

AT IAS PART 36 OF THE SUPREME COURT
OF THE STATE OF NEW YORK, COUNTY OF
NEW YORK, AT THE COURTHOUSE,
60 CENTRE STREET, IN THE COUNTY, CITY
AND STATE OF NEW YORK, ON THE 28TH
DAY OF JUNE, 2012

PRESENT:

HON. DORIS LING-COHAN, J.S.C.

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In the Matter of	:	
	:	
the Application of	:	Index No. 401265/2012
	:	
Benjamin M. Lawsky, Superintendent of Financial	:	<u>ORDER OF REHABILITATION</u>
Services of the State of New York, for an order to	:	
take possession of the property of and rehabilitate	:	
	:	
FINANCIAL GUARANTY INSURANCE	:	
COMPANY.	:	
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Petitioner, Benjamin M. Lawsky, Superintendent of Financial Services of the State of New York (the “**Superintendent**”), having moved this Court for an order placing Financial Guaranty Insurance Company (“**FGIC**”) into rehabilitation, and upon reading and filing the Order to Show Cause dated June 11, 2012, the verified petition of the Superintendent, duly verified the 11th day of June, 2012 (the “**Rehabilitation Petition**”),¹ the exhibits attached to the Rehabilitation Petition, and the Memorandum of Law in Support of the Rehabilitation Petition, and the Court having held a full hearing to consider the requested relief, this Court finds that:

- a. FGIC is a New York State stock insurance company that issued financial guaranty insurance;
- b. FGIC’s statutory home office is located at 125 Park Avenue, New York, New York 10017;

¹ Capitalized terms not otherwise defined shall have the meanings ascribed to them in the Rehabilitation Petition.

- c. FGIC is subject to the New York Insurance Law ("**NYIL**") and, in particular, to Article 74 thereof;
- d. FGIC has consented to entry of an order of rehabilitation pursuant to Article 74 of the NYIL by a resolution of FGIC's board of directors;
- e. FGIC is insolvent within the meaning of Section 1309 of the NYIL;
- f. FGIC has been unable to comply, within the time designated by the Superintendent, with an order of the Superintendent pursuant to Section 1310 of the NYIL, to make good an impairment of its capital or minimum surplus to policyholders;
- g. It is in the best interest of FGIC's policyholders, creditors, and the general public that the Superintendent be directed to take possession of FGIC's property and to rehabilitate its business and affairs;
- h. FGIC is the sole member of FGIC Credit Products, LLC ("**FGIC CP**"), a Delaware limited liability company that issued credit default swaps ("**CDS**") to certain buyers of credit protection. FGIC wrote financial guaranty insurance policies for the benefit of counterparties to CDS with FGIC CP (collectively, "**Counterparties**"), which policies insure FGIC CP's obligations under such CDS. The financial obligations of FGIC and FGIC CP, with respect to such CDS, are sufficiently interconnected to warrant a grant of the relief requested herein with respect to FGIC CP; and
- i. Judicial immunity applies to the Rehabilitator, the New York Liquidation Bureau (the "**NYLB**"), and their respective employees, attorneys, representatives, and agents for any action taken by them when acting in good faith, in accordance with the orders of this Court, and/or, in the case of the Rehabilitator and the NYLB, in the performance of their duties pursuant to Article 74 of the NYIL.

NOW, on motion of Eric T. Schneiderman, Attorney General of the State of New York, it is ORDERED as follows:

- 1. The relief requested in the Rehabilitation Petition is granted;
- 2. The Superintendent, and his successors in office, is appointed rehabilitator (the "**Rehabilitator**") of FGIC and is vested with all powers and authority expressed or implied under Article 74 of NYIL and this Order;
- 3. The Rehabilitator is authorized and directed to take possession and/or control of FGIC's property and assets and to conduct FGIC's business;
- 4. The Rehabilitator may deal with the property and business of FGIC in FGIC's name or in the name of the Rehabilitator including, without

limitation, continue, commence, advance, defend, or prosecute any action, claim, lawsuit, arbitration, alternative dispute resolution proceeding, or other formal legal or administrative proceedings in any municipal, state, federal, or foreign court, administrative body, or other tribunal;

5. The Rehabilitator is directed to take such steps toward the removal of the causes and conditions that make this rehabilitation proceeding (the “**Rehabilitation Proceeding**”) necessary as the Rehabilitator may deem prudent and advisable;
6. All persons and entities, other than the Rehabilitator, are permanently enjoined and restrained, except as authorized by the Rehabilitator or his designee in writing, from: (i) transacting FGIC’s business, (ii) disposing of FGIC’s property; (iii) interfering with the Rehabilitator’s possession, control, or management of FGIC’s property or the discharge of the Rehabilitator’s duties with regard to FGIC or the Rehabilitation Proceeding; and (iv) disclosing the name, address, or contact information of FGIC’s policyholders, or any other information that is proprietary to FGIC or not in the public domain;
7. All persons and entities are permanently enjoined and restrained from wasting or permitting to be done any act or thing that might waste FGIC’s property;
8. All persons and entities are enjoined and restrained from commencing, continuing, advancing, or otherwise prosecuting any actions, claims, lawsuits, arbitrations, alternative dispute resolution proceedings, or other formal legal or administrative proceedings in any municipal, state, federal, or foreign court, administrative body, or other tribunal, against (i) the Rehabilitator, the New York State Department of Financial Services (“**NYSDFS**”), the Superintendent, the NYLB, any of their respective officers, employees, attorneys, representatives, or agents, or any directors, officers, employees, attorneys, representatives, or agents of FGIC or FGIC CP, in each case as related to FGIC, FGIC CP, the Rehabilitation Circumstances (as defined below), or the Rehabilitation Proceeding; or (ii) FGIC or FGIC CP.
9. All persons and entities are enjoined and restrained from taking any steps to transfer, foreclose, sell, assign, garnish, levy, encumber, attach, dispose of, exercise, or enforce purported rights in or against any claimed interest in any property or assets of FGIC or FGIC CP or any part thereof;
10. All directors, trustees, officers, employees, agents, or representatives, if any, of FGIC and FGIC CP are hereby enjoined and restrained from paying any claims or performing any other obligations of FGIC or FGIC CP under any policy, contract, or other instrument to which FGIC or FGIC CP is a party or by which FGIC or FGIC CP is bound (a “**FGIC**

Policy/Contract”) except as authorized by the Rehabilitator or his designee in writing;

11. All persons and entities are enjoined and restrained from seeking to acquire, acquiring, or exercising voting or other corporate governance rights pursuant to or under FGIC’s outstanding preferred stock;
12. All persons and entities are enjoined and restrained from withholding or continuing to withhold, subordinating, failing to pay, setting-off, or taking similar action with respect to payments (including, without limitation, recoveries or reimbursements) owed (or that would have been or would be owed but for the commencement or continuation of the Rehabilitation Proceeding or the occurrence or existence of any of the Rehabilitation Circumstances) to FGIC or FGIC CP under any FGIC Policy/Contract, or any Transaction Document (as defined below) executed in connection with the issuance of or entry into such FGIC Policy/Contract or related to such FGIC Policy/Contract or any obligations insured or covered thereby, regardless of the existence of any provisions in such FGIC Policy/Contract or Transaction Document that would or may otherwise permit such withholding, subordination, failure to pay, setting-off, or similar action; *provided, however*, that if this Court enters an order that becomes final and non-appealable holding that a particular person or entity or group of persons or entities should have been able to set-off or recoup any given payment during the pendency of the Rehabilitation Proceeding, the Rehabilitator shall refund as an administrative expense any such payment that was made to FGIC or FGIC CP during the pendency of the Rehabilitation Proceeding. As used herein, the term “Rehabilitation Circumstances” means the circumstances and events, whenever arising, giving rise to the Rehabilitation Proceeding or in existence from and after, or giving rise to or at any time resulting from, issuance of the 1310 Order, including (i) the financial condition of FGIC or FGIC CP, (ii) the grounds for the Rehabilitation Proceeding described in the Rehabilitation Petition, (iii) actions taken or statements made by FGIC, FGIC CP, the NYSDFS, the Superintendent, the NYLB or any other person or entity in connection with or in contemplation of the 1310 Order or the Rehabilitation Proceeding, (iv) any ratings downgrade of FGIC or any affiliate thereof, (v) any failure by FGIC or FGIC CP to pay any amount (whether due to the 1310 Order, the injunctive relief in the Order to Show Cause, this Order, or otherwise), and (vi) the issuance and existence of the 1310 Order;
13. All persons and entities (other than the Rehabilitator or as authorized in writing by the Rehabilitator or his designee) are enjoined and restrained from (i) terminating, accelerating, liquidating, closing out, collecting on, claiming against, making any demand or delivering any notice under, or otherwise exercising or enforcing rights or remedies or taking any action under or with respect to, or attempting to terminate, accelerate, liquidate,

close out, collect on, claim against, make any demand or deliver any notice under, or otherwise exercise or enforce rights or remedies or take action under or with respect to any FGIC Policy/Contract or any Transaction Document (as defined below) executed in connection with the issuance of or entry into such FGIC Policy/Contract or related to such FGIC Policy/Contract or any obligations insured or covered thereby, on the basis of the commencement or continuation of the Rehabilitation Proceeding or the occurrence or existence of any of the Rehabilitation Circumstances, regardless of the existence of any provisions in such FGIC Policy/Contract or Transaction Document (as defined below) that would or may otherwise permit or require such termination, acceleration, liquidation, closing out, collection, claim, demand, notice, exercise, enforcement, or action, and/or (ii) asserting claims as a result of any actual or attempted early termination of any FGIC Policy/Contract including without limitation Termination Payments (whether calculated on the basis of "Market Quotation", "Loss", "Close-out Amount," or other methodologies) under or in relation to such FGIC Policy/Contract;

14. All persons and entities (other than the Rehabilitator or as authorized in writing by the Rehabilitator or his designee) are enjoined and restrained from: (i) exercising or taking any action to exercise any approval, consent, direction, determination, appointment, request, voting, veto, waiver, or other right or remedy that FGIC or FGIC CP has (through the right to direct or grant or withhold consent with respect to such exercise or otherwise) (or that FGIC or FGIC CP would have but for the commencement or continuation of the Rehabilitation Proceeding or the occurrence or existence of any of the Rehabilitation Circumstances) under or with respect to any policies, contracts, or other instruments or documents relating to any FGIC Policy/Contract or any obligations insured or covered thereby, including without limitation any financial guaranty policies, fee letters or premium agreements, insurance and indemnification agreements, credit default swaps or other credit derivative transaction agreements, interest rate or currency rate swap agreements, basis swap agreements, total return swap agreements, indentures, trust deeds, pooling and servicing agreements, pooling agreements, sale and servicing agreements, sale agreements, collateral management or administration agreements, servicing agreements, credit or loan agreements, residential mortgage-backed securities transaction documents, guarantee investment certificates, custodial account agreements, note purchase agreements, or other financing or transaction documents of any kind (collectively, "**Transaction Documents**" and each a "**Transaction Document**") or under applicable law (collectively, the "**FGIC Rights**"); or (ii) failing to take, or taking any action inconsistent with, any action (or inaction) directed (whether actively or passively) to be taken pursuant to the exercise by FGIC, FGIC CP, or the Rehabilitator of any FGIC Rights; or (iii) failing to provide, or causing to be provided, to FGIC or FGIC CP any notice, request, or other communication or document that FGIC or

all rights and remedies described in this clause (i)

FGIC CP may have the right to receive (or that FGIC or FGIC CP would or may have the right to receive but for the commencement or continuation of the Rehabilitation Proceeding or the occurrence or the existence of any of the Rehabilitation Circumstances). For the avoidance of doubt, this paragraph does not enjoin or restrain any servicer (including any master servicer, sub-servicer or special servicer) from servicing underlying collateral to the extent it would be permitted to do so under the applicable Transaction Documents (without regard to the commencement or continuation of the Rehabilitation Proceeding or the occurrence or existence of any Rehabilitation Circumstances). In addition, notwithstanding anything to the contrary in this Paragraph 14, (i) if the Rehabilitator (or his designee) directs an indenture trustee or another type of corporate trustee (collectively, an "**Indenture Trustee**") or servicer to take an action or refrain from taking an action (collectively, the "**Direction**") that the Indenture Trustee or servicer believes it is not obligated to take or refrain from taking, the Indenture Trustee or servicer may seek a ruling from this Court (on an expedited basis if necessary) as to whether it is required to comply with the Direction, and the Indenture Trustee or servicer shall not be in contempt of Court for not complying with the Direction prior to this Court's ruling so long as the Indenture Trustee or servicer (a) seeks a ruling no later than five (5) business days after the Rehabilitator (or his designee) gives it the Direction and (b) provides prompt notice to the Rehabilitator of its request for a ruling; *provided, however*, that nothing herein shall prohibit the Rehabilitator from seeking a ruling (on an expedited basis if necessary) with respect to the Direction at any time; and (ii) if an Indenture Trustee or servicer intends to exercise any FGIC Right, (x) the Indenture Trustee or servicer shall provide the Rehabilitator with prompt notice of its intent to exercise such FGIC Right, and (y) if the Rehabilitator believes that the Indenture Trustee or servicer is not permitted to exercise such FGIC Right, the Rehabilitator may seek a ruling from this Court as to whether to preclude such exercise (on an expedited basis if necessary) within five (5) business days after receiving notification of the intended exercise of a FGIC Right;

and the Rehabilitator shall provide prompt notice to the Indenture Trustee or servicer of its request for a ruling

15. FGIC and all persons and entities having any property belonging to or relating to FGIC, as applicable, including but not limited to, business records, insurance policies, claims files (electronic or paper), software programs, bank records, or any tangible or intangible items of value, shall preserve such property and are directed, immediately upon the Rehabilitator's request, to assign, transfer, turn over and deliver such property to the Rehabilitator or his designees;
16. Any person or entity providing claims processing services, data processing services, electronic records retention services, or other information technology services to or on behalf of FGIC shall maintain and preserve all information in its possession ("**Information**") relating in any way to FGIC and its rights and obligations, wherever located, including but not

limited to all documents, data, electronic files and records, computer equipment (e.g., servers and printers), software programs and software licenses owned or leased by FGIC and are directed, upon the Rehabilitator's request, to promptly submit all such Information to the Rehabilitator or his designees;

17. Any bank, savings and loan association, other financial institution or any other entity or person, which has on deposit or in its possession, custody, or control any of FGIC's funds, accounts or assets, shall immediately upon the Rehabilitator's request and direction: (i) turn over custody and control of such funds, accounts, or assets to the Rehabilitator or his designees; (ii) transfer title of such funds, accounts, or assets to the Rehabilitator or his designees; (iii) change the name of such accounts to the name of the Rehabilitator; (iv) transfer funds from such bank, savings and loan association or other financial institution; or (v) take any other action necessary for the proper conduct of the Rehabilitation Proceeding;
18. Without limiting the ability of the Rehabilitator to reject, modify, or renegotiate any contract, lease, or arrangement concerning FGIC, all persons and entities that provide goods or services to FGIC shall continue to provide such goods or services to the Rehabilitator pursuant to the terms of any contract, lease, or other arrangement with FGIC, regardless of the existence of any provisions in any contract or lease that would otherwise excuse performance on the basis of the commencement or continuation of the Rehabilitation Proceeding or the occurrence or existence of any of the Rehabilitation Circumstances;
19. All persons and entities are enjoined and restrained from seeking to impose liability upon the Rehabilitator, the NYLB, or any of their respective employees, attorneys, representatives, or agents relating to or arising out of the Rehabilitation Proceeding or the Rehabilitation Circumstances;
20. The injunctive relief granted by this Order shall issue without the furnishing of an undertaking by the Superintendent. CPLR § 2512(a);
21. Notwithstanding anything to the contrary in this Order, nothing herein prevents any person or entity from asserting a claim in the Rehabilitation Proceeding; *provided, however*, that no person or entity may trigger or submit claims for Termination Payments (or take any action in furtherance thereof) or otherwise take any action prohibited by the provisions of this Order. Pending further Court order, policyholders and other claimants should submit their notices of claim or similar demands pursuant to the deadlines, procedures, and service requirements specified in their policies or contracts. Without extending the deadlines for filing claims that may be set forth in any FGIC Policy/Contract, the deadline set forth in Section 7432(b) of the NYIL for all persons and entities having claims against

FGIC to file or present their claims to the Rehabilitator is deferred until further order of this Court;

22. Any person seeking modification of, or relief from, the injunctive relief set forth in this Order (an "**Objecting Party**") shall submit a written request to the Rehabilitator setting forth good cause for such modification or relief. If the Objecting Party and the Rehabilitator reach a settlement regarding such modification or relief, the Rehabilitator shall submit a request to this Court seeking approval of such settlement. If the Objecting Party and the Rehabilitator fail to reach a settlement within 30 days of the Rehabilitator's receipt of such request, or such longer time as both the Rehabilitator and the Objecting Party agree, the Objecting Party may seek relief with this Court;
23. The failure by any person or entity to have objected to the injunctive relief set forth in this Order by June 22, 2012, any delay in seeking modification of, or relief from, the injunctive relief set forth in this Order through the procedures set forth in Paragraph 22 of this Order, and any delay in seeking a ruling from this Court pursuant to Paragraph 14 of this Order shall not waive, bar, or otherwise impair the right of such person or entity to challenge the validity of or seek to set aside all or any portion of the injunctive relief set forth in this Order or be deemed a waiver of any right to take any action that has been stayed by this Order if the injunctive relief applicable to such action is modified or lifted. Any person or entity that intends to challenge or seek to set aside all or any portion of the injunctive relief set forth in this Order shall follow the procedures set forth in Paragraph 22 hereof. Nothing in this Order shall be deemed to constitute a determination of any person's or entity's rights under any Transaction Documents or applicable law so long as the procedures in Paragraphs 14 and 22 are complied with;
24. The Rehabilitator may at any time make further application to this Court for such further and different relief as he sees fit;
25. A copy of this Order shall be served forthwith by certified and regular mail upon: John S. Dubel, Chief Executive Officer of FGIC, at the statutory home office of FGIC, located at 125 Park Avenue, New York, New York 10017, and Stroock & Stroock & Lavan LLP attn. William D. Latza, counsel for FGIC, located at 180 Maiden Lane, New York, NY 10038;
26. The Rehabilitator shall provide notice of this Order to all creditors and policyholders by (i) mailing such notice to all known creditors and policyholders by first class mail; (ii) publishing such notice in the Wall Street Journal and The Bond Buyer; and (iii) posting such notice on the internet website maintained by the NYLB for the Rehabilitation Proceeding at <http://www.fgicrehabilitation.com> (which shall be

accessible from <http://www.nylb.org> and <http://www.fgic.com>) within 30 days after the entry of this Order;

27. This Court shall have exclusive jurisdiction to interpret, implement, and enforce the provisions of this Order and to hear any and all matters relating to the Rehabilitation Proceeding; and
28. All further papers with respect to FGIC in this proceeding shall bear the caption:

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

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In the Matter of the Rehabilitation of	:	
FINANCIAL GUARANTY INSURANCE	:	
COMPANY.	:	
	:	
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E N T E R



J.S.C.
DORIS LING-COHAN