

EXHIBIT 1

Omnibus Response Chart¹

TABLE OF CONTENTS

Objections²	Page
1. Objection of BNY	1
2. Objection of Deutsche Bank	10
3. Objection of U.S. Bank	12
4. Objection of Wells Fargo	15
5. Objection of JeffCo Holders	18
6. Objection of CQS	24
7. Objection of CHP	26
8. Objection of Manufacturers and Traders Trust Company	31
9. Objection of Aurelius Capital Management, LP	31

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Omnibus Reply Memorandum of Law in Further Support of Approval of First Amended Plan of Rehabilitation for Financial Guaranty Insurance Company (the “**Reply Brief**”).

² The Rehabilitator resolved the objections of Jefferson County and Assured pursuant to the Jefferson County Stipulation and the Assured Stipulation, respectively.

1. Objection of BNY	
<u>Objection</u>	<u>Response</u>
<p>BNY objects as follows:</p> <p>(a) Sections 3.5 and 7.8 of the Plan deny certificate holders their contractual control rights in the transaction documents and neither the Court nor the Rehabilitator has the authority under the NYIL to re-write contracts or exercise jurisdiction over third parties’ assets;</p> <p>(b) Sections 3.5 and 7.8 of the Plan are unfair and inequitable and an abuse of the Rehabilitator’s discretion to the extent they grant FGIC the right to recover funds that were previously distributed, or will in the future be distributed, to third parties by the trusts based on FGIC’s default;</p> <p>(c) Termination of FGIC’s consent rights are not unenforceable <i>ipso facto</i> clauses because clauses that trigger a remedy upon a payment default are not <i>ipso facto</i> clauses;</p> <p>(d) There is no basis to conclude that FGIC would be a better advocate in exercising control rights than security holders themselves because it is the holders’ assets, and not FGIC’s, that are at risk;</p> <p>(e) Section 7.8(c) violates claim holders’ common law, statutory and</p>	<p>(a) The objection should be overruled. <i>See supra</i> Reply Brief §§ I, II, III.</p> <p>(b) To address this concern, the Rehabilitator has revised Section 1.4(A) of the Restructured Policy Terms to provide that if a FGIC Payment was withheld, offset, or distributed to persons other than FGIC prior to the date of the Order of Rehabilitation in accordance with the terms of a policy or related transaction document, then FGIC’s exclusive remedy with respect to such FGIC Payment shall be to reduce cash payments that would otherwise be payable by FGIC in respect of that policy. <i>See Plan, Restructured Policy Terms § 1.4(A), Exs. B & B-1 to Index.</i>³</p> <p>(c) The objection should be overruled. <i>See supra</i> Reply Brief § II.</p> <p>(d) The objection should be overruled. <i>See supra</i> Reply Brief § III.</p> <p>(e) The objection should be overruled. <i>See supra</i> Reply Brief</p>

³ References herein to “Index” are to the Index of Plan Related Documents, filed contemporaneously herewith.

1. Objection of BNY	
<p>contractual rights to setoff and recoupment;</p> <p>(f) Section 7.8(c) violates the “best interest of creditors” test because policyholders would have had a right to setoff and recoupment had FGIC been liquidated;</p> <p>(g) The proposed reductions to cash payments to be made to the trustee as policyholder presented in the Preliminary Analysis of FGIC Payments Not Paid to FGIC (included in the Plan Supplement update filed on November 14, 2012) deprive the trustee of its common law recoupment and setoff rights and vary the terms of the transactions documents with respect to those transactions;</p> <p>(h) Section 7.5(b) of the Plan is unfair and inequitable in that it requires the trustees to look to their indemnification rights under the transaction documents before they have recourse to FGIC;</p> <p>(i) Section 7.5(b) of the Plan is unfair and inequitable because it compels the trustees to act without any assurance that FGIC could satisfy its indemnification – at a minimum, the Plan should be modified to provide that all administrative expense claims for indemnification should be paid in full in the ordinary course regardless of when such claims arose;</p>	<p>§ II.B.</p> <p>(f) Assuming policyholders would retain a right to setoff and recoupment in a liquidation, the Plan still provides policyholders with significantly greater recoveries than they would receive in a liquidation of FGIC. <i>See Lazard Aff.</i> ¶¶ 27, 28 (assuming policyholders would be able to setoff premium payments against policy claim payments owed by FGIC, policyholders would receive only approximately 7% – 14% in a liquidation compared to 27% – 30% under the Plan, in each case using a discount rate of 20% and 10%, respectively).</p> <p>(g) The objection should be overruled. <i>See supra</i> Reply Brief § II.B.</p> <p>(h) To address this concern, the Rehabilitator has removed the requirement that trustees seek reimbursement pursuant to the transaction documents before seeking indemnification from FGIC. <i>See</i> Plan § 7.5(b), Exs. B & B-1 to Index.</p> <p>(i) To address this concern, the Rehabilitator has revised the Plan to clarify that claims arising on or after the date of the Order of Rehabilitation that constitute claims for indemnification pursuant to Section 7.5(b) constitute administrative expense claims. In addition, the last sentence of Section 7.5(b) has been revised to provide that the indemnity set forth therein shall only be deemed sufficient for all purposes as long as FGIC has at least \$100 million of Admitted Assets. <i>See</i> Plan §§ 4.2(B), 7.5(b), Exs. B & B-1 to Index. This compromise is reasonable, given the significant asset threshold proposed, the amount of cash FGIC currently holds and the fact that indemnification claims have administrative expense</p>

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<p>(j) There is no justification for subordinating late-filed claims as FGIC will be paying claims for over 40 years;</p>	<p>priority.</p> <p>(j) Section 2.5 of the Plan appropriately subordinates late-filed policy claims, consistent with the priority scheme governing the distribution of assets in New York liquidation proceedings set forth in Section 7434 of the NYIL. Elevating payment priority to holders of late-filed policy claims such that they would recover either (i) <i>pari passu</i> with holders of timely-filed policy claims or (ii) after holders of timely-filed policy claims are paid in full in cash or fully reserved for (but ahead of holders of non-policy claims) would unfairly dilute recoveries to holders of timely-filed claims and could result in policyholders receiving less than what they would receive in a liquidation.</p> <p>Further, there could be significant prejudice from honoring late-filed claims as though they were timely filed. FGIC needs to understand the universe of existing claims in order to determine, pursuant to each annual CPP Revaluation, whether FGIC has sufficient assets to increase the CPP and make additional cash distributions. The CPP Revaluation mechanic set forth in the Plan is premised on the ability to compare FGIC’s estimate of future policy claims against actual policy claims that have arisen to date. If the comparison indicates that fewer claims have arisen than what FGIC originally estimated, the CPP may be increased, thus resulting in an additional cash payout to policyholders. Accordingly, the ability to determine the amount of actual policy claims that have arisen to date with a high degree of certainty is crucial to implementing the Plan and achieving the goal of making payments as expeditiously as possible. If FGIC is not able to rely on claims submitted as a proxy for actual claims that have arisen for purposes of the CPP Revaluation, FGIC may have to either be more conservative in increasing the CPP or may end up having to reduce the CPP in the future to account for policy claims for prior periods that arise unexpectedly. The one-year policy claim submission deadline set forth in Section 4.3(A) of the Plan is reasonable and gives policyholders more than enough time to gather the information necessary to complete</p>

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<p>(k) Section 3.5 should not be given effect to determine the priority of any distributions under the transaction documents;</p> <p>(l) Section 3.7(b) should be modified to indicate that a trustee shall not be required to follow any direction issued pursuant to Section 3.7(b) unless and until it receives an indemnification from FGIC pursuant to Section 7.5(b) that such trustee, in its sole discretion, deems reasonably satisfactory;</p> <p>(m) Section 3.7(b)(i) should be modified to require that FGIC give the trustees 45 business days’ notice before taking action to settle or release a loan repurchase claim to be consistent with the 45-days’ notice the trustees must give FGIC before settling or releasing claims;</p>	<p>the Proof of Policy Claim Form. Moreover, this should not be problematic for the trustees who purportedly, as Wells Fargo points out, submit claims promptly.</p> <p>Notwithstanding the foregoing, the Rehabilitator has refined the definition of “Late-Filed Claim” in the Plan to provide that a policy claim will only be deemed late filed if paying it in accordance with Section 4.7(E) of the Plan (<i>pari passu</i> with timely-filed policy claims) could reasonably be expected to interfere with FGIC’s ability to operate in accordance with the Run-Off Principles, including its ability to ensure that all holders of permitted policy claims (whenever arising) receive the same CPP of their permitted policy claims. <i>See</i> Plan, § 4.3(A) & Def. of “Late-Filed Claim,” Exs. B & B-1 to Index.</p> <p>(k) The objection should be overruled. <i>See supra</i> Reply Brief §§ I, II.A.</p> <p>(l) To address this concern, Section 3.7(b) has been revised to provide that a Trustee shall only be required to follow a direction issued pursuant to Section 3.7(b) if FGIC meets the indemnification qualifications described in the last sentence of Section 7.5(b) (as revised) or FGIC otherwise provides an indemnification to such trustee meeting any applicable requirement under any provisions of a contract or transaction document that mandate that the trustee be provided with an indemnity. <i>See</i> Plan § 3.7(b), Exs. B & B-1 to Index.</p> <p>(m) The two time periods relate to different obligations and need not be identical. The ten-day notice period in Section 3.7(b)(i) to which BNY objects is the notice FGIC must provide before asserting a demand to an originator to perform a loan repurchase obligation or filing a cause of action with respect thereto. Trustees and security holders have a similar ten-day period set forth in Section 3.7(a)(i). The 45-day notice periods in Sections 3.7 relate to any proposed settlement or release of a loan</p>

1. Objection of BNY	
<p>(n) Section 3.7(b)(iii) should be modified to remove a trustee’s entitlement to make its own determination of the merits of a compromise, settlement or release covered by Section 3.7 and to take action with respect thereto;</p> <p>(o) Section 3.7(c) must incorporate a requirement that all holders be given an adequate opportunity to object to a proposed FGIC direction with respect to loan repurchase claims to protect their interests;</p> <p>(p) FGIC should make any “NYSDFS Guidelines” referred to in Section 4.1 of the Plan available to claim holders, as such guidelines affect claim holders’ rights;</p> <p>(q) There is no rational basis to require the trustees to expend further time and resources to resubmit claims that have already properly been submitted;</p>	<p>repurchase obligation action and similarly are parallel. Pursuant to Section 3.7(b)(iii), upon notice by FGIC of any such proposed settlement or release, except to the extent that requisite security holders have directed the trustee to support or enter into such settlement or release, the trustee has 45 days to provide notice to security holders before FGIC can effectuate such settlement or release. The same 45-day period is set forth in Section 3.7(a)(iv).</p> <p>(n) The Rehabilitator has accepted this proposed change. <i>See</i> Plan § 3.7(b)(iii), Exs. B & B-1 to Index.</p> <p>(o) Sections 3.7(b)(ii) and (iii) of the Plan explicitly contemplate the provision of notice by trustees to insured security holders of FGIC directions related to actions to be taken with respect to trust loan repurchase obligations. To the extent that trustees are taking directions with respect to such obligations from the holders themselves, Section 3.7(a) provides that the terms of the underlying transaction documents govern (which, presumably, contain notice provisions).</p> <p>(p) To address this concern, the Rehabilitator has revised the definition of “NYSDFS Guidelines” to clarify that they mean written guidelines or other directions that the NYSDFS may issue and that are posted on the Policyholder Information Center. <i>See</i> Plan, Def. of “NYSDFS Guidelines,” Exs. B & B-1 to Index.</p> <p>(q) The Plan provisions requiring policyholders to resubmit unpaid claims should be approved by the Court because such provisions will facilitate and expedite the claims reconciliation process. FGIC carefully identified what information it will need, pursuant to the terms of the Plan, to reconcile claims, as set forth on the Policy Proof of Claim Form. Some of this information requested is new information that FGIC did not require previously, but now must do so based on the terms of the Plan. For example, policyholders were not previously</p>

1. Objection of BNY	
<p>(r) Section 4.4(A) requires non-policy claims to be submitted within 90 days after the effective date, but is silent as to non-policy claims arising after the effective date – the Plan should specify a deadline for such claims;</p> <p>(s) Section 4.6 of the Plan unfairly places the burden on the holders of claims to challenge FGIC’s claim determinations and improperly imposes the payment of attorneys’ fees on the non-prevailing party;</p> <p>(t) Sections 4.7(A), 4.7(D) and 4.7(E) of the Plan and the definitions of “Disputed Claim” and “Permitted” should be modified because these</p>	<p>required to (i) identify any unpaid FGIC Payments that are due and owing to FGIC or (ii) make representations and certifications regarding the composition of the total claim amount (which is necessary so that FGIC can determine whether all or any portion of the claim should not be permitted pursuant to the terms of the Plan). The new information requested has reasonably been determined as necessary to further assist FGIC with the claims reconciliation process and is not unduly burdensome to provide. By requesting that policyholders resubmit claims on the new form (for which the Rehabilitator solicited the trustees’ comments), FGIC will easily and efficiently receive this additional information, without undertaking the burdensome and time-consuming exercise of approaching policyholders on a one-off basis. Streamlining the process will spare policyholders further delays in receiving distributions on their claims. <i>See</i> Dubel Aff. ¶ 30.</p> <p>(r) Pursuant to Section 1.1 of the Plan, non-policy claims arising after the effective date are not covered by the Plan and will be resolved and paid in the ordinary course of business.</p> <p>(s) To address this concern, the Rehabilitator has revised Section 4.6 of the Plan to provide that any objection to a claim must include a reasonable summary of the bases for the objection, the holder of the claim shall have 60 (instead of 45) days to respond to such objection and the claim holder shall have 90 (instead of 60) days to challenge FGIC’s claim determination in court. <i>See</i> Plan § 4.6, Exs. B & B-1 to Index. The Rehabilitator has determined, in his discretion, that including the provision for payment of fees by the non-prevailing party is necessary to deter unnecessary and costly litigation of non-meritorious or frivolous claims that may be brought by either FGIC or claim holders.</p> <p>(t) Section 4.7(E) of the Plan provides that “Payments with respect to a Permitted Policy Claim consisting of both principal and interest</p>

1. Objection of BNY	
<p>provisions will unnecessarily cause a significant further delay with respect to payouts of undisputed portions of disputed claims that may have already been unpaid for as long as three years, and the Plan should clarify that payments with respect to both principal and interest shall be distributed pro rata to security holders;</p> <p>(u) Section 4.7(B) of the Plan is unfair and inequitable in that it allows FGIC to reduce its cash payments to claim holders whenever a third party makes even a partial payment to a holder – to the extent FGIC seeks the right to reduce its obligation to holders, such reduction should be made to the permitted claim amount, not cash payment amount;</p> <p>(v) Section 4.9 of the Plan improperly grants FGIC setoff rights while denying policyholders their setoff rights – the Plan should provide for similar treatment of rights to setoff;</p>	<p>payments insured by the related Policy shall be applied by the holder of such Permitted Policy Claim against principal and interest amounts pursuant to the applicable terms (if any) of the related Transaction Documents.” BNY proposes that the terms of the underlying documents should be modified in a manner that would alter the parties’ respective rights as related to the ordering/priority of payments. Specifically, BNY requests an amendment to the underlying documents such that payments of principal and interest would be distributed pro rata rather than as currently provided and agreed in the transaction documents. The Rehabilitator believes that amending the underlying agreements in this manner would raise concerns that there has been an exchange or taxable event for federal income and other tax purposes with respect to the underlying obligations and the policies, with potential adverse income tax consequences to holders of permitted policy claims and to FGIC.</p> <p>To address BNY’s concern about payment of undisputed portions of claims, the Rehabilitator has revised the Plan in Section 4.7(A) and elsewhere to provide that FGIC will only withhold payment with respect to disputed portions of claims. <i>See</i> Plan § 4.7(A), Exs. B & B-1 to Index.</p> <p>(u) BNY misreads Section 4.7(B) of the Plan, which provides in clause (i) that FGIC will reduce “the DPO with respect to a Permitted Policy Claim” to the extent that a holder of a permitted policy claim receives payment from a third party. Pursuant to clause (ii) of Section 4.7(B), reductions to cash distributions on account of third party payments will be applied only to non-policy claims.</p> <p>(v) The objection should be overruled. <i>See supra</i> Reply Brief § II.B.</p>

1. Objection of BNY	
<p>(w) Section 4.10(v) is unfair, inequitable and in contravention of New York law because it could be used by FGIC to argue that a claim is not permitted where the liability of an underlying obligor has been discharged or modified (such as in a bankruptcy or debt restructuring);</p>	<p>(w) To address this concern, the Rehabilitator has revised Section 4.10 clause (v) to clarify that permitted claims may include claims for losses where an underlying obligation insured by FGIC is released, satisfied, terminated, commuted, novated or extinguished as a result of a discharge or release granted in an insolvency proceeding of the related underlying obligor. <i>See</i> Plan § 4.10, Exs. B & B-1 to Index.</p>
<p>(x) Section 4.10(viii)-(ix) should be modified because it could be read to mean that, if a portion of a claim is duplicative, the non-duplicative portion also will not be permitted;</p>	<p>(x) To address this concern, the Rehabilitator has revised clauses (viii) and (ix) of Section 4.10 to clarify that such portion of a claim that is duplicative is not permitted. <i>See</i> Plan § 4.10, Exs. B & B-1 to Index.</p>
<p>(y) Section 4.13 of the Plan should be clarified to make clear that although FGIC retains all of its subrogation rights under a policy or related transaction document, those rights are not enlarged;</p>	<p>(y) The Rehabilitator has rejected this proposed change. Although the change requested is non-substantive, it would alter language specifically negotiated with a group of holders of FGIC-insured securities.</p>
<p>(z) Section 7.8(a) of the Plan improperly seeks to chill potential challenges to the Plan’s operation and should be stricken;</p>	<p>(z) To address this concern, the Rehabilitator has revised Section 7.8(a) of the Plan to clarify that parties are enjoined from commencing or prosecuting legal proceedings against exculpated parties with respect to released causes of action and exculpated causes of action (rather than the rehabilitation proceeding or circumstances more generally). <i>See</i> Plan § 7.8(a), Exs. B & B-1 to Index.</p>
<p>(aa) Section 7.8(f) is improperly vague and should be stricken;</p>	<p>(aa)The injunction in Section 7.8(f) is essential to ensure compliance with the terms of the Plan. It is necessarily broad, in order to capture the innumerable actions that could be taken in violation thereof.</p>
<p>(bb) In the interest of transparency, all reports required pursuant to Section 7.11 should be filed with NYSDFS and posted on the Policyholder Information Center website;</p>	<p>(bb) To address this concern, the Rehabilitator has revised Section 7.11(A) of the Plan to provide that FGIC will include in its annual report to be posted on the Policyholder Information Center a summary explanation of the basis for any change or determination not to change the CPP during such year. <i>See</i> Plan § 7.11(A), Exs. B & B-1 to Index.</p>
<p>(cc) Section 9.16 of the Plan should be added to clarify that the Plan shall supersede prior orders of the Court;</p>	<p>(cc)To address this concern, the Rehabilitator has revised Section 9.12 of the Plan to provide that, with respect to periods from and after the effective date of the Plan, the Plan and Plan Approval Order shall</p>

1. Objection of BNY	
<p>(dd) The Plan should be modified to provide time periods for subsequent payments of permitted policy claims and such dates should occur no later than January 1 and July 1 of each year;</p> <p>(ee) If the Court recognizes FGIC’s right to setoff under Section 1.4(A) of the Restructured Policy Terms, the Plan should require the Court to determine the validity of FGIC’s claim (through a procedure similar to the Section 4.6 treatment of disputed claims) prior to the exercise of setoff, and FGIC should be required to setoff against the permitted claim amount, not the cash payment amount; and</p> <p>(ff) The Plan’s employment of the Policy Crystallization Event concept accelerates the parties’ rights under the affected policies, and due process requires that a trustee be able to raise issues about the operation of the Plan and its impact on transaction documents without risking a Policy Crystallization Event – Sections 2.1 and 2.2 of the Restructured Policy Terms should be stricken.</p>	<p>supersede the Order of Rehabilitation and the Order to Show Cause. <i>See</i> Plan § 9.12, Exs. B & B-1 to Index.</p> <p>(dd) Section 1.1(B) of the Restructured Policy Terms provides that FGIC shall make cash payments on account of permitted policy claims promptly following FGIC’s determination that such claims are permitted. Further, pursuant to Section 1.5(C) of the Restructured Policy Terms, if the CPP is adjusted upward, additional cash distributions in respect of permitted claims will be paid within ten business days. <i>See</i> Plan, Restructured Policy Terms §§ 1.1(B), 1.5(C), Exs. B & B-1 to Index.</p> <p>(ee)If FGIC is forced to undergo a claims reconciliation process to determine the validity of FGIC’s claims prior to exercising setoff, there is a significant risk that, during the pendency of such process, cash distributions would be made, a portion of which may have to be clawed back in the event it was ultimately determined that FGIC has a valid setoff right and, therefore, should have reduced such distributions. This is impractical and not feasible. Section 1.4(A) of the Restructured Policy Terms imposes a good faith requirement on FGIC in making its determination to exercise setoff. To the extent that parties believe FGIC does so improperly at any point, such parties may contest FGIC’s compliance with the Plan. If, pursuant to any such challenge, it is determined that FGIC unreasonably withheld funds, FGIC can then correct the matter by making an additional distribution. This is the fairest, most efficient means to avoid any further delay in delivering payments to policyholders.</p> <p>(ff) To address this concern, the Rehabilitator has revised Section 2.1 of the Restructured Policy Terms to provide that FGIC may not declare a Policy Crystallization Event until final resolution or settlement of any judicial action commenced disputing any potential Policy Crystallization Event pursuant to Section 8.1(j) of the Plan. <i>See</i> Plan, Restructured Policy Terms § 2.1, Exs. B & B-1 to Index.</p>

2. Objection of Deutsche Bank	
<u>Objection</u>	<u>Response</u>
<p>Deutsche Bank objects as follows:</p> <p>(a) The Plan revokes trustees’ setoff and recoupment rights in violation of New York common law and Section 7427 of the NYIL;</p> <p>(b) Provisions in the transaction documents that revert control rights to trust investors upon a FGIC default do not constitute unenforceable <i>ipso facto</i> provisions because they do not modify FGIC’s rights on account of its insolvency or the commencement of an Article 74 proceeding, but instead condition FGIC’s exercise of control rights on full performance of its obligations under its policies;</p> <p>(c) Section 3.7 of the Plan impermissibly rewrites provisions in the transaction documents governing enforcement of loan repurchase obligations by imposing on the trustees and certificate holders significant additional notice and reporting obligations, while conferring upon FGIC rights to which it is not entitled;</p> <p>(d) The Plan unfairly limits trustees’ indemnification rights by forcing the trustees to accept a determination that the Plan’s indemnification satisfies for all purposes any requirement in the transaction documents that the trustees be provided with “adequate,” “sufficient,” “reasonable,” or “acceptable” indemnity;</p> <p>(e) The Plan unfairly limits trustees’ indemnification rights by providing that trustees can only seek indemnity from FGIC to the extent that the trusts are not able to provide sufficient indemnity;</p>	<p>(a) The objection should be overruled. <i>See supra</i> Reply Brief § II.B.</p> <p>(b) The objection should be overruled. <i>See supra</i> Reply Brief § II, III.</p> <p>(c) The objection should be overruled. <i>See supra</i> Reply Brief §§ I, III.</p> <p>(d) <i>See supra</i> Response⁴ to Obj. of BNY (i).</p> <p>(e) <i>See supra</i> Response to Obj. of BNY (h).</p>

⁴ References to “Response” are to the responses set forth in this chart.

2. Objection of Deutsche Bank	
<p>(f) The Rehabilitator has no authority to unilaterally rewrite FGIC’s insurance policies or the underlying transaction documents to which FGIC is not a party;</p> <p>(g) The Plan’s claims resolution procedures, which give FGIC unfettered discretion to dispute any claims and provide that no claim shall be permitted (or paid) until all disputed portions thereof are resolved, are draconian;</p> <p>(h) The Plan’s Policy Crystallization Event mechanism is unfair and unduly burdensome because it puts trustees and certificate holders in the position of deciding whether to exercise their control rights under the transaction documents or risk losing a distribution on account of their policies, and should at a minimum be revised to suspend any declaration of a Policy Crystallization Event if a judicial action is commenced relating to such declaration; and</p> <p>(i) The Plan’s claim resubmission process is unduly burdensome and wasteful.</p>	<p>(f) The objection should be overruled. <i>See supra</i> Reply Brief § I.</p> <p>(g) <i>See supra</i> Response to Obj. of BNY (t).</p> <p>(h) <i>See supra</i> Response to Obj. of BNY (ff).</p> <p>(i) <i>See supra</i> Response to Obj. of BNY (q).</p>

3. Objection of U.S. Bank	
<u>Objection</u>	<u>Response</u>
<p>U.S. Bank objects as follows:</p> <p>(a) Sections 3.5 and 7.8(c) of the Plan revoke trustees’ setoff rights in violation of Section 7427 of the NYIL and common law;</p> <p>(b) There is no business justification for allowing FGIC to exercise control rights pursuant to Sections 3.5 and 7.8(e) of the Plan when it has defaulted on its obligations;</p> <p>(c) Payments to policyholders will be inappropriately delayed under the Plan because the Plan imposes a lengthy claim review and dispute resolution process and no payment will be made on account of any undisputed portion of a claim until the disputed portion is resolved;</p> <p>(d) Section 1.4 of the Restructured Policy Terms may require trustees to pay to FGIC amounts that were already distributed to other parties in recognition of FGIC’s payment defaults;</p> <p>(e) The Plan’s payment mechanisms may be inconsistent with DTC’s standard policies and procedures;</p> <p>(f) Since trustees will have obligations pursuant to the Plan that extend beyond the original terms of the trust, Section 7.5(b) of the Plan, which provides that FGIC bears related costs to the extent funds under the trusts are insufficient, should be modified to provide that FGIC will compensate and reimburse the trustees for all actions taken as a result of the Rehabilitation as an administrative expense;</p>	<p>(a) The objection should be overruled. <i>See supra</i> Reply Brief § II.B.</p> <p>(b) The objection should be overruled. <i>See supra</i> Reply Brief § III.</p> <p>(c) <i>See supra</i> Response to Obj. of BNY (t).</p> <p>(d) <i>See supra</i> Response to Obj. of BNY (b).</p> <p>(e) The Rehabilitator’s legal advisors had a telephone conversation with a representative from DTC to discuss the Plan’s payment mechanisms, during which the DTC representative confirmed that such payment mechanisms do not conflict with DTC’s standard policies and procedures.</p> <p>(f) <i>See supra</i> Response to Obj. of BNY (h) & (i).</p>

3. Objection of U.S. Bank	
<p>(g) The exclusive jurisdiction provision in Section 8.1 of the Plan should be modified to exclude actions relating to the administration and resolution of conflicts arising under individual trusts;</p> <p>(h) The portions of Section 7.5(b) of the Plan that permit FGIC to assume U.S. Bank’s defense and deem FGIC’s indemnity adequate for all purposes should be stricken because the Plan should not alter the trustees’ contractual indemnification rights;</p> <p>(i) The Rehabilitator should provide the following Plan clarifications or additional information:</p> <ul style="list-style-type: none"> i. Assurances from FGIC or the Rehabilitator, in the form of REMIC or tax opinions, that amendments to governing documents posed by the Plan will not have tax implications for security holders; 	<p>(g) To address this concern, the Rehabilitator has revised Section 8.1 of the Plan to provide that the exclusive jurisdiction provision does not apply to judicial proceedings seeking instructions regarding the administration or interpretation of a trust or its related transaction documents, or the trustee’s duty thereunder, as long as such instructions do not involve the interpretation, implementation, or enforcement of the Plan. The Rehabilitator also made a corresponding change in Section 8.1(f). <i>See</i> Plan § 8.1, Exs. B & B-1 to Index.</p> <p>(h) The Rehabilitator has determined that it is important and reasonable that FGIC be able to assume the defense of any legal proceeding against an indemnified trustee that may result in a loss for which FGIC would be obligated to provide indemnification. However, to address U.S. Bank’s concerns, the Rehabilitator has revised Section 7.5(b) to provide certain limitations on FGIC’s ability to settle any action for which it assumes the defense (and, to the extent it does not, the trustee’s ability to settle is similarly limited). In addition, the Rehabilitator has made certain other changes to limit the indemnification provision, as described in the Response to BNY’s objection above. <i>See</i> Plan § 7.5(b), Exs. B & B-1 to Index; <i>supra</i> Response to Obj. of BNY (h), (i), (l).</p> <p>(i)</p> <ul style="list-style-type: none"> i. It is not appropriate or feasible to ask FGIC or the Rehabilitator to provide an opinion regarding potential tax implications to security holders stemming from proposed amendments to documents pursuant to the Plan. Each security holder needs to itself consider its unique circumstances and any potential adverse consequence (tax or otherwise) that could evolve from the Plan. Notwithstanding this, certain tax-related risks were identified in the

3. Objection of U.S. Bank	
<p>ii. Information sufficient to permit a trustee to determine which of the trusts for which it serves as trustee would be novated under the Novation Agreement; and</p> <p>iii. The inclusion of a statement clarifying that allocation of DPO with respect to a permitted claim will not otherwise impair or limit security holders' rights to receive payments under governing documents from third parties; and</p> <p>(j) The Policy Crystallization Events are overbroad and inappropriate given that the full implications of Plan implementation are unknown and trustees may be unable to carry out directives by reason of mechanical or operational impossibility and should not be penalized in such instances.</p>	<p>Disclosure Statement.</p> <p>ii. A list of covered policies (which includes the policy identification number and policy name) is attached as Schedule 1 to the Novation Agreement, which was filed with the Plan Supplement and is available at www.fgicrehabilitation.com/. Additional information is available at www.mbia.com/.</p> <p>iii. The Rehabilitator does not intend for the allocation of DPO with respect to a permitted claim to otherwise impair or limit security holders' rights to receive payments under governing documents from third parties.</p> <p>(j) The Policy Crystallization Event mechanism is necessary to protect (among other things) FGIC's retention of control rights pursuant to the Plan, and to provide FGIC with an efficient and fair means to take corrective action in the event a party tries to usurp such rights and take actions that create additional losses under the policies. The mechanism is intended to be applied where necessary or advisable to ensure the fairness of the Plan. The trustees have fiduciary obligations to carry out the terms of the Plan and the trust documents. FGIC and its other policyholders should not be penalized by having to bear additional losses resulting from a trustee experiencing "mechanical or operational" difficulties in implementing directions.</p>

4. Objection of Wells Fargo	
<u>Objection</u>	<u>Response</u>
<p>Wells Fargo objects as follows:</p> <p>(a) Sections 3.5 and 7.8(e) of the Plan, which permit FGIC to retain control rights in contravention of the terms of transaction documents, secure rights for FGIC that it did not bargain for, to the detriment of certificate holders, and impermissibly amend the terms of documents to which FGIC is not a party;</p> <p>(b) The Rehabilitator has failed to demonstrate that Sections 3.5 and 7.8(e) are necessary to the effective rehabilitation of FGIC;</p> <p>(c) If Sections 3.5 and 7.8(e) are approved, Section 3.7(c) should be revised to provide a mechanism for resolving a conflict that might arise between a trustee’s exercise of remedies concerning a claim for breaches of representations and warranties and a FGIC direction concerning such claim;</p> <p>(d) The Plan unnecessarily subordinates late-filed claims, potentially prejudicing insured certificate holders, and the Rehabilitator cannot demonstrate a need for this treatment since the trustees endeavor to file policy claims in a prompt manner;</p> <p>(e) Section 3.7(a)(iv) should be revised to require any instrument holders taking an action pursuant to Section 3.7(a) to provide 10 (instead of 45) business days’ written notice to FGIC;</p> <p>(f) Section 3.7(b)(iii) should be modified to remove a trustee’s entitlement to make its own determination of the merits of a compromise, settlement or release covered by Section 3.7 and to take action with respect thereto;</p>	<p>(a) The objection should be overruled. <i>See supra</i> Reply Brief §§ I, III.</p> <p>(b) The objection should be overruled. <i>See supra</i> Reply Brief § I, II, III.</p> <p>(c) To address this concern, the Rehabilitator has revised Section 3.7(c) of the Plan to provide that, if a direction provided by FGIC conflicts with any direction provided by the trustee, the direction of the trustee shall control. <i>See</i> Plan § 3.7(c), Exs. B & B-1 to Index.</p> <p>(d) <i>See supra</i> Response to Obj. of BNY (j).</p> <p>(e) The 45 day notice period in Section 3.7(a)(iv) of the Plan with which insured holders and trustees must comply before settling or releasing trust loan repurchase obligation claims mirrors the same notice period to which FGIC is bound, pursuant to Section 3.7(b)(iii) of the Plan. <i>See</i> Plan § 3.7(b)(iii), Exs. B & B-1 to Index.</p> <p>(f) The Rehabilitator has accepted this proposed change. <i>See</i> Plan §§ 3.7(a)(iv), 3.7(b)(iii), Exs. B & B-1 to Index.</p>

4. Objection of Wells Fargo	
<p>(g) Section 4.6 should be revised to remove the prevailing party’s entitlement to recover reasonable attorneys’ fees and costs from the other party;</p> <p>(h) Section 4.7(A) and related provisions of the Plan should be modified to require FGIC to make timely payment of all undisputed portions of policy claims;</p> <p>(i) Section 4.10(viii) should be revised to clarify that only the portion of a claim that is a duplicate claim will not be permitted and Section 4.10(ix) should be removed;</p> <p>(j) Section 7.5(b) of the Plan should be modified so that FGIC is relieved of its indemnification obligation only where a trustee has actually received payment in satisfaction of the amount to be indemnified;</p> <p>(k) Section 7.5(b) should be modified to remove FGIC’s ability to elect to assume the defense of a legal proceeding against an indemnified trustee;</p> <p>(l) The last sentence of Section 7.5(b) should be stricken because it arbitrarily limits a trustee’s indemnification rights by denying the trustee its right to consider the sufficiency of the indemnification being offered;</p> <p>(m) Section 8.1 of the Plan impermissibly forecloses a trustee’s right to pursue trust construction proceedings in other jurisdictions and imposes a tremendous burden on the Court to hear disputes or otherwise resolve issues pertaining to operative trust documents that are unrelated to FGIC or the Rehabilitation Proceeding;</p>	<p>(g) <i>See supra</i> Response to Obj. of BNY (s).</p> <p>(h) <i>See supra</i> Response to Obj. of BNY (t).</p> <p>(i) <i>See supra</i> Response to Obj. of BNY (x).</p> <p>(j) <i>See supra</i> Response to Obj. of BNY (h).</p> <p>(k) <i>See supra</i> Response to Obj. of U.S. Bank (h).</p> <p>(l) <i>See supra</i> Response to Obj. of BNY (i).</p> <p>(m) <i>See supra</i> Response to Obj. of U.S. Bank (g).</p>

4. Objection of Wells Fargo	
<p>(n) Section 2.1 of the Restructured Policy Terms should be modified to clarify that FGIC cannot declare a Policy Crystallization Event if a party seeks judicial guidance as to the effect of Sections 3.5 and 7.8(e) of the Plan;</p> <p>(o) The information included in the quarterly and annual reports referred to in Section 7.11(B) of the Plan should be publicly disclosed; and</p> <p>(p) A section should be added to the Plan clarifying that the Plan shall supersede the Order of Rehabilitation.</p>	<p>(n) <i>See supra</i> Response to Obj. of BNY (ff).</p> <p>(o) <i>See supra</i> Response to Obj. of BNY (bb).</p> <p>(p) <i>See supra</i> Response to Obj. of BNY (cc).</p>

5. Objection of JeffCo Holders	
<u>Objection</u>	<u>Response</u>
<p>JeffCo Holders object as follows:</p> <p>(a) The Rehabilitator does not have authority and the Court does not have jurisdiction to amend the terms of the underlying warrant indenture to deem FGIC not to have defaulted under the Jefferson County insurance policies and enjoin the JeffCo Holders from exercising control rights (pursuant to Sections 3.5 and 7.8 of the Plan).</p> <p>(b) Clauses providing for the transfer of control rights and/or the termination of FGIC’s consent rights do not constitute unenforceable <i>ipso facto</i> clauses under section 365(e)(1) of the Bankruptcy Code and, therefore, the Rehabilitator’s justification for restoring FGIC’s control rights lacks merit;</p> <p>(c) The Rehabilitator’s argument that Sections 3.5 and 7.8(e) of the Plan are necessary to prevent holders who purchased insured bonds at a discount from taking action with respect to underlying collateral in order to obtain a quick and certain recovery is “unsupported and irrational” – the JeffCo Holders are better positioned and more motivated than FGIC to obtain a favorable treatment of the sewer warrants in Jefferson County’s bankruptcy case;</p> <p>(d) FGIC’s retention of control rights constitutes an unlawful taking under the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, Sections 6 and 7 of the New York Constitution because the Plan neither accomplishes a valid public use nor compensates the JeffCo Holders for the taking of their contract rights;</p>	<p>(a) The objection should be overruled. <i>See supra</i> Reply Brief § I.</p> <p>(b) The objection should be overruled. <i>See supra</i> Reply Brief § I, III.</p> <p>(c) The objection should be overruled. <i>See supra</i> Reply Brief § III.</p> <p>(d) FGIC’s retention of control rights and entitlement to receive premiums and reimbursements is not an unconstitutional taking of the JeffCo Holders’ property. As explained in greater detail in Section I.A of the Reply Brief, the Rehabilitator has substantial authority when acting in accordance with Section 7403(a) of the NYIL because, in doing so, he is exercising “an aspect of the police powers of the state.” <i>Minor v. Stephens</i>, 898 S.W.2d 71, 78, 80 (Ky.</p>

5. Objection of JeffCo Holders	
<p>(e) The requirements that parties turn over to FGIC reimbursement amounts and not offset such amounts against unpaid claims:</p> <ul style="list-style-type: none"> i. Violate the terms of the Jefferson County policies and sewer warrants indenture; 	<p>1995). “[The] due process clause does not restrict the state’s reasonable exercise of its police power in furtherance of the public interest, even though such laws may interfere with contractual relations and commercial freedoms of private parties.” <i>Id. citing Warschauer Sick Support Society v. State of N.Y.</i>, 754 F.Supp.305 (E.D.N.Y. 1991); <i>see also Carpenter v. Pacific Mutual Life Ins. Co.</i>, 10 Cal.2d 307, 331, 74 P.2d 761, 776 (1937), <i>aff’d sub nom. Neblett v. Carpenter</i>, 305 U.S. 297 (1938) (noting that the contract and due process clauses of the Constitution “do not apply to the state acting under its police powers”).</p> <p>The only restriction on the Rehabilitator’s exercise of state police power is that the actions undertaken pursuant to his authority must be reasonably related to a public interest and must not be arbitrary or improperly discriminatory. <i>Carpenter</i>, 10 Cal.2d at 330, 74 P.2d at 775; <i>Minor</i>, 898 S.W.2d at 82. Although certain of the JeffCo Holders’ rights may be compromised as a consequence of the Rehabilitator’s determination that FGIC should retain its control rights, premiums and reimbursements, the overall benefit to the estate and policyholders as a whole justifies such determination. <i>See supra</i> Reply Brief § II, III.</p> <p>(e)</p> <ul style="list-style-type: none"> i. As set forth in detail in the Reply Brief, the Rehabilitator has broad authority to implement the Plan, including to modify contracts and other rights and deem FGIC cured for purposes of recovering reimbursements. <i>See supra</i> Reply Brief §§ I, II. Furthermore, the transaction documents governing the JeffCo Holders clearly provide that FGIC has a right to reimbursement to the extent it makes payments, regardless of whether the holders’ losses are paid in full. First, FGIC has no obligation to

5. Objection of JeffCo Holders

make a payment on account of its policy until the JeffCo Holders have provided evidence that FGIC will have the right to reimbursement. Thus, the policy specifically provides that payment is conditioned on “receipt by the Fiscal Agent . . . [of] evidence, including any appropriate instruments of assignment, that all of the Bondholder’s rights to payment of such principal or interest Due for Payment shall thereupon vest in in [FGIC].” JeffCo Holder Obj. Ex. B. Second, the JeffCo Holders’ indenture provides that FGIC shall be subrogated to the extent that it makes payments, without regard to whether payments are made in full. JeffCo Holder Obj. Ex. A § 17.1(c) (“The Bond Insurer shall to the extent it makes payment of principal of or interest on the Series 1997 Warrants become subrogated to the rights of the recipients of such payments . . .”). Third, in the event that (i) FGIC has made any payment of principal and/or interest on the transaction securities and is therefore contractually subrogated to the rights of the recipients of such payments in accordance with the express terms of the policy and the indenture, and (ii) the amount available to the respective trustee for such purpose is not sufficient to pay in full an installment of principal and/or interest due, then in accordance with the express terms of the indenture, the trustee is required to apply available funds to the proportionate payment of all such installments, with interest on overdue installments, according to the amounts thereof, without preference or priority of any installment over any other or any discrimination or privilege among the persons entitled thereto. Accordingly, pursuant to the express terms of the policy and the indenture, FGIC, as contractual subrogee and assignee, is entitled to its proportionate share of such distributions with respect to such prior

5. Objection of JeffCo Holders	
<p>ii. Violate New York’s “made whole” doctrine;</p>	<p>payments of principal and/or interest made by FGIC, together with interest thereon without regard to whether all holders have been paid in full. <i>See</i> JeffCo Holder Obj. Ex. A § 13.3 (providing that available funds must be applied to pay the outstanding principal of, premium if any, and interest on the transaction securities, with interest on overdue installments thereof, without preference or priority of any installment of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any transaction security over any other transaction security, in proportion to the amounts for both principal and interest due respectively to the persons entitled thereto, <i>without any discrimination or privilege among such persons</i>).</p> <p>Importantly, and consistent with the JeffCo Holders’ policy and indenture, Section 1.4(A) and the definition of FGIC Payments clearly provide that FGIC’s recovery by subrogation to a policyholder will never exceed the amount FGIC paid that policyholder on account of policy claims. Section 4.13 of the Plan reinforces this point, providing that any right to subrogation that FGIC may have “shall be for an amount equal to the Cash that FGIC ultimately pays”</p> <p>ii. The Plan and Restructured Policy Terms provide that policyholders must turn over reimbursements to FGIC. The made whole doctrine only applies to instances of equitable subrogation, and does not apply to contractual subrogation rights or other contractual provisions for reimbursement. <i>See J & B Schoenfeld, Fur Merchants, Inc. v. Albany Ins. Co.</i>, 109 A.D.2d 370, 372-73, 492 N.Y.S.2d 38, 41 (1st Dept. 1985) (“[W]here the right of</p>

5. Objection of JeffCo Holders

an insurer to subrogation is expressly provided for in the policy, its rights must be governed by the terms of the policy.”); *Fed. Ins. Co. v. Arthur Andersen & Co.*, 75 N.Y.2d 366, 371 (N.Y. 1990) (noting that for “contractual subrogation . . . the subrogee’s rights are defined in an express agreement between the insurer-subrogee and the insured-subrogor”); *Lawyers’ Fund for Client Prot. of State of N.Y. v. Bank Leumi Trust Co. of New York*, 94 N.Y.2d 398, 403 (N.Y. 2000) (interpreting a contractual subrogation provision to allow recovery of amounts greater than had been paid, notwithstanding the general rule that a subrogee’s claim is limited to the amount it paid the subrogor, and noting that “this is not a case dealing with equitable subrogation”). All of the New York cases the JeffCo Holders cite as support that they must be “made whole” recognize that this doctrine is an equitable principle that applies to equitable subrogation, as opposed to contractual subrogation. See *Fasso v. Doerr*, 12 N.Y.3d 80, 86-88 (N.Y. 2009) (noting that the made whole doctrine is “an important limitation on recovery under the doctrine of *equitable subrogation*” and also distinguishing equitable subrogation from the “contract-based theory of subrogation”) (emphasis added); cf. *USF&G v. Maggiore*, 299 A.D.2d 341, 343, 749 N.Y.S.2d 555 (2d Dept. 2002) (applying made whole doctrine because, though insurers asserted a right of contractual subrogation, the relevant terms were not part of the record and therefore the court had to rely on equitable subrogation principles). Here, the provisions of the restructured policies are clear: FGIC has the right to recover FGIC Payments, whether they arise through subrogation or otherwise, and without any requirement that the insured first recover its entire loss. Therefore, the made whole doctrine does not apply.

5. Objection of JeffCo Holders	
<p>iii. Constitute an unconstitutional taking of the JeffCo Holders’ property; and</p> <p>iv. Conflict with federal bankruptcy law and claims administration in the Jefferson County bankruptcy proceeding;</p> <p>(f) Section 4.10 of the Plan violates New York law by appearing to disallow any claim of a policyholder where the underlying insured obligations are released or discharged.</p>	<p>Contrary to the JeffCo Holders’ assertion, FGIC is not seeking to claim any payment based on the DPO or a discharge of the claim, but rather has strictly limited its reimbursement rights to the amount of actual CPP payments. See supra Response to JeffCo Holders Obj. (e)(i). <i>Northwestern Mutual Life Ins. Co. v. Delta Air Lines, Inc. (In re Delta Air Lines, Inc.)</i>, 608 F.3d 139 (2d Cir. 2010), which the JeffCo Holders cite on this topic, is not a “made whole” case or even a subrogation case. It is a contractual interpretation case and is completely irrelevant here.</p> <p>iii. <i>See supra</i> Response to JeffCo Holders Obj. (d).</p> <p>iv. Whether FGIC’s claims against Jefferson County in its chapter 9 bankruptcy case are or should be subordinated pursuant to section 509 of the Bankruptcy Code is not an issue before the Court. For all of the reasons discussed in the Reply Brief, the Rehabilitator has authority to require the Jefferson County indenture trustee to turn over FGIC Payments, and doing so is necessary to provide fair and equitable treatment to all policyholders.</p> <p>(f) <i>See supra</i> Response to Obj. of BNY (w).</p>

6. Objection of CQS	
<u>Objection</u>	<u>Response</u>
<p>CQS objects as follows:</p> <p>(a) It is unfair and inequitable to deem FGIC not in default under the policies and permit FGIC to retain control rights and reimbursements (including excess cash flow from insured securities) because FGIC is not paying policy claims in full;</p> <p>(b) The Plan benefits certain policyholders at the expense of others by taking cash streams (reimbursements) from those bondholders whose underlying securities are producing excess cash and redistributing it to bondholders whose underlying securities are not;</p> <p>(c) Many bondholders will receive worse treatment under the Plan than under the status quo or a liquidation of FGIC because (i) on a present value basis, the 15% CPP⁵ has less value than the value of excess spread such bondholders currently receive from insured securities and (ii) the Plan permits FGIC to collect the excess spread without guaranteeing that additional payments will be made on account of DPO; and</p>	<p>(a) The objection should be overruled. <i>See supra</i> Reply Brief § I, II, III.</p> <p>(b) The objection should be overruled. <i>See supra</i> Reply Brief § II.A.</p> <p>(c) CQS provides no evidence to support its assertion that many bondholders will receive worse treatment under the Plan than under the status quo or in a liquidation of FGIC. Furthermore, CQS provides no explanation of the term “excess spread” or how, if at all, the Plan affects who receives such amounts. The only evidence before the Court is the Updated Liquidation Analysis, which shows that policyholders recover more under the Plan. <i>See Lazard Aff. Ex. 2.</i></p> <p>CQS’s comparison to the “Sharps” deal (which FGIC understands to refer to the Sharps SP I LLC offer to exchange) is also misguided. CQS’s understanding that the Sharps SP I LLC offer to exchange was rejected because bondholders were better off with the excess spread rather than the cash consent fee and other consideration offer by FGIC is purely speculative. The SP I LLC offer to exchange did not purport to amend policyholders’ rights to receive</p>

⁵ Since CQS has filed its objection, the initial CPP has increased from 15% to 17.25%. *See Lazard Aff.* ¶ 22.

6. Objection of CQS	
<p>(d) Termination (pursuant to the Novation Agreement) of FGIC's right to recapture certain reinsured municipal bond policies from National Public eliminates a valuable asset of FGIC without consideration and is not in the best interest of policyholders.</p>	<p>excess spread and any comparison between it and the Plan regarding the excess spread is misplaced.</p> <p>(d) The objection should be overruled. <i>See supra</i> Reply Brief § IV.</p>

7. Objection of CHP	
<u>Objection</u>	<u>Response</u>
<p>CHP objects as follows:</p> <p>(a) Sections 3.5 and 7.8 of the Plan unfairly deprive CHP of its contractual right to terminate its policies based upon a FGIC ratings downgrade, which right was triggered before FGIC was placed into rehabilitation;</p>	<p>(a) Although CHP may have been able to terminate its policies on account of a ratings downgrade occurring several years ago (before FGIC’s financial condition had deteriorated to the point of requiring initiation of an insolvency proceeding), CHP failed to exercise that right. CHP’s request amounts to termination based upon the rehabilitation (including policyholders’ treatment in the Plan), which is precluded by Section 7.8(d) of the Plan. There is no basis on which to treat CHP differently than other policyholders.</p> <p>As recognized by bankruptcy courts facing analogous situations, where termination of a contract initially is permissible but the holder of the termination right delays and later seeks to exercise such right based upon prohibited reasons (<i>i.e.</i> treatment in an insolvency proceeding), the right is waived and termination is prohibited. <i>See, e.g., In re Lehman Brothers, Inc.</i>, Case No. 08-13555 (JMP), Transcript [Dkt. No. 5261] at 101-13 (Bankr. S.D.N.Y. Sept. 17, 2009) (finding that, although the Bankruptcy Code granted the right to terminate a swap agreement upon Lehman’s bankruptcy filing, this right had been waived because over a year had passed since the filing and the party had attempted to “ride the market” in hopes that its contract would become more valuable); <i>see also In re Amcor Funding Corp.</i>, 117 B.R. 549, 550 (D. Ariz. 1990) (prohibiting broker from liquidating a debtor’s securities account even though the right to liquidate had been triggered by the commencement of the debtor’s bankruptcy case, as permitted by the Bankruptcy Code, where over a year had passed since the commencement date and the decision to liquidate was clearly based on the broker’s own financial condition).</p>

7. Objection of CHP	
<p>(b) The Plan permits the Rehabilitator to “cherry-pick” the benefits of the bargain it struck with CHP (by requiring payment in full of premiums) without having to abide by its burdens (including termination rights);</p> <p>(c) Sections 3.5 and 7.8 of the Plan inequitably permit FGIC to retain control rights over the financing of the insured project;</p> <p>(d) Pursuant to the Novation Agreement, the Plan violates Section 7434 of the NYIL by preferring some policyholders at the expense of others;</p> <p>(e) The Plan otherwise contains deficiencies and objectionable provisions, including because:</p> <ul style="list-style-type: none"> i. The Plan is nothing more than a disguised liquidation without any court oversight in violation of Section 7405 of the NYIL because after the effective date there will be no business other than the run-off of FGIC’s policies; 	<p>(b) The objection should be overruled. <i>See supra</i> Reply Brief § I, II.</p> <p>(c) The objection should be overruled. <i>See supra</i> Reply Brief § I, III.</p> <p>(d) The objection should be overruled. <i>See supra</i> Reply Brief § IV.</p> <p>(e) CHP’s remaining contentions were listed as bullet points with little, if any, legal or factual backing. Nonetheless, the Rehabilitator submits the following points:</p> <ul style="list-style-type: none"> i. Although the Plan provides for a runoff of FGIC’s assets, it entails relief distinct and actually better than what would be available in a liquidation. Under an Article 74 liquidation, as described in the Updated Liquidation Analysis, FGIC would wind down over a 40 year period, during which policy claimants may receive a few small distributions during the proceeding but a significant portion of the claims would remain unpaid until the final distribution (likely in 2052). <i>Lazard Aff. Ex. 2</i>. By contrast, under the Plan, FGIC will pay the CPP of permitted policy claims as they come in and, if possible, additional amounts over time, adjusted as expected recoveries change. By effectuating these distributions outside of a proceeding, the Plan eliminates the legal and administrative expenses that would be associated with a prolonged, court-supervised liquidation process, thus resulting in increased recoveries. Furthermore, by making larger distributions now as claims arise, instead of very limited, periodic disbursements over a substantial

7. Objection of CHP

ii. The Rehabilitator has not demonstrated that policyholders would recover more under the Plan than in a liquidation;

length of time, those parties with permitted claims will get the benefit of the time value of recoveries. In any event, the Plan calls for continued oversight by the NYSDFS and has been designed to ensure the fair and equitable treatment of all policyholders, consistent with the purposes of Article 74, and the Court will retain exclusive jurisdiction to hear disputes or enforce the Plan, as necessary.

CHP cites no authority whatsoever for its proposition that an insurer’s liquidation must occur within a proceeding pursuant to Section 7405 of the NYIL. This requirement cannot be found anywhere in Section 7405, and is inconsistent with numerous provisions in Article 74 granting the Superintendent and the Court broad discretion to determine the most suitable means of winding down an insurer’s business. For instance, Sections 7402(i) and 7404 provide that where an insurer has ceased to issue new policies (*i.e.* has begun a voluntary run-off) it is a matter of the Superintendent’s discretion whether to order a court-monitored rehabilitation or liquidation proceeding (or no proceeding at all). Furthermore, Article 74 does not require that an insurer that is exiting rehabilitation continues to issue new policies; rather, Section 7403(d) allows a court to terminate a rehabilitation if it determines that “the purposes of the proceeding have been fully accomplished.” Contrary to CHP’s assertion, the runoff provided by the Plan does not violate any requirements of Section 7405 or Article 74.

ii. CHP has not provided any basis for its conclusory statement that the Rehabilitator has failed to adequately demonstrate that policyholders will receive more under

7. Objection of CHP	
<p>iii. Policyholders cannot opt-out of the Plan;</p> <p>iv. The Rehabilitator has failed to provide justification for applying a discount rate of 10-20% in calculating present value recoveries of policyholders and courts have rejected applying discount rates in excess of 10% in the context of bankruptcy valuations;</p> <p>v. The Rehabilitator has not demonstrated that the broad injunctions under Section 7.8 of the Plan are necessary for the rehabilitation to be effective or that they satisfy the requirements of Section 7419(b) of the NYIL;</p>	<p>the Plan than in a liquidation. The only evidence on this point is the Rehabilitator's Updated Liquidation Analysis, and CHP offers nothing to rebut this evidence. <i>See</i> Memo of Law § II.C; Lazard Aff. ¶ 28, Ex. 2.</p> <p>iii. The objection should be overruled. <i>See supra</i> Reply Brief § I.A.</p> <p>iv. CHP claims that the discount factors used in the Run-Off Projections and Liquidation Analysis, 10% and 20%, are too high, pointing to a bankruptcy case where a 10% discount rate was found to be too high and another case where an 8.5% discount rate was “reasonable.” However, the appropriate discount rate will depend on the riskiness of cash flows being adjusted, and so the fact that one discount rate is appropriate for one set of cash flows does not mean it is appropriate for another. <i>See</i> Lazard Aff. ¶ 35. A 3.6% discount rate, for example, would be used to adjust the long-term debt of a strong, investment grade company and would not be appropriate for cash flows with a higher risk, such as FGIC policyholder claims. <i>See</i> Lazard Aff. ¶ 38. Yet even with a discount rate as low as 3.6%, the expected policyholder recoveries would remain higher under the Plan than in a liquidation. <i>See</i> Lazard Aff. ¶ 37.</p> <p>v. This Court has broad powers under Section 7419(b) of the NYIL to enjoin acts that “it deems necessary to prevent . . . waste of the assets of the insurer, or . . . the obtaining of a preference . . .” The Rehabilitator has exercised discretion in determining the parameters of the injunctive relief provided by Section 7.8 of the Plan. Such injunctions are necessary to implement and enforce the provisions of the Plan, the bases for which are set forth in the Reply Brief and in the Memo of Law. <i>See</i></p>

7. Objection of CHP

vi. Under Section 7.10 of the Plan, policyholders are deprived of their due process to challenge the NYSDFS’s decision to permit FGIC to write new insurance policies (and such decision may have an adverse impact on policyholder recoveries);

vii. Sections 2.6 and 7.10(b) of the Plan are inconsistent – Section 2.6 provides that equity holders will not be entitled to any distributions unless all claims are paid in cash or fully reserved for, but Section 7.10(b) does not contain the same limitations;

***supra* Reply Brief §§ I, II, III; Memo of Law § IV. CHP has not provided any example of how Section 7.8 is too broad or explained why this relief should not be granted.**

vi. Article 74 grants the Superintendent of Insurance discretion, as regulator, to allow or not allow a financial guaranty insurer to continue to issue policies. *See* NYIL §§ 1104(c), 6908 (providing that the superintendent *may* limit the amount of premiums written by a financial guaranty insurer upon determining that such insurer’s surplus is not adequate in relation to its outstanding liabilities or financial needs). These provisions were enacted by the New York Legislature, as an exercise of its state police power. *See Carpenter*, 74 P.2d at 776 (explaining that the state acted “under and within its police power” in establishing the statutory scheme embodied in its insurance code and noting that the contract and due process clauses of the Constitution “do not apply to the state acting under its police powers”). Section 7.10 of the Plan, which provides that the decision whether to permit FGIC to write new insurance policies rests solely with the NYSDFS, is consistent with applicable law and does not violate any policyholders’ right to due process.

vii. Section 2.6 provides that equity holders will not receive any distributions until all claims are paid in cash or fully reserved for. Assuming that condition is satisfied, Section 7.10(b) provides that a dividend still will only be made upon prior express written approval of the NYSDFS.

7. Objection of CHP	
<p>viii. The Plan does not make adequate disclosures regarding selection of management or explain how such selection is consistent with public policy;</p> <p>ix. Section 7.8(c) of the Plan enjoins parties from exercising setoff rights in violation of Section 7427 of the NYIL; and</p> <p>x. The Policy Crystallization Event provisions are unclear.</p>	<p>viii. The objection should be overruled. <i>See supra</i> Reply Brief § IV.</p> <p>ix. The objection should be overruled. <i>See supra</i> Reply Brief § II.B.</p> <p>x. The provisions providing for Policy Crystallization Events are described in detail in the Disclosure Statement. <i>See</i> Disclosure Statement § VI.B.1.f. CHP does not explain how this description is unclear or what is not understood.</p>

8. Objection of Manufacturers and Traders Trust Company	
<u>Objection</u>	<u>Response</u>
(a) Manufacturers and Traders Trust Company joins in the objection filed by Deutsche Bank.	(a) <i>See</i> Responses above.

9. Objection of Aurelius Capital Management, LP	
<u>Objection</u>	<u>Response</u>
(a) Aurelius Capital Management, LP joins in the objections filed by U.S. Bank and BNY.	(a) <i>See</i> Responses above.