

2130--A

2013-2014 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 9, 2013

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Introduced by M. of A. SIMOTAS, COOK, TITONE, ESPINAL -- Multi-Sponsored  
by -- M. of A. BRAUNSTEIN, HEVESI -- read once and referred to the  
Committee on Insurance -- committee discharged, bill amended, ordered  
reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to the foreign invest-  
ments of insurance companies

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

1     Section 1. Paragraph 7 of subsection (a) of section 1405 of the insur-  
2     ance law, subparagraph (C) as amended by chapter 60 of the laws of 2008  
3     and subparagraph (D) as amended by chapter 162 of the laws of 1999, is  
4     amended to read as follows:  
5     (7) Foreign investments. (A) Canadian investments substantially of the  
6     same types as those eligible for investment under paragraphs one through  
7     six of this subsection, provided that, after giving effect to any  
8     investment made under this subparagraph, the aggregate amount of invest-  
9     ments made under this subparagraph and then held by such insurer shall  
10    not exceed ten percent of the insurer's admitted assets, except where a  
11    greater amount is permitted under subparagraph (B) below (in which case  
12    the provisions of this subparagraph shall not be applicable).  
13    (B) In the case of any domestic insurer that is authorized to do busi-  
14    ness in a foreign country or possession of the United States of America  
15    or that has outstanding insurance, annuity or reinsurance contracts on  
16    lives or risks resident or located in such foreign country or  
17    possession, investments in such foreign country or possession that are  
18    substantially of the same types as those eligible for investment under  
19    paragraphs one through six of this subsection; provided that, except  
20    where a greater amount is permitted under subparagraph (A) above, after  
21    giving effect to any investment in such foreign country or possession  
22    made under this subparagraph, the aggregate amount of cash in the

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

LBD02686-03-3

1 currency of such foreign country or possession and of investments in  
2 such foreign country or possession made under this subparagraph and then  
3 held by such insurer shall not exceed one and one-half times the amount  
4 of such insurer's reserves and other obligations under such contracts or  
5 the amount which such insurer is required by law to invest in such coun-  
6 try or possession, whichever shall be greater.

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

15 (i) the issuer or obligor is (I) a jurisdiction, which is rated in one  
16 of the four highest rating categories by an independent, nationally  
17 recognized United States rating agency, (II) any political subdivision  
18 or other governmental unit of any such jurisdiction, or any agency or  
19 instrumentality of any such jurisdiction, political subdivision or other  
20 governmental unit or (III) an institution which is organized under the  
21 laws of any such jurisdiction or, in the case of such paragraphs three  
22 and four of this subsection, the real property is located in any such  
23 jurisdiction; and

24 (ii) [if the investment is denominated in any currency other than  
25 United States dollars, the investment is effectively hedged, substan-  
26 tially in its entirety, against the United States dollar:

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

32 (II) for any other insurer, pursuant to contracts or agreements which  
33 are: (aa) issued by or traded on a securities exchange or board of trade  
34 regulated under the laws of the United States or Canada or a province  
35 thereof or (bb) entered into with: (aaa) a United States banking insti-  
36 tution which has assets in excess of five billion dollars and which has  
37 obligations outstanding, or has a parent corporation which has obli-  
38 gations outstanding, which are rated in one of the two highest rating  
39 categories by an independent, nationally recognized, United States  
40 rating agency; (bbb) a broker-dealer registered with the Securities and  
41 Exchange Commission which has net capital in excess of two hundred fifty  
42 million dollars; or

43 (ccc) any other banking institution which has assets in excess of five  
44 billion dollars and which has obligations outstanding, or has a parent  
45 corporation which has obligations outstanding, which are rated in one of  
46 the two highest rating categories by an independent, nationally recog-  
47 nized, United States rating agency and which is organized under the laws  
48 of a jurisdiction which is rated in one of the two highest rating cate-  
49 gories by an independent, nationally recognized, United States rating  
50 agency; and

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

1 (D) In addition to the foreign investments permitted under the preced-  
2 ing subparagraphs of this paragraph, foreign investments that are  
3 substantially of the same types as those eligible for investment under  
4 paragraphs one through six of this subsection, provided that, after  
5 giving effect to any investment made under this subparagraph, the aggre-  
6 gate amount of investments made under this subparagraph and then held by  
7 such insurer shall not exceed [four] SIX percent of the insurer's admit-  
8 ted assets, and provided further that an insurer shall not make any  
9 investment in any foreign country pursuant to this subparagraph, if such  
10 investment, together with all other investments in the same foreign  
11 country so made and then held by such insurer, would exceed [two] THREE  
12 percent of the insurer's admitted assets.

13 S 2. Section 1405 of the insurance law is amended by adding a new  
14 subsection (f) to read as follows:

15 (F) ANY INVESTMENT MAY BE DENOMINATED IN A CURRENCY OTHER THAN UNITED  
16 STATES DOLLARS, PROVIDED THAT THE AGGREGATE AMOUNT OF ALL SUCH INVEST-  
17 MENTS (OTHER THAN INVESTMENTS MADE PURSUANT TO SUBPARAGRAPHS (A) AND (B)  
18 OF PARAGRAPH SEVEN OF SUBSECTION (A) OF THIS SECTION) THAT ARE NOT  
19 EFFECTIVELY HEDGED, SUBSTANTIALLY IN THEIR ENTIRETY, AGAINST THE UNITED  
20 STATES DOLLAR, REDUCED, ON A CURRENCY BY CURRENCY BASIS, BY THE AMOUNT  
21 OF FOREIGN-CURRENCY DENOMINATED INSURANCE LIABILITIES MAY NOT EXCEED  
22 FOUR PERCENT OF THE INSURER'S ADMITTED ASSETS. AN INVESTMENT SHALL BE  
23 DEEMED TO BE EFFECTIVELY HEDGED, SUBSTANTIALLY IN ITS ENTIRETY, IF IT  
24 HAS BEEN HEDGED:

25 (1) FOR AN INSURER THAT HAS AN APPROVED DERIVATIVE USE PLAN UNDER  
26 SECTION ONE THOUSAND FOUR HUNDRED TEN OF THIS ARTICLE, PURSUANT TO  
27 CONTRACTS OR AGREEMENTS ENTERED INTO UNDER AND IN ACCORDANCE WITH THAT  
28 DERIVATIVE USE PLAN AND SUBJECT TO THE COUNTERPARTY EXPOSURE LIMITS  
29 THEREUNDER; OR

30 (2) FOR ANY OTHER INSURER, PURSUANT TO CONTRACTS OR AGREEMENTS (DERIV-  
31 ATIVE TRANSACTIONS) WHICH ARE CLEARED THROUGH A "DERIVATIVES CLEARING-  
32 HOUSE" OR ENTERED INTO WITH A "QUALIFIED COUNTERPARTY", AS THOSE TERMS  
33 ARE DEFINED PURSUANT TO SUBSECTION (F) OF SECTION ONE THOUSAND FOUR  
34 HUNDRED TEN OF THIS ARTICLE.

35 S 3. Paragraph 2 of subsection (c) of section 1410 of the insurance  
36 law, as added by chapter 650 of the laws of 1998, is amended to read as  
37 follows:

38 (2) Transactions entered into to effectively hedge the currency risk  
39 of investments denominated in a currency other than United States  
40 dollars, pursuant to [subparagraph (C) of paragraph seven of subsection  
41 (a)] SUBSECTION (F) of section one thousand four hundred five of this  
42 article, shall not be included in the limits under paragraph one of this  
43 subsection.

44 S 4. This act shall take effect immediately.