

2130--A

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

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.

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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.