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BY HAND

January 25, 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

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. We respectfully enclose herewith the Rehabilitator's Amended Omnibus Reply Memorandum of Law in Further Support of Approval of First Amended Plan of Rehabilitation for Financial Guaranty Insurance Company (the "**Amended Reply**") pursuant to the Court's December 19, 2012 Order (the "**Order**"). Enclosed, as well, are an Amended Omnibus Response Chart and an Index of certain amended Plan-related documents.

The Order required the parties to submit "amended objections" and an "amended reply" and the Court made clear at the January 15, 2013 hearing that the amended objections should just delete material that is no longer relevant due to its consensual resolution and should not raise new arguments or new objections, nor act as a sur-reply to the Rehabilitator's reply to the objections. *See* 1/15/13 Tr. at 3:15-4:2-3 (confirming that "the purpose of the [O]rder is for parties to simply go into their existing pleadings and delete from them the objections that are no longer before the Court, and it's not meant to allow the party to add new arguments or objections to the previously filed pleadings"). Indeed, certain objectors expressly requested that the Court allow the amended pleadings to respond to arguments made in the Rehabilitator's reply to objections and this request was expressly denied. *Id.* at 47:10-26 (denying objector's request to "in a surgical way respond just briefly in the papers that we're submitting on the 22nd to new arguments that were raised in the reply for the first time"); *see also id.* at 4:5-17 (same).

On January 22, 2013, all eight objectors filed amended objections to the First Amended Proposed Plan of Rehabilitation for Financial Guaranty Insurance Company. However, four of the eight objectors – Aurelius Capital Management, LP ("**Aurelius**"), U.S. Bank National Association and U.S. Bank Trust National Association (collectively, "**U.S. Bank**"), CQS ABS Alpha Master Fund Ltd. ("**CQS**"), and The Bank of New York Mellon and The Bank of New York Mellon Trust Company, N.A., (collectively,

"**BNY**") – filed amended objections that disregarded the Court's explicit direction in the Order and at the January 15, 2013 hearing to simply delete the sections relating to resolved matters and not to raise new arguments or objections in the amended objections.[1] *See supra* ¶ 2.

For example, the initial objection filed by Aurelius was a one-page joinder to the objections filed by U.S. Bank and BNY. Its "Amended Objection," however, is a 16-page brief raising wholly new arguments in direct response to arguments made by the Rehabilitator 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**"). *See, e.g.*, Aurelius Amd. Obj. at 5-6, 9, 12, and 14.

Similarly, U.S. Bank's amended objection also raises new arguments in response to the Rehabilitator's reply. Indeed, U.S. Bank states openly that the purpose of its amended objection is not to present only those objections that have not been resolved, but rather to rebut the arguments raised in the Reply. *See* U.S. Bank Amd. Obj. at 5 ("Accordingly, *as discussed in further detail below*, the Rehabilitator's arguments in the Omnibus Reply . . . are not well-grounded in the law or logic") (emphasis added).

BNY's amended objection also contains an entirely new argument (Point V, entitled "The Forced Payover/Setoff Provisions Violate New York's 'Made Whole' Doctrine") that did not appear in its original objection. *See* BNY Amd. Obj. at 28.[2]

Finally, CQS's amended objection explicitly references the Reply and the Affidavit of John Dubel, *see, e.g.*, CQS Amd. Obj. at 1-2 (citing Reply); *id.* at 3 (citing Dubel Aff.) and attempts to respond thereto. Moreover, in flagrant disregard of the Court's ruling of December 18, 2012 (*see* 12/18/12 Tr. at 17:10-20:20) denying CQS's application to join other parties' objections because "it is inappropriate to allow a party orally to request essentially that they be allowed to interpose an objection at the hearing today", CQS joined the amended objections of BNY, the JeffCo Holders, CHP, and Aurelius. *See id.* at 9-10.

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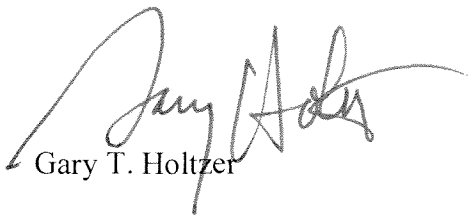
[1] The Jefferson County Warrantholders ("**JeffCo Holders**"), Childrens Health Partnership Holdings Pty Ltd. ("**CHP**"), Deutsche Bank National Trust Company and Deutsche Bank Company Americas (collectively, "**Deutsche Bank**"), and Wells Fargo Bank, N.A., ("**Wells Fargo**") all complied with the Court's orders.

[2] Although BNY claims that this is not a "new objection" because it already argued that the Plan of Rehabilitation for Financial Guaranty Insurance Company was in violation of "applicable law" (*see id.* at n. 26), it is obvious that Point V violates the Court's ruling against raising new arguments. Indeed, on its face, the amended pleading did not simply delete material that had been consensually resolved. If BNY actually believed that it was not raising a new argument, it hardly would have proffered an explanation as to why Point V is allegedly not a new argument.

The evidence strongly suggests that non-compliance by these objectors was also not inadvertent, but rather considered and intended. Tellingly, not only were the Court's directions clear on their face (as evidenced by the JeffCo Holders, CHP, Deutsche Bank, and Wells Fargo's full compliance), but also were expressly acknowledged by two of the objectors in their amended objections, including BNY. *See* BNY Amd. Obj. at 5 ("[o]n January 15, 2013, at the Discovery Conference, the Court indicated that the amended objections could not address points raised in the Rehabilitator's Reply"); *see also* CHP Amd. Obj. at n. 2 ("This Amended Objection is filed pursuant to the Court's December 20, 2012 Order directing objectors to submit Amended Objections stating their remaining objections to the Plan. The Court ordered on the record on December 18, 2012 and January 15, 2013, however, that the objectors would not be permitted to address the new arguments and facts raised by the Rehabilitator in its reply brief."). These acknowledgements strongly support the notion that non-compliance was a measured decision.

Our Amended Reply complies with the Order and therefore merely deletes no-longer-relevant arguments from the Reply. The Rehabilitator is preparing a motion to strike the non-compliant portions of the amended objections and also will seek recovery of the attorney's fees incurred in preparing that motion.

Respectfully submitted,



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Enclosures

Cc: All counsel of record (by email)