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FINANCIAL INSTITUTION FAILURES: INTERSECTION OF MULTIPLE INSOLVENCY REGIMES AND REGULATORS

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I. Overview of Financial Institution Failures

A. Under the Dodd-Frank Act, systemically important financial institutions ("SIFIs") must prepare a resolution plan outlining how the SIFI would preserve systemically important operations while undergoing a reorganization or liquidation under the Bankruptcy Code. Many of the SIFIs include regulated subsidiaries ineligible to file bankruptcy, but subject to alternative proceedings.

B. Today we review three types of alternative proceedings:

1. FDIA proceedings for US banks,

2. State law proceedings for US insurance companies, and

3. SIPA proceedings for US broker-dealers.

C. All three types of entities are excluded from federal bankruptcy law.

1. 11 U.S.C. 109(b) excludes banks, insurance companies, and broker-dealers from qualifying as debtors under chapter 7.

2. 11 U.S.C. 109(d) excludes banks, insurance companies, and broker-dealers from qualifying as debtors under chapter 11.

D. But their holding companies and affiliates may be eligible to be debtors under the Bankruptcy Code.

E. Finally, we discuss the prophylactic requirement under the Dodd-Frank Act that SIFIs prepare and submit to regulators plans for their orderly and rapid resolution upon failure.

II. FDIA Proceedings

A. *Overview*

1. The Federal Deposit Insurance Corporation (the "FDIC") was created in 1933 in response to a wave of bank failures.

a. From 1865-1933, bank depositors were treated as normal creditors who recovered a portion of their deposits only after a bank's assets were liquidated.

(i) At the federal level, it took approximately 6 years to liquidate a bank's assets, pay depositors, and close the bank's books.

(ii) Depositors at federally-chartered banks received an average of 58% of their deposits.

b. Illiquidity resulting from resolving bank failures contributed significantly to the Great Depression.

(i) An increase in bank failures during the 1920s, and a wave beginning in 1929, led to a shortage of experienced receivers.

(ii) National and state receivers were appointed as political favors, and receivers attempted to extend the work and make large commissions.

2. To stabilize the financial system and restore confidence in banks, in 1933 Congress created the FDIC.

a. Provided that the FDIC would insure deposits up to the deposit limit;

b. Gave the FDIC special powers to use in the liquidation of assets from failed banks and thrifts and in the payment of claims against the estate; and

c. Required the appointment of the FDIC as receiver for national banks and all banks with FDIC-insured deposits.

3. Laws were designed to promote the efficient and expeditious liquidation of failed banks and thrifts.

a. Congress believed the FDIC's appointment would simplify procedures, eliminate duplication of records, and vest responsibility for liquidation in the largest creditor – namely, the FDIC as subrogee for the insured deposits it paid.

b. The FDIC is required by statute to maximize the return on assets of the failed bank or thrift and minimize losses to the insurance fund.

B. *Appointment*

1. A depository institution's charter governs which state or federal regulator will appoint a receiver.

a. National banks and federal savings associations are overseen by the Office of the Comptroller of the Currency.

b. State-chartered savings and loan associations or banks are overseen by their respective state regulators.

2. For insured federal depository institutions, the FDIC must be appointed as receiver.

3. In certain limited circumstances, the FDIC may appoint itself as receiver for a state-chartered insured depository institution.

    a. Congress gave the FDIC this power in 1991 to protect the insurance fund; it did not want the FDIC to be dependent on the judgment of state-chartering authorities.

4. The FDIC as receiver is legally and functionally separate from the FDIC in its corporate capacity as deposit insurer.

C. *Receivership Process*

1. After a chartering authority closes a bank or thrift and appoints the FDIC as receiver, the FDIC:

    a. Takes custody of the failed institution's premises, records, loans, and other assets;

    b. Posts notices to explain the action to the public and changes locks and combinations;

    c. Notifies correspondent banks and other parties of the closing;

    d. Brings all accounts forward to the closing date and posts all applicable entries to the general ledger;

    e. Creates two complete sets of inventory books explaining the disposition of the institution's assets and liabilities – one for a prospective assuming institution, and one for the receivership; and

    f. Notifies all creditors, including customers with uninsured deposits, to submit their claims to the receiver.

        (i) Notices are mailed to all creditors identified in institution's records; and

        (ii) Notice is published in a local publication for 3 months.

2. The FDIC has a number of methods to resolve a distressed depository institution:

    a. Open bank assistance

        (i) The FDIC may offer financial assistance to a failed or failing institution by assuming liabilities, infusing capital, or facilitating a merger with another institution.

        (ii) This is used rarely.

b. Purchase and assumption (P&A) agreement

(i) The FDIC may arrange for another depository institution to purchase some or all of the failed institution's assets and assume some or all of its liabilities.

(ii) This is the most commonly used method (e.g., Washington Mutual → JPMorgan Chase).

c. Bridge bank

(i) The FDIC may establish a bridge bank temporarily to stabilize the failed institution and preserve going-concern value while pursing a P&A agreement or other alternative (e.g., IndyMac Bank).

d. Liquidation

(i) The FDIC may sell or otherwise liquidate assets and apply the proceeds to the institution's liabilities.

3. Payments to Depositors.

a. In resolutions of failed banks involving a P&A agreement, the healthy bank assumes the insured deposits of the failed bank (and, in certain cases, all deposits of the failed bank, insured or uninsured).

b. In other cases, when there is no sale to a healthy bank, the FDIC will pay depositors directly by check up to the insured balance, usually within two (2) business days of the bank closing.

D. *Receivership Powers*

1. The FDIC's role and responsibilities as receiver are defined in the Federal Deposit Insurance Act (the "FDIA").

2. As receiver, the FDIC may:

a. Step into the shoes of the failed institution, succeeding to the powers, rights, and privileges of the institution and its stockholders, officers, and directors;

(i) The FDIC may bring lawsuits for negligence, misrepresentation, or other wrongdoing.

b. Collect all obligations and money due to the institution, preserve or market and liquidate its assets and property, distribute proceeds to

creditors, and perform any other function consistent with the appointment;

c. Transfer assets and liabilities without the consent of any other agency, court, or contracting party;

d. Disaffirm or repudiate contracts such as leases, or choose not to do so if they benefit the institution;

e. Merge the failed institution with another insured depository institution; and

f. Form a new institution, such as a bridge bank, to take over the assets and liabilities of the institution, or sell the assets to the FDIC in its corporate capacity.

3. Many of the FDIC's powers in receivership are similar to a bankruptcy trustee's powers.

4. However, the FDIC was given additional powers to expedite the liquidation process for banks and thrifts to maintain confidence in the banking system and preserve a strong insurance fund.

a. As receiver, the FDIC is not subject to court supervision (or supervision by any other agency or department) or creditor participation in administering the assets and liabilities of the failed institution, and its decisions are reviewable only under very limited circumstances.

b. The goal is to limit interference and expedite the process so that the FDIC can maximize returns and minimize losses to the insurance fund.

5. Repudiation of Contracts

a. The FDIC may repudiate or disaffirm any contract within a reasonable time after appointment, if:

(i) It deems it burdensome, and

(ii) It finds that repudiation would promote the orderly administration of the estate.

b. Damages are limited to actual direct compensatory damages as of the date of the receiver's appointment.

(i) There are no accelerated, consequential, or loss-of-profit damages.

(ii) However, when terminating qualified financial contracts ("QFCs"), which include securities contracts, commodity contracts, forward contracts, repurchase agreements, and swap agreements, damages are measured as of the date of repudiation and may include the cost of acquiring a replacement QFC.

(a) The FDIC must either retain or repudiate all QFCs with a particular counterparty; if transferred, there must be one transferee for all of a counterparty's QFCs. It should be noted that the FDIC is expressly permitted to transfer QFCs, and that a one-day automatic stay applies to persons who are parties to QFCs, in order to allow the FDIC to transfer such contracts

c. The FDIC's repudiation power differs from a bankruptcy trustee, who can repudiate only executory contracts (i.e., contracts for which both parties have continuing obligations).

6. Avoiding Certain Fraudulent Conveyances

a. The FDIC may avoid any transfer made by the depository institution within five (5) years of its appointment as receiver, if the transfer was made with the intent to hinder, delay, or defraud the institution or its creditors.

(i) The FDIA allows the FDIC to avoid actually fraudulent transfers but, unlike section 548 of the Bankruptcy Code, does not cover constructively fraudulent transfers.

(ii) But the Dodd-Frank Act gives the FDIC, as receiver for covered financial companies in an orderly liquidation, broader avoidance powers, but with a shorter lookback period – the FDIC may recover actually fraudulent or constructively fraudulent transfers made within two (2) years of its appointment as receiver.

(iii) The Dodd-Frank Act also gives the FDIC, as receiver for covered financial companies in an orderly liquidation, the power to avoid preferential transfers made within 90 days of its appointment as receiver (or within 1 year if such creditor was an insider).

b. The FDIC's rights in avoidance are superior to the rights of any trustee or other party.

7. Enforcement

   a. The FDIC can enforce a contract (other than a QFC) entered into by the depository institution notwithstanding any *ipso facto* clause, i.e., a clause allowing the opposing party the right to terminate, accelerate, or exercise default rights based on insolvency/receivership.

   b. With respect to QFCs, other than a one-day automatic stay, counterparties to QFCs retain any rights in their contract to terminate such contracts based on receivership/insolvency.

8. Staying Litigation

   a. The FDIC may request that a court stay litigation in which it is involved as receiver for up to 90 days so that it can evaluate the case and decide how to proceed.

      (i) Courts cannot decline to issue the stay once the FDIC requests it.

      (ii) In multi-party litigation, the stay applies to all parties to the proceeding, not just the failed bank and adverse parties (unlike in bankruptcy).

9. Removal Power

   a. The FDIC may generally remove cases to federal court.

10. Statute of Limitations

   a. The FDIC also has a special statute of limitations (if longer than a state statute of limitations):

      (i) Six years for contract claims by the receiver;

      (ii) Three years for tort suits by the receiver; and

      (iii) The FDIC may revive certain tort claims, e.g., fraud, if they expired less than 5 years before the receivership was established.

11. The FDIC as Cross-Guarantee Creditor

   a. The FDIC may assess any loss that it suffers or anticipates suffering from a failed institution against other depository institutions controlled by the same holding company.

12. Special Defenses

a. Improperly-documented agreements are not binding on the FDIC.

(i) Common law and statutory counterparts [12 U.S.C. §§ 1821(e) and 1821(d)(9)(A)] recognize that unless an agreement is properly documented (written, approved, and continuously maintained in the bank's records), it cannot be enforced in making a claim or defending against a claim by the receiver.

b. As receiver, the FDIC cannot be enjoined.

(i) Courts cannot issue injunctions or similar equitable relief to restrain the FDIC from completing its job, nor can they issue any order to attach or execute upon any assets in the possession of the receiver.

c. In certain circuits, the FDIC may be entitled to the status of "holder in due course" of a negotiable instrument under state law and therefore hold those instruments free of personal claims or defenses of the maker of the instrument.

E. *Resolution of Claims*

1. Claimants must file timely proof of claims.

a. The FDIC has 180 days to determine whether claim should be allowed.

(i) If allowed, then the claim is paid on a *pro rata* basis, to the extent funds are available after receivership expenses are paid, with other allowed claims of the same priority class.

(ii) If the FDIC is not satisfied that the claim has merit or if it takes no action, the claim is disallowed.

(a) Within 60 days after the claim is denied (or deemed denied), the creditor may seek judicial review by filing a lawsuit.

(b) Administrative avenues must be exhausted before litigation can be pursued.

F. *Payment of Claims*

1. Secured Claims

   a. The FDIC will generally recognize a perfected security interest as long as the agreement is properly documented, the creditor is not an affiliate of the depository institution, and the obligation arises out of a bona fide arm's length transaction for adequate consideration.

      (i) Secured claims are satisfied in full up to the value of the collateral, with any additional amount treated as an unsecured claim as described below.

      (ii) Perfected secured creditors can use reasonable self-help methods in jurisdictions allowing such methods as long as the FDIC's involvement is not required and there was a default other than through an *ipso facto* provision in the contract.

2. Unsecured Claims

   a. The National Depositor Preference Amendment became effective August 10, 1993, and sets the priority for paying allowed claims against a failed depository institution:

      (i) Administrative expenses of the receiver

      (ii) Deposit liability claims

         (a) Insured deposit claims are replaced by the FDIC claim

      (iii) Other general or senior liabilities of the institution

         (a) The preference for deposit liability claims often eliminates recovery for unsecured general creditors

      (iv) Subordinated obligations

      (v) Shareholder obligations

3. The FDIC's maximum liability to a claimant is what the claimant would receive if the institution's assets were liquidated.

III. **State Law Proceedings for Insurance Companies**

A. *Exclusion from Federal Bankruptcy Law*

1. Bankruptcy Code

   a. 11 U.S.C. 109(b) excludes domestic insurance companies from qualifying as debtors under chapter 7.

   b. 11 U.S.C. 109(d) excludes domestic insurance companies from qualifying as debtors under chapter 11.

2. McCarran-Ferguson Act:

   a. (a): "the business of insurance . . . shall be subject to the laws of the several States"

   b. (b): "No Act of Congress shall be construed to invalidate, impair or supersede any law enacted by any State for the purpose of regulating the business of insurance . . unless such Act specifically relates to the business of insurance . . . ."

3. Insolvency proceedings of an insurance company constitute "the business of insurance" and bankruptcy law does not specifically relate thereto.

B. *What Constitutes Insurance?*

1. Each state statute defines insurance under its own insurance laws.

2. Common elements of insurance:

   a. The applicable agreement must confer upon the insured or beneficiary a pecuniary interest.

   b. The pecuniary benefit is payable upon occurrence of a certain fortuitous event.

   c. The insured or beneficiary has a material interest that may be adversely affected by such fortuitous event ("insurable interest" or "indemnity" requirement).

C. *Applicable Insolvency Law*

1. Insurance operating companies are creatures of state law, which varies from state to state.

2. Rehabilitation and/or liquidation of insurance companies are exclusively state law proceedings. States have significantly different laws with respect to insurance company rehabilitation or liquidation.

3. Most states adopt either:

   a. The Insurers Rehabilitation and Liquidation Model Act (1995) (the "Model Act"); or

   b. The Uniform Insurer's Liquidation Act (1939) (the "Uniform Act").

4. The National Association of Insurance Commissioners (the "NAIC") revised the Model Act in 2005 and adopted it as the Insurer Receivership Model Act, but only Oklahoma, Texas, and Utah have enacted all or part of it.

5. New York has enacted a version of the Uniform Act (N.Y. Ins. Law §§ 7401-36).

6. Wisconsin has enacted a version of the Model Act.

D. *Restructuring Mechanisms*

1. Supervision

   a. The regulator requires the insurer to obtain certain approvals to operate, but no court proceeding is initiated and the supervision is confidential.

   b. If not feasible or not effective, then the regulator will consider seeking a state court order placing the insurer into insolvency proceeding as the next step.

2. Rehabilitation

   a. This is similar to chapter 11 restructuring (with a chapter 11 trustee).

   b. Used when the continued viability of insurer is possible

   c. The receiver takes over the assets of the insurer in order to stabilize and rehabilitate it, with the hope of allowing the insurer (or some portion thereof) to ultimately emerge from the proceeding.

   d. The receiver "stands in the shoes" of the insurer.

   e. The receiver may at any time apply to court to convert rehabilitation proceeding into liquidation.

3. Liquidation

   a. This is similar to chapter 7 liquidation.

   b. Used when the continued viability of insurer is doubtful and relatively quick action is necessary

   c. The receiver protects and marshals assets (including reinsurance recoveries) for liquidation.

   d. The receiver receives and reviews claims filed and distributes assets in accordance with a priority scheme.

E. *Key Features*

1. Primary Purpose: Protection of policyholders

2. Procedural Issues

   a. Timing: Typically, long-term process (10+ years)

   b. Court: State court proceeding

   c. Eligibility: Various grounds for rehabilitation or liquidation, including:

      (i) Insolvency;

      (ii) Refusal to submit books, papers, accounts or affairs for inspection;

      (iii) Further transaction of business would be harmful to policyholders;

      (iv) Willful violation of charter or any law of the state;

      (v) Ceasing to do business of insurance for one year;

      (vi) Voluntary commencement of liquidation or dissolution; or

      (vii) Consent through majority of directors, shareholders, or members.

3. Role of the Receiver:

   a. The receiver has exclusive control to petition court to place insurer into an insolvency proceeding.

   b. The receiver has sole authority to propose a plan of rehabilitation.

c. The receiver, acting as rehabilitator, supersedes the board of directors (there is no debtor-in-possession).

d. Policyholders and creditors can object to plan, but the court typically gives significant deference to the receiver.

F. *Comparisons to Bankruptcy*

1. Broad powers of the receiver to "take such steps toward the removal of causes and conditions which have made such proceeding necessary as the court shall direct."

2. No automatic stay

3. No QFC safe harbors in many states

4. A rehabilitation plan need only provide policyholders with at least as much as they would have received in liquidation.

5. Policyholders are accorded special priority treatment, superior to other general unsecured creditors and even governmental claims.

6. Availability of state guaranty fund coverage

7. No debtor-in-possession (but management might remain in place)

8. No disclosure statement is required.

9. No creditor approval is required.

10. No recovery for contingent claims in many states, including New York

11. Court oversight / approval is required

12. Although there is no automatic stay, policyholders and creditors are typically enjoined from suing the insurer or attaching the insurer's assets.

13. Claw back of preferences by the receiver (12 month look-back)

14. Fixing of a bar date and filing of proofs of claim within a specified period of time

15. Setoff of mutual debts and credits is permitted

G. *Insurance Holding Company Chapter 11*

1. Entities that own insurance companies may be chapter 11 debtors.

2. State regulators remain in control of insurance company subsidiaries even when the holding company is in chapter 11. Relevant issues include:

   a. How many insurance companies are in the group?

   b. What kinds of insurance are written?

   c. Where are the insurers domesticated and which state is the primary regulator?

   d. Will states form a steering committee to handle insurance issues?

3. State laws give insurance regulators authority over:

   a. Holding company board of directors as well as the selection of any new directors;

   b. Any transfer of assets from the insurance company to any affiliated entity;

   c. Any agreement regarding use and sharing of insurance company NOLs;

   d. Any proposed sale of insurance companies or any parts thereof; and

   e. Ability of insurance companies to write new businesses while the parent is in chapter 11.

H. *Case Studies*

1. Ambac – chapter 11 filed after state proceeding was commenced

2. Conseco – chapter 11 for parent but insurers continued to operate under supervision of state regulators

3. FGIC – chapter 11 filed and state regulator is currently supervising insolvent insurer

I. *Other Materials*

1. Illustrative Statutes [see handout materials]

   a. New York

   b. NAIC Model

2. Summaries of Proceedings and News Articles

a. Ambac [see Appendix A]

b. Conseco [see Appendix B]

c. FGIC [see Appendix C]

IV. SIPA Proceedings

A. *Securities Investor Protection Act*

1. The Securities Investor Protection Act of 1970 (as amended, "SIPA"), codified at 15 U.S.C. §78aaa et seq., operates as a parallel regulatory scheme to govern the liquidation of broker/dealers.

2. SIPA's primary purpose is to provide financial protection to customers of failing broker/dealers and to prevent the failure of a single broker/dealer from dragging down other, solvent, broker/dealers having substantial open transactions with the troubled firm.

B. *Securities Investor Protection Corporation*

1. SIPA's objectives are carried out largely though the intervention of the Securities Investor Protection Corporation (the "SIPC"). The SIPC has broad powers to place failing broker/dealers into proceedings under SIPA, to notify customers of their rights to make claims, to appoint a trustee to manage the liquidation of the broker/dealer, to distribute securities and cash to customers, and, to the extent that such securities and cash are insufficient to satisfy customer claims, to advance monies from a special fund to cover a deficiency of up to $500,000 (of which no more than $100,000 may relate to cash).

2. The SIPC is a statutory, nonprofit corporation and is comprised of nearly all broker/dealers registered under the Securities Exchange Act of 1934 (the "1934 Act"), and, with certain limited exceptions, all members of national securities exchanges.

3. SIPA adopts definitions for the terms "broker" and "dealer" from the 1934 Act. Broker/dealers are generally not eligible for relief under chapter 11 of the Bankruptcy Code.

C. *Commencement of SIPA Proceeding*

1. The SIPC generally commences a SIPA proceeding by filing an application and complaint in the appropriate district court. There is no private right of action to initiate a SIPA proceeding.

2. The commencement of a SIPA proceeding automatically halts any case pending for a debtor under the Bankruptcy Code. Upon entry of a protective decree and appointment of a trustee, the SIPA proceeding is removed to the appropriate bankruptcy court which, among other things, exercises exclusive jurisdiction over all of the property of the debtor wherever located, including property held as security for a debt or subject to a lien.

3. Section 78eee(b)(1) of SIPA provides that the district court shall issue the protective decree if the debtor consents, fails to contest the SIPC's application, or satisfies one of the following conditions: the debtor (i) is insolvent within the meaning of section 101 of the Bankruptcy Code, (ii) is the subject of a proceeding pending in any court or before an agency of the United States or any State in which a receiver, trustee or liquidator for such debtor has been appointed; (iii) is not in compliance with the applicable requirements of the 1934 Act or the rules of the Securities Exchange Commission or any self-regulatory agency with respect to financial responsibility or hypothecation of customers' security; or (iv) is unable to make such computations as may be necessary to establish compliance with such financial responsibility or hypothecation rules.

D. *Applicability of the Bankruptcy Code to a SIPA Proceeding*

1. SIPA specifically adopts chapters 1, 3 and 5, and subchapters I and II of chapter 7 of the Bankruptcy Code to the extent such provisions are consistent with SIPA. A Bankruptcy Code provision is inconsistent with SIPA if it "conflicts with an explicit provision" of SIPA or if its application "substantially impedes the fair and effective operation of SIPA without providing significant countervailing benefits."

2. Subchapter III of chapter 7 of the Bankruptcy Code also contains a liquidation scheme for broker/dealers but, following the enactment of SIPA, is rarely used because SIPC advances are not available in a chapter 7 liquidation.

E. *Customers*

1. The "customer" designation is extremely significant in a SIPA proceeding because persons determined to be customers of the debtor receive preferential treatment.

2. "Customer" is defined in 15 U.S.C. §78lll(2) as:

Any person (including any person with whom the debtor deals as principal or agent) who has a claim on account of securities received, acquired, or held by the debtor in the ordinary course of its business as a broker or dealer from or for the securities accounts

of such person for safekeeping, with a view to the sale, to cover consummated sales, pursuant to purchases, as collateral security, or for purposes of effecting transfer. The term “customer” includes any person who has a claim against the debtor arising out of sales or conversions of such securities, and any person who has deposited cash with the debtor for the purpose of purchasing securities.

F. *Securities*

1. “Security” is defined in 15 U.S.C. §78lll(14) as:

> any note, stock, treasury stock, bond, debenture, evidence of indebtedness, any collateral trust certificate, preorganization certificate or subscription, transferable share, voting trust certificate, certificate of deposit, certificate of deposit for a security, any investment contract or certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or mineral royalty or lease (if such investment contract or interest is the subject of a registration statement with the [SEC] pursuant to the provisions of the Securities Act of 1933), any put, call, straddle, option, or privilege on any security, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase or sell any of the foregoing, and any other instrument commonly known as a security. Except as specifically provided above, the term "security“ does not include any currency, or any commodity or related contract or futures contract, or any warrant or right to subscribe to or purchase or sell any of the foregoing.

2. Certain transactions, such as repos, may not qualify as securities under SIPA.

G. *Bulk Transfers*

1. Section 78fff-2(f) of SIPA authorizes the trustee to sell or otherwise transfer a debtor’s customer accounts to another member of the SIPC. Such bulk transfers of customer accounts do not require the consent of the holders of such accounts.

H. *Customer Property*

1. The debtor's assets are divided into three categories:

    a. Customer Name Securities – include securities that are registered in the name of the customer. These are usually returned to the customer outright.

    b. Assets of the General Estate – includes any assets that are not Customer Name Securities or Customer Property.

    c. Customer Property – includes the cash and securities (other than customer name securities) at any time received or held by or for the account of a debtor from or for the securities accounts of a customer, and the proceeds of such property transferred by the debtor.

        (i) Includes property of the debtor which, upon compliance with applicable laws, would have been set aside or held for the benefit of customers (i.e. 15c-(c)(3) accounts)

2. Net Equity

    a. The most contentious issue in a SIPA proceeding is the determination of what constitutes customer property. This process generally involves disputes over who qualifies as a "customer," and what qualifies as a "security."

    b. In order to determine the total amount of customer claims, the trustee must calculate each customer's Net Equity Claim. This is a dollar figure determined by adding any cash held in the customer's account to the value, as of the Commencement Date, of the securities (other than Customer Name Securities which have already been returned) held for that account. Any debit balance (amount owed by the customer to the broker dealer) is then subtracted leaving the Net Equity Claim.

3. Distributions

    a. To the extent that a portion of a customer's net equity claim is comprised of securities, such claim is paid, to the extent practicable, with securities of the same class and series as those that were in the customer's account as of the Commencement Date.

    b. If there is a shortage, the trustee typically purchases replacements, if available, in the open market.

c. While the net equity claim is calculated using dollars, customers receive the number of shares that were in their account on the Commencement Date since the securities that are returned in satisfaction of the claim also are valued on the basis of their value as of the Commencement Date. As a result, customers are exposed to fluctuations in the value of the security during the period of time between the Commencement Date and the date of return of the securities and do not have claims for loss of value.

I. *SIPC Fund*

1. If customer property is insufficient to satisfy a customer's net equity claim, the SIPC will advance funds to enable the trustee to purchase securities or pay cash to make up the deficiency up to a maximum of $500,000 (based on Commencement Date values) of which not more than $100,000 can be for a cash claim.

2. To the extent that a customer's account exceeds either of these limits, such customer is entitled to a *pro rata* share of the assets of the general estate for the deficiency.

J. *Investigations*

1. Section 78fff-1(d) requires that the trustee "investigate the acts, conduct, property, liabilities, and financial condition of the debtor, the operation of its business, and any other matter, to the extent relevant to the liquidation proceeding, and report thereon to the court."

V. Living Wills

A. *Section 165(d) of Dodd-Frank requires SIFIs to submit an annual Resolution Plan (a "Living Will").*

1. A Living Will provides for the rapid and orderly resolution of the Covered Company, under the Bankruptcy Code or other applicable insolvency regimes, in a manner designed to avoid systemic risk and preserve operations critical to the U.S. financial markets.

2. "Covered Companies" subject to Section 165(d) include:

a. Non-bank financial companies supervised by the Fed;

b. U.S. bank holding companies with $50 billion or more in consolidated assets; and

c. Non-U.S. bank holding companies with $50 billion or more in consolidated assets.

3. Living Wills are submitted annually to the Fed and the FDIC, who were charged with issuance of rules to implement Section 165(d) and ongoing review and oversight of the Living Wills process.

4. On September 13, 2011, the FDIC approved a final rule implementing Section 165(d), which received Fed approval on October 17, 2011, and will become effective on November 30, 2011.

B. *Living Wills must include:*

1. Plan: A strategic contingency plan to maintain critical operations (which may include a sale or transfer of assets to third parties), resolve material entities using the Bankruptcy Code or other insolvency regimes, and account for scenarios of both isolated failure of the Covered Company and a systemic crisis

2. Strategic Analysis: Analysis of strategy to address funding, liquidity and capital requirements of core business lines, critical operations, and material entities; key assumptions underlying the plan; range of actions to be taken to implement the plan; and impact on other SIFIs, international operations, and the Covered Company's core business lines, critical operations, and material entities

3. Disclosure: Information regarding the Covered Company's ownership structure, assets, liabilities, interconnectedness, contractual obligations, core business lines, critical operations, material entities, major counterparties, hedging and other derivatives transactions, international operations, and corporate governance

C. *Timeline for Submission*

1. The deadline for submission of a Living Will depends on the size of the Covered Company:

   a. By July 1, 2012: Covered Companies with $250 billion or more in total non-bank assets

   b. By July 1, 2013: Covered Companies with $100-249 billion in total non-bank assets

   c. By December 31, 2013: remaining Covered Companies

2. If deemed a "Covered Company" after the final rule's effective date, then the submission deadline is July 1 following the date of designation as a Covered Company, so long as the company has been a Covered Company for at least 270 days.

3. In the event the Covered Company experiences a material event or change in circumstances, it must submit a notice with the FDIC and the Fed no later than 45 days after the occurrence of such event or change in circumstances.

4. The Covered Company must submit an annual updated Living Will on or before subsequent anniversary dates of the date of submission of its initial Living Will.

5. The FDIC and the Fed may grant a Covered Company an extension of time, require a Covered Company to file interim updates, or require a Covered Company to submit its Living Will on a more frequent basis.

D. *Approval and Review of Living Wills*

1. Board Approval:

   a. The Covered Company's board of directors must approve each Living Will.

2. Regulatory Review:

   a. Within 60 days from submission, the Fed and the FDIC must advise the Covered Company whether the Living Will is informationally incomplete or requires substantial additional information.

      (i) The Covered Company has 30 days to submit a revised Living Will, unless extended by the Fed and the FDIC.

   b. Once informationally complete, the Fed and the FDIC review the Living Will to determine whether it presents a credible plan for the rapid and orderly resolution of the Covered Company.

      (i) If deficiencies are identified, the Covered Company has 90 days to submit a revised Living Will addressing the deficiencies, unless extended by the Fed and FDIC

E. *Failure to Submit a Credible Living Will*

1. Imposition of Stringent Requirements

   a. The Fed and the FDIC may jointly impose more stringent capital, leverage, or liquidity requirements, or restrict growth and operations of the Covered Company – this may include forced subsidiarization.

2. Divestiture of Assets or Operations

a. If the Covered Company fails to remedy deficiencies within a 2-year period beginning on the date restrictions were imposed, the Fed and the FDIC may, in consultation with the Financial Stability Oversight Council, jointly direct the Covered Company to divest certain assets or operations.

F. *Confidentiality and Non-Binding Nature*

1. Public v. Confidential aspects of Living Will submissions

a. Public Section: Required to include an executive summary of the Living Will including a description of the Company's business and the elements and concepts underlying its resolution strategy

b. Private Section: Internal proprietary information, trade secrets and privileged information may be designated as confidential by the Covered Company

(i) To receive confidential treatment, the Covered Company must submit a properly substantiated FOIA request, which will be considered by the FDIC and the Fed.

(ii) The Fed and the FDIC have publicly recognized that large portions of the Living Will submissions will contain confidential information.

2. Non-Binding Nature of Living Wills

a. No Private Right of Action: No private right of action exists based on the preparation or submission of a Living Will or the Fed or the FDIC's actions with respect to a Living Will submission.

b. No Limiting Effect: Nothing in the Living Will shall limit a court, trustee, receiver, or other authority (including a subsidiary or affiliate) authorized to resolve a Covered Company.

c. Board Approval: Although each Living Will must be approved by the Covered Company's board of directors, such approval does not equate to certification that the Living will is accurate and current.

G. *Holding Company v. Insured Depository*

1. BHCs v. IDIs: By year-end, implementing rules governing the submission of resolution plans by both bank holding companies ("BHCs") and insured depository institutions ("IDIs") will be final.

    a. Resolution planning for BHCs and IDIs include many of the same information and analytical requirements and follow a similar timetable for submission.

    b. BHCs and their subsidiary IDIs may incorporate by reference information contained in their parent or subs' submission.

Appendix A

FFHSJ Draft

Ambac Financial Group, Inc. ("Ambac")

I. Structure

A. Ambac is a Delaware incorporated insurance holding company headquartered in New York City. Ambac is a public company.

B. Ambac owns 100% of the voting equity interests of Ambac Assurance Corporation ("AAC"), which is Ambac's principal operating subsidiary. AAC is a Wisconsin-domiciled financial guaranty insurance company.

II. Background

A. Since 1991, Ambac has been the common parent of an affiliated group of corporations (the "Ambac Consolidated Group") that files a single consolidated U.S. federal income tax return pursuant to a tax sharing agreement entered into on July 18, 1991 (the "Tax Sharing Agreement").

B. Ambac's financial guarantee business was historically supported by AAC's triple-A ratings and investor confidence in AAC's financial strength.

C. Due to AAC's deteriorating financial condition, losses in its insured portfolio and resulting downgrades of AAC's financial strength ratings, AAC originated *de minimis* amounts of new business from November 2007 through the end of 2008 and has been able unable to originate any new business since 2008. This lack of revenue from writing new policies, combined with payment of policyholder claims well in excess of historic levels, caused the Office of the Commissioner of Insurance for the State of Wisconsin and the Commissioner of Insurance for the State of Wisconsin (together, "OCI") to approach AAC in September 2008 to discuss possible restructuring scenarios.

D. On December 16, 2009, pursuant to an amendment to the Tax Sharing Agreement (the "December Tax Amendment"), AAC was granted a trust and/or security interest in U.S. federal income tax refunds allocable to net operating loss ("NOL") carryovers attributable to losses incurred by AAC.

E. On September 23, 2008, August 11, 2009 and December 21, 2009, Ambac filed claims with the IRS for tentative clawback adjustment on Form 1139 (Corporate Application for Tentative Refund) as a result of the carryback to prior taxable years of $33 million and $3.2 billion of NOLs in 2007 and 2008 respectively. The IRS refunded over $700 million, which Ambac transferred to AAC pursuant to the Tax Sharing Agreement and the December Tax Amendment.

III. Restructuring Efforts

A. Between September 2008 and March 2010, Ambac, the AAC and OCI worked closely together to minimize damage and loss resulting from restructuring scenarios to AAC policyholders, AAC creditors and Ambac.

1. On March 24, 2010, AAC acquiesced to the request of the OCI and established a segregated account (the "Segregated Account") pursuant to Wisconsin insurance law. The Segregated Account is a separate insurer from AAC created for segregated account rehabilitation proceedings in order to segregate certain segments of AAC's liabilities. The Segregated Account operates exclusively through the Wisconsin Commissioner of Insurance (the "Rehabilitator") and deals with (i) certain policies insuring or relating to credit default swaps ("CDS"), (ii) residential mortgage-backed securities policies, (iii) certain student loan policies and (iv) other policies insuring obligations with substantial projected impairments or related transactions.

   a) As of June 30, 2011, net par exposure of the Segregated Account policies was $40.5 billion. The Segregated Account is capitalized by a $2 billion secured note due 2050 issued by AAC and an aggregate excess of loss reinsurance agreement provided by AAC.

2. On March 24, 2010, OCI commenced rehabilitation proceedings with respect to the Segregated Account in the circuit court of Dane County Wisconsin (the "Rehabilitation Court") to permit OCI to facilitate an orderly run-off and/or settlement of the liabilities in the Segregated Account.

   a) The Rehabilitation Court also entered a temporary injunction order effective until further court order enjoining certain actions by Segregated Account policyholders and other counterparties.

3. Pursuant to a CDS settlement agreement between AAC, ACP and certain counterparties (the "CDS Counterparties"), AAC paid to the CDS Counterparties (i) $2.6 billion and (ii) $2 billion in principal amount of newly issues surplus notes of AAC. In exchange, Ambac Credit Products, LLP ("ACP") and AAC commuted all obligations relating to (i) a commutation agreement entered into with each of the CDS Counterparties that is a party to CDS written by ACP with respect to certain collateralized debt obligations backed by asset-backed securities ("CDO of ABS")

and (ii) related financial guarantee insurance policies written by AAC with respect to ACP's obligations ("Commuted CDS of ABS Obligations") totaling $16.5 billion of par.

a) In addition, AAC also commuted for $96.5 million of cash certain additional obligations, including non-CDO of ABS obligations, to the CDS Counterparties with par or notional amounting to $1.4 billion.

b) AAC also commuted another CDO of ABS transaction in an amount equal to its remaining par value of $90 million.

B. On June 7, 2010, Ambac and its affiliates entered into a subsequent tax sharing agreement in which the Ambac Consolidated Group was split into two subgroups: (i) Ambac and its non-AAC subsidiaries (the "Ambac Subgroup") and (ii) AAC and its subsidiaries (the "AAC Subgroup"). The agreement requires Ambac to compensate AAC on a current basis if it uses NOLs attributable to losses incurred by the AAC Subgroup to offset income attributable to the Ambac Subgroup, subject to certain other restrictions.

C. On October 8, 2010, the Rehabilitator filed a plan of rehabilitation with the Rehabilitation Court (which was confirmed on January 24, 2011) in which holders of permitted Segregated Account policies will receive 25% of their permitted claims in cash and 75% in surplus notes of the Segregated Accounts. The effective date has yet to be determined by the Rehabilitator.

D. On October 28, 2010, the IRS sent Ambac an information document request ("IDR") regarding (i) the Form 3115 that Ambac filed in 2008 and (ii) claims filed by Ambac regarding adjustment on its refunds. Additionally, the IRS questioned the loss accounting methods Ambac used in reporting consolidated NOLs on September 30, 2010 of approximately $7.3 billion.

E. Ambac's management feared that the IRS would asses Ambac for a deficiency and immediately obtain liens and levy upon Ambac's cash assets, AAC's assets and any other Ambac affiliate without notice to Ambac or an opportunity to pay or object to such assessed deficiency. Because these enforcement actions had the potential to eliminate Ambac's ability to reorganize and force it into liquidation proceedings, on November 8, 2010 (the "Petition Date"), Ambac filed for chapter 11 protection in the bankruptcy court of the Southern District of New York.

1. As of the Petition Date, pursuant to a number of senior and subordinated notes, Ambac had approximately $1.6 billion in outstanding unsecured debt.

F. On November 9, 2010, Ambac commenced an adversary proceeding against the IRS (the "IRS Adversary Proceeding") seeking a preliminary injunction pursuant to Bankruptcy Code § 105(a) barring assessment and collection of tax refunds against non-debtor entities in the Ambac Group. Ambac and the IRS agreed to a stipulation that the IRS would provide 5 days notice before taking any action against Ambac's non-debtor subsidiaries in the Ambac Subgroup.

G. On November 30, 2010, the Bankruptcy Court entered an order restricting the transfers of equity interests in and claims against Ambac, the purpose of which is to preserve Ambac's NOLs.

1. Under IRC section 382, if a corporation undergoes an "ownership change," the amount of pre-ownership change NOLs which may be utilized to offset future taxable income generally is subject to an annual limitation. In general, the amount of this annual limitation is equal to the product of the fair market value of the stock of the corporation immediately before the ownership change and the "long-term tax-exempt rate." Ambac intends to qualify for a special exception that would exempt the company from the annual limitation on use of NOLs even if there is an ownership change.

H. On February 1, 2011, Ambac filed a motion in the IRS Adversary Proceeding seeking, amongst other things, authorization to implement alternative dispute resolution procedures.

I. On May 5, 2011, the IRS filed claims for over $807 million for return of tax refunds for 2007 and 2008.

J. On July 6, 2011, Ambac filed a proposed plan of reorganization which contemplated a debt for equity exchange and a plan settlement by Ambac, AAC, the Segregated Account and OCI.

1. Key terms of the proposed plan of reorganization:

a) Ambac would retain ownership of AAC.

b) Ambac, AAC, the Segregated Account and OCI would execute a series of amendments to the Tax Sharing Agreement regarding the allocation of and payment by AAC for use of the NOLs.

c) Ambac and AAC would share expenses incurred by the IRS Adversary Proceeding and related issues.

K. On July 6, 2011, mediation in the IRS Adversary Proceeding commenced with the participation of the IRS, Ambac, AAC, the committee of unsecured creditors and OCI (the "Mediation Parties"). After several weeks of mediation, the Mediation Parties agreed entered into a cooperation agreement upon which a second amended plan of reorganization could be based.

1. Key terms of the cooperation agreement and second amended plan:

a) Ambac will use its best efforts to preserve the NOLs for the benefit of the AAC Subgroup, including its best efforts to obtain a confirmation order from the Bankruptcy Court memorializing such.

b) Ambac will (i) provide the Rehabilitator the ability to participate in all meetings, (ii) provide the Rehabilitator all reports provided to Ambac management and (iii) obtain Rehabilitator approval prior to accepting repayment of any intercompany loan in an amount in excess of $50 million per annum or any modification to or deemed repayment of any intercompany loan that would result in Ambac recognizing income or a reduction in issue price in excess of $50 million.

c) Any changes to Ambac's existing investment policy shall be submitted to the Rehabilitator for approval.

d) AAC will make a $30 million up front payment for Ambac's benefit and pay $5 million per year to cover some of Ambac's operating expenses.

e) General unsecured claimholders would receive 8.5 cents to 13.2 cents on the dollar, while holders of $1.25 billion of senior notes would receive between 11.4 cents and 17.6 cents on the dollar.

f) The plan provides for broad releases of Ambac, AAC, the Segregated Account, OCI, the Rehabilitator and others.

L. On October 5, 2011, Judge Shelley Chapman approved Ambac's second amended disclosure statement. Creditors have until November 23, 2011 to vote on the plan of reorganization.

M. On October 12, 2011, Ambac filed a motion to determine what amounts the company owes the IRS on the claims the IRS has made regarding the tax refunds for 2007 and 2008. Ambac has stated that the OCI is near the point it could offer a settlement to the IRS regarding tax claims, but that the allowance of the full amount of the IRS claims would be "catastrophic" and likely lead to a liquidation. A hearing is set in this matter for October 26, 2011.

IV. Interesting Issues

A. The Rehabilitator (i.e. the Wisconsin insurance commissioner) has played a much larger role in Ambac's chapter 11 case than the New York insurance commissioner as played in FGIC Corp.'s chapter 11 case.

B. In addition, pursuant to the cooperation agreement, the Rehabilitator will continue to play a large rile in Ambac's affairs after the chapter 11 case concludes.

BOND INSURERS: Ambac Rehab Plan a Positive, Moody's Says The Bond Buyer October 19, 2010 Tuesday

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October 19, 2010 Tuesday

SECTION: UNDERWRITERS & DEALERS; Pg. 20 Vol. 374 No. 33401

LENGTH: 626 words

HEADLINE: BOND INSURERS: **Ambac** Rehab Plan a Positive, Moody's Says

BYLINE: Patrick McGee

BODY:

Moody's Investors Service said the proposed **rehabilitation** plan to deal with **Ambac** Assurance Corp.'s segregated account of high-risk insured assets is a credit positive and, if confirmed by the courts, will put the Wisconsin-domiciled bond insurer "one step closer to an orderly run-off."

Ambac has not written new policies since June 2008. It was a triple-A rated insurer before its portfolio imploded from guaranteeing toxic mortgage-related assets.

It is now rated Caa2 by Moody's and R, indicating regulatory action, by Standard & Poor's.

The **rehabilitation** plan was announced Oct. 8 by Sean Dilweg, the Wisconsin insurance commissioner.

Dilweg created the segregated account in March and deposited into it about 700 of **Ambac's** riskiest policies covering a net par outstanding amount of about $50 billion.

Dilweg's proposed plan, which requires approval from the Wisconsin Circuit Court for Dane County, would give segregated account policyholders 25% of their permitted claims in cash and 75% in notes backed by the company's surplus with a scheduled maturity of June 7, 2020.

The notes would bear a 5.1% coupon and would make interest payments on a schedule in accordance with the original policy contract.

"That really helps to mitigate the liquidity crunch in the general account," Helen Remeza, vice president and senior analyst at Moody's, said in an interview.

She added that the plan will allow the insurer to pay $656 million of suspended claims that came due in the six months ending June 30.

The general account includes about $200 billion of insured municipal bonds.

That action will remove substantial uncertainty, Remeza said.

The Wisconsin regulator earlier clarified **Ambac's** fiscal future in June when it ordered the insurer to pay 14 major banks $2.6 billion in cash and $2 billion in surplus notes in exchange for commuting, or tearing up, a number of credit default swap contracts that had a face value of

$16.4 billion.

"The filing of the final plan, together with the commutation in June, puts **Ambac** one step closer to an orderly run-off, which is credit positive for general account policyholders," Remeza wrote in Moody's Weekly Credit Outlook.

The separate account is mostly made up of mortgage-backed securities and other structured finance products.

The account also includes defaulted municipal debt issued for the Las Vegas monorail by Las Vegas Monorail Co. through the Nevada Department of Business & Industry, and some other muni assets, including surety and swap wraps, according to Remeza.

Dilweg said last week the **rehabilitation** plan aims to give holders of the risky assets as much cash as possible without depriving **Ambac** of its ability to pay other future claims.

The Wisconsin regulator last week released four scenarios assuming different losses and remediation recoveries.

In the best-case scenario, surplus noteholders would be paid all owed claims, leaving money left over to pay subordinate claims including those from reinsurance contracts.

In the three other scenarios, segregated account policyholders take a loss. In the most stressful case, Remeza said senior note policyholders would receive 45% of par, resulting in a 58.75% ultimate recovery on policy claims, while subordinate claims would receive nothing.

Before the separate account was established, **Ambac** policyholders were treated on a "first-come, first-served" approach, Remeza wrote in April.

That left many policyholders - including muni-debt owners - at a disadvantage because "aggregate resources may ultimately prove to be inadequate to cover all claims."

Dilweg plans to keep the courts current on **Ambac's** run-off by providing an annual update. If **Ambac's** unwinding goes smoothly, the cash-to-notes ratio could increase if claims-paying resources are sufficient.

URL: http://www.bondbuyer.com/

LOAD-DATE: October 19, 2010

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Ambac Files Reorganization Plan; Wisconsin Regulator Finds Fault The Bond Buyer July 8, 2011 Friday

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July 8, 2011 Friday

SECTION: UNDERWRITERS & DEALERS; Pg. 20 Vol. 377 No. F326

LENGTH: 599 words

HEADLINE: Ambac Files Reorganization Plan; Wisconsin Regulator Finds Fault

BYLINE: Taylor Riggs

BODY:

Ambac Financial Group, the bankrupt holding company for bond insurer **Ambac** Assurance Corp., filed a plan of reorganization in **bankruptcy** court this week, but quickly came under criticism from the Wisconsin regulator in charge of overseeing **Ambac** Assurance.

Ambac Financial, which voluntarily filed for Chapter 11 last November, has struggled to devise a plan that both **Ambac** Financial and the Wisconsin Office of the Commissioner of Insurance can agree on.

In a statement, Wisconsin rehabilitator Theodore Nickel, who oversees the segregated account of **Ambac** Assurance, said he "does not believe that the reorganization plan proposed by **Ambac** Financial is in the best interests of policyholders of the segregated account, or for that matter, those of the **Ambac** Financial creditors."

The OCI rehabilitator added that he engaged in discussions for several months with **Ambac** Financial and its **bankruptcy** creditors committee to see if mutually agreeable terms could be arrived at, but it seems no such agreement has been met.

"Despite the rehabilitator's best efforts to facilitate a fair resolution of issues, the parties reached an impasse," he wrote, adding that **Ambac** Financial filed a proposed plan to restructure debt "on terms which are inconsistent with the consensual direction of the recent negotiations with the rehabilitator."

The statement said the plan would "employ litigation to try to divert value from the segregated account. The rehabilitator will vigorously contest that litigation."

The Wisconsin regulator has been active in efforts to reach an agreement between **Ambac** Financial and **Ambac** Assurance since they became involved in their dispute. The regulator also oversees the segregated account, which was established in March 2010, to separate certain liabilities that presented serious financial hazards to the company and its policyholders. It holds about $50 billion in policies.

Last May, the Wisconsin regulator proposed a plan that **Ambac** Financial found unacceptable, and **Ambac** responded by saying it would submit its own plan by the July deadline "with or without the agreement of the OCI."

At that time, lawyers for **Ambac** Financial said that **bankruptcy** plan was "very disappointing and the credits committee found it disappointing too."

Lawyers representing **Ambac** Financial at Dewey & LeBoeuf LLP then said if a deal with the insurance office was not included in the new plan, they may have to resort to litigation. The lawyers did not return calls seeking comment on the new plan of reorganization.

The Wisconsin regulator also recently appointed Roger Peterson as a special deputy commissioner for the company's segregated account, effective July 1. Peterson reports to Nickel. He now focuses solely on his new role, having resigned as deputy administrator of the OCI's division of regulation and enforcement.

Peterson is responsible for oversight and strategic management of the segregated account, including developing its business plans, goals and priorities. He also will manage its loss-mitigation efforts, litigation strategies, and surplus note issuance and payments.

When Peterson was hired, **Ambac** said he "will act for the benefit of policyholders and will not take into account the interests of security holders of **Ambac** Financial Group, or holders of preferred shares of **Ambac** Assurance."

Ambac Assurance was once the second-largest municipal bond insurer until it ran into serious trouble in late 2007 because of decaying credit quality in its structured finance policies, which included contracts guaranteeing to cover losses on mortgage bonds and credit default swaps.

URL: http://www.bondbuyer.com/

LOAD-DATE: July 7, 2011

Source: **News & Business > Combined Sources > Mega News, Most Recent Two Years (English, Full Text)** i
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Ambac wins support from insurance regulator Daily Deal/The Deal September 22, 2011 Thursday

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September 22, 2011 Thursday

LENGTH: 977 words

HEADLINE: Ambac wins support from insurance regulator

BYLINE: by Aviva Gat

BODY:

Thanks to successful mediation with Wisconsin's insurance regulator, **Ambac Financial Group Inc.** now has a new reorganization plan that resolves their dispute. Judge Shelley C. Chapman of the U.S. **Bankruptcy** Court for the Southern District of New York in Manhattan is set on Oct. 5 to consider the adequacy of the disclosure statement for the plan.

The parent of **Ambac** Assurance Corp., a financial guarantee insurance company domiciled in Wisconsin, filed its amended plan with support from the Wisconsin Office of the Commissioner of Insurance on Wednesday, Sept. 21. **Ambac** and the OCI had been fighting over dividends AAC was to pay to its parent. **Ambac** had originally filed a plan on July 6 that outlined two scenarios depending on whether any agreement was reached. **Ambac** only filed that plan because its exclusivity period was set to expire that day. The exclusive right for **Ambac** to solicit votes on its plan has since been extended to Dec. 5, via an Aug. 10 order. The deadline for Ted Nickel, Wisconsin's current insurance commissioner, to accept a settlement was July 29, but the court extended that date to Aug. 25. **Ambac** and the OCI commenced mediation on Aug. 16. After several weeks, the parties came to an agreement, leading **Ambac** to file its amended plan and disclosure statement on Wednesday. According to the disclosure statement, the OCI approved a $2 million cash payment to **Ambac** from AAC due to the additional costs to the estate while attending mediation. The payment will be credited toward any agreed obligation of AAC to reimburse the debtor for a percentage of fees and disbursements incurred from an adversary proceeding with the **Internal Revenue Service.** Under the plan, senior noteholders, general unsecured creditors and subordinate noteholders would receive a pro-rata share of new common stock in the reorganized debtor. **Ambac** estimated senior noteholders would recover between 11.4% and 17.6% of their claims, while general unsecured creditors would recover 8.5% to 13.2% and subordinate noteholders would recover 0.5% to 0.8%. Intercompany claims and equity interests would be wiped out. **Ambac** would retain ownership of AAC. Under the agreement with the OCI, **Ambac** and AAC will enter into a cost allocation agreement, and any net operating losses generated by AAC after Oct. 1 would be available to AAC at no cost. The settlement estimates the amount of net operating losses at $3.8 billion. AAC will then pay all of **Ambac's** operating expenses, subject to a cap of $5 million per year, through the fifth anniversary of the effective date of **Ambac's** plan. After five years, AAC will only have to pay up to $4 million of **Ambac's** operating expenses. Under **Ambac's** original plan, AAC was to pay the debtor $50 million on Dec. 31 and again on March 31, 2012, plus a $100 million payment on June 30, 2012. It also could have taken care of all these obligations by making a $200 million payment on Dec. 31. **Ambac** has been negotiating with the OCI since it filed for **bankruptcy** on Nov. 8. The original deadline to reach a settlement was Dec. 31, 2010, but the deadline was extended several times. If no agreement had been reached, the debtor said it would seek to convert its case to a Chapter 7 liquidation. Without a conversion, on the effective date **Ambac**

would have transferred 20% of its stock in AAC to a limited liability company or another third party. The debtor would also have established a litigation trust to prosecute causes of action, documents show. **Ambac** stopped selling insurance policies in 2008 because of its deteriorating financial condition and lowered credit ratings. **Ambac** had offered financial guarantee insurance on investment-grade municipal finance and private structured-finance debt obligations. As a result of the recession, its business declined, leading the Wisconsin insurance commissioner to block AAC from paying dividends to **Ambac** in 2007. The debtor said that as a holding company, it was dependent on dividends from AAC to pay principal and interest on its indebtedness and operating expenses. **Ambac** has also been litigating with the **IRS**. The debtor filed an adversary complaint one day after its petition date against the U.S. government, seeking a declaration affirming it has no tax liability for the tax years 2003 through 2008. **Ambac** said in its lawsuit that it received approximately $700 million in tax refunds for those years for net operating loss carryforwards from its credit default swap contracts. On Oct. 28 the **IRS** formally requested information from the debtor about the accounting method it used for such contracts and the basis for its entitlement to the tax refunds. The agency later informed **Ambac** it might attempt to recoup payment of the refunds. **Ambac and the IRS** commenced mediation on July 6. According to **Ambac's** disclosure statement, the parties have made progress toward a resolution, and they intend to continue negotiations. If no agreement were reached, **Ambac** said it would move the court to estimate the **IRS'** claim for the purpose of voting on the plan. In its petition, **Ambac** listed negative $185.5 million in assets and $1.69 billion in liabilities. The company had hoped to file a prepackaged reorganization plan, but it could not reach a deal with an ad hoc group of noteholders. Nonbankrupt AAC issues policies to support public finance, structured finance and internal finance transactions such as municipal bonds and residential mortgage-backed securities. Such guarantees protect the holder of a fixed-income obligation against nonpayment when principal and interest are due. Debtor counsel Peter Ivanick and Allison Weiss of**Dewey & LeBoeuf LLP**couldn't be reached for comment. **Blackstone Group LP** is **Ambac's** financial adviser. Anthony Princi of **Morrison & Foerster LLP** represents the official committee of unsecured creditors.

LOAD-DATE: October 14, 2011

Source: **News & Business > Combined Sources > Mega News, Most Recent Two Years (English, Full Text)** i
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Ambac Stakeholders Agree on Reorganization Plan The Bond Buyer September 23, 2011 Friday

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September 23, 2011 Friday

SECTION: UNDERWRITERS & DEALERS; Pg. 4 Vol. 377 No. F337

LENGTH: 580 words

HEADLINE: Ambac Stakeholders Agree on Reorganization Plan

BYLINE: Taylor Riggs

BODY:

Closing in on the one-year anniversary of its **bankruptcy** filing, **Ambac** Financial Group has filed a new reorganization plan that all parties involved have agreed on.

Ambac Financial said those parties include its bond insurer subsidiary **Ambac** Assurance Corp., the segregated account established for its most toxic policies, the Wisconsin commissioner of insurance, the rehabilitator of the segregated account, and the committee of unsecured creditors.

At the center of the negotiations was how to allocate tax benefits related to $7 billion in net operating losses and other resources.

It's not clear whether the plan would have any impact on holders of municipal bonds wrapped by **Ambac** Assurance, but a spokesman for **Ambac** Financial said **Ambac** Assurance's policies are still protected by its claims-paying resources, including its investment portfolio. The spokesman said **Ambac** Assurance could benefit by receiving an allocation from the parent company's net operating losses.

Ambac, which lost its triple-A ratings during the financial crisis, currently is prohibited from originating new bond insurance policies.

The segregated account is overseen by the Wisconsin regulator. The plan of rehabilitation relating to the segregated account is not yet effective and hasn't been implemented by the regulator. The segregated account was established in March 2010 to separate those liabilities from the company's muni bond insurance policies.

Ambac filed for protection from creditors in 2010 and the segregated account holds about $50 billion in policies.

Ambac Financial in July filed a plan that the Wisconsin commissioner of insurance quickly criticized. In May, the commissioner proposed a plan that **Ambac** Financial said was unacceptable.

The new reorganization plan appears to settle a dispute between creditors of **Ambac** Financial and **Ambac** Assurance policyholders over how to split the tax losses and other resources.

"We believe that the plan is in the best interest of **Ambac** Financial Group's creditors and also of

Ambac Assurance Corp.'s policyholders," said a spokesman for **Ambac** Financial. "While there are still challenges ahead, we look forward to continuing to work towards a successful plan confirmation and the implementation of our business plans upon emerging from **bankruptcy**."

One major challenge to successful implementation of the plan was that the **Internal Revenue Service** sued **Ambac** Financial a year ago, challenging the legality of the $7 billion in net operating losses and an additional $700 million in tax refunds.

Ted Nickel, the court-appointed rehabilitator, said: "The rehabilitator recognizes the advantages of reducing uncertainty and avoiding unnecessary litigation, as achieved by this settlement. It further allows the rehabilitator to remain focused on the rehabilitation of the segregated account of **Ambac** Assurance."

The plan has been submitted to the court and will go through a disclosure hearing on Oct. 5, when the court will decide whether the information provided is adequate enough for creditors to vote on a decision. If the court deems there is sufficient information, investors will receive a ballot in the mail.

Under the plan, equity holders of **Ambac** Financial will not receive anything. The senior note holders will receive shares in the reorganized company. The agreement also breaks down how net operating losses will be divided. The holding company currently owns those NOLs and under the agreement, **Ambac** Assurance can share the tax benefits.

URL: http://www.bondbuyer.com/

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BANKRUPTCY WEEK AHEAD: Ambac Seeks To Send Bankruptcy Plan For Creditor Vote Dow Jones News Service September 30, 2011 Friday 3:41 PM GMT

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September 30, 2011 Friday 3:41 PM GMT

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HEADLINE: BANKRUPTCY WEEK AHEAD: **Ambac** Seeks To Send **Bankruptcy** Plan For Creditor Vote

BYLINE: By Patrick Fitzgerald, Of DOW JONES DAILY **BANKRUPTCY** REVIEW

BODY:

Ambac Financial Group Inc. (ABKFQ), the parent of the failed bond insurer, will take a key step Wednesday in the Manhattan **bankruptcy** court in the holding company's bid to emerge from Chapter 11 protection.

Ambac is asking a **bankruptcy** judge to let its creditors vote on restructuring plan that would see the company exit **bankruptcy** under the control of its bondholders.

The plan restructures holding company **Ambac** Financial in such a way that would keep it in business even though its Wisconsin-based operating arm, **Ambac** Assurance Corp., has been seized by regulators and hasn't written any new policies since 2008, shortly after its credit ratings were downgraded.

Ambac Assurance is now under the control of a Wisconsin insurance regulator that took over the company's toxic insurance policies which had billions of dollars' worth of potential exposure related to its role as an insurer of collateralized-debt obligations and other financial instruments linked to risky mortgages.

Originally an insurer of municipal bonds, **Ambac** sold guarantees on billions of dollars of mortgage-backed securities and more complex vehicles known as collateralized-debt obligations, or CDOs. When the housing meltdown hit, many of these securities turned toxic, leaving **Ambac** with heavy losses.

The company reached a deal earlier this month with Wisconsin Commissioner Insurance, which is overseeing **Ambac** Assurance, over tax refunds it may be forced to repay to the **Internal Revenue Service.** That deal paves the way for **Ambac** to restructure some $1.6 billion in debt by issuing new shares to bondholders and other unsecured creditors. Senior bondholders could see a recovery of up to 17.6 cents on the dollar on their claims.

One big hurdle still remains to **Ambac's bankruptcy** exit: the company's dispute with the **IRS** over nearly $1 billion in tax refunds related to losses on its portfolio of credit-default swaps. That dispute is ongoing, and **Ambac** has warned that if it loses that fight would likely torpedo its exit plan and force its liquidation.

Wednesday in Trenton, N.J., hedge fund Anchorage Capital Group will face off against New York hedge-fund manager Hildene Capital Management, over its landmark **bankruptcy**-liquidation plan for a collateralized-debt obligation.

Anchorage forced the CDO into **bankruptcy** in April, and Hildene, which holds a junior position to Anchorage, sought to have the case dismissed.

At issue is a recent court ruling involving a CDO called Zais Investment Grade Ltd. VII, created in 2005 by Zais Group LLC along with Citigroup Inc. (C). The CDO--actually a CDO Squared, meaning it held the debt of other CDOs--issued $365.5 million in notes in eight classes, or tranches, which defaulted in 2009.

In what some distressed-debt investors have called a landmark decision, **bankruptcy** Judge Raymond T. Lyons declared the CDO was eligible for **bankruptcy** protection, a decision that could mean billions of dollars to investors fighting over the distressed assets backing the structured finance vehicles. Addressing the "tranche warfare" involving the hedge funds, the judge wrote, "Reminds one of the line by Maj. T.J. 'King' Kong [played by Slim Pickens] in Dr. Strangelove, 'Well, boys, I reckon this is it--nuclear combat toe-to-toe with the Roosskies.'"

Anchorage's Chapter 11 plan calls for the liquidation of the CDO's collateral with all proceeds going to senior note holders. The junior tranche of note holders, like Hildene, would be wiped out.

Hildene has appealed the **bankruptcy**-court ruling, claiming the ruling would allow "rogue note holders" like Anchorage to do an end run around CDO indentures governing the liquidation of the assets by improperly using the **bankruptcy** courts.

Tuesday in Wilmington, Del., NewPageCorp. will seek approval to tap the remainder of a $600 million **bankruptcy** loan, a financial lifeline that has enabled the paper-making operation to avert a shutdown.

The company has already won approval to use $495 million, providing funds to shore up NewPage's finances while it works through its balance-sheet problems in **bankruptcy** court.

J.P. Morgan Chase & Co. (JPM) is providing the financing for NewPage, which sought **bankruptcy** protection in August amid rising raw material and energy costs and the aftermath of the recession. Recession-pressed suppliers have been on alert for signs of financial distress from NewPage, the country's largest producer of coated papers.

Prior to the filing, first-lien bondholders owed $1.77 billion are fighting second-lien bondholders owed more than $1 billion over terms of the restructuring.

(This item appears in Dow Jones' Daily **Bankruptcy** Review newsletter.)

-By Patrick Fitzgerald, Dow Jones Daily **Bankruptcy** Review; 202-862-3544 [09-30-11 1141ET]

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Appendix B

<u>Conseco, Inc. ("Conseco")</u>

I. Structure

A. Prior to reorganization, Conseco was a holding company that operated an insurance business and a finance business.

B. <u>CIHC</u>

1. Conseco's insurance business was operated through subsidiaries owned directly or indirectly by its intermediate holding company CIHC, Inc. ("<u>CIHC</u>"). CIHC's insurance subsidiaries were domiciled in Arizona, Illinois, Indiana, New York, Pennsylvania and Texas.

2. CIHC's insurance subsidiaries developed, marketed and administered supplemental health insurance, annuity, individual life insurance and other insurance products. During 2001, CIHC had over $5.4 billion of annual premium and asset accumulation product collections and during the nine month period ending September 30, 2002, CIHC had $3.7 billion of collections.

C. <u>CFC</u>

1. Conseco's finance business was operated through Conseco Finance Corp. ("<u>CFC</u>"), which was a wholly owned subsidiary of CIHC and its subsidiaries.

2. CFC historically provided a variety of housing and floor plan loans, home equity mortgages, home improvement and consumer product loans and private label credit cards.

3. As of September 30, 2002, CFC's managed receivables included $23.9 billion of contracts for manufactured housing purchases, $10.0 billion of contracts for home equity and home improvement loans and $2.9 billion of contracts for credit card loans.

II. Background

A. Between 1982 and 2002, Conseco grew rapidly through acquisitions, including the acquisition of 19 separate insurance groups. From 1988 to 1998, the total return on Conseco's stock averaged 47% per year, 17th-best among publicly traded companies in the United States.

B. In 1998, in an attempt to grow Conseco's business, the company acquired Green Tree Financial Corporation ("<u>Green Tree</u>"), which Conseco planned to use as a platform to enter into the finance business.

C. Between 1996 and 1999, certain officers and directors of Conseco borrowed money to purchase common stock of Conseco under credit facilities provided by Bank of America and other lending institutions (the "D&O Credit Facility").

D. Between 1993 and 2002, Conseco and its subsidiaries issued a number notes and securities.

III. Restructuring Efforts

A. Following Conseco's acquisition of Green Tree, the company's stock fell 15% due to concerns that Conseco had overpaid for the company. Conseco's stock continued to fall and by April 2000, Conseco's stock was selling for $5.62 a share, less than 10% of its peak just before the acquisition of Green Tree.

B. In an effort to address Conseco's mounting debt, on June 29, 2000, Conseco hired Gary Wendt, former head of General Electric Capital Services. Wendt instituted a turnaround plan that included cutting 2,000 jobs. Despite these efforts, Conseco posted a $407.2 million loss for the second quarter of 2000 and a $487.3 million loss for the quarter ending September 30, 2000. In order to meet its financial obligations, Conseco agreed to sell Manhattan National Life Insurance for $48.5 million and Conseco Variable Insurance Company for approximately $130 million.

C. In July 2002, Conseco shares dropped below $1.00 and the company was delisted from Standard & Poor's 500. Concerns over the D&O Credit Facility were seen as a giant obstacle imperiling the company's future.

D. On August 9, 2002, Conseco announced that the company had engaged financial and legal advisors in order to restructure the company's debt. Following the announcement, the New York Stock Exchange suspended trading of Conseco common stock and three credit-rating agencies lowered rations on Conseco bonds.

E. On October 22, 2002, Canseco announced that its board of directors had approved a plan to sell or seek new investors in the companies finance business including securing new investors and selling CFC's three lines of business: (i) manufactured housing, (ii) mortgage and home equity services and (iii) consumer finance.

F. On October 30, 2002, Conseco's two Texas subsidiaries entered into consent orders with the Commissioner of Insurance for the State of Texas whereby they agreed, amongst other things, not to request any dividends or other distributions prior to January 1, 2003 and thereafter not pay any dividends or other distributions to parent companies outside of the insurance system without prior approval of the Texas Insurance Commissioner.

G. On December 17, 2002, (the "Petition Date"); Conseco filed for chapter 11 bankruptcy after reaching a tentative pact with its major creditors to restructure approximately $6.5 billion in debt.[1]

1. Along with its petition, Conseco filed a motion for authority to prohibit trading of equity securities in which Conseco requested that the Bankruptcy Court (i) prohibit, without consent of Conseco or the Bankruptcy Court, sales and other transfers of equity securities by holders of outstanding Conseco common stock on a fully diluted basis (a "Substantial Equityholder"); (ii) prohibit, without the consent of Conseco or the Bankruptcy Court, the acquisition of Conseco equity securities by Substantial Equityholders or by persons who would become a Substantial Equityholder as a result of that acquisition; and (iii) impose certain notification requirements on persons who are or become Substantial Equityholders.

a) Conseco requested this relief to guard against unplanned change in control for the purposes of section 382 of the Internal Revenue Code, which would limit Conseco's ability to use net operating losses in the future.

b) The Bankruptcy Court granted and entered a final amended order on January 21, 2003.

H. On March 5, 2003, Conseco concluded an auction pursuant to Section 363 of the Bankruptcy Code in which the company sold CFC for over $1 billion to CFN Investments LLC and GE Consumer finance. The deal was approved by Judge Doyle on March 14, 2003.

I. On September 9, 2003, Judge Doyle approved Conseco's plan of reorganization, which included Conseco solely working in the insurance business.

J. The plan included the following features:

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[1] As if the Petition Date, the D&O Credit Facility, which was guaranteed by Conseco, had an aggregate amount of over $481.3 million and the aggregate outstanding principal on all notes and securities issued by Conseco and its subsidiaries was approximately $3.54 billion.

1. Conseco would operate two distinct and separate insurance businesses: (i) Conseco Insurance Group ("CIG") and (ii) Bankers Life and Casualty Company ("Bankers Life").

    a) CIG is comprised of several insurance companies that serve over 3 million policyholders. CIG has historically offered a complete portfolio of supplemental health insurance, life and annuity products.

    b) Bankers Life is a 120-year-old health, life and annuity company focused primarily on the needs of middle income senior citizens. Bankers Life offers the market a comprehensive insurance product portfolio that includes long term care, Medicare supplement, senior life and fixed annuities.

2. Conseco's debt and preferred-securities obligations were reduced from $6.5 billion to $1.3 billion. While the majority of intercompany amounts owed by Conseco to other reorganizing debtors was cancelled under the plan (including those owed between Conseco and CFC), certain intercompany amounts owing to Conseco's insurance subsidiaries were maintained so as to maintain minimum capitalization requirements.

3. CIHC previously issued three series of preferred stock to Conseco's insurance subsidiaries, all of which were reinstated under the plan with the same admitted values that existed immediately prior to the Petition Date because each constituted admitted assets on the statutory balance sheets of each insurance subsidiary.

K. On November 19, 2003, the Commissioner of Insurance for the State of Texas lifted the consent order requiring Conseco's two Texas subsidiaries not to request any dividends or other distributions without prior approval of the Texas Insurance Commissioner.

Conseco files for bankruptcy;Moving on: Filing ends four months of speculation over struggling giant's immediate fate.; Obstacles remain: Carmel-based Conseco Insurance Group still faces an uphill battle to thrive.; Policies secure: Conseco insurance policyholders are secure, company says. The Indianapolis Star December 18, 2002 Wednesday City final Edition

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HEADLINE: Conseco files for **bankruptcy;**
Moving on: Filing ends four months of speculation over struggling giant's immediate fate.;
Obstacles remain: Carmel-based **Conseco** Insurance Group still faces an uphill battle to thrive.;
Policies secure: **Conseco** insurance policyholders are secure, company says.

BYLINE: BY BILL W. HORNADAY BILL.HORNADAY@INDYSTAR.COM

BODY:
Conseco acknowledged the inevitable and filed for Chapter 11 **bankruptcy** late Tuesday, just after reaching a tentative pact with its major creditors to restructure roughly $6.5 billion in debt.

The filing -- made to the U.S. **Bankruptcy** Court in Chicago at 11:36 p.m. -- ends one vigil for the ailing insurance and finance company's long-term future and the jobs of 2,600 Carmel-based workers.

Conseco officials and their **bankruptcy** attorneys, Chicago-based Kirkland & Ellis, had no immediate comment on the filing. However, **Conseco** spokesman Mark Lubbers acknowledged that those involved with the filing had been "burning the midnight oil" to complete the work Tuesday.

"I've just spoken with (**Conseco** CEO) Bill Shea and he said there's an agreement in principle with the banks and bondholders," Lubbers said at around 12:30 a.m. "It's a done deal."

By moving restructuring efforts before a federal **bankruptcy** judge, it brings **Conseco's** insurance businesses one step closer to a return to normal operations.

Still, there are no guarantees of a positive outcome.

Before the insurance units can improve their health through competitive credit ratings, the court must approve the restructuring plan -- a process that could take as little as three months or as long as two years, experts say.

Liquidation also remains an option -- albeit remote -- for companies like **Conseco** that hope to regain their former glory. Chapter 11 filings resolve debt by keeping businesses operational, while Chapter 7 filings are more common for liquidations, particularly if the court appoints a trustee to take over operations.

"In **bankruptcy** court, **Conseco** could sell the insurance operations and use the proceeds to pay creditors," said Julie Burke, an analyst at Fitch Inc., a financial ratings firm.

"I don't know," said Joseph Belth, publisher of The Insurance Forum. "I felt for a long time that what's going to happen is that these companies are going to get sold."

Further clues on **Conseco's** future should emerge today, when the company is expected to release key terms reached with its banks and bondholders after four months of talks.

Major indicators include how much money all parties agree that **Conseco** is worth and whether certain creditors favor a debt-for-equity swap that effectively would make them **Conseco's** new owners.

Other factors could hinge on whether preferred trustholders, who also took part in negotiations, are dissatisfied with the outcome. If so, they could try to derail **bankruptcy** proceedings by filing an injunction or requesting a detailed inspection with the judge that could take months to complete.

Before creditors can recover any part of their investment, **Conseco** first must:

* Maintain funds to allow its insurance and finance units to operate and comply with state laws;

* Pay $1.5 billion in bank debt, including nearly $500 million in loan guarantees to directors and officers;

* Refund $2.5 billion to senior and junior bondholders;

* Refund $2 billion to senior and junior preferred trustholders.

Common shareholders sit on the bottom of the list and stand little chance of regaining any part of their investment. Analysts have held for months that little, if any, debt will be recovered beyond what goes to the banks.

Striking a deal with major creditors has been **Conseco's** priority since Aug. 9, when it ceased making short-term payments and began efforts to reconcile its debt. Since then, its insurance and finance businesses have been vulnerable because they have been forced to operate under credit conditions inferior to their rivals.

Its two insurance subsidiaries -- Carmel-based **Conseco** Insurance Group and Chicago-based **Bankers Life** & Casualty -- continue to sell life insurance, health insurance and annuities products and for now remain in good graces with state regulators.

But restructuring has taken its toll on **Conseco** Finance, which has been shut out of the capital markets that allow it to do business since August. The Minnesota-based unit became insolvent after missing a payment last week and owes several hundred million dollars to Lehman Brothers, which could end up owning the unit.

A separate **bankruptcy** filing for at least parts of **Conseco** Finance is seen as likely.

Such a move would come as no surprise to one Indiana contractor, who said he is out $27,000 for a mobile-home repair ordered by **Conseco** Finance. An uncle who does similar work in northern Indiana is out $103,000, he said.

"Back in November they wanted 117 units winterized, but I still haven't been paid for the work I've done," said Charles Lizius of Greenwood. "When I call, I can't get anybody to answer the phone. I paid both of my workers up through Friday and gave them a week's pay for Christmas, but then I had to let them go."

Conseco co-founder Stephen C. Hilbert said Tuesday that he still has faith in his former company.

"I have always believed in the strength of **Conseco's** operating life insurance companies and the strength of **Conseco's** associates," Hilbert said in a prepared statement. " I remain confident

Conseco will emerge from Chapter 11 and deliver solid returns to all stakeholders. I wish Bill Shea and his management team the best."

Former executives such as one-time Chief Operating Officer Thomas J. Kilian had little to say on the matter Tuesday. Kilian left **Conseco** in January and six months later became CEO of Cleveland-based Ceres Group.

"Tom is not comfortable commenting on the whole **Conseco** situation," Ceres Group spokeswoman Gayle Vixler said. "At least not at this time."

Based on total assets of $52.2 billion in its latest quarterly report, **Conseco's bankruptcy** would be the third-largest in U.S. history. However, not all of **Conseco's** assets are expected to be covered by the **bankruptcy**, since assets under the insurance and finance subsidiaries are not part of the restructuring.

Once a high-flying company that caught Wall Street's fancy, **Conseco** rose to Fortune 500 status through numerous Hilbert-engineered insurance acquisitions.

Despite analysts' criticism that such a growth strategy was unsustainable and clouded by unorthodox accounting, **Conseco's** stock price soared past $58 per share in 1998 and Hilbert became one of America's highest-paid executives, raking in $119 million in 1997 alone.

But a buyout of the nation's largest manufactured-home lender, Green Tree Financial, sent the company into a tailspin so severe that Hilbert and Chief Financial Officer Rollin Dick were forced to resign two years later.

Conseco turned to former GE Capital chief Gary C. Wendt as its savior in June 2000, paying a $45 million signing bonus after giving Hilbert a $74 million golden parachute to leave. Faced with more than $8.2 billion in debt, Wendt pledged to slash $3.5 billion by 2003 and have **Conseco** profitable again by 2005.

He managed to eliminate $2.7 billion. But massive losses in mobile home loans and investments -- as well as a $4 billion second-quarter write-off -- forced **Conseco** to delay a debt payment in August and begin talks with its lenders to restructure **Conseco's** debt.

Wendt resigned as CEO in early October and was succeeded by COO William J. "Bill" Shea. Wendt remains with **Conseco** as chairman of its board of directors.

Conseco Inc.

Carmel-based **Conseco's** losses for the year equal more than $6 billion.

Founded: In 1979 by Stephen Hilbert and David Deeds

Headquarters: 11825 N. Pennsylvania St., Carmel

Employees in Indiana: 2,600

Total employees: About 13,000

Top executive: William J. Shea, CEO

Lines of business: Insurance and financial services

Conseco's parts

A snapshot of **Conseco's** three primary divisions:

Conseco Insurance Group

Headquarters: Carmel

Other key locations: Chicago; Noida, India.

Chief executive: Liz

Georgakopoulos

Founded: 2001

Employees: 2,250

Bankers Life & Casualty

Headquarters: Chicago

Chief executive: Ed Berube

Founded: 1932

Employees: 1,575

Conseco Finance

Headquarters: St. Paul, Minn.

Key Locations: Rapid City, S.D.; Tempe, Ariz.; Duluth, Ga.

Chief executive: Chuck Cremens

Founded: 1999

Employees: 7,000

Staff Writer Chris O'Malley contributed to this story.

Call Bill W. Hornaday at 1-317-444-6202.

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Judge Approves Sale of Conseco Finance The Indianapolis Star March 15, 2003, Saturday

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March 15, 2003, Saturday

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HEADLINE: Judge Approves Sale of **Conseco** Finance

BYLINE: By Bill W. Hornaday

BODY:
CHICAGO--**Conseco** Finance's sale was approved Friday by a U.S. **bankruptcy** judge after an $ 85 million increase in its original auction-winning bid and other concessions surmounted obstacles that threatened to kill the deal.

Terms now call for CFN Investments LLC and GE Consumer Finance to pay around $ 1.3 billion for the Minnesota-based subsidiary of Carmel, Ind.-based **Conseco,** which jettisoned the troubled lender as part of its efforts to resolve roughly $ 6.5 billion in corporate debt.

CFN would pay $ 772 million of that amount in cash, with GE exercising its option to pay $ 323 million for Mill Creek Bank, a Utah-based lender that finances **Conseco** Finance's private-label credit-card business, said attorney Richard Wynne of Chicago-based Kirkland & Ellis, which represents **Conseco** in **bankruptcy** matters.

The deal also includes $ 200 million in assumed liabilities and raises the unit's loan- servicing fees from 0.5 percent to 1.25 percent for the first 12 months under new ownership, and 1.15 percent afterward. Based on **Conseco** estimates, the move adds roughly $ 70 million in value to the transaction, Wynne said.

That proved enough to sway Fannie Mae, which holds roughly $ 10 billion worth of the $ 23.4 billion in asset-backed manufactured-housing certificates that **Conseco** Finance carries. Before the concessions were made, Fannie Mae had told the court that it was only willing to partner with Warren Buffett's Berkadia LLC, which unsuccessfully pitched a $ 1.15 billion post-auction bid last week.

"The servicing portfolio was pretty critical for them because they'll have to live with it for the next 30 years," Wynne said. "By increasing the price, we were able to satisfy various certificate holders and get the deal done."

Conseco attorneys later said it is possible that the $ 1.3 billion sale was one of the largest asset transactions ever logged in a U.S. **bankruptcy** court. The deal is expected to close by May 31, said Anup Sathy, another Kirkland & Ellis attorney.

Additional talks before U.S. **Bankruptcy** Judge Carol A. Doyle regarding **Conseco's** disclosure statement -- a key part of its plan to emerge from **bankruptcy** by June -- produced a compromise on when to begin confirmation hearings.

That date is now set for May 28 -- later than **Conseco's** wish for an April 21 commencement, but well before the June 23 start proposed by Irving Walker of Saul Ewing LLC, whose law firm represents holders of more than $ 2 billion in trust-preferred securities who oppose the

confirmation statement.

Conseco attorneys argued that with each passing day that the **bankruptcy** talks drag on, the company's two insurance subsidiaries -- **Conseco** Insurance Group and **Bankers Life** and Casualty -- run an increased risk of insolvency or regulatory problems due to declining business and shrinking reserves that are required by law to fulfill customers' claims.

Though not cited in court, that argument was bolstered by a memo circulated Thursday within **Conseco's** Carmel headquarters by Chief Executive Officer William J. Shea.

He warned that immediate action within CIG, including "almost certainly" some layoffs over the next few weeks, was necessary due to shrinking reserves and overall losses resulting from declining interest rates, reduced investment portfolio returns and increased operating expenses -- particularly the cost of generating new business.

Through expense cuts and reinforced sales efforts **Conseco** hopes to generate an additional $ 250 million in revenue over the next two years, Shea said.

Any employees who were laid off would receive the standard **Conseco** compensation package, he said.

Such discourse, while offering less than good news for **Conseco** employees, would be welcomed by Walker.

He contended that at no time during **Conseco's** debt talks have attorneys with his office been allowed to directly contact the company's top executives, and that he has inadequate time to sift through more than 180,000 pages of material to boost their claim that **Conseco** is worth more than $ 5 billion -- not $ 3.8 billion as **Conseco** auditing firms suggest.

"The number of documents you have to go through does not impress me," Doyle said. "Your job is to figure out which of them are most important."

Doyle also urged **Conseco** attorneys to be more cooperative.

"If both sides were to talk face to face, there is a chance it could prove productive," she said. "That's not something I'm going to order. But to move the case along, it may be something you might consider -- even if there's considerable disagreement. Sometimes face-to-face talks can have unexpected results."

The court resumes more key hearings at 2:30 p.m. Monday when Doyle considers that status of Donald Trump's $ 1 billion lawsuit against **Conseco** over ownership of New York City's General Motors Building. At 2 p.m. Tuesday; a review of the disclosure statement and various objections resumes.

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Judge OKs Conseco's Emergence From Ch. 11 Associated Press Online September 10, 2003 Wednesday

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September 10, 2003 Wednesday

SECTION: FINANCIAL NEWS

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HEADLINE: Judge OKs **Conseco's** Emergence From Ch. 11

BYLINE: MARK JEWELL; AP Business Writer

DATELINE: INDIANAPOLIS

BODY:
With a judge's approval in hand, **Conseco** Inc. says it is ready to emerge from nearly nine months of Chapter 11 **bankruptcy** protection and stake its future on its once-lucrative insurance business.

A reorganization plan confirmed in **bankruptcy** court Tuesday details **Conseco's** formula for paying off debt and returning to profitability: casting off its money-draining consumer finance unit and focusing on a narrower range of insurance products than it traditionally has sold.

The plan cuts **Conseco's** debt load to $1.4 billion from the $7 billion it owed Dec. 17, when it became the third-largest U.S. company to file for **bankruptcy**.

Bondholders will assume majority control of **Conseco** as it tries to restore healthy credit ratings to the insurance business that made the company a Wall Street darling through most of the 1990s.

At a hearing in Chicago, U.S. **Bankruptcy** Judge Carol **Doyle** approved **Conseco's** exit plan, as well as a separate plan for the consumer finance unit the parent company is selling.

Conseco, based in the Indianapolis suburb of Carmel, offered no firm date by which it expects to formally emerge from **bankruptcy**. But a company statement said that would occur soon.

"To have completed such a large and complex restructuring in less than nine months is truly a remarkable achievement," said William J. Shea, who took over as **Conseco's** chief executive last fall. He is the only current company director who will remain on **Conseco's** board.

Shea, who also serves as president, said **Conseco** "will emerge as a re-energized company with greatly reduced debt and a single business focus."

Doyle's approval of the sixth version of **Conseco's** plan came about a month after the company reached agreements with the plan's primary objectors: a dissident investor group, the government trustee overseeing the case and Gary Wendt, the company's former chief executive and outgoing chairman.

Those parties dropped their objections in exchange for concessions over how much holders of trust-preferred securities can expect to recover from their losses, and over legal protections that protect many company insiders from liability for bad business decisions.

Delays over those issues forced the company to abandon its initial hopes of emerging from **bankruptcy** as early as June.

Conseco sought a quick exit to cast off inferior credit ratings that hurt its ability to attract and retain insurance customers.

If **Conseco** doesn't regain an A- rating from the ratings agency A.M. Best by Aug. 15, 2005, it risks a return to **bankruptcy** court and a possible liquidation of its remaining assets.

Conseco's ratings dropped as debt piled up from risky acquisitions, including **Conseco's** 1998 purchase of St. Paul, Minn.-based Green Tree Financial Corp., which specialized in mobile home loans. That unit, which became **Conseco** Finance Corp., burdened its parent company as foreclosures piled up.

That unit has been sold to an investment consortium for about $1 billion, or one-sixth of what **Conseco** paid for it.

Conseco still faces a heavy debt burden, with obligations for annual payments ranging from $53 million to $153 million through 2008. The obligation rises to $785 million by 2009.

A default could jeopardize the company's future. Meanwhile, state regulators will closely watch to ensure **Conseco** has enough assets to pay policyholders' claims.

The company listed $52.3 billion in assets and $51.2 billion in debts in its **bankruptcy** filing. **Conseco** now has about 3,950 employees, including 2,400 at its Carmel headquarters. It once employed more than 10,000.

As it exits **bankruptcy, Conseco** plans to more narrowly focus its insurance products with emphasis on Medicare supplements and other health policies and less reliance on life insurance.

Most investors will be granted newly issued **Conseco** stock, with bondholders holding nearly 90 percent equity and a new board led by former ING Americas chief executive R. Glenn Hilliard. Bondholders were owed $1.5 billion in debt.

Common shareholders are not expected to recover any of their losses. Those shares reached $58 each in 1998, but now trade at 3 cents apiece.

On the Net:

Conseco: http://www.**conseco**.com

LOAD-DATE: September 11, 2003

Source: **News & Business > Combined Sources > Mega News, All (English, Full Text)** i

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Appendix C

Financial Guaranty Insurance Company ("FGIC")

I. Structure

A. FGIC

1. FGIC is a monoline financial guaranty insurance company organized under the laws of the State of New York.

2. Beginning in 1983 and through 2007, FGIC and its subsidiaries guaranteed the timely payment of principal and interest on public finance and structured finance obligations by issuing insurance policies and credit default swap ("CDS") contracts.

B. FGIC Corp.

1. FGIC Corporation ("FGIC Corp.") is an insurance holding company with no employees, no operations and no assets other than its cash on hand and 100% of the common equity interests in FGIC.

II. Background

A. FGIC

1. Together with its subsidiaries, FGIC did business in three principal areas: U.S. Public Finance, U.S. Structured Finance and International Finance (composed of both public finance and structured finance business outside of the U.S.).

2. Within the structured finance segment of its business, FGIC insured both residential mortgage-backed securities ("RMBS") and collateralized debt obligations of asset-backed securities ("ABS CDOs"). As of March 31, 2010, FGIC had insured (a) RMBS with approximately $19.2 billion net par in force and approximately $2.63 billion of statutory loss reserves and (b) ABS CDOs with approximately $1.6 billion net par in force and approximately $393 million of statutory loss reserves. The vast majority of FGIC's ABS CDO exposure was written in the form where FGIC insured the obligations of FGIC CP, a wholly-owned subsidiary of FGIC, under CDS contracts between FGIC CP and the counterparties thereto.

3. As a result of the significant deterioration in the U.S. housing and mortgage markets and the global credit markets, FGIC was in a policyholders' surplus deficit position of approximately $2,227.0 million as of December 31, 2010.

B. FGIC Corp.

1. General Electric Capital Corporation ("GE Capital"), an affiliate of General Electric Company, acquired FGIC Corp. in 1989. In December 2003, GE Capital sold 95.5% of its common equity interest in FGIC Corp. to a diversified group of sophisticated investors, including PMI Mortgage Insurance Co. ("PMI"), affiliates of The Blackstone Group LP (the "Blackstone Affiliates"), affiliates of The Cypress Group LLC (the "Cypress Affiliates") and affiliates of CIVC Partners LP (the "CIVC Affiliates").

III. Restructuring Efforts

A. FGIC

1. FGIC ceased writing new business in January 2008.

2. In the third and fourth quarters of 2008, FGIC completed a reinsurance transaction (the "MBIA Reinsurance Transaction") with MBIA pursuant to which FGIC ceded exposure under policies covering certain U.S. Public Finance credits with total new par in force of approximately $188 billion.

   (a) As a result of the MBIA Reinsurance Transaction, FGIC increased its statutory policyholders' surplus by approximately $534 million while reducing overall exposure.

3. From January 2008 through July 2009, FGIC eliminated its insured exposure to ABS CDOs with total new par in force of approximately $9.4 billion by completing consensual commutation and termination transactions with eight counterparties.

   (a) FGIC obtained an aggregate surplus benefit of over $2.0 billion, eliminated its exposure to further adverse loss development and also eliminated its exposure to potential claims for termination payments.

4. In the fourth quarter of 2008, FGIC issued preferred stock under a "soft capital" facility in exchange for a cash purchase price of $300 million, which increased FGIC's surplus by an equal amount.

5. From September 2008 through August 2009, FGIC mitigated its insured exposure on FGIC-insured RMBS with total new par in force of approximately $538 million, by either purchasing such RMBS (in the secondary market) or entering into a private capital markets transaction where it purchased the right to receive the future claims payments made by FGIC with respect to the subject RMBS.

(a) FGIC obtained an aggregate surplus benefit of approximately $129 million and FGIC eliminated its exposure to further adverse loss development on these RMBS.

6. From January 2008 through April 2011, FGIC eliminated its insured exposure on policies insuring CDS referencing CLOs or other structured finance credits with over $13.0 billion of new par in force, by negotiating and entering into consensual commutation and termination agreements pursuant to which FGIC was paid $5.5 million.

7. On November 24, 2009, the NYID issued an order (as amended or supplemented by the NYID, the "1310 Order") pursuant to Section 1310 of the NYIL, requiring FGIC, effective that day, to suspend payment of any and all claims and prohibiting FGIC from writing any new policies.

(a) The 1310 Order also directed FGIC to submit to the Superintendent by January 5, 2010, a plan to eliminate the impairment of FGIC's policyholders' surplus, and to take such steps as may be necessary to remove the impairment of its capital and to return to compliance with its minimum policyholders' surplus requirement by no later than June 15, 2010. Under the 1310 Order, FGIC could operate only in the ordinary course of business and as necessary to effectuate the plan it developed at the direction of the NYID (as amended and restated, the "Surplus Restoration Plan") to eliminate the impairment of FGIC's policyholders' surplus.

(b) The Surplus Restoration Plan included three key loss mitigation components:

(i) Remediating a substantial portion of FGIC's exposure to RMBS and certain ABS insured by FGIC in the primary market and for which it has established statutory loss reserves, including by the consensual "stripping" of FGIC insurance on all or a substantial portion of such RMBS and ABS through various consensual remediation transactions, including an exchange offer for such RMBS and ABS;

(ii) Commuting, terminating, restructuring or reinsuring a substantial portion of FGIC's remaining exposure to ABS CDOs and to certain other obligations for which it has established statutory loss reserves, including RMBS insured by FGIC in the secondary market, through consensual transactions; and

(iii) Mitigating FGIC's existing exposure for claims based on Termination Payments under CDS insured by FGIC,

pursuant to consensual transactions with the counterparties to such CDS.

8. In accordance with the Surplus Restoration Plan, in March 2010, Sharps SP I LLC launched an offer to exchange 119 different CUSIPs of RMBS and ABS insured by FGIC with an aggregate unpaid principal balance of approximately $9.6 billion. To close the exchange offer, 70% of the 119 different CUSIPs would have to participate in the exchange offer.

   (a) On October 25, 2010, Sharps SP I LLC announced that it did not receive sufficient participation from eligible holders in its offer to exchange and terminated the exchange offer.

B. FGIC

1. Deterioration in FGIC's capital surplus position resulted in its inability to pay dividends to FGIC Corp. and FGIC has not made any such payments since January 2008. Because FGIC Corp. is an insurance holding company with no operations, it depends on dividend income from FGIC to service its debt obligations.[1]

2. Accordingly, on August 3, 2010, FGIC Corp. filed for bankruptcy.

   (a) Pursuant to FGIC Corp.'s proposed plan of reorganization, all of FGIC Corp.'s unsecured debt will be cancelled and FGIC Corp.'s unsecured creditors will received all cash on hand and the common stock of Reorganized FGIC Corp. Reorganized FGIC Corp. will be capitalized with no more than $400,000 to fund its business needs and will continue to operate as an insurance holding company after the effective date of the plan.

3. Prior to filing for bankruptcy, in order to continue to protect net operating losses ("NOLs") belonging to FGIC Corp. and its subsidiaries, Dubel & Associates entered into an agreement in which it purchased 100% of PMI's equity interest in FGIC Corp. and subsequently transferred these shares to FGIC Corp. and requested that FGIC Corp. retire these shares. In addition, the Blackstone Affiliates, the Cypress Affiliates and the CIVC Affiliates entered into an agreement pursuant to which these equity holders have agreed to not take any action that could in any way impair the value of the NOLs.

4. There are approximately $4 billion of NOLs.

[1] FGIC Corp. has approximately $391.5 million of unsecured debt, consisting of (a) $46 million under a revolving credit facility, $345.5 million in senior notes and $30,000 for services rendered by FGIC to FGIC Corp.

IV. Current Issues

A. The Surplus Restoration Plan has failed. The 1310 Order is still in place. Accordingly, FGIC is in run-off and cannot pay claims. From a regulatory perspective, FGIC cannot stay in this state of limbo forever.

B. The chapter 11 case of FGIC Corp. is ongoing. FGIC Corp.'s exclusive period to file a plan has been extended to February 3, 2012 and the exclusive period to solicit votes has been extended to April 3, 2012.

C. FGIC Corp.'s restructuring efforts have been hampered by FGIC's ongoing restructuring efforts. According to FGIC Corp., "the Creditors' Committee, and other stakeholders have continued to evaluate the ongoing restructuring of . . . [FGIC]." In light of the unsuccessful exchange offer, FGIC Corp.'s restructuring efforts in chapter 11 have been stalled.

D. According to public filings by FGIC Corp. in the chapter 11 cases,

"Since the Exchange Offer terminated, FGIC has been engaged in discussions with the NYID and, starting in November 2010, the steering committee for an advisory group of policyholders, regarding potential alternative surplus restoration plans to restore FGIC's statutory surplus and to restructure FGIC in a manner that is fair and equitable to its policyholders and other creditors. There can be no assurance given as to what actions the Superintendent or the NYID may take with respect to FGIC and when such actions may be taken. The Debtor and FGIC are hopeful that any proposed alternative surplus restoration plan would provide a far better result for policyholders than a liquidation of FGIC under the NY Insurance Law."

E. Until FGIC's restructuring efforts materialize into an agreed upon restructuring (or rehabilitation/liquidation) nothing can/will happen with FGIC Corp.'s chapter 11 plan. According to FGIC Corp., "[b]ecause [FGIC Corp.'s] equity interest in FGIC is one of two main assets of [FGIC Corp.'s], [FGIC Corp.] respectfully submits that it is prudent to await clear direction in the FGIC restructuring before proceeding with the confirmation process for the Plan."