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

10259

I N A S S E M B L Y

March 15, 2010

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

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

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

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

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

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

"Mortgage-related security" means an obligation that is rated AA or higher (or the equivalent thereto) by a [nationally recognized securities] STATISTICAL rating [agency] ORGANIZATION RECOGNIZED BY THE SUPERINTENDENT and either:

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

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

(ii) are rated A or higher (or the equivalent thereto) by a [securities] STATISTICAL rating [agency] ORGANIZATION recognized by the superintendent, or if not so rated, are similar in structure and in all material respects to other obligations of the same institution which are so rated[, or];

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

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

LBD15515-01-0

after considering such insurance, are rated Aaa (or the equivalent thereto) by a [securities] STATISTICAL rating [agency] ORGANIZATION recognized by the superintendent[,]; or

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

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

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

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

(7) Development bank obligations. Obligations issued or guaranteed by the international bank for reconstruction and development, the inter-American development bank, the Asian development bank, the African development bank or the international finance corporation; provided that

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

[(ii)] (B) the aggregate investment made pursuant to the provisions of this paragraph in each such bank and the international finance corporation at any time, shall not exceed five percent of the insurer's admitted assets as shown by its last statement on file with the superintendent[,]; and

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

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

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

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

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

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

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

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

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

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

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

(3) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

(H) The provisions of this subparagraph shall apply to any life insurance company which has life insurance policies or annuity or pure endowment contracts in effect which were issued in a foreign country and under which premiums and benefits, and the assets supporting reserves in respect thereof, are denominated in the currency of a foreign country which is rated in one of the two highest rating categories by [an independent, nationally recognized United States] A STATISTICAL rating [agency] ORGANIZATION RECOGNIZED BY THE SUPERINTENDENT. For the purpose of determining the reference interest rate to be used in valuing such policies and contracts, the superintendent may permit any such company, or may by regulation require all such companies (except as exempted pursuant to such regulation), to adjust the yield average of the applicable index published by Moody's Investors Service, Inc. (or the yield average determined on the basis of any substitute method applicable to such policies or contracts and approved by the superintendent in accordance with subparagraph (G) of this paragraph) in accordance with a method approved by the superintendent, or to substitute an alternative method approved by the superintendent in place of the applicable index published by Moody's Investors Service, provided that any such substitute or alternative method shall produce year-to-year consistency in reserving methods and shall appropriately reflect the difference between the yield average on corporate bonds issued in the United States and the yield average on corporate bonds issued in such foreign country. Any company which adjusts yield averages in accordance with a method approved by the superintendent pursuant to this subparagraph shall continue to use such method with respect to the valuation of such policies and contracts until the superintendent permits or requires such company to cease using such method.

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

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

(a) of section one thousand four hundred four of this chapter, provided however that such investments need not meet the otherwise applicable qualitative standards of such paragraph two so long as all such investments are rated at BBB or higher (or the equivalent thereto) by a [security] STATISTICAL rating [agency] ORGANIZATION recognized by the superintendent.

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

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

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

(1) are rated BBB or higher (or the equivalent thereto) by a [securities] STATISTICAL rating [agency] ORGANIZATION recognized by the superintendent, or if not so rated, are similar in structure and in all material respects to other obligations of the same institution which are so rated, or

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

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

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

(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] STATISTICAL rating [agency acceptable to] ORGANIZATION RECOGNIZED BY the superintendent;

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

(k) "Governmental unit" means the United States of America, Canada, 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] STATISTICAL rating [agency acceptable to] ORGANIZATION RECOGNIZED BY the superintendent, OR a state, territory or possession of the United States of America, the District of Columbia, a province of Canada, a municipality, or a political subdivision of any of the foregoing, or any public agency or instrumentality thereof.

S 15. 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] STATISTICAL rating [agency acceptable to] ORGANIZATION RECOGNIZED BY the superintendent;

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

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

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

(s) "Utility first mortgage obligation" means any obligation of an issuer secured by a first priority mortgage on utility property owned by or leased to an investor-owned or cooperative-owned utility company and located in the United States, Canada or 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] STATISTICAL rating [agency acceptable to] ORGANIZATION RECOGNIZED BY the superintendent; provided that the utility or utility property or the usage fees or other similar utility rates or charges are subject to regulation or oversight by a governmental unit.

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

(4) a financial guaranty insurance corporation's investments in any one entity insured by that corporation 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] STATISTICAL rating [agency acceptable to] ORGANIZATION RECOGNIZED BY the superintendent.

S 18. This act shall take effect immediately.