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Gary T. Holtzer

February 11, 2013

The Honorable Doris Ling-Cohan, J.S.C.  
IAS Part 36  
Supreme Court of the State of New York, County of New York  
60 Centre Street  
New York, NY 10007

Re: *In the Matter of the Rehabilitation of Financial Guaranty Insurance Company*  
Index No. 401265/2012; Motion Sequence No. 004

Dear Justice Ling-Cohan:

We represent Benjamin M. Lawsky, Superintendent of Financial Services of the State of New York, in his capacity as the court-appointed rehabilitator (the “**Rehabilitator**”) of Financial Guaranty Insurance Company. Pursuant to the Court’s Order, dated January 28, 2013, we submit this letter to advise the Court of the remaining issues to be addressed at the hearing on February 15, 2013.

On February 4, 2013, we circulated a draft letter to counsel for each of the eight remaining objecting parties, along with the Amended Omnibus Response Chart that was attached as Exhibit 1B to the Rehabilitator’s Amended Omnibus Reply Memorandum of Law, filed with the Court on January 25, 2013 (“**Exhibit 1B**”). Exhibit 1B listed the remaining issues, as confirmed on the record by counsel for each of the objecting parties at the hearing on December 18, 2012. *See* 12/18/12 Tr. at 13-16.

Counsel for five of the objectors – Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas (collectively, “**Deutsche Bank**”), Wells Fargo Bank, N.A. (“**Wells Fargo**”),<sup>1</sup> U.S. Bank National Association and U.S. Bank Trust National Association (collectively, “**U.S. Bank**”), the Jefferson County Warrantholders (“**JeffCo Holders**”) and Childrens Health Partnership Holdings Pty Ltd. (“**CHP**”) – confirmed that Exhibit 1B accurately represented the remaining issues.

Counsel for Aurelius Capital Management, LP (“**Aurelius**”) asked the Rehabilitator to correct the Amended Omnibus Response Chart to indicate that, in its initial objection and joinder filed on November 19, 2012, in addition to joining in the objections of U.S. Bank and The Bank of New York

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<sup>1</sup> Counsel for Wells Fargo also requested that we correct a typographical error on page 6 of the Amended Omnibus Response Chart; as requested, we revised the response to Wells Fargo’s objection (c) to refer to “Response to Obj. of BNY (k)” instead of “Response to Obj. of BNY (l).”

Mellon and The Bank of New York Mellon Trust Company, N.A. (collectively, “**BNY**”), Aurelius objected on the grounds that:

- The Plan of Rehabilitation “seeks to abrogate policyholders’ statutory and common law rights of setoff and recoupment, both prospectively and retroactively, while at the same time maintaining and even expanding those rights for FGIC. Under the New York rehabilitation statutes, the unilateral abolition of the policyholders’ well-established rights of setoff and recoupment is not permitted.”

This correction is reflected in the revised version of the Amended Omnibus Response Chart attached hereto as **Exhibit 1C**.

Counsel for two of the objectors – BNY and CQS ABS Alpha Master Fund Ltd. (“**CQS**”) – requested that the Rehabilitator add new issues to the Amended Omnibus Response Chart.

Specifically, BNY asked the Rehabilitator to add:

- “Section 1.4(A) and 2.1 of the Restructured Policy Terms violate the well-settled New York law principle – known as the ‘made whole’ doctrine – that an insurer claiming subrogation rights may not recover until the insured is fully compensated for its insured loss.”
- “The final proviso to Section 3.7(d) should restrict FGIC from entering into a contract restricting FGIC from disclosing to a Trustee the terms of settlements if the Trustee agrees to be bound by the same confidentiality restrictions imposed on FGIC by the settlement contract.”

CQS asked the Rehabilitator to add:

- “CQS objects to Sections 3.5, 4.6, 4.9 and 7.8 of the Plan.”
- “CQS objects to Exhibit B, Section 1.4(A).”
- “CQS joins the amended objections of BNY, the JeffCo Holders, CHP and Aurelius.”

In light of the objectors’ statements at the December 18, 2012 hearing – which confirmed that Exhibit 1B accurately represented the remaining issues – the Rehabilitator determined that these new issues should not be added to the Amended Omnibus Response Chart. BNY and CQS raised a number of these new issues in the amended objections they filed on January 22, 2013. BNY has also raised certain issues and arguments for the first time in connection with this letter. For the reasons stated below, however, the time for adding new issues to the Amended Omnibus Response Chart has passed.

As set forth in the Rehabilitator’s January 25, 2013 letter to the Court, these new issues violate (i) the Court’s December 19, 2012 Order directing that the amended objections “shall not contain new ones,”

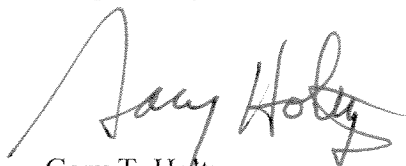
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(ii) the Court's instructions at the January 15, 2013 hearing that the amended objections should just delete material that had been resolved and should not include new objections or arguments and (iii) the Court's January 29, 2013 Order reiterating that new submissions should "merely clarify the remaining objections." The request by certain objectors to add additional objections to the Amended Omnibus Response Chart – after agreeing on the record on December 18 that the chart was complete – graphically confirms that those objectors have added new arguments in violation of the Court's orders.

Accordingly, the Rehabilitator submits that the Amended Omnibus Response Chart, attached hereto as Exhibit 1C, accurately reflects the remaining issues this Court should consider on February 15, 2013. As the Rehabilitator is continuing discussions with the objecting parties, we will advise the Court if any of the issues reflected on Exhibit 1C are resolved prior to the hearing on February 15, 2013.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gary Holtzer", with a stylized flourish at the end.

Gary T. Holtzer

Cc: All counsel of record (by email)