

7306

I N S E N A T E

May 2, 2012

Introduced by Sen. SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to derivative transactions and derivative instruments

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subsection (a) of section 1401 of the insurance law is
2 amended by adding three new paragraphs 19, 20 and 21 to read as follows:
3 (19) "OVER THE COUNTER DERIVATIVE INSTRUMENT" MEANS A DERIVATIVE
4 INSTRUMENT WHICH IS AUTHORIZED UNDER THIS CHAPTER OTHER THAN A DERIVA-
5 TIVE INSTRUMENT (A) CLEARED THROUGH A UNITED STATES OR FOREIGN CLEARING-
6 HOUSE OR (B) TRADED ON OR THROUGH A UNITED STATES OR FOREIGN EXCHANGE
7 PROVIDING CLEARING SERVICES.
8 (20) "CLEARINGHOUSE" MEANS A DERIVATIVES CLEARING ORGANIZATION WHICH
9 ACTS AS A MEDIUM FOR CLEARING, OR EFFECTING SETTLEMENTS OF, DERIVATIVE
10 INSTRUMENTS SUCH THAT THE CLEARINGHOUSE IS SUBSTITUTED AS THE OTHER
11 PARTY TO THE DERIVATIVE TRANSACTION.
12 (21) "MASTER AGREEMENT" MEANS A WRITTEN MASTER AGREEMENT RELATING TO
13 DERIVATIVES TRANSACTIONS THAT PROVIDES FOR NETTING OF PAYMENTS OWED BY
14 THE RESPECTIVE PARTIES, AND THE DOMICILIARY JURISDICTION OF THE COUNTER-
15 PARTY IS EITHER WITHIN THE UNITED STATES OR IF NOT WITHIN THE UNITED
16 STATES, WITHIN A FOREIGN (NOT UNITED STATES) JURISDICTION DEEMED BY THE
17 SECURITIES VALUATION OFFICE OF THE NATIONAL ASSOCIATION OF INSURANCE
18 COMMISSIONERS, OR ANY SUCCESSOR OFFICE ESTABLISHED BY THE NATIONAL ASSO-
19 CIATION OF INSURANCE COMMISSIONERS, AS ELIGIBLE FOR NETTING.
20 S 2. Subsection (f) of section 1410 of the insurance law, as added by
21 chapter 650 of the laws of 1998, is amended to read as follows:
22 (f)(1) The counterparty exposure under [a] AN OVER THE COUNTER deriva-
23 tive instrument entered into by an insurer authorized to engage in tran-
24 sactions pursuant to this section shall be deemed to be an obligation of
25 the institution to which the insurer is exposed to credit risk and shall
26 be included in determining compliance with any single or aggregate quan-
27 titative limitation on investments made by an insurer under this chap-
28 ter.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

LBD15578-01-2

(2) Notwithstanding any single or aggregate quantitative limitation on investments made by an insurer under this chapter, AN INSURER MAY ONLY TRANSACT AN OVER THE COUNTER DERIVATIVE INSTRUMENT WITH:

(A) A QUALIFIED COUNTERPARTY; OR

(B) A COUNTERPARTY OTHER THAN A "QUALIFIED COUNTERPARTY" IF, AFTER GIVING EFFECT TO THAT TRANSACTION, the aggregate counterparty exposure OF THE INSURER under one or more OVER THE COUNTER derivative [trans-actions] INSTRUMENTS to:

[(A) any single counterparty, other than a "qualified counterparty", shall be limited to one] (I) THAT NON-QUALIFIED COUNTERPARTY DOES NOT EXCEED ONE percent of [an] THE insurer's admitted assets; and

[(B)] (II) all counterparties, other than qualified counterparties, [are limited to] DOES NOT EXCEED three percent of [an] THE insurer's admitted assets.

(3) For purposes of this section:

(A) a "qualified counterparty" is a ["qualified broker or dealer" or a "qualified bank" or other counterparty rated AA-/Aa3 or higher by a nationally recognized statistical rating organization if it is also approved by the superintendent;

(B) a "qualified broker or dealer" means a broker or dealer that is organized under the laws of a state and is registered under the Securities Exchange Act of 1934, 15 U.S.C. SS 78a-78kk, and has net capital in excess of two hundred fifty million dollars;

(C) a "qualified bank" means a bank or trust company that:

(i) is organized and existing, or in the case of a branch or agency of a foreign banking organization is licensed, under the laws of the United States or any state thereof;

(ii) is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies;

(iii) has assets in excess of five billion dollars;

(iv) has senior obligations outstanding, or has a parent corporation that has senior obligations outstanding, rated AA or better (or the equivalent thereto) by two independent nationally recognized statistical rating organizations; and

(v) has a ratio of primary capital to total assets of at least five and one-half percent and a ratio of total capital to total assets of at least six percent; and

(D)] COUNTERPARTY:

(I) WHICH MEETS ONE OF THE FOLLOWING RATING STANDARDS: (I) A CREDIT RATING OF AT LEAST A- OR THE EQUIVALENT FROM AT LEAST ONE NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION; (II) WHOSE PARENT HAS A CREDIT RATING OF AT LEAST A- OR THE EQUIVALENT FROM AT LEAST ONE NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION; OR (III) THAT HAS CREDIT ENHANCEMENT FOR ALL OF ITS FINANCIAL OR SETTLEMENT OBLIGATIONS UNDER THE OVER THE COUNTER DERIVATIVE INSTRUMENT FOR THE DURATION OF THE DERIVATIVE INSTRUMENT FROM AN ENTITY THAT HAS A CREDIT RATING OF AT LEAST A- OR THE EQUIVALENT FROM AT LEAST ONE NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION FOR THE BENEFIT OF THE INSURER; OR

(II) WITH WHICH THE INSURER HAS ENTERED INTO A MASTER AGREEMENT, TOGETHER WITH A CREDIT SUPPORT ANNEX OR OTHER DOCUMENTATION PROVIDING FOR THE COLLATERALIZATION OF THE COUNTERPARTY'S OBLIGATIONS TO THE INSURER UNDER THE MASTER AGREEMENT AND WHICH MEETS ONE OF THE FOLLOWING RATING STANDARDS:

(I) AN INVESTMENT GRADE CREDIT RATING FROM AT LEAST ONE NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION;

1 (II) WHOSE PARENT HAS AN INVESTMENT GRADE CREDIT RATING FROM AT LEAST
2 ONE NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION; OR

3 (III) THAT HAS CREDIT ENHANCEMENT FOR ALL OF ITS FINANCIAL OR SETTLE-
4 MENT OBLIGATIONS UNDER THE OVER THE COUNTER DERIVATIVE INSTRUMENT FOR
5 THE DURATION OF THE DERIVATIVE INSTRUMENT FROM AN ENTITY THAT HAS AN
6 INVESTMENT GRADE CREDIT RATING FROM AT LEAST ONE NATIONALLY RECOGNIZED
7 STATISTICAL RATING ORGANIZATION FOR THE BENEFIT OF THE INSURER; AND

8 (B) "aggregate counterparty exposure" means the [sum of: (i) the
9 aggregate statement value of options, swaptions, caps, floors, and
10 warrants purchased; and (ii) the aggregate potential exposure of
11 collars, swaps, forwards and futures entered into] AGGREGATE, NET AMOUNT
12 OF CREDIT RISK ATTRIBUTABLE TO ALL OVER THE COUNTER DERIVATIVE INSTRU-
13 MENTS ENTERED INTO WITH A COUNTERPARTY, CALCULATED AS FOLLOWS:

14 (I) IF THERE IS NO MASTER AGREEMENT IN PLACE WITH THE COUNTERPARTY,
15 THE SUM OF THE MARKET VALUES OF ALL OVER THE COUNTER DERIVATIVE INSTRU-
16 MENTS WITH THE COUNTERPARTY THAT HAVE A POSITIVE MARKET VALUE, LESS ANY
17 COLLATERAL; OR

18 (II) IF A MASTER AGREEMENT IS IN PLACE WITH THE COUNTERPARTY, THE
19 GREATER OF ZERO OR THE NET SUM PAYABLE TO THE INSURER IN CONNECTION WITH
20 ALL OVER THE COUNTER DERIVATIVE INSTRUMENTS SUBJECT TO THE MASTER
21 NETTING AGREEMENT, LESS ANY COLLATERAL.

22 S 3. This act shall take effect immediately.