchase price paid by the insurer for the securities. If at any time the market value of the acceptable collateral is less than 100% of the purchase price paid by the insurer, the business entity counterparty shall be obligated to provide additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral held in connection with the transaction, equals at least 102% of the purchase price. Securities acquired by an insurer in a repurchase transaction shall not be sold in a reverse repurchase transaction, loaned in a securities lending transaction, or otherwise pledged.

Sec. 209. Foreign investments and foreign currency exposure.

(a) Subject to the limitations of section 202, an insurer may acquire foreign investments, or engage in investment practices with persons of or in foreign jurisdictions, of substantially the same types as those that an insurer is permitted to acquire under this act, other than of the type permitted under section 204, if, as a result and after giving effect to the investment:

New § 31-1372.09

(1) The aggregate amount of foreign investment held by the insurer under this subsection does not exceed 20% of its admitted assets; and

(2) The aggregate amount of foreign investments held by the insurer under this subsection in a single foreign jurisdiction does not exceed 10% of its admitted assets as to a foreign jurisdiction that has a sovereign debt rating of SVO 1 or 3% of its admitted assets as to any other foreign jurisdiction.

(b)(1) Subject to the limitations of section 202, an insurer may acquire investments, or engage in investment practices denominated in foreign currencies, whether or not they are foreign investments acquired under subsection (a) of this section, or additional foreign currency exposure as a result of the termination or expiration of a hedging transaction with respect to investments denominated in a foreign currency, if:

(A) The aggregate amount of investments held by the insurer under this subsection denominated in foreign currencies does not exceed 10% of its admitted assets; and

(B) The aggregate amount of investments held by the insurer under this subsection denominated in the foreign currency of a single foreign jurisdiction does not exceed 10% of its admitted assets as to a foreign jurisdiction that has a sovereign debt rating of SVO 1 or 3% of its admitted assets as to any other foreign jurisdiction.

(2) For the purposes of this section, an investment shall not be considered denominated in a foreign currency if the acquiring insurer enters into one or more contracts in transactions permitted under section 210 and the business entity counterparty agrees under the contract to exchange all payments made on the foreign currency denominated investment for United States currency at a rate which insulates the investment cash flow against future changes in currency exchange rates.

(c) In addition to investment permitted under subsections (a) and (b) of this section subject to the limitations of section 202, an insurer that is authorized to do business in a foreign jurisdiction and that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in that foreign jurisdiction and denominated in foreign currency of that jurisdiction may acquire foreign investments respecting that foreign jurisdiction and investments denominated in the currency of that jurisdiction; provided, that investments made under this subsection in obligations of foreign governments, their political subdivisions, and government-sponsored enterprises shall not be subject to the limitations of section 202 if those investments carry an SVO rating of 1 or 2. The aggregate amount of investments acquired by the insurer under this subsection shall not exceed the greater of:

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

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

(d) In addition to investments permitted under subsections (a) and (b) of this section, subject to t he limitations of section 202, an insurer that is not authorized to do business in a foreign jurisdiction, but which has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in that foreign jurisdiction and denominated in foreign currency of that jurisdiction, may acquire foreign investments respecting that foreign jurisdiction and investments denominated in the currency of that jurisdiction; provided, that investments made under this subsection in obligations of foreign governments, their political subdivisions, and government-sponsored enterprises shall not be subject to the limitations of section 202 if those investments carry an SVO rating of 1 or 2. The aggregate amount of investments acquired by the insurer under this subsection shall not exceed 105% of the amount of its reserves, net of reinsurance, and other obligations under the contracts on lives or risks resident or located in the foreign jurisdiction.

(e) Investments acquired under this section shall be aggregated with investments of the same types made under all other sections of this act, and in a similar manner, for purposes of

determining compliance with the limitations, if any, contained in the other sections. Investments in obligations of foreign governments, their political subdivisions, and government-sponsored enterprises of these persons, except for those exempt under subsections (c) and (d) of this section, shall be subject to the limitations of section 202.

Sec. 210. Derivative transactions.

(a) An insurer may, directly or indirectly through an investment subsidiary, engage in derivative transactions under this section, subject to the requirements of this section.

New § 31-1372.10

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

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

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

(1) The aggregate statement value of options, caps, floors, and warrants not attached to another financial instrument purchased and used in hedging transactions does not exceed 7.5% of its admitted assets;

(2) The aggregate statement value of options, caps, and floors written in hedging transactions does not exceed 3% of its admitted assets; and

(3) The aggregate potential exposure of collars, swaps, forwards, and futures used in hedging transactions does not exceed 6.5% of its admitted assets.

(d) An insurer may enter into the following types of income generation transactions if, as a result of and after giving effect to the transactions, the aggregate statement value of the fixed income assets that are subject to call or that generate the cash flow for payments under the caps or floors, the face value of fixed income securities underlying a derivative instrument subject to call, and the amount of the purchase obligations under the puts, do not exceed 10% of its admitted assets:

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

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

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

under the put during the complete term of the put option sold; or

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

(e) An insurer shall include all counterparty exposure amounts in determining compliance with the limitations of section 202.

(f) Under regulations promulgated under section 501, the Commissioner may approve additional transactions involving the use of derivative instruments in excess of the limits of subsection (c) of this section or for other risk management purposes under regulations promulgated by the Commissioner; provided, that the replication transactions shall not be permitted for other than risk management purposes.

Sec. 211. Policy loans.

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

New § 31-1372.11

Sec. 212. Additional investment authority.

(a) Solely for the purpose of acquiring investments that exceed the quantitative limitations of sections 202 through 209, an insurer may acquire under this subsection an investment, or engage in investment practices, described in section 208; provided, that an insurer shall not acquire and investment, or engage in investment practices, described in section 208 under this subsection if, as a result of and after giving effect to the transaction:

New § 31-1372.12

(1) The aggregate amount of investments held by an insurer under this subsection would exceed 3% of its admitted assets; or

(2) The aggregate amount of investments as to one limitation in sections 202 through 209 held by the insurer under this subsection would exceed 1% of its admitted assets.

(b)(1) In addition to the authority provided under subsection (a) of this section, subject to paragraph (2) of this subsection, an insurer may acquire under this subsection an investment of any kind, or engage in investment practices described in section 208, that are not specifically prohibited by this act without regard to the categories, conditions, standards, or other limitations of sections 202 through 209 if, as a result of and after giving effect to the transaction, the aggregate amount of investments held under this subsection would not exceed the lesser of:

(A) Ten percent of its admitted assets; or

(B) Seventy-five percent of its capital and surplus.

(2) An insurer shall not acquire any investment or engage in any investment practice under this subsection if, as a result of and after giving effect to the transaction, the aggregate amount of all investments in any one person held by the insurer under this subsection would exceed 3% of its admitted assets.

(c) In addition to the investments acquired under subsections (a) and (b) of this section, an insurer may acquire under this subsection an investment of any kind, or engage in investment practices described in section 208, that are not specifically prohibited by this act without regard to any limitations of sections 202 through 209 if:

(1) The Commissioner grants prior approval;

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

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

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

(B) One hundred percent of capital and surplus, less 10% of its admitted assets.

(d) An investment prohibited under section 105 or section 210 or additional derivative instruments acquired under section 210 shall not be acquired under this section.

TITLE III. FIRE, CASUALTY, AND MARINE INSURERS.

Sec. 301. Application of title.

This title shall apply to the investment and investment practices of domestic fire, casualty, and marine insurers.

New § 31-1373.01

Sec. 302. Reserve requirements.

(a)(1) Subject to all other limitations and requirements of this act, a fire, casualty, and marine insurer shall maintain an amount at least equal to 100% of adjusted loss reserves and loss adjustment expense reserves, 100% of adjusted unearned premium reserves, and 100% of statutorily required policy and contract reserves in:

New § 31-1373.02

(A) Cash and cash equivalents;

(B) High and medium grade investments that qualify under sections 304 or 305;

(C) Equity interests that qualify under section 306 and that are traded on a qualified exchange;

(D) Investments of the type set forth in section 310 if the investments are rated in the highest generic rating category by a nationally recognized statistical rating organization recognized by the SVO for rating foreign jurisdictions and if any foreign currency exposure is effectively hedged through the maturity date of the investments;

(E) Qualifying investments of the type set forth in subparagraphs (B), (C), or (D) of this paragraph that are acquired under section 312;

(F) Interest and dividends receivable on qualifying investments of the type set forth in subparagraphs (A) through (E) of this paragraph; or

(G) Reinsurance recoverable on paid losses.

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

(B)(i) Adjusted loss reserves and loss adjustment expense reserves shall be calculated as follows:

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

(II) The discount factor that is applicable to the line of business and accident year published by the Internal Revenue Service under section 846 of the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2399; 26 U.S.C. § 846), for the calendar year that corresponds to the most recent annual statement of the insurer; less

(III) Accrued retrospective premiums discounted by an average discount factor, which shall be calculated by dividing the unpaid losses, discounted (as provided under sub-sub-subparagraph (II) of this sub-subparagraph), by the unpaid losses.

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

(C) Adjusted unearned premium reserves shall be equal to:

(i) The amount reported by the insurer as unearned premium reserves; less

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

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

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

(III) Bills receivable taken for premium.

(D) Statutorily required policy and contract reserves shall include the amounts required by the Required Annual Financial Statements and Participation in the NAIC Insurance Regulatory Information System Act of 1993, effective October 21, 1993 (D.C. Law 10-42; D.C. Official Code § 31-1901 *et seq.*).

(b) A fire, casualty, and marine insurer shall supplement its annual statement with a reconciliation and summary of its assets and reserve requirements as required under subsection (a) of this section. A reconciliation and summary showing that an insurer's assets as required under subsection (a) of this section are at least equal to its undiscounted reserves required under subsection (a) of this section shall be sufficient to satisfy this requirement. Upon prior

notification, the Commissioner may require an insurer to submit the reconciliation and summary with any quarterly statement filed during the calendar year.

(c) If a fire, casualty, and marine insurer's assets and reserves is not in compliance with subsection (a) of this section, the insurer shall notify the Commissioner immediately of the amount by which the reserve requirements exceed the annual statement value of the qualifying assets, explain why the deficiency exists, and, within 30 days of the date of the notice, propose a plan of action to remedy the deficiency.

(d)(1) If the Commissioner determines that an insurer is not in compliance with subsection (a) of this section, the Commissioner shall require the insurer to eliminate the condition causing the noncompliance within a specified time from the date that the notice of the Commissioner's requirement is mailed or delivered to the insurer.

(2) If an insurer fails to comply with the Commissioner's requirement under paragraph (1) of this subsection, the insurer shall be deemed to be in hazardous financial condition and the Commissioner shall take one or more of the actions authorized by law as to insurers in hazardous financial condition.

Sec. 303. General 5% diversification, medium and lower grade investments, and Canadian investments.

(a)(1) Except as otherwise specified in this act, an insurer shall not acquire, directly or indirectly through an investment subsidiary, an investment under this act if, as a result of and after giving effect to the investment, the insurer would hold more than 5% of its admitted assets in investments of all kinds issued, assumed, accepted, insured, or guaranteed by a single person.

New § 31-1373.03

(2) The 5% limitation shall not apply to the aggregate amounts insured by a single financial guaranty insurer with the highest generic rating issued by a nationally recognized statistical rating organization.

(3) Asset-backed securities shall not be subject to the limitations of paragraph (1) of this subsection; provided, that an insurer shall not acquire an asset-backed security if, as a result of and after giving effect to the investment, the aggregate amount of asset-backed securities secured by or evidencing an interest in a single asset or single pool of assets held by a trust or other business entity, held by the insurer would exceed 5% of its admitted assets.

(b)(1) An insurer shall not acquire, directly or indirectly through an investment subsidiary, an investment under sections 304, 307, or 310, or counterparty exposure under section 311(d) if, as a result of and after giving effect to the investment:

(A) The aggregate amount of all medium and lower grade investments held by the insurer would exceed 20% of its admitted assets;

(B) The aggregate amount of lower grade investments held by the insurer would exceed 10% of its admitted assets;

(C) The aggregate amount of investments rated 5 or 6 by the SVO held by the insurer would exceed 5% of its admitted assets;

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

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

(2) An insurer shall not acquire, directly or indirectly through an investment subsidiary, an investment under sections 304, 307, or 310, or counterparty exposure under section 311(d) if, as a result of and after giving effect to the investment:

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

(B) The aggregate amount of lower grade investments issued, assumed, guaranteed, accepted, or insured by any one person or, as to asset-backed securities secured by or evidencing an interest in a single asset or pool of assets, held by the insurer would exceed 0.5% of its admitted assets.

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

(c)(1) An insurer shall not acquire, directly or indirectly through an investment subsidiary, a Canadian investment authorized by this act if, as a result of and after giving effect to the investment:

(A) The aggregate amount of these investments held by the insurer would exceed 40% of its admitted assets; or

(B) The aggregate amount of Canadian investments not acquired under section 304(b) held by the insurer would exceed 25% of its admitted assets.

(2) As to an insurer that is authorized to do business in Canada or that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in Canada and denominated in Canadian currency, the limitations of paragraph (1) of this subsection shall be increased by the greater of:

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

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

Sec. 304. Rated credit instruments.

(a) Subject to the limitations of section 303(b) and subsection (f) of this section, but not to the limitations of section 303(a), an insurer may acquire rated credit instruments issued, assumed, guaranteed, or insured by: **New**

(1) The United States; or

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

(b)(1) Subject to the limitations of section 303(b), but not to the limitations of section 303(a), an insurer may acquire rated credit instruments issued, assumed, guaranteed, or insured by:

(A) Canada; or

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

(2) An insurer shall not acquire an instrument under this subsection if, as a result of and after giving effect to the investment, the aggregate amount of investments held by the insurer under this subsection would exceed 40% of its admitted assets.

(c)(1) Subject to the limitations of section 303(b) and paragraph (2) of this subsection, but not to the limitations of section 303(a), an insurer may acquire rated credit instruments, excluding asset-backed securities:

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

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

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

(D) Issued by a multilateral development bank.

(2) An insurer shall not acquire an instrument of any fund, enterprise, or entity, or state under this subsection if, as a result of and after giving effect to the investment, the aggregate amount of investments held in any one fund, enterprise or entity or state under this subsection would exceed 10% of its admitted assets.

(d) Subject to the limitations of section 303, an insurer may acquire preferred stocks that are not foreign investments and that meet the requirements of rated credit instruments if, as a result of and after giving effect to the investment:

(1) The aggregate amount of preferred stocks held by the insurer under this subsection does not exceed 20% of its admitted assets; and

(2) The aggregate amount of preferred stocks held by the insurer under this subsection which are not sinking fund stocks or rated P1 or P2 by the SVO does not exceed 10% of its admitted assets.

(e) Subject to the limitations of section 303, in addition to those investments eligible under subsections (a), (b),(c), and (d) of this section, an insurer may acquire rated credit instruments that are not foreign investments.

(f) Notwithstanding any other provision of this section, an insurer shall not acquire special rated credit instruments under this section if, as a result of and after giving effect to the investment, the aggregate amount of special rated credit instruments held by the insurer would exceed 5% of its admitted assets.

(g) For purposes of this section, obligations of Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, and other mortgage related securities as defined in section 106 of the Secondary Mortgage Market Enhancement Act of 1984, approved October 3, 1984 (98 Stat. 1691;15 U.S.C. § 77r-1), may be acquired to the same extent as allowed under subsection (a) of this section, whether or not they are rated credit instruments authorized in section 304(a).

Sec. 305. Insurer investment pools.

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

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

New § 31-1373.05

(A) A remaining maturity not exceeding 397 days or a put that entitles the holder to receive the principal amount of the obligation, which put may be exercised through maturity at specified intervals not exceeding 397 days; or

(B) A remaining maturity not exceeding 3 years, and a floating interest rate that resets no less frequently than quarterly on the basis of a current short-term index (including federal funds, prime rate, treasury bills, London InterBank Offered Rate, or commercial paper) and is subject to no maximum limit, if the obligations do not have an interest rate that varies inversely to market interest rate changes;

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

(3) Securities lending, repurchase, and reverse repurchase transactions that meet all the requirements of section 309 other than the quantitative limitations of section 309(d); or

(4) Investments which an insurer may acquire under this act if the insurer's proportionate interest in the amount invested in these investments does not exceed the applicable limits of this act.

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

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

(2) Borrow or incur any indebtedness for borrowed money, except for securities lending and reverse repurchase transactions that meet the requirements of section 309 other than the quantitative limitations of section 309(d); or

(3) Permit the aggregate value of securities then loaned or sold to, purchased from, or invested in any one business entity under this section to exceed 10% of the total assets of the investment pool.

(c) The limitations of section 303(a) shall not apply to an insurer's investment in an investment pool; provided, that an insurer shall not acquire an investment in an investment pool under this section if, as a result of and after giving effect to the investment, the aggregate amount of investments held by the insurer under this section:

(1) In any one investment pool would exceed 10% of its admitted assets;

(2) In all investment pools investing in investments permitted under subsection (a)(2) of this section, would exceed 25% of its admitted assets; or

(3) In all investment pools would exceed 40% of its admitted assets.

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

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

(2)(A) Be the insurer; an affiliated insurer or a business entity affiliated with the insurer; a qualified bank; a business entity registered under the Investment Advisors Act of 1940, approved August 22, 1984 (54 Stat. 789;15 U.S.C. § 80a-1 *et seq.*);

(B) In the case of a reciprocal insurer or interinsurance exchange, be its attorney-in-fact; or

(C) In the case of a United States branch of a non-U.S. insurer, be its United States manager or affiliates or subsidiaries of its United States manager;

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

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

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

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

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

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

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

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

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

(1) An insurer and its affiliated insurers; in the case of an investment pool investing solely in investments permitted under subsection (a)(1) of this section, the insurer and its subsidiaries, affiliates, or any pension or profit-sharing plan of the insurer, its subsidiaries, and affiliates; and, in the case of a United States branch of a non-U.S. insurer, affiliates or subsidiaries of its United States manager, shall, at all times, hold 100% of the interests in the investment pool;

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

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

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

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

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

(5) Withdrawals may be made on demand without penalty or other assessment on any business day; provided, that settlement of funds shall occur within a reasonable and customary period thereafter not to exceed 5 business days; and

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

(f) Distributions under subsection (e)(5) of this section shall be calculated net of all applicable fees and expenses of the investment pool. The pooling agreement shall provide that the pool manager may distribute to a participant, at the discretion of the pool manager:

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

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

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

Sec. 306. Equity interests.

(a) Subject to the limitations of section 303, an insurer may acquire equity interests in business entities organized under the laws of any domestic jurisdiction.

(b) An insurer shall not acquire an investment under this section if, as a result of and after giving effect to the investment, the aggregate amount of investments held by the insurer

under this section would exceed the greater of 25% of its admitted assets or 100% of its surplus as regards policyholders. **New § 31-1373.06**

(c) An insurer shall not acquire under this section any investments that the insurer may acquire under section 308.

(d) An insurer shall not short sell equity investments unless the insurer covers the short sale by owning the equity investment or an unrestricted right to the equity instrument exercisable within 6 months of the short sale.

Sec. 307. Tangible personal property under lease.

(a)(1) Subject to the limitations of section 303, an insurer may acquire tangible personal property or equity interests therein, which property or interests are located or used wholly or in part within a domestic jurisdiction, directly or indirectly, through:

(A) Limited partnership interests and general partnership interests not otherwise prohibited by section 105(d); **New § 31-1373.07**

(B) Joint ventures;

(C) Stock of an investment subsidiary;

(D) Membership interests in a limited liability company;

(E) Trust certificates; or

(F) Other similar instruments.

(2) Investments acquired under paragraph (1) of this subsection shall be eligible only if:

(A) The property is subject to a lease or other agreement with a person whose rated credit instruments the insurer could acquire under section 304 for a price equal to the purchase price of the personal property; and

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

(b) The insurer shall compute the amount of each investment under this section on the basis of the cash purchase price and applicable related expenses paid by the insurer for the investment, net of each borrowing made to finance the purchase price and expenses to the extent the borrowing is nonrecourse to the insurer.

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

(1) Two percent of its admitted assets; or

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

personal property.

(d) For purposes of determining compliance with the limitations of section 303:

(1) Investments acquired by an insurer under this section shall be aggregated with those acquired under section 304; and

(2) Each lessee of the property under a lease referred to in this section shall be deemed the issuer of an obligation in the amount of the investment of the insurer in the property determined as provided under subsection (b) of this section.

(e) This section shall not be applicable to a lease of tangible personal property between an insurer and its subsidiaries or affiliates under a cost sharing arrangement or agreement permitted under the Holding Company System Act of 1993, effective October 21, 1993 (D.C. Law 10-44; D.C. Official Code § 31-701 *et seq.*).

Sec. 308. Mortgage loans and real estate.

(a)(1) Subject to the limitations of section 303, an insurer may acquire, directly or indirectly, through limited partnership interests and general partnership interests not otherwise prohibited by section 105(d), joint ventures, stock of an investment subsidiary, membership interests in a limited liability company, trust certificates, or other similar instruments, obligations secured by a first mortgage on real estate situated within a domestic jurisdiction; provided, that a mortgage loan which is secured by a subordinate lien shall not be acquired unless the insurer is the holder of the first lien. The obligations held by the insurer and any obligations with an equal lien priority, shall not, at the time of acquisition of the obligation, exceed:

New § 31-1373.08

(A) 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;

(B) 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 not exceeding 30 years, periodic payments made no less frequently than annually; provided, that:

(i) Each periodic payment shall be sufficient to assure that at all times the outstanding principal balance of the mortgage loan shall be not greater than the outstanding principal balance which would be outstanding under a mortgage loan with the same original principal balance, with the same interest rate and requiring equal payments of principal and interest with the same frequency over the same amortization period;

(ii) Mortgage loans permitted under this paragraph shall be permitted notwithstanding the fact that they provide for a payment of the principal balance prior to the end of the period of amortization of the loan;

(iii) For residential mortgage loans, the 80% limitation shall be 97% if acceptable private mortgage insurance has been obtained; or

(C) Seventy-five percent of the fair market value of the real estate for

mortgage loans that do not meet the requirements of subparagraphs (A) or (B) of this paragraph.

(2) For purposes of paragraph (1) of this subsection, 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.

(3) A mortgage loan that is held by an insurer under section 103(f) or acquired under this section and is restructured in a manner that meets the requirements of a restructured mortgage loan in accordance with the *NAIC Accounting Practices and Procedures Manual,* or successor publication, shall continue to qualify as a mortgage loan.

(4) Subject to the limitations of section 303, credit lease transactions that do not qualify for investment under section 304 shall be exempt from the provisions of paragraph (1) of this subsection if their terms are as follows:

(A) The loan balance at the end of the initial term of the lease will not exceed the original appraised value of the real estate;

(B) The lease payments equal or exceed the total debt service over the term of the loan;

(C) A tenant or its affiliated entity whose rated credit instruments have a SVO 1 or 2 designation or a comparable rating from a nationally recognized statistical rating organization recognized by the SVO is obligated to make the lease payments;

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

(E) The expenses of the maintenance and operation of the real estate, excluding exterior, structural, parking, and heating, ventilation and air conditioning replacement expenses, are passed through to the tenant, or annual escrow contributions from the lease payments equal or exceed the deficiencies in any such expense; and

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

(b)(1) An insurer may acquire, manage, and dispose of real estate situated in a domestic jurisdiction, directly or indirectly, through limited partnership interests and general partnership interests not otherwise prohibited by section 105(d), joint ventures, stock of an investment subsidiary, membership interests in a limited liability company, trust certificates, or other similar instruments. The real estate shall be income-producing or intended for improvement or development for investment purposes under an existing program.

(2) The real estate may be subject to mortgages, liens, other encumbrances, the amount of which shall, to the extent that the obligations secured by the mortgages, liens, or encumbrances are nonrecourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with subsection (d)(2) and (d)(3) of this section.

(c)(1) An insurer may acquire, manage, and dispose of real estate for the convenient

accommodation of the business operations, including home office, branch office, and field office operations of the insurer, its affiliates, or subsidiaries.

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

(3) The real estate acquired under this subsection may be subject to one or more mortgages, liens, or other encumbrances, the amount of which shall, to the extent that the obligations secured by the mortgages, liens, or encumbrances are nonrecourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with subsection (d)(4) of this section.

(4) For purposes of this subsection, business operations shall not include that portion of real estate used for the direct provision of health care services by an insurer whose insurance premiums and required statutory reserves for accident and health insurance constitute at least 95% of total premium considerations or total statutory required reserves, respectively. An insurer may acquire real estate used for these purposes under subsection (b) of this section.

(d)(1) An insurer shall not acquire an investment under subsection (a) of this section if, as a result of and after giving effect to the investment, the aggregate amount of all investments held by the insurer under subsection (a) of this section would exceed:

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

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

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

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

(A) One percent of its admitted assets in one parcel or group of contiguous parcels of real estate; provided, that this limitation shall not apply to that portion of real estate used for the direct provision of health care services by an insurer whose insurance premiums and required statutory reserves for accident and health insurance constitute at least 95% of total premium considerations or total statutory required reserves, respectively, such as hospitals, medical clinics, medical professional buildings, or other health facilities used for the purpose of providing health services; or

(B) The lesser of 10% of its admitted assets or 40% of its surplus as regards policyholders in the aggregate as to properties that are to be improved or developed; provided, that for an insurer whose insurance premiums and required statutory reserves for accident and health insurance constitute at least 95% of total premium considerations or total

statutory required reserves, respectively, this limitation shall be increased to 15% of its admitted assets in the aggregate.

(3) An insurer shall not acquire an investment under subsection (a) or (b) of this section if, as a result of and after giving effect to the investment and any guarantees it has made in connection with the investment, the aggregate amount of all investments held by the insurer under subsections (a) and (b) of this section, and the guarantees then outstanding would exceed 25% of its admitted assets.

(4) The limitations of section 303 shall not apply to an insurer's acquisition of real estate under subsection(c) of this section. An insurer shall not acquire real estate under subsection (c) of this section if, as a result of and after giving effect to the acquisition, the aggregate amount of all real estate held by the insurer under subsection (c) of this section would exceed 10% of its admitted assets. With the permission of the Commissioner, additional amounts of real estate may be acquired under subsection (c) of this section.

Sec. 309. Securities lending, repurchase, reverse repurchase and dollar roll transactions.

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

(b) The insurer's board of directors shall adopt a written plan that is consistent with the requirements of the written plan in section 104(a) 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;

New § 31-1373.09

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

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

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

(1) The agent is a qualified business entity;

(2) The agreement:

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

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

(d) Cash received in a transaction under this section shall be invested in accordance with this act and in a manner that recognizes the liquidity needs of the transaction or used by the insurer for its general corporate purposes. As long as the transaction remains outstanding, the insurer, its agent, or custodian shall maintain, as to acceptable collateral received in a transaction under this section, either physically or through the book entry systems of the Federal Reserve, Depository Trust Company, Participants Trust Company, or other securities depositories approved by the Commissioner:

(1) Possession of the acceptable collateral;

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

(3) In the case of a jurisdiction outside of the United States, title, or rights of a secured creditor, to the acceptable collateral.

(e) The limitations of sections 303 and 310 shall not apply to the business entity counterparty exposure created by transactions under this section. For purposes of calculations made to determine compliance with this subsection, no effect shall be given to the insurer's future obligation to resell securities in the case of a repurchase transaction or to repurchase securities in the case of a reverse repurchase transaction. An insurer shall not enter into a transaction under this section if, as a result of and after giving effect to the transaction:

(1) The aggregate amount of securities loaned to, sold to, or purchased from any one business entity counterparty under this section would exceed 5% of its admitted assets; provided, that in calculating the amount sold to or purchased from a business entity counterparty under repurchase or reverse repurchase transactions, effect may be given to netting provisions under a master written agreement; or

(2) The aggregate amount of all securities then loaned to, sold to, or purchased from all business entities under this section would exceed 40% of its admitted assets; provided, that the limitation of this subsection shall not apply to reverse repurchase transactions if the borrowing is used to meet operational liquidity requirements resulting from an officially declared catastrophe and subject to a plan approved by the Commissioner.

(f) In a securities lending transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to 102% of the market value of the securities loaned by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than the market value of the loaned securities, the business entity counterparty shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral held in connection with the transaction, at least equals 102% of the market value of the loaned securities.

(g) In a reverse repurchase transaction, other than a dollar roll transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to 95% of the market value of the securities transferred by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than 95% of the market value of the securities transferred, the business entity counterparty shall be obligated to

deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral held in connection with the transaction, equals at least 95% of the market value of the transferred securities.

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

(i) In a repurchase transaction, the insurer shall receive as acceptable collateral transferred securities having a market value at least equal to 102% of the purchase price paid by the insurer for the securities. If at any time the market value of the acceptable collateral is less than 100% of the purchase price paid by the insurer, the business entity counterparty shall be obligated to provide additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral held in connection with the transaction, equals at least 102% of the purchase price. Securities acquired by an insurer in a repurchase transaction shall not be sold in a reverse repurchase transaction, loaned in a securities lending transaction, or otherwise pledged.

Sec. 310. Foreign investments and foreign currency exposure.

(a) Subject to the limitations of section 303, an insurer may acquire foreign investments, or engage in investment practices with persons of or in foreign jurisdictions, of substantially the same types as those that an insurer is permitted to acquire under this act, other than of the type permitted under section 305, if, as a result and after giving effect to the investment:

(1) The aggregate amount of foreign investments held by the insurer under this subsection does not exceed 20% of its admitted assets; and

(2) The aggregate amount of foreign investments held by the insurer under this subsection in a single foreign jurisdiction does not exceed 10% of its admitted assets as to a foreign jurisdiction that has a sovereign debt rating of SVO 1 or 5% of its admitted assets as to any other foreign jurisdiction.

New § 31-1373.10

(b)(1) Subject to the limitations of section 303, an insurer may acquire investments, or engage in investment practices denominated in foreign currencies, whether or not they are foreign investments acquired under subsection (a) of this section, or additional foreign currency exposure as a result of the termination or expiration of a hedging transaction with respect to investments denominated in a foreign currency, if:

(A) The aggregate amount of investments held by the insurer under this subsection denominated in foreign currencies does not exceed 15% of its admitted assets; and

(B) The aggregate amount of investments held by the insurer under this subsection denominated in the foreign currency of a single foreign jurisdiction does not exceed 10% of its admitted as to a foreign jurisdiction that has a sovereign debt rating of SVO 1 or 5% of its admitted assets as to any other foreign jurisdiction.

(2) For the purposes of this subsection, an investment shall not be considered

denominated in a foreign currency if the acquiring insurer enters into one or more contracts in transactions permitted under section 311 and the business entity counterparty agrees under the contract or contracts to exchange all payments made on the foreign currency denominated investment for United States currency at a rate which insulates the investment cash flow against future changes in currency exchange rates.

(c) In addition to investments permitted under subsections (a) and (b) of this section, subject to the limitations of section 303, an insurer that is authorized to do business in a foreign jurisdiction and that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in that foreign jurisdiction and denominated in foreign currency of that jurisdiction, may acquire foreign investments respecting that foreign jurisdiction and investments denominated in the currency of that jurisdiction; provided, that investments made under this subsection in obligations of foreign governments, their political subdivisions, and government-sponsored enterprises shall not be subject to the limitations of section 303 if those investments carry an SVO rating of 1 or 2. The aggregate amount of investments acquired by the insurer under this subsection shall not exceed the greater of:

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

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

(d) In addition to investments permitted under subsections (a) and (b) of this section, subject to the limitations set forth in section 303, an insurer that is not authorized to do business in a foreign jurisdiction but which has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in a foreign jurisdiction and denominated in foreign currency of that jurisdiction may acquire foreign investments respecting that foreign jurisdiction and investments denominated in the currency of that jurisdiction; provided, that investments made under this subsection in obligations of foreign governments, their political subdivisions, and government-sponsored enterprises shall not be subject to the limitations of section 303 if those investments carry an SVO rating of 1 or 2. The aggregate amount of investments acquired by the insurer under this subsection shall not exceed 105% of the amount of its reserves, net of reinsurance, and other obligations under the contracts on risks resident or located in the foreign jurisdiction.

(e) Investments acquired under this section shall be aggregated with investments of the same types made under all other sections of this act, and in a similar manner, for purposes of determining compliance with the limitations, if any, contained in the other sections. Investments in obligations of foreign governments, their political subdivisions, and government-sponsored enterprises of these persons, except for those exempt under subsections (c) and (d) of this section, shall be subject to the limitations of section 303.

Sec. 311. Derivative transactions.

(a) An insurer may, directly or indirectly through an investment subsidiary, engage in derivative transactions under this section, subject to the requirements of this section.

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

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

New § 31-1373.11

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

(1) The aggregate statement value of options, caps, floors, and warrants not attached to another financial instrument purchased and used in hedging transactions does not exceed 7.5% of its admitted assets;

(2) The aggregate statement value of options, caps, and floors written in hedging transactions does not exceed 3% of its admitted assets; and

(3) The aggregate potential exposure of collars, swaps, forwards, and futures used in hedging transactions does not exceed 6.5% of its admitted assets.

(d) An insurer may enter into the following types of income generation transactions if, as a result of and after giving effect to the transactions, the aggregate statement value of the fixed income assets that are subject to call, the face value of fixed income securities underlying a derivative instrument subject to call, and the amount of the purchase obligations under the puts, do not exceed 10% of its admitted assets:

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

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

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

(e) An insurer shall include all counterparty exposure amounts in determining compliance with the limitations of section 303.

(f) Under regulations promulgated under section 501, the Commissioner may approve additional transactions involving the use of derivative instruments in excess of the limits of subsection (c) of this section or for other risk management purposes under regulations promulgated by the Commissioner; provided, that replication transactions shall not be permitted

for other than risk management purposes.

Sec. 312. Additional investment authority.

(a) An insurer may acquire under this section investments, or engage in investment practices, of any kind that are not specifically prohibited by this act or engage in investment practices without regard to any limitation in sections 303 through 310; provided, that an insurer shall not acquire an investment or engage in an investment practice under this section if, as a result of and after giving effect to the transaction, the aggregate amount of the investments held by the insurer under this section would exceed the greater of:

(1) Its unrestricted surplus; or

(2) The lesser of:

(A) Ten percent of its admitted assets; or

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

New § 31-1373.12

(b) An insurer shall not acquire any investment or engage in any investment practice under subsection (a)(2) of this section if, as a result of and after giving effect to the transaction the aggregate amount of all investments in any one person held by the insurer under that subsection would exceed 5% of its admitted assets.

TITLE IV. REPEALERS AND CONFORMING AMENDMENTS.

Sec. 401. Repealers and conforming amendments.

(a) Sections 16, 18, and 26 of Chapter II of the Fire and Casualty Act, approved October 9, 1940 (54 Stat. 1071; D.C. Official Code §§ 31-2502.16, 31-2502.18, and 31-2502.26), are repealed.

(b) An Act To regulate marine insurance in the District of Columbia, and for other purposes, approved March 4, 1922 (42 Stat. 401; D.C. Official Code § 31-2602.01 *et seq.*), is repealed.

(c) Section 16(b)(2) of the Hospital and Medical Services Corporation Regulatory Act of 1996, effective April 9, 1997 (D.C. Law 11-245; D.C. Official Code § 31-3515(b)(2)), is amended to read as follows:

Repeal § 31-2502.16, § 31-2502.18, § 31-2502.26

"(2) Fails to comply with sections 5, 10 through 15, 21, 24, 28, and 31 of Chapter III of the Life Insurance Act, approved June 19, 1934 (48 Stat. 1145; D.C. Official Code §§ 31-4405, 31-4410 through 4415, 31-4421, 31-4424, 31-4428, and 31-4431), and the Investments of Insurers Act of 2002, passed on 2nd reading on December 3, 2002 (Enrolled version of Bill 14-222);".

Repeal §§ 31-2602.01 - 31-2602.32

(d) Section 12(a) of the Captive Insurance Company Act of 2000, effective October 21, 2000 (D.C. Law 13-192; D.C. Official Code § 31-3911(a)), is amended by striking the phrase "section 18 of Chapter 2 of the Fire and Casualty Act**"** and inserting the phrase "the Investments of Insurers Act of 2002, passed on 2nd reading on December 3, 2002 (Enrolled version of Bill 14-222)," in its place.

Amend § 31-3515

(e) The Life Insurance Act of 1934, approved June 19, 1934 (48 Stat. 1125; D.C. Official Code § 31-4201 *et seq.*), is amended as follows:

(1) Section 23 of Chapter II (D.C. Official Code § 31-4322) is repealed.

(2) Sections 35, 40, and 41(g) and (l)(2) of Chapter III (D.C. Official Code §§ 31-4435, 31-4441, and 31-4442(g) and (l)(2)), are repealed.

Amend § 31-3911

TITLE V. REGULATIONS.

Sec. 501. Regulations.

The Commissioner may, in accordance with section 6 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505), promulgate rules and regulations to carry out the purposes of this act.

Repeal § 31-4322
Repeal § 31-4435, § 31-4441
Amend § 31-4442

TITLE VI. FISCAL IMPACT STATEMENT; EFFECTIVE DATE.

Sec. 601. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

New § 31-1375.01

Sec. 602. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602 (c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

_____

Chairman

Council of the District of Columbia

_____

Mayor
District of Columbia