

10259

I N A S S E M B L Y

March 15, 2010

Introduced by M. of A. MORELLE -- (at request of the New York State Insurance Department) -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to ratings from a statistical rating organization

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

1 Section 1. The insurance law is amended by adding a new section 1415  
2 to read as follows:

3 S 1415. SUPERINTENDENT'S AUTHORITY TO PRESCRIBE A METHOD OF ANALYZING  
4 INVESTMENTS. WITH REGARD TO ANY REFERENCE IN THIS CHAPTER TO RATINGS  
5 FROM A STATISTICAL RATING ORGANIZATION, THE SUPERINTENDENT, BY REGU-  
6 LATION, MAY AUTHORIZE OR PRESCRIBE AN ANALYTICAL METHOD THAT AN INSURER  
7 MAY USE AS AN ALTERNATIVE TO, OR SHALL USE IN ADDITION TO, OR IN LIEU  
8 OF, RATINGS FROM A STATISTICAL RATING ORGANIZATION.

9 S 2. The opening paragraph of paragraph 2 of subsection (a) of section  
10 1401 of the insurance law, as amended by chapter 500 of the laws of  
11 1991, is amended to read as follows:

12 "Mortgage-related security" means an obligation that is rated AA or  
13 higher (or the equivalent thereto) by a [nationally recognized securi-  
14 ties] STATISTICAL rating [agency] ORGANIZATION RECOGNIZED BY THE SUPER-  
15 INTENDENT and either:

16 S 3. Clauses (i), (ii) and (iii) of subparagraph (A) of paragraph 2 of  
17 subsection (a) of section 1404 of the insurance law, as amended by chap-  
18 ter 324 of the laws of 1992, are amended to read as follows:

19 (i) are adequately secured by collateral security having a market  
20 value not less than the principal amount thereof and have investment  
21 qualities and characteristics wherein the speculative elements are not  
22 predominant[, or];

23 (ii) are rated A or higher (or the equivalent thereto) by a [securi-  
24 ties] STATISTICAL rating [agency] ORGANIZATION recognized by the super-  
25 intendent, or if not so rated, are similar in structure and in all mate-  
26 rial respects to other obligations of the same institution which are so  
27 rated[, or];

28 (iii) are insured by one or more authorized insurance companies (other  
29 than the investing insurer or any parent, subsidiary or affiliate of  
30 such insurer) who are licensed to insure obligations in this state and,

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

LBD15515-01-0

1 after considering such insurance, are rated Aaa (or the equivalent ther-  
2 eto) by a [securities] STATISTICAL rating [agency] ORGANIZATION recog-  
3 nized by the superintendent[,]; or

4 S 4. Subparagraph (B) of paragraph 6 of subsection (a) of section 1404  
5 of the insurance law, as amended by chapter 324 of the laws of 1992, is  
6 amended to read as follows:

7 (B) Investments in any one possession of the United States or in any  
8 one foreign country, other than Canada, made pursuant to this paragraph  
9 shall not exceed (i) in the case of any possession or country having the  
10 highest sovereign [debt] CREDIT rating, as established by a [securities]  
11 STATISTICAL rating [agency] ORGANIZATION recognized by the superinten-  
12 dent, three percent of the insurer's admitted assets as shown by its  
13 last statement on file with the superintendent, or

14 (ii) in the case of any other possession or country one percent of the  
15 insurer's admitted assets as shown by its last statement on file with  
16 the superintendent.

17 S 5. Paragraph 7 of subsection (a) of section 1404 of the insurance  
18 law, as amended by chapter 324 of the laws of 1992, is amended to read  
19 as follows:

20 (7) Development bank obligations. Obligations issued or guaranteed by  
21 the international bank for reconstruction and development, the inter-Am-  
22 erican development bank, the Asian development bank, the African devel-  
23 opment bank or the international finance corporation; provided that

24 [(i)] (A) obligations of such banks and the international finance  
25 corporation are rated AA or higher (or the equivalent thereto) by a  
26 [securities] STATISTICAL rating [agency] ORGANIZATION recognized by the  
27 superintendent, or if not so rated are similar in structure and in all  
28 material respects to other obligations of the same institution which are  
29 so rated[, and];

30 [(ii)] (B) the aggregate investment made pursuant to the provisions of  
31 this paragraph in each such bank and the international finance corpo-  
32 ration at any time, shall not exceed five percent of the insurer's  
33 admitted assets as shown by its last statement on file with the super-  
34 intendent[,]; and

35 [(iii)] (C) the aggregate investment made pursuant to the provisions  
36 of this paragraph in all such banks and the international finance corpo-  
37 ration shall not exceed fifteen percent of the insurer's admitted assets  
38 as shown by its last statement on file with the superintendent.

39 S 6. Subparagraph (C) of paragraph 7 of subsection (a) of section 1405  
40 of the insurance law, as amended by chapter 60 of the laws of 2008, is  
41 amended to read as follows:

42 (C) Investments in foreign countries, in addition to Canadian invest-  
43 ments and investments permitted by subparagraph (B) of this paragraph,  
44 that are substantially of the same types as those eligible for invest-  
45 ment under paragraphs one through six of this subsection, provided that,  
46 after giving effect to any investment made under this subparagraph, the  
47 aggregate amount of investments qualified under this subparagraph and  
48 then held by such insurer shall not exceed sixteen percent of the insur-  
49 er's admitted assets; and

50 (i) the issuer or obligor is (I) a jurisdiction, which is rated in one  
51 of the four highest rating categories by [an independent, nationally  
52 recognized United States] A STATISTICAL rating [agency] ORGANIZATION  
53 RECOGNIZED BY THE SUPERINTENDENT, (II) any political subdivision or  
54 other governmental unit of any such jurisdiction, or any agency or  
55 instrumentality of any such jurisdiction, political subdivision or other  
56 governmental unit or (III) an institution which is organized under the

1 laws of any such jurisdiction or, in the case of [such] paragraphs three  
2 and four of this subsection, the real property is located in any such  
3 jurisdiction; and

4 (ii) if the investment is denominated in any currency other than  
5 United States dollars, the investment is effectively hedged, substan-  
6 tially in its entirety, against the United States dollar:

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

12 (II) for any other insurer, pursuant to contracts or agreements which  
13 are: (aa) issued by or traded on a securities exchange or board of trade  
14 regulated under the laws of the United States or Canada or a province  
15 thereof or (bb) entered into with: (aaa) a United States banking insti-  
16 tution which has assets in excess of five billion dollars and which has  
17 obligations outstanding, or has a parent corporation which has obli-  
18 gations outstanding, which are rated in one of the two highest rating  
19 categories by [an independent, nationally recognized, United States] A  
20 STATISTICAL rating [agency] ORGANIZATION RECOGNIZED BY THE SUPERINTEN-  
21 DENT; (bbb) a broker-dealer registered with the Securities and Exchange  
22 Commission which has net capital in excess of two hundred fifty million  
23 dollars; or

24 (ccc) any other banking institution which has assets in excess of five  
25 billion dollars and which has obligations outstanding, or has a parent  
26 corporation which has obligations outstanding, which are rated in one of  
27 the two highest rating categories by [an independent, nationally recog-  
28 nized, United States] A STATISTICAL rating [agency] ORGANIZATION RECOG-  
29 NIZED BY THE SUPERINTENDENT and which is organized under the laws of a  
30 jurisdiction which is rated in one of the two highest rating categories  
31 by [an independent, nationally recognized, United States] A STATISTICAL  
32 rating [agency] ORGANIZATION RECOGNIZED BY THE SUPERINTENDENT; and

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

38 S 7. Paragraph 3 of subsection (f) of section 1410 of the insurance  
39 law, as added by chapter 650 of the laws of 1998, is amended to read as  
40 follows:

41 (3) For purposes of this section:

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

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

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

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

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

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

2 (iv) has senior obligations outstanding, or has a parent corporation  
3 that has senior obligations outstanding, rated AA or better (or the  
4 equivalent thereto) by two [independent nationally recognized] statis-  
5 tical rating organizations RECOGNIZED BY THE SUPERINTENDENT; and

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

9 (D) "aggregate counterparty exposure" means the sum of: (i) the aggre-  
10 gate statement value of options, swaptions, caps, floors, and warrants  
11 purchased; and (ii) the aggregate potential exposure of collars, swaps,  
12 forwards and futures entered into.

13 S 8. Subparagraph (H) of paragraph 4 of subsection (c) of section 4217  
14 of the insurance law, as added by chapter 687 of the laws of 1990, is  
15 amended to read as follows:

16 (H) The provisions of this subparagraph shall apply to any life insur-  
17 ance company which has life insurance policies or annuity or pure endow-  
18 ment contracts in effect which were issued in a foreign country and  
19 under which premiums and benefits, and the assets supporting reserves in  
20 respect thereof, are denominated in the currency of a foreign country  
21 which is rated in one of the two highest rating categories by [an inde-  
22 pendent, nationally recognized United States] A STATISTICAL rating  
23 [agency] ORGANIZATION RECOGNIZED BY THE SUPERINTENDENT. For the purpose  
24 of determining the reference interest rate to be used in valuing such  
25 policies and contracts, the superintendent may permit any such company,  
26 or may by regulation require all such companies (except as exempted  
27 pursuant to such regulation), to adjust the yield average of the appli-  
28 cable index published by Moody's Investors Service, Inc. (or the yield  
29 average determined on the basis of any substitute method applicable to  
30 such policies or contracts and approved by the superintendent in accord-  
31 ance with subparagraph (G) of this paragraph) in accordance with a meth-  
32 od approved by the superintendent, or to substitute an alternative meth-  
33 od approved by the superintendent in place of the applicable index  
34 published by Moody's Investors Service, provided that any such substi-  
35 tute or alternative method shall produce year-to-year consistency in  
36 reserving methods and shall appropriately reflect the difference between  
37 the yield average on corporate bonds issued in the United States and the  
38 yield average on corporate bonds issued in such foreign country. Any  
39 company which adjusts yield averages in accordance with a method  
40 approved by the superintendent pursuant to this subparagraph shall  
41 continue to use such method with respect to the valuation of such poli-  
42 cies and contracts until the superintendent permits or requires such  
43 company to cease using such method.

44 S 9. Paragraph 2 of subsection (b) of section 4310 of the insurance  
45 law, as added by chapter 681 of the laws of 2004, is amended to read as  
46 follows:

47 (2) A corporation maintaining cash and reserve investments under  
48 subsection (a) of section one thousand four hundred four of this chapter  
49 (except paragraphs eight and ten of subsection (a) of such section),  
50 free from any lien or pledge, which, when valued in accordance with the  
51 provisions of this chapter, equal ten percent or more of net premium  
52 income for the most recent twelve month period, as shown by such corpo-  
53 ration's last sworn statement, annual or quarterly, on file with the  
54 superintendent, may, in addition to the investments permitted by para-  
55 graph one of this subsection, invest up to fifteen percent of its admit-  
56 ted assets in investments permitted under paragraph two of subsection

1 (a) of section one thousand four hundred four of this chapter, provided  
2 however that such investments need not meet the otherwise applicable  
3 qualitative standards of such paragraph two so long as all such invest-  
4 ments are rated at BBB or higher (or the equivalent thereto) by a [secu-  
5 rity] STATISTICAL rating [agency] ORGANIZATION recognized by the super-  
6 intendent.

7 S 10. Subsection (k) of section 4310 of the insurance law, as amended  
8 by chapter 370 of the laws of 2003, is amended to read as follows:

9 (k) Notwithstanding the provisions of any other law, a corporation  
10 subject to the provisions of this article which has admitted assets  
11 greater than five hundred million dollars on its last annual report  
12 filed with the superintendent may enter into a transaction for an inter-  
13 est rate swap in an amount not to exceed the amount of debt on the books  
14 of the corporation on the effective date of this subsection that was  
15 incurred within twelve months of the construction of the corporation's  
16 home office, provided that such interest rate swap shall provide an  
17 initial new interest rate that is at least two hundred basis points  
18 lower than the interest rate on the existing debt. The counterparty to  
19 this transaction shall meet the qualifications of a qualified counter-  
20 party as provided in subparagraph (A) of paragraph three of subsection  
21 (f) of section fourteen hundred ten of this chapter except that,  
22 notwithstanding clause (iv) of subparagraph (C) of such paragraph, in  
23 the event that such counterparty is a qualified bank, such bank shall be  
24 rated A or better (or the equivalent thereto) by two [independent  
25 nationally recognized] STATISTICAL rating organizations RECOGNIZED BY  
26 THE SUPERINTENDENT. Any such transaction shall be approved by the corpo-  
27 ration's board of directors prior to its implementation.

28 S 11. Paragraph 1 of subsection (a) of section 4526 of the insurance  
29 law, as amended by chapter 659 of the laws of 2004, is amended to read  
30 as follows:

31 (1) are rated BBB or higher (or the equivalent thereto) by a [securi-  
32 ties] STATISTICAL rating [agency] ORGANIZATION recognized by the super-  
33 intendent, or if not so rated, are similar in structure and in all mate-  
34 rial respects to other obligations of the same institution which are so  
35 rated, or

36 S 12. Subparagraph (B) of paragraph 3 of subsection (b) of section  
37 4530 of the insurance law, as added by chapter 22 of the laws of 2008,  
38 such paragraph as renumbered by chapter 289 of the laws of 2009, is  
39 amended to read as follows:

40 (B) maintained a minimum claims-paying, financial strength or equiv-  
41 alent rating from at least one [nationally recognized] statistical  
42 rating organization RECOGNIZED BY THE SUPERINTENDENT in one of the  
43 organization's three highest rating categories for the time period  
44 during which this section applies to the society provided that the  
45 rating shall not depend on a guarantee or other credit enhancement from  
46 another entity; and shall not be modified or otherwise qualified to show  
47 dependence of the rating on the performance or a contractual obligation  
48 of, or the society's affiliation with, another society.

49 S 13. Clause (i) of subparagraph (I) of paragraph 4 of subsection (g)  
50 of section 6901 of the insurance law, as amended by chapter 672 of the  
51 laws of 2005, is amended to read as follows:

52 (i) is organized and existing under the laws of the United States or  
53 any state thereof or, in the case of a non-domestic financial institu-  
54 tion, has a branch or agency office licensed under the laws of the  
55 United States or any state thereof and is domiciled in a member country  
56 of the Organisation for Economic Co-operation and Development having a

1 sovereign rating in one of the top two generic lettered rating classi-  
2 fications by a [securities] STATISTICAL rating [agency acceptable to]  
3 ORGANIZATION RECOGNIZED BY the superintendent;

4 S 14. Subsection (k) of section 6901 of the insurance law, as amended  
5 by chapter 605 of the laws of 2004, is amended to read as follows:

6 (k) "Governmental unit" means the United States of America, Canada, a  
7 member country of the Organisation for Economic Co-operation and Devel-  
8 opment having a sovereign rating in one of the top two generic lettered  
9 rating classifications by a [securities] STATISTICAL rating [agency  
10 acceptable to] ORGANIZATION RECOGNIZED BY the superintendent, OR a  
11 state, territory or possession of the United States of America, the  
12 District of Columbia, a province of Canada, a municipality, or a poli-  
13 tical subdivision of any of the foregoing, or any public agency or  
14 instrumentality thereof.

15 S 15. Subsection (n) of section 6901 of the insurance law, as amended  
16 by chapter 529 of the laws of 1996, is amended to read as follows:

17 (n) "Investment grade" means that:

18 (1) the obligation or parity obligation of the same issuer has been  
19 determined to be in one of the top four generic lettered rating classi-  
20 fications by a [securities] STATISTICAL rating [agency acceptable to]  
21 ORGANIZATION RECOGNIZED BY the superintendent;

22 (2) the obligation or parity obligation of the same issuer has been  
23 identified in writing by such STATISTICAL rating [agency] ORGANIZATION  
24 to be of investment grade quality; or

25 (3) if the obligation or parity obligation of the same issuer has not  
26 been submitted to any such STATISTICAL rating [agency] ORGANIZATION, the  
27 obligation is [determined to be investment grade (as indicated by a  
28 rating in category] GIVEN A DESIGNATION OF 1 or 2[)] by the Securities  
29 Valuation Office of the National Association of Insurance Commissioners.

30 S 16. Subsection (s) of section 6901 of the insurance law, as amended  
31 by chapter 672 of the laws of 2005, is amended to read as follows:

32 (s) "Utility first mortgage obligation" means any obligation of an  
33 issuer secured by a first priority mortgage on utility property owned by  
34 or leased to an investor-owned or cooperative-owned utility company and  
35 located in the United States, Canada or a member country of the Organi-  
36 sation for Economic Co-operation and Development having a sovereign  
37 rating in one of the top two generic lettered rating classifications by  
38 a [securities] STATISTICAL rating [agency acceptable to] ORGANIZATION  
39 RECOGNIZED BY the superintendent; provided that the utility or utility  
40 property or the usage fees or other similar utility rates or charges are  
41 subject to regulation or oversight by a governmental unit.

42 S 17. Paragraph 4 of subsection (a) of section 6902 of the insurance  
43 law, as amended by chapter 605 of the laws of 2004, is amended to read  
44 as follows:

45 (4) a financial guaranty insurance corporation's investments in any  
46 one entity insured by that corporation shall not exceed four percent of  
47 its admitted assets at last year-end, except that this limit shall not  
48 apply to investments payable or guaranteed by a United States govern-  
49 mental unit or New York state if such investments payable or guaranteed  
50 by the United States governmental unit or New York state shall be rated  
51 in one of the top two generic lettered rating classifications by a  
52 [securities] STATISTICAL rating [agency acceptable to] ORGANIZATION  
53 RECOGNIZED BY the superintendent.

54 S 18. This act shall take effect immediately.