

**ESTADO LIBRE ASOCIADO DE PUERTO RICO
TRIBUNAL DE PRIMERA INSTANCIA
SALA SUPERIOR DE SAN JUAN**

FINANCIAL GUARANTY INSURANCE
COMPANY,

Plaintiff,

v.

MERRILL LYNCH, PIERCE, FENNER &
SMITH INCORPORATED; CITIGROUP
GLOBAL MARKETS INC.; GOLDMAN
SACHS & CO. LLC; J.P. MORGAN
SECURITIES LLC; MORGAN STANLEY
& CO. LLC; ORIENTAL FINANCIAL
SERVICES LLC; POPULAR
SECURITIES LLC; RAYMOND JAMES
& ASSOCIATES, INC.; RBC CAPITAL
MARKETS LLC; SAMUEL A. RAMIREZ
& CO., INC.; SANTANDER SECURITIES
LLC; UBS FINANCIAL SERVICES INC.;
and UBS SECURITIES LLC.

Defendants.

Civil No.:

IN RE: Damages due to Breach of
Obligations Under the Doctrine
of *Actos Propios* and the Unilateral
Declaration of Will

COMPLAINT

TO THE HONORABLE COURT:

COMES NOW, the Plaintiff, Financial Guaranty Insurance Company (“FGIC”), through its undersigned legal representation and very respectfully states, alleges, and prays:

INTRODUCTION

1. This is an action brought to recover hundreds of millions of dollars in damages to FGIC caused by Defendants who, as the underwriters of bonds issued by the Commonwealth of Puerto Rico (the “Commonwealth”) and various of its instrumentalities (collectively “Puerto Rico”), failed to perform their fundamental role as underwriters to investigate the accuracy of statements which were used to solicit FGIC’s insurance, and thereby failed to identify or disclose material concerns regarding the creditworthiness of the bonds that FGIC insured and created a picture that was different than reality. As a result of Defendants’ misconduct, FGIC issued insurance policies on over \$1.4 billion dollars of bonds that were significantly more likely to default than FGIC knew or could have known, which are the subject of this lawsuit (the “Bonds”). This action is to recover the more than \$447 million in bond insurance claims FGIC has already incurred—and the hundreds of millions of dollars of additional bond insurance payments and liabilities that are expected to

come—which would have been avoided but for the Defendants’ failure to undertake the due diligence they were both required to, and created the false appearance they would, fulfill.

2. For years, Defendants Merrill Lynch, Pierce, Fenner & Smith Incorporated; Citigroup Global Markets Inc.; Goldman Sachs & Co. LLC; J.P. Morgan Securities LLC; Morgan Stanley & Co. LLC; Oriental Financial Services LLC; Popular Securities LLC; Raymond James & Associates, Inc.; RBC Capital Markets LLC; Samuel A. Ramirez & Co., Inc.; Santander Securities LLC; UBS Financial Services Inc.; and UBS Securities LLC, profited handsomely from their valuable positions as the underwriters of Puerto Rico bonds. As part of those bond issuances, Defendants solicited financial guaranty insurance from FGIC pursuant to which FGIC would be responsible to make payments to the bondholders if the bonds defaulted. That insurance allowed the bonds to be sold with lower interest rates, which permitted the issuers to increase the overall amount of bonds issued and thereby also increased the Underwriters’ fees and profits.

3. To procure that financial guaranty insurance, Defendants provided FGIC with information regarding the bond issuances, including information concerning the fiscal status, performance, and management of each of the issuers and the Commonwealth. FGIC trusted that, consistent with their legal obligations and market expectations, Defendants were conducting due diligence on the information they provided to FGIC. In fact, as part of their disclosures to FGIC, Defendants firmly declared that they were complying with their obligations to conduct such due diligence, which was a key part of an underwriter’s role in the market for municipal securities.

4. Relying on the information provided by Defendants and their obligation to perform adequate due diligence, FGIC issued financial guaranty insurance covering hundreds of millions of dollars in face value of the Bonds. The Bonds were variously issued by the Commonwealth of Puerto Rico directly or by certain of its public instrumentalities, including the Puerto Rico Highways and Transportation Authority (“PRHTA”), the Puerto Rico Infrastructure Financing Authority (“PRIFA”), and the Puerto Rico Convention Center District Authority (“PRCCDA”). These Bond issuances enriched Defendants by millions of dollars in upfront fees and related compensation.

5. By providing financial guaranty insurance on the Bonds, FGIC obligated itself to make payments for the benefit of bondholders if Puerto Rico ever defaulted on its

bond payment obligations. It was therefore paramount to FGIC in deciding to provide the insurance that it have an accurate understanding of the financial strength and controls of the Commonwealth. The information that the Defendants provided to FGIC gave exactly that type of assurance, painting a picture of Puerto Rico as readily able to handle its debt burden and other obligations.

6. In truth, however, the revenue, expenses, and financial controls of the Commonwealth and many of its instrumentalities had been systemically misrepresented for years, making the Bonds far less creditworthy than the picture that Defendants provided. As the United States Government Accountability Office (“GAO”) would later conclude, “the Puerto Rico government frequently overestimated the amount of revenue it would collect and Puerto Rico’s agencies regularly spent more than the amounts Puerto Rico’s legislature appropriated for a given fiscal year.” These facts, while hidden from FGIC’s view at the time, ultimately resulted in widespread defaults on the Bonds, thereby triggering claims under FGIC’s policies. Had FGIC been informed by Defendants of these facts—or even been told that Defendants failed in their due diligence obligations—FGIC would never have insured the Bonds, and would never have faced the insurance claims that have cost it hundreds of millions of dollars.

7. Unlike FGIC, the Defendants were uniquely positioned to know or at least discover the true information about Puerto Rico’s financial reporting and creditworthiness at the time insurance was solicited from FGIC. For example, the Defendants had long enjoyed a symbiotic relationship with those in charge of the Commonwealth’s finances—including the Puerto Rico Government Development Bank (“GDB”), the entity that selected underwriters for issuances of public debt. As has been widely reported, a revolving door existed between GDB and Defendants whereby it was common for GDB employees, including senior GDB officials, to have worked for one or more of the Defendants, and for Defendants to employ people who had previously worked at GDB. In addition, Defendants’ role as underwriters on the Bonds, as well as their experience as underwriters of other bonds issued by the Commonwealth and its various instrumentalities, provided them with unfettered access to the Commonwealth’s records and personnel responsible for its financial reporting and management so Defendants could fulfill their due diligence obligations. Defendants benefited from their employees working at and with the GDB, gaining an

advantageous view of processes that should have raised red flags, such as rapid (*i.e.* within hours) approvals of loan requests, and other information that should have led to further inquiry. An audit report prepared by the Office of the Comptroller found, for example, the approval of a \$600 million loan after a one day turnaround. *See* Audit Report CP-14-03, dated September 15, 2013.

8. Yet, notwithstanding their superior access to information about Puerto Rico's creditworthiness, recent reports have revealed that Defendants repeatedly failed to adequately investigate the information they disseminated regarding Puerto Rico bond issuances or to disclose the multitudes of inaccuracies in that information. For example, in August 2018, the Independent Investigator retained by the Financial Oversight and Management Board for Puerto Rico issued its Final Investigative Report ("Final Investigative Report"), revealing that underwriting banks, including Defendants, had failed to perform basic due diligence on many aspects of financial reporting on Puerto Rico bond issuances, despite having ready access to extensive information about Puerto Rico's finances and despite being on notice that figures being used to market bonds to investors were materially misleading or stale. The Final Investigative Report explained that this failure was not a result of mere sloppiness, but rather that the underwriting banks, including Defendants, were subject to conflicts of interest from the profits they earned on numerous sides of the same transaction—often acting as seller and buyer in the same deal—and from selling expensive financial products that were purportedly to reduce risk but often ended up simply increasing the financing costs to the benefit of no one other than Defendants. This created a perverse incentive for Defendants to keep Puerto Rico bond issuances churning despite the red flashing lights they were uniquely situated to see. Looking the other way allowed them to continue enjoying the lucrative fruits of their underwriting business regardless of who would ultimately be left holding the bag when it all came crashing down.

9. Had Defendants instead used their insider knowledge and superior access to information to properly review and investigate Puerto Rico's financial controls and condition, they would have discovered—and should have already known—that there were systemic weaknesses, and that Puerto Rico's financial disclosures made in connection with the Bonds were inaccurate because of these systemic weaknesses. And had Defendants properly investigated and disclosed the real risk associated with the Bonds, FGIC would never have

issued financial guaranty policies on them, thus avoiding hundreds of millions of dollars in losses. Through this lawsuit, FGIC therefore seeks recompense for its losses resulting from Defendants' inequitable conduct under two doctrines recognized by the Supreme Court of Puerto Rico as available in circumstances such as these, where no statute otherwise applies to the conduct at issue: *actos propios* and Unilateral Declaration of Will.

10. The doctrine of *actos propios* applies where a party creates an appearance that is contrary to reality and which induces the trust of another party proceeding in good faith who is harmed thereby. The Supreme Court of Puerto Rico has provided a broad interpretation of the *actos propios* doctrine for over four decades, emphasizing that its application—including in commercial contexts such as this—is intended to foster honesty and sincerity and to allow people to rely on the representations or acts of others. That purpose warrants its application in this case as well, where FGIC was harmed by having reasonably trusted in the honesty and sincerity of the Defendants and their responsibility to investigate the accuracy of the disclosures that were used to induce FGIC to issue the financial guaranty policies on the Bonds.

11. The doctrine of Unilateral Declaration of Will similarly applies where a party clearly expresses its intention to be bound through an appropriate legal act that is not contrary to the law, morality or the public order. Here, Defendants conveyed specific information about the Bonds, and about Defendants' supposed efforts to evaluate the accuracy of that information, in what the United States Securities and Exchange Commission ("SEC") has characterized as amounting to an "implied endorsement." That recommendation triggered the obligations imposed by the doctrine of Unilateral Declaration of Will and thereby imposed on Defendants a binding legal obligation to do what they said they would do: take appropriate steps to ensure the accuracy of the information they provided to investors and to FGIC.

12. Not only are these two well-accepted doctrines—*actos propios* and Unilateral Declaration of Will—applicable based upon their purpose and terms, but their application in this case is further justified by the strong public policy they serve. Defendants spent decades lining their pockets with massive fees they collected from Puerto Rico while ignoring their duties and thereby foisting untoward risk on unsuspecting investors, and insurers like FGIC. They should be held accountable for their behavior. This suit seeks to accomplish exactly

that by requiring Defendants to properly compensate FGIC for the grave damage that Defendants' conduct has caused.

PARTIES

I. Plaintiff

13. FGIC is a New York stock insurance corporation with its principal place of business at 463 Seventh Avenue, New York, New York, 10018. It is a wholly owned subsidiary of FGIC Corporation. FGIC previously issued financial guaranty insurance policies insuring public finance, structured finance and other obligations, and insured certain bonds issued by Puerto Rico and underwritten by the Defendants, including the Bonds at issue here.

II. Defendants

14. Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") is a United States-based financial services company headquartered at One Bryant Park, New York, NY 10036. Merrill Lynch is an SEC-registered broker-dealer and has been a registered broker-dealer in Puerto Rico since September 1, 1984. Merrill Lynch is a wholly owned indirect subsidiary of Bank of America Corporation. Merrill Lynch is an underwriter of PRIFA Special Tax Revenue Bonds Series 2005A, Special Tax Revenue Bonds Series 2005B, and Special Tax Revenue Refunding Bonds Series 2005C, which FGIC insured under policy number 05010416; PRCCDA Hotel Occupancy Tax Revenue Bonds Series A, which FGIC insured under policy number 06010122; Commonwealth of Puerto Rico General Obligation Bonds: Commonwealth Public Improvement Refunding Bonds Series 2003A, which FGIC insured under policy number 02011035; Commonwealth Public Improvement Bonds of 2003, Series A, and Commonwealth Public Improvement Refunding Bonds, Series 2003, which FGIC insured under policy number 02010977; Commonwealth Public Improvement Bonds of 2006, Series A, which FGIC insured under policy number 06010316; Commonwealth Public Improvement Refunding Bonds, Series 2007A, which FGIC insured under policy number 07010415; PRHTA Highway Revenue Refunding Bonds Series AA, Transportation Revenue Bonds Series G, Transportation Revenue Refunding Bonds Series H, and Subordinated Transportation Revenue Bonds Series 2003, which FGIC insured under policy numbers 03010506 and 03010507; PRHTA Transportation Revenue Refunding Bonds Series I and Transportation Revenue Bonds Series J, which FGIC insured under policy number

04010258; PRHTA Transportation Revenue Refunding Bond Series L, which FGIC insured under policy number 05010655; and PRHTA Transportation Revenue Refunding Bonds Series N, which FGIC insured under policy number 07010057.

15. In 2010, Merrill Lynch became the successor by merger to Banc of America Securities LLC (“Banc of America”). Banc of America was an SEC-registered broker-dealer and an underwriter of PRIFA Special Tax Revenue Bonds Series 2005A, Special Tax Revenue Bonds Series 2005B, and Special Tax Revenue Refunding Bonds Series 2005C, which FGIC insured under policy number 05010416; PRCCDA Hotel Occupancy Tax Revenue Bonds Series A, which FGIC insured under policy number 06010122; Commonwealth of Puerto Rico General Obligation Bonds: Commonwealth Public Improvement Refunding Bonds Series 2003A, which FGIC insured under policy number 02011035; Commonwealth Public Improvement Bonds of 2003, Series A, and Commonwealth Public Improvement Refunding Bonds, Series 2003, which FGIC insured under policy number 02010977; Commonwealth Public Improvement Bonds of 2006, Series A, which FGIC insured under policy number 06010316; Commonwealth Public Improvement Refunding Bonds, Series 2007A, which FGIC insured under policy number 07010415; PRHTA Highway Revenue Refunding Bonds Series AA, Transportation Revenue Bonds Series G, Transportation Revenue Refunding Bonds Series H, and Subordinated Transportation Revenue Bonds Series 2003, which FGIC insured under policy numbers 03010506 and 03010507; PRHTA Transportation Revenue Refunding Bonds Series I and Transportation Revenue Bonds Series J, which FGIC insured under policy number 04010258; PRHTA Transportation Revenue Refunding Bond Series L, which FGIC insured under policy number 05010655; and PRHTA Transportation Revenue Refunding Bonds Series N, which FGIC insured under policy number 07010057.

16. Citigroup Global Markets Inc. (“Citigroup”) is a United States-based financial services company headquartered at 388 Greenwich Street, New York, NY, 10013. Citigroup is an SEC-registered broker-dealer and has been a registered broker-dealer in Puerto Rico since September 1, 1984. Citigroup is an underwriter of PRIFA Special Tax Revenue Bonds Series 2005A, Special Tax Revenue Bonds Series 2005B, and Special Tax Revenue Refunding Bonds Series 2005C, which FGIC insured under policy number 05010416; PRCCDA Hotel Occupancy Tax Revenue Bonds Series A, which FGIC insured

under policy number 06010122; Commonwealth Public Improvement Bonds of 2006, Series A, which FGIC insured under policy number 06010316; Commonwealth of Puerto Rico General Obligation Bonds: Commonwealth Public Improvement Refunding Bonds, Series 2007A, which FGIC insured under policy number 07010415; and PRHTA Transportation Revenue Refunding Bond Series L, which FGIC insured under policy number 05010655.

17. Goldman Sachs & Co. LLC (“Goldman Sachs”) is a United States-based financial services company headquartered at 200 West Street, New York, NY, 10282. Goldman is an SEC-registered broker-dealer and has been a registered broker-dealer in Puerto Rico since September 1, 1984. Goldman Sachs is an underwriter of PRIFA Special Tax Revenue Bonds Series 2005A, Special Tax Revenue Bonds Series 2005B, and Special Tax Revenue Refunding Bonds Series 2005C, which FGIC insured under policy number 05010416; PRCCDA Hotel Occupancy Tax Revenue Bonds Series A, which FGIC insured under policy number 06010122; Commonwealth of Puerto Rico General Obligation Bonds: Commonwealth Public Improvement Refunding Bonds Series 2003A, which FGIC insured under policy number 02011035; Commonwealth Public Improvement Bonds of 2003, Series A, and Commonwealth Public Improvement Refunding Bonds, Series 2003, which FGIC insured under policy number 02010977; Commonwealth Public Improvement Bonds of 2006, Series A, which FGIC insured under policy number 06010316; Commonwealth Public Improvement Refunding Bonds, Series 2007A, which FGIC insured under policy number 07010415; PRHTA Highway Revenue Refunding Bonds Series AA, Transportation Revenue Bonds Series G, Transportation Revenue Refunding Bonds Series H, and Subordinated Transportation Revenue Bonds Series 2003, which FGIC insured under policy numbers 03010506 and 03010507; PRHTA Transportation Revenue Refunding Bonds Series I and Transportation Revenue Bonds Series J, which FGIC insured under policy number 04010258; PRHTA Transportation Revenue Refunding Bond Series L, which FGIC insured under policy number 05010655; and PRHTA Transportation Revenue Refunding Bonds Series N, which FGIC insured under policy number 07010057.

18. J.P. Morgan Securities LLC (“J.P. Morgan”), formerly known as J.P. Morgan Securities, Inc., is a United States-based financial services company headquartered at 383 Madison Avenue, New York, New York, 10179. J.P. Morgan is an SEC-registered broker-dealer and has been a registered broker-dealer in Puerto Rico since September 1, 1984. J.P.

Morgan is an underwriter of PRIFA Special Tax Revenue Bonds Series 2005A, Special Tax Revenue Bonds Series 2005B, and Special Tax Revenue Refunding Bonds Series 2005C, which FGIC insured under policy number 05010416; PRCCDA Hotel Occupancy Tax Revenue Bonds Series A, which FGIC insured under policy number 06010122; Commonwealth of Puerto Rico General Obligation Bonds: Commonwealth Public Improvement Bonds of 2006, Series A, which FGIC insured under policy number 06010316; Commonwealth Public Improvement Refunding Bonds, Series 2007A, which FGIC insured under policy number 07010415; PRHTA Highway Revenue Refunding Bonds Series AA, Transportation Revenue Bonds Series G, Transportation Revenue Refunding Bonds Series H, and Subordinated Transportation Revenue Bonds Series 2003, which FGIC insured under policy numbers 03010506 and 03010507; PRHTA Transportation Revenue Refunding Bonds Series I and Transportation Revenue Bonds Series J, which FGIC insured under policy number 04010258; PRHTA Transportation Revenue Refunding Bond Series L, which FGIC insured under policy number 05010655; and PRHTA Transportation Revenue Refunding Bonds Series N, which FGIC insured under policy number 07010057.

19. J.P. Morgan acquired Bear, Stearns & Co. Inc. (“Bear Stearns”) in 2008. Bear Stearns was a registered investment bank and an underwriter of Commonwealth of Puerto Rico General Obligation Bonds: Commonwealth Public Improvement Refunding Bonds Series 2003A, which FGIC insured under policy number 02011035; Commonwealth Public Improvement Bonds of 2003, Series A, and Commonwealth Public Improvement Refunding Bonds, Series 2003, which FGIC insured under policy number 02010977; and Commonwealth Public Improvement Refunding Bonds, Series 2007A, which FGIC insured under policy number 07010415.

20. Morgan Stanley & Co. LLC (“Morgan Stanley”) is a United States-based financial services company headquartered at 1585 Broadway, New York, NY 10036. Morgan Stanley is an SEC-registered broker-dealer and has been a registered broker-dealer in Puerto Rico since November 8, 1985. Morgan Stanley is an underwriter of PRIFA Special Tax Revenue Bonds Series 2005A, Special Tax Revenue Bonds Series 2005B, and Special Tax Revenue Refunding Bonds Series 2005C, which FGIC insured under policy number 05010416; PRCCDA Hotel Occupancy Tax Revenue Bonds Series A, which FGIC insured under policy number 06010122; Commonwealth of Puerto Rico General Obligation Bonds:

Commonwealth Public Improvement Refunding Bonds Series 2003A, which FGIC insured under policy number 02011035; Commonwealth Public Improvement Bonds of 2003, Series A, and Commonwealth Public Improvement Refunding Bonds, Series 2003, which FGIC insured under policy number 02010977; Commonwealth Public Improvement Bonds of 2006, Series A, which FGIC insured under policy number 06010316; PRHTA Highway Revenue Refunding Bonds Series AA, Transportation Revenue Bonds Series G, Transportation Revenue Refunding Bonds Series H, and Subordinated Transportation Revenue Bonds Series 2003, which FGIC insured under policy numbers 03010506 and 03010507; PRHTA Transportation Revenue Refunding Bonds Series I and Transportation Revenue Bonds Series J, which FGIC insured under policy number 04010258; PRHTA Transportation Revenue Refunding Bond Series L, which FGIC insured under policy number 05010655; and PRHTA Transportation Revenue Refunding Bonds Series N, which FGIC insured under policy number 07010057.

21. Oriental Financial Services LLC (“Oriental Financial”) is a Puerto Rico-based financial services company headquartered at 254 Munoz Rivera Ave., 2nd Floor, Oriental Group Center, San Juan PR 00918. Oriental Financial is an SEC-registered broker-dealer and has been a registered broker-dealer in Puerto Rico since January 4, 1993. Oriental Financial is an underwriter of Commonwealth of Puerto Rico General Obligation Bond: Commonwealth Public Improvement Refunding Bonds, Series 2007A, which FGIC insured under policy number 07010415.

22. In 2012, Oriental Financial acquired BBVA PR. BBVA PR was a registered commercial bank and an underwriter of Commonwealth of Puerto Rico General Obligation Bond: Commonwealth Public Improvement Refunding Bonds, Series 2007A, which FGIC insured under policy number 07010415 and PRHTA Transportation Revenue Refunding Bonds Series N, which FGIC insured under policy number 07010057.

23. Popular Securities LLC (“Popular”) is a Puerto Rico-based financial services company headquartered at 208 Avenue Ponce de Leon Popular Center Suite 1200 San Juan, PR 00918-103. Popular is an SEC-registered broker-dealer and has been a registered broker-dealer in Puerto Rico since September 1, 1984. Popular is an underwriter of Commonwealth Public Improvement Bonds of 2006, Series A, which FGIC insured under policy number 06010316; Commonwealth Public Improvement Refunding Bonds, Series 2007A, which

FGIC insured under policy number 07010415; and PRHTA Transportation Revenue Refunding Bonds Series N, which FGIC insured under policy number 07010057.

24. Raymond James & Associates, Inc. (“Raymond James”) is a United States-based financial services company headquartered at 880 Carillon Parkway, St. Petersburg, FL, 33716. Raymond James is an SEC-registered broker-dealer and been a registered broker-dealer in Puerto Rico since September 1, 1984. Raymond James is an underwriter of PRIFA Special Tax Revenue Bonds Series 2005A, Special Tax Revenue Bonds Series 2005B, and Special Tax Revenue Refunding Bonds Series 2005C, which FGIC insured under policy number 05010416; PRCCDA Hotel Occupancy Tax Revenue Bonds Series A, which FGIC insured under policy number 06010122; Commonwealth of Puerto Rico General Obligation Bonds: Commonwealth Public Improvement Bonds of 2006, Series A, which FGIC insured under policy number 06010316; PRHTA Highway Revenue Refunding Bonds Series AA, Transportation Revenue Bonds Series G, Transportation Revenue Refunding Bonds Series H, and Subordinated Transportation Revenue Bonds Series 2003, which FGIC insured under policy numbers 03010506 and 03010507; PRHTA Transportation Revenue Refunding Bonds Series I and Transportation Revenue Bonds Series J, which FGIC insured under policy number 04010258; PRHTA Transportation Revenue Refunding Bond Series L, which FGIC insured under policy number 05010655; and PRHTA Transportation Revenue Refunding Bonds Series N, which FGIC insured under policy number 07010057.

25. RBC Capital Markets LLC (“RBC”) is a United States-based financial services company headquartered at 3 World Financial Center 200 Vesey St. New York, NY 10281. RBC is an SEC-registered broker-dealer and has been a registered broker-dealer in Puerto Rico since May 16, 1997. RBC is an underwriter of Commonwealth of Puerto Rico General Obligation Bond: Commonwealth Public Improvement Refunding Bonds, Series 2007A, which FGIC insured under policy number 07010415 and PRHTA Transportation Revenue Refunding Bonds Series N, which FGIC insured under policy number 07010057.

26. Samuel A. Ramirez & Co., Inc. (“Samuel Ramirez”) is a United States-based financial services company headquartered at 61 Broadway, New York, New York, 10006. Samuel Ramirez is an SEC-registered broker-dealer and has been a registered broker-dealer in Puerto Rico since May 20, 1997. Samuel Ramirez is an underwriter of PRIFA Special Tax Revenue Bonds Series 2005A, Special Tax Revenue Bonds Series 2005B, and Special

Tax Revenue Refunding Bonds Series 2005C, which FGIC insured under policy number 05010416; PRCCDA Hotel Occupancy Tax Revenue Bonds Series A, which FGIC insured under policy number 06010122; Commonwealth Public Improvement Refunding Bonds, Series 2007A, which FGIC insured under policy number 07010415; PRHTA Highway Revenue Refunding Bonds Series AA, Transportation Revenue Bonds Series G, Transportation Revenue Refunding Bonds Series H, and Subordinated Transportation Revenue Bonds Series 2003, which FGIC insured under policy numbers 03010506 and 03010507; PRHTA Transportation Revenue Refunding Bonds Series I and Transportation Revenue Bonds Series J, which FGIC insured under policy number 04010258; PRHTA Transportation Revenue Refunding Bond Series L, which FGIC insured under policy number 05010655; and PRHTA Transportation Revenue Refunding Bonds Series N, which FGIC insured under policy number 07010057 .

27. Santander Securities LLC (“Santander”) is a United States-based financial services company headquartered at Morrissey Boulevard Mail Code MA1-MB2-03-17 Dorchester, MA 02125. Santander is an SEC-registered broker-dealer and has been a registered broker-dealer in Puerto Rico since Dec. 3, 1996. Santander is an underwriter of Commonwealth of Puerto Rico General Obligation Bond: Commonwealth Public Improvement Refunding Bonds, Series 2007A, which FGIC insured under policy number 07010415 and PRHTA Transportation Revenue Refunding Bonds Series N, which FGIC insured under policy number 07010057.

28. UBS Financial Services Inc. (“UBS Financial”) is a United States-based financial services company headquartered at 1200 Harbor Boulevard, Weehawken, NJ 07086. UBS Financial is an SEC-registered broker-dealer and has been a registered broker-dealer in Puerto Rico since September 1, 1984. UBS Financial is an underwriter of PRIFA Special Tax Revenue Bonds Series 2005A, Special Tax Revenue Bonds Series 2005B, and Special Tax Revenue Refunding Bonds Series 2005C, which FGIC insured under policy number 05010416; PRHTA Transportation Revenue Refunding Bonds Series I and Transportation Revenue Bonds Series J, which FGIC insured under policy number 04010258; and PRHTA Transportation Revenue Refunding Bond Series L, which FGIC insured under policy number 05010655.

29. UBS Financial is the successor-in-interest to UBS PaineWebber Inc., which underwrote Commonwealth of Puerto Rico General Obligation Bonds: Commonwealth Public Improvement Refunding Bonds Series 2003A, which FGIC insured under policy number 02011035; Commonwealth Public Improvement Bonds of 2003, Series A, Commonwealth Public Improvement Refunding Bonds, Series 2003, which FGIC insured under policy number 02010977; PRHTA Highway Revenue Refunding Bonds Series AA, Transportation Revenue Bonds Series G, Transportation Revenue Refunding Bonds Series H, and Subordinated Transportation Revenue Bonds Series 2003, which FGIC insured under policy numbers 03010506 and 03010507; PRHTA Transportation Revenue Refunding Bonds Series I and Transportation Revenue Bonds Series J, which FGIC insured under policy number 04010258; PRHTA Transportation Revenue Refunding Bond Series L, which FGIC insured under policy number 05010655; and PRHTA Transportation Revenue Refunding Bonds Series N, which FGIC insured under policy number 07010057.

30. UBS Securities LLC (“UBS Securities”) is a United States-based financial services company headquartered at 1285 Avenue of the Americas, New York, NY 10019. UBS Securities is an SEC-registered broker-dealer and has been a registered broker-dealer in Puerto Rico since June 4, 1992. UBS Securities is a successor-in-interest to UBS Investment Bank, which underwrote Commonwealth of Puerto Rico General Obligation Bond: Commonwealth Public Improvement Bonds of 2006, Series A, which FGIC insured under policy number 06010316 and PRHTA Transportation Revenue Refunding Bonds Series N, which FGIC insured under policy number 07010057

JURISDICTION

31. This court has personal jurisdiction over each Defendant.

I. General Jurisdiction

32. This Court has general jurisdiction over each Defendant because each Defendant has continuous and systematic contact with Puerto Rico.

33. Citigroup is a registered broker-dealer in Puerto Rico. Citigroup conducts continuous and systematic business in Puerto Rico, including, *inter alia*, the underwriting of bonds issued by Puerto Rico. Citigroup also consults for the Financial Oversight and Management Board of Puerto Rico (“FOMB”), which was created by the Puerto Rico

Oversight, Management, and Economic Stability Act of 2016 (“PROMESA”). Citigroup has consulted on, *inter alia*, the bankruptcy proceedings initiated under Title III of PROMESA.

34. Goldman Sachs is a registered broker-dealer in Puerto Rico. Goldman Sachs conducts continuous and systematic business in Puerto Rico, including, *inter alia*, the underwriting of bonds issued by Puerto Rico. Goldman Sachs is also a part of joint ventures with Puerto Rico entities, including Autopistas Metropolitanas de Puerto Rico, LLC, which manages public toll roads in Puerto Rico.

35. J.P. Morgan is a registered broker-dealer in Puerto Rico. J.P. Morgan conducts continuous and systematic business in Puerto Rico, including, *inter alia*, the underwriting of bonds issued by Puerto Rico. J.P. Morgan also maintains offices in Puerto Rico from which it conducted its broker-dealer business.

36. Merrill Lynch is a registered broker-dealer in Puerto Rico. Merrill Lynch conducts continuous and systematic business in Puerto Rico, including, *inter alia*, the underwriting of bonds issued by Puerto Rico.

37. Morgan Stanley is a registered broker-dealer in Puerto Rico. Morgan Stanley conducts continuous and systematic business in Puerto Rico, including, *inter alia*, the underwriting of bonds issued by Puerto Rico.

38. Oriental Financial is a registered broker-dealer in Puerto Rico. Oriental Financial maintains a headquarters at 254 Munoz Rivera Avenue, 2nd Floor, Oriental Group Center, San Juan PR 00918.

39. Popular is a registered broker-dealer in Puerto Rico. Popular maintains a headquarters at 208 Avenue Ponce de Leon Popular Center Suite 1200 San Juan, PR 00918-103.

40. Samuel Ramirez is a registered broker-dealer in Puerto Rico. Samuel Ramirez conducts continuous and systematic business in Puerto Rico, including, *inter alia*, the underwriting of bonds issued by Puerto Rico.

41. Santander is a registered broker-dealer in Puerto Rico. Santander conducts continuous and systematic business in Puerto Rico, including, *inter alia*, the underwriting of bonds issued by the Commonwealth.

42. RBC is a registered broker-dealer in Puerto Rico. RBC conducts regular and systematic business in Puerto Rico, including, *inter alia*, the underwriting of bonds issued by Puerto Rico.

43. Raymond James is a registered broker-dealer in Puerto Rico. Raymond James conducts regular and systematic business in Puerto Rico, including, *inter alia*, the underwriting of bonds issued by Puerto Rico.

44. UBS Financial is a registered broker-dealer in Puerto Rico. UBS Financial conducts regular and systematic business in Puerto Rico, including, *inter alia*, the underwriting of bonds issued by Puerto Rico.

45. UBS Securities is a registered broker-dealer in Puerto Rico. UBS Securities conducts regular and systematic business in Puerto Rico, including, *inter alia*, the underwriting of bonds issued by Puerto Rico.

II. Specific Jurisdiction

46. The Court has specific jurisdiction over the Defendants because each Defendant transacted business in Puerto Rico in connection with the underwriting of the bonds at issue, and because FGIC's claims arise out of those transactions.

47. Specifically, FGIC's claims arise out of the Defendants' conduct in connection with the underwriting and purchasing of Bonds issued by the Commonwealth and its agencies and instrumentalities PRHTA, PRIFA, and PRCCDA. In connection with the underwriting of each issuance, the Defendants retained Puerto Rico local counsel who provided advice regarding certain legal matters for the Defendants and who communicated with FGIC on behalf of Defendants in connection with the issuances, including in certain instances with respect to the transmittal of drafts of the Bonds' official statements to FGIC.

48. Additionally, as part of their conduct as underwriters, Defendants communicated with the Bonds' issuers and with GDB, all of whom are located in Puerto Rico. Upon information and belief, the Defendants also had meetings in Puerto Rico in connection with each issuance of the Bonds, including in relation to their promotion and sale and to the procurement of financial guaranty insurance from FGIC.

49. In connection with many of the issuances, Defendants Morgan Stanley, J.P. Morgan, Goldman Sachs, and Merrill Lynch (in its own capacity and through its predecessor-in-interest Banc of America) entered into agreements with Puerto Rico-based banks,

including among others Defendants Popular and Oriental Financial, which banks agreed to provide underwriting and investment banking services in exchange for a portion of the net profits, if any, in connection with the underwriting of the given bonds.¹

50. The exercise of jurisdiction over the Defendants is fair and reasonable. The courts of Puerto Rico have a significant interest in adjudicating this dispute, which relates to the issuance of bonds by Puerto Rico. The action is based on unique Puerto Rico doctrines. The Defendants will not be burdened as they have significant resources and continue to do business in Puerto Rico. Further, no other forum has a greater interest in adjudicating this dispute and the claims are capable of resolution here.

VENUE

51. Venue is proper in San Juan pursuant to P.R. Laws Ann. tit. 32, App. VR. 3.5. The majority of the transactions and key acts alleged herein occurred in San Juan. The Bonds were issued and the related transactions closed in San Juan. The executive offices of the Bonds' issuers are in San Juan. Relevant communications took place, and relevant documents were produced, in San Juan.

FACTUAL ALLEGATIONS

52. Between 1998 and 2014, Puerto Rico issued tens of billions of dollars in municipal bonds, including the \$1.4 billion dollars in face value of Bonds at issue in this case. Defendants were in the coveted position of being able to underwrite all of the Bond offerings at issue here thanks to their close connections to the financial infrastructure of the Commonwealth. Because of these connections, Defendants were in a position to know of systemic deficiencies in Puerto Rico's financial condition, controls and reporting. Defendants were also responsible under applicable regulations and industry custom and

¹ See, e.g., the Official Statement for PRIFA Series 2005A, 2005B, 2005C (June 2, 2005) p. 29, which reads, "Banc of America Securities LLC[], a co-senior underwriter, has entered into a written agreement with [Oriental Financial] ... pursuant to which Oriental Financial Services has agreed to act as a consultant to Banc of America Securities in connection with Banc of America Securities' provision of underwriting and investment banking services to the Authority with respect to the Series 2005 Bonds ... Pursuant to these agreements, the existence of which has been disclosed to the Authority and Government Development Bank, Oriental Financial Services . . . will be entitled to receive, respectively, a portion of Banc of America Securities' ... actual net profits, if any, in connection with the underwriting of the Series 2005 Bonds. Other similar agreements with respect to the sharing of underwriting net profits have been entered into and disclosed to the Authority and Government Development Bank by J.P. Morgan Securities, Inc. ... Goldman Sachs & Co.... Santander Securities Corporation, Morgan Stanley & Co. Inc. and Popular Securities Inc." See also Official Statement for PRCCDA, Series A, 22 (March 15, 2006) p. 32; Official Statement for PRHTA, Series M, N, CC (Feb. 15, 2007).

expectations to conduct due diligence on the Bond issuances, so as to form a reasonable basis for the belief that the official statements released in connection with the Bond issuances were accurate, and to provide any additional information that was material to investments in the Bonds prior to the time an investment decision was made.

53. Instead of conducting their required due diligence and correcting or disclosing material inaccuracies in Puerto Rico’s financial reporting, Defendants rubber-stamped misleading and incomplete Bond disclosures that materially misstated the Bonds’ risk profiles. Based on these inaccurate disclosures, Defendants promoted and sold these Bonds to investors—and procured insurance on the Bonds from FGIC—without performing the due diligence that they were required to perform, and that the market expected and relied on them to perform, which they made it appear they *would* perform.

I. Municipal Bond Underwriters

54. Municipal bonds are debt securities. They are generally issued by state, local, territorial, or commonwealth governments, or by one of their agencies, and typically are used to finance public projects such as roads, infrastructure, housing, schools, or public utilities.

55. Generally, a municipal bond issuer owes the bond holders a debt and thus must pay them interest on that debt at specified intervals and then also pay back the principal on the bonds at their maturity or when otherwise specified in the bond documentation.

56. A municipal bond issuer ordinarily hires one or more municipal securities dealers to act as underwriters on the bond issuance. The underwriters are frequently involved in structuring the financing, and then are responsible for marketing and selling the bonds to potential investors. As part of those responsibilities, an underwriter generally conducts due diligence and an overall inspection of the offering, structures the financing, and maintains its own counsel, through whom it is intimately involved in the preparation and drafting of the “official statements” that describe and are used to market the bonds.

57. Those official statements are publicly filed with the Municipal Securities Rulemaking Board (“MSRB”) and are “the main document on which investors should be able to rely in making investment determinations.”² They are “the most comprehensive

² MSRB “Overview of Disclosure Obligations for a Primary Offering of Municipal Securities” at 3 (January 2018), <https://www.msrb.org/~media/Files/Resources/Overview-of-Disclosure-Obligations-for-Primary-Offering> (accessed Nov. 25, 2020).

source for information on the specific terms of bonds” and they “typically provide[] the most detailed description of the terms and features of the bonds through maturity.”³ For example, the official statements contain information on: the interest rate; the timing and manner of payment of the principal on the bonds; the source of funds from which payment on the bonds will be made; and the financial history and wherewithal of the issuer or related guarantor, including a description of outstanding debt and future debt burdens. *Id.*

58. Accurate and complete information regarding the bonds and the issuer’s ability to make debt service payments is vitally important to investors and other stakeholders to allow them to fairly evaluate the risk of their investment. Underwriters play an essential role in ensuring accurate information is provided. As the SEC has explained, underwriters “stand[] between the issuer and the public purchasers,” having superior access to information in their role of assisting the issuer in pricing, structuring the financing and preparing disclosure documents. United States Securities and Exchange Commission, *Municipal Securities Disclosure*, Release No. 26100 (Sept. 22, 1988) (“Disclosure, Release No. 26100”).

59. Underwriters put their own names on the front covers of these official statements, thereby attaching their reputations and lending credibility to the bond issuance. This is an important signal for the market, as recognized by the SEC, which has explained: “[B]y participating in an offering, an underwriter makes an implied recommendation about the securities. This recommendation implies that the underwriter has a reasonable basis for belief in the truthfulness and completeness of the key representations contained in the official statement.” United States Securities and Exchange Commission, *Municipal Securities Disclosure*, Exchange Act Release No. 26985, at *7 (June 28, 1989) (“Disclosure, Release No. 26985”).

60. To develop a reasonable basis for belief in the truthfulness and completeness of the key representations made in the official statements, underwriters are required to perform a “reasonable investigation” into their accuracy. Disclosure, Release No. 26100, at *20. This “reasonable investigation” requires an overall inspection of the offering and the related disclosures to ensure they are fairly and accurately described. Importantly, if any

³ MSRB Education Center “Official Statements,” <https://www.msrb.org/EducationCenter/Municipal-Market/Lifecycle/Disclosure/Official-Statements> (accessed Nov. 25, 2020).

false or incomplete disclosures are discovered during due diligence, the underwriter can require the issuer to correct the disclosures or refuse to participate in the offering, thereby signaling to the market that something is wrong. *See* Stavros Gadinis & Colby Mangels, *Collaborative Gatekeepers*, 73 Wash. & Lee L. Rev. 797, 810 (2016).

61. Investors expect municipal bond underwriters to confirm the accuracy of the official statements, both as a matter of industry custom and practice, and because the preparation and dissemination of official statements by underwriters is subject to regulation.

62. One source of such regulation is the MSRB—a self-regulatory organization created by Congress to “protect investors, state and local governments, issuers, other municipal entities and the public interest”—which has established “rules for dealers and municipal advisors” that are designed to ensure that the market for municipal securities operates “fairly, transparently, efficiently and with integrity.”⁴ For example, MSRB Rule G-47 requires a dealer of municipal securities—including an underwriter in connection with a primary offering—to disclose “all material information known about the transaction.” The MSRB has explained in accompanying commentary that this “disclosure obligation includes a duty to give a customer a complete description of the security, including . . . facts that are material to assessing the potential risk of the investment.” MSRB Rule G-47 Supp. Mat. 01. Additionally, MSRB Rule G-17 requires that a dealer of municipal securities, including an underwriter, “deal fairly with all persons, and shall not engage in any deceptive, dishonest, or unfair practice.”

63. Another source of such regulation is the SEC, which established Rule 15c2-12 requiring underwriters to “obtain and review an official statement” in connection with any municipal bond offering. 17 C.F.R. §250.15c2-12(b)(1). In adopting that rule, the SEC underscored the implied representation made by an underwriter when it provides disclosure documents to investors, namely that it has a reasonable basis for believing in the accuracy and completeness of the key representations contained in the documents. United States Securities and Exchange Commission, *Municipal Securities Disclosure*, 54 F.R. 28799-01, 1989 WL 281659 (July 10, 1989).

⁴ *See* MSRB “Mission Statement,” <http://www.msrb.org/About-MSRB/About-the-MSRB/Mission-Statement.aspx> (accessed Nov. 25, 2020).

64. The SEC has subsequently reiterated that underwriters, as “key players in maintaining the quality of disclosures in the municipal securities market,” have a “duty to review the issuers’ disclosure documents . . . and to have a reasonable basis for [their] belief as to the accuracy and completeness of the representations” therein. Statement of the Comm’n Regarding Disclosure Obligations of Mun. Sec. Issuers & Others, Release No. 42, at 12749 (Mar. 17, 1994). And the SEC has specifically noted the “critical” importance of disclosing “the future impact of currently known facts,” including “facts that would significantly affect the financial information presented or future financial operation of the issuer, as well as a discussion of its projected operations.” *Id.* at 12753.

65. Rules and regulations such as these give rise to an expectation among other participants in the market for municipal securities that the underwriters of municipal bond offerings—such as the Defendants for the Bonds at issue in this case—act as “gatekeepers” by reviewing the issuer’s offering statements and undertaking steps to establish a reasonable belief in the accuracy and completeness of the information provided therein. The expectation that an underwriter has performed that role allows investors and others to assess the risk that the issuer will be unable or unwilling to repay the bonds it issues on the disclosed terms—an assessment that they can conduct only if the information disclosed is truthful and complete.

66. Underwriters earn enormous fees for their services, including by purchasing bonds from the issuer at a lower price than what is offered to the market. Underwriters make money on this “underwriter spread” when they sell the bonds on to investors at the higher price.

67. Underwriters can also sell related products to the issuer, such as interest rate swaps to hedge against risk that interest payments on variable-interest bonds will rise in the future. If the underwriting institution manages funds or investment plans, those entities can also purchase the bonds and make fees for managing that investment. These fees—which can reach tens of millions of dollars for each issuance—do not depend on whether the bonds ultimately succeed or default. Underwriters therefore have an enormous profit incentive to bring bonds to market regardless of the underlying viability of the offering.

II. Municipal Bond Insurance

68. In order to make municipal bonds more attractive to investors, municipal bonds are often marketed together with financial guaranty insurance policies from

specialized “monoline” insurance companies such as FGIC. Under a financial guaranty insurance policy, in exchange for a premium, the monoline insurer guarantees that it will pay scheduled interest and principal amounts to bondholders if the issuer ever defaults and fails to make those payments. This is often called “wrapping” the bonds because the monoline insurer’s own credit rating and creditworthiness (*i.e.*, ability to pay claims) is “wrapped” around the bonds, thereby enhancing the creditworthiness and marketability of the bonds. In most cases, this gives investors increased comfort that they will be paid on the bonds pursuant to the bonds’ terms. In some cases, without bond insurance, an underwriter may not be able to successfully market the bonds at all.

69. Per well-established industry norms and customs, the underwriter submits to potential insurers a collection of documents that describe the issuer and the bonds. These documents often include the draft official statement, audited financial statements from the issuer or associated obligor, and legal documents concerning the issuance and the terms and conditions that apply to the bonds and the issuer. The underwriter then continuously supplements its representations to the insurers with updated documents, including updated financials and draft official statements, until ultimately submitting the final version of the official statements.

70. In light of market custom and practice, and the rules and regulations governing the municipal securities market, the submission of these materials to an insurer by an underwriter gives rise to an understanding and reasonable expectation that the underwriter is conducting a reasonable investigation into the truth and completeness of the information contained in those documents and that it will ensure before the bonds are issued that it has a reasonable basis to believe that the provided information is materially true and complete.

71. The insurer’s understanding and expectation are reinforced by the fact that underwriters have special access to the issuers—including to their financial personnel and information—that insurers and other market participants do not. Consequently, in deciding whether to provide insurance, a monoline insurer depends on information provided by the underwriter and on the underwriter’s assurances that it will have fully vetted that information before the bonds are ever issued. *See Collaborative Gatekeepers*, 73 Wash. & Lee L. Rev. at 809. Thus, as the SEC has observed, bond insurers not only “rely upon disclosure concerning the primary obligor [*i.e.*, the issuer]” but also upon the “reasonable investigation [by the

underwriter] of the accuracy and completeness of key representations concerning the primary obligor.” Disclosure, Release No. 26985, at *22.

72. Once a monoline insurer issues a financial guaranty policy, the insurer is subject to the risk of claims being made under the policy if the subject bond ever defaults. Indeed, the insurer is generally subject to these risks even if it turns out that the policy was issued based on information that turns out to have been false or incomplete. It is therefore particularly vital that underwriters’ disclosures and assurances to monoline insurers be true and complete. If an underwriter fails to conduct the promised due diligence and instead brings a bond to market based on false or incomplete information, that failure can—and in this case did—result in catastrophic damage to those, like FGIC, that rely upon the underwriters to discharge their obligations.

III. Defendants Underwrite And FGIC Insures the Commonwealth General Obligation, PRHTA, PRIFA, and PRCCDA Bonds

73. Defendants underwrote numerous Puerto Rico bond issuances by taking advantage of Defendants’ own positions in and connections with Commonwealth institutions. Defendants then exploited these connections to make millions of dollars in fees on every side of these issuances.

74. Defendants were selected as underwriters by GDB, a Puerto Rico public corporation that acted as fiscal agent and financial adviser on all issuances of debt by Puerto Rico. As recently revealed by the Final Investigative Report, a “revolving door” existed between GDB and the underwriters it selected, including Defendants. Final Investigative Report at 98. For example, Alfredo Salazar Conde, who acted as Chair of GDB from 2005 to 2007, was formerly the Director of Operations in Latin America for Paine-Webber/UBS Financial Services, a predecessor of Defendant UBS Financial. José Ramon Gonzalez, Carlos M. Garcia, and Juan Carlos Batlle, former senior members of Santander, also served as heads of GDB. The Independent Investigator also discovered that it was common “for *empleados de confianza* [*i.e.*, at-will employees] to join GDB from—or leave GDB for—positions with private financial institutions,” some which “served as underwriting banks for Puerto Rico-Related Bonds.” *Id.*

75. In addition, due to an exemption under the Investment Company Act of 1940, Defendants that had on-island affiliates—such as UBS Financial, Santander and Popular—had the ability to engage in multiple roles on the same bond issuances. According to the

Independent Investigator, such “affiliated transactions abounded” from “the first stage in underwriting the bonds to the last stage of sales to retail investors.” *Id.* at 390. It further found that such Defendants “reaped financial benefits at all stages of the process—for underwriting the bonds, to managing the [local closed-end funds] containing the bonds, to selling the [local closed-end fund] shares and bonds to local retail investors.” *Id.* at 358. The Independent Investigator further noted that these “market dynamics” could have incentivized an underwriter engaging in such transactions “to seek out more opportunities to underwrite bonds, thereby encouraging it to underwrite and place riskier bonds.” *Id.* at 361. The revolving door with GDB and affiliated transactions by Defendants that created perverse incentives were particularly troubling, given the Independent Investigator’s additional finding that GDB did not maintain adequate ethical safeguards to manage conflicts of interest. *Id.* at 406-07.

76. Using their positions of influence with GDB, Defendants and other underwriters lobbied GDB to pursue more and more debt issuances. By the time the Final Investigative Report was released in 2018, the Commonwealth had accumulated approximately \$74 billion in bond obligations, including the Bonds at issue here, which are described below.⁵

A. The Commonwealth General Obligation Bonds

77. The Commonwealth’s general obligation bonds are issued for the purpose of paying for various Commonwealth obligations including police and fire protection, education, public health and welfare programs, economic development, and municipal fiscal affairs. The Commonwealth General Obligation Bonds are backed by the Commonwealth’s good faith, credit, and taxing power and are payable from the Commonwealth’s general funds. Commonwealth General Obligation debt is provided express constitutional protections under Article VI, Section 8 of the Puerto Rico Constitution. Puerto Rico Const. Art. VI, § 8.

78. Based on information provided by or on behalf of Defendants Goldman, UBS Financial predecessor UBS PaineWebber, Merrill Lynch, J.P. Morgan predecessor Bear Stearns, and Morgan Stanley, (the “2002 General Obligations Bond Underwriters”), and trusting in the declarations of and appearance created by the 2002 General Obligations Bond Underwriters that they had performed or would perform an adequate review of that

⁵ Final Investigative Report at 2.

information to determine its accuracy and completeness—and without knowing that they had not and would not in fact do so—FGIC insured \$89,610,000 out of a total principal value of \$89,610,000 of the Commonwealth General Obligation Bond issuance for Series 2003A (“2002 Commonwealth General Obligation Bonds”), issued on August 1, 2002.

79. Based on information provided by or on behalf of Defendants Goldman, UBS Financial predecessor UBS PaineWebber, J.P. Morgan predecessor Bear Stearns and Merrill Lynch, and Morgan Stanley, (the “2003 General Obligations Bond Underwriters”), and trusting in the declarations of and appearance created by the 2003 General Obligations Bond Underwriters that they had performed or would perform an adequate review of that information to determine its accuracy and completeness—and without knowing that they had not and would not in fact do so—FGIC insured \$347,730,000 out of a total principal value of \$555,295,000 of the Commonwealth General Obligation Bond issuance for Series A and Series 2003A (“2003 Commonwealth General Obligation Bonds”), issued on July 18, 2002.

80. Based on information provided by or on behalf of Defendants Goldman, Merrill Lynch, Morgan Stanley, Citigroup, Samuel Ramirez, Raymond James, J.P. Morgan, Popular and UBS Financial (the “2006 General Obligations Bond Underwriters”), and trusting in the declarations of and appearance created by the 2006 General Obligations Bond Underwriters that they had performed or would perform an adequate review of that information to determine its accuracy and completeness—and without knowing that they had not and would not in fact do so—FGIC insured \$32,815,000 out of a total principal value of \$500,000,000 of the Commonwealth General Obligation Bond issuance for 2006, Series A (“2006 Commonwealth General Obligation Bonds”), issued on August 2, 2006.

81. Based on information provided by or on behalf of Defendants Goldman, UBS Financial predecessor UBS PaineWebber, Merrill Lynch, Morgan Stanley, RBC, Popular, J.P. Morgan and its predecessor Bear Stearns, Santander, Citigroup, Oriental Financial, and Samuel Ramirez (the “2007 General Obligations Bond Underwriters”), and trusting in the declarations of and appearance created by the 2007 General Obligations Bond Underwriters that they had performed or would perform an adequate review of that information to determine its accuracy and completeness—and without knowing that they had not and would not in fact do so—FGIC insured \$73,035,000 out of a total principal value of \$926,570,000

of the Commonwealth General Obligation Bond issuance for Series 2007A (“2007 Commonwealth General Obligation Bonds”), issued on October 3, 2007.

B. The PRHTA Bonds

82. PRHTA is a public corporation created by Act No. 74-1965 (the “PRHTA Enabling Act”) to assume responsibility for the construction of highways and other transportation systems in Puerto Rico. Pursuant to its powers under the PRHTA Enabling Act, PRHTA has issued certain bonds which are secured by pledged revenues, including: (i) revenues derived from PRHTA’s toll facilities; (ii) special excise taxes consisting, among other things, of taxes on gasoline, diesel, crude oil, and cigarettes; (iii) special excise taxes consisting of motor vehicle license fees collected by the Commonwealth. 9 L.P.R.A. § 2004(l). The purposes of PRHTA’s issuances have been, among other things, to fund various highway system improvements, to fund the construction of an urban rail mass transit system and to refund outstanding PRHTA bonds.

83. Based on information provided by or on behalf of Defendants Morgan Stanley, Merrill Lynch, Goldman Sachs, UBS Financial predecessor UBS PaineWebber Inc., Citigroup, J.P. Morgan, Samuel Ramirez and Raymond James, (the “2003 PRHTA Underwriters”), and trusting in the declarations of and appearance created by the 2003 PRHTA Underwriters that they had performed or would perform an adequate review of that information to determine its accuracy and completeness—and without knowing that they had not or would not in fact do so—FGIC insured \$401,430,000 out of a total principal value of \$1,673,595,000 of the PRHTA Series G, H, AA and 2003 Bonds, issued on April 10, 2003.

84. Based on information provided by or on behalf of Defendants Morgan Stanley, Merrill Lynch, Goldman Sachs, UBS Financial, J.P. Morgan, and Raymond James, (the “2004 PRHTA Underwriters”), and trusting in the declarations of and appearance created by the 2004 PRHTA Underwriters that they had performed or would perform an adequate review of that information to determine its accuracy and completeness—and without knowing that they had not or would not in fact do so—FGIC insured \$95,625,000 out of a total principal value of \$488,235,000 of the PRHTA Series I and J Bonds, issued on April 7, 2004.

85. Based on information provided by or on behalf of Defendants Morgan Stanley, Merrill Lynch, Goldman Sachs, UBS Financial, Citigroup, J.P. Morgan, Samuel Ramirez

and Raymond James, (the “2005 PRHTA Underwriters”), and trusting in the declarations of and appearance created by the 2005 PRHTA Underwriters that they had performed or would perform an adequate review of that information to determine its accuracy and completeness—and without knowing that they had not or would not in fact do so—FGIC insured \$48,020,000 out of a total principal value of \$598,285,000 of the PRHTA Series L Bonds, issued on September 22, 2005.

86. Based on information provided by or on behalf of Defendants Morgan Stanley, Merrill Lynch, Goldman Sachs, UBS Securities predecessor, UBS Investment, Citigroup, J.P. Morgan, Samuel Ramirez, Santander and Raymond James (the “2007 PRHTA Underwriters”), and trusting in the declarations of and appearance created by the 2007 PRHTA Underwriters that they had performed or would perform an adequate review of that information to determine its accuracy and completeness—and without knowing that they had not or would not in fact do so—FGIC insured \$263,790,000 out of a total principal value of \$1,502,904,943.95 of the PRHTA Series N Bonds, issued on February 15, 2007.

C. The PRCCDA Bonds

87. PRCCDA is a public corporation of the Commonwealth that was created by Act No. 351 of September 2, 2000 (the “PRCCDA Enabling Act”) for the purpose of developing and operating a convention center located in San Juan, Puerto Rico and for related improvements and facilities (“Convention Center Project”). *See* P.R. Laws Ann. tit. 23, §§ 6402, 6404. Under the PRCCDA Enabling Act, PRCCDA has the power to issue bonds. *See* P.R. Laws Ann. tit. 23, § 6412(b), (e), (h). Pursuant to the PRCCDA Enabling Act, PRCCDA issued approximately \$468 million in revenue bonds under a Trust Agreement dated March 24, 2006 (the “PRCCDA Trust Agreement”). The principal purpose of the bonds was to repay interim financing for the Convention Center Project and to provide financing for its completion.

88. Pursuant to the PRCCDA Enabling Act, the PRCCDA Trust Agreement and Act 272-2003 (the “Hotel Tax Act”), the PRCCDA bonds are secured by a lien on certain hotel occupancy taxes collected by the Puerto Rico Tourism Company pursuant to the Hotel Tax Act.

89. Based on information provided by lead underwriter Lehman Brothers, and by or on behalf of Defendants Citigroup, Goldman Sachs, J.P. Morgan, Merrill Lynch, Morgan

Stanley, Raymond James; and Samuel Ramirez (the “PRCCDA Underwriters”), and trusting in the declarations of and appearance created by Lehman Brothers and the PRCCDA Underwriters that they had performed or would perform an adequate review of that information to determine its accuracy and completeness—and without knowing that they had not or would not in fact do so—FGIC insured \$97,975,000 out of a total principal value of \$468,800,000 of the Hotel Occupancy Tax Revenue Bonds Series A, issued by the PRCCDA on March 15, 2006 (“PRCCDA Bonds”).

D. The PRIFA Bonds

90. PRIFA is a public corporation of the Commonwealth created by Act 44-1988 (the “PRIFA Enabling Act”) for the purpose of providing financial and other types of assistance to political subdivisions, public agencies, and instrumentalities of the Commonwealth. Under the PRIFA Enabling Act, PRIFA has the power to issue bonds. *See* P.R. Laws Ann. tit. 3, §§ 1906(d), (g), (l), 1907. Pursuant to the PRIFA Enabling Act, PRIFA has issued certain special tax revenue bonds under a Trust Agreement (the “PRIFA Trust Agreement”) dated October 1, 1988. The principal purpose of the bonds was to finance infrastructure projects, including capital projects of the Puerto Rico Aqueduct and Sewer Authority.

91. Pursuant to the PRIFA Enabling Act and the PRIFA Trust Agreement, the PRIFA Bonds are secured by a portion of the revenue that is required by law to be transferred to it from a federal excise tax imposed on rum produced in the Commonwealth and sold in the United States.

92. Based on information provided by or on behalf of Defendants , Merrill Lynch, UBS Financial, Citigroup, Goldman Sachs, J.P. Morgan, Merrill Lynch, Morgan Stanley, Raymond James, and Samuel Ramirez (the “PRIFA Underwriters”), and trusting in the declarations of and appearance created by the PRIFA Underwriters that they had performed or would perform an adequate review of that information to determine its accuracy and completeness—and without knowing that they had not or would not in fact do so—FGIC insured aggregate \$367,474,513.70 out of a total principal value of \$1,332,962,916.15 of the Special Tax Revenue Bonds Series 2005A (“Series 2005A”), the Special Tax Revenue Bond Series 2005B (“Series 2005B”), and the Special Tax Revenue Bonds Series 2005C (“Series 2005C”), issued on June 2, 2005 (collectively the “PRIFA Bonds”).

IV. FGIC Reasonably Relied on Defendants' Representations Regarding Finances and Controls When Deciding to Insure the Bonds

93. FGIC agreed to wrap the Bonds believing that the Defendants would investigate and address any information casting doubt on whether the Bonds were supported by robust financial performance and revenue streams and strong internal controls of the Commonwealth and the issuers. That belief was based upon the appearance Defendants created by underwriting the Bonds and through their representations, including the information that Defendants provided to FGIC in order to solicit FGIC's insurance, such as the draft and final official statements for the Bonds. Those materials typically included: information regarding the specific government instrumentality that was issuing the debt and, to the extent relevant, the recent and projected future economic performance of the Commonwealth; information regarding the debt load and the principal and interest payment obligations that would result from the new debt issuance; information regarding the sources of revenues or other funds that would be used to make the required principal and interest payments; and information regarding the organizational controls by which the Commonwealth, issuer or other parties would administer the programs or revenue streams that were to be used to satisfy those payment obligations.

94. For example, the official statement for the PRCCDA bonds contained: data regarding historical and projected future hotel occupancy rates, PRCCDA Official Statement 23-24; information regarding the historical and projected future revenues of the hotel occupancy tax that was to be used to fund principal and interest payments on the bonds, *id.* at 23-25; information regarding the amount of those principal and interest payments (and a comparison of those amounts to projected hotel occupancy tax revenues), *id.* at 25; and a description of the process by which the Commonwealth was to assess, collect, audit, and distribute the tax revenues that were to be used to fund the bonds' principal and interest payments. *Id.* at 17-22.

95. Similarly, the official statement for the 2003 PRHTA bonds contained: data regarding historical and projected revenues from the gasoline taxes, highway tolls, and other sources of funds that were to be used to finance the bonds being issued, 2003 PRHTA Official Statement at 34-43; information regarding the amount of principal and interest payments that would be due on those bonds (and a comparison of those amounts to projected tax, toll, and other revenue), *id.* at 44; and a description of the role of the Department of the Treasury and

the PRHTA itself in collecting the taxes and tolls that were to be used to satisfy the bonds. *Id.* at 17.

96. These representations, and comparable representations in the offering statements for each of the Bonds at issue, were critical to FGIC's decision to issue financial guaranty policies on the Bonds. By issuing those policies, FGIC took on the issuer's credit risk by agreeing to make the required payments to bondholders if the issuer itself failed to do so. In order to determine whether it was willing to undertake such a commitment, FGIC needed to understand both the magnitude of the debt burden that the issuer was assuming in a given bond issuance, and the likelihood that the revenues dedicated to the repayment of the bonds would be sufficient and available. FGIC also needed assurance that the Commonwealth itself was committed to and had in place the controls necessary to ensure that those dedicated revenues were in fact collected and directed towards their promised purpose, namely the repayment of the bonds.

97. FGIC relied on the accuracy and completeness of the information provided by Defendants in the official statements, acting on the expectation that Defendants had complied with their own responsibility to investigate the information that the Commonwealth and the specific issuer had provided to ensure that it was in fact complete and accurate. Indeed, each of the official statements included express representations by Defendants that they had "reviewed the information" in the official statement "in accordance with, and as part of, their respective responsibilities to investors." As described above, those responsibilities included the Defendants' investigation into the accuracy and completeness of the information in the official statements.

98. Had FGIC known that Defendants had not performed any such investigation nor planned to do so before the bonds' issuance, and that accordingly there was no assurance that the information provided by the Commonwealth and/or the issuer—information that was critical to FGIC's decision to issue financial guaranty insurance—was in fact accurate or complete, FGIC would not have agreed to insure the bonds at issue.

99. Based on Defendants' representations and the disclosures in the Official Statements provided by Defendants, FGIC issued financial guaranty insurance policies insuring over \$1.4 billion dollars in aggregate principal amount of the Bonds.

V. Defendants Failed To Investigate And Adequately Disclose Deficiencies In The Official Statements

100. As described above, Defendants were uniquely situated to determine whether the information in the official statements that FGIC relied upon in assessing whether to provide financial guaranty insurance was accurate and complete. Nonetheless, in recent years, investigations by Congress and the federal government have revealed that the underwriters of Puerto Rico bonds, including many of the Defendants in this proceeding, systematically failed to investigate—or even turned a blind eye to—misstatements and material omissions in the official statements they disseminated for Puerto Rico bond issuances.

101. For example, recent reports confirm that Defendants failed to disclose rampant deficiencies in Puerto Rico’s financial controls that would have been important to investors or other stakeholders, such as FGIC. One of the Commonwealth’s central financial controls was the oversight powers statutorily granted to GDB, as fiscal agent, to inspect the books and records of any Commonwealth instrumentality for the purpose of monitoring financial performance, tracking deficits, and confirming proper use of bond proceeds. Yet, the Independent Investigator discovered that GDB had abjectly failed in those oversight duties: “Despite its responsibility for helping the Puerto Rico-Related Entities to make sound financial decisions, *we found no meaningful evidence that GDB had an effective process in place to oversee important aspects of their fiscal health, or to impose accountability for repayment of debts.*” Final Investigative Report at 85 (emphasis added). In particular, it noted having “found no meaningful evidence that GDB monitored operational deficits, tracked how the Puerto Rico-Related Entities actually used their loan funds, or oversaw what the Puerto Rico-Related Entities actually did with the proceeds from their bond issuances.” *Id.* Indeed, “GDB did not implement any internal financial controls to monitor operational deficits until 2009”—well after the Bonds in this case were issued. *Id.* at 86.

102. Given the revolving door between GDB and the Defendants, as well as their other close contacts with GDB, Defendants had superior access to the information that GDB was failing in its central oversight role. Yet Defendants did not disclose those failures in the official statements for the Bonds, despite the obvious importance of that information to investors and stakeholders like FGIC. GDB’s failures also made it even more important for

Defendants to perform due diligence on the issuers and the bonds they were underwriting, but despite creating the appearance that they were doing so, they did not.

103. The deficiencies in the Commonwealth’s financial controls were far from harmless. To the contrary, a report issued in May 2018 by the U.S. Government Accountability Office concluded that the lack of oversight had resulted in the Commonwealth systemically overestimating its revenue collection and underestimating its expenses for years:

According to current and former Puerto Rico officials and experts in Puerto Rico’s economy and the municipal securities markets, Puerto Rico’s government lacked adequate budgetary and other controls for effective financial management and oversight. This lack of effective practices and controls resulted in Puerto Rico’s government: 1) overestimating the amount of revenue it would collect and 2) spending in excess of appropriated amounts.

GAO Report at 15-16.

104. These findings were further supported by the Independent Investigator’s discovery of specific misstatements in the financial reporting included in Puerto Rico bond issuances. A number of those instances involved one Puerto Rico instrumentality that the Independent Investigator examined in detail—the Puerto Rico Electric Power Authority (“PREPA”)—where it found numerous instances of false or insufficient information regarding the “state of [its] infrastructure and finances” reported to investors. *Id.* at 562. FGIC, relying on the assurances of the underwriters of the PREPA bonds, insured bonds issued by that entity. *See, e.g.*, Official Statement for PREPA Power Revenue Refunding Bonds, Series OO and Series PP, issued August 12, 2004, showing FGIC issued \$39,500,000 and \$85,050,000 in insurance, respectively; Official Statement for PREPA Power Revenue Bonds, Series RR, issued March 24, 2005, showing FGIC issued \$96,770,000 in insurance.

105. For example, the Independent Investigator noted PREPA’s recent concession that “from 2011 to 2016, its rates were insufficient to cover overhead and operational costs” when it had “consistently represented to the public in Official Statements ... that PREPA’s rates *were* sufficient to cover operating expenses.” *Id.* at 562 (emphasis added). The Independent Investigator further pointed to manipulations of PREPA’s debt coverage calculations that were accomplished through inflating PREPA’s “revenue figure by including CILTs [*i.e.*, contributions in lieu of taxes] and other accounts receivable that it had reason to believe it would *never* collect in revenues.” *Id.* at 563 (emphasis added). It also discovered evidence that “PREPA and GDB knew by 2012, at the very latest, that if PREPA had used a

revenue figure that accurately reflected the amount of revenues it expected to, and did, collect, then PREPA would not be able to satisfy the required debt coverage needed to issue” bonds. *Id.* And, in another instance, investors were never informed that \$430 million of funds raised through debt issuances that were earmarked for a construction fund went to other uses. *Id.* at 138, 146.

106. In looking to assign responsibility for these misstatements, the Independent Investigator found that the PREPA underwriters—who included all the Defendants here—had abdicated their responsibility to act as gatekeepers for the Commonwealth’s investors. This abdication was evidenced by the fact that “the PREPA underwriters all denied having conducted their own due diligence when each arguably had an obligation to do so.” *Id.* at 562. For example, witnesses from “various investment banks that underwrote PREPA bonds told [the Independent Investigator] that the underwriters accepted PREPA’s debt service calculations without conducting any of their own due diligence into the veracity of those figures.” *Id.* at 563. Evidence similarly demonstrated that “neither GDB nor the underwriters monitored PREPA’s *actual* use of bond proceeds as compared to the *represented* use of proceeds.” *Id.* at 114. As a result, the Independent Investigator concluded that PREPA’s underwriters “could be subject to potential liability for any material misstatements or omissions in the Official Statements” and that any defense that they “did not know and should not have known” of misstatements in the official statements would be a “weak defense.” *Id.* at 561.

107. The Independent Investigator’s shocking findings in regard to PREPA were not isolated, but were rather emblematic of systemic problems that infected other Puerto Rico instrumentalities and bond issuances. The Final Investigative Report is rife with other examples of “perennially ... unfunded liabilities,” failures to “[d]evelop budgets based on accurate growth and revenue estimates,” use of “stale financial information,” and a general lack of “sufficient transparency into matters that concerned, or were otherwise entwined with, Puerto Rico’s fiscal health.” *Id.* at 7, 8, 540.

108. The misstatements and omissions identified by the Independent Investigator relate to precisely the same type of information—regarding financial condition, debt coverage calculations, and projected revenues—that FGIC relied upon in the official statements for the Bonds at issue here. The diversity and stability of the revenue sources

securing the bonds, as well as their ability to cover debt service, were important characteristics FGIC considered when determining whether to issue insurance. Given the documented failure of the underwriters of the PREPA bonds to conduct *any* due diligence of this type of information, there is every reason to believe that the Defendants—all of whom were underwriters of the PREPA bonds—likewise failed to conduct “any of their own due diligence into the veracity” of the information they provided to FGIC for the purpose of obtaining insurance for the Bonds.

109. Indeed, the same types of misstatements the Independent Investigator found in respect of the PREPA bond issuances also exist in respect of Bonds at issue here. For example, the PRIFA and PRCCDA official statements represented that budgeted General Fund revenues for Fiscal Year 2006 totaled \$9.684 billion. Yet when the GAO analyzed the Commonwealth’s estimated and actual General Fund revenues, it concluded that the Commonwealth overestimated its Fiscal Year 2006 General Fund revenues by \$280 million, and underestimated its General Fund Expenses by \$400 million.⁶ Such inaccuracies reflect financial mismanagement, a failure of internal controls, and general disregard for the rules of financial reporting. These inaccuracies also created a false impression of the Commonwealth’s finances and obfuscated the full extent of the risks associated with the PRIFA and PRCCDA bonds.

110. Thus, as a result their failure to investigate the accuracy and completeness of the information they included in the official statements for the Bonds, Defendants provided FGIC with an inaccurate and incomplete picture of the risks associated with the Bonds that FGIC was being asked to insure. Had Defendants actually performed an adequate review of the information contained in the official statements as they were required to do and as FGIC reasonably understood that they were doing, they would have discovered the errors and omissions that rendered the official statements inaccurate and incomplete. And, had FGIC been informed of these errors and omissions—as Defendants would have been obligated to do upon discovering them—it would never have agreed to insure the Bonds.

VI. The Bonds Default And FGIC Honors Its Obligations

111. In November 2015, the Governor of the Commonwealth issued Administrative Bulletin No. OE-2015-046 directing the Puerto Rico Department of Treasury

⁶ See U.S. GAO Report at 63.

to withhold the revenue assigned to the PRHTA and PRIFA Bonds for payment of the public debt. Executive Order 2015-46 also directed the Puerto Rico Tourism Company to transfer the funds for PRCCDA to the Department of Treasury instead of releasing them for application to the PRCCDA Bonds.

112. Without the funds necessary to make scheduled principal and interest payments, the PRIFA Series 2005C bonds defaulted on January 1, 2016. Over the following months, and following a series of additional governmental orders, the PRIFA Series 2005A and 2005C Bonds, the PRCCDA Bonds, the PRHTA Bonds, and the Commonwealth General Obligation Bonds also defaulted.

113. As of October 26, 2020, FGIC had incurred liabilities in excess of \$1.4 million in insurance claims in relation to the PRCCDA Bonds, \$160 million in relation to the PRIFA Bonds, \$149 million in relation to the Commonwealth General Obligation Bonds, and \$122 million in relation to the PRHTA Bonds and has also incurred tens of millions of dollars in loss adjustment expenses.

114. Moreover, FGIC continues to insure approximately \$1.477 billion in principal of the Bonds, and the interest thereon.

115. The Commonwealth, its people, its municipal bond investors, and insurers such as FGIC have all suffered as a result of the massive bond defaults emanating from issuances promoted and underwritten by Defendants. Although Defendants have acted inequitably, there is no statutory claim available to FGIC to remedy this wrong. FGIC therefore brings these claims against Defendants to hold Defendants accountable for their actions and remedy this harm.

First Cause of Action: Doctrine of Actos Propios

116. FGIC incorporates and re-alleges the foregoing factual allegations.

117. Article 7 of the Civil Code of Puerto Rico provides, “[w]hen there is no statute applicable to the case at issue, the court shall decide in accordance with equity, which means that natural justice, as embodied in the general principles of jurisprudence and in the accepted and established usages and customs, shall be taken into consideration.” P.R. Laws Ann. tit. 31, § 7.

118. The doctrine of *actos propios* arises from the principle that “it is not lawful for anyone to go or act against his or her acts.” *Int’l Gen. Elec. v. Concrete Builders*, No. R-

76-48, 1976 WL 40145, at * 2 (P.R. May 19, 1976) (unofficial translation). It seeks to ensure good faith conduct by all persons in the exercise of their rights and in the fulfillment of obligations incurred in various legal relationships. The confidence that these acts generates in third parties is protected because to oppose them would obviously constitute an attack against good faith.

119. Defendants provided official statements and other information regarding the Bonds to FGIC, and thereby created the false impression that Defendants had taken and would take the steps necessary to form a reasonable basis to believe that the information provided was complete and accurate. Defendants created this false impression by, among other things, submitting official statements and various other documents related to the Bonds, the Commonwealth and the issuers to FGIC, expressing their compliance with the securities laws, creating the appearance that they had adhered to industry custom and norm requiring a reasonable investigation and full disclosure, and affixing their names and reputations to the official statements.

120. Defendants generated a situation contrary to reality by assuring FGIC that they had a reasonable basis to believe the truth and completeness of the statements in the documents they provided to FGIC. As underwriters, Defendants are expected and required to have a reasonable basis for recommending any municipal securities. That obligation extends to reviewing in a professional manner the accuracy of the official statements with which the municipal bonds are associated. Defendants are also expected and required to have a reasonable basis for belief in the truthfulness and completeness of the key representations made.

121. Defendants bolstered FGIC's trust in Defendants' fulfilling their due diligence obligations by confirming in the official statements that they had reviewed the information in the official statement in accordance with, and as part of, their respective responsibilities to investors under the federal securities laws. PRIFA Official Statement at ii; PRCCDA Official Statement at iii; Commonwealth General Obligation Bonds at ii; Official Statement for PRHTA 2005 Bonds at iv; Official Statement for PRHTA 2007 Bonds at v.

122. By providing FGIC with these documents, affixing their names and reputations as underwriters, and stating they would comply with their legal obligations,

Defendants created the appearance that they would conduct, and had conducted, a reasonable investigation. Their assertions, particularly forceful given their status as “gatekeepers” of the municipal bond market, were undeniably influential on the behavior of others, including FGIC.

123. FGIC, acting in good faith and legitimately expecting that Defendants would do the same, trusted in the appearance Defendants created and relied on that appearance to insure approximately over \$1.4 billion dollars in face value of the Bonds.

124. Defendants’ actions have caused FGIC to incur at least \$447 million in damages resulting from policy claims and associated costs in connection with the Bonds, and FGIC reasonably anticipates it will incur even more in future claims payments and liabilities.

125. There is no statute applicable to FGIC’s claims. In such circumstances, the doctrine of *actos propios* applies to fill that gap and ensure good faith conduct and the fulfillment of obligations.

126. Because Defendants acted inequitably and contrary to the appearance and trust that they created, they must be prevented from going against their own acts and denying responsibility for the consequences of their conduct—by compensating FGIC for the damage and loss that FGIC has suffered and will suffer as a result.

Second Cause of Action: Unilateral Declaration of Will

127. FGIC incorporates and realleges the foregoing factual allegations.

128. Article 1042 of the Civil Code of Puerto Rico provides, “[o]bligations are created by law, by contracts, by quasi contracts, and by illicit acts and omissions or by those in which any kind of fault or negligence occurs.” 31 LPRA § 2992.

129. The Supreme Court of Puerto Rico recognizes the Unilateral Declaration of Will as a source of obligations. By a promise or expression of unilateral will, a person can obligate him or herself to give, do or not do something in favor of another person, as long as the person’s intention to be bound is clear, arises from an suitable legal act, and is not contrary to law, morality or public order.

130. Defendants acted in their unilateral will when they participated in offering the Bonds, making an implied recommendation of the securities, and also when they submitted to FGIC the official statements and included the assurance that they had reviewed the information in those official statements in accordance with, and as part of, their respective

responsibilities to investors under the federal securities laws as applied to the facts and circumstances of each transaction.

131. Defendants performed a suitable legal act when they provided the official statements and associated materials to FGIC. The official statements were provided as part of the materials on which FGIC would make its determination to insure the Bonds. It is commonly understood that the official statements are critical documents that provide information investors rely upon in evaluating an investment in municipal bonds.

132. Both with the provision of the official statements, as well as the statements contained therein, Defendants expressed their unilateral will and clear intention to be bound by attaching their names to the Bonds and their representation that they had conducted or would conduct a reasonable investigation to form a reasonable basis as to the truth and completeness of the information provided and would supply material information to investors prior to the time an investment decision was made.

133. Also clear is the object of the obligation: to create the conditions necessary for FGIC to insure the Bonds which Defendants underwrote. It was for this express purpose that Defendants provided the information to FGIC and solicited FGIC to insure the Bonds.

134. FGIC, as recipient of the official statements, has standing to enforce Defendants' declaration.

135. It is consistent with law, morals, and public policy to enforce Defendants' obligations to conduct a reasonable investigation in order to form a reasonable basis as to the truth and completeness of the official statements and thereby to comply with their obligations as underwriters.

136. FGIC issued its financial guaranty insurance policies based on Defendants' acts. Consequently, FGIC has incurred at least \$447 million dollars in damages and expects to incur more damages as a result of the Bonds' default. Defendants are obligated by their unilateral declarations of will to compensate FGIC for the consequential damage it has suffered.

WHEREFORE, FGIC requests relief as follows:

a. Damages in an amount to be proven at trial, but not less than \$447 million;

- b. Pre- and post-judgment interest and any other legal interest to which FGIC is entitled;
- c. Reasonable attorney's fees and costs; and
- d. Such other and further relief as the Court may deem just and proper.

Dated: November 25, 2020

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