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

6001

2009-2010 Regular Sessions

I N S E N A T E

June 19, 2009

Introduced by Sen. BRESLIN -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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:

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:

(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:

(A) failure of any obligor on or issuer of any debt instrument or other monetary obligation (including equity securities [guarantied] 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

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

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payment, regardless of whether such obligation is incurred directly or as guarantor by or on behalf of another obligor that has also defaulted;

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

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

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

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

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

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

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

(I) to the extent that any such obligations or indebtedness are backed by specific assets, such assets must at all times be owned by the insurer or the subsidiary; and

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

(ii) in which a life insurer [guaranties] GUARANTEES obligations or indebtedness (including the obligation to substitute assets where appropriate) with respect to specific assets acquired by such life insurer in the course of its normal investment activities and not for the purpose of resale with credit enhancement, or [guaranties] GUARANTEES obligations or indebtedness acquired by its subsidiary, provided that the assets acquired pursuant to this item (ii) have been:

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

(II) sold to an independent third party; or

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

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

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

(i) [guarantees] GUARANTIES authorized pursuant to section one thousand one hundred fourteen of this chapter; OR

(ii) financial guaranty insurance policies insuring guaranteed investment contracts issued by life insurers, provided that:

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

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

(III) the obligations insured by the financial guaranty insurance policies are investment grade based on the rating of the life insurers or, in the case of separate account guaranteed investment contracts, based on the ratings of such separate accounts;

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

(V) the financial guaranty insurance policies provide that if, prior to payment by the insurer under the financial guaranty insurance policies, the guaranty fund has paid a claim under such contracts for an amount that, when added to the amount payable under the financial guaranty insurance policies, would exceed the amount owed under such contracts, then the financial guaranty insurer shall pay the portion of the amount payable in excess of the contract amounts to the guaranty fund instead of to the beneficiary under such contracts; or

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

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

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

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

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

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

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

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

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

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

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

[(iii)] (C) no asset in such pool, other than an asset directly payable by, guaranteed by or backed by the full faith and credit of the United States government or that otherwise qualifies as collateral under

paragraph one or two of subsection (g) of this section, has a value exceeding twenty percent of the pool's aggregate value[; or

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

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

(B) no reference obligation in such pool, other than an obligation directly payable by, guaranteed by or backed by the full faith and credit of the United States government or that otherwise qualifies as collateral under paragraph two of subsection (g) of this section, has a notional amount exceeding ten percent of the pool's aggregate notional amount; and

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

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

(g) "Collateral" means:

(1) cash;

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

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

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

(A) is irrevocable;

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

(C) is issued, presentable and payable either:

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

(ii) at an office of the letter of credit issuer located in the jurisdiction in which the trustee or paying agent for the insured obligation is located;

(D) contains a statement that either:

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

(ii) identifies the trustee or the paying agent for the insured obligation as the beneficiary;

(E) contains a statement to the effect that the obligation of the letter of credit issuer under the letter of credit is an individual obligation of such issuer and is in no way contingent upon reimbursement with respect thereto;

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

(G) either:

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

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

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

(I) is issued by a bank, trust company, or savings and loan association that:

(i) is organized and existing under the laws of the United States or any state thereof or, in the case of a non-domestic financial institution, has a branch or agency office licensed under the laws of the United States or any state thereof and is domiciled in a member country of the Organisation for Economic Co-operation and Development having a sovereign rating in one of the top two generic lettered rating classifications by a securities rating agency acceptable to the superintendent;

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

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

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

(A) may not be amended without the consent of the insurer and may only be terminated: (i) at the option of the insurer; (ii) at the option of the counterparty to the insurer (or its nominee), if the credit default swap provides for the payment of a termination amount equal to the replacement cost of the terminated credit default swap determined with reference to standard documentation of the International Swap and Derivatives Association, Inc. or otherwise acceptable to the superintendent; or (iii) at the discretion of the superintendent acting as a rehabilitator, liquidator or receiver of the insurer upon payment by or on behalf of the insurer of any termination amount due from the insurer;

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

(C) is provided by:

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

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

(iii) any other financial institution that the superintendent determines to be substantially similar to any of the foregoing.

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

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

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

(n) "Investment grade" means that:

(1) the obligation or parity obligation of the same issuer has been determined to be in one of the top four generic lettered rating classifications by a securities rating agency acceptable to the superintendent OR THE SECURITIES VALUATION OFFICE OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS DESIGNATES THE OBLIGATION CATEGORY 1 OR 2;

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

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

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

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

sand one hundred six of this chapter, except as modified by the following provisions:

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

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

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

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

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

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

(4) a financial guaranty [insurance corporation's] INSURER'S investments in any one entity insured by that [corporation] INSURER shall not exceed four percent of its admitted assets at last year-end, except that this limit shall not apply to investments payable or guaranteed by a United States governmental unit or New York state if such investments payable or guaranteed by the United States governmental unit or New York state shall be rated in one of the top two generic lettered rating classifications by a securities rating agency acceptable to the superintendent.

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

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

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

(iii) the amount of foreign currencies to be purchased under the transaction shall not exceed the amount guaranteed under such policies or reinsurance contracts that is denominated in foreign currency;

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

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

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

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

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

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

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

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

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

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

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

(3)] A FINANCIAL GUARANTY INSURER SHALL MAINTAIN, AND MAKE AVAILABLE FOR INSPECTION BY THE SUPERINTENDENT UPON REQUEST, UNDERWRITING GUIDELINES REQUIRING:

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

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

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

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

PARAGRAPH TWO OF THIS SUBSECTION SHALL BE KEPT CONFIDENTIAL AND SHALL 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.

(4) A financial guaranty [insurance company] INSURER shall be deemed to be in compliance with paragraphs one and two of subsection (b) of section one thousand four hundred two of this chapter if not less than sixty percent of the amount of the required minimum capital or minimum surplus to policyholder investments shall consist of the types specified in paragraphs one and two of subsection (b) of section one thousand four hundred two of this chapter and direct government obligations of any state of the United States or of any county, district or municipality thereof, provided such government obligations have been given the highest quality designation of the Securities Valuation Office of the National Association of Insurance Commissioners. Before investing any part of the required minimum capital or surplus in direct government obligations of any other state of the United States or of any county, district or municipality thereof, such financial guaranty [insurance company] INSURER shall have invested at least ten percent of such required minimum in government obligations of New York state or of any county, district or municipality thereof. Only for purposes of meeting the required investment in government obligations of New York state, the FINANCIAL GUARANTY insurer may count investments in any government obligation of New York state, whether direct or otherwise.

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

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

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

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

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

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

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

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

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

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

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

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

(B) the total contingency reserve required shall be the greater of fifty percent of premiums written for each such category or the following amount prescribed for each such category:

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

(ii) special revenue bonds, and obligations demonstrated to the satisfaction of the superintendent to be the functional equivalent thereof, 0.85 percent of principal [guarantied] GUARANTEED;

(iii) investment grade industrial development bonds, secured by collateral or having a term of seven years or less, and utility first mortgage obligations, 1.0 percent of principal [guarantied] GUARANTEED;

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

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

(C) Contributions to the contingency reserve required by this paragraph, equal to one-eightieth of the total reserve required, shall be made each quarter for twenty years, provided, however, that contributions may be discontinued so long as the total reserve for all categories listed in items (i) through (v) of subparagraph (B) of this paragraph exceeds the percentages contained in such items (i) through (v) when applied against unpaid principal.

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

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

(B) the total contingency reserve required shall be the greater of fifty percent of premiums written for each such category or the following amount prescribed for each such category:

(i) investment grade obligations, secured by collateral or having a term of seven years or less, 1.0 percent of principal [guarantied] GUARANTEED;

(ii) other investment grade obligations, 1.5 percent of principal [guarantied] GUARANTEED;

(iii) non-investment grade consumer debt obligations, 2.0 percent of principal [guarantied] GUARANTEED;

(iv) non-investment grade asset-backed securities, 2.0 percent of principal [guarantied] GUARANTEED;

(v) other non-investment grade obligations, 2.5 percent of principal [guarantied] GUARANTEED; and

(C) Contributions to the contingency reserve required by this paragraph, equal to one-sixtieth of the total reserve required, shall be made each quarter for fifteen years, provided, however, that contributions may be discontinued so long as the total reserve for all categories listed in items (i) through (v) of subparagraph (B) of this paragraph exceeds the percentages contained in such items (i) through (v) when applied against unpaid principal.

(5) Contingency reserves required in paragraphs two, three and four of this subsection may be established and maintained net of collateral and reinsurance, provided that, in the case of reinsurance, the reinsurance agreement requires that the reinsurer shall, on or after the effective date of the reinsurance, establish and maintain a reserve in an amount equal to the amount by which the insurer reduces its contingency reserve, and contingency reserves required in paragraphs three and four of this subsection may be maintained (A) net of refundings and refinancings to the extent the refunded or refinanced issue is paid off or secured by obligations which are directly payable or [guarantied] GUARANTEED by the United States government and (B) net of insured securities in a unit investment trust or mutual fund that have been sold from the trust or fund without insurance.

(6) The contingency reserves may be released thereafter in the same manner in which they were established and withdrawals therefrom, to the extent of any excess, may be made from the earliest contributions to such reserves remaining therein:

(A) with the prior written approval of the superintendent:

(i) if the actual incurred losses for the year, in the case of the categories of guaranties subject to paragraph three of this subsection exceeds thirty-five percent of earned premiums, or in the case of the categories of guaranties subject to paragraph four of this subsection exceed sixty-five percent of earned premiums; or

(ii) if the contingency reserve applicable to the categories of guaranties subject to paragraph three of this subsection has been in existence for less than forty quarters, or for less than thirty quarters for the categories of guaranties subject to paragraph four of this subsection, upon a demonstration satisfactory to the superintendent that the amount carried is excessive in relation to the insurer's outstanding obligations under its financial guaranties.

(B) upon thirty days prior written notice to the superintendent, provided that the contingency reserve applicable to the categories of guaranties subject to paragraph three of this subsection has been in existence for forty quarters, or thirty quarters for categories of guaranties subject to paragraph four of this subsection, upon a demonstration satisfactory to the superintendent that the amount carried is excessive in relation to the insurer's outstanding obligations under its financial guaranties.

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

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

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

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

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

(A) municipal obligation bonds;

(B) special revenue bonds;

(C) industrial development bonds;

(D) obligations of corporations, trusts or other similar entities established under applicable law;

(E) partnership obligations;

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

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

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

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

[(II)] (BB) in the case of mortgages on property located in a state other than the state of New York, insured by mortgage guaranty insurers authorized to do business in such other state; or

[(III)] (CC) in an aggregate principal amount less than the single risk limits prescribed in paragraph five of subsection (d) of this section; or

[(ii)] (II) WITH RESPECT TO additional mortgages with principal balances, other collateral with a market value, or (provided the insured risk is investment grade) excess spread in an amount, in each instance at least equal to the coverage that would otherwise be provided by such mortgage guaranty insurers in accordance with [item (i)] CLAUSE (I) of this [subparagraph] ITEM are pledged as additional security for the asset-backed securities; OR

(II) WITH RESPECT TO ANY ASSET-BACKED SECURITIES BACKED BY ANOTHER POOL OF ASSET-BACKED SECURITIES, THE CONDITIONS SET FORTH IN SUBPARAGRAPH (B) OF PARAGRAPH FIVE OF THIS SUBSECTION ARE MET;

(G) installment purchase agreements executed as a condition of sale;

(H) consumer debt obligations;

(I) utility first mortgage obligations; [and]

(J) INVESTMENT GRADE OBLIGATIONS OF THE GOVERNMENT OF A COUNTRY, MUNICIPALITY, OR A POLITICAL SUBDIVISION OF ANY OF THE FOREGOING, OR ANY PUBLIC AGENCY OR INSTRUMENTALITY THEREOF IF THAT ENTITY DOES NOT MEET THE DEFINITION OF A GOVERNMENTAL UNIT; AND

(K) any other debt instrument or financial obligation that the superintendent determines to be substantially similar to any of the foregoing or THAT shall otherwise be approved by the superintendent.

S 14. Paragraph 2 of subsection (b) of section 6904 of the insurance law, as amended by chapter 605 of the laws of 2004, is amended and a new paragraph 5 is added to read as follows:

(2) [An] (A) A FINANCIAL GUARANTY insurer may insure obligations [enumerated in subparagraphs (A), (B), and (C) of paragraph one of this subsection] that are not investment grade so long as at least ninety-five percent of the insurer's aggregate net liability [on the kinds of obligations enumerated in subparagraphs (A), (B) and (C) of paragraph one of this subsection] shall be investment grade.

(B) UPON APPLICATION BY THE FINANCIAL GUARANTY INSURER, THE SUPERINTENDENT MAY ESTABLISH A LOWER PERCENTAGE OF THE FINANCIAL GUARANTY INSURER'S AGGREGATE NET LIABILITY THAT IS REQUIRED TO BE INVESTMENT GRADE IF THE SUPERINTENDENT DETERMINES THAT THERE IS NO UNDUE RISK TO THE INSURER, OR ITS POLICYHOLDERS OR THE PEOPLE OF THIS STATE. IN MAKING THE DETERMINATION, THE SUPERINTENDENT SHALL TAKE INTO CONSIDERATION, AMONG OTHER FACTORS, THE FINANCIAL GUARANTY INSURER'S OUTSTANDING LIABILITIES ON NON-INVESTMENT GRADE OBLIGATIONS IN RELATION TO THE AMOUNT OF ITS SURPLUS TO POLICYHOLDERS AND CONTINGENCY RESERVES.

(C) A FINANCIAL GUARANTY INSURER SHALL NOTIFY THE SUPERINTENDENT AND PROVIDE A PLAN FOR CORRECTIVE ACTION WITHIN FIVE CALENDAR DAYS AFTER THE CONCLUSION OF ANY THIRTY-DAY CALENDAR PERIOD IN WHICH THE FINANCIAL GUARANTY INSURER'S NON-INVESTMENT GRADE OBLIGATIONS CONTINUOUSLY EXCEED THE PERMITTED AMOUNT BY MORE THAN TWENTY PERCENT.

(5) (A) A FINANCIAL GUARANTY POLICY SHALL NOT INSURE A POOL OF ASSETS THAT INCLUDES ANY PART OF ONE OR MORE OTHER POOLS OF ASSETS, EXCEPT AS PROVIDED IN PARAGRAPH TWO OF THIS SUBSECTION.

(B) A POOL OF ASSETS MAY INCLUDE A PART, OR THE ENTIRETY, OF ONE OR MORE POOLS OF ASSETS, PROVIDED THAT:

(I) THE POOL OF ASSET-BACKED SECURITIES SHALL BE COMPRISED OF ASSET-BACKED SECURITIES HAVING A RIGHT TO PAYMENT AND RIGHTS IN INSOL-

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

(II) THE FINANCIAL GUARANTY INSURER SHALL POSSESS CONTROL AND REMEDIATION RIGHTS SUBSTANTIALLY SIMILAR TO THOSE HELD BY THE MOST SENIOR CLASS OF SECURITIES OF THE ISSUER OF THE INSURED OBLIGATIONS BACKED BY THE SAME POOL OF ASSETS;

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

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

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

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

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

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

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

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

(C) 1.0 percent or 1/100th of the aggregate net liability under guaranties, secured by collateral or having a term of seven years or less, of:

(i) investment grade industrial development bonds, AND

(ii) other investment grade obligations; plus

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

(E) 2.0 percent or 1/50th of the aggregate net liability under guaranties of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) INSURED AVERAGE ANNUAL DEBT SERVICE; OR

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

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

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

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

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

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

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

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

(G) FOR THE PURPOSE OF THIS PARAGRAPH:

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

(II) "TYPES OF ASSETS" MEANS:

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

(II) SPECIAL REVENUE BONDS;

(III) INDUSTRIAL DEVELOPMENT BONDS;

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

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

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

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

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

(IX) OTHER TYPES OF ASSETS AS THE SUPERINTENDENT MAY SPECIFY IN REGULATIONS;

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

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

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

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

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

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

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

(1) THE NOTIONAL VALUE OF THE INSURER'S AGGREGATE LIABILITIES ON ALL GUARANTEED MUNICIPAL OBLIGATION BONDS, SPECIAL REVENUE BONDS, AND INDUSTRIAL DEVELOPMENT BONDS, GROSS OF LIABILITIES ASSUMED AND NET OF LIABILITIES REINSURED, IS EQUAL TO OR GREATER THAN ONE HUNDRED TIMES POLICYHOLDER SURPLUS PLUS CONTINGENCY RESERVES;

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

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

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

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

(1) A LISTING OF THE INSURER'S AGGREGATE LIABILITIES, INCLUDING EACH LIABILITY'S FAIR VALUE, FOR ALL GUARANTEED OBLIGATIONS, GROSS OF LIABILITIES ASSUMED AND BOTH NET OF AND WITHOUT REGARD TO LIABILITIES REINSURED; AND

(2) IDENTIFICATION OF ALL GUARANTEED OBLIGATIONS (INCLUDING EACH OBLIGATION'S FAIR VALUE), IN A FORM AND MANNER ACCEPTABLE TO THE SUPERINTENDENT, IDENTIFYING THE OBLIGATION FOR ITS PROPER EVALUATION BY THE SUPERINTENDENT FOR DEGREE OF RISK.

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

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

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

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

(L) NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, THE SUPERINTENDENT MAY, PURSUANT TO REGULATION, PROHIBIT THE WRITING OF FINANCIAL GUARANTY INSURANCE, OR IMPOSE LIMITATIONS WITH RESPECT TO THE WRITING OF FINANCIAL GUARANTY INSURANCE, WITH RESPECT TO ANY INSTRUMENT OR OTHER MONETARY OBLIGATION THAT IS NOT INVESTMENT GRADE, UPON A DETERMINATION THAT THE PROHIBITION OR IMPOSITION OF LIMITATIONS IS NECESSARY TO PROTECT THE INTERESTS OF FINANCIAL GUARANTY INSURERS, POLICYHOLDERS, CLAIMANTS, OBLIGEES OR INDEMNITEES, OR THE PEOPLE OF THIS STATE.

(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.

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:

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.

(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.

(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.

(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:

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

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

(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.

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

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

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

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

[(a) may, unless the superintendent determines after notice and an opportunity to be heard that such activity poses a hazard to the insurer, its policyholders or to the public, continue to write financial guaranties (except guaranties of municipal bonds) of the types authorized by subsection (b) of section six thousand nine hundred four of this article applicable to financial guaranty insurance corporations, subject to the following conditions:

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

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

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

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

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

(iii) the underwriting procedures that will be followed;

(iv) oversight methods;

(v) investment policies; and

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

(C) if the insurer has determined that it will not organize a financial guaranty insurance corporation, within thirty days after that determination it shall notify the superintendent, cease writing policies of financial guaranty insurance and comply with the provisions of paragraph four of this subsection; and

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

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

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

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

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

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

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

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

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

(iii) the underwriting procedures that will be followed;

(iv) oversight methods;

(v) investment policies; and

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

(F) if the insurer has determined that it will not organize a financial guaranty insurance corporation, within thirty days after that determination it shall notify the superintendent, cease writing policies of financial guaranty insurance and comply with the provisions of paragraph four of this subsection; and

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

(3) For a transition period not to exceed twelve months from the effective date of this article, in the case of an insurer transacting only financial guaranty insurance prior to the effective date of this article and which qualifies for licensing as a financial guaranty insurance corporation under section six thousand nine hundred two of this article, provided that it makes application to amend its current license to that of a financial guaranty insurance corporation licensed to transact only those kinds of insurance permitted pursuant to section six thousand nine hundred two of this article within sixty days of the effective date of this article, and provided that, for purposes of this paragraph, an insurer shall be deemed to be transacting only financial guaranty insurance prior to the effective date of this article if, with the approval of the superintendent, it has reinsured all of any other insurance liabilities with one or more authorized insurers or has otherwise made provision for such liabilities.

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

(A) reinsure its net in force business with a licensed financial guaranty insurance corporation; or

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

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

of this article. Provided, however, an insurer must receive the prior approval of its domiciliary commissioner before issuing any new financial guaranty insurance policies that would have the effect of increasing its risk of loss;

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

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

(B) A POLICY ISSUED BY A FINANCIAL GUARANTY INSURER ON OR AFTER AUGUST FIRST, TWO THOUSAND NINE, WHICH AMENDS OR REPLACES A POLICY ISSUED BEFORE AUGUST FIRST, TWO THOUSAND NINE, SHALL BE GOVERNED BY THIS ARTICLE AS IN EFFECT ON THE DATE THE ORIGINAL POLICY WAS FIRST ISSUED OR, IF AMENDED, THE DATE THAT THE ORIGINAL POLICY WAS LAST AMENDED PRIOR TO AUGUST FIRST, TWO THOUSAND NINE, PROVIDED THAT THE AMENDMENT OR REPLACEMENT OF THE ORIGINAL INSURANCE POLICY IS EXECUTED SOLELY TO MITIGATE ACCUMULATED LOSSES AND REDUCE EXPOSURE TO FUTURE LOSSES UNDER THE POLICY.

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

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

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

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

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

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

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

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

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

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

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

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