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I N S E N A T E

April 13, 2010

Introduced by Sen. BRESLIN -- (at request of the New York State Insurance Department) -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

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

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

1 Section 1. The insurance law is amended by adding a new section 1415
2 to read as follows:
3 S 1415. SUPERINTENDENT'S AUTHORITY TO PRESCRIBE A METHOD OF ANALYZING
4 INVESTMENTS. WITH REGARD TO ANY REFERENCE IN THIS CHAPTER TO RATINGS
5 FROM A STATISTICAL RATING ORGANIZATION, THE SUPERINTENDENT, BY REGU-
6 LATION, MAY AUTHORIZE OR PRESCRIBE AN ANALYTICAL METHOD THAT AN INSURER
7 MAY USE AS AN ALTERNATIVE TO, OR SHALL USE IN ADDITION TO, OR IN LIEU
8 OF, RATINGS FROM A STATISTICAL RATING ORGANIZATION.
9 S 2. The opening paragraph of paragraph 2 of subsection (a) of section
10 1401 of the insurance law, as amended by chapter 500 of the laws of
11 1991, is amended to read as follows:
12 "Mortgage-related security" means an obligation that is rated AA or
13 higher (or the equivalent thereto) by a [nationally recognized securi-
14 ties] STATISTICAL rating [agency] ORGANIZATION RECOGNIZED BY THE SUPER-
15 INTENDENT and either:
16 S 3. Clauses (i), (ii) and (iii) of subparagraph (A) of paragraph 2 of
17 subsection (a) of section 1404 of the insurance law, as amended by chap-
18 ter 324 of the laws of 1992, are amended to read as follows:
19 (i) are adequately secured by collateral security having a market
20 value not less than the principal amount thereof and have investment
21 qualities and characteristics wherein the speculative elements are not
22 predominant[, or];
23 (ii) are rated A or higher (or the equivalent thereto) by a [securi-
24 ties] STATISTICAL rating [agency] ORGANIZATION recognized by the super-
25 intendent, or if not so rated, are similar in structure and in all mate-
26 rial respects to other obligations of the same institution which are so
27 rated[, or];
28 (iii) are insured by one or more authorized insurance companies (other
29 than the investing insurer or any parent, subsidiary or affiliate of
30 such insurer) who are licensed to insure obligations in this state and,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 (3) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (n) "Investment grade" means that:

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

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

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

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

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

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

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

54 S 18. This act shall take effect immediately.