

**§4353. Definitions**

For the purposes of this chapter: [PL 1969, c. 132, §1 (NEW).]

1. "Insurer," in addition to persons so defined under section 4, includes also persons purporting to be insurers, or organizing or holding themselves out as organizing in this State for the purpose of becoming an insurer.

[PL 1969, c. 132, §1 (NEW).]

2. "Delinquency proceeding" means any proceeding commenced against an insurer pursuant to sections 4351 to 4385 for the purpose of conserving, rehabilitating, reorganizing or liquidating the insurer, or the proceedings authorized by sections 4401 to 4407.

[PL 1969, c. 132, §1 (NEW).]

3. "State" has the meaning ascribed in section 7.

[PL 1969, c. 132, §1 (NEW).]

4. "Domiciliary state" means the state in which an insurer is incorporated or organized, or as to an alien insurer, the state in which, at the commencement of delinquency proceedings the larger amount of the insurer's assets are held in trust or on deposit for the benefit of policyholders and creditors in the United States of America.

[PL 1969, c. 132, §1 (NEW).]

5. "Ancillary state" means any state other than a domiciliary state.

[PL 1969, c. 132, §1 (NEW).]

6. "Reciprocal state" means any state other than this State in which there is in force, in substance and effect, a law substantially similar to the Uniform Insurers Liquidation Act or another law determined by the superintendent to establish adequate procedures for the conduct and interstate coordination of the rehabilitation and liquidation of delinquent insurers, including provisions requiring that the insurance superintendent or equivalent insurance supervisory official be the receiver of a delinquent insurer, and in which effective provisions exist for avoidance of fraudulent conveyances and unlawful preferential transfers.

[PL 2021, c. 16, §14 (AMD).]

7. "Foreign country" means territory not in any state.

[PL 1969, c. 132, §1 (NEW).]

8. "Impairment" exists as to a stock insurer when the insurer's assets do not at least equal the sum of its liabilities and its paid-in capital stock; and as to a mutual insurer when the insurer's assets do not at least equal the sum of the insurer's liabilities and the minimum basic surplus required under this Title to be maintained for authority to transact the kinds of insurance transacted.

[PL 1969, c. 132, §1 (NEW).]

9. "Insolvency" exists when the insurer fails to meet its obligations as they mature or when a stock insurer's assets are less than the sum of its liabilities and the minimum paid-in capital stock required for its authority to transact insurance in this State; or when a mutual insurer's assets are less than the sum of its liabilities and the minimum basic surplus required to be maintained by the insurer under this Title for authority to transact the kinds of insurance transacted; or as otherwise expressly provided in this Title.

[PL 1969, c. 132, §1 (NEW).]

10. "General assets" means all property, real, personal or otherwise, not specifically mortgaged, pledged, deposited or otherwise encumbered for the security or benefit of specified persons or a limited class or classes of persons; and as to such specifically encumbered property, the term includes all such property or its proceeds in excess of the amount necessary to discharge the sums secured thereby. Assets

held in trust or on deposit for the security or benefit of all policyholders or all policyholders and creditors in the United States of America are deemed general assets.

[PL 1969, c. 132, §1 (NEW).]

**11. "Preferred claim"** means any claim accorded priority of payment from the insurer's general assets under applicable law.

[PL 1969, c. 132, §1 (NEW).]

**12. "Special deposit claim"** means any claim secured by deposit made under statute for the security or benefit of a limited class or classes of persons, but not including any general assets.

[PL 1969, c. 132, §1 (NEW).]

**13. "Secured claim"** means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims which have become liens upon specific assets through judicial process and not invalidated.

[PL 1969, c. 132, §1 (NEW).]

**14. "Receiver"** means receiver, liquidator, rehabilitator or conservator, as context requires.

[PL 1969, c. 132, §1 (NEW).]

**15. "Creditor"** means a person having a claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, or absolute, fixed or contingent.

[PL 1969, c. 132, §1 (NEW).]

**16. Fair consideration.** "Fair consideration" is given for property or an obligation:

A. When in exchange for that property or obligation, as a fair equivalent for the property or obligation and in good faith, property is conveyed, services are rendered, an obligation is incurred or an antecedent debt is satisfied; or [PL 1991, c. 828, §25 (NEW).]

B. When that property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared to the value of the property or obligation obtained. [PL 1991, c. 828, §25 (NEW).]

[PL 1991, c. 828, §25 (NEW).]

**17. Guaranty association.** "Guaranty association" means the Maine Insurance Guaranty Association established by chapter 57, subchapter III, the Life and Health Insurance Guaranty Association established by chapter 62 and any other similar entity created by the laws of this State for the payment of claims of insolvent insurers.

[PL 1991, c. 828, §25 (NEW).]

**18. Foreign guaranty association.** "Foreign guaranty association" means a guaranty association created by the legislature of any other state.

[PL 1991, c. 828, §25 (NEW).]

**19. Transfer.** "Transfer" includes the sale and every other direct or indirect method of disposing of or of parting with property or an interest in property or with the possession of property or of fixing a lien upon property or upon an interest in property, absolutely or conditionally, voluntarily or by or without judicial proceedings. The retention of a security interest in property delivered to a debtor is a transfer suffered by the debtor.

[PL 1991, c. 828, §25 (NEW).]

**20. Netting agreement.** "Netting agreement" means:

A. A contract or agreement, including terms and conditions incorporated by reference into a contract or agreement, including a master agreement, that documents one or more transactions between the parties to the agreement for or involving one or more qualified financial contracts and that provides for the netting, liquidation, setoff, termination, acceleration or closeout under or in

connection with one or more qualified financial contracts or present or future payment or delivery obligations or payment or delivery entitlements under one or more qualified financial contracts, including liquidation or close-out values relating to such obligations or entitlements among the parties to the netting agreement; [PL 2011, c. 107, §1 (NEW).]

B. Any master agreement or bridge agreement for one or more master agreements described in paragraph A; or [PL 2011, c. 107, §1 (NEW).]

C. Any security agreement or arrangement or other credit enhancement or guarantee or reimbursement obligation related to any contract or agreement described in paragraph A or B. [PL 2011, c. 107, §1 (NEW).]

A contract or agreement described in paragraph A or B relating to agreements or transactions that are not qualified financial contracts is considered to be a netting agreement only with respect to those agreements or transactions that are qualified financial contracts. For the purposes of this subsection, a master agreement together with all schedules, confirmations, definitions and addenda to the master agreement and transactions under any master agreement, is treated as one netting agreement. [PL 2011, c. 107, §1 (NEW).]

**21. Qualified financial contract.** "Qualified financial contract" means a commodity contract, forward contract, repurchase agreement, securities contract, swap agreement and any similar agreement that the superintendent determines to be a qualified financial contract.

A. "Commodity contract" means:

- (1) A contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a board of trade or contract market under the federal Commodity Exchange Act or a board of trade outside the United States;
- (2) An agreement that is subject to regulation under Section 23 of the federal Commodity Exchange Act and that is commonly known to the commodities trade as a margin account, margin contract, leverage account or leverage contract;
- (3) An agreement or transaction that is subject to regulation under Section 4c(b) of the federal Commodity Exchange Act and that is commonly known to the commodities trade as a commodity option;
- (4) Any combination of the agreements or transactions referred to in this paragraph; or
- (5) Any option to enter into an agreement or transaction referred to in this paragraph. [PL 2011, c. 107, §2 (NEW).]

B. "Forward contract," "repurchase agreement," "securities contract" and "swap agreement" have the meanings set forth in the Federal Deposit Insurance Act, 12 United States Code, Section 1821(e)(8)(D), as amended from time to time. [PL 2011, c. 107, §2 (NEW).]

[PL 2011, c. 107, §2 (NEW).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). PL 1991, c. 828, §25 (AMD). PL 2011, c. 107, §§1, 2 (AMD). PL 2021, c. 16, §14 (AMD).

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