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

7306--B

Cal. No. 998

I N S E N A T E

May 2, 2012

Introduced by Sen. SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the insurance law, in relation to derivative transactions and derivative instruments

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

Section 1. 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:

(f)(1) The counterparty exposure under [a] AN OVER THE COUNTER derivative instrument entered into by an insurer authorized to engage in transactions pursuant to this section shall be deemed to be an obligation of the institution to which the insurer is exposed to credit risk and shall be included in determining compliance with any single or aggregate quantitative limitation on investments made by an insurer under this chapter.

(2) Notwithstanding any single or aggregate quantitative limitation on investments made by an insurer under this chapter, AN INSURER MAY ONLY TRANSACT AN OVER THE COUNTER DERIVATIVE INSTRUMENT WITH:

(A) A QUALIFIED COUNTERPARTY; OR

(B) A COUNTERPARTY OTHER THAN A "QUALIFIED COUNTERPARTY" IF, AFTER GIVING EFFECT TO THAT TRANSACTION, the aggregate counterparty exposure OF THE INSURER under one or more OVER THE COUNTER derivative [transactions] INSTRUMENTS to:

[(A) any single counterparty, other than a "qualified counterparty", shall be limited to one] (I) THAT NON-QUALIFIED COUNTERPARTY DOES NOT EXCEED ONE percent of [an] THE insurer's admitted assets; and

[(B)] (II) all counterparties, other than qualified counterparties, [are limited to] DOES NOT EXCEED three percent of [an] THE insurer's admitted assets.

(3) For purposes of this section:

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

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(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 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; 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)] COUNTERPARTY WHICH HAS AN INVESTMENT GRADE RATING FROM AT LEAST ONE NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION OR A DESIGNATION OF ONE FROM THE SECURITIES VALUATION OFFICE OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, OR ANY SUCCESSOR OFFICE ESTABLISHED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, AND WITH WHICH THE INSURER HAS ENTERED INTO A MASTER AGREEMENT, TOGETHER WITH A CREDIT SUPPORT ANNEX OR OTHER DOCUMENTATION PROVIDING FOR THE COLLATERALIZATION OF THE COUNTERPARTY'S OBLIGATIONS TO THE INSURER UNDER THE MASTER AGREEMENT, IF THAT COLLATERAL DOCUMENTATION PROVIDES FOR (I) DAILY MARGIN AND COLLATERAL SETTLEMENT, IN CASH OR INVESTMENT GRADE SECURITIES, BETWEEN THE PARTIES, (II) A MINIMUM TRANSFER AMOUNT OF NO MORE THAN ONE MILLION DOLLARS, AND (III) A REQUIREMENT THAT COLLATERAL BE PROVIDED BY THE COUNTERPARTY FROM THE FIRST DOLLAR OF EXPOSURE, SUBJECT TO THE MINIMUM TRANSFER AMOUNT;

(B) "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[.];

(C) "OVER THE COUNTER DERIVATIVE INSTRUMENT" MEANS A DERIVATIVE INSTRUMENT WHICH IS AUTHORIZED UNDER THIS CHAPTER OTHER THAN A DERIVATIVE INSTRUMENT (I) CLEARED THROUGH A UNITED STATES OR FOREIGN DERIVATIVES CLEARINGHOUSE, OR (II) TRADED ON OR THROUGH A UNITED STATES OR FOREIGN EXCHANGE PROVIDING DERIVATIVES CLEARING SERVICES;

(D) "DERIVATIVES CLEARINGHOUSE" MEANS A DERIVATIVES CLEARING ORGANIZATION REGISTERED WITH THE COMMODITY FUTURES TRADING COMMISSION OR THE SECURITIES AND EXCHANGE COMMISSION OR, IF NOT SO REGISTERED, IS A FOREIGN CLEARINGHOUSE REGULATED, SUPERVISED AND EXAMINED BY A REGULATORY AUTHORITY IN A FOREIGN JURISDICTION APPROVED BY THE SUPERINTENDENT;

(E) "MASTER AGREEMENT" MEANS A WRITTEN MASTER AGREEMENT RELATING TO DERIVATIVES TRANSACTIONS THAT PROVIDES FOR NETTING OF PAYMENTS OWED BY THE RESPECTIVE PARTIES, AND THE DOMICILIARY JURISDICTION OF THE COUNTERPARTY IS EITHER WITHIN THE UNITED STATES OR IF NOT WITHIN THE UNITED

STATES, WITHIN A JURISDICTION APPROVED BY THE SUPERINTENDENT AS ELIGIBLE FOR NETTING; AND

(F) "MINIMUM TRANSFER AMOUNT" MEANS AN AMOUNT BELOW WHICH A DAILY MARGIN AND COLLATERAL SETTLEMENT IS NOT REQUIRED.

S 2. This act shall take effect immediately; provided, however that the documentation requirements set forth in items (i), (ii) and (iii) of subparagraph (A) of paragraph (3) of subsection (f) of section 1410 of the insurance law as added by section one of this act shall take effect on January 1, 2013.