

7306--B

Cal. No. 998

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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 (f) of section 1410 of the insurance law, as
2 added by chapter 650 of the laws of 1998, is amended to read as follows:
3 (f)(1) The counterparty exposure under [a] AN OVER THE COUNTER deriva-
4 tive instrument entered into by an insurer authorized to engage in tran-
5 sactions pursuant to this section shall be deemed to be an obligation of
6 the institution to which the insurer is exposed to credit risk and shall
7 be included in determining compliance with any single or aggregate quan-
8 titative limitation on investments made by an insurer under this chap-
9 ter.
10 (2) Notwithstanding any single or aggregate quantitative limitation on
11 investments made by an insurer under this chapter, AN INSURER MAY ONLY
12 TRANSACT AN OVER THE COUNTER DERIVATIVE INSTRUMENT WITH:
13 (A) A QUALIFIED COUNTERPARTY; OR
14 (B) A COUNTERPARTY OTHER THAN A "QUALIFIED COUNTERPARTY" IF, AFTER
15 GIVING EFFECT TO THAT TRANSACTION, the aggregate counterparty exposure
16 OF THE INSURER under one or more OVER THE COUNTER derivative [trans-
17 actions] INSTRUMENTS to:
18 [(A) any single counterparty, other than a "qualified counterparty",
19 shall be limited to one] (I) THAT NON-QUALIFIED COUNTERPARTY DOES NOT
20 EXCEED ONE percent of [an] THE insurer's admitted assets; and
21 [(B)] (II) all counterparties, other than qualified counterparties,
22 [are limited to] DOES NOT EXCEED three percent of [an] THE insurer's
23 admitted assets.
24 (3) For purposes of this section:

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

LBD15578-04-2

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

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

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

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

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

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

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

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

24 (D)] COUNTERPARTY WHICH HAS AN INVESTMENT GRADE RATING FROM AT LEAST
25 ONE NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION OR A DESIG-
26 NATION OF ONE FROM THE SECURITIES VALUATION OFFICE OF THE NATIONAL ASSO-
27 CIATION OF INSURANCE COMMISSIONERS, OR ANY SUCCESSOR OFFICE ESTABLISHED
28 BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, AND WITH WHICH
29 THE INSURER HAS ENTERED INTO A MASTER AGREEMENT, TOGETHER WITH A CREDIT
30 SUPPORT ANNEX OR OTHER DOCUMENTATION PROVIDING FOR THE COLLATERALIZATION
31 OF THE COUNTERPARTY'S OBLIGATIONS TO THE INSURER UNDER THE MASTER AGREE-
32 MENT, IF THAT COLLATERAL DOCUMENTATION PROVIDES FOR (I) DAILY MARGIN AND
33 COLLATERAL SETTLEMENT, IN CASH OR INVESTMENT GRADE SECURITIES, BETWEEN
34 THE PARTIES, (II) A MINIMUM TRANSFER AMOUNT OF NO MORE THAN ONE MILLION
35 DOLLARS, AND (III) A REQUIREMENT THAT COLLATERAL BE PROVIDED BY THE
36 COUNTERPARTY FROM THE FIRST DOLLAR OF EXPOSURE, SUBJECT TO THE MINIMUM
37 TRANSFER AMOUNT;

38 (B) "aggregate counterparty exposure" means the sum of: (i) the aggre-
39 gate statement value of options, swaptions, caps, floors, and warrants
40 purchased; and (ii) the aggregate potential exposure of collars, swaps,
41 forwards and futures entered into[.];

42 (C) "OVER THE COUNTER DERIVATIVE INSTRUMENT" MEANS A DERIVATIVE
43 INSTRUMENT WHICH IS AUTHORIZED UNDER THIS CHAPTER OTHER THAN A DERIVA-
44 TIVE INSTRUMENT (I) CLEARED THROUGH A UNITED STATES OR FOREIGN DERIVA-
45 TIVES CLEARINGHOUSE, OR (II) TRADED ON OR THROUGH A UNITED STATES OR
46 FOREIGN EXCHANGE PROVIDING DERIVATIVES CLEARING SERVICES;

47 (D) "DERIVATIVES CLEARINGHOUSE" MEANS A DERIVATIVES CLEARING ORGANIZA-
48 TION REGISTERED WITH THE COMMODITY FUTURES TRADING COMMISSION OR THE
49 SECURITIES AND EXCHANGE COMMISSION OR, IF NOT SO REGISTERED, IS A
50 FOREIGN CLEARINGHOUSE REGULATED, SUPERVISED AND EXAMINED BY A REGULATORY
51 AUTHORITY IN A FOREIGN JURISDICTION APPROVED BY THE SUPERINTENDENT;

52 (E) "MASTER AGREEMENT" MEANS A WRITTEN MASTER AGREEMENT RELATING TO
53 DERIVATIVES TRANSACTIONS THAT PROVIDES FOR NETTING OF PAYMENTS OWED BY
54 THE RESPECTIVE PARTIES, AND THE DOMICILIARY JURISDICTION OF THE COUNTER-
55 PARTY IS EITHER WITHIN THE UNITED STATES OR IF NOT WITHIN THE UNITED

1 STATES, WITHIN A JURISDICTION APPROVED BY THE SUPERINTENDENT AS ELIGIBLE
2 FOR NETTING; AND

3 (F) "MINIMUM TRANSFER AMOUNT" MEANS AN AMOUNT BELOW WHICH A DAILY
4 MARGIN AND COLLATERAL SETTLEMENT IS NOT REQUIRED.

5 S 2. This act shall take effect immediately; provided, however that
6 the documentation requirements set forth in items (i), (ii) and (iii) of
7 subparagraph (A) of paragraph (3) of subsection (f) of section 1410 of
8 the insurance law as added by section one of this act shall take effect
9 on January 1, 2013.