

WAC 284-13-910 Definitions. The definitions in this section apply to WAC 284-13-920 through 284-13-960.

"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 for-profit or not-for-profit.

"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.

"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.

"Counterparty exposure amount" means:

(1) 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). The amount of credit risk equals:

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

(b) Zero if the liquidation of the derivative instrument would not result in a final cash payment to the insurance company.

(2) 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* of the NAIC as eligible for netting, the net amount of credit risk must be the greater of zero or the net sum of:

(a) 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 insurance company; and

(b) 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 insurance company to the business entity.

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

"Covered" means that an insurer owns or can immediately acquire, through the exercise of options, warrants, or conversion rights already owned, the underlying interest in order 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 in an income generation transaction.

"Derivative instrument" means an agreement, option, instrument, or a series or combination thereof:

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

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

(2) Derivative instruments include options, warrants, caps, floors, collars, swaps, forwards, futures, and any other agreements, options, or instruments substantially similar thereto or any series or combination thereof. Derivative instruments shall additionally include any agreements, options, or instruments permitted under WAC 284-13-920 through 284-13-960. Derivative instruments shall not include an investment authorized by RCW 48.13.061 (2) through (10).

"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.

"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.

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

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

(2) 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.

"Insurer" includes domestic insurance companies authorized under chapter 48.05 RCW, United States branches of alien insurers entered through this state, alien insurers admitted and using this state as their port of entry, domestic fraternal benefit societies formed pursuant to chapter 48.36A RCW, domestic health care service contractors registered under chapter 48.44 RCW, domestic health maintenance organizations registered under chapter 48.46 RCW, and domestic self-funded multiple employer welfare arrangements registered under chapter 48.125 RCW.

"Option" means an agreement giving the buyer the right to buy or receive (a "call option"), sell or deliver (a "put option"), enter into, extend, or terminate or effects a cash settlement based on the actual or expected price, level, performance, or value of one or more underlying interests.

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

"Qualified exchange" means:

(1) A securities exchange registered as a national securities exchange, or a securities market regulated under the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78 et seq.), as amended;

(2) A board of trade or commodities exchange designated as a contract market by the Commodity Futures Trading Commission (CFTC) or any successors thereto;

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

(4) A designated offshore securities market as defined in Securities Exchange Commission Regulation S, 17 C.F.R. Part 230, as amended; or

(5) A qualified foreign exchange.

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

(1) That has received regulatory comparability relief under Commodity Futures Trading Commission Rule 30.10 (as set forth in Appendix C to Part 30 of the CFTC's Regulations, 17 C.F.R. Part 30);

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

(3) Upon which foreign stock index futures contracts are listed that are the subject of no-action relief issued by the CFTC's Office of General Counsel, but an exchange, board of trade, or contracts market that qualifies as a "qualified foreign" only under this subsection shall be a "qualified foreign exchange" as to foreign stock index futures contracts that are the subject of the no-action relief under this subsection.

"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.

"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.

"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, for example, as part of a merger or recapitalization agreement, or to facilitate divestiture of the securities of another business entity.

[Statutory Authority: RCW 48.020.60 [48.02.060], 48.13.171 and 48.13.091. WSR 14-21-106 (Matter No. R 2014-05), § 284-13-910, filed 10/15/14, effective 11/15/14.]