

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:

1 Section 1. Paragraph 1 of subsection (a) of section 6901 of the insur-  
2 ance law, as added by chapter 48 of the laws of 1989, the opening para-  
3 graph as amended by chapter 605 of the laws of 2004, and subparagraph  
4 (A) as amended by chapter 529 of the laws of 1996, is amended to read as  
5 follows:

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

14 (A) failure of any obligor on or issuer of any debt instrument or  
15 other monetary obligation (including equity securities [guarantied]  
16 GUARANTEED under a surety bond, insurance policy or indemnity contract)  
17 to pay when due to be paid by the obligor or scheduled at the time  
18 insured to be received by the holder of the obligation, principal,  
19 interest, premium, dividend or purchase price of or on, or other amounts  
20 due or payable with respect to, such instrument or obligation, when such  
21 failure is the result of a financial default or insolvency or, provided  
22 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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1 payment, regardless of whether such obligation is incurred directly or  
2 as guarantor by or on behalf of another obligor that has also defaulted;  
3 (B) changes in the levels of interest rates, whether short or long  
4 term or the differential in interest rates between various markets or  
5 products;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 paragraph one or two of subsection (g) of this section, has a value  
2 exceeding twenty percent of the pool's aggregate value[; or  
3 (2) a pool of credit default swaps or credit default swaps referencing  
4 a pool of obligations, provided that:

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

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

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

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

20 (g) "Collateral" means:

21 (1) cash;

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

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

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

41 (A) is irrevocable;

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

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

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

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

51 (D) contains a statement that either:

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

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

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

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

6 (G) either:

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

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

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

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

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

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

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

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

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

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

1 (C) is provided by:

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

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

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

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

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

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

34 (n) "Investment grade" means that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (i) investment grade obligations, secured by collateral or having a  
2 term of seven years or less, 1.0 percent of principal [guarantied] GUAR-  
3 ANTEED;

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

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

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

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

12 (C) Contributions to the contingency reserve required by this para-  
13 graph, equal to one-sixtieth of the total reserve required, shall be  
14 made each quarter for fifteen years, provided, however, that contrib-  
15 utions may be discontinued so long as the total reserve for all catego-  
16 ries listed in items (i) through (v) of subparagraph (B) of this para-  
17 graph exceeds the percentages contained in such items (i) through (v)  
18 when applied against unpaid principal.

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

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

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

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

42 (ii) if the contingency reserve applicable to the categories of guar-  
43 anties subject to paragraph three of this subsection has been in exist-  
44 ence for less than forty quarters, or for less than thirty quarters for  
45 the categories of guaranties subject to paragraph four of this  
46 subsection, upon a demonstration satisfactory to the superintendent that  
47 the amount carried is excessive in relation to the insurer's outstanding  
48 obligations under its financial guaranties.

49 (B) upon thirty days prior written notice to the superintendent,  
50 provided that the contingency reserve applicable to the categories of  
51 guaranties subject to paragraph three of this subsection has been in  
52 existence for forty quarters, or thirty quarters for categories of guar-  
53 anties subject to paragraph four of this subsection, upon a demon-  
54 stration satisfactory to the superintendent that the amount carried is  
55 excessive in relation to the insurer's outstanding obligations under its  
56 financial guaranties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (H) consumer debt obligations;

19 (I) utility first mortgage obligations; [and]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 (i) investment grade industrial development bonds, AND

41 (ii) other investment grade obligations; plus

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 (I) INSURED AVERAGE ANNUAL DEBT SERVICE; OR

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

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

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

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

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

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

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

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

19 (G) FOR THE PURPOSE OF THIS PARAGRAPH:

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

22 (II) "TYPES OF ASSETS" MEANS:

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

25 (II) SPECIAL REVENUE BONDS;

26 (III) INDUSTRIAL DEVELOPMENT BONDS;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48 (iv) oversight methods;

49 (v) investment policies; and

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

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

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

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

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

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

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

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

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

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

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

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

8 (iv) oversight methods;

9 (v) investment policies; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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