

April 3, 2006

Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, DC 20549-0609  
Attn: Nancy M. Morris, Secretary

**VIA E-MAIL** [rule-comments@sec.gov]

Re: Proposed Rules on Executive Compensation and Related Party Disclosure  
Release Nos. 33-8655, 34-53185, IC-27218 (File No. S7-03-06)

Ladies and Gentlemen:

This letter is submitted on behalf of Financial Security Assurance Holdings Ltd. (the "Company") in response to the Commission's request for comments in Release Nos. 33-8655 and 34-53185, "Executive Compensation and Related Party Disclosure," dated February 8, 2006 (the "Release"). The Company is commenting on the advisability of limiting the applicability of certain requirements of Proposed Item 402. Specifically, as set out in more detail below, the Company submits that Proposed Item 402(b), the Compensation Discussion and Analysis (the "CD&A"), should only apply to proxy or information statements relating to annual meetings of security holders (or special meetings or written consents in lieu of such meeting) at which directors are to be elected.

The Company is primarily engaged in the business of providing financial guaranty insurance on municipal and asset-backed obligations in domestic and international markets. It is an indirectly held subsidiary of Dexia S.A., a Belgian corporation. Although the Company does not have registered equity securities, the Company has registered debt securities and therefore files periodic reports under the Securities Exchange Act of 1934 (as amended, the "Exchange Act"). The Company's debt securities are listed on the New York Stock Exchange ("NYSE").

**1. Debt holders do not require the CD&A to receive the compensation information that is material to them.**

The CD&A is meant to "put into perspective for investors the numbers and narrative that follow it"<sup>1</sup> by putting the "focus on broader topics regarding the objectives and implementation of executive compensation policies."<sup>2</sup> A registrant would use the

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<sup>1</sup> *Executive Compensation and Related Party Disclosure*, Release Nos. 33-8655 and 34-53185 (February 8, 2006) (the "Release") at Section I.

<sup>2</sup> *Ibid.*, at Section II.B.3.

CD&A to explain the material elements of its compensation program, including, among other things, the program's objectives, what it is meant to reward and how the registrant determines the formula and amount of compensation under the different elements of the program.

Disclosure of the more specific material factors necessary to an understanding of the tables that follow the CD&A, however, would not appear in that discussion, but be integrated with the tables themselves. Proposed Item 402(f) would require a narrative description of any material factors necessary to an understanding of the information in the summary compensation table and subsidiary tables. Similarly, Proposed Item 402(i)(3), (j)(3) and (l)(3) would require narrative descriptions of the material factors necessary to an understanding of officers' post-employment compensation and deferred compensation as well as director compensation. Proposed Item 402(k) would complete the disclosure with a description of all contracts, agreements, plans or arrangements that provide for payments to a named officer at, following, or in connection with any termination, change in control or change in responsibilities.

By its nature debt is senior to equity and finite in duration. Accordingly, a debt holder's material interest is whether the registrant is in a position to service its debt and pay it when due, not the registrant's long-term financial well-being. To this end, when reviewing an issuer's compensation disclosure, the debt holder's focus is on the amounts awarded and the material factors necessary to understand the compensation disclosure—in short, the information called for in Proposed Item 402(c)-(1)—as this is the information that enables the debt holder to assess the impact of the managers' and directors' compensation on the registrant's financial condition. We understand that the CD&A “is intended to allow broader discussion than just that of the relationship of compensation to the performance of the company as reflected by stock price,”<sup>3</sup> but ultimately the more conceptual disclosure regarding the underlying objectives and strategies provided in the CD&A is not material to the debt holder.

**2. The CD&A is most material in proxy or information statements relating to annual meetings of security holders at which directors are to be elected.**

By nature of their equity ownership, shareholders have a vested interest in the long-term financial well-being of the registrant as well as in the stock price and short-term dividend payouts. The perspective offered by the CD&A is of greatest value to a shareholder at the time of a board election, as it would provide him or her with information regarding the compensation objectives and strategies of management and the Board of Directors, in particular the Compensation Committee, at the time that he or she is making voting decisions regarding the Board of Directors. Accordingly, the Company suggests that the CD&A is most appropriate in proxy or information statements relating to annual meetings of security holders (or special meetings or written consents in lieu of

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<sup>3</sup> *Ibid.*, at Section II.A.4.

such meeting) at which directors are to be elected, similar to the current Compensation Committee Report requirement in Item 402(a)(8).

**3. Limiting the applicability of the CD&A would be consistent with current practice.**

As noted in the Release, together the CD&A and the narrative description in Proposed Item 402(f) would replace the currently required Compensation Committee Report and Performance Graph.<sup>4</sup> These items are currently only required to be provided in registrant proxies or information statements relating to an annual meeting of security holders at which directors are to be elected.<sup>5</sup>

The NYSE corporate governance listing standards in Section 303A of the Listed Company Manual make a similar distinction. If a listed company has equity security holders, the company must comply with all the corporate governance requirements of Section 303A of the Manual, including the reporting requirements therein. A company that only has debt securities listed on the NYSE, however, while it must have an audit committee that satisfies the requirements of Rule 10A-3 of the Exchange Act, is not subject to the balance of the corporate governance requirements of Section 303A. The periodic reports it must present to the NYSE are extremely limited in scope. Implicitly, the NYSE is making the same distinction between the information needs of debt and equity holders that the current Item 402 makes in 402(a)(8) and which we suggest the SEC consider in Proposed Item 402 as well.

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We hope these comments will be of use to the Commission and its staff. Should you have any questions regarding these comments or require any additional information with respect thereto, please feel free to contact me, at (212) 339-3482 or [bstern@fsa.com](mailto:bstern@fsa.com).

Respectfully submitted,

Bruce E. Stern  
General Counsel  
Financial Security Assurance Holdings Ltd.

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<sup>4</sup> *Ibid.*, at Section I, note 43.

<sup>5</sup> Current Item 402(a)(8) of Regulation S-K.