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HOUSE BILL NO. 2320

Offered January 14, 2009

Prefiled January 14, 2009

A BILL to amend the Code of Virginia by adding in Title 38.2 a chapter numbered 64, consisting of sections numbered 38.2-6400 through 38.2-6414, relating to financial guaranty insurance.

Patron—Marshall, R.G.

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 38.2 a chapter numbered 64, consisting of sections numbered 38.2-6400 through 38.2-6414 as follows:

CHAPTER 64.

FINANCIAL GUARANTY INSURANCE.

§ 38.2-6400. Definitions.

As used in this chapter:

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

"Aggregate net liability" means the aggregate amount of insured unpaid principal, interest, and other monetary payments, if any, of guarantied obligations insured or assumed, less reinsurance ceded and less collateral.

"Asset-backed securities" means:

1. Securities or other financial obligations of an issuer, provided that:

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; and

b. A pool of assets that (i) has been conveyed, pledged, or otherwise transferred to or is otherwise owned or acquired by the issuer; (ii) backs the securities or other financial obligations issued; and (iii) has no asset, 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 this section, that has a value exceeding 20 percent of the pool's aggregate value; or

2. A pool of credit default swaps or credit default swaps referencing a pool of obligations, provided that:

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 such 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 this section, has a notional amount exceeding 10 percent of the pool's aggregate notional amount; and

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

"Average annual debt service" means the amount of insured unpaid principal and interest on an obligation, multiplied by the number of such insured obligations (assuming each obligation represents $1,000 par value), divided by the amount equal to the aggregate life of all such obligations (assuming each obligation represents $1,000 par value).

"Collateral" means:

1. Cash;

2. The cash flow from specific obligations that 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 or prepayments) on the insured obligation provided that (i) such specific obligations are directly payable by, guaranteed by, or backed by the full faith and credit of the United States government; (ii) in the case of insured obligations denominated or payable in foreign currency as permitted under subsection D of § 38.2-6405, such specific obligations are directly payable by, guaranteed by, or backed by the full faith and credit of such foreign government or the central bank thereof; or (iii) such specific obligations are insured by the same insurer that insures the obligations being collateralized and the cash flows from such 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 a letter of credit that:

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 or (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 insurer and any successor by operation of law, including any liquidator, rehabilitator, receiver, or conservator, as the beneficiary or (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 such issuer and is in no way contingent upon reimbursement with respect thereto;

f. Contains an issue date and a date of expiration;

g. Either (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 policy or (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 this subdivision is not provided;

h. States that it is governed by the laws of the Commonwealth or by the 1983 or 1993 Revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400 or 500) or any successor revision if approved by the Commissioner, and contains 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; and

i. Is issued by a bank, trust company, or savings institution that:

(1) Is organized and existing under the laws of the United States or any state thereof or, in the case of a nondomestic financial institution, 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 Organisation 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;

(2) 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; and

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

5. The amount of credit protection available to the insurer, or its nominee, under a credit default swap that:

a. May not be amended without the consent of the insurer and may only be terminated (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 (iii) at the discretion of the Commissioner acting as a 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 non pro rata basis and may apply on an aggregate basis to more than one policy;

c. Is provided by (i) a counterparty whose obligations under the credit default swap are insured by a financial guaranty insurance corporation licensed under this chapter or guaranteed by a financial institution; (ii) a financial institution satisfying the requirements of subdivision 4 i (1), 4 i (2), and 4 i (3) of this definition; provided that obligations of such financial institution on parity with its obligations under the credit default swap are investment grade and if such 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 such financial institution is required to collateralize the replacement cost of the credit default swap in the event that it shall fail to maintain such rating; or (iii) any other financial institution that the Commissioner determines to be substantially similar to any of the foregoing. Collateral shall be deposited with the insurer, held in trust by a trustee or custodian acceptable to the Commissioner for the benefit of the insurer, or held in trust pursuant to the bond indenture or other trust arrangement for the benefit of security holders in the form of funds for the payment of insured obligations, sinking funds, or other reserves that may be used for the payment of insured obligations and trustee and other

administrative fees on a first priority basis established and continually maintained pursuant to the bond indenture or other trust arrangement by a trustee acceptable to the Commissioner. The Commissioner may adopt regulations 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.

"Commercial real estate" means income-producing real property other than residential property consisting of fewer than five units.

"Consumer debt obligations guaranties" means financial guaranty insurance that indemnifies 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 such pool has been determined to be investment grade. Consumer debt obligations guaranty policies shall contain a provision that all coverage under the policies terminates upon sale or transfer of the underlying consumer debt obligation to any transferee not insured by the same insurer under a similar policy.

"Contingency reserve" means an additional liability reserve established to protect policyholders against the effects of adverse economic developments or cycles or other unforeseen circumstances.

"Credit default swap" means an agreement 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; however, such agreement does not constitute an insurance contract and the making of such credit default swap does not constitute the doing of an insurance business unless the agreement is purchased by a party who, at the time at which the agreement is entered into, holds, or reasonably expects to hold, a material interest in the referenced obligation.

"Excess spread" means, with respect to any insured issue of asset-backed securities, the excess of (i) the scheduled cash flow 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 (ii) the scheduled debt service requirements on the insured securities, provided that such excess is held in the same manner as collateral is required to be held under this section.

"Financial guaranty insurance" means a surety bond, an insurance policy, or, when issued by an insurer or any person doing an insurance business, an indemnity contract, and any guaranty 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:

1. 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, or purchase price of or on, or other amounts due or payable with respect to, such instrument or obligation, when such failure is the result of a financial default or insolvency or, provided that such payment source is investment grade, any other failure to make payment, regardless of whether such obligation is incurred directly or as guarantor by or on behalf of another obligor that has also defaulted;

2. Changes in the levels of interest rates, whether short or long term or the differential in interest rates between various markets or products;

3. Changes in the rate of exchange of currency;

4. Changes in the value of specific assets or commodities, financial or commodity indices, or price levels in general; or

5. Other events that the Commissioner determines are substantially similar to any of the foregoing.

"Financial guaranty insurance" shall not include (i) insurance of any loss resulting from any event described in subdivisions 1 through 5 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: (a) a fortuitous physical event, (b) failure of or deficiency in the operation of equipment, or (c) an inability to extract or recover a natural resource; (ii) fidelity and surety insurance as defined in §§ 38.2-120 and 38.2-121; (iii) credit insurance as defined in § 38.2-122; (iv) credit involuntary unemployment insurance as defined in § 38.2-122.1; (v) mortgage guaranty insurance as defined in § 38.2-128; (vi) guaranteed investment contracts issued by life insurance companies that provide that the life insurer itself will make specified payments in exchange for specific premiums or contributions; (vii) indemnity contracts or similar guaranties, to the extent that they are not otherwise limited or proscribed by this chapter, in which a life insurer guaranties its obligations or indebtedness or the obligations or indebtedness of a subsidiary, other than a financial guaranty insurance corporation; (viii) guarantees of insurance contracts, except for reinsurance guarantees authorized pursuant to this title; or (ix) any other form of insurance covering risks that the Commissioner determines to be substantially similar to any of the

foregoing.

"Financial guaranty insurance corporation" or "corporation" means an insurer licensed to transact the business of financial guaranty insurance in the Commonwealth.

"Governmental unit" means the United States, Canada, a member country of the Organisation 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 state, a province of Canada, a locality, a political subdivision of any of the foregoing, or any public agency or instrumentality thereof.

"Industrial development bond" means any security or other instrument, other than a utility first mortgage obligation, 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 payable or guaranteed by a governmental unit.

"Insurable risk" means, with respect to asset-backed securities, that such obligation on an uninsured basis has been determined to be not less than investment grade based solely on the pool of assets backing the insured obligation or securing the insurer, without consideration of the creditworthiness of the issuer.

"Investment grade" means that:

1. The obligation or parity obligation of the same issuer has been determined to be in one of the top four generic lettered rating classifications by a securities rating agency acceptable to the Commissioner;

2. The obligation or parity obligation of the same issuer has been identified in writing by such rating agency to be of investment grade quality; or

3. If the obligation or parity obligation of the same issuer has not been submitted to any such rating agency, the obligation is determined to be investment grade by the Securities Valuation Office of the National Association of Insurance Commissioners.

"Municipal bonds" means municipal obligation bonds and special revenue bonds.

"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 political 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 or payable or guaranteed by a governmental unit or issued by a special purpose corporation, special purpose trust, or other special purpose legal entity to finance a project serving a substantial public purpose, and that is payable:

1. From tax revenues, but not tax allocations, within the jurisdiction of such governmental unit;

2. 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 housing agency of a state or an equivalent subdivision of another national government that qualifies as a governmental unit;

3. From rates or charges, but not tolls, levied or collected in respect of a utility project, public transportation facility, or public higher education facility; or

4. With respect to lease obligations, from future appropriations.

"Reinsurance" means cessions qualifying for credit under § 38.2-6410.

"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 serving a substantial public purpose, and not payable from any of the sources enumerated in the definition of a municipal obligation bond; or securities that are the functional equivalent of the foregoing issued by a nonprofit corporation or a special purpose corporation, special purpose trust, or other special purpose legal entity; provided that, in the case of obligations of a special purpose corporation, special purpose trust, or other special purpose legal entity, (i) such obligations are investment grade at the time of issuance; (ii) such obligations are not payable from the sources enumerated in subdivisions 1 through 4 of the definition of municipal obligation bond; and (iii) 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 unit.

"Utility first mortgage obligation" means any obligation of an issuer secured by a first priority mortgage on utility property owned by or leased to an investor-owned or cooperative-owned utility company and located in the United States, Canada, or a member country of the Organisation 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 unit.

§ 38.2-6401. Organization; financial requirements.

A. A financial guaranty insurance corporation may be organized and licensed, and a foreign insurer may be licensed, in the manner prescribed in Chapter 10 (§ 38.2-1000 et seq.), except as modified by

the following provisions:

1. A corporation organized for the purpose of transacting financial guaranty insurance may, subject to all the applicable provisions of this chapter, be licensed to transact only (i) fidelity and surety insurance as defined in §§ 38.2-120 and 38.2-121 or (ii) credit insurance as defined in § 38.2-122;

2. A financial guaranty insurance corporation may assume only those kinds of insurance for which it is licensed to write direct business;

3. Prior to the issuance of a license, unless a plan of operation has been previously approved by the Commissioner, a corporation shall submit for the approval of the Commissioner a plan of operation detailing the types and projected diversification of guaranties that will be issued, the underwriting procedures that will be followed, managerial oversight methods, investment policies, and such other matters as may be prescribed by the Commissioner;

4. A financial guaranty insurance corporation's investments in any one entity insured by that corporation shall not exceed four percent of its admitted assets at last year-end, except that this limit shall not apply to investments payable or guaranteed by a United States governmental unit or the Commonwealth if such investments payable or guaranteed by the United States governmental unit or the Commonwealth shall be rated in one of the top two generic lettered rating classifications by a securities rating agency acceptable to the Commissioner; and

5. As a condition of continued licensure, a corporation shall maintain:

a. Sufficient liquidity to pay claims, including payment of claims under extreme stress scenarios;

b. Appropriate risk underwriting policies, criteria, and procedures to (i) ensure that any transaction underwritten demonstrates sufficiently low levels of risk of default or severity of loss, such that actual losses on, or ratings downgrades of, transactions or sectors within the corporation's portfolios do not significantly erode capital strength; (ii) ensure appropriate pricing and accurate estimate of anticipated losses; and (iii) use dynamic risk modeling and management thereafter; and

c. Sufficient control and remediation rights to mitigate the potential severity of any loss.

B. In addition to any transaction that an insurer meeting the requirements of Article 3 (§ 38.2-1311 et seq.) of Chapter 13 may effect and maintain under any other provision of this chapter, a financial guaranty insurance corporation may effect and maintain transactions in (i) contracts for the future delivery or receipt of the currency of a foreign country, (ii) interest rate options, (iii) credit default swaps under which the insurer is acquiring credit protection, and (iv) other products included in the plan referred to in subdivision B 7, in each case meeting the following requirements:

1. The transaction is used for the purpose of limiting risk of loss under financial guaranty insurance policies or reinsurance contracts covering such policies due to fluctuations in interest rates or currency exchange rates or, in the case of credit default swaps, financial default, insolvency, or other credit events;

2. The transaction shall not exceed a duration of 12 months beyond the term of such policies or reinsurance contracts;

3. The amount of foreign currencies to be purchased under the transaction shall not exceed the amount guaranteed under such policies or reinsurance contracts that is denominated in foreign currency;

4. The amount that is subject to interest rate hedging transactions does not exceed the amount guaranteed under such policies or reinsurance contracts that is subject to the risk of interest rate fluctuations;

5. The counterparty to such transaction has, or is the principal operating subsidiary of a holding company that has, a long-term unsecured debt rating or claims-paying ability rating that is at least investment grade;

6. The transaction is not conducted for arbitrage purposes; and

7. The transaction is entered into pursuant to a plan that has been approved by the board of directors of the financial guaranty insurance corporation and filed with and approved by the Commissioner.

C. A financial guaranty insurance corporation shall not transact business unless it has paid-in capital of at least $15 million and paid-in surplus of at least $165 million, and shall at all times thereafter maintain a minimum surplus to policyholders of at least $150 million.

D. An insurer transacting only financial guaranty insurance prior to July 1, 2009, that has a paid-in capital of at least $15 million and maintains surplus to policyholders of at least $45 million shall have 36 months from July 1, 2009, to fully comply with the surplus requirements set forth in subsection C.

E. A financial guaranty insurance company shall be deemed to be in compliance with subsections C and D if not less than 60 percent of the amount of the required minimum capital or minimum surplus to policyholder investments shall consist of the types specified in subsections A, B, or C of § 38.2-1415 and direct government obligations of any state or of any county, district, or municipality thereof, provided such government obligations have been given the highest quality designation of the Securities Valuation

Office of the National Association of Insurance Commissioners. Before investing any part of the required minimum capital or surplus in direct government obligations of any other state or of any county, district, or municipality thereof, such financial guaranty insurance company shall have invested at least 10 percent of such required minimum in government obligations of the Commonwealth or of any locality. Only for purposes of meeting the required investment in government obligations of the Commonwealth, the insurer may count investments in any government obligation of the Commonwealth, whether direct or otherwise.

§ 38.2-6402. Contingency reserves.

A. A corporation shall establish and maintain contingency reserves for the protection of insureds and claimants against the effects of excessive losses occurring during adverse economic cycles. With respect to all financial guaranties written prior to and in force as of the first day of the next calendar quarter commencing after July 1, 2009:

1. The insurer shall establish and maintain a contingency reserve consistent with the requirements applicable for municipal bond guaranties in effect prior to July 1, 2009, equal to 50 percent of earned premiums on such policies; and

2. To the extent that the insurer's contingency reserves maintained as of the first day of the next calendar quarter commencing after July 1, 2009, are less than those required for municipal bond guaranties, the insurer shall have three years from such date to bring its contingency reserves into compliance.

B. With respect to financial guaranties of municipal obligation bonds, special revenue bonds, industrial development bonds, and utility first mortgage obligations written on and after the first day of the next calendar quarter commencing after July 1, 2009:

1. The insurer shall establish and maintain a contingency reserve for all such insured issues in each calendar year that shall be the greater of 50 percent of premiums written for each such category or the following amount prescribed for each such category:

a. Municipal obligation bonds, 0.55 percent of principal guarantied;

b. Special revenue bonds, and obligations demonstrated to the satisfaction of the Commissioner to be the functional equivalent thereof, 0.85 percent of principal guarantied;

c. Investment grade industrial development bonds, secured by collateral or having a term of seven years or less, and utility first mortgage obligations, 1.0 percent of principal guarantied;

d. Other investment grade industrial development bonds, 1.5 percent of principal guarantied; and

e. All other industrial development bonds, 2.5 percent of principal guarantied; and

2. Contributions to the contingency reserve required by this section, equal to one-eightieth of the total reserve required, shall be made each quarter for 20 years; however, contributions may be discontinued so long as the total reserve for all categories listed in subdivisions B 1 a through B 1 e exceeds the percentages contained in subdivisions B 1 a through B 1 e when applied against unpaid principal.

C. With respect to all other financial guaranties written on or after the first day of the next calendar quarter commencing after July 1, 2009:

1. The insurer shall establish and maintain a contingency reserve for all such insured issues in each calendar year that shall be the greater of 50 percent of premiums written for each such category or the following amount prescribed for each such category:

a. Investment grade obligations, secured by collateral or having a term of seven years or less, 1.0 percent of principal guarantied;

b. Other investment grade obligations, 1.5 percent of principal guarantied;

c. Noninvestment grade consumer debt obligations, 2.0 percent of principal guarantied;

d. Noninvestment grade asset-backed securities, 2.0 percent of principal guaranteed;

e. Other noninvestment grade obligations, 2.5 percent of principal guarantied; and

2. Contributions to the contingency reserve required by this subsection, equal to one-sixtieth of the total reserve required, shall be made each quarter for 15 years, provided, however, that contributions may be discontinued so long as the total reserve for all categories listed in subdivisions C 1 a through C 1 e exceeds the percentages contained in subdivisions C 1 a through C 1 e when applied against unpaid principal.

D. Contingency reserves required in subsections A, B, and C may be established and maintained net of collateral and reinsurance, provided that, in the case of reinsurance, the reinsurance agreement requires that the reinsurer shall, on or after the effective date of the reinsurance, establish and maintain a reserve in an amount equal to the amount by which the insurer reduces its contingency reserve, and contingency reserves required in subsections B and C may be maintained (i) net of refundings and refinancings to the extent the refunded or refinanced issue is paid off or secured by obligations that are directly payable or guaranteed by the United States government and (ii) net of insured securities in a unit investment trust or mutual fund that have been sold from the trust or fund without insurance.

E. The contingency reserves may be released thereafter in the same manner in which they were

established and withdrawals therefrom, to the extent of any excess, may be made from the earliest contributions to such reserves remaining therein:

1. With the prior written approval of the Commissioner:

a. If the actual incurred losses for the year, in the case of the categories of guaranties subject to subsection C, exceed 35 percent of earned premiums, or in the case of the categories of guaranties subject to subsection D, exceed 65 percent of earned premiums; or

b. If the contingency reserve applicable to the categories of guaranties subject to subsection C has been in existence for less than 40 quarters, or for less than 30 quarters for the categories of guaranties subject to subsection D, upon a demonstration satisfactory to the Commissioner that the amount carried is excessive in relation to the insurer's outstanding obligations under its financial guaranties; or

2. Upon 30 days' prior written notice to the Commissioner, provided that the contingency reserve applicable to the categories of guaranties subject to subsection B has been in existence for 40 quarters, or 30 quarters for categories of guaranties subject to subsection C, upon a demonstration satisfactory to the Commissioner that the amount carried is excessive in relation to the insurer's outstanding obligations under its financial guaranties.

F. An insurer providing financial guaranty insurance may invest the contingency reserve in tax and loss bonds, or similar securities, purchased pursuant to § 832(e) of the Internal Revenue Code, or any successor provision, only to the extent of the tax savings resulting from the deduction for federal income tax purposes of a sum equal to the annual contributions to the contingency reserve. The contingency reserve shall otherwise be invested only in classes of securities or types of investments specified in subsections A through D of § 38.2-1415.

§ 38.2-6403. Loss reserves and unearned premium reserves.

A. The case basis method or such other method as may be prescribed by the Commissioner shall be used to establish and maintain loss reserves, net of collateral, for claims reported and unpaid, in a manner prescribed by the Commissioner. A deduction from loss reserves shall be allowed for the time value of money by application of a discount rate equal to the average rate of return on the admitted assets of the insurer as of the date of the computation of any such reserves. The discount rate shall be adjusted at the end of each calendar year.

B. If the insured principal and interest on a defaulted issue of obligations due and payable during any three years following the date of default exceeds 10 percent of the insurer's surplus to policyholders and contingency reserves, its reserve so established shall be supported by a report from an independent source acceptable to the Commissioner.

C. An unearned premium reserve shall be established and maintained net of reinsurance and collateral with respect to all financial guaranty premiums. Where financial guaranty insurance premiums are paid on an installment basis, an unearned premium reserve shall be established and maintained, net of reinsurance and collateral, computed on a daily or monthly pro rata basis. All other financial guaranty insurance premiums written shall be earned in proportion with the expiration of exposure, or by such other method as may be prescribed by the Commissioner.

§ 38.2-6404. Transaction of financial guaranty insurance business.

Financial guaranty insurance may be transacted in the Commonwealth only by a corporation licensed for such purpose pursuant to this chapter.

§ 38.2-6405. Permissible guarantees.

A. The Commissioner shall not permit the writing of financial guaranty insurance except as defined in § 38.2-6400, and a corporation may insure the timely payment of United States dollar debt instruments, or other monetary obligations, only in the following categories:

1. Municipal obligation bonds;

2. Special revenue bonds;

3. Industrial development bonds;

4. Obligations of corporations, trusts, or other similar entities established under applicable law;

5. Partnership obligations;

6. Asset-backed securities, trust certificates, and trust obligations other than mortgage-backed securities secured by first mortgages on real property that are insurable by a mortgage guaranty insurer, unless:

a. Such mortgages with loan-to-value ratios in excess of 80 percent are:

(1) In the case of mortgages on property located in the Commonwealth, insured by mortgage guaranty insurers;

(2) In the case of mortgages on property located in a state other than the Commonwealth, insured by mortgage guaranty insurers authorized to do business in such other state; or

(3) In an aggregate principal amount less than the single risk limits prescribed in subdivision A 5 of § 38.2-6407; or

b. Additional mortgages with principal balances, other collateral with a market value, or, provided

the insured risk is investment grade, excess spread in an amount in each instance at least equal to the coverage that would otherwise be provided by such mortgage guaranty insurers is pledged as additional security for the asset-backed securities;

7. Installment purchase agreements executed as a condition of sale;

8. Consumer debt obligations;

9. Utility first mortgage obligations; and

10. Any other debt instrument or financial obligation that the Commissioner determines to be substantially similar to any of the foregoing or shall otherwise be approved by the Commissioner.

B. An insurer may insure obligations enumerated in subdivisions A 1, A 2, and A 3 that are not investment grade so long as at least 95 percent of the insurer's aggregate net liability on the kinds of obligations enumerated in subdivisions A 1, A 2, and A 3 shall be investment grade.

C. A corporation may insure the timely payment of monetary obligations in any category designated in this section notwithstanding that such obligation may be insured by a financial guaranty insurance policy issued by another insurer. In the event that any obligation is insured by more than one financial guaranty insurance policy, then each such insurance policy may by its terms specify its priority of payment in the event of a default under the obligation insured or any other insurance policy; provided that an insurer shall be entitled to take into account payment under another policy insuring such obligation for purposes of establishing and maintaining loss reserves only to the extent that the policy issued by such insurer provides for payment only in the event of payment default under both such obligation and the other policy.

D. A corporation may also write financial guaranty insurance to insure the timely payment of non-United States dollar debt instruments or other monetary obligations denominated or payable in foreign currency, only for the categories listed in subdivisions A 1 through A 10, provided that:

1. Such currency is that of an Organisation for Economic Co-Operation and Development member country or such other country (i) whose sovereign rating is investment grade or (ii) as shall not otherwise be disapproved by the Commissioner within 30 days following receipt of written notification. The Commissioner shall not disapprove such notification upon demonstration that there is no undue risk associated with insuring the timely payment of such instruments or obligations. In making such a determination the Commissioner shall take into consideration the corporation's outstanding liabilities on noninvestment grade instruments and obligations in relation to its outstanding liabilities on all instruments and obligations and in relation to the amount of its surplus to policyholders;

2. Reserves required pursuant to this chapter in regard to such obligations shall be established and adjusted quarterly based upon the then current foreign exchange rates;

3. Such obligations shall not exceed 25 percent of an insurer's aggregate net liability; and

4. The aggregate and single risk limitations prescribed by §§ 38.2-6406 and 38.2-6407 shall be determined by applying the then current foreign exchange rates.

E. Notwithstanding anything in this section to the contrary, a corporation shall not insure pools of asset-backed securities that comprise or include portions of other pools of asset-backed securities unless:

1. The insurance policy provides that the corporation shall hold an unsubordinated, senior position, provided such position has an investment rating of single-A or above;

2. The pool consists solely of asset-backed securities that are issued or guaranteed by a government-sponsored enterprise, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Agricultural Mortgage Corporation, or the Farm Credit Insurance Fund;

3. The pool consists entirely of the portion of other pools of asset-backed securities that are already insured by the corporation, so that no additional obligations are incurred by the corporation; or

4. The Commissioner has determined that the insurance is without undue risk to the corporation, its policyholders, and the people of the Commonwealth.

§ 38.2-6406. Aggregate risk limits.

A. The corporation shall at all times maintain surplus to policyholders and contingency reserves in the aggregate no less than the sum of:

1. 0.3333 percent or 1/300th of the aggregate net liability under guaranties of municipal bonds including obligations demonstrated to the satisfaction of the Commissioner to be the functional equivalent thereof and investment grade utility first mortgage obligations; plus

2. 0.6666 percent or 1/150th of the aggregate net liability under guaranties of investment grade asset-backed securities; plus

3. 1.0 percent or 1/100th of the aggregate net liability under guaranties, secured by collateral or having a term of seven years or less, of:

a. Investment grade industrial development bonds; and

b. Other investment grade obligations; plus

4. 1.5 percent or 1/66.67th of the aggregate net liability under guaranties of other investment grade

obligations; plus

5. 2.0 percent or 1/50th of the aggregate net liability under guaranties of:

a. Noninvestment grade consumer debt obligations; and

b. Noninvestment grade asset-backed securities; plus

6. 2.5 percent or 1/40th of the aggregate net liability under guaranties of noninvestment grade obligations secured by first mortgages on commercial real estate and having loan-to-value ratios of 80 percent or less; plus

7. 4.0 percent or 1/25th of the aggregate net liability under guaranties of other noninvestment grade obligations; and

8. If the amount of collateral required by subdivision A 3 is no longer maintained, that proportion of the obligation insured that is not so collateralized shall be subject to the aggregate limits specified in subdivision A 4; and

9. Surplus to policyholders determined by the Commissioner to be adequate to support the writing of fidelity and surety insurance and credit insurance, if the corporation has elected to transact such kinds of insurance.

B. Notwithstanding any provision of subsection A to the contrary, other than for (i) super-senior tranches or (ii) junior tranches for which the insurer also insures all senior tranches of that obligation, insurers shall maintain capital and contingency reserves no less than the greater of 300 percent of the amount required for that tranche, or the capital and contingency reserves for all tranches senior to that tranche that are not already insured by the insurer.

§ 38.2-6407. Single risk limits.

A. A financial guaranty insurance corporation shall limit its exposure to loss on any one risk insured by policies providing financial guaranty insurance, net of collateral and reinsurance, as follows:

1. For municipal obligation bonds, special revenue bonds, and obligations demonstrated to the satisfaction of the Commissioner to be the functional equivalent thereof:

a. The insured average annual debt service with respect to a single entity and backed by a single revenue source shall not exceed 10 percent of the aggregate of the insurer's surplus to policyholders and contingency reserve; and

b. The insured unpaid principal issued by a single entity and backed by a single revenue source shall not exceed 75 percent of the aggregate of the insurer's surplus to policyholders and contingency reserve;

2. For each issue of asset-backed securities issued by a single entity and for each pool of consumer debt obligations, the insured average annual debt service shall not exceed 10 percent of the aggregate of the insurer's surplus to policyholders and contingency reserve, provided that no asset in the pool supporting the asset-backed securities exceeds the single risk limits prescribed in this chapter, if directly guaranteed; and provided further that, if the issuer of such insured asset-backed securities is a special purpose corporation, trust, or other entity and such issuer shall have indebtedness outstanding with respect to any other pool of assets, either such other indebtedness shall be entitled to the benefits of a financial guaranty policy of the same insurer, or such other indebtedness shall (i) be fully subordinated to the insured obligation, with respect to, or be nonrecourse with respect to, the pool of assets that supports the insured obligation; (ii) be nonrecourse to the issuer other than with respect to the asset pool securing such other indebtedness and proceeds in excess of the proceeds necessary to pay the insured obligation (excess proceeds); and (iii) not constitute a claim against the issuer to the extent that the asset pool securing such other indebtedness or excess proceeds are insufficient to pay such other indebtedness;

3. For obligations issued by a single entity and secured by commercial real estate, and not meeting the definition of asset-backed securities, the insured unpaid principal less 50 percent of the appraised value of the underlying real estate shall not exceed 10 percent of the aggregate of the insurer's surplus to policyholders and contingency reserve;

4. For utility first mortgage obligations, the insured average annual debt service shall not exceed 10 percent of the aggregate of the insurer's surplus to policyholders and contingency reserve; and

5. For all other policies providing financial guaranty insurance with respect to obligations issued by a single entity and backed by a single revenue source, the insured unpaid principal shall not exceed 10 percent of the aggregate of the insurer's surplus to policyholders and contingency reserve.

B. In determining the single entity when calculating risk limits, corporations shall include, in addition to the issuer of the debt, the initial lender and servicer of each category of obligation, such as consumer debt obligations or obligations secured by residential real estate, regardless of the type of underlying collateral.

C. A corporation shall notify the Commissioner promptly if its exposure to a particular category of debt or obligations that are issued within a particular calendar year exceeds the limits prescribed by this section, and promptly explain to the Department in writing any actions the corporation intends to

take, or has taken, to reduce its exposure to that category of risk.

§ 38.2-6408. Additional limitations.

A. Except as provided in subsection B, if an insurer at any time exceeds any limitation prescribed by § 38.2-6406 or 38.2-6407, the insurer shall within 30 days after the limitations are breached submit a written plan to the Commissioner detailing the steps that it will take or has taken to reduce its exposure to loss to no more than the permitted amounts, and if after notice and hearing the Commissioner determines that an insurer has exceeded any limitation prescribed by this section, he may order such insurer to cease transacting any new financial guaranty insurance business until its exposure to loss no longer exceeds said limitations or, with respect to the limitations prescribed in the last sentence of subsection B, may order such insurer to limit its writing of the types of guaranties permitted under subdivisions A 1, A 2, and A 3 of § 38.2-6407 to investment grade obligations until such time as it shall be in compliance with such limitations.

B. An insurer shall not be deemed in violation of any limitation prescribed by § 38.2-6407 with respect to any financial guaranty insurance outstanding prior to July 1, 2009, if the insurer was in compliance with the applicable single risk limit in effect in the Commonwealth at the time that the financial guaranty insurance policy was issued. If the insurer was not so in compliance, such financial guaranty insurance shall comply with the limitations prescribed by § 38.2-6407 no later than three years after July 1, 2009.

C. No insurer authorized to transact the business of financial guaranty insurance shall pay any commission or make any gift of money, property, or other valuable thing to any employee, agent, or representative of any potential purchaser of a financial guaranty insurance policy, as an inducement to the purchase of such a policy, and no such employee, agent, or representative of such potential purchaser shall receive any such payment or gift. Violation of the provisions of this section shall not, however, have the effect of rendering void the insurance policy issued by the insurer.

D. A corporation may provide a financial guaranty policy with respect to the payment obligations of an affiliated transformer under the terms of a credit default swap if:

1. The corporation underwrites the policy guaranteeing the credit default swap using its customary underwriting criteria;

2. The duration of the credit default swap does not exceed five years;

3. The security referenced in the credit default swap is rated at least investment grade;

4. If the referenced security was a municipal bond, the corporation adhered to the risk limitations and reserve requirements applicable to investment grade corporate obligations; and

5. The corporation complied with holding company requirements set forth in Article 5 (§ 38.2-1322 et seq.) of Chapter 13, as well as all applicable annual statement reporting requirements.

E. Corporations shall not issue policies for which the corporation uses a special purpose vehicle as a nominal counterparty or that guarantee payments by transformers or other parties pursuant to a credit default swap.

F. If, absent an approved request for exception, less than 95 percent of the insurer's entire insured portfolio is investment grade as measured by aggregate net liability for at least 30 days, then the insurer shall file a reasonable plan of operation, acceptable to the Commissioner, which shall contain a reasonable timetable and appropriate procedures to implement that timetable to make a determination as to whether or not the insurer will meet such requirement that 95 percent of its insured portfolio be investment grade.

§ 38.2-6409. Policy forms and rates.

A. Policy forms and any amendments thereto shall be filed with the Commissioner within 30 days of their use by the insurer if not otherwise filed prior to July 1, 2009. Every such policy shall provide that, in the event of a payment default by or insolvency of the obligor, there shall be no acceleration of the payment required to be made under such policy unless such acceleration is at the sole option of the corporation; provided that (i) policies may insure amounts payable under a credit default swap or interest rate, currency, or other swap upon a credit event or termination event if the expected amount payable on an accelerated basis in respect of any individual obligation referenced by a credit default swap or in the aggregate under an interest rate, currency, or other swap does not exceed the single risk limits prescribed in 38.2-6407, (ii) policies insuring credit default swaps referencing an obligation shall be treated as if the insurer had directly insured the referenced obligation for all other purposes of this chapter, except that the currency of amounts owed under the credit default swap, rather than the currency of the obligations referenced by the credit default swap, shall apply for purposes of determining whether the obligation is a permissible guaranty under § 38.2-6405, and (iii) with respect to policies insuring credit default swaps, "credit event" or "termination event" shall include only the failure to pay obligations when due or payable when the failure is the result of a financial default or insolvency, and neither the credit default swap agreement under which one counterparty sells protection to the other nor the contract under which the insurer guarantees payment by the protection seller shall define a credit event, termination event, or event of default as including a change in the credit quality,

rehabilitation, liquidation, or insolvency of the corporation providing credit support for one of the credit default swap counterparties, and neither the terms of the credit default swap agreement nor the contract under which the corporation provides its guaranty requires the insurer to post collateral. The Commissioner may prescribe minimum policy provisions determined by the Commissioner to be necessary or appropriate to protect policyholders, claimants, obligees, or indemnitees.

B. Rates shall not be excessive, inadequate, unfairly discriminatory, destructive of competition, detrimental to the solvency of the insurer, or otherwise unreasonable. In determining whether rates comply with the foregoing standards, the Commissioner shall include all income earned by such insurer. Criteria and guidelines utilized by insurers in establishing rating categories and ranges of rates to be utilized shall be filed with the Commissioner for information prior to their use by the insurer if not otherwise filed prior to the effective date of this chapter.

C. All such filings shall be available for public inspection at the offices of the Commission.

§ 38.2-6410. Reinsurance.

A. For financial guaranty insurance that takes effect on or after July 1, 2009, an insurer authorized to transact financial guaranty insurance shall receive credit for reinsurance, in accordance with the provisions of this chapter applicable to property/casualty insurers, as an asset or as a reduction from liabilities provided that such reinsurance is subject to an agreement that, for its stated term and with respect to any such reinsured financial guaranty insurance in force, the reinsurance agreement (facultative or treaty) may only be terminated or amended (i) at the option of the reinsurer or the ceding insurer, if the reinsurance agreement provides that the liability of the reinsurer with respect to policies in effect at the date of termination shall continue until the expiration or cancellation of each such policy, (ii) with the consent of the ceding company, if the reinsurance agreement provides for a cutoff of the reinsurance in force at the date of termination, or (iii) at the discretion of the Commissioner acting as rehabilitator, liquidator, or receiver of the ceding or assuming insurer; and provided that such reinsurance is:

1. Placed with a financial guaranty insurance corporation licensed under this chapter or an insurer writing only financial guaranty insurance as is or would be permitted by this chapter; or

2. Placed with a property and casualty insurer or an accredited reinsurer licensed or accredited to reinsure risks of every kind or description, including municipal obligation bonds, if the reinsurance agreement with such insurer requires that such insurer:

a. Have and maintain surplus to policyholders of at least $35 million;

b. Establish and maintain the reserves required in this chapter, except that if the reinsurance agreement is not pro rata the contribution to the contingency reserve shall be equal to 50 percent of the quarterly earned reinsurance premium. However, the assuming insurer need not establish and maintain such reserve to the extent that the ceding insurer has established and continues to maintain such reserve;

c. Comply with the provisions of § 38.2-6406, except that the maximum total exposures reinsured net of retrocessions and collateral shall be one-half of that permitted for a financial guaranty insurance corporation;

d. If a parent of the insurer, another subsidiary of the parent of the insurer, or a subsidiary of the insurer, then the aggregate of all risks assumed by such reinsurers shall not exceed 10 percent of the insurer's exposures, net of retrocessions and collateral. Direct or indirect ownership interests of 50 percent or more shall be deemed a parent/subsidiary relationship;

e. If an affiliate of the insurer, such affiliate shall not assume a percentage of the insurer's total exposures insured net of retrocessions and collateral in excess of its percentage of equity interest in the insurer; and

f. Assume from the financial guaranty insurer and any affiliate, parent of the insurer, another subsidiary of the parent of the insurer, or subsidiary of the insurer that is a financial guaranty insurance corporation or an insurer writing only financial guaranty insurance as is or would be permitted by this chapter and such other kinds of insurance that a financial guaranty insurance corporation may write in the Commonwealth, together with all other reinsurers subject to this section, less than 50 percent of the total exposures insured by the financial guaranty insurer and such affiliates, parents, or subsidiaries of the insurer, net of collateral, remaining after deducting any reinsurance placed with another financial guaranty insurance corporation that is not an affiliate, a parent of the financial guaranty insurer, another subsidiary of the parent of the insurer, or a subsidiary of the insurer or a financial guaranty insurer writing only financial guaranty insurance as is or would be permitted by this chapter that is not an affiliate, a parent of the financial guaranty insurer, another subsidiary of the parent of the insurer, or a subsidiary of the insurer; or

3. If placed with an unauthorized or unaccredited reinsurer that otherwise meets the requirements of either the opening paragraph of subsection A and subdivision A 1, or the opening paragraph of subsection A and subdivisions A 2 a, A 2 d, A 2 e, and A 2 f, in an amount not exceeding the liabilities

carried by the ceding insurer for amounts withheld under a reinsurance treaty with such reinsurer or amounts deposited by such reinsurer as security for the payment of obligations under the treaty if such funds or deposit are held subject to withdrawal by, and under the control of, the ceding insurer.

B. In determining whether the insurer meets the aggregate risk limitations, in addition to credit for other types of qualifying reinsurance, the insurer's aggregate risk may be reduced to the extent of the limit for aggregate excess reinsurance, but in no event in an amount greater than the amount of the aggregate risks that will become due during the unexpired term of such reinsurance agreement in excess of the insurer's retention pursuant to such reinsurance agreement.

§ 38.2-6411. Transition provisions.

A licensed insurer writing financial guaranty insurance prior to July 1, 2009, but that is not authorized to write financial guaranty insurance in this state, shall be subject to all the provisions of this chapter except § 38.2-6401 and:

1. May, unless the Commissioner determines after notice and an opportunity to be heard that such activity poses a hazard to the insurer, its policyholders, or the public, continue to write financial guaranties, except guaranties of municipal bonds, of the types authorized by § 38.2-6405 applicable to financial guaranty insurance corporations, subject to the following conditions:

a. For a transition period not to exceed 60 months from July 1, 2009, if the insurer has and maintains surplus to policyholders of at least $75 million, and for the purpose of this subsection if the insurer is a foreign insurer its surplus to policyholders shall be computed as if it were a domestic insurer; provided that:

(1) During the 60-month transition period, the amount of surplus to policyholders needed to meet the single and aggregate risk limitations imposed by this chapter shall be less than four percent of the insurer's surplus to policyholders;

(2) Within nine months of July 1, 2009, the insurer shall file a reasonable plan of operation, acceptable to the Commissioner, that shall contain (i) a reasonable timetable and appropriate procedures to implement that timetable to make a determination as to whether or not the insurer will make application to organize a financial guaranty insurance corporation during the aforesaid 60-month period; (ii) the types and projected diversification of guaranties that will be issued during the transition period; (iii) the underwriting procedures that will be followed; (iv) oversight methods; (v) investment policies; and (vi) such other matters as may be prescribed by the Commissioner. The plan of operation shall be deemed acceptable unless, within 60 days of its filing, the Commissioner notifies the insurer of any specific objections to such plan. The plan shall be updated in the event of a material change with respect to the foregoing and at least annually;

(3) If the insurer has determined that it will not organize a financial guaranty insurance corporation, within 30 days after that determination it shall notify the Commissioner, cease writing policies of financial guaranty insurance, and comply with the provisions of this subsection; and

(4) The insurer shall file such additional statements or reports as may be required by the Commissioner;

b. For a transition period not to exceed 96 months from July 1, 2009, if the insurer has and maintains surplus to policyholders of at least $150 million (for the purpose of this section, "surplus to policyholders" means the aggregate surplus to policyholders of said insurer and other member companies of an intercompany pool, and if the insurer is a foreign insurer its surplus to policyholders shall be computed as if it were a domestic insurer) and the aggregate financial guaranty written premium of said insurer and other member companies of an intercompany pool shall have been at least $1 million in any one of the five years ending December 31, 1988, provided that:

(1) During the first 60 months of the transition period, the amount of surplus to policyholders needed to meet the aggregate risk limitations imposed by this chapter shall be less than four percent of the insurer's surplus to policyholders. After such 60-month period, provided the insurer complies with subdivision 1 b (4), the amount of surplus to policyholders needed to meet such aggregate risk limitations shall be less than five percent of the insurer's surplus to policyholders for the succeeding 12-month period and less than six percent for the next succeeding 24-month period;

(2) During the transition period, the amount of surplus to policyholders needed to meet the single risk limitations imposed by § 38.2-6407 shall be less than 20 percent of the insurer's surplus to policyholders, except that the single risk limitation with respect to investment grade obligations under such subsection shall be the lesser of $80 million or seven percent of the insurer's surplus to policyholders;

(3) During the transition period, industrial development bonds shall not be included in the investment grade requirements set forth in such sentence;

(4) During the transition period, reinsurance in the form of intercompany pooling agreements shall not be subject to § 38.2-6407, if such intercompany pooling agreements were in effect on January 1, 1989, and reinsurance placed with insurers that are not members of the ceding company's intercompany pooling agreement may not exceed 60 percent of the total exposures insured net of collateral remaining

after deducting any reinsurance placed with another financial guaranty insurance corporation or an insurer writing only financial guaranty insurance as is or would be permitted by this chapter;

(5) Within 60 months of July 1, 2009, the insurer shall file a reasonable plan of operation, acceptable to the Commissioner, which plan shall contain (i) a reasonable timetable and appropriate procedures to implement that timetable to make a determination as to whether or not the insurer will make application to organize a financial guaranty insurance corporation during the aforesaid 96-month period; (ii) the types and projected diversification of guaranties that will be issued during the transition period; (iii) the underwriting procedures that will be followed; (iv) oversight methods; (v) investment policies; and (vi) such other matters as may be prescribed by the Commissioner. The plan of operation shall be deemed acceptable unless, within 60 days of its filing, the Commissioner notifies the insurer of any specific objections to such plan. The plan shall be updated in the event of a material change with respect to the foregoing and at least annually;

(6) If the insurer has determined that it will not organize a financial guaranty insurance corporation, within 30 days after that determination it shall notify the Commissioner, cease writing policies of financial guaranty insurance, and comply with the provisions of subdivision 1 d; and

(7) The insurer shall file such additional statements or reports as may be required by the Commissioner;

c. For a transition period not to exceed 12 months from July 1, 2009, in the case of an insurer transacting only financial guaranty insurance prior to July 1, 2009, and that qualifies for licensing as a financial guaranty insurance corporation, provided that it makes application to amend its current license to that of a financial guaranty insurance corporation licensed to transact only those kinds of insurance permitted pursuant to § 38.2-6401 within 60 days of July 1, 2009, and provided that, for purposes of this subdivision, an insurer shall be deemed to be transacting only financial guaranty insurance prior to July 1, 2009, if, with the approval of the Commissioner, it has reinsured all of any other insurance liabilities with one or more authorized insurers or has otherwise made provision for such liabilities;

d. For a transition period not to exceed nine months, in the case of an insurer that does not qualify under either subdivisions 1 a, 1 b, or 1 c or does not file a plan of operation pursuant to subdivision 1 or 2, such insurer shall cease writing any new financial guaranty insurance business and may:

(1) Reinsure its net in-force business with a licensed financial guaranty insurance corporation; or

(2) Subject to the prior approval of its domiciliary commissioner, reinsure all or part of its net in-force business in accordance with the requirements of subdivision A 2 of § 38.2-6410. The assuming insurer shall maintain reserves of such reinsured business in the manner applicable to the ceding insurer under this subdivision 1 d; or

(3) Thereafter continue the risks then in force and, with 30 days' prior written notice to its domiciliary commissioner, issue new financial guaranty policies, provided that the issuing of such policies is reasonably prudent to mitigate either the amount of or possibility of loss in connection with business transacted prior to July 1, 2009. Provided, however, an insurer shall receive the prior approval of its domiciliary commissioner before issuing any new financial guaranty insurance policies that would have the effect of increasing its risk of loss;

2. Shall, for all guaranties in force prior to July 1, 2009, including those that fall under the definition of financial guaranty insurance, be subject to the reserve requirements applicable for municipal bond guaranties in effect prior to July 1, 2009. To the extent that the insurer's contingency reserves maintained as of July 1, 2009, are less than those required for municipal bond guaranties, the insurer shall have three years to bring its reserves into compliance, except that a part of the reserve may be released proportional to the reduction in aggregate net liability resulting from reinsurance, provided that the reinsurer shall, on the effective date of the reinsurance, establish a reserve in an amount equal to the amount released and, in addition, a part of the reserve may be released with the approval of the Commissioner upon demonstration that the amount carried is excessive in relation to the corporation's outstanding obligations; and

3. Shall be subject to the reserve requirements specified in §§ 38.2-6402 and 38.2-6403 for all policies of financial guaranty insurance issued on or after July 1, 2009.

§ 38.2-6412. Notices to Commissioner.

Each insurer shall notify the Commissioner in writing of:

1. Any failure by the insurer to maintain the standards set forth in this chapter;

2. The basis for material declines in policyholder surplus of five percent or more for insurers with less than $500 million at the end of the previous quarter, and 20 percent or more for insurers with $500 million or more of policyholder surplus;

3. When the notional value of the insurer's aggregate liabilities on its guaranteed obligations gross of liabilities assumed and net of, or without regard to, liabilities assumed rises above multiples of policyholder surplus and contingency reserves;

4. On a periodic basis, all guaranteed obligations by fair value, gross and net par outstanding and

debt service insured, vintage, category or class, and the Committee on Uniform Security Identification Procedures and the nine-character alphanumeric security identifiers that they distribute upon request for all North American securities, or comparable identification to make the data sufficiently transparent to be properly evaluated by the Department for degree of risk; and

5. All guarantees and insurance contracts entered into between insurers and related single purpose vehicles.

§ 38.2-6413. Applicability of other laws.

An insurer issuing policies of financial guaranty insurance shall be subject to all of the provisions of this title applicable to property and casualty insurers to the extent that such provisions are not inconsistent with the provisions of this chapter.

§ 38.2-6414. Relationship to security fund.

No insurer or agent of an insurer may deliver a policy of financial guaranty insurance unless such policy and any prospectus delivered on or after July 1, 2009, with respect to the insured obligations clearly discloses that the policy is not covered by the Property and Casualty Insurance Guaranty Association fund specified in Chapter 16 (§ 38.2-1600 et seq.).