§ 1401. Definitions and rules of general application. (a) In this article: (1) "Invested assets" means the admitted assets of an insurer that conform to the requirements of paragraphs one and two of subsection (a) of section one thousand three hundred one of this chapter, but excluding the income due or accrued thereon.

(2) "Mortgage-related security" means an obligation that is rated AA or higher (or the equivalent thereto) by a nationally recognized securities rating agency and either:

(A) represents ownership of one or more promissory notes or certificates of interest or participation in such notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of such notes, certificates, or participation of amounts payable under, such notes, certificates, or participation), which notes:

(i) are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in section 5402(6) of Title 42 of the U.S.C.A., whether such manufactured home is considered real or personal property under the laws of the state in which it is to be located; and

(ii) were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution which is supervised and examined by a federal or state authority, or by a mortgage approved by the secretary of housing and urban development pursuant to sections 1709 and 1715-b of Title 12 of the U.S.C.A., or, where such notes involve a lien on the manufactured home, by any such institution or by any financial institution approved for insurance by the secretary of housing and urban development pursuant to section 1703 of Title 12 of the U.S.C.A.; or

(B) is secured by one or more promissory notes or certificates of interest or participations in such notes (with or without recourse to the issuer thereof) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of items (i) and (ii) of subparagraph (A) of this paragraph or certificates of interest or participation in promissory notes meeting such requirements.

For the purpose of this paragraph the term "promissory note", when used in connection with a manufactured home, shall also include a loan, advance or credit sale as evidence by a retail installment sales contract or other instrument.

(3) "Partnership interests" when used in connection with the permissible types of investments made by any domestic insurer, other than a domestic life insurer, means, an interest as a limited partner in a limited partnership. A "limited partnership" means a partnership formed by two or more persons pursuant to the provisions of the applicable law, having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership.

(4) "United States" means, when used to signify place, only the states of the United States, the Commonwealth of Puerto Rico, the District of Columbia and includes lands and waters adjacent to the foregoing and under the jurisdiction of the United States.

(5) "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.

(6) "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.

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

(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.

The term "derivative instrument" includes options, warrants, caps, floors, collars, swaps, swaptions, forwards, and futures.

(8) "Derivative transaction" means a transaction involving the use of

one or more derivative instruments.

(9) "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.

(10) "Forward" means an agreement (other than a future) to make or take delivery in the future of one or more underlying interests, or effect a cash settlement, based on the actual or expected price, level, performance or value of such underlying interests, but shall not mean or include spot transactions effected within customary settlement periods, when-issued purchases, or other similar cash market transactions.

(11) "Future" means agreement traded on a futures 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.

(12) "Hedging transaction" means a derivative transaction which is entered into and at all times maintained to reduce:

(A) the risk of economic loss due to 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 risk of economic loss due to changes in the currency exchange rate or the degree of exposure as to assets or liabilities denominated in a foreign currency which an insurer has acquired or incurred or anticipates acquiring or incurring.

(13) "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 effect a cash settlement based on the actual or expected price, spread, level, performance or value of one or more underlying interests.

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

(15) "Swaption" means an option to purchase or sell a swap at a given price and time or at a series of prices and times. A swaption does not mean a swap with an embedded option.

(16) "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.

(17) "Warrant" means an instrument that gives the holder the right to purchase or sell the underlying interest at a given price and time or at a series of prices and times outlined in the warrant agreement.

(18) "Replication transaction" means a derivative transaction or combination of derivative transactions effected either separately or in conjunction with cash market investments included in the insurer's investment portfolio in order to replicate the investment characteristic of another authorized transaction, investment or instrument and/or operate as a substitute for cash market transactions. A derivative transaction entered into by the insurer as a hedging transaction or income generation transaction authorized pursuant to this section shall not be considered a replication transaction.

(b) All financial tests and other requirements for the making of any investment are satisfied if complied with on the date of acquisition by the insurer, except as otherwise permitted by this chapter or by regulation.

(c) None of the financial tests or other requirements for the making of any investment under this article, or as otherwise required by this chapter or by regulation promulgated pursuant thereto, are preempted by the provisions of section 106 of Title I of the Secondary Mortgage Market Enhancement Act of 1984 (15 U.S.C. § 77r-1)("SMMEA"). The provisions of this chapter and any regulation promulgated pursuant thereto that pertain to investments in the categories of securities specified in paragraphs one and two of subsection (a) of section 106 of such act shall remain in full force and effect notwithstanding the enactment of SMMEA.