CHAPTER 60L

INVESTMENTS OF INSURERS

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60L.01 DEFINITIONS.

Subdivision 1. **Application.** For purposes of sections 60L.01 to 60L.15, the definitions in subdivisions 2 to 15 have the meanings given them.

Subd. 2. **Admitted assets.** "Admitted assets" means the assets as shown by an insurer's financial statement most recently required to be filed with the commissioner, or such other financial statement required to be filed with the commissioner as the context may require, but excluding assets allocated to separate accounts. For these purposes, assets must be valued according to valuation regulations prescribed by the National Association of Insurance Commissioners and procedures adopted by the National Association of Insurance Commissioners' Financial Condition Ex.4 Subcommittee if not addressed in another section, unless the commissioner requires or finds another method of valuation reasonable under the circumstances. For purposes of any other investment limitation based on the amount of the admitted assets of a life insurer governed by sections 60L.01 to 60L.15, "admitted assets" has the meaning given under this subdivision.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subd. 4. **Derivative instrument.** "Derivative instrument" means an item appropriately reported in schedule DB, derivative instruments, or schedule DC, insurance futures and insurance futures options, of an insurer's statutory financial statement, or successor schedules, as provided under applicable annual statement instructions or statutory accounting guidelines.

Subd. 5. **Derivative transaction.** "Derivative transaction" means a transaction involving the use of one or more derivative instruments.

Subd. 6. **Government sponsored enterprise.** "Government sponsored enterprise" means a governmental agency, a corporation, limited liability company, association, partnership, joint stock company, joint venture, trust, or other entity or instrumentality organized under the laws of the United States to accomplish a public policy or other governmental purpose.

Subd. 7. **Income generation.** "Income generation" means a derivative transaction involving the writing of covered options, caps, or floors that is intended to generate income or enhance return.

Subd. 8. **Insurer.** "Insurer" means a domestic insurance company, including a fraternal benefit society.

Subd. 9. **Lower grade investment.** "Lower grade investment" means a rated credit instrument or debt-like preferred stock rated 4, 5, or 6 by the Securities Valuation Office of the National Association of Insurance Commissioners or any successor office.

Subd. 10. **Medium grade investment.** "Medium grade investment" means a rated credit instrument or debt-like preferred stock rated 3 by the Securities Valuation Office of the National Association of Insurance Commissioners or any successor office.

Subd. 11. **Minimum asset requirement.** "Minimum asset requirement" means: (1) in the case of an insurer other than a life insurer, the sum of an insurer's liabilities and its minimum financial security benchmark; and (2) in the case of a life insurer, the sum of the insurer's liabilities, other than the asset valuation reserve, voluntary investment reserves and liabilities on separate accounts, and its minimum financial security benchmark.

Subd. 12. **Minimum financial security benchmark.** "Minimum financial security benchmark" means the amount an insurer is required to have under section 60L.03.

Subd. 13. **Nationally recognized statistical rating organization.** "Nationally recognized statistical rating organization" means a rating organization so designated by the Securities and Exchange Commission of the United States and that has applied to, and whose status as a nationally recognized statistical rating organization has been confirmed by, the Securities Valuation Office of the National Association of Insurance Commissioners, or any other rating organization approved by the commissioner as a nationally recognized statistical rating organization for purposes of sections 60L.01 to 60L.15.

Subd. 13a. **Replicated investment position.** "Replicated investment position" means the statement value of the position reported under the heading "Replicated (Synthetic) Asset" on Schedule DB, Part F, of the annual statement of the insurer, or any successor provision.

Subd. 14. **Replication transaction.** "Replication transaction" means a derivative transaction that is intended to replicate the performance of one or more assets that an insurer is authorized to acquire under sections 60L.01 to 60L.15. A derivative transaction that is entered into as a hedging transaction is not considered a replication transaction.

Subd. 15. **SVO listed mutual fund.** "SVO listed mutual fund" means a money market mutual fund or short-term bond fund that is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940, and that has been determined by the Securities Valuation Office of the National Association of Insurance Commissioners to be eligible for special reserve and reporting treatment other than as common stock.

History: *1998 c 319 s 1; 2001 c 131 s 7,8*

60L.02 REQUIREMENTS.

Subdivision 1. **Life insurers.** In order to be eligible to be governed by sections 60L.01 to 60L.15, a life insurer must meet the following requirements:

(a) For each calendar year during which sections 60L.01 to 60L.15 apply to the insurer, the insurer shall have had, as of the end of the immediately preceding calendar year:

(1) total admitted assets of at least $2,000,000,000;

(2) a total amount of capital plus surplus of at least $200,000,000; and

(3) a total amount of capital plus surplus plus asset valuation reserve of at least $250,000,000.

(b) For each calendar year during which sections 60L.01 to 60L.15 apply to the insurer, the insurer shall have had, as of the end of the immediately preceding calendar year, total adjusted capital equal to or greater

than 200 percent of company action level risk-based capital, as defined in section 60A.60, subdivision 11. For purposes of this subdivision, "total adjusted capital" means total adjusted capital as defined in section 60A.60, subdivision 14, adjusted to deduct the value of capital notes and surplus notes as provided in the risk-based instructions as defined in section 60A.60, subdivision 10.

(c) For each calendar year during which sections 60L.01 to 60L.15 apply to the insurer, the mean of the ratio, calculated as of the end of each of the five immediately preceding calendar years, of total adjusted capital to company action level risk-based capital, as defined in section 60A.60, subdivision 11, must equal at least 2.0.

Subd. 2. **Other insurers.** In order to be eligible to be governed by sections 60L.01 to 60L.15, an insurer other than a life insurer must meet the following requirements:

(a) For each calendar year during which sections 60L.01 to 60L.15 apply to the insurer, the insurer shall have had, as of the end of the immediately preceding calendar year:

(1) total admitted assets of at least $2,000,000,000; and

(2) a total amount of capital plus surplus of at least $200,000,000.

(b) For each calendar year during which sections 60L.01 to 60L.15 apply to the insurer, the insurer shall have had, as of the end of the immediately preceding calendar year, total adjusted capital equal to or greater than company action level risk-based capital, as defined in section 60A.60, subdivision 11. For purposes of this subdivision, "total adjusted capital" means total adjusted capital as defined in section 60A.60, subdivision 14, adjusted to deduct the value of capital notes and surplus notes as provided in the risk-based instructions as defined in section 60A.60, subdivision 10.

(c) For each calendar year during which sections 60L.01 to 60L.15 apply to the insurer, the mean of the ratio, calculated as of the end of each of the five immediately preceding calendar years, of total adjusted capital to company action level risk-based capital, as defined in section 60A.60, subdivision 11, must equal at least 1.0.

(d) An insurer is considered to have met the requirements of this subdivision and subdivision 3 if the insurer participates in a 100 percent reinsurance pooling agreement which substantially affects the solvency and integrity of its reserves and cedes all of its direct and assumed business to the pool, and where the insurer with the largest share of pooled business subject to the agreement meets the requirements of this subdivision and subdivision 3.

Subd. 3. **Additional requirements.** (a) In order to be eligible to be governed by sections 60L.01 to 60L.15, the insurer must meet the requirements specified under this subdivision.

(b) The insurer shall:

(1) have been in continuous operation for a minimum of five years; and

(2) maintain a minimum claims-paying, financial strength, or equivalent rating from at least one nationally recognized statistical rating organization in one of the organization's three highest rating categories for the time period during which sections 60L.01 to 60L.15 apply to the insurer. For purposes of this subdivision, the rating must be based on a review of the insurer by the nationally recognized statistical rating organization with the cooperation of the insurer; must not depend on a guarantee or other credit enhancement from another entity; and must not be modified or otherwise qualified to show dependence of the rating on the performance or a contractual obligation of, or the insurer's affiliation with, another insurer.

(c) The insurer or an affiliate, as defined in section 60D.15, subdivision 2, of the insurer shall employ at least one individual as a professional investment manager for the insurer's investments whom the board of directors or trustees of the insurer finds is qualified on the basis of experience, education or training, competence, personal integrity, and who conducts professional investment management activities in accordance with the Code of Ethics and Standards of Professional Conduct of the Association for Investment Management and Research. For purposes of complying with this paragraph, an employee of an affiliate may only be used if they are responsible for managing the insurer's investments.

(d) The board of directors of the insurer must annually adopt a resolution finding that the insurer or an affiliate, as defined in section 60D.15, subdivision 2, of the insurer has employed a professional investment manager for the insurer's investments with sufficient expertise and has sufficient other resources to implement and monitor the insurer's investment policies and strategies.

(e) In the report required under section 60A.1291, subdivision 12, the insurer's independent auditor shall not have identified any significant deficiencies in the insurer's internal control structure related to investments during any of the five years immediately preceding the date on which sections 60L.01 to 60L.15 begin to apply to the insurer, and as long as sections 60L.01 to 60L.15 apply to the insurer.

Subd. 4. **Resolutions.** Before sections 60L.01 to 60L.15 apply to an insurer, the board of directors of the insurer must adopt the following resolutions:

(1) a resolution finding that the insurer or an affiliate, as defined in section 60D.15, subdivision 2, of the insurer has employed a professional investment manager for the insurer's investments with sufficient expertise and has sufficient other resources to implement and monitor the insurer's investment policies and strategies; and

(2) a resolution electing that sections 60L.01 to 60L.15 apply to the insurer.

Subd. 5. **Commissioner review.** Sections 60L.01 to 60L.15 do not govern an insurer unless the insurer has notified the commissioner in writing of its intention that sections 60L.01 to 60L.15 will govern the insurer at least 30 days before applying sections 60L.01 to 60L.15 to its investment policies, or a shorter period of time as the commissioner permits, and the commissioner has not disapproved the governing of the insurer by sections 60L.01 to 60L.15 within this period.

Subd. 6. **Substitution of law.** When sections 60L.01 to 60L.15 begin to govern an insurer, then, in the case of a life insurer, sections 61A.28; 61A.282, subdivision 2; 61A.283; 61A.29; 61A.31; and 61A.315; and, in the case of an insurer other than a life insurer, section 60A.11, do not apply to an insurer.

Subd. 7. **Termination.** (a) After sections 60L.01 to 60L.15 begin to govern an insurer, sections 60L.01 to 60L.15 apply to the insurer unless:

(1) the insurer has ceased to comply with the requirements of:

(i) subdivision 1, if the insurer is a life insurer;

(ii) subdivision 2, if the insurer is other than a life insurer; or

(iii) subdivision 3

and the insurer has failed to bring itself back into compliance with the requirements of the applicable subdivisions within 30 days of ceasing to comply; or

(2) the commissioner has issued an order under section 60L.14, subdivision 2, that sections 60L.01 to 60L.15 no longer govern the insurer, regardless of whether the insurer is contesting the order; or

(3) all of the following conditions have been met:

(i) the insurer's board of directors has adopted a resolution electing that sections 60L.01 to 60L.15 no longer apply to its investments and investment practices;

(ii) the insurer has notified the commissioner in writing of its intention that sections 60L.01 to 60L.15 no longer apply to the insurer's investments and investment practices; and

(iii) during the period ending 30 days after the receipt by the commissioner of the written notice, the commissioner has not issued an order under section 60L.14 prohibiting the insurer from ceasing to comply with sections 60L.01 to 60L.15.

(b) An insurer may not elect more than once in a 12-month period that sections 60L.01 to 60L.15 do not apply to the insurer's investments and investment practices.

(c) An investment which is held as an admitted asset by an insurer on the date on which sections 60L.01 to 60L.15 cease to govern the insurer and which qualified as an admitted asset immediately before the date remains qualified as an admitted asset of the insurer.

(d) If sufficient voting securities of the insurer or an affiliate are acquired to require a filing under section 60D.17, sections 60L.01 to 60L.15 cease to apply to the insurer 30 days following the completion of the acquisition of voting securities. If the board of directors of the insurer desires the insurer to continue to be governed by sections 60L.01 to 60L.15, it shall comply with the requirements of subdivision 4 and shall notify the commissioner as required under and subject to subdivision 5. If the notification is received within 30 days of the completion of the acquisition, the insurer is governed by sections 60L.01 to 60L.15 during the time period allowed for the commissioner's disapproval.

(e) When sections 60L.01 to 60L.15 cease to govern an insurer, then, in the case of a life insurer, sections 61A.28; 61A.282, subdivision 2; 61A.283; 61A.29; 61A.31; and 61A.315, and, in the case of an insurer other than a life insurer, section 60A.11, apply to the insurer.

Subd. 8. **Conflict of laws.** Sections 60L.01 to 60L.15 prevail over any other law, except section 60D.16, that authorizes an insurer to make a particular investment if the other law was enacted before August 1, 1998.

History: *1998 c 319 s 2; 1998 c 408 s 4,5; 2009 c 37 art 3 s 13*

60L.03 MINIMUM FINANCIAL SECURITY BENCHMARK.

Subdivision 1. **Amount.** Except as otherwise provided in subdivisions 2 and 3, the amount of the minimum financial security benchmark for an insurer is the greater of:

(1) the authorized control level risk-based capital applicable to the insurer as defined under section 60A.60, subdivision 11, clause (3); or

(2) the minimum capital or minimum surplus required for maintenance of an insurer's certificate of authority.

Subd. 2. **Authorization by order.** The commissioner may, according to the controlling factors specified in subdivision 6, establish by order a minimum financial security benchmark to apply to a specific insurer provided it is not less than the amount determined under subdivision 1.

Subd. 3. **Additional authorization.** The commissioner may establish a minimum financial security benchmark that is a multiple of authorized control level risk-based capital to apply to any class of insurers provided the amount established is not less than the amount specified under subdivision 1.

Subd. 4. **Surplus.** The commissioner shall determine the amount of surplus that constitutes an insurer's minimum financial security benchmark as an amount that will provide reasonable security against contingencies affecting the insurer's financial position that are not fully covered by reserves or by reinsurance.

Subd. 5. **Types of contingencies.** The commissioner shall consider the risks of:

(1) increases in the frequency or severity of losses beyond the levels contemplated by the rates charged;

(2) increases in expenses beyond those contemplated by the rates charged;

(3) decreases in the value of or the return on invested assets below those planned on;

(4) changes in economic conditions that would make liquidity more important than contemplated and would force untimely sale of assets or prevent timely investments;

(5) currency devaluation to which the insurer may be subject; and

(6) any other contingencies the commissioner can identify that may affect the insurer's operations.

Subd. 6. **Controlling factors.** In making the determination under subdivision 4, the commissioner shall take into account the following factors:

(1) the most reliable information available as to the magnitude of the various risks under subdivision 5;

(2) the extent to which the risks specified under subdivision 5 are independent of each other or are related, and whether any dependency is direct or inverse;

(3) the insurer's recent history of profits or losses;

(4) the extent to which the insurer has provided protection against the contingencies in other ways than the establishment of surplus, including redundancy of premiums, adjustability of contracts under their terms, investment valuation reserves whether voluntary or mandatory, appropriate reinsurance, the use of conservative actuarial assumptions to provide a margin of security, reserve adjustments in recognition of previous rate inadequacies, contingency or catastrophe reserves, diversification of assets, and underwriting risks;

(5) independent judgments of the soundness of the insurer's operations, as evidenced by the ratings of reliable professional financial reporting services; and

(6) any other relevant factors.

History: *1998 c 319 s 3*

60L.04 AUTHORIZED INVESTMENTS.

Subdivision 1. **Authorization.** Subject to the provisions of sections 60L.01 to 60L.15, an insurer may loan or invest its funds, and may buy, sell, hold title to, possess, occupy, pledge, convey, manage, protect,

insure, and deal with its investments, property, and other assets to the same extent as any other corporation or other person under the laws of this state or the United States.

Subd. 2. **Board of directors; duties.** With respect to all of the insurer's investments, the board of directors of an insurer shall exercise the judgment and care, under the circumstances then prevailing, that persons of reasonable prudence, discretion, and intelligence exercise in the management of a like enterprise, not in regard to speculating but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Investments must be of sufficient value, liquidity, and diversity to ensure the insurer's ability to meet its outstanding obligations based on reasonable assumptions as to new business production for current lines of business. As part of its exercise of judgment and care, the board of directors shall take into account the prudence evaluation criteria specified under section 60L.05.

Subd. 3. **Internal controls.** The insurer shall establish and implement internal controls and procedures to ensure compliance with investment policies and procedures to ensure that:

(1) the insurer's investment staff and any consultants used are reputable and capable;

(2) a periodic evaluation and monitoring process occurs for assessing the effectiveness of investment policy and strategies;

(3) management's performance is assessed in meeting the stated objectives within the investment policy; and

(4) appropriate analyses are undertaken of the degree to which asset cash flows are adequate to meet liability cash flows under different economic environments. The analyses must be conducted at least annually and make specific reference to economic conditions.

Subd. 4. **Compliance.** Compliance with sections 60L.01 to 60L.15 is determined in light of the facts and circumstances existing at the time of the insurer's decision or action and not by hindsight.

History: *1998 c 319 s 4*

60L.05 PRUDENCE EVALUATION CRITERIA.

The factors in clauses (1) to (12) shall be evaluated by the insurer and considered along with its business in determining whether an investment portfolio or investment policy is prudent. The commissioner shall consider the factors in clauses (1) to (12) before making a determination that an insurer's investment portfolio or investment policy is not prudent:

(1) general economic conditions;

(2) the possible effect of inflation or deflation;

(3) the expected tax consequences of investment decisions or strategies;

(4) the fairness and reasonableness of the terms of an investment considering its probable risk and reward characteristics and relationship to the investment portfolio as a whole;

(5) the extent of the diversification of the insurer's investments among individual investments, classes of investments, industry concentrations, dates of maturity, and geographic areas;

(6) the quality and liquidity of investments in affiliates;

(7) the investment exposure to the following risks, quantified in a manner consistent with the insurer's acceptable risk level identified in section 60L.06, clause (8): liquidity; credit and default; systemic (market); interest rate; call, prepayment and extension; currency; and foreign sovereign;

(8) the amount of the insurer's assets, capital and surplus, premium writings, insurance in force, and other appropriate characteristics;

(9) the amount and adequacy of the insurer's reported liabilities;

(10) the relationship of the expected cash flows of the insurer's assets and liabilities, and the risk of adverse changes in the insurer's assets and liabilities;

(11) the adequacy of the insurer's capital and surplus to secure the risks and liabilities of the insurer; and

(12) any other factors relevant to whether an investment is prudent.

History: *1998 c 319 s 5*

60L.06 INSURER INVESTMENT POLICY.

In acquiring, investing, exchanging, holding, selling, and managing investments, an insurer shall establish and follow a written investment policy that must be reviewed and approved by the insurer's board of directors at least annually. The content and format of an insurer's investment policy are at the insurer's discretion, but must include written guidelines appropriate to the insurer's business as to the following:

(1) the general investment policy of the insurer containing policies, procedures, and controls covering all aspects of the investing function;

(2) quantified goals and objectives regarding the composition of classes of investments, including maximum internal limits;

(3) periodic evaluation of the investment portfolio as to its risk and reward characteristics. This clause does not preclude an insurer from the use of modern portfolio theory to manage its investments. For purposes of this section, "modern portfolio theory" means the collection of models and applications that prescribe the maximization of expected returns for a given level of aggregate risk as the primary objective of investment portfolio management;

(4) professional standards for the individuals making day-to-day investment decisions to ensure that investments are managed in an ethical and capable manner;

(5) the types of investments to be made and those to be avoided, based on their risk and reward characteristics and the insurer's level of experience with the investments;

(6) the relationship of classes of investments to the insurer's insurance products and liabilities;

(7) the manner in which the insurer intends to implement section 60L.05; and

(8) the level of risk, based on quantitative measures, appropriate for the insurer given the level of capitalization and expertise available to the insurer.

History: *1998 c 319 s 6*

60L.07 AUTHORIZED CLASSES OF INVESTMENTS.

The following classes of investments may be counted for the purposes specified in section 60L.11, whether they are made directly or as a participant in a partnership, joint venture, or limited liability company:

(1) cash in the direct possession of the insurer or on deposit with a financial institution regulated by any federal or state agency of the United States;

(2) bonds, debt-like preferred stock, and other evidences of indebtedness of governmental units in the United States or Canada, or the instrumentalities of the governmental units, or private business entities domiciled in the United States or Canada, including asset-backed securities and SVO listed mutual funds;

(3) loans secured by mortgages, trust deeds, or other security interests in real property located in the United States or Canada or secured by insurance against default issued by a government insurance corporation of the United States or Canada or by an insurer authorized to do business in this state;

(4) common stock or equity-like preferred stock or equity interests in any United States or Canadian business entity, or shares of mutual funds registered with the Securities and Exchange Commission of the United States under the Investment Company Act of 1940, other than SVO listed mutual funds;

(5) real property necessary for the convenient transaction of the insurer's business;

(6) real property and its fixtures, furniture, furnishings, and equipment in the United States or Canada, which produces or after suitable improvement can reasonably be expected to produce substantial income;

(7) loans, securities, or other investments of the types described in clauses (1) to (6) in countries other than the United States and Canada;

(8) bonds or other evidences of indebtedness of international development organizations of which the United States is a member;

(9) loans upon the security of the insurer's own policies in amounts that are adequately secured by the policies and that in no case exceed the surrender values of the policies;

(10) tangible personal property under contract of sale or lease under which contractual payments may reasonably be expected to return the principal of and provide earnings on the investment within its anticipated useful life;

(11) other investments authorized by the commissioner; and

(12) investments not otherwise permitted by this section, and not specifically prohibited by other law, to the extent of not more than five percent of the first $500,000,000 of the insurer's admitted assets plus ten percent of the insurer's admitted assets exceeding $500,000,000.

History: *1998 c 319 s 7*

60L.08 LIMITATIONS GENERALLY APPLICABLE.

Subdivision 1. **Class limitations.** For the purposes of section 60L.11, the following limitations on classes of investments apply:

(a) For investments authorized under section 60L.07, clause (2), and investments authorized under section 60L.07, clause (7), that are of the types described in section 60L.07, clause (2), the following restrictions apply:

(1) the aggregate amount of medium and lower grade investments may not exceed 20 percent of the insurer's admitted assets;

(2) the aggregate amount of lower grade investments may not exceed ten percent of the insurer's admitted assets;

(3) the aggregate amount of investments rated 5 or 6 by the SVO may not exceed five percent of the insurer's admitted assets;

(4) the aggregate amount of investments rated 6 by the SVO may not exceed one percent of the insurer's admitted assets; or

(5) the aggregate amount of medium and lower grade investments that receive as cash income less than the equivalent yield for United States Treasury issues with a comparative average life, may not exceed one percent of the insurer's admitted assets.

(b) Investments authorized under section 60L.07, clause (3), may not exceed 45 percent of admitted assets in the case of life insurers and 25 percent of admitted assets in the case of insurers other than life insurers.

(c) Investments authorized under section 60L.07, clause (4), other than subsidiaries of the types authorized under section 60A.11, subdivision 18, paragraph (a), clause (4); 60D.16; or 61A.281, may not exceed 20 percent of admitted assets in the case of life insurers and 25 percent of admitted assets in the case of insurers other than life insurers.

(d) Investments authorized under section 60L.07, clause (5), may not exceed ten percent of admitted assets.

(e) Investments authorized under section 60L.07, clause (6), may not exceed 20 percent of admitted assets in the case of life insurers, and ten percent of admitted assets in the case of insurers other than life insurers.

(f) Investments authorized under section 60L.07, clause (7), may not exceed 20 percent of admitted assets.

(g) Investments authorized under section 60L.07, clause (8), may not exceed two percent of admitted assets.

(h) Investments authorized under section 60L.07, clause (10), may not exceed two percent of admitted assets.

Subd. 2. **Individual limitations.** For purposes of determining compliance with section 60L.11, securities of a single issuer and its affiliates, other than the government of the United States and subsidiaries authorized under section 60A.11, subdivision 18, paragraph (a), clause (4); 60D.16; or 61A.281, may not exceed three percent of admitted assets in the case of life insurers, and five percent in the case of insurers other than life insurers. For purposes of this subdivision, in the case of asset-backed securities issued, assumed, insured, or guaranteed by a government-sponsored enterprise and secured by or evidencing an interest in a single asset or single pool of assets held by a trust or other business entity, the issuer is considered to be the asset or pool of assets.

Subd. 3. **Investment subsidiaries.** For purposes of determining compliance with this section, the admitted portion of assets of subsidiaries under section 60A.11, subdivision 18, paragraph (a), clause (4); 60D.16, subdivision 2, paragraph (b); or 61A.281, subdivision 5, are considered to be owned directly by the insurer

and any other investors in proportion to the market value, or if there is no market, the reasonable value, of their interest in the subsidiaries.

Subd. 4. **Effect of quantity limitations.** To the extent that investments exceed the limitations specified under subdivisions 1 and 2, the excess may be assigned to the investment class authorized in section 60L.07, clause (12), until that limit is exhausted.

Subd. 5. **Mutual funds, pooled investment vehicles, and other investment companies.** If the commissioner considers it desirable in order to get a proper evaluation of the investment portfolio of an insurer, the commissioner may require that investments in mutual funds, pooled investment vehicles, or other investment companies be treated for purposes of sections 60L.01 to 60L.15, as if the investor owned directly its proportional share of the assets owned by the mutual fund, pooled investment vehicle, or investment company.

Subd. 6. **Investment limitation computation.** Unless otherwise specified, an investment limitation computed on the basis of an insurer's admitted assets or capital and surplus must 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.

Subd. 7. **Replication transactions.** (a) An insurer engaging in replication transactions shall include all replicated investment positions in calculating compliance with the limitations on investments contained in this section. So long as the insurer so complies with the limitations on investments contained in this section, then the insurer may count a replication transaction and any related investment of the insurer for the purposes specified in section 60L.11, to the extent the insurer has appropriately assigned the transaction or other investment to an investment class authorized in section 60L.07. An insurer shall not otherwise count replicated investment positions for the purposes specified in section 60L.11.

(b) If an investment position of the insurer includes a replicated investment position and exceeds an applicable limitation contained in this section, then the insurer may allocate part or all of the replicated investment position as follows for the purposes of calculating compliance with the limitations on investments and other requirements contained in sections 60L.01 to 60L.15: to the extent an insurer owns assets in excess of its minimum asset requirement, the insurer may deem a replicated investment position to be among such excess assets, but only to the extent that the replicated investment position does not cause the total positions represented by such excess assets to be greater than the total positions represented by such excess assets as would be permitted in the absence of the replicated investment position.

History: *1998 c 319 s 8; 1999 c 86 art 1 s 15; 2001 c 131 s 9*

60L.09 PROTECTION AGAINST CURRENCY FLUCTUATIONS.

An insurer doing business that requires it to make payments in different currencies shall have investments in securities in each of these currencies in an amount that independently of all other investments meets the requirements of sections 60L.01 to 60L.15 as applied separately to the insurer's obligations in each currency. The commissioner may by order exempt an insurer, or a class of insurers, from this requirement if the obligations in other currencies are small enough that no significant problem for financial solidity would be created by substantial fluctuations in relative currency values.

History: *1998 c 319 s 9*

60L.10 PROHIBITED INVESTMENTS.

Subdivision 1. **Prohibitions.** An insurer may not invest in investments that are prohibited for an insurer by law. The use of a derivative instrument for any purposes other than hedging, income generation, or replication is prohibited.

Subd. 2. **Disposal of prohibited asset.** A reasonable time, not to exceed five years, must be allowed for disposal of a prohibited investment in hardship cases if the investment is demonstrated by the insurer to have been legal when made, or the result of a mistake made in good faith, or if the commissioner determines that the sale of the asset would be contrary to the interests of insureds, creditors, or the general public.

History: *1998 c 319 s 10; 2001 c 131 s 10*

60L.11 EFFECT OF INVESTMENT RESTRICTIONS.

Subdivision 1. **Invested assets.** Invested assets may be counted toward satisfaction of the minimum asset requirement only so far as they are invested in compliance with sections 60L.01 to 60L.15 and orders issued by the commissioner. Assets other than invested assets may be counted toward satisfaction of the minimum asset requirement at admitted annual statement value.

Subd. 2. **Admitted asset.** An investment which is held as an admitted asset by an insurer on the date on which sections 60L.01 to 60L.15 begin to govern the insurer and which qualified as an admitted asset immediately before this date remain qualified as an admitted asset under sections 60L.01 to 60L.15.

Subd. 3. **Acquired assets.** Assets acquired in the bona fide enforcement of creditors' rights or in bona fide workouts or settlements of disputed claims may be counted for the purposes of subdivision 1 for five years after acquisition if real property and three years if not real property, even if they could not otherwise be counted under sections 60L.01 to 60L.15. The commissioner may allow reasonable extensions of these periods if replacement of the assets within the periods would not be possible without substantial loss.

Subd. 4. **Liquidation and rehabilitation.** If an insurer does not own, or is unable to apply toward compliance with sections 60L.01 to 60L.15, an amount of assets equal to its minimum asset requirement, the commissioner may consider it to be financially hazardous under section 60B.15; 60B.20; or 60G.20.

History: *1998 c 319 s 11*

60L.12 REPORTS AND REPLIES.

Subdivision 1. **Requirements.** The commissioner may require any of the following from a person subject to regulation under sections 60L.01 to 60L.15:

(1) statements, reports, answers to questionnaires and other information, and evidence in whatever reasonable form the commissioner designates, and at reasonable intervals as the commissioner chooses;

(2) full explanation of the programming of any data storage or communication system in use; or

(3) that information from any books, records, electronic data processing systems, computers, or any other information storage system be made available to the commissioner at a reasonable time and in a reasonable manner.

Subd. 2. **Forms.** The commissioner may prescribe forms for the reports required under subdivision 1 and specify who shall execute or certify the reports. The forms for the reports required under subdivision 1 must be consistent, so far as practicable, with those prescribed by other jurisdictions.

Subd. 3. **Accounting.** The commissioner may prescribe reasonable minimum standards and techniques of accounting and data handling to ensure that timely and reliable information will exist and will be available to the commissioner.

Subd. 4. **Prompt reply.** Any officer, manager, or general agent of an insurer subject to sections 60L.01 to 60L.15, any person controlling or having a contract under which the person has a right to control the insurer, whether exclusively or otherwise, or a person with executive authority over or in charge of any segment of the insurer's affairs, shall reply promptly in writing or in other reasonably designated form, to a written inquiry from the commissioner requesting a reply.

Subd. 5. **Verified communication.** The commissioner may require that any communication made to the commissioner under this section be verified.

Subd. 6. **No action for damages.** A communication to the commissioner, or to an expert or consultant retained by the commissioner, required under sections 60L.01 to 60L.15, shall not subject the person making it to an action for damages for the communication in the absence of actual malice.

Subd. 7. **Information.** Notwithstanding subdivision 6, the commissioner may bring suit against any person providing information required under sections 60L.01 to 60L.15 that is not truthful and accurate.

History: *1998 c 319 s 12*

60L.13 RETENTION OF EXPERTS.

The commissioner may retain at the insurer's expense attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist in reviewing the insurer's investments. Persons so retained are under the direction and control of the commissioner and shall act in a purely advisory capacity.

History: *1998 c 319 s 13*

60L.14 COMMISSIONER'S ORDERS.

Subdivision 1. **Necessary changes.** If the commissioner determines that an insurer's investment practices do not meet the requirements of sections 60L.01 to 60L.15, the commissioner may, after notification to the insurer of the commissioner's findings, order the insurer to make changes necessary to comply with the requirements of sections 60L.01 to 60L.15.

Subd. 2. **Additional restrictions.** If the commissioner determines that by reason of the financial condition, current investment practice, or current investment plan of an insurer, the interests of insureds, creditors, or the general public are or may be endangered, the commissioner may impose reasonable additional restrictions upon the admissibility or valuation of investments or may impose restrictions on the investment practices of an insurer, including prohibition, divestment, or requiring investments by insurers to be governed by section 60A.11 in the case of insurers other than life insurers, and sections 61A.28; 61A.282, subdivision 2; 61A.283; 61A.29; 61A.31; and 61A.315 in the case of life insurers.

Subd. 3. **Additional assets.** The commissioner may count toward satisfaction of the minimum asset requirement any assets in which an insurer is required to invest under the laws of a country other than the United States as a condition for doing business in that country if the commissioner finds that counting them does not endanger the interests of insureds, creditors, or the general public.

Subd. 4. **Adjustments.** If the commissioner is satisfied by evidence of the solidity of an insurer and the competence of management and its investment advisors, the commissioner, after a hearing, may by order

adjust the class limitations under section 60L.08, for that insurer, to the extent that the commissioner is satisfied that the interests of insureds, creditors, and the public are sufficiently protected in other ways. Adjustments to the class limitations granted under section 60L.08, in aggregate, are limited to an amount equal to ten percent of the insurer's liabilities.

History: *1998 c 319 s 14*

60L.15 ADMINISTRATIVE HEARINGS.

Subdivision 1. **Authorization.** An insurer aggrieved by an order or any other act or failure to act of the commissioner regarding compliance with sections 60L.01 to 60L.15, may request a hearing by following the procedures of chapter 14.

Subd. 2. **Private hearing.** The commissioner shall hold hearings under this section privately unless the insurer requests a public hearing, in which case the hearing is public.

History: *1998 c 319 s 15*