S T A T E O F N E W Y O R K

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I N S E N A T E

January 24, 2013

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

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

Section 1. Paragraph 7 of subsection (a) of section 1405 of the insurance law, subparagraph (C) as amended by chapter 60 of the laws of 2008 and subparagraph (D) as amended by chapter 162 of the laws of 1999, is amended to read as follows:

(7) Foreign investments. (A) Canadian investments substantially of the same types as those eligible for investment under paragraphs one through six of this subsection, provided that, after giving effect to any investment made under this subparagraph, the aggregate amount of investments made under this subparagraph and then held by such insurer shall not exceed ten percent of the insurer's admitted assets, except where a greater amount is permitted under subparagraph (B) below (in which case the provisions of this subparagraph shall not be applicable).

(B) In the case of any domestic insurer that is authorized to do business in a foreign country or possession of the United States of America or that has outstanding insurance, annuity or reinsurance contracts on lives or risks resident or located in such foreign country or possession, investments in such foreign country or possession that are substantially of the same types as those eligible for investment under paragraphs one through six of this subsection; provided that, except where a greater amount is permitted under subparagraph (A) above, after giving effect to any investment in such foreign country or possession made under this subparagraph, the aggregate amount of cash in the

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

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currency of such foreign country or possession and of investments in such foreign country or possession made under this subparagraph and then held by such insurer shall not exceed one and one-half times the amount of such insurer's reserves and other obligations under such contracts or the amount which such insurer is required by law to invest in such country or possession, whichever shall be greater.

(C) Investments in foreign countries, in addition to Canadian investments and investments permitted by subparagraph (B) of this paragraph, that are substantially of the same types as those eligible for investment under paragraphs one through six of this subsection, provided that, after giving effect to any investment made under this subparagraph, the aggregate amount of investments qualified under this subparagraph and then held by such insurer shall not exceed [sixteen] TWENTY percent of the insurer's admitted assets; and

(i) the issuer or obligor is (I) a jurisdiction, which is rated in one of the four highest rating categories by an independent, nationally recognized United States rating agency, (II) any political subdivision or other governmental unit of any such jurisdiction, or any agency or instrumentality of any such jurisdiction, political subdivision or other governmental unit or (III) an institution which is organized under the laws of any such jurisdiction or, in the case of such paragraphs three and four of this subsection, the real property is located in any such jurisdiction; and

(ii) [if the investment is denominated in any currency other than United States dollars, the investment is effectively hedged, substantially in its entirety, against the United States dollar:

(I) for an insurer that has an approved derivative use plan under section one thousand four hundred ten of this article, pursuant to contracts or agreements entered into under and in accordance with that derivative use plan and subject to the counterparty exposure limits thereunder; or

(II) for any other insurer, pursuant to contracts or agreements which are: (aa) issued by or traded on a securities exchange or board of trade regulated under the laws of the United States or Canada or a province thereof or (bb) entered into with: (aaa) a United States banking institution which has assets in excess of five billion dollars and which has obligations outstanding, or has a parent corporation which has obligations outstanding, which are rated in one of the two highest rating categories by an independent, nationally recognized, United States rating agency; (bbb) a broker-dealer registered with the Securities and Exchange Commission which has net capital in excess of two hundred fifty million dollars; or

(ccc) any other banking institution which has assets in excess of five billion dollars and which has obligations outstanding, or has a parent corporation which has obligations outstanding, which are rated in one of the two highest rating categories by an independent, nationally recognized, United States rating agency and which is organized under the laws of a jurisdiction which is rated in one of the two highest rating categories by an independent, nationally recognized, United States rating agency; and

(iii) provided that] an insurer shall not make any investment in any foreign country pursuant to this subparagraph, if such investment, together with all other investments in the same foreign country so made and then held by such insurer, would exceed [six] SEVEN percent of the insurer's admitted assets.

(D) In addition to the foreign investments permitted under the preceding subparagraphs of this paragraph, foreign investments that are substantially of the same types as those eligible for investment under paragraphs one through six of this subsection, provided that, after giving effect to any investment made under this subparagraph, the aggregate amount of investments made under this subparagraph and then held by such insurer shall not exceed [four] SIX percent of the insurer's admitted assets, and provided further that an insurer shall not make any investment in any foreign country pursuant to this subparagraph, if such investment, together with all other investments in the same foreign country so made and then held by such insurer, would exceed [two] THREE percent of the insurer's admitted assets.

S 2. Section 1405 of the insurance law is amended by adding a new subsection (f) to read as follows:

(F) ANY INVESTMENT MAY BE DENOMINATED IN A CURRENCY OTHER THAN UNITED STATES DOLLARS, PROVIDED THAT THE AGGREGATE AMOUNT OF ALL SUCH INVESTMENTS (OTHER THAN INVESTMENTS MADE PURSUANT TO SUBPARAGRAPHS (A) AND (B) OF PARAGRAPH SEVEN OF SUBSECTION (A) OF THIS SECTION) THAT ARE NOT EFFECTIVELY HEDGED, SUBSTANTIALLY IN THEIR ENTIRETY, AGAINST THE UNITED STATES DOLLAR, REDUCED, ON A CURRENCY BY CURRENCY BASIS, BY THE AMOUNT OF FOREIGN-CURRENCY DENOMINATED INSURANCE LIABILITIES MAY NOT EXCEED FOUR PERCENT OF THE INSURER'S ADMITTED ASSETS. AN INVESTMENT SHALL BE DEEMED TO BE EFFECTIVELY HEDGED, SUBSTANTIALLY IN ITS ENTIRETY, IF IT HAS BEEN HEDGED:

(1) FOR AN INSURER THAT HAS AN APPROVED DERIVATIVE USE PLAN UNDER SECTION ONE THOUSAND FOUR HUNDRED TEN OF THIS ARTICLE, PURSUANT TO CONTRACTS OR AGREEMENTS ENTERED INTO UNDER AND IN ACCORDANCE WITH THAT DERIVATIVE USE PLAN AND SUBJECT TO THE COUNTERPARTY EXPOSURE LIMITS THEREUNDER; OR

(2) FOR ANY OTHER INSURER, PURSUANT TO CONTRACTS OR AGREEMENTS (DERIVATIVE TRANSACTIONS) WHICH ARE CLEARED THROUGH A "DERIVATIVES CLEARINGHOUSE" OR ENTERED INTO WITH A "QUALIFIED COUNTERPARTY", AS THOSE TERMS ARE DEFINED PURSUANT TO SUBSECTION (F) OF SECTION ONE THOUSAND FOUR HUNDRED TEN OF THIS ARTICLE.

S 3. Paragraph 2 of subsection (c) of section 1410 of the insurance law, as added by chapter 650 of the laws of 1998, is amended to read as follows:

(2) Transactions entered into to effectively hedge the currency risk of investments denominated in a currency other than United States dollars, pursuant to [subparagraph (C) of paragraph seven of subsection (a)] SUBSECTION (F) of section one thousand four hundred five of this article, shall not be included in the limits under paragraph one of this subsection.

S 4. This act shall take effect immediately.