

Assembly Bill No. 796

CHAPTER 138

An act to amend Sections 739.3, 1765.1, 10082.5, and 12100 of the Insurance Code, relating to insurance.

[Approved by Governor July 27, 2007. Filed with
Secretary of State July 27, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

AB 796, Committee on Insurance. Insurance.

Existing law requires that insurers file a comprehensive financial plan with the commissioner on the occurrence of a Company Action Level Event, as defined. That report must be filed if, among other things, certain insurers' annual Risk-Based Capital (RBC) report indicates either of 2 specified levels of Total Adjustable Capital.

This bill would add another level of Total Adjusted Capital which, with respect to certain insurers, would be indicated in the insurer's RBC report.

Existing law limits the ability of a surplus line broker to place any coverage with a nonadmitted insurer, as specified. In order for a nonadmitted insurer to qualify for coverage it must demonstrate financial stability, as defined. In making this showing, securities specifically valued by the National Association of Insurance Commissioners Securities Valuation Office are presumed to be readily marketable, absent evidence to the contrary.

This bill would delete the presumption relating to marketability of securities valued by the National Association of Insurance Commissioners.

Existing law requires that Insurance Exchanges created and authorized under the laws of individual states maintain specified amounts of capital and surplus. In demonstrating this requirement, securities specifically valued by the National Association of Insurance Commissioner Securities Valuation Office are presumed to be readily marketable, absent evidence to the contrary.

This bill would delete the presumption relating to marketability of securities valued by the National Association of Insurance Commissioners.

Existing law requires an insurer who charges an additional earthquake insurance premium or deductible because a dwelling fails to meet certain criteria to not charge the same if the dwelling is brought into compliance with specified building code provisions.

This bill would include compliance with successor editions of the building code provisions for those purposes, or with any local government modifications to those requirements, as specified.

Existing law defines financial guaranty insurance, and provides that a credit default swap shall not constitute an insurance contract and shall not constitute the transaction of insurance.

This bill would recast the definition of a credit default swap.

The people of the State of California do enact as follows:

SECTION 1. Section 739.3 of the Insurance Code is amended to read:

739.3. (a) “Company Action Level Event” means any of the following events:

(1) The filing of an RBC Report by an insurer that indicates any of the following:

(A) The insurer’s Total Adjusted Capital is greater than or equal to its Regulatory Action Level RBC but less than its Company Action Level RBC.

(B) If a life or health insurer, the insurer has Total Adjusted Capital that is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 2.5, and has a negative trend.

(C) If a property and casualty insurer, the insurer has Total Adjusted Capital which is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 3.0, and triggers the trend test determined in accordance with the trend test calculation included in the Property and Casualty RBC instructions.

(2) The notification by the commissioner to the insurer of an Adjusted RBC Report that indicates the event in subparagraph (A) or (B) of paragraph (1), provided the insurer does not challenge the Adjusted RBC Report under Section 739.7.

(3) If the insurer challenges an Adjusted RBC Report that indicates the event in subparagraph (A) or (B) of paragraph (1) under Section 739.7, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer’s challenge.

(b) In the event of a Company Action Level Event, the insurer shall prepare and submit to the commissioner a comprehensive financial plan which shall do all of the following:

(1) Identify the conditions in the insurer that contribute to the Company Action Level Event.

(2) Contain proposals of corrective actions that the insurer intends to take and would be expected to result in the elimination of the Company Action Level Event.

(3) Provide projections of the insurer’s financial results in the current year and at least the four succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital, or surplus, or a combination. The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component.

(4) Identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions.

(5) Identify the quality of, and problems associated with, the insurer's business, including, but not limited to, its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance in each case, if any.

(c) The RBC Plan shall be submitted as follows:

(1) Within 45 days of the Company Action Level Event.

(2) If the insurer challenges an Adjusted RBC Report pursuant to Section 739.7, within 45 days after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(d) Within 60 days after the submission by an insurer of an RBC Plan to the commissioner, the commissioner shall notify the insurer whether the RBC Plan shall be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the RBC Plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions that will render the RBC Plan satisfactory, in the judgment of the commissioner. Upon notification from the commissioner, the insurer shall prepare a Revised RBC Plan, which may incorporate by reference any revisions proposed by the commissioner, and shall submit the Revised RBC Plan to the commissioner as follows:

(1) Within 45 days after the notification from the commissioner.

(2) If the insurer challenges the notification from the commissioner under Section 739.7, within 45 days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(e) In the event of a notification by the commissioner to an insurer that the insurer's RBC Plan or Revised RBC Plan is unsatisfactory, the commissioner may at the commissioner's discretion, subject to the insurer's right to a hearing under Section 739.7, specify in the notification that the notification constitutes a Regulatory Action Level Event.

(f) Every domestic insurer that files an RBC Plan or Revised RBC Plan with the commissioner shall file a copy of the RBC Plan or Revised RBC Plan with the insurance commissioner in any state in which the insurer is authorized to do business if the following apply:

(1) That state has an RBC provision substantially similar to subdivision (a) of Section 739.8.

(2) The insurance commissioner of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the RBC Plan or Revised RBC Plan in that state no later than the later of:

(A) Fifteen days after the receipt of notice to file a copy of its RBC Plan or Revised RBC Plan with the state.

(B) The date on which the RBC Plan or Revised RBC Plan is filed under subdivision (c) of Section 739.7.

SEC. 2. Section 1765.1 of the Insurance Code is amended to read:

1765.1. No surplus line broker shall place any coverage with a nonadmitted insurer unless the insurer is domiciled in the Republic of Mexico and the placement covers only liability arising out of the ownership, maintenance, or use of a motor vehicle, aircraft, or boat in the Republic of Mexico, or, at the time of placement, the nonadmitted insurer meets the following requirements:

(a) (1) Has established its financial stability, reputation, and integrity, for the class of insurance the broker proposes to place, by satisfactory evidence submitted to the commissioner through a surplus line broker.

(2) Meets one of the following requirements with respect to its financial stability:

(A) Has capital and surplus that together total at least fifteen million dollars (\$15,000,000). “Capital” shall be as defined in Section 36. “Surplus” shall be defined as assets exceeding the sum of liabilities for losses reported, expenses, taxes, and all other indebtedness and reinsurance of outstanding risks as provided by law and paid-in capital in the case of an insurer issuing or having outstanding shares of capital stock. The type of assets to be used in calculating capital and surplus shall be as follows: at least fifteen million dollars (\$15,000,000) shall be in the form of cash, or securities of the same character and quality as specified in Sections 1170 to 1182, inclusive, or in readily marketable securities listed on regulated United States’ national or principal regional securities exchanges. The remaining assets shall be in the form just described, or in the form of investments of substantially the same character and quality as described in Sections 1190 to 1202, inclusive. In calculating capital and surplus under this section, the term “same character and quality” shall permit, but not require, the commissioner to approve assets maintained in accordance with the laws of another state or country. The commissioner shall be guided by any limitations, restrictions, or other requirements of this code or the National Association of Insurance Commissioners’ Accounting Practices and Procedures Manual in determining whether assets substantially similar to those described in Sections 1190 to 1202, inclusive, qualify. The commissioner shall retain the discretion to disapprove or disallow any asset that is not of a sound quality, or that he or she deems to create an unacceptable risk of loss to the insurer or to policyholders. Letters of credit will not qualify as assets in the calculation of surplus. If less than fifteen million dollars (\$15,000,000), the commissioner has affirmatively found that the capital and surplus is adequate to protect California policyholders. The commissioner shall consider, on determining whether to make this finding, factors such as quality of management, the capital and surplus of any parent company, the underwriting profit and investment income trends, and the record of claims payment and claims handling practices of the nonadmitted insurer.

(B) In the case of an “Insurance Exchange” created and authorized under the laws of individual states, maintains capital and surplus of not less than fifty million dollars (\$50,000,000) in the aggregate. “Capital” shall be as defined in Section 36. “Surplus” shall be defined as assets exceeding the sum of liabilities for losses reported, expenses, taxes, and all other

indebtedness and reinsurance of outstanding risks as provided by law and paid-in capital in the case of an insurer issuing or having outstanding shares of capital stock. The type of assets to be used in calculating capital and surplus shall be as follows: at least fifteen million dollars (\$15,000,000) shall be in the form of cash, or securities of the same character and quality as specified in Sections 1170 to 1182, inclusive, or in readily marketable securities listed on regulated United States' national or principal regional securities exchanges. The remaining assets shall be in the form just described, or in the form of investments of substantially the same character and quality as described in Sections 1190 to 1202, inclusive. In calculating capital and surplus under this section, the term "same character and quality" shall permit, but not require, the commissioner to approve assets maintained in accordance with the laws of another state or country. The commissioner shall be guided by any limitations, restrictions, or other requirements of this code or the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual in determining whether assets substantially similar to those described in Sections 1190 to 1202, inclusive, qualify. The commissioner shall retain the discretion to disapprove or disallow any asset that is not of a sound quality, or that he or she deems to create an unacceptable risk of loss to the insurer or to policyholders. Letters of credit shall not qualify as assets in the calculation of surplus. In the case of an Insurance Exchange which maintains funds for the protection of all Insurance Exchange policyholders, each individual syndicate seeking to accept surplus line placements of risks resident, located, or to be performed in this state shall maintain minimum capital and surplus of not less than six million four hundred thousand dollars (\$6,400,000). Each individual syndicate shall increase the capital and surplus required by this paragraph by one million dollars (\$1,000,000) each year until it attains a capital and surplus of fifteen million dollars (\$15,000,000). In the case of Insurance Exchanges that do not maintain funds for the protection of all Insurance Exchange policyholders, each individual syndicate seeking to accept surplus line placement of risks resident, located, or to be performed in this state shall meet the capital and surplus requirements of subparagraph (A) of this paragraph.

(C) In the case of a syndicate that is part of a group consisting of incorporated individual insurers, or a combination of both incorporated and unincorporated insurers, that at all times maintains a trust fund of not less than one hundred million dollars (\$100,000,000) in a qualified United States financial institution as security to the full amount thereof for the United States surplus line policyholders and beneficiaries of direct policies of the group, including all policyholders and beneficiaries of direct policies of the syndicate, and the full balance in the trust fund is available to satisfy the liabilities of each member of the group of those syndicates, incorporated individual insurers or other unincorporated insurers, without regard to their individual contributions to that trust fund, and the trust complies with the terms of and conditions specified in paragraph (1) of subdivision (b), the syndicate is excepted from the capital and surplus requirements of

subparagraph (A) of paragraph (2). The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members.

(b) (1) In addition, to be eligible as a surplus line insurer, an insurer not domiciled in one of the United States or its territories shall have in force in the United States an irrevocable trust account in a qualified United States financial institution, for the protection of United States policyholders, of not less than five million four hundred thousand dollars (\$5,400,000) and consisting of cash, securities acceptable to the commissioner which are authorized pursuant to Sections 1170 to 1182, inclusive, readily marketable securities acceptable to the commissioner that are listed on a regulated United States national or principal regional security exchange, or clean and irrevocable letters of credit acceptable to the commissioner and issued by a qualified United States financial institution. The trust agreement shall be in a form acceptable to the commissioner. The funds in the trust account may be included in any calculation of capital and surplus, except letters of credit, which shall not be included in any calculation.

(2) In the case of a syndicate seeking eligibility under subparagraph (C) of paragraph (2) of subdivision (a), the syndicate shall, in addition to the requirements of that subparagraph, at a minimum, maintain in the United States a trust account in an amount satisfactory to the commissioner that is not less than the amount required by the domiciliary state of the syndicate's trust. The trust account shall comply with the terms and conditions specified in paragraph (1).

(3) In the case of a group of incorporated insurers under common administration that maintains a trust fund of not less than one hundred million dollars (\$100,000,000) in a qualified United States financial institution for the payment of claims of its United States policyholders, their assigns, or successors in interest and that complies with the terms and conditions of paragraph (1) that has continuously transacted an insurance business outside the United States for at least three years, that is in good standing with its domiciliary regulator, whose individual insurer members maintain standards and a financial condition reasonably comparable to admitted insurers, that submits to this state's authority to examine its books and bears the expense of examination, and that has an aggregate policyholder surplus of ten billion dollars (\$10,000,000,000), the group is excepted from the capital and surplus requirements of subdivision (a).

(c) Has caused to be provided to the commissioner the following documents:

(1) The financial documents as specified below, each showing the insurer's condition as of a date not more than 12 months prior to submission:

(A) A copy of an annual statement, prepared in the form prescribed by the NAIC. For an alien insurer, in lieu of an annual statement, a licensee may submit a form as set forth by regulation and as prepared by the insurer,

and, if listed by the IID, a copy of the complete information as required in the application for listing by the IID.

(B) A copy of an audited financial report on the insurer's condition that meets the standards of subparagraph (D) for foreign insurers or subparagraph (E) for alien insurers.

(C) If the insurer is an alien:

(i) A certified copy of the trust agreement referenced in subdivision (b).

(ii) A verified copy of the most recent quarterly statement or list of the assets in the trust.

(D) Financial reports filed pursuant to this section by foreign insurers shall conform to the following standards:

(i) Financial documents shall be certified.

(ii) An audited financial report shall constitute a supplement to the insurer's annual statement, as required by the annual statement instructions issued by the NAIC.

(iii) An audited financial report shall be prepared by an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states where licensed to practice; and be prepared in conformity with statutory accounting practices prescribed, or otherwise permitted, by the insurance regulator of the insurer's domiciliary jurisdiction.

(iv) An audited financial report shall include information on the insurer's financial position as of the end of the most recent calendar year, and the results of its operations, cashflows, and changes in capital and surplus for the year then ended.

(v) An audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the insurer's annual statement filed with its domiciliary jurisdiction, and presenting comparatively the amounts as of December 31 of the most recent calendar year and the amounts as of December 31 of the preceding year.

(E) Financial reports filed pursuant to this section by alien insurers shall conform to the following standards:

(i) Except as provided in clause (ii) of subparagraph (C), financial documents should be certified, if certification of a financial document is not available, the document shall be verified.

(ii) Financial documents should be expressed in United States dollars, but may be expressed in another currency, if the exchange rate for the other currency as of the date of the document is also provided.

(iii) The responses provided pursuant to subparagraph (A) of paragraph (1) on the form submitted in lieu of an annual statement should follow the most recent ISI Guide to Alien Reporting Format, "Standard Definitions of Accounting Items." Responses that do not agree with a standard definition shall be fully explained in the form.

(iv) An audited financial report shall be prepared by an independent licensed auditor in the insurer's domiciliary jurisdiction or in any state.

(v) An audited financial report shall be prepared in accord with either (I) Generally Accepted Auditing Standards that prescribe Generally Accepted

Accounting Principles, or (II) International Accounting Standards as published and revised from time to time by the International Auditing Guidelines published by the International Auditing Practice Committee of the International Federation of Accountants; and shall include financial statement notes and a summary of significant accounting practices.

(F) The commissioner may accept, in lieu of a document described above, any certified or verified financial or regulatory document, statement, or report if the commissioner finds that it possesses reliability and financial detail substantially equal to or greater than the document for which it is proposed to be a substitute.

(G) If one of the financial documents required to be submitted under subparagraphs (A) and (B) is dated within 12 months of submission, but the other document is not so dated, the licensee may use the outdated document if it is accompanied by a supplement. The supplement must meet the same requirements which apply to the supplemented document, and must update the outdated document to a date within the prescribed time period, preferably to the same date as the nonsupplemented document.

(2) A certified copy of the insurer's license issued by its domiciliary jurisdiction, plus a certification of good standing, certificate of compliance, or other equivalent certificate, from either that jurisdiction or, if the jurisdiction does not issue those certificates, from any state where it is licensed.

(3) Information on the insurer's agent in California for service of process, including the agent's full name and address. The agent's address must include a street address where the agent can be reached during normal business hours.

(4) The complete street address, mailing address, and telephone number of the insurer's principal place of business.

(5) A certified or verified explanation, report, or other statement, from the insurance regulatory office or official of the insurer's domiciliary jurisdiction, concerning the insurer's record regarding market conduct and consumer complaints; or, if that information cannot be obtained from that jurisdiction, then any other information that the licensee can procure to demonstrate a good reputation for payment of claims and treatment of policyholders.

(6) A verified statement, from the insurer or licensee, on whether the insurer or any affiliated entity is currently known to be the subject of any order or proceeding regarding conservation, liquidation, or other receivership; or regarding revocation or suspension of a license to transact insurance in any jurisdiction; or otherwise seeking to stop the insurer from transacting insurance in any jurisdiction. The statement shall identify the proceeding by date, jurisdiction, and relief or sanction sought; and shall attach a copy of the relevant order.

(7) A certified copy of the most recent report of examination or an explanation if the report is not available.

(8) A list of all California surplus line brokers authorized by the insurer to issue policies on its behalf, and any additions to or deletions from that list.

(d) (1) Has provided any additional information or documentation required by the commissioner that is relevant to the financial stability, reputation, and integrity of the nonadmitted insurer. In making a determination concerning financial stability, reputation, and integrity of the nonadmitted insurer, the commissioner shall consider any analyses, findings, or conclusions made by the National Association of Insurance Commissioners (NAIC) in its review of the insurer for purposes of inclusion on or exclusion from the list of authorized nonadmitted insurers maintained by the NAIC. The commissioner may, but shall not be required to, rely on, adopt, or otherwise accept any analyses, findings, or conclusions of the NAIC, as the commissioner deems appropriate. In the case of a syndicate seeking eligibility under subparagraph (C) of paragraph (2) of subdivision (a), the commissioner may, but shall not be required to, rely on, adopt, or otherwise accept any analyses, findings, or conclusions of any state, as the commissioner deems appropriate, as long as that state, in its method of regulation and review, meets the requirements of paragraph (2).

(2) The regulatory body of the state shall regularly receive and review the following: (A) an audited financial statement of the syndicate, prepared by a certified or chartered public accountant; (B) an opinion of a qualified actuary with regard to the syndicate's aggregate reserves for payment of losses or claims and payment of expenses of adjustment or settlement of losses or claims; (C) a certification from the qualified United States financial institution that acts as the syndicate's trustee, respecting the existence and value of the syndicate's trust fund; and (D) information concerning the syndicate's or its manager's operating history, business plan, ownership and control, experience and ability, together with any other pertinent factors, and any information indicating that the syndicate or its manager make reasonably prompt payment of claims in this state or elsewhere. The regulatory body of the state shall have the authority, either by law or through the operation of a valid and enforceable agreement, to review the syndicate's assets and liabilities and audit the syndicate's trust account, and shall exercise that authority with a frequency and in a manner satisfactory to the commissioner.

(e) Has established that:

(1) All documents required by subdivisions (c) and (d) have been filed. Each of the documents appear after review to be complete, clear, comprehensible, unambiguous, accurate, and consistent.

(2) The documents affirm that the insurer is not subject in any jurisdiction to an order or proceeding that:

(A) Seeks to stop it from transacting insurance.

(B) Relates to conservation, liquidation, or other receivership.

(C) Relates to revocation or suspension of its license.

(3) The documents affirm that the insurer has actively transacted insurance for the three years immediately preceding the filing made under this section,

unless an exemption is granted. As used in this paragraph, “insurer” does not include a syndicate of underwriting entities. The commissioner may grant an exemption if the licensee has applied for exemption and demonstrates either of the following:

(A) The insurer meets the condition for any exception set forth in subdivision (a), (b), or (c) of Section 716.

(B) If the insurer has been actively transacting insurance for at least 12 months, and the licensee demonstrates that the exemption is warranted because the insurer’s current financial strength, operating history, business plan, ownership and control, management experience, and ability, together with any other pertinent factors, make three years of active insurance transaction unnecessary to establish sufficient reputation.

(4) The documents confirm that the insurer holds a license to issue insurance policies (other than reinsurance) to residents of the jurisdiction that granted the license unless an exemption is granted. The commissioner may grant an exemption if the licensee has applied for an exemption and demonstrates that the exemption is warranted because the insurer proposes to issue in California only commercial coverage, and is wholly owned and actually controlled by substantial and knowledgeable business enterprises that are its policyholders and that effectively govern the insurer’s destiny in furtherance of their own business objectives.

(5) The information filed pursuant to paragraph (5) of subdivision (c) or otherwise filed with or available to the commissioner, including reports received from California policyholders, shall indicate that the insurer makes reasonably prompt payment of claims in this state or elsewhere.

(6) The information available to the commissioner shall not indicate that the insurer offers in California a licensee products or rates that violate any provision of this code.

(f) Has been placed on the list of eligible surplus line insurers by the commissioner. The commissioner shall establish a list of all surplus line insurers that have met the requirements of subdivisions (a) to (e), inclusive, and shall publish a master list at least semiannually. Any insurer receiving approval as an eligible surplus line insurer shall be added by addendum to the list at the time of approval, and shall be incorporated into the master list at the next date of publication. If an insurer appears on the most recent list, it shall be presumed that the insurer is an eligible surplus line insurer, unless the commissioner or his or her designee has mailed or causes to be mailed notice to all surplus line brokers that the commissioner has withdrawn the insurer’s eligibility. Upon receipt of notice, the surplus line broker shall make no further placements with the insurer. Nothing in this subdivision shall limit the commissioner’s discretion to withdraw an insurer’s eligibility.

(g) (1) Except as provided by paragraph (2), whenever the commissioner has reasonable cause to believe, and determines after a public hearing, that any insurer on the list established pursuant to subdivision (f), (A) is in an unsound financial condition, (B) does not meet the eligibility requirements under subdivisions (a) to (e), inclusive, (C) has violated the laws of this state, or (D) without justification, or with a frequency so as to indicate a

general business practice, delays the payment of just claims, the commissioner may issue an order removing the insurer from the list. Notice of hearing shall be served upon the insurer or its agent for service of process stating the time and place of the hearing and the conduct, condition, or ground upon which the commissioner would make his or her order. The hearing shall occur not less than 20 days, nor more than 30 days after notice is served upon the insurer or its agent for service of process.

(2) If the commissioner determines that an insurer's immediate removal from the list is necessary to protect the public or an insured or prospective insured of the insurer, or, in the case of an application by an insurer to be placed on the list which is being denied by the commissioner, the commissioner may issue an order pursuant to paragraph (1) without prior notice and hearing. At the time an order is served pursuant to this paragraph to an insurer on the list, the commissioner shall also issue and serve upon the insurer a statement of the reasons that immediate removal is necessary. Any order issued pursuant to this paragraph shall include a notice stating the time and place of a hearing on the order, which shall be not less than 20 days, nor more than 30 days after the notice is served.

(3) Notwithstanding paragraphs (1) and (2), in any case where the commissioner is basing a decision to remove an insurer from the list, or deny an application to be placed on the list, on the failure of the insurer or applicant to comply with, meet or maintain any of the objective criteria established by this section, or by regulation adopted pursuant to this section, the commissioner may so specify this fact in the order, and no hearing shall be required to be held on the order.

(4) Notwithstanding paragraphs (1) and (2), the commissioner may, without prior notice or hearing, remove from the list established pursuant to subdivision (f) any insurer that has failed or refused to timely provide documents required by this section, or any regulations adopted to implement this section. In the case of removal pursuant to this paragraph, the commissioner shall notify all surplus line brokers of the action.

(h) In addition to any other statements or reports required by this chapter, the commissioner may also address to any licensee a written request for full and complete information respecting the financial stability, reputation and integrity of any nonadmitted insurer with whom the licensee has dealt or proposes to deal in the transaction of insurance business. The licensee so addressed shall promptly furnish in written or printed form so much of the information requested as he or she can produce together with a signed statement identifying the same and giving reasons for omissions, if any. After due examination of the information and accompanying statement, the commissioner may, if he or she believes it to be in the public interest, order the licensee in writing to place no further insurance business on property located or operations conducted within or on the lives of persons who are residents of this state with the nonadmitted insurer on behalf of any person. Any placement in the nonadmitted insurer made by a licensee after receipt of that order is a violation of this chapter. The commissioner may issue an order when documents submitted pursuant to subdivisions (c) and (d) do

not meet the criteria of subdivisions (a) to (e), inclusive, or when the commissioner obtains documents on an insurer and the insurer does not meet the criteria of subdivisions (a) to (e), inclusive.

(i) The commissioner shall require, at least annually, the submission of records and statements as are reasonably necessary to ensure that the requirements of this section are maintained.

(j) The commissioner shall establish by regulation a schedule of fees to cover costs of administering and enforcing this chapter.

(k) (1) Insurance may be placed on a limited basis with insurers not on the list established pursuant to this section if all of the following conditions are met:

(A) The use of multiple insurers is necessary to obtain coverage for 100 percent of the risk.

(B) At least 80 percent of the risk is placed with admitted insurers or insurers that appear on the list of eligible nonadmitted insurers.

(C) The placing surplus line broker submits to the commissioner, or his or her designee, copies of all documentation relied upon by the surplus line broker to make the broker's determination that the financial stability, reputation, and integrity of the unlisted insurer or insurers, are adequate to safeguard the interest of the insured under the policy. This documentation, and any other documentation regarding the unlisted insurer requested by the commissioner, shall be submitted no more than 30 days after the insurance is placed with the unlisted insurer for the initial placement by that broker with the particular unlisted insurer, and annually thereafter for as long as the broker continues to make placements with the unlisted insurer pursuant to this paragraph.

(D) The insured has aggregate annual premiums for all risks other than workers' compensation or health coverage totaling no less than one hundred thousand dollars (\$100,000).

(2) Insurance may not be placed pursuant to paragraph (1) if any of the following applies:

(A) The unlisted insurer has for any reason been objected to by the commissioner pursuant to this section, removed from the list, or denied placement on the list.

(B) The insurance includes coverage for employer-sponsored medical, surgical, hospital, or other health or medical expense benefits payable to the employee by the insurer.

(C) The insurance is mandatory under the laws of the federal government, this state, or any political subdivision thereof, and includes any portion of limits of coverage mandated by those laws.

(D) The insured is a multiple employer welfare arrangement, as defined in Section 1002(40)(A) of Title 29 of the United States Code, or any other arrangement among two or more employers that are not under common ownership or control, which is established or maintained for the primary purpose of providing insurance benefits to the employees of two or more employers.

(E) Unlisted insurers represent a disproportionate portion of the lower layers of the coverage.

(3) Nothing in this section is intended to alter any duties of a surplus line broker pursuant to subdivision (b) of Section 1765 or other laws of this state to safeguard the interests of the insured under the policy in recommending or placing insurance with a nonadmitted insurer.

(4) Placements authorized by this subdivision are intended to provide sophisticated insurance purchasers with a means to obtain necessary commercial insurance coverage from nonadmitted insurers not listed by the commissioner in situations where it is not commercially possible to fully obtain that coverage from either admitted or listed insurers. This subdivision shall not be deemed to permit surplus line brokers to place with nonadmitted insurers common commercial or personal line coverages for insureds that can be placed with insurers that are admitted or listed pursuant to this section, whether the insured is an individual insured, or a group created primarily for the purpose of purchasing insurance.

(l) As used in this section:

(1) “Certified” means an originally signed or sealed statement, dated not more than 60 days before submission, made by a public official or other person, attached to a copy of a document, that attests that the copy is a true copy of the original, and that the original is in the custody of the person making the statement.

(2) “Domiciliary jurisdiction” means the state, nation, or subdivision thereof under the laws of which an insurer is incorporated or otherwise organized.

(3) “Domiciliary state of the syndicate’s trust” means the state in which the syndicate’s trust fund is principally maintained and administered for the benefit of the syndicate’s policyholders in the United States.

(4) “IID” means the International Insurers Department.

(5) “Insurer” means (unless the context indicates otherwise) “nonadmitted” insurers that are either “foreign” or “alien” insurers, as those terms are defined in Sections 25, 27, and 1580, and syndicates whose members consist of individual incorporated insurers who are not engaged in any business other than underwriting as a member of the group and individual unincorporated insurers, provided all the members are subject to the same level of solvency regulation and control by the group’s domiciliary regulator. The term “insurer” includes all nonadmitted insurers selling insurance to or through purchasing groups as defined in the Liability Risk Retention Act of 1986 (15 U.S.C. Sec. 3901 et seq.) and the California Risk Retention Act of 1990 (Chapter 1.5 (commencing with Section 125) of Part 1 of Division 1), except insurers that are risk retention groups as defined by those acts.

(6) “ISI” means Insurance Solvency International.

(7) “Licensee” means a surplus line broker as defined in Section 47.

(8) “NAIC” means the National Association of Insurance Commissioners or its successor organization.

(9) “NAIIO” means the Nonadmitted Alien Insurer Information Office of the NAIC or its successor office.

(10) “State” means any state of the United States; the District of Columbia; a commonwealth, or a territory.

(11) “Verified” means a document or copy accompanied by an originally signed statement, dated not more than 60 days before submission, from a responsible executive or official who has authority to provide the statement and knowledge whereof he or she speaks, attesting either under oath before a notary public, or under penalty of perjury under California law, that the assertions made in the document are true.

(m) With respect to a nonadmitted insurer that is listed as an authorized surplus line insurer as of December 31, 1994, pursuant to Sections 2174.1 to 2174.14, inclusive, of Title 10 of the California Code of Regulations, this section shall not be effective until the subsequent expiration of the listing of that insurer. Nothing in the bill that amended this section during the 1994 portion of the 1993–94 Regular Session is intended to repeal or imply there is not authority to adopt, or to have adopted, or to continue in force, any regulation, or part thereof, with respect to surplus line insurance which is not clearly inconsistent with it.

SEC. 3. Section 10082.5 of the Insurance Code is amended to read:

10082.5. (a) If an insurer subject to this chapter charges an additional earthquake insurance premium or deductible because a dwelling fails to comply with paragraph (1), (2), (3), (4), or (5) and the dwelling is subsequently brought into compliance with any one of these paragraphs, then the additional premium or deductible attributed to noncompliance shall not be charged.

(1) Until December 31, 2008, compliance with the foundation anchor bolt requirements of subdivision (f) of Section 2907 of Chapter 29 of the 1991 edition of the Uniform Building Code of the International Conference of Building Officials, or a successor building code adopted by the State of California, or with any local government modifications to those requirements.

(2) Until December 31, 2008, compliance with the bracing requirements for cripple walls of paragraph (4) of subdivision (g) of Section 2517 of Chapter 25 of the 1991 edition of the Uniform Building Code of the International Conference of Building Officials, or a successor building code adopted by the State of California, and with any local government modifications to those requirements.

(3) Compliance with Section 19215 of the Health and Safety Code for the bracing, anchoring, or strapping all water heaters to resist falling or horizontal displacement due to earthquake motion.

(4) Commencing on January 1, 2009, compliance with the foundation anchor bolt requirements of the 2007 edition of the California Building Standards Code as specified in Title 24 of the California Code of Regulations, or a successor edition of that code, or with any local government modifications to those requirements.

(5) Commencing on January 1, 2009, compliance with the bracing requirements for cripple walls of the 2007 edition of the California Building

Standards Code as specified in Title 24 of the California Code of Regulations, or a successor edition of that code, or with any local government modifications to those requirements.

(b) A copy of the approved inspection record for the building permit for work performed pursuant to this section shall be submitted by the insured to the insurer in order to verify that retrofits performed pursuant to this section have been performed.

SEC. 4. Section 12100 of the Insurance Code is amended to read:

12100. As used in this article:

(a) (1) “Financial guaranty insurance” means a surety bond, an insurance policy or, when issued by an insurer, an indemnity contract and any guarantee similar to the foregoing types, under which loss is payable upon proof of occurrence of financial loss to an insured claimant, obligee, or indemnitee as a result of any of the following events:

(A) Failure of any obligor on or issuer of any debt instrument or other monetary obligation (including equity securities guaranteed under a surety bond, insurance policy, or indemnity contract) to pay, when due to be paid by the obligor or scheduled at the time insured to be received by the holder of the obligation, principal, interest, premium, dividend, purchase price of or on the instrument or obligation, or other monetary payment when the failure is the result of financial default or insolvency, or, provided that the payment source is investment grade, any other failure of that payment source to make payment, regardless of whether the obligation is incurred directly or as guarantor by or on behalf of another obligor that has also defaulted.

(B) Changes in the levels of interest rates, whether short or long term, or the differential in interest rates between various markets or products.

(C) Changes in the rate of exchange of currency.

(D) Changes in the value of financial or commodity indices, or price levels in general.

(E) Other events that the commissioner determines by order, regulation, or written consent are substantially similar to any of the foregoing.

(2) Notwithstanding paragraph (1), “financial guaranty insurance” shall not include any of the following:

(A) Insurance of any loss resulting from any event described in paragraph (1), if the loss is payable only upon the occurrence of any of the following, as specified in a surety bond, insurance policy, or indemnity contract:

(i) A fortuitous physical event.

(ii) A failure of or deficiency in the operation of equipment.

(iii) An inability to extract or recover a natural resource.

(B) Title insurance authorized by Section 104 and as permitted to be written by title insurers pursuant to Chapter 1 (commencing with Section 12340) of Part 6 of this division.

(C) Surety insurance as authorized by Section 105.

(D) Credit unemployment insurance, meaning insurance on a debtor in connection with a specific loan or other credit transaction, to provide payments to a creditor in the event of unemployment of the debtor for the

installments or other periodic payments becoming due while a debtor is unemployed.

(E) Credit insurance authorized by Section 113.

(F) Guaranteed investment contracts and funding agreements issued by life insurance companies which provide that the life insurer itself will make specified payments in exchange for specific premiums or contributions.

(G) Mortgage insurance authorized by Section 117 and as permitted to be written by mortgage insurers pursuant to Chapter 2 (commencing with Section 12420) of Part 6 of this division.

(H) Mortgage guaranty insurance authorized by Section 119 and as permitted to be written by a mortgage guaranty insurer pursuant to Chapter 2A (commencing with Section 12640.01) of Part 6 of this division.

(I) Indemnity contracts or similar guarantees, to the extent that they are not otherwise limited or proscribed by this article, in which a life insurer does any of the following:

(i) Guarantees its obligations or indebtedness or the obligations or indebtedness of a subsidiary (as defined in Section 1215) other than a financial guaranty insurance corporation; provided that:

(I) To the extent that any such obligations or indebtedness are backed by specific assets, those assets shall at all times be owned by the life insurer or the subsidiary.

(II) In the case of the guarantee of the obligations or indebtedness of the subsidiary that are not backed by specific assets of the life insurer, the guarantee terminates once the subsidiary ceases to be a subsidiary.

(ii) Guarantees obligations or indebtedness (including the obligation to substitute assets where appropriate) with respect to specific assets acquired by a life insurer in the course of normal investment activities and not for the purpose of resale with credit enhancement, or guarantees obligations or indebtedness acquired by its subsidiary, provided that the assets acquired pursuant to this clause have been either of the following:

(I) Acquired by a special purpose entity, whose sole purpose is to acquire specific assets of the life insurer or the subsidiary and issue securities or participation certificates backed by the assets.

(II) Sold to an independent third party.

(iii) Guarantees obligations or indebtedness of an employee or agent of the life insurer.

(J) Any cramdown bond or mortgage repurchase bond, as those phrases are used by nationally recognized rating agencies in respect of mortgage-backed securities.

(K) Residual value insurance.

(L) Any other form of insurance covering risks that the commissioner determines by order, regulation, or written consent to be substantially similar to any of the foregoing.

(b) "Affiliate" means a person that, directly or indirectly, owns at least 10 but less than 50 percent of the financial guaranty insurance corporation or that is at least 10 percent but less than 50 percent, directly or indirectly, owned by a financial guaranty insurance corporation.

(c) “Asset-backed securities” means either of the following:

(1) Securities or other financial obligations of an issuer provided that both of the following apply:

(A) The issuer is a special purpose corporation, trust, or other entity, or, provided that the securities or other financial obligations constitute an insurable risk, is a bank, trust company, or other financial institution, deposits in which are insured by the Bank Insurance Fund or the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation or any successors thereto.

(B) The securities or other financial obligations are related to a pool of assets so that all of the following apply:

(i) The pool of assets has been conveyed, pledged, or otherwise transferred to or is otherwise owned or acquired by the issuer.

(ii) The pool of assets backs the securities or other financial obligations issued.

(iii) No asset in the pool, other than an asset directly payable by, guaranteed by, or backed by the full faith and credit of the United States government or that otherwise qualifies as collateral under paragraph (1) or (2) of subdivision (e), has a value exceeding 20 percent of the aggregate value of the pool.

(2) A pool of credit default swaps or credit default swaps referencing a pool of obligations, provided that each of the following is true:

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

(B) No reference obligation in the pool, other than an obligation directly payable by, guaranteed by, or backed by the full faith and credit of the United States government, or that otherwise qualifies as collateral under paragraph (2) of subdivision (e), has a notional amount exceeding 10 percent of the pool’s aggregate notional amount.

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

(d) “Average annual debt service” means the amount of insured unpaid principal and interest on an obligation multiplied by the number of the insured obligations (assuming that each obligation represents a \$1,000 par value), divided by the amount equal to the aggregate life of all of those obligations. This definition, expressed as a formula in regard to bonds, is as follows:

$$\text{Average Annual Debt Service} = \frac{\text{Total Debt Service} \times \text{Number of Bonds}}{\text{Bond Years}}$$

$$\frac{\text{Total Debt Service}}{\text{Number of Bonds}} = \frac{\text{Insured Unpaid Principal} + \text{Interest}}{\frac{\text{Total Insured Principal}}{\$1,000}}$$

$$\text{Bond Years} = \text{Number of Bonds} \times \text{Term in Years}$$

Term in Years = Term to maturity based on scheduled amortization or, in the absence of a scheduled amortization in the case of asset-backed securities or other obligations lacking a scheduled amortization, expected amortization, in each case determined as of the date of issuance of the insurance policy based upon the amortization assumptions employed in pricing the insured obligations or otherwise used by the insurer to determine aggregate net liability.

(e) “Collateral” means any of the following:

(1) Cash.

(2) The cashflow from specific obligations which are not callable and scheduled to be received based on expected prepayment speed on or prior to the date of scheduled debt service (including scheduled redemptions and prepayments) on the insured obligation, provided that any of the following is true, as applicable:

(A) The specific obligations are directly payable by, guaranteed by or backed by the full faith and credit of the United States government.

(B) In the case of insured obligations denominated or payable in a foreign currency as permitted under paragraph (3) of subdivision (b) of Section 12112, the specific obligations are directly payable by, guaranteed by, or backed by the full faith and credit of the foreign government or the central bank thereof.

(C) The specific obligations are insured by the same insurer that insures the obligations being collateralized, and the cashflows from the specific obligations are sufficient to cover the insured scheduled payments on the obligations being collateralized.

(3) The market value of investment grade obligations, other than obligations evidencing an interest in the project or projects financed with the proceeds of the insured obligations.

(4) The face amount of each letter of credit that meets all of the following criteria:

(A) Is irrevocable.

(B) Provides for payment under the letter of credit in lieu of or as reimbursement to the insurer for payment required under a financial guaranty insurance policy.

(C) Is issued, presentable, and payable either:

(i) At an office of the letter of credit issuer in the United States.

(ii) At an office of the letter of credit issuer located in the jurisdiction in which the trustee or paying agent for the insured obligation is located.

(D) Contains a statement that either:

(i) Identifies the financial guaranty insurance corporation, its collateral agent, or any successor by operation of law, including any liquidator, rehabilitator, receiver or conservator, as the beneficiary.

(ii) Identifies the trustee or the paying agent for the insured obligation as the beneficiary.

(E) Contains a statement to the effect that the obligation of the letter of credit issuer under the letter of credit is an individual obligation of that issuer and is in no way contingent upon reimbursement with respect thereto.

(F) Contains an issue date and an expiration date.

(G) Does either of the following:

(i) Has a term at least as long as the shorter of the term of the insured obligation or the term of the financial guaranty insurance policy.

(ii) Provides that the letter of credit shall not expire without 30 days prior written notice to the beneficiary and allows for drawing under the letter of credit in the event that, prior to expiration, the letter of credit is not renewed or extended or a substitute letter of credit or alternate collateral meeting the requirements of subdivision (e) is not provided.

(H) If the letter of credit is governed by the 1983 revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400 or 500), or any successor revision approved by the commissioner, it shall contain a provision for an extension of time, of not less than 30 days after resumption of business, to draw against the letter of credit in the event that one or more of the occurrences described in Article 19 of Publication 400 or 500 occurs.

(I) Is issued by a bank, trust company, or savings association that meets all of the following criteria:

(i) Is organized and existing under the laws of the United States or any state thereof or, in the case of a financial institution organized under the laws of a foreign country, has a branch or agency office licensed under the laws of the United States or any state thereof and is domiciled in a member country of the Organization of Economic Co-operation and Development having a sovereign rating in one of the top two generic lettered rating classifications by a securities rating agency acceptable to the commissioner.

(ii) Has (or is the principal operating subsidiary of a financial institution holding company that has) a long-term debt rating of at least investment grade.

(iii) Is not a parent, subsidiary or affiliate of the trustee or paying agent, if any, with respect to the insured obligation if that trustee or paying agent is the named beneficiary of the letter of credit.

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

(A) May not be amended without the consent of the insurer and may only be terminated in accordance with one of the following:

(i) At the option of the insurer.

(ii) At the option of the counterparty to the insurer (or its nominee), if the credit default swap provides for the payment of a termination amount equal to the replacement cost of the terminated credit default swap determined with reference to standard documentation of the International Swap and Derivatives Association, Inc. or otherwise acceptable to the commissioner.

(iii) At the discretion of the commissioner acting as rehabilitator, liquidator, or receiver of the insurer upon payment by or on behalf of the insurer of any termination amount due from the insurer.

(B) Provides for payment under all instances in which payment under a financial guaranty insurance policy is required, except that payment under the credit default swap may be on a first loss, excess of loss, or other nonpro-rata basis and may apply on an aggregate basis to more than one policy.

(C) Is provided by one of the following:

(i) A counterparty whose obligations under the credit default swap are insured by a financial guaranty insurance corporation licensed under this article or guaranteed by a financial institution referred to in clauses (ii) and (iii) of this subparagraph.

(ii) A financial institution satisfying the requirements of clauses (i) to (iii), inclusive, of subparagraph (I) of paragraph (4), provided that obligations of the financial institution on parity with its obligations under the credit default swap are rated as investment grade, and further provided that, if the financial institution is not organized under, or acting through a branch or agency office licensed under, the laws of the United States or any state thereof, then the financial institution is required to collateralize the replacement cost of the credit default swap in the event that it fails to maintain the investment grade rating.

(iii) Any other financial institution that the commissioner determines to be substantially similar to any specified in clause (i) or (ii).

(iv) The requirements of this subparagraph shall not be construed as authority for an insurer domiciled in the United States to issue credit default swaps unless the insurer has explicit authority to issue credit default swaps.

Collateral shall be deposited with or held by the financial guaranty insurance corporation, held by a trustee or agent for the benefit of the financial guaranty insurance corporation in trust or to perfect a security interest, or held in trust pursuant to the bond indenture or other trust arrangement by a trustee or custodian for the benefit of holders of the insured obligations in the form of funds for payment of insured obligations, sinking funds, or other reserves which may be used for the payment of insured obligations, collateral agent fees and trustee fees, or reimbursement of the financial guaranty insurance corporation on any obligation insured by the corporation. Any such trustee, custodian, or agent shall be a bank, savings association, depository institution, or other entity acceptable to the commissioner, the deposits of which are insured by the Bank Insurance Fund or the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation (or any successors thereto), or in the case of banking organizations organized under the laws of a foreign country in addition satisfies the requirements of clauses (i) and (ii) of subparagraph (I) of paragraph (4) of subdivision (e) of Section 12100, and, in each case which has a net worth of at least twenty-five million dollars (\$25,000,000). Any such trustee or agent may also be an approved or qualified servicer or originator of the kind of assets which comprise the collateral which maintains

in force at all times errors and omissions insurance applicable to the trust or agency activities, including without limitation, a servicer qualified under a federal or state insurance or guaranty program to service loans or mortgage loans. The commissioner may adopt regulations, bulletins, notices or orders to limit the amount of collateral provided by obligations, letters of credit, or credit default swaps, or to limit the amount of collateral provided by any single issuer, bank, or counterparty as provided for in this subdivision. The commissioner may also require additional reporting as deemed necessary.

(f) “Commercial real estate” means income-producing real property other than residential property consisting of less than five units.

(g) “Contingency reserve” means an additional liability reserve established to protect policyholders against the effects of adverse economic cycles or other unforeseen circumstances.

(h) “Credit default swap” means an agreement referencing credit derivative definitions published from time to time by the International Swap and Derivatives Association, Inc., or otherwise acceptable to the commissioner, pursuant to which a party agrees to compensate another party in the event of a payment default by, insolvency of, or other adverse credit event in respect of, an issuer of a specified security or other obligation; provided that the agreement does not constitute an insurance contract and the making of the credit default swap does not constitute the transaction of insurance.

(i) “Excess spread” means, with respect to any insured issue of asset-backed securities, the excess of (A) the scheduled cashflow on the underlying assets that is reasonably projected to be available, over the term of the insured securities after payment of the expenses associated with the insured issue, to make debt service payments on the insured securities over (B) the scheduled debt service requirements on the insured securities, provided that this excess is held in the same manner as collateral is required to be held under subdivision (e).

(j) “Financial guaranty insurance corporation” means an insurer transacting financial guaranty insurance.

(k) “Governmental unit” means a state, territory, or possession of the United States of America, the District of Columbia, the country of Canada, a province of Canada, the United Kingdom, a public authority of the United Kingdom, a member country of the Organization for Economic Co-operation and Development having a sovereign rating in one of the top two generic lettered rating classifications by a securities rating agency acceptable to the commissioner, a municipality, or a political subdivision of any of the foregoing, or any public agency or instrumentality thereof.

(l) “Guarantees of consumer debt obligations” means insurance policies indemnifying a purchaser or lender against loss or damage resulting from defaults on a pool of debts owed for extensions of credit (including in respect of installment purchase agreements and leases) to individuals provided in the normal course of the purchaser’s or lender’s business, provided that the pool meets the requirements of paragraph (2) of subdivision (c) and that the pool has been determined to be investment grade. Policies providing that

coverage shall contain a provision that all liability terminates upon sale or transfer of the underlying obligation to any transferee that is not an insured of the financial guaranty insurance corporation under a similar policy.

(m) “Industrial development bond” means any security, or other instrument under which a payment obligation is created, issued by or on behalf of a governmental unit to finance a project serving a private industrial, commercial, or manufacturing purpose and not guaranteed by a governmental unit.

(n) “Insurable risk” means that the obligation on an uninsured basis has been determined to be not less than investment grade. With respect to asset-backed securities as defined in subdivision (c), the determination shall be, based solely on the pool of assets backing the insured obligation or securing the financial guaranty insurance corporation, without consideration of the creditworthiness of the issuer.

(o) “Investment grade” means that the obligation or parity obligation of the same issuer is rated in one of the top four generic lettered rating classifications by a securities rating agency acceptable to the commissioner, that the obligation or parity obligation of the same issuer, without regard to financial guaranty insurance, has been identified in writing by that rating agency as an insurable risk deemed to be of investment grade quality, or that the obligation or parity obligation of the same issuer has been determined to be investment grade (as indicated by a category 1 or 2 rating) by the Securities Valuation Office of the National Association of Insurance Commissioners.

(p) “Municipal bonds” means municipal obligation bonds and special revenue bonds.

(q) (1) “Municipal obligation bond” means any security, or other instrument, including a lease payable or guaranteed by the United States or another national government that qualifies as a governmental unit, or any agency, department, or instrumentality thereof, or by a state or an equivalent subdivision of another national government that qualifies as a governmental unit, but not a lease of any other governmental unit, under which a payment obligation is created, issued by or on behalf of a governmental unit or issued by a special purpose corporation, special purpose trust, or other special purpose legal entity to finance a project or undertaking serving a substantial public purpose, and which is one or more of the following:

(A) Payable from tax revenues, but not tax allocations, within the jurisdiction of the governmental unit.

(B) Payable or guaranteed by the United States of America or another national government that qualifies as a governmental unit, or any agency, department, or instrumentality thereof, or by a housing agency of a state or an equivalent political subdivision of another national government that qualifies as a governmental unit.

(C) Payable from rates or charges (but not tolls) levied or collected in respect of a nonnuclear utility project, public transportation facility (other than an airport facility) or public higher education facility.

(D) With respect to lease obligations, payable from past, present, or future appropriations.

(2) Notwithstanding paragraph (1), obligations of a special purpose corporation, special purpose trust, or other special purpose legal entity shall not be considered municipal obligation bonds unless the obligations are investment grade at the time of issuance, the obligations are payable from sources enumerated in subparagraphs (A) to (D), inclusive, and the project being financed or the tolls, tariffs, usage fees, or other similar rates or charges for its use are subject to regulation or oversight by a governmental entity.

(r) “Parent” means a person that, directly or indirectly, owns at least 50 percent of a financial guaranty insurance corporation.

(s) “Reinsurance” means cessions qualifying for credit under Section 12121.

(t) “Security” or “secured” means any of the following:

(1) A deposit at least equal to the full amount of the outstanding principal of the insured obligation.

(2) Collateral, as defined by subdivision (e), at least equal to the full amount of the outstanding principal of the insured obligation or that has a market value or scheduled cashflow which is equal to or greater than the scheduled debt service on the insured obligation.

(3) Property, provided the financial guaranty insurance corporation or the trustee has possession of evidence of the right, title, or authority to claim or foreclose thereon or otherwise dispose of the property for value, the scheduled cashflow from which, or market value thereof, is at least equal to the scheduled debt service on the insured obligation.

(u) “Special revenue bond” means any security or other instrument under which a payment obligation is created, issued by or on behalf of, or payable or guaranteed by, a governmental unit to finance a project or undertaking serving a substantial public purpose and not payable from the sources enumerated in subdivision (q) or securities which are substantially similar to the foregoing issued by any of the following:

(1) A not-for-profit corporation.

(2) A special purpose corporation, special purpose trust or other special purpose legal entity, provided that the obligations are investment grade at the time of issuance, the obligations are not payable from the sources enumerated in subparagraphs (A) to (D), inclusive, of paragraph (1) of subdivision (q), and the project being financed or the tolls, tariffs, usage fees, or other similar rates or charges for its use are subject to regulation or oversight by a governmental entity.

(v) “Subsidiary” means a person that, directly or indirectly, is at least 50 percent owned by a financial guaranty insurance corporation.

(w) “Total net liability” of a financial guaranty insurance corporation means the aggregate amount of insured unpaid principal, interest, and other monetary payments, if any, of guaranteed obligations insured or assumed, less reinsurance and less collateral.

(x) “Utility first mortgage obligation” means an obligation of an issuer secured by a first priority mortgage on property owned or leased by an

investor-owned or cooperative-owned utility company and located in the United States, Canada, or a member country of the Organization for Economic Co-operation and Development having a sovereign rating in one of the top two generic lettered rating classifications by a securities rating agency acceptable to the commissioner, provided that the utility or utility property or the usage fees or other similar utility rates or charges are subject to regulation or oversight by a governmental entity.

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