

8855

2009-2010 Regular Sessions

I N A S S E M B L Y

June 11, 2009

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

AN ACT to amend the insurance law, in relation to enhancing the regulation of financial guaranty insurers; and to repeal certain provisions of the insurance law relating thereto

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

1 Section 1. Paragraph 1 of subsection (a) of section 6901 of the insurance law, as added by chapter 48 of the laws of 1989, the opening paragraph as amended by chapter 605 of the laws of 2004, and subparagraph (A) as amended by chapter 529 of the laws of 1996, is amended to read as follows:

6 (1) "Financial guaranty insurance" means a surety bond, an insurance policy or[, when issued by an insurer or any person doing an insurance business as defined in paragraph one of subsection (b) of section one thousand one hundred one of this chapter, an indemnity] OTHER contract, and any guaranty similar to the foregoing types, [under] which [loss] is payable, upon [proof of] occurrence of financial loss, [to an insured claimant, obligee or indemnitee] as a result of any of the following events:

14 (A) failure of any obligor on or issuer of any debt instrument or other monetary obligation (including equity securities [guaranteed] GUARANTEED under a surety bond, insurance policy or indemnity contract) to pay when due to be paid by the obligor or scheduled at the time insured to be received by the holder of the obligation, principal, interest, premium, dividend or purchase price of or on, or other amounts due or payable with respect to, such instrument or obligation, when such failure is the result of a financial default or insolvency or, provided that such payment source is investment grade, any other failure to make payment, regardless of whether such obligation is incurred directly or as guarantor by or on behalf of another obligor that has also defaulted;

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

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1 (B) changes in the levels of interest rates, whether short or long
2 term or the differential in interest rates between various markets or
3 products;

4 (C) changes in the rate of exchange of currency;

5 (D) changes in the value of specific assets or commodities, financial
6 or commodity indices, or price levels in general; or

7 (E) other events [which] THAT the superintendent determines are
8 substantially similar to any of the foregoing.

9 S 2. Subparagraphs (H), (I), and (J) of paragraph 2 of subsection (a)
10 of section 6901 of the insurance law, subparagraph (H) as added by chap-
11 ter 48 of the laws of 1989, subparagraph (I) as amended and subparagraph
12 (J) as added by chapter 605 of the laws of 2004, are amended to read as
13 follows:

14 (H) indemnity contracts or similar guaranties, to the extent that they
15 are not otherwise limited or proscribed by this chapter:

16 (i) in which a life insurer or an insurer subject to article forty-
17 three of this chapter [guaranties] GUARANTEES its obligations or indebt-
18 edness or the obligations or indebtedness of a subsidiary (as defined in
19 paragraph forty of subsection (a) of section one hundred seven of this
20 chapter), other than a financial guaranty [insurance corporation] INSUR-
21 ER, provided that:

22 (I) to the extent that any such obligations or indebtedness are backed
23 by specific assets, such assets must at all times be owned by the insur-
24 er or the subsidiary; and

25 (II) in the case of the guaranty of the obligations or indebtedness of
26 the subsidiary that are not backed by specific assets of such insurer,
27 such guaranty terminates once the subsidiary ceases to be a subsidiary;
28 or

29 (ii) in which a life insurer [guaranties] GUARANTEES obligations or
30 indebtedness (including the obligation to substitute assets where appro-
31 priate) with respect to specific assets acquired by such life insurer in
32 the course of its normal investment activities and not for the purpose
33 of resale with credit enhancement, or [guaranties] GUARANTEES obli-
34 gations or indebtedness acquired by its subsidiary, provided that the
35 assets acquired pursuant to this item (ii) have been:

36 (I) acquired by a special purpose CORPORATION, SPECIAL PURPOSE TRUST
37 OR OTHER SPECIAL PURPOSE LEGAL entity, whose sole purpose is to acquire
38 specific assets of such life insurer or its subsidiary and issue securi-
39 ties or participation certificates backed by such assets; or

40 (II) sold to an independent third party; or

41 (iii) in which a life insurer [guaranties] GUARANTEES obligations or
42 indebtedness of an employee or insurance agent of such life insurer; or

43 (I) [guarantees] GUARANTIES of higher education loans, unless written
44 by a financial guaranty [insurance corporation] INSURER;

45 (J) [guarantees] GUARANTIES of insurance contracts, except for:

46 (i) [guarantees] GUARANTIES authorized pursuant to section one thou-
47 sand one hundred fourteen of this chapter; OR

48 (ii) financial guaranty insurance policies insuring guaranteed invest-
49 ment contracts issued by life insurers, provided that:

50 (I) the obligations under such contracts are not dependent on the
51 continuance of human life;

52 (II) the financial guaranty insurance policies do not guaranty death
53 benefits provided by such contracts;

54 (III) the obligations insured by the financial guaranty insurance
55 policies are investment grade based on the rating of the life insurers

1 or, in the case of separate account guaranteed investment contracts,
2 based on the ratings of such separate accounts;

3 (IV) the financial guaranty insurance policies shall not condition or
4 delay payment of a claim with respect to such contracts upon the insured
5 or beneficiary making a claim on the contracts with any insurance guar-
6 anty fund under this chapter or of any other jurisdiction; and

7 (V) the financial guaranty insurance policies provide that if, prior
8 to payment by the insurer under the financial guaranty insurance poli-
9 cies, the guaranty fund has paid a claim under such contracts for an
10 amount that, when added to the amount payable under the financial guar-
11 anty insurance policies, would exceed the amount owed under such
12 contracts, then the financial guaranty insurer shall pay the portion of
13 the amount payable in excess of the contract amounts to the guaranty
14 fund instead of to the beneficiary under such contracts; or

15 S 3. Subsections (b), (c), and (d) of section 6901 of the insurance
16 law, subsections (b) and (d) as added by chapter 48 of the laws of 1989,
17 subsection (c) as amended by chapter 529 of the laws of 1996, are
18 amended to read as follows:

19 (b) "Financial guaranty insurance corporation" or ["corporation"]
20 "FINANCIAL GUARANTY INSURER" means an insurer licensed to transact the
21 business of financial guaranty insurance in this state.

22 (c) "Affiliate" means a person which, directly or indirectly, owns at
23 least ten percent but less than fifty percent of the financial guaranty
24 [insurance corporation] INSURER or which is at least ten percent but
25 less than fifty percent, directly or indirectly, owned by a financial
26 guaranty [insurance corporation] INSURER.

27 (d) "Aggregate net liability" means the aggregate amount of insured
28 unpaid principal, interest and other monetary payments, if any, of
29 [guaranteed] GUARANTEED obligations insured or assumed, less reinsurance
30 ceded and less collateral.

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

33 (e) "Asset-backed securities" mean[:

34 (1)] securities or other financial obligations of an issuer, provided
35 that:

36 [(A)] (1) the issuer is a special purpose corporation, trust or other
37 entity, or (provided that the securities or other financial obligations
38 constitute an insurable risk) is a bank, trust company or other finan-
39 cial institution, deposits in which are insured by the Bank Insurance
40 Fund or the Savings Insurance Fund (or any successor thereto); and

41 [(B)] (2) THE SECURITIES OR OTHER FINANCIAL OBLIGATIONS ARE HELD IN a
42 pool of assets EXPECTED TO GENERATE EITHER CASH FLOW OR CASH PROCEEDS BY
43 THE TERMS OF THE SECURITIES OR OTHER FINANCIAL OBLIGATIONS, OR PURSUANT
44 TO LEASES OR OTHER CONTRACTUAL RIGHTS, INCLUDING ANY EXPECTED EXTENSIONS
45 OR RENEWALS THEREOF, OR THROUGH A SALE IN A PUBLIC OR PRIVATE MARKET FOR
46 PROCEEDS SUFFICIENT TO PAY THE INSURED OBLIGATIONS:

47 [(i)] (A) [has] HAVE been conveyed, pledged or otherwise transferred
48 to or [is] ARE otherwise owned or acquired by the issuer;

49 [(ii)] (B) such pool of assets backs the securities or other financial
50 obligations issued; and

51 [(iii)] (C) no asset in such pool, other than an asset directly paya-
52 ble by, guaranteed by or backed by the full faith and credit of the
53 United States government or that otherwise qualifies as collateral under
54 paragraph one or two of subsection (g) of this section, has a value
55 exceeding twenty percent of the pool's aggregate value[; or

1 (2) a pool of credit default swaps or credit default swaps referencing
2 a pool of obligations, provided that:

3 (A) the swap counterparty whose obligations are insured under the
4 credit default swap is a special purpose corporation, special purpose
5 trust or other special purpose legal entity;

6 (B) no reference obligation in such pool, other than an obligation
7 directly payable by, guaranteed by or backed by the full faith and cred-
8 it of the United States government or that otherwise qualifies as colla-
9 teral under paragraph two of subsection (g) of this section, has a
10 notional amount exceeding ten percent of the pool's aggregate notional
11 amount; and

12 (C) the insurer has the benefit of a deductible or other first loss
13 credit protection against claims under its insurance policy].

14 S 5. Subsection (g) of section 6901 of the insurance law, as amended
15 by chapter 605 of the laws of 2004, subparagraph (I) of paragraph 4 as
16 amended by chapter 672 of the laws of 2005, is amended to read as
17 follows:

18 (g) "Collateral" means:

19 (1) cash;

20 (2) the cash flow from specific obligations which are not callable and
21 scheduled to be received based on expected prepayment speed on or prior
22 to the date of scheduled debt service (including scheduled redemptions
23 or prepayments) on the insured obligation provided that (i) such specif-
24 ic obligations are directly payable by, guaranteed by or backed by the
25 full faith and credit of the United States government, (ii) in the case
26 of insured obligations denominated or payable in foreign currency as
27 permitted under paragraph four of subsection (b) of section six thousand
28 nine hundred four of this article, such specific obligations are direct-
29 ly payable by, guaranteed by or backed by the full faith and credit of
30 such foreign government or the central bank thereof, or (iii) such
31 specific obligations are insured by the same insurer that insures the
32 obligations being collateralized, and the cash flows from such specific
33 obligations are sufficient to cover the insured scheduled payments on
34 the obligations being collateralized;

35 (3) the market value of investment grade obligations, other than obli-
36 gations evidencing an interest in the project or projects financed with
37 the proceeds of the insured obligations; OR

38 (4) the face amount of each letter of credit that:

39 (A) is irrevocable;

40 (B) provides for payment under the letter of credit in lieu of or as
41 reimbursement to the insurer for payment required under a financial
42 guaranty insurance policy;

43 (C) is issued, presentable and payable either:

44 (i) at an office of the letter of credit issuer in the United States;

45 or

46 (ii) at an office of the letter of credit issuer located in the juris-
47 diction in which the trustee or paying agent for the insured obligation
48 is located;

49 (D) contains a statement that either:

50 (i) identifies the insurer and any successor by operation of law,
51 including any liquidator, rehabilitator, receiver or conservator, as the
52 beneficiary; or

53 (ii) identifies the trustee or the paying agent for the insured obli-
54 gation as the beneficiary;

55 (E) contains a statement to the effect that the obligation of the
56 letter of credit issuer under the letter of credit is an individual

1 obligation of such issuer and is in no way contingent upon reimbursement
2 with respect thereto;

3 (F) contains an issue date and a date of expiration;

4 (G) either:

5 (i) has a term at least as long as the shorter of the term of the
6 insured obligation or the term of the financial guaranty policy; or

7 (ii) provides that the letter of credit shall not expire without thir-
8 ty days prior written notice to the beneficiary and allows for drawing
9 under the letter of credit in the event that, prior to expiration, the
10 letter of credit is not renewed or extended or a substitute letter of
11 credit or alternate collateral meeting the requirements of this
12 subsection is not provided;

13 (H) states that it is governed by the laws of the state of New York or
14 by the 1983 or 1993 Revision of the Uniform Customs and Practice for
15 Documentary Credits of the International Chamber of Commerce (Publica-
16 tion 400 or 500) or any successor Revision if approved by the super-
17 intendent, and contains a provision for an extension of time, of not
18 less than thirty days after resumption of business, to draw against the
19 letter of credit in the event that one or more of the occurrences
20 described in Article 19 of Publication 400 or 500 occurs; and

21 (I) is issued by a bank, trust company, or savings and loan associ-
22 ation that:

23 (i) is organized and existing under the laws of the United States or
24 any state thereof or, in the case of a non-domestic financial institu-
25 tion, has a branch or agency office licensed under the laws of the
26 United States or any state thereof and is domiciled in a member country
27 of the Organisation for Economic Co-operation and Development having a
28 sovereign rating in one of the top two generic lettered rating classi-
29 fications by a securities rating agency acceptable to the superinten-
30 dent;

31 (ii) has (or is the principal operating subsidiary of a financial
32 institution holding company that has) a long-term debt rating of at
33 least investment grade; and

34 (iii) is not a parent, subsidiary or affiliate of the trustee or
35 paying agent, if any, with respect to the insured obligation if such
36 trustee [of] OR paying agent is the named beneficiary of the letter of
37 credit[; or

38 (5) the amount of credit protection available to the insurer (or its
39 nominee) under each credit default swap that:

40 (A) may not be amended without the consent of the insurer and may only
41 be terminated: (i) at the option of the insurer; (ii) at the option of
42 the counterparty to the insurer (or its nominee), if the credit default
43 swap provides for the payment of a termination amount equal to the
44 replacement cost of the terminated credit default swap determined with
45 reference to standard documentation of the International Swap and Deriv-
46 atives Association, Inc. or otherwise acceptable to the superintendent;
47 or (iii) at the discretion of the superintendent acting as a rehabilita-
48 tor, liquidator or receiver of the insurer upon payment by or on behalf
49 of the insurer of any termination amount due from the insurer;

50 (B) provides for payment under all instances in which payment under a
51 financial guaranty insurance policy is required, except that payment
52 under the credit default swap may be on a first loss, excess of loss or
53 other non-pro-rata basis and may apply on an aggregate basis to more
54 than one policy;

55 (C) is provided by:

1 (i) a counterparty whose obligations under the credit default swap are
2 insured by a financial guaranty insurance corporation licensed under
3 this article or guaranteed by a financial institution referred to in
4 items (ii) and (iii) of this subparagraph;

5 (ii) a financial institution satisfying the requirements of items (i)
6 through (iii) of subparagraph (I) of paragraph four of this subsection;
7 provided that (A) obligations of such financial institution on parity
8 with its obligations under the credit default swap are investment grade
9 and (B) if such financial institution is not organized under, or acting
10 through a branch or agency office licensed under, the laws of the United
11 States or any state thereof, then such financial institution is required
12 to collateralize the replacement cost of the credit default swap in the
13 event that it shall fail to maintain such rating; or

14 (iii) any other financial institution that the superintendent deter-
15 mines to be substantially similar to any of the foregoing.

16 Collateral must be deposited with the insurer; held in trust by a
17 trustee or custodian acceptable to the superintendent for the benefit of
18 the insurer; or held in trust pursuant to the bond indenture or other
19 trust arrangement, for the benefit of security holders in the form of
20 funds for the payment of insured obligations, sinking funds or other
21 reserves which may be used for the payment of insured obligations and
22 trustee and other administrative fees on a first priority basis estab-
23 lished and continually maintained pursuant to the bond indenture or
24 other trust arrangement by a trustee acceptable to the superintendent.
25 The superintendent may promulgate regulations to limit the amount of
26 collateral provided by obligations, letters of credit or credit default
27 swaps or to limit the amount of collateral provided by any single
28 issuer, bank or counterparty as provided for in this subsection].

29 S 6. Subsection (j-1) of section 6901 of the insurance law is
30 REPEALED.

31 S 7. Subsection (n) of section 6901 of the insurance law, as amended
32 by chapter 529 of the laws of 1996, is amended to read as follows:

33 (n) "Investment grade" means that:

34 (1) the obligation or parity obligation of the same issuer has been
35 determined to be in one of the top four generic lettered rating classi-
36 fications by a securities rating agency acceptable to the superintendent
37 OR THE SECURITIES VALUATION OFFICE OF THE NATIONAL ASSOCIATION OF INSUR-
38 ANCE COMMISSIONERS DESIGNATES THE OBLIGATION CATEGORY 1 OR 2;

39 (2) the obligation or parity obligation of the same issuer has been
40 identified in writing by such rating agency to be of investment grade
41 quality OR THE SECURITIES VALUATION OFFICE OF THE NATIONAL ASSOCIATION
42 OF INSURANCE COMMISSIONERS DESIGNATES THE OBLIGATION CATEGORY 1 OR 2; or

43 (3) if the obligation or parity obligation of the same issuer has not
44 been submitted to any such rating agency, the obligation is determined
45 to be investment grade (as indicated by a [rating] DESIGNATION in cate-
46 gory 1 or 2) by the Securities Valuation Office of the National Associ-
47 ation of Insurance Commissioners.

48 S 8. Subsection (a) of section 6902 of the insurance law, as added by
49 chapter 48 of the laws of 1989, paragraph 1 as amended by chapter 672 of
50 the laws of 2005, paragraphs 4 and 5 as amended by chapter 605 of the
51 laws of 2004, is amended to read as follows:

52 (a) A financial guaranty [insurance corporation] INSURER may be organ-
53 ized and licensed in the manner prescribed in section one thousand two
54 hundred one of this chapter and a foreign insurer may be licensed AS A
55 FINANCIAL GUARANTY INSURER in the manner prescribed in section one thou-

1 sand one hundred six of this chapter, except as modified by the follow-
2 ing provisions:

3 (1) a corporation organized for the purpose of transacting financial
4 guaranty insurance may, subject to all the applicable provisions of this
5 chapter, be licensed to transact only the following additional kinds of
6 insurance:

7 (A) residual value insurance, as defined in paragraph twenty-two of
8 subsection (a) of section one thousand one hundred thirteen of this
9 chapter;

10 (B) surety insurance, as defined in subparagraphs (C), (D), (E), (F),
11 (G), (H) and (I) of paragraph sixteen of subsection (a) of section one
12 thousand one hundred thirteen of this chapter; and

13 (C) credit insurance, as defined in subparagraph (A) of paragraph
14 seventeen of subsection (a) of section one thousand one hundred thirteen
15 of this chapter;

16 (2) a financial guaranty [insurance corporation] INSURER may only
17 assume those kinds of insurance for which it is licensed to write direct
18 business;

19 (3) prior to the issuance of a license, unless a plan of operation has
20 been previously approved by the superintendent, [a corporation] AN
21 INSURER shall submit for the approval of the superintendent a plan of
22 operation, detailing the types and projected diversification of guaran-
23 ties that will be issued, the underwriting procedures that will be
24 followed, managerial oversight methods, investment policies, and such
25 other matters as may be prescribed by the superintendent; and

26 (4) a financial guaranty [insurance corporation's] INSURER'S invest-
27 ments in any one entity insured by that [corporation] INSURER shall not
28 exceed four percent of its admitted assets at last year-end, except that
29 this limit shall not apply to investments payable or guaranteed by a
30 United States governmental unit or New York state if such investments
31 payable or guaranteed by the United States governmental unit or New York
32 state shall be rated in one of the top two generic lettered rating clas-
33 sifications by a securities rating agency acceptable to the superinten-
34 dent.

35 (5) in addition to any transaction that an insurer meeting the
36 requirements of subsection (c) of section one thousand four hundred
37 three of this chapter may effect and maintain under any other provision
38 of this chapter, a financial guaranty [insurance corporation] INSURER
39 may effect and maintain transactions in (A) contracts for the future
40 delivery or receipt of the currency of a foreign country, (B) interest
41 rate options, AND (C) [credit default swaps under which the insurer is
42 acquiring credit protection and (D)] other products included in the plan
43 referred to in [clause] ITEM (vii) of this subparagraph, in each case
44 meeting the following requirements:

45 (i) the transaction is used for the purpose of limiting risk of loss
46 under financial guaranty insurance policies or reinsurance contracts
47 covering such policies due to fluctuations in interest rates or currency
48 exchange rates or, in the case of credit default swaps, financial
49 default, insolvency or other credit events;

50 (ii) the transaction shall not exceed a duration of twelve months
51 beyond the term of such policies or reinsurance contracts;

52 (iii) the amount of foreign currencies to be purchased under the tran-
53 saction shall not exceed the amount guaranteed under such policies or
54 reinsurance contracts that is denominated in foreign currency;

1 (iv) the amount that is subject to interest rate hedging transactions
2 does not exceed the amount guaranteed under such policies or reinsurance
3 contracts that is subject to the risk of interest rate fluctuations;

4 (v) the counterparty to such transaction has (or is the principal
5 operating subsidiary of a holding company that has) a long term unse-
6 cured debt rating or claims-paying ability rating that is at least
7 investment grade;

8 (vi) the transaction is not conducted for arbitrage purposes; and

9 (vii) the transaction is entered into pursuant to a plan that has been
10 approved by the board of directors of the financial guaranty [insurance
11 corporation] INSURER and filed with and approved by the superintendent.

12 S 9. Subsection (b) of section 6902 of the insurance law, as amended
13 by chapter 89 of the laws of 1989, paragraph 3 as amended by chapter 529
14 of the laws of 1996, is amended to read as follows:

15 (b) (1) (A) A financial guaranty [insurance corporation] INSURER shall
16 not transact business unless it has paid-in capital of at least [two]
17 FIFTEEN million [five hundred thousand] dollars and paid-in surplus of
18 at least [seventy-two] ONE HUNDRED SIXTY-FIVE million [five hundred
19 thousand] dollars, and shall at all times thereafter maintain a minimum
20 surplus to policyholders of at least [sixty-five] ONE HUNDRED FIFTY
21 million dollars.

22 (B) A FINANCIAL GUARANTY INSURER SHALL REPORT TO THE SUPERINTENDENT
23 WITHIN FIVE DAYS IF THE FINANCIAL GUARANTY INSURER'S POLICYHOLDER
24 SURPLUS DECREASES AS FOLLOWS:

25 (I) FOR A FINANCIAL GUARANTY INSURER WITH LESS THAN FIVE HUNDRED
26 MILLION DOLLARS OF POLICYHOLDER SURPLUS, A DECREASE IN EXCESS OF FIVE
27 PERCENT FROM THE AMOUNT OF POLICYHOLDER SURPLUS AT THE END OF THE
28 PRECEDING QUARTER;

29 (II) FOR A FINANCIAL GUARANTY INSURER WITH FIVE HUNDRED MILLION
30 DOLLARS OR MORE OF POLICYHOLDER SURPLUS, A DECREASE IN EXCESS OF TWENTY
31 PERCENT FROM THE AMOUNT OF POLICYHOLDER SURPLUS AT THE END OF THE
32 PRECEDING QUARTER; OR

33 (III) THE MINIMUM SURPLUS SPECIFIED IN SUBPARAGRAPH (A) OF PARAGRAPH
34 ONE OF THIS SUBSECTION FALLS BELOW SEVEN HUNDRED FIFTY MILLION DOLLARS.

35 (2) [An insurer transacting only financial guaranty insurance prior to
36 the effective date of this article which has a paid-in capital of at
37 least two million five hundred thousand dollars and maintains surplus to
38 policyholders of at least forty-five million dollars shall have thirty-
39 six months from the effective date of this article to fully comply with
40 the surplus requirements set forth in paragraph one of this subsection.

41 (3)] A FINANCIAL GUARANTY INSURER SHALL MAINTAIN, AND MAKE AVAILABLE
42 FOR INSPECTION BY THE SUPERINTENDENT UPON REQUEST, UNDERWRITING GUIDE-
43 LINES REQUIRING:

44 (A) SUFFICIENT LIQUIDITY TO PAY CLAIMS IN ADVERSITY, INCLUDING EXTREME
45 STRESS SCENARIOS;

46 (B) APPROPRIATE RISK UNDERWRITING POLICIES, CRITERIA, AND PROCEDURES
47 TO ENSURE THAT ANY TRANSACTION UNDERWRITTEN DEMONSTRATES SUFFICIENTLY
48 LOW LEVELS OF RISK OF DEFAULT OR SEVERITY OF LOSS, SUCH THAT ACTUAL
49 LOSSES ON, OR RATINGS DOWNGRADES OF, TRANSACTIONS OR SECTORS WITHIN THE
50 FINANCIAL GUARANTY INSURER'S PORTFOLIOS UNDER EXTREME STRESS SCENARIOS
51 ARE NOT EXPECTED TO SIGNIFICANTLY ERODE CAPITAL STRENGTH; AND

52 (C) CONTROL AND REMEDIATION RIGHTS TO MITIGATE THE POTENTIAL SEVERITY
53 OF ANY LOSS APPROPRIATE FOR THE TYPE, INVESTMENT QUALITY AND AMOUNT OF
54 OBLIGATIONS INSURED.

55 (3) ANY REPORT SUBMITTED PURSUANT TO THIS SECTION AND ANY UNDERWRITING
56 GUIDELINES MADE AVAILABLE TO THE SUPERINTENDENT UPON REQUEST PURSUANT TO

1 PARAGRAPH TWO OF THIS SUBSECTION SHALL BE KEPT CONFIDENTIAL AND SHALL
2 NOT BE MADE PUBLIC UNLESS, AFTER NOTICE AND AN OPPORTUNITY TO BE HEARD,
3 THE SUPERINTENDENT DETERMINES THAT THE INTERESTS OF POLICYHOLDERS,
4 STOCKHOLDERS OR THE PUBLIC WILL BE SERVED BY THE PUBLICATION THEREOF.

5 (4) A financial guaranty [insurance company] INSURER shall be deemed
6 to be in compliance with paragraphs one and two of subsection (b) of
7 section one thousand four hundred two of this chapter if not less than
8 sixty percent of the amount of the required minimum capital or minimum
9 surplus to policyholder investments shall consist of the types specified
10 in paragraphs one and two of subsection (b) of section one thousand four
11 hundred two of this chapter and direct government obligations of any
12 state of the United States or of any county, district or municipality
13 thereof, provided such government obligations have been given the high-
14 est quality designation of the Securities Valuation Office of the
15 National Association of Insurance Commissioners. Before investing any
16 part of the required minimum capital or surplus in direct government
17 obligations of any other state of the United States or of any county,
18 district or municipality thereof, such financial guaranty [insurance
19 company] INSURER shall have invested at least ten percent of such
20 required minimum in government obligations of New York state or of any
21 county, district or municipality thereof. Only for purposes of meeting
22 the required investment in government obligations of New York state, the
23 FINANCIAL GUARANTY insurer may count investments in any government obli-
24 gation of New York state, whether direct or otherwise.

25 S 10. Section 6902 of the insurance law is amended by adding three new
26 subsections (c), (d) and (e) to read as follows:

27 (C) COLLATERAL SHALL BE DEPOSITED WITH THE INSURER; HELD IN TRUST BY A
28 TRUSTEE OR CUSTODIAN ACCEPTABLE TO THE SUPERINTENDENT FOR THE BENEFIT OF
29 THE INSURER; OR HELD IN TRUST PURSUANT TO THE BOND INDENTURE OR OTHER
30 TRUST ARRANGEMENT FOR THE BENEFIT OF SECURITY HOLDERS IN THE FORM OF
31 FUNDS FOR THE PAYMENT OF INSURED OBLIGATIONS, SINKING FUNDS OR OTHER
32 RESERVES, WHICH MAY BE USED FOR THE PAYMENT OF INSURED OBLIGATIONS AND
33 TRUSTEE AND OTHER ADMINISTRATIVE FEES ON A FIRST PRIORITY BASIS ESTAB-
34 LISHED AND CONTINUALLY MAINTAINED PURSUANT TO THE BOND INDENTURE OR
35 OTHER TRUST ARRANGEMENT BY A TRUSTEE ACCEPTABLE TO THE SUPERINTENDENT.

36 (D) THE SUPERINTENDENT MAY PROMULGATE REGULATIONS TO LIMIT THE AMOUNT
37 OF COLLATERAL PROVIDED BY OBLIGATIONS OR LETTERS OF CREDIT OR TO LIMIT
38 THE AMOUNT OF COLLATERAL PROVIDED BY ANY SINGLE ISSUER, OR BANK AS
39 PROVIDED FOR IN THIS SUBSECTION.

40 (E) NOTWITHSTANDING ANY PROVISION CONTAINED IN THIS CHAPTER, IF THE
41 SUPERINTENDENT FINDS THAT THE INTERESTS OF FINANCIAL GUARANTY INSURERS,
42 POLICYHOLDERS, CLAIMANTS, OBLIGEEES OR INDEMNITEES, OR THE PEOPLE OF THE
43 STATE SO REQUIRE, THEN THE SUPERINTENDENT MAY REQUIRE ANY FINANCIAL
44 GUARANTY INSURER TO SUBMIT ONE OR MORE OBLIGATIONS THAT IT GUARANTEES TO
45 THE SECURITIES VALUATION OFFICE OF THE NATIONAL ASSOCIATION OF INSURANCE
46 COMMISSIONERS FOR DESIGNATION AS TO INVESTMENT QUALITY OR TO SUCH OTHER
47 INSTITUTION FOR EVALUATION AS MAY BE SPECIFIED BY REGULATION. ALL
48 EXPENSES OF ANY SUCH EVALUATION SHALL BE BORNE BY THE FINANCIAL GUARANTY
49 INSURER.

50 S 11. Subsection (a) of section 6903 of the insurance law, as added by
51 chapter 48 of the laws of 1989, clause (iii) of subparagraph (B) of
52 paragraph 3 and paragraph 7 as amended by chapter 89 of the laws of
53 1989, paragraph 5 as amended by chapter 605 of the laws of 2004, is
54 amended to read as follows:

55 (a) Contingency reserves. (1) A [corporation] FINANCIAL GUARANTY
56 INSURER shall establish and maintain contingency reserves for the

1 protection of insureds and claimants against the effects of excessive
2 losses occurring during adverse economic cycles.

3 (2) With respect to all financial guaranties written prior to and in
4 force as of the first day of the next calendar quarter commencing after
5 the date that the act enacting this article shall become law:

6 (A) the insurer shall establish and maintain a contingency reserve
7 consistent with the requirements applicable for municipal bond guaran-
8 ties in effect prior to the effective date of this article equal to
9 fifty percent of earned premiums on such policies; and

10 (B) to the extent that the insurer's contingency reserves maintained
11 as of the first day of the next calendar quarter commencing after the
12 date that the act enacting this article shall become law are less than
13 those required for municipal bond guaranties, the insurer shall have
14 three years from such date to bring its contingency reserves into
15 compliance.

16 (3) With respect to financial guaranties of municipal obligation
17 bonds, special revenue bonds, industrial development bonds and utility
18 first mortgage obligations written on and after the first day of the
19 next calendar quarter commencing after the date that the act enacting
20 this article shall become law:

21 (A) the insurer shall establish and maintain a contingency reserve for
22 all such insured issues in each calendar year for each category listed
23 in subparagraph (B) of this paragraph;

24 (B) the total contingency reserve required shall be the greater of
25 fifty percent of premiums written for each such category or the follow-
26 ing amount prescribed for each such category:

27 (i) municipal obligation bonds, 0.55 percent of principal [guarantied]
28 GUARANTEED;

29 (ii) special revenue bonds, and obligations demonstrated to the satis-
30 faction of the superintendent to be the functional equivalent thereof,
31 0.85 percent of principal [guarantied] GUARANTEED;

32 (iii) investment grade industrial development bonds, secured by colla-
33 teral or having a term of seven years or less, and utility first mort-
34 gage obligations, 1.0 percent of principal [guarantied] GUARANTEED;

35 (iv) other investment grade industrial development bonds, 1.5 percent
36 of principal [guarantied] GUARANTEED; and

37 (v) all other industrial development bonds, 2.5 percent of principal
38 [guarantied] GUARANTEED; and

39 (C) Contributions to the contingency reserve required by this para-
40 graph, equal to one-eightieth of the total reserve required, shall be
41 made each quarter for twenty years, provided, however, that contrib-
42 utions may be discontinued so long as the total reserve for all catego-
43 ries listed in items (i) through (v) of subparagraph (B) of this para-
44 graph exceeds the percentages contained in such items (i) through (v)
45 when applied against unpaid principal.

46 (4) With respect to all other financial guaranties written on or after
47 the first day of the next calendar quarter commencing after the date
48 that the act enacting this article shall become law:

49 (A) the insurer shall establish and maintain a contingency reserve for
50 all such insured issues in each calendar year for each such category
51 listed in subparagraph (B) of this paragraph;

52 (B) the total contingency reserve required shall be the greater of
53 fifty percent of premiums written for each such category or the follow-
54 ing amount prescribed for each such category:

- 1 (i) investment grade obligations, secured by collateral or having a
2 term of seven years or less, 1.0 percent of principal [guarantied] GUAR-
3 ANTEED;
- 4 (ii) other investment grade obligations, 1.5 percent of principal
5 [guarantied] GUARANTEED;
- 6 (iii) non-investment grade consumer debt obligations, 2.0 percent of
7 principal [guarantied] GUARANTEED;
- 8 (iv) non-investment grade asset-backed securities, 2.0 percent of
9 principal [guarantied] GUARANTEED;
- 10 (v) other non-investment grade obligations, 2.5 percent of principal
11 [guarantied] GUARANTEED; and
- 12 (C) Contributions to the contingency reserve required by this para-
13 graph, equal to one-sixtieth of the total reserve required, shall be
14 made each quarter for fifteen years, provided, however, that contrib-
15 utions may be discontinued so long as the total reserve for all catego-
16 ries listed in items (i) through (v) of subparagraph (B) of this para-
17 graph exceeds the percentages contained in such items (i) through (v)
18 when applied against unpaid principal.
- 19 (5) Contingency reserves required in paragraphs two, three and four of
20 this subsection may be established and maintained net of collateral and
21 reinsurance, provided that, in the case of reinsurance, the reinsurance
22 agreement requires that the reinsurer shall, on or after the effective
23 date of the reinsurance, establish and maintain a reserve in an amount
24 equal to the amount by which the insurer reduces its contingency
25 reserve, and contingency reserves required in paragraphs three and four
26 of this subsection may be maintained (A) net of refundings and refi-
27 nancements to the extent the refunded or refinanced issue is paid off or
28 secured by obligations which are directly payable or [guarantied] GUAR-
29 ANTEED by the United States government and (B) net of insured securities
30 in a unit investment trust or mutual fund that have been sold from the
31 trust or fund without insurance.
- 32 (6) The contingency reserves may be released thereafter in the same
33 manner in which they were established and withdrawals therefrom, to the
34 extent of any excess, may be made from the earliest contributions to
35 such reserves remaining therein:
- 36 (A) with the prior written approval of the superintendent:
- 37 (i) if the actual incurred losses for the year, in the case of the
38 categories of guaranties subject to paragraph three of this subsection
39 exceeds thirty-five percent of earned premiums, or in the case of the
40 categories of guaranties subject to paragraph four of this subsection
41 exceed sixty-five percent of earned premiums; or
- 42 (ii) if the contingency reserve applicable to the categories of guar-
43 anties subject to paragraph three of this subsection has been in exist-
44 ence for less than forty quarters, or for less than thirty quarters for
45 the categories of guaranties subject to paragraph four of this
46 subsection, upon a demonstration satisfactory to the superintendent that
47 the amount carried is excessive in relation to the insurer's outstanding
48 obligations under its financial guaranties.
- 49 (B) upon thirty days prior written notice to the superintendent,
50 provided that the contingency reserve applicable to the categories of
51 guaranties subject to paragraph three of this subsection has been in
52 existence for forty quarters, or thirty quarters for categories of guar-
53 anties subject to paragraph four of this subsection, upon a demon-
54 stration satisfactory to the superintendent that the amount carried is
55 excessive in relation to the insurer's outstanding obligations under its
56 financial guaranties.

1 (7) An insurer providing financial guaranty insurance may invest the
2 contingency reserve in tax and loss bonds (or similar securities)
3 purchased pursuant to section 832(e) of the Internal Revenue Code (or
4 any successor provision), only to the extent of the tax savings result-
5 ing from the deduction for federal income tax purposes of a sum equal to
6 the annual contributions to the contingency reserve. The contingency
7 reserve shall otherwise be invested only in classes of securities or
8 types of investments specified in paragraphs one through three of
9 subsection (b) of section one thousand four hundred two of this chapter
10 and paragraphs one through three of subsection (a) of section one thou-
11 sand four hundred four of this chapter.

12 S 12. Paragraph 1 of subsection (b) of section 6903 of the insurance
13 law, as added by chapter 48 of the laws of 1989, is amended to read as
14 follows:

15 (1) The case basis method or such other method as may be prescribed by
16 the superintendent shall be used to establish and maintain loss
17 reserves, net of collateral, for claims reported and unpaid, in a manner
18 consistent with section four thousand one hundred seventeen of this
19 chapter. A deduction from loss reserves shall be allowed for the time
20 value of money by application of a discount rate, AS OF THE STATEMENT
21 DATE AND CORRESPONDING TO THE EXPECTED TIME OF CLAIM PAYMENT, equal to
22 the [average rate of return on the admitted assets of the insurer as of
23 the date of the computation of any such reserves] ZERO-COUPON YIELD
24 IMPLIED BY THE PRICE OF A REPRESENTATIVE SAMPLING OF COUPON BEARING
25 NONCALLABLE UNITED STATES TREASURY OBLIGATIONS, IN ACCORDANCE WITH A
26 METHOD OR FORMULA ACCEPTABLE TO THE SUPERINTENDENT. The discount rate
27 shall be adjusted at the end of each calendar [year] QUARTER OR SUCH
28 OTHER PERIOD AS THE SUPERINTENDENT DETERMINES.

29 S 13. The subsection heading and paragraph 1 of subsection (b) of
30 section 6904 of the insurance law, as amended by chapter 605 of the laws
31 of 2004, is amended to read as follows:

32 Permissible [guarantees] GUARANTIES. (1) The superintendent shall not
33 permit the writing of financial guaranty insurance except as defined in
34 subparagraph (A) of paragraph one of subsection (a) of section six thou-
35 sand nine hundred one of this article, and a [corporation] FINANCIAL
36 GUARANTY INSURER may insure the timely payment of United States dollar
37 debt instruments, or other monetary obligations, only in the following
38 categories:

39 (A) municipal obligation bonds;
40 (B) special revenue bonds;
41 (C) industrial development bonds;
42 (D) obligations of corporations, trusts or other similar entities
43 established under applicable law;

44 (E) partnership obligations;
45 (F) asset-backed securities, trust certificates and trust obligations
46 [other than]; PROVIDED THAT:

47 (I) WITH RESPECT TO mortgage-backed securities secured by first mort-
48 gages on real property which are insurable by a mortgage guaranty insur-
49 er authorized under paragraph twenty-three of subsection (a) of section
50 one thousand one hundred thirteen of this chapter[, unless]:

51 [(i)] (I) such mortgages with loan-to-value ratios in excess of eighty
52 percent are:

53 [(I)] (AA) in the case of mortgages on property located in the state
54 of New York, insured by mortgage guaranty insurers authorized under
55 paragraph twenty-three of subsection (a) of section one thousand one
56 hundred thirteen of this chapter;

1 [(II)] (BB) in the case of mortgages on property located in a state
2 other than the state of New York, insured by mortgage guaranty insurers
3 authorized to do business in such other state; or
4 [(III)] (CC) in an aggregate principal amount less than the single
5 risk limits prescribed in paragraph five of subsection (d) of this
6 section; or
7 [(ii)] (II) WITH RESPECT TO additional mortgages with principal
8 balances, other collateral with a market value, or (provided the insured
9 risk is investment grade) excess spread in an amount, in each instance
10 at least equal to the coverage that would otherwise be provided by such
11 mortgage guaranty insurers in accordance with [item (i)] CLAUSE (I) of
12 this [subparagraph] ITEM are pledged as additional security for the
13 asset-backed securities; OR
14 (II) WITH RESPECT TO ANY ASSET-BACKED SECURITIES BACKED BY ANOTHER
15 POOL OF ASSET-BACKED SECURITIES, THE CONDITIONS SET FORTH IN SUBPARA-
16 GRAPH (B) OF PARAGRAPH FIVE OF THIS SUBSECTION ARE MET;
17 (G) installment purchase agreements executed as a condition of sale;
18 (H) consumer debt obligations;
19 (I) utility first mortgage obligations; [and]
20 (J) INVESTMENT GRADE OBLIGATIONS OF THE GOVERNMENT OF A COUNTRY, MUNI-
21 CIPALITY, OR A POLITICAL SUBDIVISION OF ANY OF THE FOREGOING, OR ANY
22 PUBLIC AGENCY OR INSTRUMENTALITY THEREOF IF THAT ENTITY DOES NOT MEET
23 THE DEFINITION OF A GOVERNMENTAL UNIT; AND
24 (K) any other debt instrument or financial obligation that the super-
25 intendent determines to be substantially similar to any of the foregoing
26 or THAT shall otherwise be approved by the superintendent.
27 S 14. Paragraph 2 of subsection (b) of section 6904 of the insurance
28 law, as amended by chapter 605 of the laws of 2004, is amended and a new
29 paragraph 5 is added to read as follows:
30 (2) [An] (A) A FINANCIAL GUARANTY insurer may insure obligations
31 [enumerated in subparagraphs (A), (B), and (C) of paragraph one of this
32 subsection] that are not investment grade so long as at least ninety-
33 five percent of the insurer's aggregate net liability [on the kinds of
34 obligations enumerated in subparagraphs (A), (B) and (C) of paragraph
35 one of this subsection] shall be investment grade.
36 (B) UPON APPLICATION BY THE FINANCIAL GUARANTY INSURER, THE SUPER-
37 INTENDENT MAY ESTABLISH A LOWER PERCENTAGE OF THE FINANCIAL GUARANTY
38 INSURER'S AGGREGATE NET LIABILITY THAT IS REQUIRED TO BE INVESTMENT
39 GRADE IF THE SUPERINTENDENT DETERMINES THAT THERE IS NO UNDUE RISK TO
40 THE INSURER, OR ITS POLICYHOLDERS OR THE PEOPLE OF THIS STATE. IN
41 MAKING THE DETERMINATION, THE SUPERINTENDENT SHALL TAKE INTO CONSIDER-
42 ATION, AMONG OTHER FACTORS, THE FINANCIAL GUARANTY INSURER'S OUTSTANDING
43 LIABILITIES ON NON-INVESTMENT GRADE OBLIGATIONS IN RELATION TO THE
44 AMOUNT OF ITS SURPLUS TO POLICYHOLDERS AND CONTINGENCY RESERVES.
45 (C) A FINANCIAL GUARANTY INSURER SHALL NOTIFY THE SUPERINTENDENT AND
46 PROVIDE A PLAN FOR CORRECTIVE ACTION WITHIN FIVE CALENDAR DAYS AFTER THE
47 CONCLUSION OF ANY THIRTY-DAY CALENDAR PERIOD IN WHICH THE FINANCIAL
48 GUARANTY INSURER'S NON-INVESTMENT GRADE OBLIGATIONS CONTINUOUSLY EXCEED
49 THE PERMITTED AMOUNT BY MORE THAN TWENTY PERCENT.
50 (5) (A) A FINANCIAL GUARANTY POLICY SHALL NOT INSURE A POOL OF ASSETS
51 THAT INCLUDES ANY PART OF ONE OR MORE OTHER POOLS OF ASSETS, EXCEPT AS
52 PROVIDED IN PARAGRAPH TWO OF THIS SUBSECTION.
53 (B) A POOL OF ASSETS MAY INCLUDE A PART, OR THE ENTIRETY, OF ONE OR
54 MORE POOLS OF ASSETS, PROVIDED THAT:
55 (I) THE POOL OF ASSET-BACKED SECURITIES SHALL BE COMPRISED OF
56 ASSET-BACKED SECURITIES HAVING A RIGHT TO PAYMENT AND RIGHTS IN INSOL-

1 VENCY THAT ARE NOT SUBORDINATED TO ANY OTHER SECURITY OF THE ISSUER, IN
2 THE EVENT OF A PAYMENT DEFAULT BY, OR REHABILITATION OR INSOLVENCY OF,
3 THE ISSUER AND ALL POSITIONS GUARANTEED BY THAT INSURER HAVE BEEN DETER-
4 MINED TO BE INVESTMENT GRADE;

5 (II) THE FINANCIAL GUARANTY INSURER SHALL POSSESS CONTROL AND REMEDI-
6 ATION RIGHTS SUBSTANTIALLY SIMILAR TO THOSE HELD BY THE MOST SENIOR
7 CLASS OF SECURITIES OF THE ISSUER OF THE INSURED OBLIGATIONS BACKED BY
8 THE SAME POOL OF ASSETS;

9 (III) THE POOL, A PORTION OR ALL OF WHICH IS CONTAINED WITHIN THE POOL
10 OF ASSETS, CONSISTS SOLELY OF ASSET-BACKED SECURITIES THAT ARE ISSUED OR
11 GUARANTEED BY A GOVERNMENTAL UNIT, FEDERAL NATIONAL MORTGAGE ASSOCI-
12 ATION, FEDERAL HOME LOAN MORTGAGE CORPORATION, FEDERAL HOME LOAN BANK,
13 THE FEDERAL AGRICULTURAL MORTGAGE CORPORATION, OR THE FEDERAL FARM CRED-
14 IT SYSTEM BANKS AS A CONSOLIDATED DEBT OBLIGATION OR A SYSTEM WIDE DEBT
15 OBLIGATION TO THE EXTENT THAT THE OBLIGATIONS ARE COVERED BY THE FARM
16 CREDIT INSURANCE FUND;

17 (IV) THE COMBINATION OF A PORTION OR ALL OF TWO OR MORE POOLS OF
18 ASSET-BACKED SECURITIES DOES NOT INCREASE OR AFFECT EITHER THE QUANTITY
19 OR INVESTMENT QUALITY OF OBLIGATIONS GUARANTEED BY THAT INSURER;

20 (V) THE POOL CONSISTS ENTIRELY OF ASSET-BACKED SECURITIES INSURED BY
21 THE FINANCIAL GUARANTY INSURER; OR

22 (VI) THE SUPERINTENDENT DETERMINES, UPON APPLICATION BY THE INSURER,
23 THAT INCLUSION OF A PORTION OR ALL OF THE POOL WITHIN THE POOL OF ASSETS
24 INSURED BY THE FINANCIAL GUARANTY INSURER DOES NOT RESULT IN UNDUE RISK
25 TO THE INSURER, ITS POLICYHOLDERS, OR THE PEOPLE OF THIS STATE.

26 S 15. Subsection (c) of section 6904 of the insurance law, as added by
27 chapter 48 of the laws of 1989, is amended to read as follows:

28 (c) Aggregate risk limits. The [corporation] FINANCIAL GUARANTY INSUR-
29 ER must at all times maintain surplus to policyholders and contingency
30 reserves in the aggregate no less than the sum of:

31 (1)(A) 0.3333 percent or 1/300th of the aggregate net liability under
32 guaranties of municipal bonds including obligations demonstrated to the
33 satisfaction of the superintendent to be the functional equivalent ther-
34 eof and investment grade utility first mortgage obligations; plus

35 (B) 0.6666 percent or 1/150th of the aggregate net liability under
36 guaranties of investment grade asset-backed securities; plus

37 (C) 1.0 percent or 1/100th of the aggregate net liability under guar-
38 anties, secured by collateral or having a term of seven years or less,
39 of:

40 (i) investment grade industrial development bonds, AND

41 (ii) other investment grade obligations; plus

42 (D) 1.5 percent or 1/66.67th of the aggregate net liability under
43 guaranties of other investment grade obligations; plus

44 (E) 2.0 percent or 1/50th of the aggregate net liability under guaran-
45 ties of:

46 (i) non-investment grade consumer debt obligations, and

47 (ii) non-investment grade asset-backed securities; plus

48 (F) 2.5 percent or 1/40th of the aggregate net liability under guaran-
49 ties of non-investment grade obligations secured by first mortgages on
50 commercial real estate and having loan-to-value ratios of eighty percent
51 or less; plus

52 (G) 4.0 percent or 1/25th of the aggregate net liability under guaran-
53 ties of other non-investment grade obligations; and

54 (H) if the amount of collateral required by subparagraph (C) of this
55 paragraph is no longer maintained, that proportion of the obligation

1 insured which is not so collateralized shall be subject to the aggregate
2 RISK limits specified in subparagraph (D) of this paragraph; and

3 (2) surplus to policyholders determined by the superintendent to be
4 adequate to support the writing of residual value insurance, surety
5 insurance and credit insurance, if the [corporation] FINANCIAL GUARANTY
6 INSURER has elected to transact such kinds of insurance pursuant to
7 subsection (a) of section six thousand nine hundred two of this article.

8 S 16. Paragraphs 2, 4 and 5 of subsection (d) of section 6904 of the
9 insurance law, as amended by chapter 605 of the laws of 2004, are
10 amended to read as follows:

11 (2) (A) for each issue of asset-backed securities BACKED BY THE SAME
12 POOL OF ASSETS OR issued by a single entity [and], for [each pool] ALL
13 POOLS of consumer debt obligations AND ASSET-BACKED SECURITIES ORIGI-
14 NATED BY THE SAME ORIGINATOR, SERVICED BY THE SAME SERVICER AS OF THE
15 EFFECTIVE DATE OF THE POLICY, OR ISSUED IN THE SAME YEAR, FURTHER CATE-
16 GORIZED BY THE TYPE OF ASSETS SPECIFIED IN SUBPARAGRAPH (E) OF THIS
17 PARAGRAPH, the lesser of:

18 [(A)] (I) insured average annual debt service; or

19 [(B)] (II) insured unpaid principal (reduced by the extent to which
20 the unpaid principal of the supporting assets and, provided the insured
21 risk is investment grade, excess spread exceed the insured unpaid prin-
22 cipal) divided by nine[;]

23 shall not exceed ten percent of the aggregate of the FINANCIAL GUARANTY
24 insurer's surplus to policyholders and contingency reserve[, provided
25 that no].

26 (B) IF AN ASSET-BACKED SECURITY IS SUBORDINATE WITH RESPECT TO THE
27 RIGHT OF PAYMENT TO ANY OTHER SECURITIES OF THE ENTITY BACKED BY THE
28 SAME POOL OF ASSETS, THEN THE INSURED AVERAGE ANNUAL DEBT SERVICE AND
29 INSURED UNPAID PRINCIPAL SHALL BE DEEMED TO BE THE LESSER OF:

30 (I) THREE HUNDRED PERCENT OF THE INSURED AVERAGE ANNUAL DEBT SERVICE
31 OR INSURED UNPAID PRINCIPAL RESPECTIVELY; OR

32 (II) THE INSURED AVERAGE ANNUAL DEBT SERVICE OR INSURED UNPAID PRINCI-
33 PAL FOR BOTH THE INSURED SECURITY AND ALL SECURITIES SENIOR TO THE
34 INSURED SECURITY THAT ARE BACKED BY THE SAME POOL OF ASSETS BUT NOT
35 INSURED BY THE SAME FINANCIAL GUARANTY INSURER.

36 (C) FOR ALL ISSUES OF ASSET-BACKED SECURITIES ORIGINATED BY THE SAME
37 ORIGINATOR, SERVICED ON THE EFFECTIVE DATE OF THE RELATED INSURANCE
38 POLICY BY THE SAME SERVICER, OR BOTH, BACKED BY THE SAME TYPE OF ASSET
39 AND ISSUED IN THE SAME CALENDAR YEAR, THE LESSER OF FIVE TIMES THE:

40 (I) INSURED AVERAGE ANNUAL DEBT SERVICE; OR

41 (II) INSURED UNPAID PRINCIPAL (REDUCED BY THE EXTENT TO WHICH THE
42 UNPAID PRINCIPAL OF THE SUPPORTING ASSETS AND, PROVIDED THE INSURED RISK
43 IS INVESTMENT GRADE, EXCESS SPREAD EXCEED THE INSURED UNPAID PRINCIPAL)
44 DIVIDED BY NINE SHALL NOT EXCEED FIFTY PERCENT OF THE AGGREGATE OF THE
45 FINANCIAL GUARANTY INSURER'S SURPLUS TO POLICYHOLDERS AND CONTINGENCY
46 RESERVE.

47 (D) AN asset in the pool supporting the asset-backed securities
48 [exceeds] SHALL NOT EXCEED the single risk limits prescribed in [para-
49 graph five] SUBPARAGRAPH (A) of this [subsection] PARAGRAPH, if directly
50 guaranteed[; and provided further that, if].

51 (E) IF the issuer of [such] THE insured asset-backed securities AS
52 DESCRIBED IN SUBPARAGRAPH (A) OF THIS PARAGRAPH is a special purpose
53 corporation, SPECIAL PURPOSE trust or other SPECIAL PURPOSE LEGAL entity
54 and [such] THE issuer shall have indebtedness outstanding with respect
55 to any other pool of assets, THEN either such other indebtedness shall

1 be entitled to the benefits of a financial guaranty policy of the same
2 insurer, or such other indebtedness shall:

3 (i) be fully subordinated to the insured obligation, with respect to,
4 or be non-recourse with respect to, the pool of assets that supports the
5 insured obligation,

6 (ii) be non-recourse to the issuer other than with respect to the
7 asset pool securing such other indebtedness and proceeds in excess of
8 the proceeds necessary to pay the insured obligation ("excess
9 proceeds"); and

10 (iii) not constitute a claim against the issuer to the extent that the
11 asset pool securing such other indebtedness or excess proceeds are
12 insufficient to pay such other indebtedness[;].

13 (F) IF A SINGLE ORIGINATOR OR SERVICER MERGES OR CONSOLIDATES WITH,
14 ACQUIRES OR IS ACQUIRED BY, OR BECOMES A PARENT, SUBSIDIARY OR AFFILIATE
15 OF ANOTHER ORIGINATOR OR SERVICER ON OR AFTER THE ISSUE DATE OF ANY
16 POLICY, THEN THE RISK LIMITS SET FORTH IN SUBSECTION (C) OF THIS SECTION
17 AND THIS SUBSECTION SHALL CONTINUE TO BE COMPUTED WITHOUT REGARD TO THE
18 STATUS CHANGE WITH RESPECT TO POLICIES ISSUED BEFORE THE STATUS CHANGE.

19 (G) FOR THE PURPOSE OF THIS PARAGRAPH:

20 (I) AN ORIGINATOR OR SERVICER INCLUDES ANY PARENT, AFFILIATE OR
21 SUBSIDIARY OF THE ORIGINATOR OR SERVICER; AND

22 (II) "TYPES OF ASSETS" MEANS:

23 (I) MUNICIPAL OBLIGATIONS (INCLUDING STATE, COUNTY, CITY OR ANY OTHER
24 POLITICAL SUBDIVISION);

25 (II) SPECIAL REVENUE BONDS;

26 (III) INDUSTRIAL DEVELOPMENT BONDS;

27 (IV) CORPORATE OBLIGATIONS (TYPES I, II OR III, AS DESCRIBED BY EACH
28 YEAR'S PROPERTY/CASUALTY ANNUAL STATEMENT INSTRUCTIONS);

29 (V) CONSUMER DEBT OBLIGATIONS (INCLUDING CREDIT CARD RECEIVABLES AND
30 AUTOMOBILE LOANS);

31 (VI) OBLIGATIONS SECURED BY RESIDENTIAL REAL ESTATE (SUCH AS HOME
32 EQUITY LINES OF CREDIT, SECOND MORTGAGES, AND SUBPRIME MORTGAGES);

33 (VII) OBLIGATIONS SECURED BY COMMERCIAL REAL ESTATE, INCLUDING OFFICE
34 BUILDINGS AND MULTI-FAMILY DWELLINGS WITH MORE THAN FOUR RESIDENCES;

35 (VIII) NON-INVESTMENT GRADE OBLIGATIONS AND ALL OTHER GUARANTEES; OR

36 (IX) OTHER TYPES OF ASSETS AS THE SUPERINTENDENT MAY SPECIFY IN REGU-
37 LATIONS;

38 (4) for utility first mortgage obligations, the insured average annual
39 debt service shall not exceed ten percent of the aggregate of the FINAN-
40 CIAL GUARANTY insurer's surplus to policyholders and contingency
41 reserve; and

42 (5) for all other policies providing financial guaranty insurance
43 [with respect to] ON obligations issued by a single entity [and] OR
44 backed by a single revenue source, the insured unpaid principal shall
45 not exceed ten percent of the aggregate of the FINANCIAL GUARANTY insur-
46 er's surplus to policyholders and contingency reserve.

47 S 17. Subsection (f) of section 6904 of the insurance law, as amended
48 by chapter 89 of the laws of 1989, is amended and six new subsections
49 (h), (i), (j), (k), (l), and (m) are added to read as follows:

50 (f) An insurer shall not be deemed in violation of any limitation
51 prescribed by [subsection (d)] ANY PROVISION of this [section] ARTICLE
52 with respect to any financial guaranty insurance outstanding prior to
53 the effective date of [this article] THE PROVISION, if the insurer was
54 in compliance with the applicable [single risk limit] PROVISION OF THIS
55 ARTICLE in effect in this state at the time that the financial guaranty
56 insurance policy was issued. [If the insurer was not so in compliance,

1 such financial guaranty insurance shall comply with the limitations
2 prescribed by subsection (d) of this section no later than three years
3 after the effective date of this article.]

4 (H) ALL POLICIES ISSUED BY A FINANCIAL GUARANTY INSURER SHALL BE
5 AGGREGATED FOR PURPOSES OF DETERMINING WHETHER ANY LIMITATION PRESCRIBED
6 BY SUBSECTION (D) OF THIS SECTION HAVE BEEN EXCEEDED.

7 (I) A FINANCIAL GUARANTY INSURER SHALL REPORT TO THE SUPERINTENDENT
8 WITHIN TEN DAYS OF THE END OF A CALENDAR QUARTER, ON A FORM PRESCRIBED
9 BY THE SUPERINTENDENT, IF:

10 (1) THE NOTIONAL VALUE OF THE INSURER'S AGGREGATE LIABILITIES ON ALL
11 GUARANTEED MUNICIPAL OBLIGATION BONDS, SPECIAL REVENUE BONDS, AND INDUS-
12 TRIAL DEVELOPMENT BONDS, GROSS OF LIABILITIES ASSUMED AND NET OF LIABIL-
13 ITIES REINSURED, IS EQUAL TO OR GREATER THAN ONE HUNDRED TIMES POLICY-
14 HOLDER SURPLUS PLUS CONTINGENCY RESERVES;

15 (2) THE NOTIONAL VALUE OF THE INSURER'S AGGREGATE LIABILITIES ON ALL
16 GUARANTEED MUNICIPAL OBLIGATION BONDS, SPECIAL REVENUE BONDS, AND INDUS-
17 TRIAL DEVELOPMENT BONDS, GROSS OF LIABILITIES ASSUMED, BUT DISREGARDING
18 LIABILITIES REINSURED, IS EQUAL TO OR GREATER THAN TWO HUNDRED TIMES
19 POLICYHOLDER SURPLUS PLUS CONTINGENCY RESERVES;

20 (3) THE NOTIONAL VALUE OF THE INSURER'S AGGREGATE LIABILITIES ON ALL
21 GUARANTEED OBLIGATIONS OTHER THAN MUNICIPAL OBLIGATION BONDS, SPECIAL
22 REVENUE BONDS, AND INDUSTRIAL DEVELOPMENT BONDS, GROSS OF LIABILITIES
23 ASSUMED AND NET OF LIABILITIES REINSURED IS EQUAL TO OR GREATER THAN TEN
24 TIMES POLICYHOLDER SURPLUS PLUS CONTINGENCY RESERVES; OR

25 (4) THE NOTIONAL VALUE OF THE INSURER'S AGGREGATE LIABILITIES ON ALL
26 GUARANTEED OBLIGATIONS OTHER THAN MUNICIPAL OBLIGATION BONDS, SPECIAL
27 REVENUE BONDS, AND INDUSTRIAL DEVELOPMENT BONDS, GROSS OF LIABILITIES
28 ASSUMED, BUT DISREGARDING LIABILITIES REINSURED, IS EQUAL TO OR GREATER
29 THAN FIFTEEN TIMES POLICYHOLDER SURPLUS PLUS CONTINGENCY RESERVES.

30 (J) A FINANCIAL GUARANTY INSURER SHALL SUBMIT TO THE SUPERINTENDENT,
31 WITHIN FORTY-FIVE DAYS AFTER THE END OF EACH CALENDAR QUARTER, THE
32 FOLLOWING INFORMATION:

33 (1) A LISTING OF THE INSURER'S AGGREGATE LIABILITIES, INCLUDING EACH
34 LIABILITY'S FAIR VALUE, FOR ALL GUARANTEED OBLIGATIONS, GROSS OF LIABIL-
35 ITIES ASSUMED AND BOTH NET OF AND WITHOUT REGARD TO LIABILITIES REIN-
36 SURED; AND

37 (2) IDENTIFICATION OF ALL GUARANTEED OBLIGATIONS (INCLUDING EACH OBLI-
38 GATION'S FAIR VALUE), IN A FORM AND MANNER ACCEPTABLE TO THE SUPERINTEN-
39 DENT, IDENTIFYING THE OBLIGATION FOR ITS PROPER EVALUATION BY THE SUPER-
40 INTENDENT FOR DEGREE OF RISK.

41 (K) A REPORT PROVIDED TO THE SUPERINTENDENT PURSUANT TO THIS SECTION
42 SHALL INCLUDE:

43 (1) ALL RELEVANT SPECIFIC DETAIL (INCLUDING ANY APPLICABLE DOLLAR
44 AMOUNTS, PERCENTAGES, AND/OR RATIOS);

45 (2) AN EXPLANATION OF ANY RELEVANT FACTS AND CIRCUMSTANCES RESULTING
46 IN ANY DISCREPANCIES OR MATERIAL CHANGES FROM ANY PREVIOUS REPORT; AND

47 (3) A STATEMENT AS TO ANY ACTIONS THE INSURER MAY INTEND TO TAKE TO
48 AFFECT THE PROVIDED INFORMATION.

49 (L) NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, THE SUPER-
50 INTENDENT MAY, PURSUANT TO REGULATION, PROHIBIT THE WRITING OF FINANCIAL
51 GUARANTY INSURANCE, OR IMPOSE LIMITATIONS WITH RESPECT TO THE WRITING OF
52 FINANCIAL GUARANTY INSURANCE, WITH RESPECT TO ANY INSTRUMENT OR OTHER
53 MONETARY OBLIGATION THAT IS NOT INVESTMENT GRADE, UPON A DETERMINATION
54 THAT THE PROHIBITION OR IMPOSITION OF LIMITATIONS IS NECESSARY TO
55 PROTECT THE INTERESTS OF FINANCIAL GUARANTY INSURERS, POLICYHOLDERS,
56 CLAIMANTS, OBLIGEEES OR INDEMNITEES, OR THE PEOPLE OF THIS STATE.

1 (M) ANY REPORT SUBMITTED PURSUANT TO THIS SECTION SHALL BE KEPT CONFIDENTIAL AND NOT BE MADE PUBLIC UNLESS, AFTER NOTICE AND AN OPPORTUNITY TO BE HEARD, THE SUPERINTENDENT DETERMINES THAT THE INTERESTS OF POLICYHOLDERS, STOCKHOLDERS OR THE PUBLIC WILL BE SERVED BY THE PUBLICATION THEREOF.

6 S 18. Section 6905 of the insurance law, as added by chapter 48 of the laws of 1989, subsection (a) as amended by chapter 672 of the laws of 2005, is amended to read as follows:

9 S 6905. Policy forms and rates. (a) Policy forms and any amendments OR ENDORSEMENTS thereto shall be filed with the superintendent within thirty days of their use by the FINANCIAL GUARANTY insurer if not otherwise filed prior to the effective date of this article.

13 (B) Every [such] FINANCIAL GUARANTY policy shall provide that, in the event of a payment default by or insolvency of the obligor, there shall be no acceleration of the payment required to be made under such policy unless [such] acceleration is [at the sole option of the corporation; provided that (1) policies may insure amounts payable under a credit default swap or interest rate, currency or other swap upon a credit event or termination event if the expected amount payable on an accelerated basis in respect of any individual obligation referenced by a credit default swap or in the aggregate under an interest rate, currency or other swap does not exceed the single risk limits prescribed in paragraph five of subsection (d) of section six thousand nine hundred four of this article and (2) policies insuring credit default swaps referencing an obligation shall be treated as if the insurer had directly insured the referenced obligation for all other purposes of this article, except that the currency of amounts owed under the credit default swap, rather than the currency of the obligations referenced by the credit default swap, shall apply for purposes of determining whether the obligation is a permissible guaranty under subsection (b) of section six thousand nine hundred four of this article PERMITTED BY THE FINANCIAL GUARANTY INSURER AT ITS SOLE OPTION, EXERCISED AT THE TIME OF THE PAYMENT.

34 (C) A FINANCIAL GUARANTY POLICY SHALL NOT PROVIDE THAT COMMENCEMENT OF REHABILITATION, LIQUIDATION OR CONSERVATORSHIP PROCEEDINGS UNDER ARTICLE SEVENTY-FOUR OF THIS CHAPTER, BANKRUPTCY OR ANY OTHER SIMILAR PROCEEDINGS WHETHER UNDER THE LAWS OF THIS STATE OR ANOTHER STATE, WITH RESPECT TO A FINANCIAL GUARANTY INSURER OR THE INSURED ACCELERATES ANY PAYMENT REQUIRED TO BE MADE UNDER THE POLICY, ABSENT A PAYMENT DEFAULT BY THE OBLIGOR OR THE INSURER.

41 (D) A FINANCIAL GUARANTY POLICY MAY PROVIDE THAT EITHER THE FINANCIAL GUARANTY INSURER OR THE INSURED MAY TERMINATE THE POLICY AS A CONSEQUENCE OF THE COMMENCEMENT OF REHABILITATION, LIQUIDATION OR CONSERVATORSHIP PROCEEDINGS UNDER ARTICLE SEVENTY-FOUR OF THIS CHAPTER, BANKRUPTCY OR ANY OTHER SIMILAR PROCEEDINGS, WHETHER UNDER THE LAWS OF THIS STATE OR ANOTHER STATE, WITH RESPECT TO A FINANCIAL GUARANTY INSURER OR THE INSURED, PROVIDED THAT THE TERMINATION:

48 (1) DOES NOT ACCELERATE OR OTHERWISE INCREASE THE OBLIGATION OF THE FINANCIAL GUARANTY INSURER TO MAKE SCHEDULED PAYMENTS WHEN DUE UNDER THE POLICY; AND

51 (2) DOES NOT REQUIRE THE INSURER TO MAKE ANY ADDITIONAL PAYMENT TO THE INSURED BY REASON OF THE TERMINATION.

53 (E) The superintendent BY REGULATION may prescribe minimum policy provisions determined by the superintendent to be necessary or appropriate to protect FINANCIAL GUARANTY INSURERS, policyholders, claimants, obligees or indemnitees OR THE PEOPLE OF THIS STATE.

1 [(b)] (F) Rates shall not be excessive, inadequate, unfairly discrimi-
2 natory, destructive of competition, detrimental to the solvency of the
3 insurer, or otherwise unreasonable. In determining whether rates comply
4 with the foregoing standards, the superintendent shall include all
5 income earned by such insurer. Criteria and guidelines utilized by
6 insurers in establishing rating categories and ranges of rates to be
7 utilized shall be filed with the superintendent for information prior to
8 their use by the insurer if not otherwise filed prior to the effective
9 date of this article.

10 [(c)] (G) All such filings shall be available for public inspection at
11 the insurance department.

12 S 19. Section 6907 of the insurance law, as added by chapter 48 of the
13 laws of 1989, subparagraph (C) of paragraph 1 of subsection (a) as
14 amended by chapter 324 of the laws of 1992, is amended to read as
15 follows:

16 S 6907. Transition provisions. (A) A licensed insurer writing finan-
17 cial guaranty insurance prior to the effective date of this article, but
18 which is not authorized to write financial guaranty insurance in this
19 state, shall be subject to all the provisions of this article, except
20 section six thousand nine hundred two of this article, and SHALL:

21 [(a) may, unless the superintendent determines after notice and an
22 opportunity to be heard that such activity poses a hazard to the insur-
23 er, its policyholders or to the public, continue to write financial
24 guaranties (except guaranties of municipal bonds) of the types author-
25 ized by subsection (b) of section six thousand nine hundred four of this
26 article applicable to financial guaranty insurance corporations, subject
27 to the following conditions:

28 (1) For a transition period not to exceed sixty months from the effec-
29 tive date of this article, if the insurer has and maintains surplus to
30 policyholders of at least seventy-five million dollars (for the purpose
31 of this paragraph, if the insurer is a foreign insurer, its surplus to
32 policyholders shall be computed as if it were a domestic insurer);
33 provided that:

34 (A) during the sixty month transition period, the amount of surplus to
35 policyholders needed to meet the single and aggregate risk limitations
36 imposed by this article must be less than four percent of the insurer's
37 surplus to policyholders;

38 (B) within nine months of the effective date of this article, the
39 insurer shall file a reasonable plan of operation, acceptable to the
40 superintendent, which shall contain:

41 (i) a reasonable timetable and appropriate procedures to implement
42 that timetable to make a determination as to whether or not the insurer
43 will make application to organize a financial guaranty insurance corpo-
44 ration during the aforesaid sixty month period;

45 (ii) the types and projected diversification of guaranties that will
46 be issued during the transition period;

47 (iii) the underwriting procedures that will be followed;

48 (iv) oversight methods;

49 (v) investment policies; and

50 (vi) such other matters as may be prescribed by the superintendent.
51 The plan of operation shall be deemed acceptable unless, within sixty
52 days of its filing, the superintendent notifies the insurer of any
53 specific objections to such plan. The plan shall be updated in the event
54 of a material change with respect to the foregoing and at least annual-
55 ly;

1 (C) if the insurer has determined that it will not organize a finan-
2 cial guaranty insurance corporation, within thirty days after that
3 determination it shall notify the superintendent, cease writing policies
4 of financial guaranty insurance and comply with the provisions of para-
5 graph four of this subsection; and

6 (D) the insurer shall file such additional statements or reports as
7 may be required by the superintendent.

8 (2) For a transition period not to exceed ninety-six months from the
9 effective date of this article, if the insurer has and maintains surplus
10 to policyholders of at least one hundred fifty million dollars (for the
11 purpose of this section, surplus to policyholders means the aggregate
12 surplus to policyholders of said insurer and other member companies of
13 an inter-company pool, and if the insurer is a foreign insurer its
14 surplus to policyholders shall be computed as if it were a domestic
15 insurer) and the aggregate financial guaranty written premium of said
16 insurer and other member companies of an inter-company pool shall have
17 been at least one million dollars in any one of the five years ending
18 December thirty-first, nineteen hundred eighty-eight, provided that:

19 (A) during the first sixty months of the transition period, the amount
20 of surplus to policyholders needed to meet the aggregate risk limita-
21 tions imposed by this article must be less than four percent of the
22 insurer's surplus to policyholders. After such sixty month period,
23 provided the insurer complies with subparagraph (D) of this paragraph,
24 the amount of surplus to policyholders needed to meet such aggregate
25 risk limitations must be less than five percent of the insurer's surplus
26 to policyholders for the succeeding twelve month period and less than
27 six percent for the next succeeding twenty-four month period;

28 (B) during the transition period, the amount of surplus to policyhold-
29 ers needed to meet the single risk limitations imposed by paragraphs two
30 through five of subsection (d) of section six thousand nine hundred four
31 of this article must be less than twenty percent of the insurer's
32 surplus to policyholders, except that the single risk limitation with
33 respect to investment grade obligations under such paragraph five shall
34 be the lesser of eighty million dollars or seven percent of the insur-
35 er's surplus to policyholders;

36 (C) during the transition period, notwithstanding the last sentence of
37 paragraph one of subsection (b) of section six thousand nine hundred
38 four, industrial development bonds shall not be included in the invest-
39 ment grade requirements set forth in such sentence.

40 (D) during the transition period, reinsurance in the form of intercom-
41 pany pooling agreements, shall not be subject to subparagraphs (C), (D),
42 (E) and (F) of paragraph two of subsection (a) of section six thousand
43 nine hundred six of this article, if such intercompany pooling agree-
44 ments were in effect on January first, nineteen hundred eighty-nine, and
45 reinsurance placed with insurers which are subject to the provisions of
46 paragraph two of subsection (a) of section six thousand nine hundred six
47 and are not members of the ceding company's intercompany pooling agree-
48 ment may not exceed sixty percent of the total exposures insured net of
49 collateral remaining after deducting any reinsurance placed with another
50 financial guaranty insurance corporation or an insurer writing only
51 financial guaranty insurance as is or would be permitted by this arti-
52 cle;

53 (E) within sixty months of the effective date of this article, the
54 insurer shall file a reasonable plan of operation, acceptable to the
55 superintendent, which shall contain:

1 (i) a reasonable timetable and appropriate procedures to implement
2 that timetable to make a determination as to whether or not the insurer
3 will make application to organize a financial guaranty insurance corpo-
4 ration during the aforesaid ninety-six month period;

5 (ii) the types and projected diversification of guaranties that will
6 be issued during the transition period;

7 (iii) the underwriting procedures that will be followed;

8 (iv) oversight methods;

9 (v) investment policies; and

10 (vi) such other matters as may be prescribed by the superintendent.
11 The plan of operation shall be deemed acceptable unless, within sixty
12 days of its filing, the superintendent notifies the insurer of any
13 specific objections to such plan. The plan shall be updated in the event
14 of a material change with respect to the foregoing and at least annual-
15 ly;

16 (F) if the insurer has determined that it will not organize a finan-
17 cial guaranty insurance corporation, within thirty days after that
18 determination it shall notify the superintendent, cease writing policies
19 of financial guaranty insurance and comply with the provisions of para-
20 graph four of this subsection; and

21 (G) the insurer shall file such additional statements or reports as
22 may be required by the superintendent.

23 (3) For a transition period not to exceed twelve months from the
24 effective date of this article, in the case of an insurer transacting
25 only financial guaranty insurance prior to the effective date of this
26 article and which qualifies for licensing as a financial guaranty insur-
27 ance corporation under section six thousand nine hundred two of this
28 article, provided that it makes application to amend its current license
29 to that of a financial guaranty insurance corporation licensed to trans-
30 act only those kinds of insurance permitted pursuant to section six
31 thousand nine hundred two of this article within sixty days of the
32 effective date of this article, and provided that, for purposes of this
33 paragraph, an insurer shall be deemed to be transacting only financial
34 guaranty insurance prior to the effective date of this article if, with
35 the approval of the superintendent, it has reinsured all of any other
36 insurance liabilities with one or more authorized insurers or has other-
37 wise made provision for such liabilities.

38 (4) For a transition period not to exceed nine months, in the case of
39 an insurer that does not qualify under either paragraph one, two or
40 three of this subsection or does not file a plan of operation pursuant
41 to paragraph one or two of this subsection, such insurer shall cease
42 writing any new financial guaranty insurance business and may:

43 (A) reinsure its net in force business with a licensed financial guar-
44 anty insurance corporation; or

45 (B) subject to the prior approval of its domiciliary commissioner,
46 reinsure all or part of its net in force business in accordance with the
47 requirements of paragraph two of subsection (a) of section six thousand
48 nine hundred six of this article, except that subparagraphs (D), (E) and
49 (F) of paragraph two of such subsection shall not be applicable. The
50 assuming insurer shall maintain reserves of such reinsured business in
51 the manner applicable to the ceding insurer under this paragraph; or

52 (C) thereafter continue the risks then in force and, with thirty days
53 prior written notice to its domiciliary commissioner, issue new finan-
54 cial guaranty policies, provided that the issuing of such policies is
55 reasonably prudent to mitigate either the amount of or possibility of
56 loss in connection with business transacted prior to the effective date

1 of this article. Provided, however, an insurer must receive the prior
2 approval of its domiciliary commissioner before issuing any new finan-
3 cial guaranty insurance policies that would have the effect of increas-
4 ing its risk of loss;

5 (b) shall,] (1) for all guaranties in force prior to the effective
6 date of this article, including those [which] THAT fall under the defi-
7 nition of financial guaranty insurance contained in subsection (a) of
8 section six thousand nine hundred one of this article, be subject to the
9 reserve requirements applicable for municipal bond guaranties in effect
10 prior to the effective date of this article. To the extent that the
11 FINANCIAL GUARANTY insurer's contingency reserves maintained as of the
12 effective date of this article are less than those required for municip-
13 al bond guaranties, the insurer shall have three years to bring its
14 reserves into compliance, except that a part of the reserve may be
15 released proportional to the reduction in aggregate net liability
16 resulting from reinsurance, provided that the reinsurer shall, on the
17 effective date of the reinsurance, establish a reserve in an amount
18 equal to the amount released and, in addition, a part of the reserve may
19 be released with the approval of the superintendent upon demonstration
20 that the amount carried is excessive in relation to the [corporation's]
21 FINANCIAL GUARANTY INSURER'S outstanding obligations; and

22 [(c) shall] (2) be subject to the reserve requirements specified in
23 section six thousand nine hundred three of this article for all policies
24 of financial guaranty insurance issued on or after the effective date of
25 this article.

26 (B) A POLICY ISSUED BY A FINANCIAL GUARANTY INSURER ON OR AFTER AUGUST
27 FIRST, TWO THOUSAND NINE, WHICH AMENDS OR REPLACES A POLICY ISSUED
28 BEFORE AUGUST FIRST, TWO THOUSAND NINE, SHALL BE GOVERNED BY THIS ARTI-
29 CLE AS IN EFFECT ON THE DATE THE ORIGINAL POLICY WAS FIRST ISSUED OR, IF
30 AMENDED, THE DATE THAT THE ORIGINAL POLICY WAS LAST AMENDED PRIOR TO
31 AUGUST FIRST, TWO THOUSAND NINE, PROVIDED THAT THE AMENDMENT OR REPLACE-
32 MENT OF THE ORIGINAL INSURANCE POLICY IS EXECUTED SOLELY TO MITIGATE
33 ACCUMULATED LOSSES AND REDUCE EXPOSURE TO FUTURE LOSSES UNDER THE POLI-
34 CY.

35 (C) IF A FINANCIAL GUARANTY INSURER'S EXPOSURE TO LOSS ON ANY ONE RISK
36 INSURED BY POLICIES PROVIDING FINANCIAL GUARANTY INSURANCE, NET OF
37 COLLATERAL AND REINSURANCE, EXCEEDS THE SINGLE RISK LIMITS IN SUBSECTION
38 (D) OF SECTION SIX THOUSAND NINE HUNDRED FOUR OF THIS ARTICLE AS OF
39 AUGUST FIRST, TWO THOUSAND NINE, THE FINANCIAL GUARANTY INSURER'S EXPO-
40 SURE TO LOSS SHALL NONETHELESS BE DEEMED TO SATISFY THE REQUIREMENTS OF
41 SUCH SUBSECTION PROVIDED THAT:

42 (1) THE FINANCIAL GUARANTY INSURER'S EXPOSURE TO LOSS ON ANY SINGLE
43 RISK DOES NOT EXCEED THE EXPOSURES ON THAT RISK AS OF AUGUST FIRST, TWO
44 THOUSAND NINE;

45 (2) THE FINANCIAL GUARANTY INSURER SHALL NOT ISSUE A POLICY ADDING
46 ADDITIONAL EXPOSURE TO LOSS WITH RESPECT TO THAT SINGLE RISK;

47 (3) THE FINANCIAL GUARANTY INSURER'S EXPOSURE TO LOSS UNDER THIS
48 SUBSECTION SHALL BE REDUCED TO REFLECT PREPAYMENTS, AMORTIZATION,
49 INCREASED CAPITAL, REINSURANCE AND ANY OTHER EVENT THAT REDUCES THE
50 AMOUNT OF THE INSURER'S EXPOSURE TO LOSS FOR THE SPECIFIC SINGLE RISK;

51 (4) THE FINANCIAL GUARANTY INSURER'S EXPOSURE TO LOSS, AS ADJUSTED BY
52 PARAGRAPH THREE OF THIS SUBSECTION, FOR A SPECIFIC SINGLE RISK SHALL
53 QUARTERLY BE COMPARED TO THE SINGLE RISK LIMIT COMPUTED UNDER SUBSECTION
54 (D) OF SECTION SIX THOUSAND NINE HUNDRED FOUR OF THIS ARTICLE, AS
55 AMENDED EFFECTIVE AUGUST FIRST, TWO THOUSAND NINE; AND

1 (5) THE SUBSECTION SHALL NO LONGER APPLY AS OF THE DATE UPON WHICH THE
2 INSURER'S EXPOSURE TO LOSS FOR THE SPECIFIC SINGLE RISK IS EQUAL TO OR
3 LESS THAN THE SINGLE RISK LIMITS COMPUTED UNDER SUBSECTION (D) OF
4 SECTION SIX THOUSAND NINE HUNDRED FOUR OF THIS ARTICLE, AS AMENDED
5 EFFECTIVE ON AUGUST FIRST, TWO THOUSAND NINE.

6 S 20. Section 1108 of the insurance law is amended by adding a new
7 subsection (j) to read as follows:

8 (J)(1) A WRITER OF A CREDIT DEFAULT SWAP OR ANY AGENT, BROKER OR OTHER
9 PERSON ACTING IN CONNECTION WITH THE MAKING OF THE CREDIT DEFAULT SWAP,
10 FROM THIS CHAPTER OR ANY PART THEREOF, TO THE EXTENT THAT THE SUPER-
11 INTENDENT IN A REGULATION HAS DETERMINED THAT THE ISSUANCE OF THE CREDIT
12 DEFAULT SWAP IS EFFECTIVELY AND COMPREHENSIVELY REGULATED IN A MANNER
13 THAT PROTECTS THE INTERESTS OF THE PEOPLE OF THIS STATE, INCLUDING THAT:

14 (A) THE CREDIT DEFAULT SWAP WRITER SHALL MAINTAIN ADEQUATE CAPITAL AND
15 POST SUFFICIENT TRADING MARGINS TO MINIMIZE COUNTERPARTY RISK; AND

16 (B) COMPREHENSIVE MARKET DATA IS COLLECTED AND TIMELY MADE AVAILABLE
17 TO ALL APPROPRIATE REGULATORY AUTHORITIES.

18 (2) FOR PURPOSES OF THIS SUBSECTION, "CREDIT DEFAULT SWAP" MEANS AN
19 AGREEMENT REFERENCING THE CREDIT DERIVATIVE DEFINITIONS PUBLISHED FROM
20 TIME TO TIME BY THE INTERNATIONAL SWAP AND DERIVATIVES ASSOCIATION, INC.
21 OR OTHERWISE ACCEPTABLE TO THE SUPERINTENDENT, PURSUANT TO WHICH A PARTY
22 AGREES TO COMPENSATE ANOTHER PARTY IN THE EVENT OF A PAYMENT DEFAULT BY,
23 INSOLVENCY OF, OR OTHER ADVERSE CREDIT EVENT IN RESPECT OF, AN ISSUER OF
24 A SPECIFIED SECURITY OR OTHER OBLIGATION.

25 S 21. This act shall take effect August 1, 2009.