

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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: Index No. 401265/2012  
In the Matter of the Rehabilitation of :  
FINANCIAL GUARANTY INSURANCE :  
COMPANY. : **AFFIRMATION**  
: :  
: :  
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Gary T. Holtzer, an attorney duly admitted to practice law in the Courts of the State of New York, respectfully affirms the truth of the following statements under penalty of perjury pursuant to CPLR 2106:

1. I am a partner with Weil, Gotshal & Manges LLP, attorneys for Benjamin M. Lawskey, Superintendent of Financial Services of the State of New York (the “**Superintendent**”), as the court-appointed rehabilitator (the “**Rehabilitator**”) of Financial Guaranty Insurance Company (“**FGIC**”).

2. I am fully familiar with all of the prior pleadings and proceedings that have taken place in this matter.

3. I submit this affirmation in support of the motion by the Rehabilitator for an order substantially in the form attached hereto as **Exhibit A** (the “**Proposed Plan Approval Order**”) (i) approving the proposed Plan of Rehabilitation for FGIC, dated September 27, 2012, attached hereto as **Exhibit B**, together with all exhibits and the Plan Supplement<sup>1</sup> thereto (collectively and as the same may be revised, the “**Plan**”),<sup>2</sup> including approving the Novation

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<sup>1</sup> The initial Plan Supplement is attached hereto as **Exhibit C**. The Rehabilitator anticipates supplementing the initial Plan Supplement in the future in accordance with the schedule set forth in the Scheduling Order (defined below).

<sup>2</sup> Capitalized terms not defined herein have the meanings ascribed to them in the Plan.

Agreement and the CDS Commutation Agreements and consummation of the transactions contemplated thereby, (ii) terminating the above-captioned rehabilitation proceeding (the “**Rehabilitation Proceeding**”) upon the effective date of the Plan (the “**Effective Date**”) and (iii) granting such other and further relief as this Court may deem just and proper.

### **Background**<sup>3</sup>

4. On June 28, 2012, this Court issued an order (the “**Order of Rehabilitation**”) pursuant to Section 7403(a) of the New York Insurance Law (the “**NYIL**”) (i) appointing the Superintendent as Rehabilitator of FGIC, (ii) directing the Rehabilitator to take possession of the property and assets of FGIC and to conduct the business thereof and (iii) directing the Rehabilitator to take steps toward the removal of the causes and conditions which have made this Rehabilitation Proceeding necessary.

5. In accordance with the Order of Rehabilitation, the Rehabilitator has been working with his agents and advisors to determine the best way to restore FGIC to statutory solvency in a manner that treats all Policyholders and other claimants fairly and equitably. The Plan is the result of this deliberate process.

6. On behalf of the Rehabilitator, I respectfully submit that approval and implementation of the Plan, which includes consummation of the transactions contemplated by the Novation Agreement and the CDS Commutation Agreements and termination of the Rehabilitation Proceeding upon the Effective Date, is the best way to return FGIC to statutory solvency and maximize the fair and equitable treatment of FGIC’s Policyholders and other claimants.

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<sup>3</sup> The relevant factual background is set out in greater detail in the Disclosure Statement for Plan of Rehabilitation of Financial Guaranty Insurance Company (the “**Disclosure Statement**”), attached hereto as **Exhibit D**.

### **Grounds for Relief**

7. Section 7403(a) of the NYIL provides that the Rehabilitator may “take such steps toward the removal of the causes and conditions which have made such proceeding necessary as the court shall direct.” N.Y. Ins. Law § 7403(a). The Rehabilitator has determined that implementation of the Plan is necessary to correct FGIC’s deficit in policyholders’ surplus, which necessitated this Rehabilitation Proceeding. Accordingly, the Court should approve the Plan and all transactions contemplated therein pursuant to Section 7403(a) of the NYIL.

8. Section 7403(d) of the NYIL provides that “[t]he rehabilitator . . . at any time, may apply for an order terminating any rehabilitation proceeding and permitting such insurer to resume possession of its property and the conduct of its business.” N.Y. Ins. Law § 7403(d). Further, “no such order shall be granted except when, after a full hearing, the court shall determine that the purposes of the proceeding have been fully accomplished.” *Id.* The Rehabilitator submits that, as of the Effective Date, FGIC will have sufficient assets to pay all of its obligations pursuant to the Plan, while maintaining at least the minimum policyholders’ surplus required for a financial guaranty insurance company under Section 6902(b)(1) of the NYIL. Thus, the purposes of this Rehabilitation Proceeding will have been fully accomplished on the Effective Date. Accordingly, the Court should enter an order terminating the Rehabilitation Proceeding as of the Effective Date pursuant to Section 7403(d) of the NYIL.

### **Relief Requested**

9. In light of the foregoing, on behalf of the Rehabilitator, I respectfully request that the Court issue the Proposed Plan Approval Order, which order would, among other things, (i) approve the Plan, including approving the Novation Agreement and the CDS

Commutation Agreements and consummation of the transactions contemplated thereby and (ii) terminate the Rehabilitation Proceeding as of the Effective Date.

10. On behalf of the Rehabilitator, I further respectfully request that the Court issue the order to show cause filed contemporaneously herewith (the “**Scheduling Order**”), which, among other things, (i) sets the date for the hearing to consider entry of the Proposed Plan Approval Order (the “**Plan Approval Hearing**”), (ii) establishes a briefing schedule and (iii) sets forth notice requirements for the Scheduling Order.

11. On behalf of the Rehabilitator, I respectfully request that the Court, subject to the Court’s availability, schedule the Plan Approval Hearing on or about December 18, 2012, which is approximately eighty-two (82) days from the date hereof. Such period will allow the Rehabilitator to provide sufficient notice of the Plan Approval Hearing to interested Persons and will provide such Persons sufficient time to consider the relief requested herein.

12. At the June 28, 2012 hearing, in an effort to facilitate a transparent process with the goal of formulating a consensual plan of rehabilitation, the Rehabilitator indicated his intent to file a proposed plan within approximately sixty (60) days. Accordingly, the Rehabilitator is filing the Plan and Disclosure Statement on the date hereof in order to put interested Persons on notice of the substance of the Plan. The Rehabilitator is continuing to discuss the Plan with various constituents and may file revisions to the Plan with the Court on or before December 12, 2012, as set forth in the Scheduling Order. The Rehabilitator will post any revisions to the Plan at [www.fgicrehabilitation.com](http://www.fgicrehabilitation.com) within one (1) Business Day after filing such revisions with the Court. The Rehabilitator also intends to file additional documents, including a memorandum of law, which will further support the Rehabilitator’s determination that the Plan is the best way to provide fair and equitable treatment to all of FGIC’s

Policyholders. The briefing schedule set forth in the Scheduling Order will enable the Rehabilitator to provide such additional support, and respond to any objections, in an orderly and efficient manner in advance of the Plan Approval Hearing.

13. Finally, the Scheduling Order provides that service of notice of the Scheduling Order and the papers upon which it is granted shall be made by (i) posting true copies of the same, along with the Disclosure Statement, at [www.fgicrehabilitation.com](http://www.fgicrehabilitation.com) within five (5) Business Days after issuance of the Scheduling Order, (ii) publishing notice substantially in the form of the Notice of Plan Approval Hearing annexed hereto as **Exhibit E** (the “**Notice**”) in The Wall Street Journal and The Bond Buyer within ten (10) Business Days after issuance of the Scheduling Order and (iii) mailing the Notice to all known Policyholders and other claimants, except for known Policyholders or claimants that have requested not to receive notices related to the Rehabilitation Proceeding, by first class mail within five (5) Business Days after issuance of the Scheduling Order. Such service is reasonably calculated to fairly and timely apprise interested Persons of the Plan, while keeping the method of notice efficient and cost-effective given the large number of interested Persons. Accordingly, such service should be deemed good and sufficient service.

14. There has been no previous application for the relief requested herein.

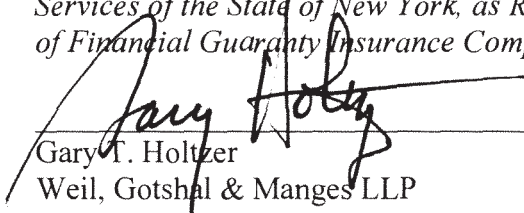
WHEREFORE, on behalf of the Rehabilitator, I respectfully request that this Court grant the relief requested herein and such other and further relief as this Court may deem just and proper.

Dated: September 27, 2012  
New York, New York

Weil, Gotshal & Manges LLP

*Attorneys for the Superintendent of Financial  
Services of the State of New York, as Rehabilitator  
of Financial Guaranty Insurance Company*

By:

  
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