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Sent: Friday, December 17, 2010 8:41 PM
To: JointSEC <JointSEC@CFTC.gov>
Subject: Assured Guaranty Comments on Dodd-Frank Act
Attach: [Untitled].pdf

Please see the attached letter, which was delivered to Chairman Gensler and CFTC Commissioners on December 17, 2010.

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December 14, 2010

The Honorable Mary Schapiro
Chairman
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

The Honorable Gary Gensler
Chairman
U.S. Commodity Futures Trading Commission
1155 21 Street, N.W.
Washington, D.C. 20581

Dear Chairmen Schapiro and Gensler,

Assured Guaranty thanks you for the opportunity to provide the Commodity Futures Trading Commission ("CFTC") and the Securities and Exchange Commission ("SEC" and, collectively with the CFTC, the "Commissions") general comments as you consider regulations governing the definition of "swap" and "security-based swap" under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). We support your efforts to improve the over-the-counter derivatives markets. We intend to provide formal comments on the proposed regulations as well.

A financial guaranty insurance policy typically insures that if the issuer of an insured bond (such as a state or local government) fails to make a scheduled principal or interest payment, the financial guarantor will make the scheduled payment on time and in full. This unconditional, irrevocable guaranty covers all types of risk, including fraud, and offers significant benefits to both investors, particularly retail investors, and debt issuers, particularly municipal issuers.

We believe that Congress did not intend that the Dodd-Frank Act displace the current state regulation of the insurance industry. It created a Federal Insurance Office to monitor the insurance industry, with the authority to gather information and issue reports. But it fell far short of providing for federal regulation of the business of insurance.

The McCarran-Ferguson Act precludes the regulation of insurance, including financial guaranty insurance, as swaps or security-based swaps under the Dodd-Frank Act. The McCarran-Ferguson Act requires Congress to express a clear intention to override state regulation of insurance when it intends to do so, and states that "[n]o 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." The Dodd-Frank Act does not include any such clear expression. In fact, characterizing as swaps or security-based swaps

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transactions already regulated as insurance, together with the Dodd-Frank Act's prohibition on state regulation of swaps or security-based swaps, would have the perverse effect of displacing a currently active, substantial and comprehensive state regulatory regime with a regime not designed to regulate insurance.

Given that the Dodd-Frank Act does not pre-empt state regulation of insurance products, application of the Dodd-Frank Act derivative regulations to insurance products would result in inconsistent and incompatible regulatory regimes. Generally speaking, the Dodd-Frank Act requires clearing of derivative contracts, requires margin for those contracts and establishes capital requirements for swap dealers and major swap participants. However, a financial guaranty insurance policy is typically not severable from the security or other obligation it insures. Did the Dodd-Frank Act contemplate that insured municipal bonds be cleared? State laws generally, and for good reason, prohibit or discourage collateralization of insurance policy exposures (since collateralization would provide a preference of one policyholder over another policyholder). Did the Dodd-Frank Act contemplate pre-empting these state laws? State laws establish detailed capital requirements for insurance companies. Did the Dodd-Frank-Act contemplate different capital regimes? We respectfully submit that the answers to these questions are self-evident.

With respect to the Dodd-Frank Act, it is important to recognize that the scope of the Federal Insurance Office's preemption and other powers is limited. The Federal Insurance Office is charged with evaluating the merits of federal regulation of insurance, which is inconsistent with subjecting financial guaranty insurers or other insurers to federal regulation absent further Congressional action under Title VII. In addition, the Bureau of Consumer Financial Protection, established by the Dodd-Frank Act, is generally prohibited from regulating the insurance industry. The existing state regulatory regime, coupled with the lack of Congressional intent to regulate insurance, indicates that regulation of financial guaranty insurance as swaps or security-based swaps would be contrary to the legislative intent of the Dodd-Frank Act.

Therefore, were the SEC or CFTC to include traditional financial guaranty insurance as a swap or security-based swap under either Commissions' proposed rules, it would not only be inconsistent with the policy of the Dodd Frank Act on federal regulation of state-based regulated insurance, but would also have negative unintended policy implications on the municipal bond market, state and local governments who rely upon access to the municipal bond market, and the insurance industry. Application of the Dodd-Frank Act derivative framework to financial guaranty insurance would create significant challenges and merits further study.

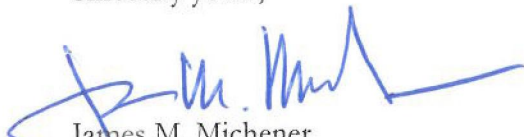
One intention of the Dodd-Frank Act is to establish financial stability in the derivatives market. At this juncture, it seems clear that application of the Dodd-Frank Act derivative regulations to financial guaranty insurers has the potential to destabilize the municipal bond market, which relies in part, particularly in the case of small municipal issuers, upon the availability of bond insurance. Assured Guaranty has insured approximately 1,600 issuances to date in 2010, representing approximately \$25 billion of new issue volume. Of the issues backed by financial guaranty



insurance, nearly 90% of those transactions were offerings of \$30 million or less. Without financial guaranty insurance, it would be nearly impossible for many of these issuers to access the market, frustrating the ability for state and local governments to obtain necessary financing for roads, schools, hospitals and other critical infrastructure projects. All of this comes at a time when many municipalities are finding themselves under considerable financial stress.

We appreciate the opportunity to engage you, your colleagues and the Commissions' staffs in this dialogue, and welcome the chance to continue our discussion.

Sincerely yours,



James M. Michener
General Counsel

cc: Luis Aguilar, Commissioner, SEC
Kathleen Casey, Commissioner, SEC
Troy Paredes, Commissioner, SEC
Elisse Walter, Commissioner, SEC

Bart Chilton, Commissioner, CFTC
Michael Dunn, Commissioner, CFTC
Scott O'Malia, Commissioner, CFTC
Jill Sommers, Commissioner, CFTC