MEMORANDUM

TO: File
FROM: Cristie March
RE: Meeting with Assured Guaranty regarding Dodd-Frank Act Title VII Rulemaking
DATE: September 7, 2010

On September 2, 2010, Brian Bussey, Amy Starr, Michael Reedich, Tamara Brightwell, David Dimitrious, Matthew Daigler, and Cristie March met with Ling Chow, James Michener, Bruce Stern (Assured Guaranty), Ethan James (David Polk & Wardwell, LLP), Micah Green, and Matthew Kulkin (Patton Boggs, LLP) (collectively "Assured Guaranty").

Assured Guaranty discussed its business, its thoughts on the definition of swap under Title VII of the Dodd-Frank Act, and the characteristics of swaps and financial guaranty bond insurance.

Proposed Agenda
for
Meeting with Assured Guaranty

Assured Guaranty is the one surviving play in the financial guaranty bond insurance sector. They now represent two combined companies (Assured Guaranty and FSA). Most of the other industry players experienced serious degradation of their condition as a result of their involvement in many of the most risky structured products. Assured and FSA did not insure those transactions and have maintained high ratings and they are currently the only bond insuring actively writing insurance on municipal bonds.

During the legislative process, they have been watching carefully the issue of how existing swap contracts are treated by the legislation as it relates to collateral and margin requirements. They would like to speak with the derivatives team at the SEC about this issue. Also, in conversations with the CFTC, it is clear that regulators need to have a good understanding of what bond insurance is, and possibly more importantly, what it isn't. The definition of swap is very broad in Dodd Frank. However, bond insurance is a state regulated insurance product. The executives of Assured would also like to speak with you about these issues.

Below is a list of issues related to the derivatives markets that assured with like to discuss with the relevant SEC team.

- Assured Guaranty Overview
- Financial Guaranty Insurance
- Assured Guaranty Participation in Derivatives Business
- Issues Presented by the Dodd-Frank Act
    - Definition of Swap, Swap Dealer, Major Swap Participant
    - Collateral and Margin for Previously Executed Swaps
    - Legal Certainty Provision

Impact of the Dodd-Frank Act Derivative Provisions on Financial Guaranty Insurers

September 2, 2010

ASSURED GUARANTY
FAMILY OF COMPANIES

Issues Presented by the Dodd-Frank Act

- **Application to Core Financial Guaranty Business:**

  - Financial guaranty insurance policies or surety bond policies should not be considered swaps or security-based swaps

- **Application to Financial Guarantors' CDS Business:**

  - *Retroactive Application*: Capital and margin requirements should not be applied retroactively to financial guaranty insurers or their affiliated transformers that entered into credit default swap ("CDS") transactions

  - *Future Business*: The imposition of margin and other requirements may be inconsistent with existing insurance regulation and the financial guaranty insurance marketplace and could preclude the participation of financial guarantors in these transactions

Traditional Financial Guaranty Insurance Policies Should Not be Regulated as Swaps

- **The Dodd-Frank Act was not intended to displace current state regulation of insurance**
  - Members of Congress referred in colloquies to Title VII's purpose as providing a regulatory framework for the previously unregulated over-the-counter derivatives market
  - Scope of Federal Insurance Office's preemption and other powers are limited
  - Orderly liquidation authority does not cover insurers generally
  - Bureau of Consumer Financial Protection does not regulate insurance industry
- **Financial guarantors are subject to extensive regulation**
  - Assured Guaranty Municipal Corp. ("AGM") is a New York domiciled insurance company regulated by the New York Insurance Department
  - Assured Guaranty Corp. ("AGC") is a Maryland domiciled insurance company regulated by the Maryland Insurance Administration
  - All financial guaranty insurers incorporated or licensed in New York, including AGM and AGC, are subject to Article 69 of the New York Insurance Law
    - Comprehensive regulatory framework; market conduct rules; financial reporting; contingency reserves; single and aggregate risk limits; diversified investments; regulatory examinations

Traditional Financial Guaranty Insurance Policies Should Not be Regulated as Swaps – Key Differences

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	Financial Guaranty / Surety Policies	Traditional CDS
Purpose:	Core business is the insurance of municipal bonds Municipal bond insurance serves a substantial public purpose by facilitating the ability of municipal issuers to access the capital markets and lowering their borrowing costs	Enables buyers of protection to hedge exposure with sellers of protection and enables buyers to take a position on an obligation without owning it
Ownership of Insured Obligation:	Beneficiaries of insurance policies are required to have an insurable interest	Buyers of protection are not required to hold the insured obligation; ability to execute transaction synthetically results in possibility of outstanding swap notional vastly exceeding principal amount outstanding of reference obligation
Legal Rights:	Insurers typically have direct control, information and inspection rights in transaction documents for insured obligations, including opportunities to participate in workouts, as well as rights as third party beneficiaries of representations and warranties and covenants	Sellers of protection derive their rights through the buyers of protection

Traditional Financial Guaranty Insurance Policies Should Not be Regulated as Swaps – Key Differences (continued)

	Financial Guaranty / Surety Policies	Traditional CDS
Risk of Acceleration:	There can be no acceleration of the payment required to be made under a policy except at the sole option of the insurer	Physical settlement of entire notional amount of swap may be required upon any Failure to Pay
Termination Payments:	Insurers are not subject to the risk of destabilizing mark-to-market termination payments on an insurance policy – concept does not apply	Risk of mark-to-market termination payments exists
Accounting Treatment:	Financial Accounting Standards Board issued separate guidance on accounting for financial guaranty insurance (ASC 944, “Financial Services – Insurance”) and accounting for CDS (ASC 815, “Derivatives and Hedging”) Requirements to apply different methodology, including for premium revenue recognition and claim liability measurement	
Market Perception:	Market participants do not consider financial guaranty insurance policies to be swaps or security-based swaps	

Traditional Financial Guaranty Insurance Policies Should Not be Regulated as Swaps – Conclusion

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FAMILY OF COMPANIES

- **Dodd-Frank Act was not intended to provide for substantive federal regulation of insurance**
- **Extensive existing state regulation and regulatory involvement**
- **Many significant differences between financial guaranty insurance policies and swaps**

Legislation Should Not Be Applied Retroactively to Existing CDS Portfolios

- **How financial guaranty insurers participated in CDS business**
  - CDS were considered an extension of core financial guaranty insurance business
  - Financial guaranty insurers did not execute CDS directly, but rather insured CDS written by affiliated special purpose entities known as “transformers” that have no business other than the issuance of CDS insured by their affiliated insurance companies
  - Transformers may be specific to a single CDS or counterparty, or may cover multiple CDS or counterparties
  - The financial guaranty insurer was the “credit support provider” to the transformer
  - Transformers only *sold* credit protection – they did not buy credit protection
  - Transformers’ CDS were held until maturity – they did not “trade” or make a market
  - Transactions were highly negotiated and, with few exceptions, specifically excluded collateral posting

- **Use of transformers was explicitly sanctioned by insurance law**
  - Article 69 of the New York Insurance Law establishes parameters for the terms of insured CDS
  - Circular Letter No. 19, issued by New York Insurance Department in 2008, restricts financial guarantors’ insuring CDS – including by prohibiting the posting of collateral by financial guaranty insurers
  - Circular Letter No. 19 constitutes part of the NYID’s plan to address the serious challenges faced by the bond insurance industry; it outlines “best practices” to which the NYID expects financial guaranty insurers to adhere

Legislation Should Not Be Applied Retroactively to Existing CDS Portfolios (continued)

- **Capital and margin requirements**
  - If retroactively applied to existing swap portfolios, the financial condition and liquidity of financial guaranty insurers could be adversely affected
  - Collateral posting would subordinate insured municipal bondholders and other insurance policyholders to CDS counterparties, which historically were mostly investment banks and large commercial banks
  - Such requirements may conflict with existing state insurance law requirements
  - Insurance regulators have been extensively involved in restructuring the financial guaranty insurers that were severely impaired by the financial crisis

- **Existing CDS portfolios**
  - Assured Guaranty's CDS portfolio, $112.2 billion in net par outstanding as of the end of Q2 2010, has been amortizing and is expected to run off by approximately three quarters by the end of 2015, compared to the balance at the end of Q2 2010
  - Neither Assured Guaranty, nor, to our knowledge, any other financial guaranty insurer has insured any CDS transactions since early 2009 (other than in connection with loss mitigation)

Legislation Should Not Be Applied Retroactively to Existing CDS Portfolios - Conclusion

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- **Prior CDS activity of financial guarantors has been and is governed by insurance law**

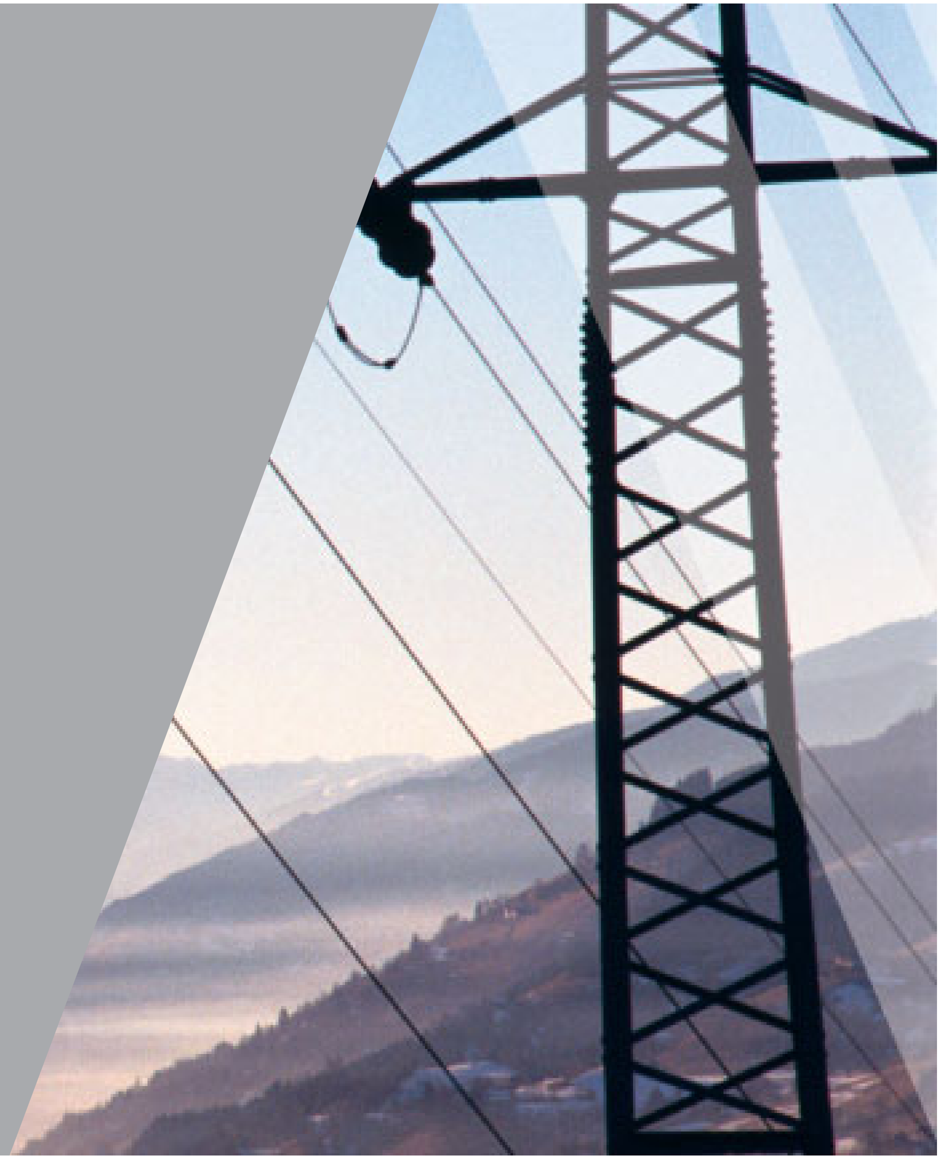
- **Retroactive application could have an adverse impact on financial condition and liquidity of financial guarantors**

Conflicting Regulations and Market Structure

- **Current insurance regulatory policy as expressed in, e.g., the New York Insurance Department's Circular No. 19 (2008), prohibits financial guaranty insurers' posting of collateral in connection with insured CDS**

- **Collateral posting would subordinate insured municipal bondholders and other insurance policyholders to CDS counterparties**

Assured Guaranty Overview



Assured Guaranty Today

	As of June 30, 2010
Net par insured	$627.5 B
Total investment portfolio	$10.5 B
Total assets	$17.6 B
Claims paying resources	$13.3 B

- **We are the leading financial guaranty franchise**
  - We are a publicly traded holding company (NYSE: AGO) that makes 10-K, 10-Q and other periodic filings with the Securities and Exchange Commission
  - We have maintained financial strength ratings acceptable to the market
  - Our core business is the insurance of municipal bonds
- **Our sole focus is financial guaranty insurance**
  - Extensive quarterly financial disclosures provide transparency to all investors
  - 20+ year track record in financial guaranty insurance market
- **We serve the U.S. capital markets through two platforms:**
  - AGM guarantees public finance and infrastructure transactions
  - AGC guarantees public finance, infrastructure and structured finance transactions

High Financial Strength Ratings

- **We have the highest ratings of any active financial guaranty insurer today:**
  - Moody's confirmed AGC's and AGM's Aa3 financial strength ratings in fourth quarter 2009
  - Standard & Poor's confirmed AGC's and AGM's AAA rating in second quarter 2010
- **We have been able to maintain our ratings because our underwriting standards did not permit us to guarantee asset-backed securities backed by mezzanine tranches of residential mortgage-backed securities**

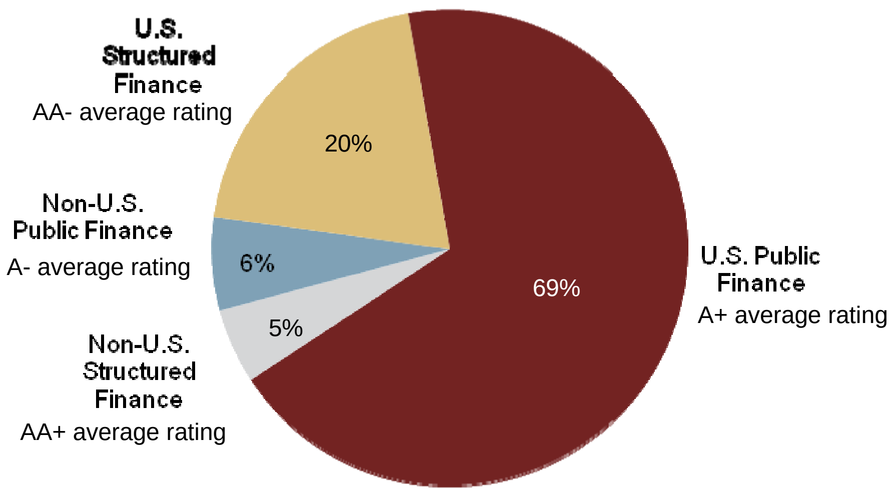
Financial Strength Ratings
As of September 2, 2010

	Moody's (rating/outlook)	S&P (rating/outlook)
AGC	Aa3 / negative	AAA / negative
AGM	Aa3 / negative	AAA / negative

Net Par Outstanding Diversified By Sector

- **Assured Guaranty's portfolio is largely concentrated in U.S. public finance**
  - 69% U.S. public finance
  - 20% U.S. structured finance
  - 11% International
- **Our portfolio has an A+ average internal credit rating**
- **In 2009, Assured Guaranty's gross par written for U.S. public finance totaled $41.1 billion**
- **New business originations are almost exclusively U.S. public finance**
  - Clarity is necessary for investors in municipal bonds insured by Assured Guaranty
- **CDS constitutes approximately 18% of net par insured**
  - All CDS were written pursuant to a comprehensive regulatory scheme

Consolidated Net Par Outstanding
As of June 30, 2010
($ in billions)



$627.5 billion, A+ average rating

Corporate Structure

ASSURED GUARANTY
FAMILY OF COMPANIES

Assured Guaranty Ltd.
Hamilton, Bermuda
Publicly traded Holding Company (NYSE: AGO)
A+ (stable) / A3 (negative outlook)
senior debt ratings

Assured Guaranty Re Ltd. ("AG Re")
Financial Guaranty Reinsurance
AA (stable) / A1 (negative outlook)
financial strength ratings

Assured Guaranty Ireland Holdings Limited
Ireland Holding Company
NR

Assured Guaranty Finance Overseas Ltd.
European Credit Derivative Marketing
NR

Assured Guaranty US Holdings Inc.
U.S. Holding Company
A+ (stable) / A3 (negative outlook)
senior debt ratings

Assured Guaranty Municipal Holdings Inc. (formerly Financial Security Assurance Holdings Ltd.)
U.S. Holding Company
A+ (stable) / A3 (negative outlook)
senior debt ratings

Assured Guaranty Overseas U.S. Holdings Inc.
U.S. Holding Company
NR

Assured Guaranty Re Overseas Ltd. ("AGRO")
Financial Guaranty Reinsurance
AA (stable) / A1 (negative outlook)
financial strength ratings

Assured Guaranty Mortgage Insurance Company
Mortgage Guaranty
AA (stable) / A1 (negative outlook)
financial strength ratings

Assured Guaranty Corp. ("AGC")
Financial Guaranty Direct
AAA (negative outlook) /
Aa3 (negative outlook)
financial strength ratings

AG Financial Products Inc.
Swap Counterparty
NR

Assured Guaranty (UK) Ltd.
Financial Guaranty Direct
AAA (negative outlook) /
Aa3 (negative outlook)
financial strength ratings

Financial Security Assurance International Ltd.
Bermuda Subsidiary
Financial Guaranty Direct
and Reinsurance
AAA (negative outlook) /
Aa3 (negative outlook)
financial strength ratings

Assured Guaranty Municipal Corp. ("AGM") (formerly Financial Security Assurance Inc.)
Financial Guaranty Direct
AAA (negative outlook) / Aa3 (negative outlook)
financial strength ratings

FSA Insurance Company
Financial Guaranty Reinsurance
AAA (negative outlook) / NR
financial strength ratings

Assured Guaranty (Europe) Ltd. (formerly Financial Security Assurance (U.K.) Limited)
Financial Guaranty Direct
AAA (negative outlook) / Aa3 (negative outlook)
financial strength ratings

Ratings and company names as of September 2, 2010.
S&P / Moody's.
NR = Not rated

Safe Harbor Disclosure

- Forward-looking statements are being made in this presentation that reflect the current views of Assured Guaranty Ltd. (“AGL” and, together with its subsidiaries, “Assured Guaranty” or the “Company”) with respect to future events and financial performance. They are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Actual results could differ materially from these statements. For example, Assured Guaranty’s forward-looking statements could be affected by:
  - rating agency action, including a ratings downgrade at any time of Assured Guaranty Ltd. or any of its subsidiaries and/or of transactions insured by AGL’s subsidiaries, both of which have occurred in the past;
  - developments in the world's financial and capital markets that adversely affect issuers’ payment rates, Assured Guaranty’s loss experience, its ability to cede exposure to reinsurers, its access to capital, its unrealized (losses) gains on derivative financial instruments or its investment returns;
  - changes in the credit markets, segments thereof or general economic conditions;
  - more severe or frequent losses implicating the adequacy of Assured Guaranty’s loss reserve;
  - the impact of market volatility on the mark-to-market of its contracts written in credit default swap form;
  - reduction in the amount of reinsurance portfolio opportunities available to Assured Guaranty;
  - decreased demand or increased competition;
  - changes in applicable accounting policies or practices;
  - changes in applicable laws or regulations, including insurance and tax laws;
  - other governmental actions;
  - difficulties with the execution of Assured Guaranty’s business strategy;
  - contract cancellations;
  - Assured Guaranty’s dependence on customers;
  - loss of key personnel;
  - adverse technological developments;
  - the effects of mergers, acquisitions and divestitures;
  - natural or man-made catastrophes;
  - other risks and uncertainties that have not been identified at this time;
  - management's response to these factors; and
  - other risk factors identified in Assured Guaranty’s filings with the Securities and Exchange Commission (the “SEC”).
- See Assured Guaranty’s SEC filings and latest earnings press release and financial supplement, which are available on its website, for more information on factors that could affect its forward-looking statements. Do not place undue reliance on these forward-looking statements, which are made only as of September 2, 2010. Assured Guaranty does not undertake to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

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September 2, 2010

ASSURED GUARANTY CORP.

Financial Guaranty Insurance Policy

Issuer: **Policy No.:**

Obligations: **Premium:**

Effective Date:

Assured Guaranty Corp., a Maryland corporation ("**AGC**"), in consideration of the payment of the Premium and on the terms and subject to the conditions of this Policy (which includes each endorsement hereto), hereby unconditionally and irrevocably agrees to pay to the trustee (the "**Trustee**") or the paying agent (the "**Paying Agent**") for the Obligations (as set forth in the documentation providing for the issuance of and securing the Obligations) for the benefit of the Holders that portion of the Insured Payments which shall become Due for Payment but shall be unpaid by reason of Nonpayment.

AGC will make such Insured Payments to the Trustee or the Paying Agent on the later to occur of (i) the date applicable principal or interest becomes Due for Payment, or (ii) the Business Day next following the day on which AGC shall have Received a completed Notice of Nonpayment. If a Notice of Nonpayment by AGC is incomplete or does not in any instance conform to the terms and conditions of this Policy, it shall be deemed not Received, and AGC shall promptly give notice to the Trustee or the Paying Agent. Upon receipt of such notice, the Trustee or the Paying Agent may submit an amended Notice of Nonpayment. The Trustee or the Paying Agent will disburse the Insured Payments to the Holders only upon receipt by the Trustee or the Paying Agent, in form reasonably satisfactory to it of (i) evidence of the Holder's right to receive such payments, and (ii) evidence, including without limitation any appropriate instruments of assignment, that all of the Holder's rights to payment of such principal or interest Due for Payment shall thereupon vest in AGC. Upon and to the extent of such disbursement, AGC shall become the Holder of the Obligations, any appurtenant coupon thereto and right to receipt of payment of principal thereof or interest thereon, and shall be fully subrogated to all of the Holder's right, title and interest thereunder, including without limitation the right to receive payments in respect of the Obligations. Payment by AGC to the Trustee or the Paying Agent for the benefit of the Holders shall discharge the obligation of AGC under this Policy to the extent of such payment.

This Policy is non-cancelable by AGC for any reason. The Premium on this Policy is not refundable for any reason. This Policy does not insure against loss of any prepayment premium or other acceleration payment which at any time may become due in respect of any Obligation, other than at the sole option of AGC, nor against any risk other than Nonpayment.

Except to the extent expressly modified by any endorsement hereto, the following terms shall have the meanings specified for all purposes of this Policy. "**Avoided Payment**" means any amount previously distributed to a Holder in respect of any Insured Payment by or on behalf of the Issuer which amount has been recovered from such Holder pursuant to the United States Bankruptcy Code in accordance with a final, nonappealable order of a court having competent jurisdiction that such payment constitutes an avoidable preference with respect to such Holder. "**Business Day**" means any day other than (i) a Saturday or Sunday, (ii) any day on which the offices of the Trustee, the Paying Agent or AGC are closed, or (iii) any day on which banking institutions are authorized or required by law, executive order or governmental decree to be closed in the City of New York or in the State of Maryland. "**Due for Payment**" means (i) when referring to the principal of an Obligation, the stated maturity date thereof, or the date on which such Obligation shall have been duly called for mandatory sinking fund redemption, and does not refer to any earlier date on which payment is due by reason of a call for redemption (other than by mandatory sinking fund redemption), acceleration or other advancement of maturity (unless AGC in its sole discretion elects to make any principal payment, in whole or in part, on such earlier date) and (ii) when referring to interest on an Obligation, the stated date for payment of such interest. "**Holder**" means, in respect of any Obligation, the person or entity who, at the time of Nonpayment, is entitled under the terms of such Obligation to payment of principal or interest thereunder, except that Holder shall not include the Issuer or any person or entity whose direct or indirect obligation constitutes the underlying security for the Obligations. "**Insured Payments**" means that portion of the principal of and interest on the Obligations that shall become Due for Payment but shall be unpaid by reason of Nonpayment. Insured Payments shall not include any additional amounts owing by the Issuer solely as a result of the failure by the Trustee or the Paying Agent to pay such amount when due and payable, including without limitation any such additional amounts as may be attributable to penalties or to interest accruing at a default rate, to amounts payable in respect of indemnification, or to any other additional amounts payable by the Trustee or the Paying Agent by reason of such failure. "**Nonpayment**" means, in respect of an Obligation, the failure of the Issuer to have provided sufficient funds to the Trustee or the Paying Agent for payment in full of all principal and interest Due for Payment on such Obligation. It is further understood that the term "Nonpayment" in respect of an Obligation includes any Avoided Payment. "**Receipt**" or "**Received**" means actual receipt or notice of or, if notice is given by overnight or other delivery service, or by certified or registered United States mail, by a delivery receipt signed by a person authorized to accept delivery on behalf of the person to whom the notice was given. Notices to AGC may be mailed by registered mail or personally delivered or telecopied to it at 31 West 52nd Street, New York, New York 10019, Telephone Number: (212) 974-0100, Facsimile Number: (212) 581-3268, Attention: Risk Management Department - Public Finance Surveillance, with a copy to the General Counsel at the same address and at generalcounsel@assuredguaranty.com or at the following Facsimile Number: (212) 445-8705, or to such other address as shall be specified by AGC to the Trustee or the Paying Agent in writing. A Notice of Nonpayment will be deemed to be Received by AGC on a given Business Day if it is Received prior to 12:00 noon (New York City time) on such Business Day; otherwise it will be deemed Received on the next Business Day. "**Term**" means the period from and including the Effective Date until the earlier of (i) the maturity date for the Obligations, or (ii) the date on which the Issuer has made all payments required to be made on the Obligations.

At any time during the Term of this Policy, AGC may appoint a fiscal agent (the "**Fiscal Agent**") for purposes of this Policy by written notice to the Trustee or the Paying Agent, specifying the name and notice address of such Fiscal Agent. From and after the date of Receipt of such notice by the Trustee or the Paying Agent, copies of all notices and documents required to be delivered to AGC pursuant to this Policy shall be delivered simultaneously to the Fiscal Agent and to AGC. All payments required to be made by AGC under this Policy may be made directly by AGC or by the Fiscal Agent on behalf of AGC. The Fiscal Agent is the agent of AGC only, and the Fiscal Agent shall in no event be liable to the Trustee or the Paying Agent for any acts of the Fiscal Agent or any failure of AGC to deposit, or cause to be deposited, sufficient funds to make payments due under this Policy.

To the fullest extent permitted by applicable law, AGC hereby waives, in each case for the benefit of the Holders only, all rights and defenses of any kind (including, without limitation, the defense of fraud in the inducement or in fact or any other circumstance that would have the effect of discharging a surety, guarantor or any other person in law or in equity) that may be available to AGC to deny or avoid payment of its obligations under this Policy in accordance with the express provisions hereof. Nothing in this paragraph will be construed (i) to waive, limit or otherwise impair, and AGC expressly reserves, AGC's rights and remedies, including, without limitation: its right to assert any claim or to pursue recoveries (based on contractual rights, securities law violations, fraud or other causes of action) against any person or entity, in each case, whether directly or acquired as a subrogee, assignee or otherwise, subsequent to making any payment to the Trustee or the Paying Agent, in accordance with the express provisions hereof, and/or (ii) to require payment by AGC of any amounts that have been previously paid or that are not otherwise due in accordance with the express provisions of this Policy.

This Policy (which includes each endorsement hereto) sets forth in full the undertaking of AGC with respect to the subject matter hereof, and may not be modified, altered or affected by any other agreement or instrument, including, without limitation, any modification thereto or amendment thereof. THIS POLICY IS NOT COVERED BY THE PROPERTY/CASUALTY INSURANCE SECURITY FUND SPECIFIED IN ARTICLE 76 OF THE NEW YORK INSURANCE LAW. This Policy will be governed by, and shall be construed in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, AGC has caused this Policy to be affixed with its corporate seal, to be signed by its duly authorized officer, and to become effective and binding upon AGC by virtue of such signature.

ASSURED GUARANTY CORP.

(SEAL)

By:________________________________

[Insert Authorized Signatory Name]
[Insert Authorized Signatory Title]

Signature attested to by:

____
Counsel

STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

David A. Paterson
Governor

Eric R. Dinallo
Superintendent

Circular Letter No. 19 (2008)
September 22, 2008

TO: All authorized financial guaranty insurers
RE: "Best practices" for financial guaranty insurers

STATUTORY REFERENCES: New York Insurance Law §§ 107, 201, 301, 307, 1101, 1102, 1301, and 1402; and Article 69.

I. PURPOSE

The New York State Insurance Department ("Department") is the primary regulator for most United States financial guaranty insurance companies ("FGIs"), and those that are not legally domiciled in New York are licensed to issue financial guaranty insurance under Article 69 of the New York Insurance Law. FGIs issue policies on two main classes of securities: municipal bonds and asset-backed securities ("ABS"). For over 35 years financial guaranty insurance has reduced borrowing costs for issuers of debt instruments in the United States and worldwide. The Department's aim is to ensure that all consumers – individuals, businesses, and government entities – continue to have access to the benefits of financial guaranty insurance in a financially healthy and competitive insurance marketplace.

The marketplace places a value on the insurance policies issued by FGIs, based on the financial strength ratings issued by nationally recognized statistical rating organizations ("NRSROs") such as Moody's, Standard & Poor's, and Fitch. For decades, both the market and the NRSROs viewed FGIs as having a near "zero underwriting loss" business model because FGIs primarily guaranteed municipal and state government-issued securities and ABS with low historic default rates. But in recent years, FGIs insured markedly more risky non-governmental structured securities, many of which are backed by portfolios of residential real estate loans. As the value of the real estate supporting these structured finance transactions began to decline significantly in 2007, the value of the structured finance obligations supported by these debts (particularly sub-prime debt) also dropped precipitously. Consequently, by mid-2008, the NRSROs had lowered the ratings for virtually all of the FGIs, even those with less exposure to risky mortgage-backed securities.

In the fall of 2007, the Department developed a three-part plan to address the serious challenges recently faced by the bond insurance industry. The Department thus has:

1. Encouraged the entry of additional, well-capitalized insurers into the FGI market and facilitated capital raising by existing insurers.

2. Protected policyholders and the public by helping financially distressed FGIs to develop workable solutions to stave off adverse financial impact and further ratings deterioration.

3. Worked to develop new standards to which the financial guaranty business should adhere.

This Circular Letter advances the goals of the third part of the plan by setting forth the Department's key concerns with how FGIs have conducted their businesses to date, and by outlining "best practices" to which the Superintendent, on a prospective basis, expects FGIs to adhere, beginning January 1, 2009.

II. BACKGROUND

In the early years of the business, FGIs mainly provided insurance, or "wraps," for the debt offerings of municipalities, states, or other public entities. These wraps "enhanced" the quality of the issuer's credit rating (if any). Under a typical policy, if the issuer fails to make all or any part of a scheduled payment, the FGI pledges to make interest and principal payments to bondholders as scheduled. For wrapped bonds, the rating agencies confer the rating of the FGI on the issue. Until the recent turmoil, bond insurance enabled issuers to sell their bonds into debt markets at a triple-A rating – often at substantially lower interest rates than the issuer would otherwise pay. The availability of bond insurance for the municipal market reduced the cost to taxpayers of issuing debt to finance infrastructure and public projects supported by taxes or other revenue streams. The benefit of FGI policies for new bond issuances has diminished with the recent ratings downgrades of FGIs by NRSROs.

In the 1980s, the FGIs began to insure securitized debt, particularly securities based on pools of loans and mortgages. In the years that followed, securitization became increasingly complex, and new securities issued to investors became further removed or disintermediated from their supporting collateral. These new securities were generally backed by pools of securities based on portfolios of loans, referred to generically as collateralized debt obligations ("CDOs") of ABS - or ABS CDOs. One type of security – known as CDOs squared – was backed by multiple CDOs of ABS. The CDOs or CDOs squared were divided into tiers, or "tranches." The highest tranches were the most secure (i.e., they were paid first from proceeds of the underlying ABS securities), had the lowest risk of default, and were typically rated triple-A or higher ("super-senior") by the NRSROs. Subordinated tranches were riskier and were assigned weaker or lower ratings. For the most part, FGIs issued policies on CDO tranches rated triple-A, or "super senior".

In reaction to declines in home prices and increasing mortgage defaults in the past year, the three major NRSROs substantially lowered the ratings on thousands of mortgage-backed securities. The NRSROs (and other observers) have come to expect much higher losses on mortgage-backed securities than originally anticipated. Indeed, many financial guaranty policies have begun incurring losses, which requires FGIs to pay claims.

Although the NRSROs that rate FGIs employ different assumptions and methodologies, the general rule is that an FGI must, in order to maintain a triple-A rating, maintain claims paying resources that are a multiple of the amount needed to pay all future losses under highly stressful market circumstances. Accordingly, as the expected losses on ABS have grown, the NRSROs substantially increased the amount of resources required for the FGIs to maintain their coveted triple-A ratings. Indeed, most FGIs have been unable to meet the new (and frequently changing) targets required by the NRSROs, which has led to the ratings downgrades.

Many of the policies that FGIs sold in the structured finance marketplace backed commitments by affiliated special purpose vehicles ("SPV" or "transformer") that entered into credit default swaps ("CDS") with banks and securities firms. A CDS transfers credit and default risk from one counterparty ("protection buyer") to the other ("protection seller"). The large financial institutions that buy protection must, under accounting rules, periodically take into account changes in the values of the underlying obligations on which CDS protection is purchased (a process known as "mark-to-market"). The credit protection offers a hedge that reduces or eliminates the day-to-day volatility in the value of the underlying obligation. These hedged positions receive favorable accounting treatment from regulators and other authorities.

In accordance with Article 69 of the Insurance Law, the FGIs establish and control minimally capitalized SPVs which function as protection sellers for CDS. The SPVs, as CDS protection sellers, can offer certain contract terms that cannot be legally included in policies issued directly by an FGI. If a credit event occurs, the SPV is obligated to pay as counterparty. If the SPV fails to pay, the FGI will then be required to pay under its guarantee of the SPV counterparty obligations, even though the credit event triggering the SPV's requirement to pay may have been beyond the scope of risks that can be guaranteed by an FGI policy.

The obligation of an FGI to make a payment in accordance with its guarantee of an SPV under a CDS does not necessarily require a default by the reference security in payment of principal or interest (as is the case with municipal bonds), and can include any "credit event" or "termination event" specified by the terms of the CDS. "Credit events" include restructuring, repudiations or moratoriums, and entry into bankruptcy proceedings if the CDS uses the credit derivative definitions set forth in the 2003 ISDA Master Agreement published by the International Swap and Derivatives Association, Inc. ("ISDA"). In 2005, ISDA published a pay-as-you-go ("PAUG") master agreement with general terms that are much closer to those set forth in a typical FGI policy.

III. REGULATION OF FINANCIAL GUARANTY INSURERS

The regulation of FGIs in New York is principally governed by Article 69 of the Insurance Law, which applies exclusively to FGIs. Article 69 sets forth a series of specialized and highly technical requirements intended to safeguard the financial solvency of FGIs authorized to do business in this State. These include:

- Minimum capital: The minimum initial capital and surplus requirement for an FGI is $75 million, and at all times an FGI must maintain a policyholders' surplus of at least $65 million.[1]

- Contingency reserves: In addition to the minimum surplus to policyholders, an FGI is required to maintain a contingency reserve.[2] This reserve is based upon the greater of 50% of premiums written for each category of security guaranteed or a sum arrived at by multiplying specific factors by the principal amount of each class of security guaranteed. The amounts are based upon both the principal guaranteed and the relative risk of the type of bond, with municipal bonds receiving the lowest factor and non-investment grade securities receiving the highest.

- Aggregate risk limitations: An FGI is limited in the amount and type of securities that it may insure, based upon its surplus to policyholders and contingency reserves. See Insurance Law § 6904(d).

- Single risk limitations: Exposure on any one risk is limited, net of collateral and reinsurance, to a percentage of the aggregate of the insurer's surplus to policyholders and contingency reserves. See Insurance Law § 6904(d).

- Limitation on non-investment grade securities: At least 95% of the municipal obligation bonds, special revenue bonds and industrial development bonds insured by an FGI must be "investment grade."[3]

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[1] "Capital" is defined by Insurance Law § 107(a)(12) to mean, when used in reference to a stock insurance company, the aggregate par value of all classes of shares of capital stock issued and outstanding. "Surplus to policyholders" is defined by Insurance Law § 107(a)(42) to mean the excess of total admitted assets over the liabilities of an insurer, which is the sum of all capital and surplus accounts minus any impairment thereof. "Admitted assets," pursuant to Insurance Law § 107(a)(3), is defined by the detailed provisions of Insurance Law § 1301. See also Insurance Law § 6902(b).

[2] "Contingency reserve" is defined by Insurance Law § 6901(j) to mean an additional liability reserve established to protect policyholders against the effects of adverse economic developments or cycles or other unforeseen circumstances. See also Insurance Law § 6903(a).

[3] "Investment grade" is defined by Insurance Law § 6901(n) to include:

> (1) the obligation or parity obligation of the same issuer [that] has been determined to be in one of the top four generic lettered rating classifications by a securities rating agency acceptable to the superintendent;

IV. BEST PRACTICES

In light of the current economic environment, the Department has closely examined the existing statutory and regulatory structure that applies to FGIs and formulated "best practices" set forth below, to which the Superintendent, on a prospective basis, expects FGIs under the jurisdiction of the Department to adhere, beginning January 1, 2009. The Department intends to promulgate regulations or seek legislation, as necessary, to formalize these guidelines.

A. Insurance for CDOs of ABS

FGIs should restrict significantly the issuance of policies that back CDOs of asset-backed securities ("ABS"). The ability of FGIs to guarantee these securities derives from the reference to "pools" in the definition of "asset-backed securities" in Insurance Law § 6901(e)(1). Yet, no specific provision in the Insurance Law expressly authorizes FGIs to insure ABS that are collateralized by successive pools of ABS, so as to create several tranches of securitizations between the debt security insured by FGIs and the mortgage or other obligation ultimately backing the security. These multi-tranched obligations, sometimes referred to as CDO-squareds, are inherently riskier and unpredictable than an ABS that is no more than one layer removed from the underlying debts or obligations. Indeed, the recent turmoil in the financial markets amply demonstrates that even highly sophisticated participants in the CDO of ABS market are simply unable to adequately evaluate the risk assumed when FGIs insure structures that are substantially separated from the underlying obligations.

Accordingly, FGIs should not insure pools of ABS that are comprised or include portions of other pools of ABS unless:

- The insurance policy provides that the FGI holds an unsubordinated, senior position, provided such position has an investment rating of single-A or above;

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

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(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 (as indicated by a rating in category 1 or 2) by the Securities Valuation Office ("SVO") of the National Association of Insurance Commissioners ("NAIC").

See also Insurance Law § 6904(b)(2).

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

- The Superintendent has determined that the insurance is without undue risk to the FGI, its policyholders, and the people of the State of New York.

B. Credit protection for CDS

In 1997, the Department's Property Bureau addressed whether an FGI may lawfully provide a financial guaranty policy with respect to the payment obligations of an affiliated transformer under the terms of a CDS. The Department concluded that the proposed guarantee was "substantially similar" to a direct guarantee of the underlying obligation protected by the CDS, and thus permissible under Insurance Law § 6904(b)(1)(J). Accordingly, the Department did not object to such "back-to-back" transactions, provided that:

- The FGI underwrote policies guaranteeing CDS using its customary underwriting criteria;

- The duration of the CDS did not exceed five years;

- The security referenced in the CDS was rated at least investment grade;

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

- The FGI complied with holding company requirements set forth in Article 15 of the Insurance Law, as well as annual statement reporting requirements.

In 1999, the Department's Property Bureau issued another letter concluding that: (1) guarantees of termination payments (payments required under a CDS upon the occurrence of a specified "termination event," such as a payment default, insolvency, or a downgrade of the reference security's credit rating) were not impermissible "acceleration payments" prohibited under Insurance Law § 6905; and (2) pools of CDS obligations ("credit default pools") can be regarded as "asset-backed securities" under Insurance Law § 6901(e) (and, accordingly, were "permissible guarantees" under Insurance Law § 6904(b)).

After the release of the Department's letters, as well as an opinion from the Deparrtment's Office of General Counsel ("OGC") dated June 16, 2000, FGIs wrote numerous financial guaranty insurance policies that provided credit protection for CDS referencing collateralized debt obligations and pools of other credit default swaps. Generally, these CDS were written by transformers acting as protection sellers to counterparty banks and securities firms. That activity expanded after the Legislature codified the position reflected in the two Department letters by amending Article 69 of the Insurance Law in 2004. The amendment redefined "asset-backed securities" to expressly permit policies on CDS referencing a pool of obligations or pools of CDS. The amendment also added the following definition of CDS to Insurance Law § 6901(j-1):

> [A]n agreement referencing the credit derivative definitions published by the International Swap and Derivatives Association, Inc., 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 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.

Thus, provided that the making of the CDS itself "does not constitute the doing of an insurance business," Insurance Law § 6901(j-1) expressly permits FGIs to issue insurance policies that guarantee payments by transformers or other parties pursuant to such a CDS.

With today's Circular Letter, the Department clarifies that to the extent that the making of the CDS itself may constitute "the doing of an insurance business" within the meaning of Insurance Law § 1101, then the protection seller should consider seeking an opinion from the Department's Office of General Counsel to assess whether the protection seller should be licensed as an insurer pursuant to Insurance Law § 1102. Although OGC's June 16, 2000 opinion suggests that a CDS is not an insurance contract if the payment by the protection buyer is not conditioned upon an actual pecuniary loss, that opinion did not grapple with whether, under Insurance Law § 1101, a CDS is an insurance contract when it 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. That omission will be rectified and addressed in a forthcoming opinion to be prepared by OGC.

As noted above, FGI policies on CDS have exposed FGIs to certain risks that they have proved ill-equipped to underwrite or otherwise address effectively. Recent experience has shown that guarantees of CDS for which the FGI uses an SPV as a nominal counterparty are not consistent with the prudent operation and regulation of an FGI. Because the SPV has no financial capacity to make the payments possibly required of a counterparty to a CDS, the guarantee by the FGI of the SPV's failure to pay is equivalent to the FGI being the counterparty itself. Further, the financial obligations incurred by the SPV as a CDS counterparty (and guaranteed by the FGI) can be unexpectedly large for two primary reasons. First, mark-to-market accounting rules have forced SPVs as protection sellers (and thus their controlling FGIs) to take on additional risk when the value of CDS changes in the hands of protection buyers. Second, the terms of most CDS can trigger (or "accelerate") the SPV's liability as protection seller (and thus the guarantee of its controlling FGI) more easily than the relatively rare bond default produced by an issuer's failure to pay. Such features of CDS guarantees lead to an unusual degree of uncertainty as to likelihood and scale of CDS liabilities the FGIs ultimately guarantee. Both risks are not common to more conventional policies on municipal bonds or single-pool ABS.

The use of SPVs as nominal counterparties is, however, only one element of the Department's larger concerns with respect to the guarantees of CDS obligations by FGIs. To ensure that FGIs are able to manage the risks associated with CDS transactions prudently and equitably, the Superintendent expects FGIs to limit their issuance of policies on CDS to transactions where:

- The FGI guarantees only those risks specified in Insurance Law § 6901(a)(1)(A), namely, only failures to pay obligations when due or payable when the failure is the result of a financial default or insolvency;

- Neither the CDS agreement under which one counterparty sells protection to the other, nor the contract under which the insurer guarantees payment by the protection seller, defines a credit event, termination event, or event of default to include a change in the credit quality, rehabilitation, liquidation or insolvency of the FGI providing credit support for one of the CDS counterparties; and

- Neither the terms of the CDS agreement nor the contract under which the FGI provides its guaranty requires the insurer to post collateral.

Regulations that the Department intends to promulgate will propose to limit the definition of "credit event or termination event" with respect to guarantees of credit default swaps pursuant to Insurance Law § 6905(a).

The Superintendent intends these limitations to confine FGI participation in the CDS market to those transactions in which the insurers' risk is roughly comparable to the amount and timing of risks assumed when directly insuring bonds. These restrictions are intended to preclude the possibility that CDS counterparties will present claims ahead of other insured parties or otherwise gain a preferred position as a consequence of the Superintendent pursuing rehabilitation or liquidation against an FGI in accordance with Article 74 of the Insurance Law.

C. Concentrations of risk

Insurance Law § 6904(d) sets forth single risk limits intended to limit the exposure of the FGI to any one risk or group of risks. Obligations with respect to a "single entity," a single revenue source, a particular category of obligation, or some combination thereof cannot exceed ten percent of the aggregate surplus and contingency reserves, using debt service and principal as the measure.

In the Department's estimation, it is insufficient, particularly when examining pools of asset-backed securities, to view "single entity" as referring only to the issuer of the security if the insurer is to ensure adequate diversification of risk. Further, the guarantee of pools of ABS has made possible additional concentration risks, including the identity of the original lender, servicer, seller or sponsor, or the year in which the obligation originated (the "vintage"). Consequently, a focus on the nominal issuer of a pooled obligation or series of obligations has proven inadequate.

Accordingly, in determining how to define the "single entity" when calculating risk limits, FGIs should include not only the issuer of the debt, but also 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. In addition, each FGI should advise the Department promptly if its exposure to a particular category of debt or obligations that are issued within a particular calendar year ("vintage") exceeds the limits prescribed by Insurance Law § 6904(d)(2), and promptly explain to the Department in writing any actions the FGI intends to take (or has taken) to reduce its exposure to that category of risk.

D. Non-investment grade credit risk and monitoring

Insurance Law § 6904(b)(2) requires that an FGI's portfolios of insured municipal, special revenue, or industrial development bonds be at least 95% investment grade (as defined by Insurance Law § 6901(n)), based on a measurement of aggregate net liability.

The Department, during its statutorily required reviews, will monitor the insurer's remaining portfolio and expects that the balance of an FGI's business – i.e., structured finance – also will meet the 95% investment grade standard; unless the insurer can demonstrate that a lower standard is not detrimental to its policyholders and the people of this State.

If, absent an approved request for exception, an FGI's entire insured portfolio drops below 95% investment grade (as measured by aggregate net liability) for at least thirty days, then the insurer should promptly explain to the Department in writing any actions the FGI intends to take (or has taken) to meet that standard.

The extension of the 95% investment grade standard to the entire business of an FGI will provide additional assurance to FGI's policyholders and the public that the quality of the FGI's business is investment grade.

E. Restatement of appropriate underwriting and risk management standards

Insurance Law § 6902(a)(3) requires a new entrant into the business of financial guaranty insurance to submit a plan of operation to the Superintendent for approval. That plan must detail:

> [T]he types and projected diversification of financial guaranty insurance policies 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 superintendent.

The Department has found that, once licensed, FGIs sometimes have not adequately incorporated these initial plans into their ongoing business operations, or have not revised the initial guidelines over the course of time.

Further, the statute's reliance upon specific numerical requirements regarding surplus and reserves or aggregate and single risk limits has proven inadequate. Strict adherence to bright-line requirements that cannot anticipate all possible situations is a poor substitute for diversification, proper underwriting procedures, managerial oversight methods, and investment policies. Accordingly, an FGI should maintain:

- Sufficient liquidity to pay claims, including extreme stress scenarios;
- Appropriate risk underwriting policies, criteria, and procedures: to 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 FGI's portfolios do not significantly erode capital strength; to ensure appropriate pricing and accurate estimate of anticipated losses; and to use dynamic risk modeling and management thereafter; and
- Sufficient control and remediation rights to mitigate the potential severity of any loss.

This clear statement of the continuing obligation of FGIs to manage risk prudently is intended to reverse a trend of apparently inadequate underwriting standards and incautious business practices.

F. <u>Increased capital and surplus requirements</u>

The amounts of paid-in capital and paid-in surplus that an FGI must maintain to transact business have not changed since 1989. Although such amounts may have been adequate nearly two decades ago, they are no longer sufficient to support the obligations undertaken by even the smallest FGI. Accordingly, the Department intends to seek a change in Insurance Law § 6902(b)(1) to increase the amount of paid-in capital from at least $2,500,000 to at least $15,000,000, and paid-in surplus from at least $72,500,000 to at least $165,000,000. Further, the Department intends to seek an amendment to Insurance Law § 6902(b)(1) to increase the amount of minimum surplus to policyholders that a financial guaranty insurer must maintain from at least $65,000,000 to a figure in excess of $150,000,000.

Pending any change in the statute, however, the Superintendent expects all FGIs to maintain these higher levels of paid-in capital and paid-in surplus so as to enhance their ability to obtain new business.

G. <u>Increased capital for insurance that includes operating leverage</u>

Governmental entity obligations are generally insured in their entirety by a single FGI (subject to subsequent or concurrent reinsurance agreements). In contrast, asset-backed securities often are split horizontally into tranches of different quality or with differing terms, the insurance of which may bear disparate risks, even if the tranche insured is itself nominally investment grade.

If credit events, termination events or defaults (depending upon the chosen terminology) occur, losses are incurred beginning at the lowest quality tranche of the obligation. Severe stress can, however, mean that losses eventually reach even into the tranches assumed to be investment grade. These losses will disproportionally affect insurers who guarantee only a portion of the tranches at the bottom of the investment grade tranches. Because of this layering, an insurer that guarantees payment for all of the investment grade tranches of an obligation bears less risk as a percentage of its guarantee than an insurer that guarantees only the more junior investment-grade, or so-called "mezzanine," tranches.

The minimum levels of capital and surplus ordinarily required under Insurance Law § 6904(c) do not accurately reflect the increased operating leverage and greater risk of loss associated with financial guaranty insurance policies issued with respect to more junior tranches of obligations. Other than for the super-senior tranches (or junior tranches for which the insurer also insures all senior tranches of that obligation), the Superintendent expects FGIs to maintain capital and contingency reserves no less than the greater of 300% 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.

This methodology is intended to account more accurately for the higher risks associated with the guaranty of junior tranches.

H. Additional regulatory and reporting requirements

The Department is taking other steps to strengthen its ability to oversee the activities of FGIs. To that end, FGIs will be required by regulations to report any failure to maintain the standards set forth in this Circular Letter and, among other items, to report:

- The basis for material declines in policyholder surplus (i.e., 5% or more for insurers with less than $500 million at the end of the previous quarter, and 20% or more for insurers with $500 million or more of policyholder surplus).

- 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, rise above multiples of policyholder surplus and contingency reserves:

- On a periodic basis, all guaranteed obligations by fair value, gross and net par outstanding and debt service insured, vintage, category or class, and CUSIP[4] or

[4] The acronym "CUSIP" refers to both the Committee on Uniform Security Identification Procedures and the 9-character alphanumeric security identifiers that they distribute upon request for all North American securities. CUSIPs are widely used within the securities industry to facilitate the clearance and settlement of trades. The CUSIP distribution system is owned by the American Bankers Association and is operated by Standard & Poor's.

comparable identification to make the data sufficiently transparent to be properly evaluated by the Department for degree of risk.

- All guarantees and insurance contracts entered into between insurers and related SPVs.

These changes, which the Department intends to move to formalize through regulations, are intended to improve the quality and quantity of information available to the Department in its evaluation of any FGI's ability to conduct business in accordance with statutory and regulatory requirements.

Further, the Department intends to engage in more frequent, targeted examinations of FGI-risk management systems, and to examine the quality of obligations guaranteed, as well as the quality of assets held, by FGIs. Moreover, the New York addendum to the annual statement will henceforth require enhanced identification of risk for all guaranteed securities, including those held in asset-backed securities.

V. REQUIRED ACKNOWLEDGMENT

Every authorized FGI must acknowledge receipt of this Circular Letter, in writing, within 15 calendar days of the date of this Circular Letter. The acknowledgment, and any questions regarding this Circular Letter, should be directed to Associate Tax Counsel Ann H. Logan at alogan@ins.state.ny.us or (212) 480-6297.

Sincerely,

Eric R. Dinallo
Superintendent of Insurance

1 of 10 DOCUMENTS

NEW YORK CONSOLIDATED LAWS SERVICE

*** THIS SECTION IS CURRENT THROUGH 2010 RELEASED CHAPTERS ***
*** 1-56, 61-149, 169, AND 314 ***

INSURANCE LAW
ARTICLE 69. FINANCIAL GUARANTY INSURANCE CORPORATIONS

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NY CLS Ins Article 69 Note (2010)

Ins Article 69 Note

HISTORY:
Add, L 1989, ch 48, § 4, eff May 14, 1989 (see 1989 note below).

NOTES:

Editor's Notes

Laws 1989, ch 48, § 9, eff May 14, 1989 provides as follows:

§ 9. This act shall take effect on the thirtieth day after it shall have become a law, provided, however, that the superintendent of insurance may, prior to such date, promulgate such rules and regulations as may be necessary for the timely implementation of this act.

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NEW YORK CONSOLIDATED LAWS SERVICE

*** THIS SECTION IS CURRENT THROUGH 2010 RELEASED CHAPTERS ***
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INSURANCE LAW
ARTICLE 69. FINANCIAL GUARANTY INSURANCE CORPORATIONS

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NY CLS Ins § 6901 (2010)

§ 6901. Definitions

As used in this article:

(a) (1) "Financial guaranty insurance" means a surety bond, an insurance policy or, when issued by an insurer or any person doing an insurance business as defined in paragraph one of subsection (b) of section one thousand one hundred one of this chapter, 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:

(A) failure of any obligor on or issuer of any debt instrument or other monetary obligation (including equity securities guarantied 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;

(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 specific assets or commodities, financial or commodity indices, or price levels in general; or

(E) other events which the superintendent determines are substantially similar to any of the foregoing.

(2) Notwithstanding paragraph one of this subsection, "financial guaranty insurance" shall not include:

(A) insurance of any loss resulting from any event described in paragraph one of this subsection 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 [fig 1] :

(i) a fortuitous physical event;

(ii) failure of or deficiency in the operation of equipment; or

(iii) an inability to extract or recover a natural resource;

(B) fidelity and surety insurance as defined in paragraph sixteen of subsection (a) of section one thousand one hundred thirteen of this chapter;

(C) credit insurance as defined in paragraph seventeen of subsection (a) of section one thousand one hundred thirteen of this chapter;

(D) credit unemployment insurance as defined in paragraph twenty-four of subsection (a) of section one thousand one hundred thirteen of this chapter;

(E) residual value insurance as defined in paragraph twenty-two of subsection (a) of section one thousand one hundred thirteen of this chapter;

(F) mortgage guaranty insurance as defined in paragraph twenty-three of subsection (a) of section one thousand one hundred thirteen of this chapter and as permitted to be written by a mortgage guaranty insurer under article sixty-five of this chapter;

(G) guaranteed investment contracts issued by life insurance companies which provide that the life insurer itself will make specified payments in exchange for specific premiums or contributions;

(H) indemnity contracts or similar guaranties, to the extent that they are not otherwise limited or proscribed by this chapter:

(i) in which a life insurer or an insurer subject to article forty-three of this chapter guaranties its obligations or indebtedness or the obligations or indebtedness of a subsidiary (as defined in paragraph forty of subsection (a) of section one hundred seven of this chapter), other than a financial guaranty insurance corporation, provided that:

(I) to the extent that any such obligations or indebtedness are backed by specific assets, such assets must at all times be owned by the insurer or the subsidiary; and

(II) in the case of the guaranty of the obligations or indebtedness of the subsidiary that are not backed by specific assets of such insurer, such guaranty terminates once the subsidiary ceases to be a subsidiary; or

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

(I) acquired by a special purpose entity, whose sole purpose is to acquire specific assets of such life insurer or its subsidiary and issue securities or participation certificates backed by such assets; or

(II) sold to an independent third party; or

(iii) in which a life insurer guaranties obligations or indebtedness of an employee or insurance agent of such life insurer; or

(I) [fig 1] guarantees of higher education loans, unless written by a financial guaranty insurance corporation; [fig 2]

(J) guarantees of insurance contracts, except for:

(i) guarantees authorized pursuant to section one thousand one hundred fourteen of this chapter;

(ii) financial guaranty insurance policies insuring guaranteed investment contracts issued by life insurers, provided that:

(I) the obligations under such contracts are not dependent on the continuance of human life;

(II) the financial guaranty insurance policies do not guaranty death benefits provided by such contracts;

(III) the obligations insured by the financial guaranty insurance policies are investment grade based on the rating of the life insurers or, in the case of separate account guaranteed investment contracts, based on the ratings of such separate accounts;

(IV) the financial guaranty insurance policies shall not condition or delay payment of a claim with respect to such contracts upon the insured or beneficiary making a claim on the contracts with any insurance guaranty fund under this chapter or of any other jurisdiction; and

(V) the financial guaranty insurance policies provide that if, prior to payment by the insurer under the financial guaranty insurance policies, the guaranty fund has paid a claim under such contracts for an amount that, when added to the amount payable under the financial guaranty insurance policies, would exceed the amount owed under such contracts, then the financial guaranty insurer shall pay the portion of the amount payable in excess of the contract amounts to the guaranty fund instead of to the beneficiary under such contracts; or

(K) any other form of insurance covering risks which the superintendent determines to be substantially similar to any of the foregoing.

(b) "Financial guaranty insurance corporation" or "corporation" means an insurer licensed to transact the business of financial guaranty insurance in this state.

(c) "Affiliate" means a person which, directly or indirectly, owns at least ten percent but less than fifty percent of the financial guaranty insurance corporation or which is at least ten percent but less than fifty percent, directly or indirectly, owned by a financial guaranty insurance corporation.

(d) "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.

(e) "Asset-backed securities" mean:

(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 by the Bank Insurance Fund or the Savings Insurance Fund (or any successor thereto); and

(B) a pool of assets:

(i) has been conveyed, pledged or otherwise transferred to or is otherwise owned or acquired by the issuer;

(ii) such pool of assets backs the securities or other financial obligations issued; and

(iii) no asset in such pool, other than an asset directly payable by, [fig 1] guaranteed by or backed by the full faith and credit of the United States government or that otherwise qualifies as collateral under paragraph one or two of subsection (g) of this section, has a value exceeding twenty 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 paragraph two of subsection (g) of this section, has a notional amount exceeding ten 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.

(f) "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 one thousand dollars par value), divided by the amount equal to the aggregate life of all such obligations (assuming each obligation represents one thousand dollars par value). This definition, expressed as a formula in regard to bonds, is as follows:

$$\text{Average Annual Debt Service} = \frac{\text{Total Debt Service X No. of Bonds}}{\text{Bond Years}}$$

$$\text{Total Debt Service} = \text{Insured Unpaid Principal} + \text{Interest}$$

$$\text{Number of Bonds} = \frac{\text{Total Insured Principal}}{\$\ 1{,}000}$$

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

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.

(g) "Collateral" means:

(1) cash;

(2) the cash flow 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 or prepayments) on the insured obligation provided that (i) such specific obligations are directly payable by, [fig 1] guaranteed by or backed by the full faith and credit of the United States government [fig 2] , (ii) in the case of insured obligations denominated or payable in foreign currency as permitted under paragraph [fig 3] four of subsection (b) of section six thousand nine hundred four of this article, such specific obligations are directly payable by, [fig 5] 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; [fig 1]

(4) the face amount of each letter of credit that:

(A) is irrevocable;

(B) provides for payment under the letter of credit [fig 1] in lieu of or as reimbursement to the insurer for payment required under a financial guaranty insurance policy [fig 2] ;

(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 thirty 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 subsection [fig 1] is not provided;

(H) states that it is governed by the laws of the state of New York 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) [n1] or any successor Revision if approved by the superintendent, and contains a provision for an extension of time, of not less than thirty 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 and loan association that:

(i) is organized and existing under the laws of the United States or any state thereof or, in the case of a non-domestic [fig 1] 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 superintendent;

(ii) has (or is the principal operating subsidiary of a [fig 1] financial institution holding company that has) a long-term debt rating of at least investment grade; and

(iii) is not a parent, subsidiary or affiliate of the trustee or paying agent, if any, with respect to the insured obligation if such trustee of [or] [n2] 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 each 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 otherwise acceptable to the superintendent; or (iii) at the discretion of the superintendent 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 article or guaranteed by a financial institution referred to in items (ii) and (iii) of this subparagraph;

(ii) a financial institution satisfying the requirements of items (i) through (iii) of subparagraph (I) of paragraph four of this subsection; provided that (A) obligations of such financial institution on parity with its obligations under the credit default swap are investment grade and (B) 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 superintendent determines to be substantially similar to any of the foregoing.

Collateral must be deposited with the insurer; held in trust by a trustee or custodian acceptable to the superintendent 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 which 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 superintendent. The superintendent may promulgate 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 subsection.

(h) "Commercial real estate" means income producing real property other than residential property consisting of less than five units.

(i) (1) "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 (A) such pool meets the requirements of paragraph two of subsection (e) of this section and (B) such pool has been determined to be investment grade.

(2) 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.

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

(j-1) "Credit default swap" means an agreement referencing the credit derivative definitions published from time to time by the International Swap and Derivatives Association, Inc. or otherwise acceptable to the superintendent, 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 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.

(k) "Governmental unit" means the United States of America, Canada, a member country of the [fig 1] 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 superintendent, a state, territory or possession of the United States of America, the District of Columbia, a province of Canada, a municipality, or a political subdivision of any of the foregoing, or any public agency or instrumentality thereof.

(k-1) "Excess spread" means, with respect to any insured issue of asset-backed securities, the excess of (A) 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 (B) 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 subsection (g) of this section.

(l) "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 guarantied by a governmental unit.

(m) "Insurable risk" means, with respect to asset-backed securities, as defined in subsection (e) of this section, that such obligation on an uninsured basis has been determined to be not less than investment grade based solely on the pool of assets [fig 1] backing the insured obligation or securing the insurer, without consideration of the creditworthiness of the issuer.

(n) "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 superintendent;

(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 (as indicated by a rating in category 1 or 2) by the Securities Valuation Office of the National Association of Insurance Commissioners.

(o) "Municipal bonds" means municipal obligation bonds and special revenue bonds.

(p) "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 [fig 1] 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 which is:

(1) (A) payable from tax revenues, but not tax allocations, within the jurisdiction of such governmental unit;

(B) 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 housing agency of a state or an equivalent 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 non-nuclear utility project, public transportation facility (other than an airport), or public higher education facility; or

(D) with respect to lease obligations, payable from future appropriations; and

(2) provided that, in the case of obligations of a special purpose corporation, special purpose trust or other special purpose legal entity, (A) such obligations are investment grade at the time of issuance; (B) such obligations are payable from sources enumerated in subparagraph (A), (B), (C) or (D) of paragraph one of this subsection; and (C) 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 [fig 1] unit.

(q) "Reinsurance" means cessions qualifying for credit under section six thousand nine hundred six of this article.

(r) "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 subsection (p) of this section; or securities which are the functional equivalent of the foregoing issued by a not-for-profit 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, (1) such obligations are investment grade at the time of issuance; (2) such obligations are not payable from the sources enumerated in subparagraph (A), (B), (C) or (D) of paragraph one of subsection (p) of this section; and (3) 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 [fig 1] unit.

(s) "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 superintendent; 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 [fig 1] unit.

HISTORY:

Add, L 1989, ch 48, § 4, eff May 14, 1989 (see 1989 note below).
Sub (a), par (1), opening par, amd, L 2004, ch 605, § 1, Oct 19, 2004.
Sub (a), par (1), subpar (A), amd, L 1996, ch 529, § 2, eff Aug 8, 1996.
Sub (a), par (2), subpar (A), opening par, amd, L 2004, ch 605, § 1, Oct 19, 2004.
The 2004 act deleted at fig 1 a semicolon
Sub (a), par (2), subpar (A), amd, L 1996, ch 529, § 2, eff Aug 8, 1996.
Sub (a), par (2), subpar (F), amd, L 1996, ch 529, § 2, eff Aug 8, 1996.
Sub (a), par (2), subpar (I), amd, L 2004, ch 605, § 2, eff Oct 19, 2004.
The 2004 act deleted at fig 1 "guaranties" and at fig 2 "or"
Sub (a), par (2), subpar (J), add, L 2004, ch 605, § 3, eff Oct 19, 2004.

Former sub (a), par (2), subpar (J), redesignated sub (a), par (2), subpar (K), L 2004, ch 605, § 3, eff Oct 19, 2004.

Sub (a), par (2), subpar (K), formerly sub (a), par (2), subpar (J), so designated sub (a), par (2), subpar (K), L 2004, ch 605, § 3, eff Oct 19, 2004.

Sub (c), amd, L 1996, ch 529, § 2, eff Aug 8, 1996.

Sub (e), amd, L 1996, ch 529, § 3, eff Aug 8, 1996.

Sub (e), opening par, amd, L 1996, ch 529, § 3, eff Aug 8, 1996.

Sub (e), opening par, amd, L 2004, ch 605, § 4, eff Oct 19, 2004.

Sub (e), par (1), formerly part of sub (e), opening par, so designated sub (e), par (1), L 2004, ch 605, § 4, eff Oct 19, 2004.

Former sub (e), par (1), redesignated sub, (e), par (1), subpar (A), L 2004, ch 605, § 4, eff Oct 19, 2004.

Sub (e), par (1), subpar (A), formerly sub (e), par (1), amd, L 1994, ch 300, § 11 (see 1994 note below), L 1996, ch 529, § 3, eff Aug 8, 1996; so designated sub (e), par (1), subpar (A), L 2004, ch 605, § 4, eff Oct 19, 2004.

Sub (e), par (1), subpar (B), opening par, formerly sub (e), par (2), so designated sub (e), par (1), subpar (B), opening par, L 2004, ch 605, § 4, eff Oct 19, 2004.

Sub (e), par (1), subpar (B), subpar (i), formerly sub (e), par (2), subpar (A), so designated sub (e), par (1), subpar (B), subpar (i), L 2004, ch 605, § 4, eff Oct 19, 2004.

Sub (e), par (1), subpar (B), subpar (ii), formerly sub (e), par (2), subpar (B), amd, L 1996, ch 529, § 3, eff Aug 8, 1996; so designated sub (e), par (1), subpar (B), subpar (ii), L 2004, ch 605, § 4, eff Oct 19, 2004.

Sub (e), par (1), subpar (B), subpar (i), formerly sub (e), par (2), subpar (C), amd, L 1996, ch 529, § 3, eff Aug 8, 1996;; so designated sub (e), par (1), subpar (B), subpar (iii) and amd, L 2004, ch 605, § 4, eff Oct 19, 2004.

The 2004 act deleted at fig 1 "guarantied"

Sub (e), par (2), add, L 2004, ch 605, § 4, eff Oct 19, 2004.

Former sub (e), par (2), redesignated sub, (e), par (1), subpar (B), opening par, L 2004, ch 605, § 4, eff Oct 19, 2004.

Sub (f), amd, L 2004, ch 605, § 5, eff Oct 19, 2004.

Sub (f), closing par, add, L 2004, ch 605, § 5, eff Oct 19, 2004.

Sub (g), amd, L 2004, ch 605, § 6, eff Oct 19, 2004.

Sub (g), par (2), amd, L 1996, ch 529, § 2, eff Aug 8, 1996.

Sub (g), par (2), amd, L 2004, ch 605, § 6, eff Oct 19, 2004.

The 2004 act deleted at figs 1 and 4 "guarantied", at fig 2 "or" and at fig 3 "two"

Sub (g), par (3), amd, L 1996, ch 529, § 2, eff Aug 8, 1996.

Sub (g), par (3), amd, L 2004, ch 605, § 6, eff Oct 19, 2004.

The 2004 act deleted at fig 1 "or"

Sub (g), par (4), subpar (B), amd, L 2004, ch 605, § 6, eff Oct 19, 2004.

The 2004 act deleted at fig 1 "under all instances in which" and at fig 2 "is required"

Sub (g), par (4), subpar (G), cl (ii), amd, L 2004, ch 605, § 6, eff Oct 19, 2004.

The 2004 act deleted at fig 1 "(g)"

Sub (g), par (4), subpar (H), amd, L 1996, ch 529, § 2, eff Aug 8, 1996.

Sub (g), par (4), subpar (I), amd, L 2005, ch 672, § 4, eff Sept 16, 2005.

Sub (g), par (4), subpar (I), cl (i), amd, L 2004, ch 605, § 6, eff Oct 19, 2004, L 2005, ch 672, § 4, eff Sept 16, 2005.

The 2005 act deleted at fig 1 "banking organization"
Sub (g),par (4), subpar (I), cl (ii), amd, L 2005, ch 672, § 4, eff Sept 16, 2005.
The 2005 act deleted at fig 1 "bank"
Sub (g), par (4), subpar (I), cl (iii), amd, L 2004, ch 605, § 6, eff Oct 19, 2004.
Sub (g), par (5), add, L 2004, ch 605, § 6, eff Oct 19, 2004.
Sub (g), closing par, amd, L 1996, ch 529, § 2, eff Aug 8, 1996.
Sub (g), closing par, amd, L 2004, ch 605, § 6, eff Oct 19, 2004.
Sub (i), par (1), amd, L 1996, ch 529, § 2, eff Aug 8, 1996.
Sub (j-1), add, L 2004, ch 605, § 7, eff Oct 19, 2004.
Sub (k), amd, L 1996, ch 529, § 2, eff Aug 8, 1996.
Sub (k), amd, L 2004, ch 605, § 7, eff Oct 19, 2004.
The 2004 act deleted at fig 1 "organization of economic cooperation and development"
Sub (k-1), add, L 1996, ch 529, § 2, eff Aug 8, 1996.
Sub (m), amd, L 2004, ch 605, § 8, eff Oct 19, 2004.
The 2004 act deleted at fig 1 "pledeged in support of"
Sub (n), amd, L 1996, ch 529, § 2, eff Aug 8, 1996.
Sub (n), par (1), amd, L 1996, ch 529, § 2, eff Aug 8, 1996.
Sub (n), par (2), amd, L 1996, ch 529, § 2, eff Aug 8, 1996.
Sub (n), par (3), amd, L 1996, ch 529, § 2, eff Aug 8, 1996.
Sub (p), opening par, amd, L 1996, ch 529, § 2, eff Aug 8, 1996.
Sub (p), amd, L 2005, ch 672, § 5, eff Sept 16, 2005.
Sub (p), opening par, amd, L 2004, ch 605, § 9, eff Oct 19, 2004, L 2005, ch 672, § 5, eff Sept 16, 2005.
The 2005 act deleted at fig 1 "entity"
Sub (p), par (1), redesignated sub (p), par (1), subpar (A), L 2004, ch 605, § 9, eff Oct 19, 2004.
Sub (p), par (1), subpar (A), formerly sub (p), par (1), so designated sub (p), par (1), subpar (A), L 2004, ch 605, § 9, eff Oct 19, 2004.
Sub (p), par (1), subpar (B), formerly sub (p), par (2), so designated sub (p), par (1), subpar (B) and amd, L 2004, ch 605, § 9, eff Oct 19, 2004.
The 2004 act deleted at fig 1 "guarantied", at fig 2 "of America" and at fig 3 "state"
Sub (p), par (1), subpar (C), formerly sub (p), par (3), so designated sub (p), par (1), subpar (C), L 2004, ch 605, § 9, eff Oct 19, 2004.
Sub (p), par (1), subpar (D), formerly sub (p), par (4), so designated sub (p), par (1), subpar (D) and amd, L 2004, ch 605, § 9, eff Oct 19, 2004.
Sub (p), par (2), add, L 2004, ch 605, § 9, eff Oct 19, 2004; amd, L 2005, ch 672, § 5, eff Sept 16, 2005.
The 2005 act deleted at fig 1 "entity"
Former sub (p), par (2), redesignated sub (p), par (1), subpar (B), L 2004, ch 605, § 9, eff Oct 19, 2004.
Sub (p), par (3), redesignated sub (p), par (1), subpar (C), L 2004, ch 605, § 9, eff Oct 19, 2004.
Sub (p), par (4), redesignated sub (p), par (1), subpar (D), L 2004, ch 605, § 9, eff Oct 19, 2004.
Sub (r), amd, L 2004, ch 605, § 10, eff Oct 19, 2004, L 2005, ch 672, § 5, eff Sept 16, 2005.
The 2005 act deleted at fig 1 "entity"
Sub (s), amd, L 1996, ch 529, § 2, eff Aug 8, 1996.
Sub (s), amd, L 2004, ch 605, § 11, eff Oct 19, 2004, L 2005, ch 672, § 5, eff Sept 16, 2005.
The 2005 act deleted at fig 1 "entity"

NOTES:

Editor's Notes

Laws 1989, ch 48, § 9, eff May 14, 1989 provides as follows:
§ 9. This act shall take effect on the thirtieth day after it shall have become a law, provided, however, that the superintendent of insurance may, prior to such date, promulgate such rules and regulations as may be necessary for the timely implementation of this act.

Laws 1994, ch 300, § 15, eff July 20, 1994, provides as follows:
§ 15. This act shall take effect immediately and shall apply to taxable periods ending on or after August 9, 1989.

Research References & Practice Aids:
68 NY Jur 2d, Insurance §§ 99, 124, 126
68A NY Jur 2d, Insurance §§ 546, 547

Texts:
New York Insurance Law (Matthew Bender's New York Practice Series) §§ 3.03[4], 20.03[2a][ii], 54.01, 54.03[2], [5], [6b], [c], [7]

LexisNexis 50 State Surveys, Legislation & Regulations

1. Non-exchange-traded Derivatives
2. Surety Insurance & Bonds

Case Notes:

Insurance companies that issued a premium finance bond to guarantee a borrower's obligations under a loan it received from a bank waived the right to assert defenses to the bank's action seeking payment under the bond, and the trial court denied the insurance companies' request for time to conduct discovery on their claim that the bank committed fraud, and granted the bank's motion for summary judgment on its claim. *Valley Nat'l Bank v Greenwich Ins. Co. (2003, SD NY) 254 F Supp 2d 448.*

Credit insurance policy may be issued to financial institution which is assignee of trade receivables from merchant; such insurance does not constitute financial guarantee insurance. Insurance Department, Opinions of General Counsel, Opinion Number 00-06-08.

Absent bankruptcy order, coverage constituted residual value insurance where policy provided coverage to motor vehicle lender, such as bank, policy covered lender's interest in motor vehicle, which was collateral pledged to secure loan, endorsement to policy insured lender in event vehicle was repossessed and sold after vehicle owner/borrower defaulted on loan, and policy covered motor vehicle repossession loss, which was insured lender's interest in collateral (essentially, balance due under loan), computed as of date of sale less repossession sale proceeds; however, if there was bankruptcy order, coverage would constitute financial guarantee insurance. Insurance Department, Opinions of General Counsel, Opinion Number 00-08-06.

"Surety deposit bond," contract that would obligate insurer to pay deposit on real estate purchase agreement in event builder-purchaser defaulted in making its payment, constituted financial guarantee insurance authorized by *CLS Ins § 1113(a)(25)* and defined by *CLS Ins § 6901(a)*. Insurance Department, Opinions of General Counsel, Opinion Number 01-11-22.

Financial guarantee insurers are subject to Regulation 169 (*11 NYCRR §§ 420.0-420.24*); however, Regulation 169 will not apply except where individuals obtain, seek to obtain, or are claimants or beneficiaries of products or services primarily for personal, family, or household purposes. Insurance Department, Privacy Opinions of General Counsel, Opinion Number 01-04-10.

Property/casualty insurer, licensed to write surety insurance in New York, may insure bank against risk that developer will not perform certain task for municipality, when developer provides performance letter of credit issued by bank to municipality and municipality makes claim on performance letter of credit for non-performance of task. Insurance Department, Opinions of General Counsel, Opinion Number of 02-05-23.

It would constitute doing insurance business under *CLS Ins § 1101* if company promised bank that it would pay loan due to financial default of consumer where company would be guaranteeing loans as vocation and not as merely incidental to its legitimate business; such activity would constitute financial guaranty or fidelity and surety insurance. Insurance Department, Opinions of General Counsel, Opinion Number 02-06-23.

Under *CLS Ins §§ 1101(a)(3)* and *1101(b)(1)(B)*, making of surety contract constitutes insurance contract if it is issued as location and not as merely incidental to any other legitimate business or activity of surety. Insurance Department, Opinions of General Counsel, Opinion Number 02-10-09.

Proposed product intended to insure savings deposits would constitute financial guaranty insurance under New York Insurance Law. Insurance Department, Opinions of General Counsel, Opinion Number 02-11-03.

Letters of credit issued in connection with proposed transaction would not constitute financial guaranty insurance or any other kind of insurance under New York Insurance Law. Insurance Department, Opinions of General Counsel, Opinion Number 03-01-45.

Under facts presented, letters of credit would not constitute financial guaranty insurance or any other kind of insurance under Insurance Law. Insurance Department, Opinions of General Counsel, Opinion Number 03-01-45.

Public Purpose Bonds (i.e., privately issued bonds used for financing of public purpose projects, primarily located overseas) may be considered substantially similar to Special Revenue Bonds as defined by *CLS Ins § 6901(r)*. Insurance Department, Opinions of General Counsel, Opinion Number 03-10-11.

Insurer may not combine kinds of insurance that it is not licensed to write within policy or contract covering insurance of kinds that it is authorized to write. Insurance Department, Opinions of General Counsel, Opinion Number 04-04-25.

Insurer's writing authority is limited by definitions of kinds of insurance contained in *CLS Ins § 1113* and other sections of Insurance Law, including, in particular, *CLS Ins § 6901(a)*. Insurance Department, Opinions of General Counsel, Opinion Number 04-04-25.

"Lease bond", whereby New York authorized insurer guaranties tenant's payment of rent, constitutes financial guaranty insurance under Insurance Law and may be issued only by financial guaranty insurer, not surety insurer; such bond does not come within any specific provision of *CLS Ins § 1113(a)(16)* and, by virtue of exclusionary language of *CLS Ins § 1113(a)(16)(E)*, does not come within that provision either. Insurance Department, Opinions of General Counsel, Opinion Number 04-05-02.

Insurance Department considers as financial guaranty insurance any bond where principal performance guaranteed is payment of debt obligation. Insurance Department, Opinions of General Counsel, Opinion Number 04-05-02.

Designation of counterparty as beneficiary of collateral trust and grant of security interest by collateral trust to such counterparty does not constitute provision or writing of financial guaranty (or any other kind) of insurance under New York law. Insurance Department, Opinions of General Counsel, Opinion Number 05-05-02.

Neither corporate trustor, funding trust nor collateral trust will be considered to be engaged in business of insurance by virtue of designation of counterparty as beneficiary of collateral trust and grant of security interest by collateral trust to such counterparty. Insurance Department, Opinions of General Counsel, Opinion Number 05-05-02.

There is no basis in Insurance Law for position that counterparty's status as beneficiary of collateral trust and as holder of security interest would not be enforceable in accordance with their terms. Insurance Department, Opinions of General Counsel, Opinion Number 05-05-02.

Neither corporate trustor, funding trust, nor collateral trust (nor their stockholders, beneficiaries, owners, partners, directors, officers, employees or agents) will be deemed to be (or require licensing as) insurance agents, agencies, brokers, producers, consultants, advisors, administrators, solicitors, service representatives, surplus lines agents, reinsurance intermediaries, managing general agents, supervisory general agents or like under Insurance Law by virtue of their activities in connection with designation of counterparty as beneficiary of collateral trust and grant of security interest by collateral trust to such counterparty. Insurance Department, Opinions of General Counsel, Opinion Number 05-05-02.

Arrangement of statutory trust, as method for raising capital to be held in trust as collateral is not insurance transaction, even though it is similar in some respects to holding of assets for repayment of reinsurance recoverables in Regulation 114 Trust, where there is no transfer of risk and no promise to pay in event of occurrence of fortuitous event. Insurance Department, Opinions of General Counsel, Opinion Number 05-05-02.

Proposed "financial property insurance" that will insure against losses to customers caused by drop in market value of their financial and equity mutual fund assets, if deemed insurance, would be impermissible type of financial guaranty insurance; also, such financial guaranty insurance would not constitute "permissible guaranty" under *CLS Ins § 6904(b)(1)*. Insurance Department, Opinions of General Counsel, Opinion Number 05-11-02.

"Home Equity Protection Plan"--intended to protect homeowner from decline in value of home over life of policy--would constitute insurance under Insurance Law, specifically, financial guaranty insurance, but would not constitute permissible financial guaranty insurance and thus may not be written or marketed in state, since plan does not fall within permissible guarantees under *CLS Ins § 6904(b)*. Insurance Department, Opinions of General Counsel, Opinion Number 08-01-11.

Purported home equity protection plan, intended to protect homeowner from decline in value of his home during duration of contract, is form of financial guaranty insurance that is not permitted by Insurance Law because it purports to guarantee value of specific asset; thus, such product may not be written or marketed in New York. Insurance Department, Opinions of General Counsel, Opinion Number 08-07-31.

Contingent annuity contract is not permissible under Insurance Law where it purports to provide indemnification for "financial loss" resulting from "changes in the value of specific assets" and thus constitutes impermissible form of financial guaranty insurance. Insurance Department, Opinions of General Counsel, Opinion Number 09-06-11.

FOOTNOTES:

[n1] [n1] The publication Uniform Customs and Practice for Documentary Credits is published under copyright owned by the International Chamber of Commerce.

[n2] [n2] The bracketed word has been inserted by the Publisher.

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NEW YORK CONSOLIDATED LAWS SERVICE

*** THIS SECTION IS CURRENT THROUGH 2010 RELEASED CHAPTERS ***
*** 1-56, 61-149, 169, AND 314 ***

INSURANCE LAW
ARTICLE 69. FINANCIAL GUARANTY INSURANCE CORPORATIONS

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NY CLS Ins § 6902 (2010)

§ 6902. Organization; financial requirements

(a) A financial guaranty insurance corporation may be organized and licensed in the manner prescribed in section one thousand two hundred one of this chapter and a foreign insurer may be licensed in the manner prescribed in section one thousand one hundred six of this chapter, 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 the following additional kinds of insurance:
(A) residual value insurance, as defined in paragraph twenty-two of subsection (a) of section one thousand one hundred thirteen of this chapter;
(B) surety insurance, as defined in subparagraphs (C), (D), (E) [fig 1] , (F), (G), (H) and (I) of paragraph sixteen of subsection (a) of section one thousand one hundred thirteen of this chapter; and
(C) credit insurance, as defined in subparagraph (A) of paragraph seventeen of subsection (a) of section one thousand one hundred thirteen of this chapter;

(2) a financial guaranty insurance corporation may only assume 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 superintendent, a corporation shall submit for the approval of the superintendent 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 superintendent; and

(4) a financial guaranty insurance corporation's investments in any one entity insured by that corporation shall not exceed [fig 1] four percent of its admitted assets at last year-end, except that this limit shall not apply to investments payable or [fig 2] guaranteed by a United States governmental unit or New York state if such investments payable or [fig 3] guaranteed by the United States governmental unit or New York state shall be rated in one of the top two generic lettered rating classifications by a securities rating agency acceptable to the superintendent.

(5) in addition to any transaction that an insurer meeting the requirements of subsection (c) of section one thousand four hundred three of this chapter may effect and maintain [fig 1] under any other provision of this chapter, a financial guaranty insurance corporation may effect and maintain transactions in (A) contracts for the future delivery or receipt of the currency of a foreign country, (B) interest rate options, (C) credit default swaps under which the insurer is acquiring credit protection and [fig 2] (D) other products included in the plan referred to in clause (vii) of this [fig 3] subparagraph, in each case meeting the following requirements:
(i) 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;

(ii) the transaction shall not exceed a duration of twelve months beyond the term of such policies or reinsurance contracts;

(iii) the amount of foreign currencies to be purchased under the transaction shall not exceed the amount [fig 1] guaranteed under such policies or reinsurance contracts that is denominated in foreign currency;

(iv) the amount that is subject to interest rate hedging transactions does not exceed the amount [fig 1] guaranteed under such policies or reinsurance contracts that is subject to the risk of interest rate fluctuations;

(v) 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;

(vi) the transaction is not conducted for arbitrage purposes; and

(vii) 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 superintendent.

(b) (1) A financial guaranty insurance corporation shall not transact business unless it has paid-in capital of at least two million five hundred thousand dollars and paid-in surplus of at least seventy-two million five hundred thousand dollars, and shall at all times thereafter maintain a minimum surplus to policyholders of at least sixty-five million dollars.

(2) An insurer transacting only financial guaranty insurance prior to the effective date of this article which has a paid-in capital of at least two million five hundred thousand dollars and maintains surplus to policyholders of at least forty-five million dollars shall have thirty-six months from the effective date of this article to fully comply with the surplus requirements set forth in paragraph one of this subsection.

(3) A financial guaranty insurance company shall be deemed to be in compliance with paragraphs one and two of subsection (b) of section one thousand four hundred two of this chapter if not less than sixty percent of the amount of the required minimum capital or minimum surplus to policyholder investments shall consist of the types specified in paragraphs one and two of subsection (b) of section one thousand four hundred two of this chapter and direct government obligations of any state of the United States 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 of the United States or of any county, district or municipality thereof, such financial guaranty insurance company shall have invested at least ten percent of such required minimum in government obligations of New York state or of any county, district or municipality thereof. Only for purposes of meeting the required investment in government obligations of New York state, the insurer may count investments in any government obligation of New York state, whether direct or otherwise.

HISTORY:

Add, L 1989, ch 48, § 4, eff May 14, 1989 (see 1989 note below).
Sub (a), par (1), amd, L 2005, ch 672, § 6, eff Sept 16, 2005.
Sub (a), par (1), subpar (B), amd, L 2005, ch 672, § 6, eff Sept 16, 2005.
The 2005 act deleted at fig 1 "and"

Sub (a), par (4), amd, L 1989, ch 89, § 3, L 1996, ch 529, § 4, eff Aug 8, 1996.
Sub (a), par (4), amd, L 2004, ch 605, § 12, eff Oct 19, 2004.
The 2004 act deleted at fig 1 "three" and at figs 2 and 3 "guarantied"
Sub (a), par (5), add, L 1996, ch 529, § 4, eff Aug 8, 1996.
Sub (a), par (5), amd, L 2004, ch 605, § 12, eff Oct 19, 2004.
Sub (a), par (5), opening par, amd, L 2004, ch 605, § 12, eff Oct 19, 2004.
The 2004 act deleted at fig 1 "pursuant to subparagraph (B) of paragraph six and paragraph seven of subsection (d) of section one thousand four hundred three", at fig 2 "(C)" and at fig 3 "paragraph"
Sub (a), par (5), subpar (i), amd, L 2004, ch 605, § 12, eff Oct 19, 2004.
Sub (a), par (5), subpar (iii), amd, L 2004, ch 605, § 12, eff Oct 19, 2004.
The 2004 act deleted at fig 1 "guarantied"
Sub (a), par (5), subpar (iv), amd, L 2004, ch 605, § 12, eff Oct 19, 2004.
The 2004 act deleted at fig 1 "guarantied"
Sub (b), par (1), formerly entire sub (b), so designated and amd, L 1989, ch 89, § 4, eff May 14, 1989.
Sub (b), par (2), add, L 1989, ch 89, § 4, eff May 14, 1989.
Sub (b), par (3), add, L 1995, ch 331, § 1; amd, L 1996, ch 529, § 4, eff Aug 8, 1996.

NOTES:

Editor's Notes

Laws 1989, ch 48, § 9, eff May 14, 1989, provides as follows:
§ 9. This act shall take effect on the thirtieth day after it shall have become a law, provided, however, that the superintendent of insurance may, prior to such date, promulgate such rules and regulations as may be necessary for the timely implementation of this act.

Research References & Practice Aids:
68 NY Jur 2d, Insurance § 124

Texts:
New York Insurance Law (Matthew Bender's New York Practice Series) §§ 7.01, 8.06[11], 54.03[4], [10], 20.03[2a][ii]

LexisNexis 50 State Surveys, Legislation & Regulations

1. Non-exchange-traded Derivatives
2. Surety Insurance & Bonds

Case Notes:

Authorized property/casualty insurer is not authorized to transact financial guarantee insurance; as provided under *CLS Ins § 6904(a)*, only corporation licensed under *CLS Ins § 6902* to transact financial guarantee insurance may do so. Insurance Department, Opinions of General Counsel, Opinion Number 01-11-22.

Foreign insurance company, licensed only to write fidelity and surety insurance, could not agree to pay credit card debt for business using cards to pay business expenses since such insurance would constitute financial guarantee insurance as defined in *CLS Ins § 6902*, not credit card insurance as defined in *CLS Ins § 1113(a)(17)*, and company was not licensed to issue such insurance; if company agreed to provide such insurance, it would violate "Appleton Rule," as codified in *CLS Ins § 1106(f)*. Insurance Department, Opinions of General Counsel, Opinion Number 02-01-14.

Financial guarantee insurers are subject to Regulation 169 (*11 NYCRR §§ 420.0-420.24*); however, Regulation 169 will not apply except where individuals obtain, seek to obtain, or are claimants or beneficiaries of products or services primarily for personal, family, or household purposes. Insurance Department, Privacy Opinions of General Counsel, Opinion Number 01-04-10.

Property/casualty insurer licensed to sell surety and fidelity insurance under *CLS Ins §§ 4101(a)* and *4102(a)* or financial guaranty insurer licensed to sell surety insurance under *CLS Ins § 6902(a)(1)(B)* may sell surety bond to debt collection agency that collects child support payments, payable to New York City under Local Law 70/2003; insurer is subject to file and use rate regulation under *CLS Ins §§ 2305(a)*, *2305(c)*, and *2307(a)*, and to financial condition regulation by, among other provisions, *CLS Ins §§ 307* and *1111*. Insurance Department, Opinions of General Counsel, Opinion Number 04-08-24.

United States branch of alien insurer may not be admitted to New York State as financial guarantee insurer under *CLS Ins § 6902(a)*, even though § 6902(a) states that foreign insurer may be licensed in manner prescribed by *CLS Ins § 1106*, which is entitled "[a]dditional requirements for foreign or alien insurer's license"; "foreign insurer" is different from "alien insurer" as those 2 terms are defined in *CLS Ins § 107*. Insurance Department, Opinions of General Counsel, Opinion Number 06-01-26.

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*** THIS SECTION IS CURRENT THROUGH 2010 RELEASED CHAPTERS ***
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INSURANCE LAW
ARTICLE 69. FINANCIAL GUARANTY INSURANCE CORPORATIONS

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NY CLS Ins § 6903 (2010)

§ 6903. Contingency, loss and unearned premium reserves

(a) Contingency reserves.

(1) 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.

(2) With respect to all financial guaranties written prior to and in force as of the first day of the next calendar quarter commencing after the date that the act enacting this article shall become law:
(A) the insurer shall establish and maintain a contingency reserve consistent with the requirements applicable for municipal bond guaranties in effect prior to the effective date of this article equal to fifty percent of earned premiums on such policies; and
(B) to the extent that the insurer's contingency reserves maintained as of the first day of the next calendar quarter commencing after the date that the act enacting this article shall become law 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.

(3) 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 the date that the act enacting this article shall become law:
(A) the insurer shall establish and maintain a contingency reserve for all such insured issues in each calendar year for each category listed in subparagraph (B) of this paragraph;
(B) the total contingency reserve required shall be the greater of fifty percent of premiums written for each such category or the following amount prescribed for each such category:
(i) municipal obligation bonds, 0.55 percent of principal guarantied;
(ii) special revenue bonds, and obligations demonstrated to the satisfaction of the superintendent to be the functional equivalent thereof, 0.85 percent of principal guarantied;
(iii) 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;
(iv) other investment grade industrial development bonds, 1.5 percent of principal guarantied; and
(v) all other industrial development bonds, 2.5 percent of principal guarantied; and
(C) Contributions to the contingency reserve required by this paragraph, equal to one-eightieth of the total reserve required, shall be made each quarter for twenty years, provided, however, that contributions may be discontinued so long as the total reserve for all categories listed in items (i) through (v) of subparagraph (B) of this paragraph exceeds the percentages contained in such items (i) through (v) when applied against unpaid principal.

(4) With respect to all other financial guaranties written on or after the first day of the next calendar quarter commencing after the date that the act enacting this article shall become law:

(A) the insurer shall establish and maintain a contingency reserve for all such insured issues in each calendar year for each such category listed in subparagraph (B) of this paragraph;

(B) the total contingency reserve required shall be the greater of fifty percent of premiums written for each such category or the following amount prescribed for each such category:

(i) investment grade obligations, secured by collateral or having a term of seven years or less, 1.0 percent of principal guarantied;

(ii) other investment grade obligations, 1.5 percent of principal guarantied;

(iii) non-investment grade consumer debt obligations, 2.0 percent of principal guarantied;

(iv) non-investment grade asset-backed securities, 2.0 percent of principal guarantied;

(v) other non-investment grade obligations, 2.5 percent of principal guarantied; and

(C) Contributions to the contingency reserve required by this paragraph, equal to one-sixtieth of the total reserve required, shall be made each quarter for fifteen years, provided, however, that contributions may be discontinued so long as the total reserve for all categories listed in items (i) through (v) of subparagraph (B) of this paragraph exceeds the percentages contained in such items (i) through (v) when applied against unpaid principal.

(5) Contingency reserves required in paragraphs two, three and four of this subsection 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 paragraphs three and four of this subsection may be maintained (A) net of refundings and refinancings to the extent the refunded or refinanced issue is paid off or secured by obligations which are directly payable or guarantied by the United States government and (B) net of insured securities in a unit investment trust or mutual fund that have been sold from the trust or fund without insurance.

(6) 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:

(A) with the prior written approval of the superintendent:

(i) if the actual incurred losses for the year, in the case of the categories of guaranties subject to paragraph three of this subsection exceeds thirty-five percent of earned premiums, or in the case of the categories of guaranties subject to paragraph four of this subsection exceed sixty-five percent of earned premiums; or

(ii) if the contingency reserve applicable to the categories of guaranties subject to paragraph three of this subsection has been in existence for less than forty quarters, or for less than thirty quarters for the categories of guaranties subject to paragraph four of this subsection, upon a demonstration satisfactory to the superintendent that the amount carried is excessive in relation to the insurer's outstanding obligations under its financial guaranties.

(B) upon thirty days prior written notice to the superintendent, provided that the contingency reserve applicable to the categories of guaranties subject to paragraph three of this subsection has been in existence for forty quarters, or thirty quarters for categories of guaranties subject to paragraph four of this subsection, upon a demonstration satisfactory to the superintendent that the amount carried is excessive in relation to the insurer's outstanding obligations under its financial guaranties.

(7) An insurer providing financial guaranty insurance may invest the contingency reserve in tax and loss bonds (or similar securities) purchased pursuant to *section 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 paragraphs one through three of subsection (b) of section one thousand four hundred two of this chapter and paragraphs one through three of subsection (a) of section one thousand four hundred four of this chapter.

(b) Loss reserves.

(1) The case basis method or such other method as may be prescribed by the superintendent shall be used to establish and maintain loss reserves, net of collateral, for claims reported and unpaid, in a manner consistent with section four thousand one hundred seventeen of this chapter. 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.

(2) 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 ten 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 superintendent.

(c) Unearned premium reserve. 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 superintendent.

HISTORY:

Add, L 1989, ch 48, § 4, eff May 14, 1989 (see 1989 note below).
Sub (a), par 3, subpar (B), cl (iii), amd, L 1989, ch 89, § 5, eff May 14, 1989.
Sub (a), par (5), amd, L 1996, ch 529, § 5, eff Aug 8, 1996.
Sub (a), par (5), amd, L 2004, ch 605, § 13, eff Oct 19, 2004.
Sub (a), par (7), amd, L 1989, ch 89, § 6, eff May 14, 1989.
Sub (c), amd, L 1996, ch 529, § 5, eff Aug 8, 1996.
Sub (c), amd, L 2005, ch 672, § 7, eff Sept 16, 2005.

NOTES:

Editor's Notes

Laws 1989, ch 48, § 9, eff May 14, 1989, provides as follows:
§ 9. This act shall take effect on the thirtieth day after it shall have become a law, provided, however, that the superintendent of insurance may, prior to such date, promulgate such rules and regulations as may be necessary for the timely implementation of this act.

Research References & Practice Aids:
68 NY Jur 2d, Insurance §§ 178, 180, 182

Texts:
New York Insurance Law (Matthew Bender's New York Practice Series) §§ 5.14[8], 20.03[2a][ii], 54.03[5], [7], [8]

LexisNexis 50 State Surveys, Legislation & Regulations

1. Non-exchange-traded Derivatives
2. Surety Insurance & Bonds

Case Notes:

Financial guarantee insurers must establish and maintain unearned premium reserve that is actuarially sound and based on past experience; as to reserve requirements for "reduced premium" policies, policies are not properly issued at reduced premiums, and financial guarantee insurers must adhere to their filed rates. Insurance Department, Opinions of General Counsel, Opinion Number 00-05-13.

Financial guarantee insurers should include refunding credits in computing unearned premium reserve for policies on refunding bonds. Insurance Department, Opinions of General Counsel, Opinion Number 00-06-02.

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*** THIS SECTION IS CURRENT THROUGH 2010 RELEASED CHAPTERS ***
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INSURANCE LAW
ARTICLE 69. FINANCIAL GUARANTY INSURANCE CORPORATIONS

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NY CLS Ins § 6904 (2010)

§ 6904. Limitations

(a) Financial guaranty insurance may be transacted in this state only by a corporation licensed for such purpose pursuant to section six thousand nine hundred two of this article.

(b) Permissible [fig 1] guarantees.

(1) The superintendent shall not permit the writing of financial guaranty insurance except as defined in subparagraph (A) of paragraph one of subsection (a) of section six thousand nine hundred one of this article, and a corporation may insure the timely payment of United States dollar debt instruments, or other monetary obligations, only in the following categories:

(A) municipal obligation bonds;

(B) special revenue bonds;

(C) industrial development bonds;

(D) [fig 1] obligations of corporations, trusts or other similar entities established under applicable law;

(E) partnership obligations;

(F) asset-backed securities, trust certificates and trust obligations other than mortgage-backed securities secured by first mortgages on real property which are insurable by a mortgage guaranty insurer authorized under paragraph twenty-three of subsection (a) of section one thousand one hundred thirteen of this chapter, unless:

(i) such mortgages with loan-to-value ratios in excess of eighty percent are:

(I) in the case of mortgages on property located in the state of New York, insured by mortgage guaranty insurers authorized under paragraph twenty-three of subsection (a) of section one thousand one hundred thirteen of this chapter;

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

(III) in an aggregate principal amount less than the single risk limits prescribed in paragraph five of subsection (d) of this section; or

(ii) 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 in accordance with item (i) of this subparagraph are pledged as additional security for the asset-backed securities;

(G) installment purchase agreements executed as a condition of sale;

(H) consumer debt obligations;
(I) utility first mortgage obligations; and
(J) any other debt instrument or financial obligation that the superintendent determines to be substantially similar to any of the foregoing or shall otherwise be approved by the superintendent.

(2) [fig 1] An insurer may insure obligations enumerated in subparagraphs (A), (B), and (C) of paragraph one of this subsection that are not investment grade so long as at least ninety-five percent of the insurer's [fig 2] aggregate net liability on the kinds of obligations enumerated in subparagraphs (A), (B) and (C) of paragraph one of this [fig 3] subsection shall be investment grade.

(3) A corporation may insure the timely payment of monetary obligations in any category designated in this subsection 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.

(4) A corporation may also write financial guaranty insurance as defined in subparagraph (A) of paragraph one of subsection (a) of section six thousand nine hundred one of this article 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 subparagraphs (A) through (J) of paragraph one of this subsection, provided that:
(A) [fig 1] such currency is that of an [fig 2] Organisation for Economic Co-operation and Development country or such other country (i) whose sovereign rating is investment grade or (ii) as shall not otherwise be disapproved by the superintendent within thirty days following receipt of written notification. The superintendent 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 superintendent shall take into consideration the corporation's outstanding liabilities on non-investment 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;
(B) [fig 1] reserves required pursuant to section six thousand nine hundred three of this article in regard to such obligations shall be established and adjusted quarterly based upon the then current foreign exchange rates;
(C) [fig 1] such obligations shall not exceed twenty-five percent of an insurer's aggregate net liability; and
(D) [fig 1] the aggregate and single risk limitations prescribed by subsections (c) and (d) of this section shall be determined by applying the then current foreign exchange rates.

(c) Aggregate risk limits. The corporation must at all times maintain surplus to policyholders and contingency reserves in the aggregate no less than the sum of:

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

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

(C) 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:

(i) investment grade industrial development bonds,

(ii) other investment grade obligations; plus

(D) 1.5 percent or 1/66.67th of the aggregate net liability under guaranties of other investment grade obligations; plus

(E) 2.0 percent or 1/50th of the aggregate net liability under guaranties of:

(i) non-investment grade consumer debt obligations, and

(ii) non-investment grade asset-backed securities; plus

(F) 2.5 percent or 1/40th of the aggregate net liability under guaranties of non-investment grade obligations secured by first mortgages on commercial real estate and having loan-to-value ratios of eighty percent or less; plus

(G) 4.0 percent or 1/25th of the aggregate net liability under guaranties of other non-investment grade obligations; and

(H) if the amount of collateral required by subparagraph (C) of this paragraph is no longer maintained, that proportion of the obligation insured which is not so collateralized shall be subject to the aggregate limits specified in subparagraph (D) of this paragraph; and

(2) surplus to policyholders determined by the superintendent to be adequate to support the writing of residual value insurance, surety insurance and credit insurance, if the corporation has elected to transact such kinds of insurance pursuant to subsection (a) of section six thousand nine hundred two of this article.

(d) Single risk limits. 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 superintendent 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 ten 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 seventy-five 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 lesser of:

(A) insured average annual debt service; or

(B) insured unpaid principal (reduced by the extent to which the unpaid principal of the supporting assets [fig 1] and, provided the insured risk is investment grade, excess spread exceed the insured unpaid principal) divided by nine;

shall not exceed ten 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 paragraph five of this subsection, if directly [fig 1] 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 non-recourse with respect to, the pool of assets that supports the insured obligation, (ii) be non-recourse 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 fifty percent of the appraised value of the underlying real estate shall not exceed ten 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 ten 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 ten percent of the aggregate of the insurer's surplus to policyholders and contingency reserve.

(e) Except as provided in subsection (f) of this section, if an insurer at any time exceeds any limitation prescribed by subsection (c) or (d) of this section or the last sentence of paragraph one of subsection (b) of this section, the insurer shall within thirty days after the limitations are breached, submit a written plan to the superintendent 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 superintendent 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 paragraph one of subsection (b) of this section, may order such insurer to limit its writing of the types of guaranties permitted under subparagraphs (A), (B) and (C) of paragraph one of subsection (b) of this section to investment grade obligations until such time as it shall be in compliance with such limitations.

(f) An insurer shall not be deemed in violation of any limitation prescribed by subsection (d) of this section with respect to any financial guaranty insurance outstanding prior to the effective date of this article, if the insurer was in compliance with the applicable single risk limit in effect in this state 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 subsection (d) of this section no later than three years after the effective date of this article.

(g) 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.

HISTORY:

Add, L 1989, ch 48, § 4, eff May 14, 1989 (see 1989 note below).

Sub (b), amd, L 2004, ch 605, § 14, eff Oct 19, 2004.

Sub (b), opening par, amd, L 2004, ch 605, § 14, eff Oct 19, 2004.

The 2004 act deleted at fig 1 "guaranties"

Sub (b), par (1), subpar (D), amd, L 2004, ch 605, § 14, eff Oct 19, 2004.

The 2004 act deleted at fig 1 "corporate"

Sub (b), par (1), subpar (F), amd, L 1996, ch 529, § 6, eff Aug 8, 1996.

Sub (b), par (1), subpar (F), opening par, amd, L 1996, ch 529, § 6, eff Aug 8, 1996.

Sub (b), par (1), subpar (F), cl (i), opening par, formerly part of entire sub (b), par (1), subpar (F), cl (i), so designated sub (b), par (1), subpar (F), cl (i), opening par and amd, L 2004, ch 605, § 14, eff Oct 19, 2004.

Sub (b), par (1), subpar (F), cl (i), subcl (I), formerly part of sub, (b), par (1), subpar (F), cl (i), so designated sub (b), par (1), subpar (F), cl (i), subcl (I) and amd, L 2004, ch 605, § 14, eff Oct 19, 2004.

Sub (b), par (1), subpar (F), cl (i), subcl (II), add, L 2004, ch 605, § 14, eff Oct 19, 2004.

Sub (b), par (1), subpar (F), cl (i), subcl (III), formerly part of sub, (b), par (1), subpar (F), cl (i), so designated sub (b), par (1), subpar (F), cl (i), subcl (III) and amd, L 2004, ch 605, § 14, eff Oct 19, 2004.

Sub (b), par (1), subpar (F), cl (ii), amd, L 1996, ch 529, § 6, eff Aug 8, 1996.

Sub (b), par (2), formerly sub (b), closing par, so designated sub (b), par (2) and amd, L 2004, ch 605, § 14, eff Oct 19, 2004.

The 2004 act deleted at fig 1 "At", at fig 2 "outstanding total liability" and at fig 3 "paragraph"

Former sub (b), par (2), redesignated sub (b), par (4), L 2004, ch 605, § 14, eff Oct 19, 2004.

Sub (b), par (3), add, L 2004, ch 605, § 14, eff Oct 19, 2004.

Sub (b), par (4), formerly sub (b), par (2), so designated sub (b), par (4), L 2004, ch 605, § 14, eff Oct 19, 2004.

Sub (b), par (4), subpar (A), formerly sub (b), par (2), subpar (A), amd, L 1996, ch 529, § 6, eff Aug 8, 1996; so designated sub (b), par (4), subpar (A) and amd, L 2004, ch 605, § 14, eff Oct 19, 2004.

The 2004 act deleted at fig 1 "Such" and at fig 2 "Organization of Economic Cooperation"

Sub (b), par (4), subpar (B), formerly sub (b), par (2), subpar (B), amd, L 1996, ch 529, § 6, eff Aug 8, 1996; so designated sub (b), par (4), subpar (B) and amd, L 2004, ch 605, § 14, eff Oct 19, 2004.

The 2004 act deleted at fig 1 "Reserves"

Sub (b), par (4), subpar (C), formerly sub (b), par (2), subpar (C), amd, L 1996, ch 529, § 6, eff Aug 8, 1996; so designated sub (b), par (4), subpar (C) and amd, L 2004, ch 605, § 14, eff Oct 19, 2004.

The 2004 act deleted at fig 1 "Such"

Sub (b), par (4), subpar (D), formerly sub (b), par (2), subpar (D), amd, L 1996, ch 529, § 6, eff Aug 8, 1996; so designated sub (b), par (4), subpar (D) and amd, L 2004, ch 605, § 14, eff Oct 19, 2004.

The 2004 act deleted at fig 1 "The"
Sub (d), amd, L 2004, ch 605, § 14, eff Oct 19, 2004.
Sub (d), par (2), opening par, amd, L 1996, ch 529, § 6, eff Aug 8, 1996.
Sub (d), par (2), subpar (B), amd, L 2004, ch 605, § 14, eff Oct 19, 2004.
The 2004 act deleted at fig 1 "exceeds"
Sub (d), par (2), closing par, amd, L 2004, ch 605, § 14, eff Oct 19, 2004.
The 2004 act deleted at fig 1 "guarantied"
Sub (e), amd, L 1989, ch 89, § 7, eff May 14, 1989.
Sub (f), amd, L 1989, ch 89, § 7, eff May 14, 1989.

NOTES:

Editor's Notes

Laws 1989, ch 48, § 9, eff May 14, 1989, provides as follows:
§ 9. This act shall take effect on the thirtieth day after it shall have become a law, provided, however, that the superintendent of insurance may, prior to such date, promulgate such rules and regulations as may be necessary for the timely implementation of this act.

Research References & Practice Aids:
68 NY Jur 2d, Insurance §§ 126, 131

Texts:
New York Insurance Law (Matthew Bender's New York Practice Series) §§ 20.03[2a][ii], 54.03[3], [5], [6b], [c], [7]

LexisNexis 50 State Surveys, Legislation & Regulations

1. Non-exchange-traded Derivatives
2. Surety Insurance & Bonds

Case Notes:

"Repossession insurance," although insurance, was kind that could not be offered in New York either by authorized multi-line property/casualty Company or by excess lines broker on behalf of unauthorized insurer. Insurance Department, Opinions of General Counsel, Opinion Number 00-09-10.

Authorized property/casualty insurer is not authorized to transact financial guarantee insurance; as provided under *CLS Ins § 6904(a)*, only corporation licensed under *CLS Ins § 6902* to transact financial guarantee insurance may do so. Insurance Department, Opinions of General Counsel, Opinion Number 01-11-22.

Public Purpose Bonds (i.e., privately issued bonds used for financing of public purpose projects, primarily located overseas) may be considered substantially similar to Special Revenue Bonds as defined by *CLS Ins § 6901(r)*. Insurance Department, Opinions of General Counsel, Opinion Number 03-10-11.

Proposed "financial property insurance" that will insure against losses to customers caused by drop in market value of their financial and equity mutual fund assets, if deemed insurance, would be impermissible type of financial guaranty insurance; also, such financial guaranty insurance would not constitute "permissible guaranty" under *CLS Ins § 6904(b)(1)*. Insurance Department, Opinions of General Counsel, Opinion Number 05-11-02.

"Home Equity Protection Plan"--intended to protect homeowner from decline in value of home over life of policy--would constitute insurance under Insurance Law, specifically, financial guaranty insurance, but would not constitute permissible financial guaranty insurance and thus may not be written or marketed in state, since plan does not fall within permissible guarantees under *CLS Ins § 6904(b)*. Insurance Department, Opinions of General Counsel, Opinion Number 08-01-11.

Purported home equity protection plan, intended to protect homeowner from decline in value of his home during duration of contract, is form of financial guaranty insurance that is not permitted by Insurance Law because it purports to guarantee value of specific asset; thus, such product may not be written or marketed in New York. Insurance Department, Opinions of General Counsel, Opinion Number 08-07-31.

Contingent annuity contract is not permissible under Insurance Law where it purports to provide indemnification for "financial loss" resulting from "changes in the value of specific assets" and thus constitutes impermissible form of financial guaranty insurance. Insurance Department, Opinions of General Counsel, Opinion Number 09-06-11.

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INSURANCE LAW

ARTICLE 69. FINANCIAL GUARANTY INSURANCE CORPORATIONS

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NY CLS Ins § 6905 (2010)

§ 6905. Policy forms and rates

(a) Policy forms and any amendments thereto shall be filed with the superintendent within thirty days of their use by the insurer if not otherwise filed prior to the effective date of this article. 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 (1) policies may insure amounts payable under a credit default swap or interest [fig 1] 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 paragraph five of subsection (d) of section six thousand nine hundred four of this article and (2) 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 article, 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 subsection (b) of section six thousand nine hundred four of this article. The superintendent may prescribe minimum policy provisions determined by the superintendent 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 superintendent 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 superintendent for information prior to their use by the insurer if not otherwise filed prior to the effective date of this article.

(c) All such filings shall be available for public inspection at the insurance department.

HISTORY:

Add, L 1989, ch 48, § 4, eff May 14, 1989 (see 1989 note below).
Sub (a), amd, L 1996, ch 529, § 7, eff Aug 8, 1996.
Sub (a), amd, L 2004, ch 605, § 15, eff Oct 19, 2004, L 2005, ch 672, § 8, eff Sept 16, 2005.
The 2005 act deleted at fig 1 "or"

NOTES:

Editor's Notes

Laws 1989, ch 48, § 9, eff May 14, 1989 provides as follows:
§ 9. This act shall take effect on the thirtieth day after it shall have become a law, provided, however, that the superintendent of insurance may, prior to such date, promulgate such rules and regulations as may be necessary for the timely implementation of this act.

Research References & Practice Aids:
68A NY Jur 2d, Insurance § 613
69 NY Jur 2d, Insurance § 976

Texts:
New York Insurance Law (Matthew Bender's New York Practice Series) §§ 20.03[2a][ii], 54.03[8], [9]

LexisNexis 50 State Surveys, Legislation & Regulations

1. Non-exchange-traded Derivatives
2. Surety Insurance & Bonds

Case Notes:

Rates charged for financial guarantee insurance do not require prior approval of Superintendent of Insurance, but are subject to Superintendent's supervision. Insurance Department, Opinions of General Counsel, Opinion Number 00-05-13.

Any proposed "discounts" or "rebates" must be expressly set forth in financial guarantee insurance policy or other contractual documents and must not be unfairly discriminatory or cause premium charged to be detrimental to insurer's solvency, destructive to competition, or unreasonable in any other matter. Insurance Department, Opinions of General Counsel, Opinion Number 00-05-13.

In event that financial guarantee insurance policy is canceled and refund or return of premium is to be made, return of premium is governed either by rate filings of insurer or terms of policy itself. Insurance Department, Opinions of General Counsel, Opinion Number 00-05-13.

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INSURANCE LAW
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NY CLS Ins § 6906 (2010)

§ 6906. Reinsurance

(a) For financial guaranty insurance that takes effect on or after the effective date of this article, 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, or (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 superintendent 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 article or an insurer writing only financial guaranty insurance as is or would be permitted by this article; or

(2) placed with a property/casualty insurer or an accredited reinsurer licensed or accredited to reinsure risks of every kind or description (including municipal obligation bonds), as set forth in subsection (c) of section four thousand one hundred two of this chapter, if the reinsurance agreement with such insurer requires that such insurer:

(A) have and maintain surplus to policyholders of at least thirty-five million dollars;

(B) establish and maintain the reserves required in section six thousand nine hundred three of this article, except that if the reinsurance agreement is not pro rata the contribution to the contingency reserve shall be equal to fifty 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 subsection (c) of section six thousand nine hundred four of this article, 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 ten percent of the insurer's exposures, net of retrocessions and collateral. Direct or indirect ownership interests of fifty 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) assumes 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 article and such other kinds of insurance that a financial guaranty insurance corporation may write in this state, together with all other reinsurers subject to this paragraph, less than fifty 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 [fig 1] a financial guaranty insurer writing only financial guaranty insurance as is or would be permitted by this article 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 which otherwise meets the requirements of either the opening paragraph of this subsection and paragraph one of this subsection, or the opening paragraph of this subsection and subparagraphs (A), (D), (E) and (F) of paragraph two of this subsection, 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 which will become due during the unexpired term of such reinsurance agreement in excess of the insurer's retention pursuant to such reinsurance agreement.

HISTORY:

Add, L 1989, ch 48, § 4, eff May 14, 1989 (see 1989 note below).

Sub (a), par (2), subpar (D), amd, L 1996, ch 529, § 8, eff Aug 8, 1996.

Sub (a), par (2), subpar (F), amd, L 2004, ch 605, § 16, eff Oct 19, 2004, L 2005, ch 672, § 9, eff Sept 16, 2005.

The 2005 act deleted at fig 1 "an"

NOTES:

Editor's Notes

Laws 1989, ch 48, § 9, eff May 14, 1989 provides as follows:
§ 9. This act shall take effect on the thirtieth day after it shall have become a law, provided, however, that the superintendent of insurance may, prior to such date, promulgate such rules and regulations as may be necessary for the timely implementation of this act.

Research References & Practice Aids:
71 NY Jur 2d, Insurance § 2200

Texts:
New York Insurance Law (Matthew Bender's New York Practice Series) §§ 20.03[2a][ii], 54.03[6b], [8]

LexisNexis 50 State Surveys, Legislation & Regulations

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INSURANCE LAW
ARTICLE 69. FINANCIAL GUARANTY INSURANCE CORPORATIONS

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NY CLS Ins § 6907 (2010)

§ 6907. Transition provisions

A licensed insurer writing financial guaranty insurance prior to the effective date of this article, but which is not authorized to write financial guaranty insurance in this state, shall be subject to all the provisions of this article, except section six thousand nine hundred two of this article, and:

(a) may, unless the superintendent determines after notice and an opportunity to be heard that such activity poses a hazard to the insurer, its policyholders or to the public, continue to write financial guaranties (except guaranties of municipal bonds) of the types authorized by subsection (b) of section six thousand nine hundred four of this article applicable to financial guaranty insurance corporations, subject to the following conditions:

(1) For a transition period not to exceed sixty months from the effective date of this article, if the insurer has and maintains surplus to policyholders of at least seventy-five million dollars (for the purpose of this paragraph, if the insurer is a foreign insurer, its surplus to policyholders shall be computed as if it were a domestic insurer); provided that:

(A) during the sixty month transition period, the amount of surplus to policyholders needed to meet the single and aggregate risk limitations imposed by this article must be less than four percent of the insurer's surplus to policyholders;

(B) within nine months of the effective date of this article, the insurer shall file a reasonable plan of operation, acceptable to the superintendent, which 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 sixty 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 superintendent.

The plan of operation shall be deemed acceptable unless, within sixty days of its filing, the superintendent 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;

(C) if the insurer has determined that it will not organize a financial guaranty insurance corporation, within thirty days after that determination it shall notify the superintendent, cease writing policies of financial guaranty insurance and comply with the provisions of paragraph four of this subsection; and

(D) the insurer shall file such additional statements or reports as may be required by the superintendent.

(2) For a transition period not to exceed ninety-six months from the effective date of this article, if the insurer has and maintains surplus to policyholders of at least one hundred fifty million dollars (for the purpose of this section, surplus to policyholders means the aggregate surplus to policyholders of said insurer and other member companies of an inter-company 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 inter-company pool shall have been at least one million dollars in any one of the five years ending December thirty-first, nineteen hundred eighty-eight, provided that:

(A) during the first sixty months of the transition period, the amount of surplus to policyholders needed to meet the aggregate risk limitations imposed by this article must be less than four percent of the insurer's surplus to policyholders. After such sixty month period, provided the insurer complies with subparagraph (D) of this paragraph, the amount of surplus to policyholders needed to meet such aggregate risk limitations must be less than five percent of the insurer's surplus to policyholders for the succeeding twelve month period and less than six percent for the next succeeding twenty-four month period;

(B) during the transition period, the amount of surplus to policyholders needed to meet the single risk limitations imposed by paragraphs two through five of subsection (d) of section six thousand nine hundred four of this article must be less than twenty percent of the insurer's surplus to policyholders, except that the single risk limitation with respect to investment grade obligations under such paragraph five shall be the lesser of eighty million dollars or seven percent of the insurer's surplus to policyholders;

(C) during the transition period, notwithstanding the last sentence of paragraph one of subsection (b) of section six thousand nine hundred four, industrial development bonds shall not be included in the investment grade requirements set forth in such sentence.

(D) during the transition period, reinsurance in the form of intercompany pooling agreements, shall not be subject to subparagraphs (C), (D), (E) and (F) of paragraph two of subsection (a) of section six thousand nine hundred six of this article, if such intercompany pooling agreements were in effect on January first, nineteen hundred eighty-nine, and reinsurance placed with insurers which are subject to the provisions of paragraph two of subsection (a) of section six thousand nine hundred six and are not members of the ceding company's intercompany pooling agreement may not exceed sixty 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 article;

(E) within sixty months of the effective date of this article, the insurer shall file a reasonable plan of operation, acceptable to the superintendent, which 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 ninety-six 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 superintendent.

The plan of operation shall be deemed acceptable unless, within sixty days of its filing, the superintendent 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;

(F) if the insurer has determined that it will not organize a financial guaranty insurance corporation, within thirty days after that determination it shall notify the superintendent, cease writing policies of financial guaranty insurance and comply with the provisions of paragraph four of this subsection; and

(G) the insurer shall file such additional statements or reports as may be required by the superintendent.

(3) For a transition period not to exceed twelve months from the effective date of this article, in the case of an insurer transacting only financial guaranty insurance prior to the effective date of this article and which qualifies for licensing as a financial guaranty insurance corporation under section six thousand nine hundred two of this article, 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 section six thousand nine hundred two of this article within sixty days of the effective date of this article, and provided that, for purposes of this paragraph, an insurer shall be deemed to be transacting only financial guaranty insurance prior to the effective date of this article if, with the approval of the superintendent, it has reinsured all of any other insurance liabilities with one or more authorized insurers or has otherwise made provision for such liabilities.

(4) For a transition period not to exceed nine months, in the case of an insurer that does not qualify under either paragraph one, two or three of this subsection or does not file a plan of operation pursuant to paragraph one or two of this subsection, such insurer shall cease writing any new financial guaranty insurance business and may:

(A) reinsure its net in force business with a licensed financial guaranty insurance corporation; or

(B) 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 paragraph two of subsection (a) of section six thousand nine hundred six of this article, except that subparagraphs (D), (E) and (F) of paragraph two of such subsection shall not be applicable. The assuming insurer shall maintain reserves of such reinsured business in the manner applicable to the ceding insurer under this paragraph; or

(C) thereafter continue the risks then in force and, with thirty 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 the effective date of this article. Provided, however, an insurer must 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;

(b) shall, for all guaranties in force prior to the effective date of this article, including those which fall under the definition of financial guaranty insurance contained in subsection (a) of section six thousand nine hundred one of this article, be subject to the reserve requirements applicable for municipal bond guaranties in effect prior to the effective date of this article. To the extent that the insurer's contingency reserves maintained as of the effective date of this article 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 superintendent upon demonstration that the amount carried is excessive in relation to the corporation's outstanding obligations; and

(c) shall be subject to the reserve requirements specified in section six thousand nine hundred three of this article for all policies of financial guaranty insurance issued on or after the effective date of this article.

HISTORY:

Add, L 1989, ch 48, § 4, eff May 14, 1989 (see 1989 note below).

Sub (a), par (1), subpar (C), amd, L 1992, ch 324, § 47, eff July 17, 1992.

NOTES:

Editor's Notes

Laws 1989, ch 48, § 9, eff May 14, 1989 provides as follows:
§ 9. This act shall take effect on the thirtieth day after it shall have become a law, provided, however, that the superintendent of insurance may, prior to such date, promulgate such rules and regulations as may be necessary for the timely implementation of this act.

Research References & Practice Aids:
68 NY Jur 2d, Insurance § 124

Texts:
New York Insurance Law (Matthew Bender's New York Practice Series) §§ 20.03[2a][ii], 54.03[4]

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INSURANCE LAW

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NY CLS Ins § 6908 (2010)

§ 6908. Applicability of other laws

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

HISTORY:
Add, L 1989, ch 48, § 4, eff May 14, 1989 (see 1989 note below).

NOTES:

Editor's Notes

Laws 1989, ch 48, § 9, eff May 14, 1989 provides as follows:
§ 9. This act shall take effect on the thirtieth day after it shall have become a law, provided, however, that the superintendent of insurance may, prior to such date, promulgate such rules and regulations as may be necessary for the timely implementation of this act.

Research References & Practice Aids:

Texts:
New York Insurance Law (Matthew Bender's New York Practice Series) §§ 5.14[1], 8.06[11], 20.03[2a][ii]

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NY CLS Ins § 6909 (2010)

§ 6909. 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 the effective date of this article with respect to the insured obligations clearly discloses that the policy is not covered by the property/casualty insurance security fund specified in article seventy-six of this chapter.

HISTORY:
Add, L 1989, ch 48, § 4, eff May 14, 1989 (see 1989 note below).

NOTES:

Editor's Notes

Laws 1989, ch 48, § 9, eff May 14, 1989 provides as follows:
§ 9. This act shall take effect on the thirtieth day after it shall have become a law, provided, however, that the superintendent of insurance may, prior to such date, promulgate such rules and regulations as may be necessary for the timely implementation of this act.

Research References & Practice Aids:
68 NY Jur 2d, Insurance § 247

Texts:
New York Insurance Law (Matthew Bender's New York Practice Series) §§ 20.03[2a][ii], 54.03[10]

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September 13, 2010

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Dear Brian and Amy:

Thank you for taking the time to meet with us on September 2, 2010. We appreciate having had the chance to speak with you and your colleagues about the impact of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") on financial guaranty insurers. We have attached a copy of our presentation for publication so that it may become part of the public record.

As we explained during our meeting, the distinctions between financial guaranty insurance and swaps or security-based swaps are such that we believe Congress intended to exclude municipal bond insurance policies, other financial guaranty insurance policies and surety bond policies from regulation as swaps or security-based swaps under the Dodd-Frank Act. As demonstrated in the materials we presented (and attached), this is consistent with the differing treatment of the two products in current accounting and financial reporting practices. The Financial Accounting Standards Board issued separate guidance on accounting for financial guaranty insurance (ASC 944, "Financial Services – Insurance") and accounting for credit default swaps (ASC 815, "Derivatives and Hedging"). In addition, financial guaranty and surety insurance have long been the subject of comprehensive regulation, in contrast with the unregulated derivatives markets that are the subject of Title VII. It is particularly noticeable that the Dodd-Frank Act charged the Federal Insurance Office with evaluating the merits of federal regulation of insurance, which is inconsistent with subjecting financial guaranty insurers, surety insurers or other insurers to federal regulation absent further Congressional action. In fact, House Financial Services Committee Chairman Barney Frank has stated publicly his intention to consider new legislation regarding the federal regulation of insurance in the near future.

Title VII's purpose is to establish a regulatory framework for the previously unregulated over-the-counter derivatives market, but not in a manner that would displace the existing state insurance regulatory framework. Since its adoption, New York Insurance Law Article 69 ("Financial Guaranty

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Insurance Corporations") has been the accepted regulatory standard overseeing this activity. In response to the financial crisis, the New York Insurance Department issued Circular Letter No. 19 (2008) (*'Best Practices' for Financial Guaranty Insurers*) in September 2008, specifically addressing the insurance of credit default swaps. For your reference, we have included a copy of Article 69 and the Circular Letter so that you can see the regulatory requirements for financial guaranty insurers that seek to issue new policies.

Further, if certain swap products utilized by financial guarantors are deemed subject to Title VII, we submit that margin and capital requirements should not be applied retroactively to financial guaranty insurers or their affiliated "transformers" that entered into credit default swap transactions. The application of retroactive capital or margin on private bilateral contracts that were specifically negotiated to exclude such capital and margin could be detrimental to the financial condition and liquidity of financial guarantors, and would also subordinate municipal bond policyholders (as well as other policyholders) to the credit default swap transaction counterparties. This reorganization of priority of payments could result in holders of municipal bonds forfeiting insurance claim payments for the benefit of other policyholders, i.e., large financial institution credit default swap counterparties, which would be counter to public policy. In addition, application of margin requirements to insured credit default swaps would be in direct conflict with the state law requirements under which financial guaranty insurers entered into these transactions. The application of capital requirements to financial guaranty insurance would entail federal regulation of insurance companies, an action which we submit the Dodd-Frank Act contemplates should be subject to further evaluation as discussed above.

As we discussed, the existing portfolios of insured credit default swaps are amortizing with no new policies having been written since early 2009, which is another factor to be considered in evaluating the merits of applying the new regulatory framework to these transactions.

We appreciate the opportunity to engage you and your colleagues in this dialogue, and welcome the chance to continue our discussion.

Sincerely yours,

J. M. Michener

James M. Michener
General Counsel

Enclosure

cc: Mary Schapiro
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