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ASSOCIATION OF FINANCIAL GUARANTY INSURERS
Unconditional, Irrevocable Guaranty

September 17, 2012

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Release No. 34-64766; File Number S7-25-11, Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants

Dear Ms. Murphy:

The Association of Financial Guaranty Insurers (“**AFGI**”) appreciates the opportunity to provide the Securities and Exchange Commission (the “**Commission**”) with its comments on the Proposed Rules regarding business conduct standards for security-based swap dealers and major security-based swap participants (“**Proposed Rules**”), issued pursuant to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “**Dodd-Frank Act**”).¹

AFGI is the trade association representing financial guaranty insurers and reinsurers. Financial guaranty insurers apply their credit underwriting judgment, risk management skills, and capital markets experience to develop insurance and reinsurance products, including the guaranty of principal and interest payments on U.S. municipal bonds issued by state and municipal governmental authorities and by utility districts and facilities. AFGI members also insure securities issued to finance international infrastructure projects, and asset-backed securities.

AFGI understands that the Commission will regulate as security-based swaps (“**SBS**”) some of the credit default swaps (“**CDS**”) entered into by affiliates of AFGI members and, as a result, some financial guaranty insurers may potentially be subject to regulation as major security-based swap participants (“**MSBSPs**”). For this reason, AFGI writes to comment on the scope of the Proposed Rules and whether they should apply retroactively to previously-executed legacy SBS or only to transactions entered into after the compliance date.

Importantly, AFGI notes that no AFGI member has insured a new CDS since 2009, other than for loss mitigation purposes with respect to existing exposures. AFGI

¹ 76 Fed. Reg. 42,396 (July 18, 2011).

members do not expect to insure new CDS in the future, except perhaps in connection with loss mitigation activities, and are constrained from insuring CDS under applicable legal requirements.

A. General Application of the Proposed Rules to Transactions Entered into Prior to the Compliance Date

AFGI strongly supports the Commission's initial determination that the Proposed Rules be applied only to SBS executed on or after the rules' compliance date.² Indeed, retroactive application would undermine the expectations that the parties had when entering into the SBS and impose new burdens which would not effectively address policy considerations in the context of existing trades.

The underlying agreements were negotiated based on the law in effect at the time of the execution, and the parties' understanding of that law informed their evaluation of the risks and benefits of such transactions. Further, financial guaranty insurers are subject to extensive regulation by state insurance authorities, and their SBS guarantees reflect the restrictions and obligations imposed by those regimes.

For transactions executed after the compliance date, SBS dealers, MSBSPs, and their counterparties will all be on notice of the new regulatory regime and will be able to structure transactions accordingly. In contrast, with regard to legacy transactions, financial guaranty insurers and their counterparties would not be afforded the same opportunity. Applying new rules to these transactions would be highly disruptive and could have financial consequences that neither party foresaw or desired. Moreover, there is no added benefit to applying the new rules to legacy transactions as such application would not further the Commission's stated objectives of protecting investors and promoting efficiency, competition, and capital formation.

B. Application of the Daily Marks and Fair and Balanced Communications Requirements to Transactions Entered into Prior to the Compliance Date

AFGI also submits that the Proposed Rules' requirements regarding daily marks and fair and balanced communications should not apply to SBS entered into prior to the compliance date.³

² See 76 Fed. Reg. 42,401 ("The proposed rules would not, however, apply to security-based swaps executed prior to the compliance date of these rules.").

³ *Id.* at 42,402.

1. Daily Marks – § 240.15Fh-3(c)

When financial guaranty insurers and their counterparties entered into the legacy SBS transactions, they determined that the issuance of daily marks was not necessary to further their respective business interests and they contracted accordingly. The parties, dealing at arm's length, took appropriate steps to determine whether and by what standard the communications at that time, with each other would be received and evaluated.

Particularly, these legacy transactions do not require the posting of variation margin, so the provision of daily marks would not be useful for evaluating margin requirements. In addition, in most of these transactions, there is no trading market that provides meaningful pricing information – when marks are set, they are typically based on internal models or derived from indexes with which the transactions are not perfectly matched. The financial guaranty insurers' counterparties to these trades are sophisticated financial institutions with their own modeling capabilities and access to relevant data. Thus, requiring one party to give the other daily marks would not further the goal of providing “helpful transparency.”⁴

2. Fair and balanced communications – § 240.15Fh-3(g)

Although the Commission notes that the Proposed Rules' requirements regarding fair and balanced communications apply over the term of an SBS,⁵ two of the three parts of this provision are primarily aimed at undue puffery, such as might be used to induce a counterparty to enter into new transactions, which is not relevant in the context of the AFGI members' legacy CDS portfolios.⁶

Moreover, all of Proposed Rule 15Fh-3(g) is less critical in the context of the AFGI members' legacy CDS portfolios due to the sophisticated nature of their counterparties, as discussed above. The Commission highlighted the fact that all communications by SBS entities will be subject to the specific anti-fraud provisions of Title VII of the Dodd-Frank Act, and to the general anti-fraud provisions of the federal

⁴ Proposed Rule 15Fh-3(c) does not require the provision of daily marks to a counterparty that is a swap or SBS entity. Although it is likely that many counterparties to trades with AFGI members will be deemed to be swap or SBS entities, it is not possible to know that with certainty at this time. However, we believe that, even if the counterparties themselves are not swap or SBS entities, they will be affiliated with such entities and will therefore have access to relevant models and data.

⁵ See 77 Fed. Reg. 42,418.

⁶ See Proposed Rule 15Fh-3(g)(2) (“Communications may not imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast”) and Proposed Rule 15Fh-3(g)(3) (“Any statement referring to the potential opportunities or advantages presented by a security-based swap shall be balanced by an equally detailed statement of the corresponding risks”).

securities laws.⁷ The only current activities involving the AFGI members' legacy portfolios are those aimed at loss mitigation, often in the context of significant restructurings. In these activities, the counterparties have typically engaged additional outside professional advisors, so the protections of the anti-fraud provisions are sufficient.

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We thank the Commission for the opportunity to comment on these matters. If you have any questions, please do not hesitate to contact me at bstern@assuredguaranty.com or (212) 339-3482.

Sincerely,

A handwritten signature in blue ink that reads "Bruce Stern". The signature is written in a cursive, flowing style.

Bruce E. Stern, Chairman

⁷ See 77 Fed. Reg. 42,418.