

BY EMAIL

May 22, 2009

Hon. Joseph Morelle
Chair, NCOIL CDS Task Force
National Conference of Insurance Legislators
385 Jordan Road
Troy, NY 12180

Re: NCOIL Model Legislation Regarding Credit Default Insurance

Dear Assemblyman Morelle:

This letter provides comments on NCOIL's draft model legislation regarding credit default insurance on behalf of the Association of Financial Guaranty Insurers (AFGI), a trade association representing insurers and reinsurers of municipal bonds and other public and private debt. The members of AFGI are Ambac Assurance Corporation, Assured Guaranty Corp., CIFG, Financial Guaranty Insurance Company, Financial Security Assurance Inc., Radian Asset Assurance Inc., RAM Reinsurance Company Ltd., and Syncora Guarantee Inc.

AFGI supports legislative and regulatory efforts to enhance oversight and transparency of the derivatives markets.

However, AFGI respectfully submits that licensed financial guaranty insurers should be permitted under the model legislation to write credit default insurance.

The draft model provides a monoline regulatory regime for credit default insurers. Section 2(a)(1) of the model law provides that credit default insurers may only be licensed to transact residual value insurance, surety insurance, and credit insurance. AFGI submits that credit default insurers should also be permitted to be licensed to transact financial guaranty insurance in those states (such as New York, California and Connecticut) where financial guaranty insurance is a line of insurance distinct from surety insurance. Financial guaranty insurance transacted by a licensed financial guaranty insurer is similar in risk profile to credit default insurance as defined in the model legislation.

The model's language is largely drawn from Article 69 of the New York Insurance Law, which governs financial guaranty insurance. Because all financial guaranty insurers are licensed in New York, they all operate under the risk-based capital and other requirements of Article 69. In other words, financial guaranty insurers are already in compliance with most of the proposed provisions of the NCOIL model bill.

A financial guaranty insurer, in some cases, may provide financial guaranty insurance by insuring a credit default swap issued by a special purpose entity, when the swap format better suits the needs of the insurer's policyholder. When insured by a

financial guaranty insurer under Article 69, a credit default swap may be the functional equivalent of a financial guaranty insurance contract. Such a swap, like a financial guaranty insurance contract, guarantees timely payment of principal and interest to the protected bondholders.

Finally, under Article 69, which sets out a monoline regulatory regime for financial guaranty insurers like that proposed for credit default insurers, financial guaranty insurers may also be licensed to write residual value insurance, surety insurance, and credit insurance. As referenced above, these are the three lines of insurance that credit default insurers would be authorized to be licensed write while maintaining “monoline” status under the NCOIL credit default insurance model. Accordingly, Article 69 would require amendment to permit financial guaranty insurers to transact credit default insurance.

We believe it would be a natural extension of NCOIL’s intentions to improve regulation and transparency of the derivatives market to include financial guaranty insurance as a permitted line of insurance that may be written by credit default insurers, and vice versa.

We would be happy to discuss this further, and to answer any questions.

Thank you for your consideration.

Sincerely,

Bob Mackin
AFGI Executive Director

cc: Justin Wilcox, Legislative Director
Susan Nolan, NCOIL Executive Director
Michael Humphreys, NCOIL Director of State-Federal Relations