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State of Minnesota
HOUSE OF REPRESENTATIVES

**EIGHTY-SIXTH
SESSION**

HOUSE FILE No. 447

February 2, 2009

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The bill was read for the first time and referred to the Committee on Commerce and Labor

1.1 A bill for an act
1.2 relating to insurance; providing that the state will continue to regulate
1.3 equity-indexed annuities as an insurance product, and not as a security, regardless
1.4 of federal law or policy; amending Minnesota Statutes 2008, sections 60A.06,
1.5 subdivision 1; 61A.20; 80A.41.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2008, section 60A.06, subdivision 1, is amended to read:

1.8 Subdivision 1. **Statutory lines.** Insurance corporations may be authorized to
1.9 transact in any state or territory in the United States, in the Dominion of Canada, and in
1.10 foreign countries, when specified in their charters or certificates of incorporation, either as
1.11 originally granted or as thereafter amended, any of the following kinds of business, upon
1.12 the stock plan, or upon the mutual plan when the formation of such mutual companies is
1.13 otherwise authorized by law; and business trusts as authorized by law of this state shall
1.14 only be authorized to transact in this state the following kind of business hereinafter
1.15 specified in clause (7) hereof when specified in their "declaration of trust":

1.16 (1) To insure against loss or damage to property on land and against loss of rents
1.17 and rental values, leaseholds of buildings, use and occupancy and direct or consequential
1.18 loss or damage caused by fire, smoke or smudge, water or other fluid or substance,
1.19 lightning, windstorm, tornado, cyclone, earthquake, collapse and slippage, rain, hail,
1.20 frost, snow, freeze, change of temperature, weather or climatic conditions, excess or
1.21 deficiency of moisture, floods, the rising of waters, oceans, lakes, rivers or their tributaries,
1.22 bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped
1.23 power, electrical power interruption or electrical breakdown from any cause, railroad
1.24 equipment, motor vehicles or aircraft, accidental injury to sprinklers, pumps, conduits
1.25 or containers or other apparatus erected for extinguishing fires, explosion, whether fire

2.1 ensues or not, except explosions on risks specified in clause (3); provided, however, that
2.2 there may be insured hereunder the following: (a) explosion of any kind originating
2.3 outside the insured building or outside of the building containing the property insured, (b)
2.4 explosion of pressure vessels which do not contain steam or which are not operated with
2.5 steam coils or steam jackets; and (c) risks under home owners multiple peril policies;

2.6 (2)(a) To insure vessels, freight, goods, wares, merchandise, specie, bullion, jewels,
2.7 profits, commissions, bank notes, bills of exchange, and other evidences of debt, bottomry
2.8 and respondentia interest, and every insurance appertaining to or connected with risks of
2.9 transportation and navigation on and under water, on land or in the air;

2.10 (b) To insure all personal property floater risks;

2.11 (3) To insure against any loss from either direct or indirect damage to any property
2.12 or interest of the assured or of another, resulting from the explosion of or injury to

2.13 (a) any boiler, heater or other fired pressure vessel; (b) any unfired pressure vessel;

2.14 (c) pipes or containers connected with any of said boilers or vessels; (d) any engine,

2.15 turbine, compressor, pump or wheel; (e) any apparatus generating, transmitting or using

2.16 electricity; (f) any other machinery or apparatus connected with or operated by any of

2.17 the previously named boilers, vessels or machines; and including the incidental power

2.18 to make inspections of and to issue certificates of inspection upon, any such boilers,

2.19 apparatus, and machinery, whether insured or otherwise;

2.20 (4) To make contracts of life and endowment insurance, to grant, purchase, or
2.21 dispose of annuities or endowments of any kind, including equity-indexed annuities; and,
2.22 in such contracts, or in contracts supplemental thereto to provide for additional benefits in
2.23 event of death of the insured by accidental means, total permanent disability of the insured,
2.24 or specific dismemberment or disablement suffered by the insured, or acceleration of life
2.25 or endowment or annuity benefits in advance of the time they would otherwise be payable;

2.26 (5)(a) To insure against loss or damage by the sickness, bodily injury or death by
2.27 accident of the assured or dependents, or those for whom the assured has assumed a
2.28 portion of the liability for the loss or damage, including liability for payment of medical
2.29 care costs or for provision of medical care;

2.30 (b) To insure against the legal liability, whether imposed by common law or by
2.31 statute or assumed by contract, of employers for the death or disablement of, or injury
2.32 to, employees;

2.33 (6) To guarantee the fidelity of persons in fiduciary positions, public or private, or
2.34 to act as surety on official and other bonds, and for the performance of official or other
2.35 obligations;

3.1 (7) To insure owners and others interested in real or personal property as described
3.2 in section 68A.04;

3.3 (8) To insure against loss or damage by breakage of glass, located or in transit;

3.4 (9)(a) To insure against loss by burglary, theft, or forgery;

3.5 (b) To insure against loss of or damage to moneys, coins, bullion, securities, notes,
3.6 drafts, acceptance or any other valuable paper or document, resulting from any cause,
3.7 except while in the custody or possession of and being transported by any carrier for
3.8 hire or in the mail;

3.9 (c) To insure individuals by means of an all risk type of policy commonly known as
3.10 the "personal property floater" against any kind and all kinds of loss of or damage to, or
3.11 loss of use of, any personal property other than merchandise;

3.12 (d) To insure against loss or damage by water or other fluid or substance;

3.13 (10) To insure against loss from death of domestic animals and to furnish veterinary
3.14 service;

3.15 (11) To guarantee merchants and those engaged in business, and giving credit,
3.16 from loss by reason of giving credit to those dealing with them; this shall be known
3.17 as credit insurance;

3.18 (12) To insure against loss or damage to automobiles or other vehicles or aircraft
3.19 and their contents, by collision, fire, burglary, or theft, and other perils of operation,
3.20 and against liability for damage to persons, or property of others, by collision with such
3.21 vehicles or aircraft, and to insure against any loss or hazard incident to the ownership,
3.22 operation, or use of motor or other vehicles or aircraft;

3.23 (13) To insure against liability for loss or damage to the property or person of
3.24 another caused by the insured or by those for whom the insured is responsible, including
3.25 insurance of medical, hospital, surgical, funeral or other related expense of the insured
3.26 or other person injured, irrespective of legal liability of the insured, when issued with or
3.27 supplemental to policies of liability insurance;

3.28 (14) To insure against loss of or damage to any property of the insured, resulting
3.29 from the ownership, maintenance or use of elevators, except loss or damage by fire;

3.30 (15) To insure against attorneys fees, court costs, witness fees and incidental
3.31 expenses incurred in connection with the use of the professional services of attorneys
3.32 at law.

3.33 **EFFECTIVE DATE.** This section is effective the day following final enactment.

4.1 Sec. 2. Minnesota Statutes 2008, section 61A.20, is amended to read:

4.2 **61A.20 RULES.**

4.3 Notwithstanding any other provision of law, the commissioner shall have sole and
4.4 exclusive authority to regulate the issuance and sale of contracts on a variable basis,
4.5 including equity-indexed annuities, and to provide for licensing of persons selling such
4.6 contracts, and to issue such reasonable rules as may be appropriate to carry out the
4.7 purposes and provisions of sections 61A.13 to 61A.21.

4.8 **EFFECTIVE DATE.** This section is effective the day following final enactment.

4.9 Sec. 3. Minnesota Statutes 2008, section 80A.41, is amended to read:

4.10 **80A.41 SECTION 102; DEFINITIONS.**

4.11 In this chapter, unless the context otherwise requires:

4.12 (1) "Accredited investor" means an accredited investor as the term is defined in Rule
4.13 501(a) of Regulation D adopted pursuant to the Securities Act of 1933.

4.14 (2) "Administrator" means the commissioner of commerce.

4.15 (3) "Agent" means an individual, other than a broker-dealer, who represents a
4.16 broker-dealer in effecting or attempting to effect purchases or sales of securities or
4.17 represents an issuer in effecting or attempting to effect purchases or sales of the issuer's
4.18 securities. But a partner, officer, or director of a broker-dealer or issuer, or an individual
4.19 having a similar status or performing similar functions is an agent only if the individual
4.20 otherwise comes within the term. The term does not include an individual excluded by
4.21 rule adopted or order issued under this chapter.

4.22 (4) "Bank" means:

4.23 (A) a banking institution organized under the laws of the United States;

4.24 (B) a member bank of the Federal Reserve System;

4.25 (C) any other banking institution, whether incorporated or not, doing business
4.26 under the laws of a state or of the United States, a substantial portion of the business
4.27 of which consists of receiving deposits or exercising fiduciary powers similar to those
4.28 permitted to be exercised by national banks under the authority of the Comptroller of the
4.29 Currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. Section 92a), and which
4.30 is supervised and examined by a state or federal agency having supervision over banks,
4.31 and which is not operated for the purpose of evading this chapter; and

4.32 (D) a receiver, conservator, or other liquidating agent of any institution or firm
4.33 included in subparagraph (A), (B), or (C).

5.1 (5) "Broker-dealer" means a person engaged in the business of effecting transactions
5.2 in securities for the account of others or for the person's own account. The term does
5.3 not include:

5.4 (A) an agent;

5.5 (B) an issuer;

5.6 (C) a depository institution; provided such activities are conducted in accordance
5.7 with such rules as may be adopted by the administrator;

5.8 (D) an international banking institution; or

5.9 (E) a person excluded by rule adopted or order issued under this chapter.

5.10 (6) "Depository institution" means:

5.11 (A) a bank; or

5.12 (B) a savings institution, trust company, credit union, or similar institution that
5.13 is organized or chartered under the laws of a state or of the United States, authorized
5.14 to receive deposits, and supervised and examined by an official or agency of a state or
5.15 the United States if its deposits or share accounts are insured to the maximum amount
5.16 authorized by statute by the Federal Deposit Insurance Corporation, the National Credit
5.17 Union Share Insurance Fund, or a successor authorized by federal law. The term does
5.18 not include:

5.19 (i) an insurance company or other organization primarily engaged in the business
5.20 of insurance;

5.21 (ii) a Morris Plan bank; or

5.22 (iii) an industrial loan company that is not an "insured depository institution" as
5.23 defined in section 3(c)(2) of the Federal Deposit Insurance Act, United States Code, title
5.24 12, section 1813(c)(2), or any successor federal statute.

5.25 (7) "Federal covered investment adviser" means a person registered under the
5.26 Investment Advisers Act of 1940.

5.27 (8) "Federal covered security" means a security that is, or upon completion of a
5.28 transaction will be, a covered security under Section 18(b) of the Securities Act of 1933
5.29 (15 U.S.C. Section 77r(b)) or rules or regulations adopted pursuant to that provision.

5.30 (9) "Filing" means the receipt under this chapter of a record by the administrator or
5.31 a designee of the administrator.

5.32 (10) "Fraud," "deceit," and "defraud" are not limited to common law deceit.

5.33 (11) "Guaranteed" means guaranteed as to payment of all principal and all interest.

5.34 (12) "Institutional investor" means any of the following, whether acting for itself or
5.35 for others in a fiduciary capacity:

5.36 (A) a depository institution or international banking institution;

- 6.1 (B) an insurance company;
- 6.2 (C) a separate account of an insurance company;
- 6.3 (D) an investment company as defined in the Investment Company Act of 1940;
- 6.4 (E) a broker-dealer registered under the Securities Exchange Act of 1934;
- 6.5 (F) an employee pension, profit-sharing, or benefit plan if the plan has total assets
- 6.6 in excess of \$10,000,000 or its investment decisions are made by a named fiduciary, as
- 6.7 defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer
- 6.8 registered under the Securities Exchange Act of 1934, an investment adviser registered
- 6.9 or exempt from registration under the Investment Advisers Act of 1940, an investment
- 6.10 adviser registered under this chapter, a depository institution, or an insurance company;
- 6.11 (G) a plan established and maintained by a state, a political subdivision of a state, or
- 6.12 an agency or instrumentality of a state or a political subdivision of a state for the benefit
- 6.13 of its employees, if the plan has total assets in excess of \$10,000,000 or its investment
- 6.14 decisions are made by a duly designated public official or by a named fiduciary, as
- 6.15 defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer
- 6.16 registered under the Securities Exchange Act of 1934, an investment adviser registered
- 6.17 or exempt from registration under the Investment Advisers Act of 1940, an investment
- 6.18 adviser registered under this chapter, a depository institution, or an insurance company;
- 6.19 (H) a trust, if it has total assets in excess of \$10,000,000, its trustee is a depository
- 6.20 institution, and its participants are exclusively plans of the types identified in subparagraph
- 6.21 (F) or (G), regardless of the size of their assets, except a trust that includes as participants
- 6.22 self-directed individual retirement accounts or similar self-directed plans;
- 6.23 (I) an organization described in Section 501(c)(3) of the Internal Revenue Code (26
- 6.24 U.S.C. Section 501(c)(3)), corporation, Massachusetts trust or similar business trust,
- 6.25 limited liability company, or partnership, not formed for the specific purpose of acquiring
- 6.26 the securities offered, with total assets in excess of \$10,000,000;
- 6.27 (J) a small business investment company licensed by the Small Business
- 6.28 Administration under Section 301(c) of the Small Business Investment Act of 1958 (15
- 6.29 U.S.C. Section 681(c)) with total assets in excess of \$10,000,000;
- 6.30 (K) a private business development company as defined in Section 202(a)(22) of
- 6.31 the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(22)) with total assets
- 6.32 in excess of \$10,000,000;
- 6.33 (L) a federal covered investment adviser acting for its own account;
- 6.34 (M) a "qualified institutional buyer" as defined in Rule 144A(a)(1), other than Rule
- 6.35 144A(a)(1)(i)(H), adopted under the Securities Act of 1933 (17 C.F.R. 230.144A);

7.1 (N) a "major U.S. institutional investor" as defined in Rule 15a-6(b)(4)(i) adopted
7.2 under the Securities Exchange Act of 1934 (17 C.F.R. 240.15a-6);

7.3 (O) any other person, other than an individual, of institutional character with total
7.4 assets in excess of \$10,000,000 not organized for the specific purpose of evading this
7.5 chapter; or

7.6 (P) any other person specified by rule adopted or order issued under this chapter;

7.7 (13) "Insurance company" means a company organized as an insurance company
7.8 whose primary business is writing insurance or reinsuring risks underwritten by insurance
7.9 companies and which is subject to supervision by the insurance commissioner or a similar
7.10 official or agency of a state.

7.11 (14) "Insured" means insured as to payment of all principal and all interest.

7.12 (15) "International banking institution" means an international financial institution
7.13 of which the United States is a member and whose securities are exempt from registration
7.14 under the Securities Act of 1933.

7.15 (16) "Investment adviser" means a person that, for compensation, engages in the
7.16 business of advising others, either directly or through publications or writings, as to the
7.17 value of securities or the advisability of investing in, purchasing, or selling securities or
7.18 that, for compensation and as a part of a regular business, issues or promulgates analyses
7.19 or reports concerning securities. The term includes a financial planner or other person
7.20 that, as an integral component of other financially related services, provides investment
7.21 advice to others for compensation as part of a business or that holds itself out as providing
7.22 investment advice to others for compensation. The term does not include:

7.23 (A) an investment adviser representative;

7.24 (B) a lawyer, accountant, engineer, or teacher whose performance of investment
7.25 advice is solely incidental to the practice of the person's profession;

7.26 (C) a broker-dealer or its agents whose performance of investment advice is solely
7.27 incidental to the conduct of business as a broker-dealer and that does not receive special
7.28 compensation for the investment advice;

7.29 (D) a publisher of a bona fide newspaper, news magazine, or business or financial
7.30 publication of general and regular circulation;

7.31 (E) a federal covered investment adviser;

7.32 (F) a bank or savings institution;

7.33 (G) any other person that is excluded by the Investment Advisers Act of 1940 from
7.34 the definition of investment adviser; or

7.35 (H) any other person excluded by rule adopted or order issued under this chapter.

8.1 (17) "Investment adviser representative" means an individual employed by or
8.2 associated with an investment adviser or federal covered investment adviser and who
8.3 makes any recommendations or otherwise gives investment advice regarding securities,
8.4 manages accounts or portfolios of clients, determines which recommendation or advice
8.5 regarding securities should be given, provides investment advice or holds herself or
8.6 himself out as providing investment advice, receives compensation to solicit, offer, or
8.7 negotiate for the sale of or for selling investment advice, or supervises employees who
8.8 perform any of the foregoing. The term does not include an individual who:

8.9 (A) performs only clerical or ministerial acts;

8.10 (B) is an agent whose performance of investment advice is solely incidental to
8.11 the individual acting as an agent and who does not receive special compensation for
8.12 investment advisory services;

8.13 (C) is employed by or associated with a federal covered investment adviser, unless
8.14 the individual has a "place of business" in this state as that term is defined by rule adopted
8.15 under Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-3a)
8.16 and is

8.17 (i) an "investment adviser representative" as that term is defined by rule adopted
8.18 under Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-3a); or

8.19 (ii) not a "supervised person" as that term is defined in Section 202(a)(25) of the
8.20 Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(25)); or

8.21 (D) is excluded by rule adopted or order issued under this chapter.

8.22 (18) "Issuer" means a person that issues or proposes to issue a security, subject to
8.23 the following:

8.24 (A) The issuer of a voting trust certificate, collateral trust certificate, certificate of
8.25 deposit for a security, or share in an investment company without a board of directors or
8.26 individuals performing similar functions is the person performing the acts and assuming
8.27 the duties of depositor or manager pursuant to the trust or other agreement or instrument
8.28 under which the security is issued.

8.29 (B) The issuer of an equipment trust certificate or similar security serving the same
8.30 purpose is the person by which the property is or will be used or to which the property
8.31 or equipment is or will be leased or conditionally sold or that is otherwise contractually
8.32 responsible for assuring payment of the certificate.

8.33 (C) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease
8.34 or in payments out of production under a lease, right, or royalty is the owner of an interest
8.35 in the lease or in payments out of production under a lease, right, or royalty, whether
8.36 whole or fractional, that creates fractional interests for the purpose of sale.

9.1 (19) "Nonissuer transaction" or "nonissuer distribution" means a transaction or
9.2 distribution not directly or indirectly for the benefit of the issuer.

9.3 (20) "Offer to purchase" includes an attempt or offer to obtain, or solicitation of an
9.4 offer to sell, a security or interest in a security for value. The term does not include a
9.5 tender offer that is subject to Section 14(d) of the Securities Exchange Act of 1934 (15
9.6 U.S.C. Section 78n(d)).

9.7 (21) "Person" means an individual; corporation; business trust; estate; trust;
9.8 partnership; limited liability company; association; joint venture; government;
9.9 governmental subdivision, agency, or instrumentality; public corporation; or any other
9.10 legal or commercial entity.

9.11 (22) "Place of business" of a broker-dealer, an investment adviser, or a federal
9.12 covered investment adviser means:

9.13 (A) an office at which the broker-dealer, investment adviser, or federal covered
9.14 investment adviser regularly provides brokerage or investment advice or solicits, meets
9.15 with, or otherwise communicates with customers or clients; or

9.16 (B) any other location that is held out to the general public as a location at which
9.17 the broker-dealer, investment adviser, or federal covered investment adviser provides
9.18 brokerage or investment advice or solicits, meets with, or otherwise communicates with
9.19 customers or clients.

9.20 (23) "Predecessor Act" means Minnesota Statutes 2002, sections 80A.01 to 80A.31.

9.21 (24) "Price amendment" means the amendment to a registration statement filed under
9.22 the Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus
9.23 supplement filed under the Securities Act of 1933 that includes a statement of the offering
9.24 price, underwriting and selling discounts or commissions, amount of proceeds, conversion
9.25 rates, call prices, and other matters dependent upon the offering price.

9.26 (25) "Principal place of business" of a broker-dealer or an investment adviser means
9.27 the executive office of the broker-dealer or investment adviser from which the officers,
9.28 partners, or managers of the broker-dealer or investment adviser direct, control, and
9.29 coordinate the activities of the broker-dealer or investment adviser.

9.30 (26) "Purchaser" does not include:

9.31 (A) any relative, spouse, or relative of the spouse of a purchaser who has the same
9.32 principal residence as the purchaser;

9.33 (B) any trust or estate in which a purchaser and any of the persons related to him as
9.34 specified in Regulation D, Rule 501(e)(1)(i) or (e)(1)(ii) collectively have more than 50
9.35 percent of the beneficial interest (excluding contingent interests);

10.1 (C) any corporation or other organization of which a purchaser and any of the
10.2 persons related to the purchaser as specified in Regulation D, Rule 501(e)(1)(i) or
10.3 (e)(1)(ii) collectively are beneficial owners of more than 50 percent of the equity securities
10.4 (excluding directors' qualifying shares) or equity interests; and

10.5 (D) any accredited investor.

10.6 A corporation, partnership, or other entity must be counted as one purchaser. If,
10.7 however, that entity is organized for the specific purpose of acquiring the securities offered
10.8 and is not an accredited investor, then each beneficial owner of equity securities or equity
10.9 interests in the entity shall count as a separate purchaser for all provisions of Regulation
10.10 D, except to the extent provided in Regulation D, Rule 501(e)(1).

10.11 A noncontributory employee benefit plan within the meaning of Title I of the
10.12 Employee Retirement Income Security Act of 1974 shall be counted as one purchaser
10.13 where the trustee makes all investment decisions for the plan.

10.14 (27) "Record," except in the phrases "of record," "official record," and "public
10.15 record," means information that is inscribed on a tangible medium or that is stored in an
10.16 electronic or other medium and is retrievable in perceivable form.

10.17 (28) "Sale" includes every contract of sale, contract to sell, or disposition of, a
10.18 security or interest in a security for value, and "offer to sell" includes every attempt or
10.19 offer to dispose of, or solicitation of an offer to purchase, a security or interest in a
10.20 security for value.

10.21 (A) A security given or delivered with, or as a bonus on account of, any purchase of
10.22 securities or any other thing is considered to constitute part of the subject of the purchase
10.23 and to have been offered and sold for value.

10.24 (B) A gift of assessable stock is considered to involve an offer and sale.

10.25 (C) A sale or offer of a warrant or right to purchase or subscribe to another security
10.26 of the same or another issuer and a sale or offer of a security that gives the holder a present
10.27 or future right or privilege to convert the security into another security of the same or
10.28 another issuer, are each considered to include an offer of the other security.

10.29 (29) "Securities and Exchange Commission" means the United States Securities and
10.30 Exchange Commission.

10.31 (30) "Security" means a note; stock; treasury stock; security future; bond; debenture;
10.32 evidence of indebtedness; certificate of interest or participation in a profit-sharing
10.33 agreement; collateral trust certificate; preorganization certificate or subscription;
10.34 transferable share; investment contract; voting trust certificate; certificate of deposit for a
10.35 security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle,
10.36 option, or privilege on a security, certificate of deposit, or group or index of securities,

11.1 including an interest therein or based on the value thereof; put, call, straddle, option, or
 11.2 privilege entered into on a national securities exchange relating to foreign currency; or,
 11.3 in general, an interest or instrument commonly known as a "security"; or a certificate of
 11.4 interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or
 11.5 warrant or right to subscribe to or purchase, any of the foregoing. The term:

11.6 (A) includes both a certificated and an uncertificated security;

11.7 (B) does not include an insurance or endowment policy or annuity contract under
 11.8 which an insurance company promises to pay a fixed or variable sum of money either in a
 11.9 lump sum or periodically for life or other specified period;

11.10 (C) does not include an interest in a contributory or noncontributory pension or
 11.11 welfare plan subject to the Employee Retirement Income Security Act of 1974;

11.12 (D) includes as an "investment contract," among other contracts, an interest in
 11.13 a limited partnership and a limited liability company and an investment in a viatical
 11.14 settlement or similar agreement; ~~and~~

11.15 (E) does not include any equity interest of a closely held corporation or other entity
 11.16 with not more than 35 holders of the equity interest of such entity offered or sold pursuant
 11.17 to a transaction in which 100 percent of the equity interest of such entity is sold as a means
 11.18 to effect the sale of the business of the entity if the transaction has been negotiated on
 11.19 behalf of all purchasers and if all purchasers have access to inside information regarding
 11.20 the entity before consummating the transaction; and

11.21 (F) does not include equity-indexed annuities, notwithstanding any contrary
 11.22 provision of federal regulatory law or policy.

11.23 (31) "Self-regulatory organization" means a national securities exchange registered
 11.24 under the Securities Exchange Act of 1934, a national securities association of
 11.25 broker-dealers registered under the Securities Exchange Act of 1934, a clearing agency
 11.26 registered under the Securities Exchange Act of 1934, or the Municipal Securities
 11.27 Rulemaking Board established under the Securities Exchange Act of 1934.

11.28 (32) "Sign" means, with present intent to authenticate or adopt a record:

11.29 (A) to execute or adopt a tangible symbol; or

11.30 (B) to attach or logically associate with the record an electronic symbol, sound,
 11.31 or process.

11.32 (33) "State" means a state of the United States, the District of Columbia, Puerto
 11.33 Rico, the United States Virgin Islands, or any territory or insular possession subject to the
 11.34 jurisdiction of the United States.

11.35 (34) "Associated with" with respect to a person means any partner, officer, director,
 11.36 or manager of such person or any person occupying a similar status or performing

- 12.1 similar functions or any person directly or indirectly controlling, controlled by, or in
12.2 common control with, such person, but does not include a person whose primary duties
12.3 are ministerial or clerical.

- 12.4 **EFFECTIVE DATE.** This section is effective the day following final enactment.