November 13, 2008

Mr. Christopher Cox
Chairman
U.S. Securities and Exchange Commission
100 F Street NE, Room 10700
Washington, DC 20549

Re: File No. 4-573
Study on Mark-to-Market Accounting, as authorized by Section 133 of the Emergency Economic Stabilization Act of 2008

Dear Chairman Cox:

We appreciate the opportunity to comment on the current state of the market and our position regarding the appropriateness of fair value accounting on certain of our financial guarantee liabilities. We are writing this letter in response to the passage of the Emergency Economic Stabilization Act of 2008 ("EESA").

We would particularly like to discuss two sections of the EESA that give the Securities and Exchange Commission ("SEC") specific responsibilities in relation to mark-to-market accounting. Section 132, titled "*Authority to Suspend Mark-to-Market Accounting*", provides authority to the SEC to suspend the application of Statement Number 157 of the Financial Accounting Standards Board ("FAS 157"). Section 133, titled "*Study on Mark-to-Market Accounting*," requires the SEC, in consultation with the Federal Reserve and the Treasury, to conduct a study on mark-to-market accounting standards as provided in FAS 157, including its effects on balance sheets, impact on the quality of financial information, and other matters, and to report to Congress within 90 days on its findings.

With regard to Section 132, we do not support the suspension of FAS 157. As I am sure the SEC is aware, FAS 157 does not actually require any specific financial instruments be marked-to-market. It merely sets forth rules for marking any assets and liabilities that other accounting standards require or give the option to be fair valued. If the SEC simply suspended FAS 157, mark-to-market accounting would still apply, but there would be no guidance on methodology for determining fair value. This would create further confusion and misunderstanding in the marketplace.

We believe that there are two issues relating to mark-to-market accounting that are important to reassess:

1. The requirement in FAS 157 that practitioners determine “exit prices” in periods of extreme market illiquidity, when virtually every transaction can be said to occur at a “distressed price.”
2. The application of mark-to-market accounting to business models that originate liabilities or purchase assets with the intention of holding them to maturity.

The recent SEC and FASB joint letter issued September 30, 2008 on applying FAS 157 in illiquid markets, and the issuance of FSP FAS 157-3, *Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active*, seem to resolve the first issue. Since there is no exchange market for its insured credit derivative contingent liabilities, MBIA has long valued these contingent liabilities by using market references in an internal valuation framework. FAS 157-3 validates this approach as an appropriate application of the FAS 157 concepts.

However, the second issue is as yet unresolved, and we believe that MBIA’s insurance business model makes it an example of the unintended consequences of mark-to-market accounting. Our insured credit default swaps (“insured CDS”) are not materially different than our traditional financial guarantee insurance policies, yet are considered derivatives under current accounting guidance and are therefore subjected to mark-to-market rather than insurance accounting. For MBIA and the bond insurance industry, the fix is very simple. FAS Statement 133, *Accounting for Derivatives and Hedging Activities* (“FAS 133”), should be amended to provide that credit protection in credit derivative form that is written by bond insurers subject to Article 69 of the New York Insurance Law is outside its scope. The standard currently exempts traditional financial guarantee insurance policies written by bond insurers from fair value accounting. We believe that since our insured CDS contracts are functionally nearly identical to our traditional financial guarantee policies, differential accounting treatment is an example of accounting by form rather than economic substance, which results in confusing information for investors.

Executive Summary

This letter attempts to explain why we believe that fair value accounting is not in the best interests of users of our financial statements for certain of our financial guarantees that are determined to be derivatives per current financial accounting guidance. To do this we will:

- Demonstrate that there is no substantial difference between guarantees we issue in the form of traditional financial guarantee insurance policies and those that we issue in the form of insured credit default swap (“CDS”) contracts, and that, in either case, they are “buy and hold” positions for which mark-to-market accounting is inappropriate;

- Illustrate other generally accepted forms of reporting that recognize that financial guarantees issued in the form of traditional financial guarantee insurance policies and financial guarantees issued in the form of insured CDS contracts should be accounted for in the same manner;
- Clarify when fair value mark-to-market accounting is proper and when it is not in the best interests of the users of the financial statements; and
- Explain that current U.S. Generally Accepted Accounting Principles ("U.S. GAAP") allow certain financial instruments to be carried at other than fair value, and allows companies to elect fair value reporting when current U.S. GAAP does not require it. This results in different reporting for otherwise similar financial instruments (i.e. one company reports an asset at fair value whereas another company reports a similar asset at a basis other than fair value, and both are permissible under GAAP).

We further believe that there is broad support for changes to the reporting of financial guarantee insurance written in the form of insured CDS contracts by state regulated insurance companies. We believe that those in favor of such changes include investors in the financial guarantee insurance companies, analysts covering the financial guarantee insurance industry, rating agencies and other users of financial guarantee insurance company financial statements. This letter attempts to illustrate this broad based support for change.

History and Background

MBIA Insurance Corporation, headquartered in Armonk, New York, is the successor to the business of the Municipal Bond Insurance Association, which began writing financial guarantees for municipal bonds in 1974. As the world's largest financial guarantor, MBIA provides financial guarantee insurance and other forms of credit protection to public finance and structured finance issuers and capital market participants on a global basis. MBIA's financial guarantee insurance provides an unconditional and irrevocable guarantee of the payment of the principal and interest or other amounts owing on insured obligations when due. Those payments cannot be accelerated in the normal course of business except at MBIA's option after a default on the insured obligation. MBIA Insurance Corporation is a wholly-owned subsidiary of MBIA Inc., a publicly traded corporation listed on the New York Stock Exchange.

MBIA provides its guarantee in two legal forms: financial guarantee insurance policies and insured CDS contracts. The two forms of guarantee are functionally and economically identical. They are unconditional and irrevocable (with an exception limited to the non-payment of premiums on the insured CDS contracts). They do not require collateralization and cannot be settled at market value in the ordinary course of business. They can't be accelerated except at MBIA's option after a default in the insured obligation. There is no exchange market for the contracts. A portion of the economics of the contracts can be transferred in the reinsurance market, but there is no practical way for a financial guarantee insurer to realize the "market value" of a financial guarantee insurance policy or an insured CDS contract. Approximately 85% of the outstanding principal amount of MBIA's insurance is in the form of financial guarantee insurance policies, and 15% is in the form of insured CDS contracts.

Our original structured finance business provided insurance on bonds issued by securitization vehicles in traditional financial guarantee insurance policy form. In the late nineties, we began to write more business with financial institution customers that had loan assets on their balance sheets that were not destined for securitization vehicles and that would be marked-to-market by the financial institution. These customers were seeking hedges against both credit default risk and mark-to-market volatility in their financial statements. A traditional financial guarantee insurance policy is an effective hedge for the risk that the assets default, but our customers, subject to mark-to-market accounting, sought also to offset changes in the market valuation of their assets. The financial guarantee insurance industry developed a structure to deal with this – we would issue an insurance policy to a related company, which would enter into a CDS contract with the financial institution. The financial guarantee insurance policy and the credit default swap would have identical terms and conditions. Since the CDS contracts are technically derivatives, and the issuing entity is consolidated with the financial guarantee insurance company's holding company structure, the CDS contract was deemed subject to "derivatives accounting" under FAS 133. At the time of the adoption of FAS 133 in 2001, it was recognized that financial guarantee insurance policies have very different characteristics than traded derivatives, and they are "scoped out" of FAS 133 in paragraph 10(d). We believe that the scope exception should be extended to these virtually identical insured CDS contracts.

The decision to offer insured CDS contracts was ultimately value-destroying for MBIA and its competitors, for two reasons. First, MBIA has incurred approximately $1.1 billion of expected future loss payments on a portion of its insured CDS portfolio. The underwriting loss is related to and consistent with the $2.1 billion loss the company has sustained on its insured residential mortgage securitizations which were insured with traditional financial guarantee insurance policies. Second, the volatility in the changes in fair value of these contingent liabilities has created considerable confusion among our investors, inhibiting our ability to raise new capital in the face of these actual losses. We believe that the financial guarantee accounting model would provide adequate disclosure to investors about the economic loss. The mark-to-market losses are not realizable, since we do not guarantee the market value of insured obligations, and cannot be compelled to settle or collateralize insured CDS contracts.

Differences Between Common CDS and MBIA's Insured CDS Contracts

There are significant differences between the insured CDS contracts generally issued by financial guarantee insurance companies[1] and the more traditional CDS contracts typically issued by other financial institutions. The primary differences are detailed in the table below:

[1] This primarily includes MBIA, Ambac, Assured Guaranty, FGIC, and FSA

Contract Element	Traditional CDS Contracts	Financial Guarantee Insurance Company Insured CDS Contracts	Traditional Financial Guarantee Insurance Policies
Transferability	Typically traded through exchange traded or Over the Counter markets without restrictions	Cannot be traded or legally transferred	Cannot be traded or legally transferred
Net Settlement provisions	Contracts can typically be net-settled through payment of the fair value as determined by the market at time of settlement	Cannot be net settled	Cannot be net settled
Termination Provisions[2]	Can typically be terminated by either party, usually through a net settlement	Only terminable in bankruptcy, with a net settlement payment	Non-terminable
Collateral requirements	Typically require collateral posting	No collateral requirements	No collateral requirements
Accounting Model	Fair value mark-to-market through the income statement	Fair value mark-to-market through the income statement	Estimate of expected future losses

As is evident above, the insured CDS contracts issued by financial guarantee insurance companies bear little resemblance to the traditional CDS contracts which are traded and issued by other financial institutions. This is an artifact of the history of the financial guarantee insurance companies. Article 69 of The New York Insurance Law generally prohibits the acceleration of financial guarantee insurance coverage. Consequently, the defining distinction between financial guarantee insurance companies and other financial institutions is that the contingent liabilities of financial guarantee insurance companies are structured to be paid out over extended periods of time, resulting in an. absence of “run on the bank” risk – a financial guarantee insurance company cannot collapse as a result of collateral calls, demand liabilities or liabilities with “put triggers” (The largest bond insurers typically also have an asset/liability management business which does not contain these protections – and which should be subject to mark-to-market accounting for that reason).

[2] Financial guarantee insurance company insured CDS contracts can be terminated, with no net settlement provision, for failure to pay premiums. If premiums are not paid, the coverage is terminated with no penalty to MBIA. Traditional CDS can be terminated for breaches of a standard ISDA Master Agreement with net settlement by payment by the ‘out-of-the-money’ party of fair value to the counterparty

The insured CDS contracts issued by financial guarantee insurance companies are nearly identical to the traditional financial guarantee insurance policies that they historically issued in that the insured CDS contracts require no collateral, cannot be terminated or settled before maturity, and are not transferrable without the consent of the issuer. The insured CDS contracts are not traded or hedged in their entirety. There is no way for a financial guarantee insurance company to realize gains in the contracts, and they can't be compelled to realize losses. These insured CDS contracts are unconditional and irrevocable (with a limited exception for the non-payment of premiums) and are typically held to maturity, just as is the case for our traditional financial guarantee insurance policies. However, presentation in the balance sheet and income statement for insured CDS contracts is very different from that of the traditional financial guarantee insurance policies. This has led to significant volatility in our financial statements, general misunderstanding of the risks in our portfolio of guarantees, and greater capital raising challenges. The confusion and impairment of capital markets access contributed to the rating downgrades our industry sustained in the past year.

Our insured CDS contracts were an extension of the core business of financial guarantee insurance and are nearly indistinguishable from traditional financial guarantee insurance policies from both an economic and credit risk perspective. As a result, we do not consider this legal form to create a separate segment under FAS 131, *Disclosures about Segments of an Enterprise and Related Information*. MBIA has no unconditional entitlement to settle its CDS derivative positions at a gain or loss. That is, the insured CDS contract is effectively a hold-to-maturity instrument of the financial guarantee insurance company. Nonetheless, we believe the legal ownership (as discussed further below) requirement of paragraph 10(d)(3) does not change the financial guarantee insurance company's fundamental risk profile and results in inconsistent treatment of transactions with substantially similar risks.

Generally Accepted Accounting Principles for CDS

U.S. GAAP

U.S. GAAP recognizes that, generally, a contract that meets the definition of an insurance contract per U.S. GAAP guidelines is not subject to the requirements of FAS 133 and the insurance contract is, therefore, carried at the estimated cost of settling the claims[3]. However, subsequent to the initial issuance of FAS 133, the guidance was amended. This amendment further defined what constitutes a financial guarantee contract that is scoped out of FAS 133[4]. Certain of MBIA's CDS contracts do not meet the direct ownership requirement detailed in the amendment for the life of the contract and, therefore, do not meet the definition of an insurance contract per U.S. GAAP and

[3] Financial Accounting Statement 133, *Accounting for Derivative Instruments and Hedging Activities*, paragraph 10(c)
[4] Financial Accounting Statement 149, *Amendment of Statement 133 on Derivative Instruments and Hedging Activities*, paragraph A20-A23

consequently are required to be marked-to-market and carried at fair value per FAS 133*,* with changes in the marks reported in current earnings/losses.

New York State Insurance Department

In 1997, the New York State Insurance Department's Property Bureau (the "Department") addressed whether a financial guarantee insurance company may lawfully provide a financial guarantee policy with respect to the payment obligations of an affiliated transformer under the terms of a CDS. The Department concluded that the proposed guarantee was "substantially similar" to a direct guarantee of the underlying obligation protected by the CDS, and thus permissible under Insurance Law §6904(b)(1)(J). Accordingly, the Department did not object to such "back-to-back" transactions[5].

All guarantees issued by MBIA, both in the traditional financial guarantee insurance policy form and those that are issued in insured CDS contract form, meet the definition of insurance contracts per the Department's guidelines and are regulated by the Department through quarterly and annual reporting requirements. All liabilities related to financial guarantees, whether in the traditional financial guarantee insurance policy form or in the insured CDS contract form, are carried at the expected future costs to settle all claims. These expected loss liabilities are monitored and reviewed by the Department to ensure that sufficient capital is maintained to pay all expected claims.

MBIA supports the Department's definition and understanding that certain insured CDS contracts, which are substantially the same as traditional financial guarantee insurance policies, should be accounted for in the same manner as other financial guarantee insurance.

Mark-to-Market Accounting

Mark-to-market accounting is an accurate representation of the economics of a book of business that is actively traded – since the positions can be sold at any time, and may be collateralized based on changes in market value from time to time, the current realizable value is highly relevant. This accounting has been viewed as valuable by the financial institution regulators as it encourages firms to sell deteriorating assets, getting problems behind them quickly. MBIA supports fair value accounting for these tradable securities as this is the best measure for investors to understand the financial position of the enterprise. Our non-insurance business, which engages in the issuance of funded liabilities and acquiring invested assets, currently marks those assets in Other Comprehensive Income ("OCI"), as they are Available for Sale. In this case, marking the assets to market is more appropriate.

However, as we have noted above, the financial guarantees issued in insured CDS contract form are not transferable by the counterparties and are non-cancellable (with an exception limited to the non-payment of premiums). The daily, weekly and quarterly

[5] State of New York Insurance Department Circular Letter 19 (2008) issued September 22, 2008

ups and downs of the market don't matter in determining the ultimate losses of the insured CDS contracts and do not impact our claims-paying resources. What does matter is long term credit performance. Moody's and S&P agree that the mark-to-market losses may not represent a true indicator of actual credit deterioration[6] and that mark-to-market losses on credit derivatives are not predictive of future claims and are not used by them for the purposes of analyzing our capital adequacy and profitability[7]. This position is consistent among all the major financial guarantee companies that issue insured CDS contracts, including Ambac Financial Group, Assured Guaranty Ltd, as well as the Association of Financial Guarantee Insurers that represent many of the financial guarantee companies in the industry[8]. Prior to the issuance of FAS 133, all guarantees issued in insured CDS contract form were carried at the estimated ultimate cost of settlements of all claims using past experiences adjusted for current trends, consistent with statutory accounting guidelines promulgated by the Department. This generally accepted practice was successfully used by MBIA for over 30 years prior to the changes required by FAS 133. It provided useful information to investors, since any impairments of the insured obligations were recognized in income through the assessment of loss reserves.

Mark-to-market accounting on insured CDS contracts does not truly reflect the value of these guarantees to MBIA and does not accurately reflect the obligations and rights afforded MBIA on the portfolio. We believe that the most useful indicator of future performance on non-traded insurance guarantees for investors is MBIA's best estimate of the ultimate cost of settlements of all claims using past experiences adjusted for current trends, consistent with U.S. GAAP for insurance contracts as well as statutory accounting guidelines promulgated by the Department. FAS 163, *Accounting for Financial Guarantee Insurance Contracts*, requires extensive additional disclosure about these critical estimates, which we support. Conclusively defining these contracts as insurance would remove them from the mark-to-market requirements of FAS 133 and appropriately clarify the differences between the insured CDS contracts issued by MBIA and the traditional CDS contracts issued by other financial institutions. We strongly encourage the SEC and the FASB to reconsider the definition of a financial guarantee insurance contract in FAS 133. This can be done relatively easily, is widely supported by the industry, and would provide investors, rating agencies and users of the financial statements better insights into the real economic value of the companies that issue these guarantees rather than the confusion currently caused by the different accounting treatment on two very similar obligations.

Other Traditional (Traded) Market CDS Contracts

As we have noted above, the majority of CDS contracts issued by other financial institutions are readily tradable, traditionally have few restrictions, and may require collateralization based on changes in ratings or even value of the CDS contracts in the

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[6] Moody's Interpreting Financial Guarantors' Mark-to-Market Losses, July 2008
[7] Standard & Poor's, Significant Mark-To-Market Losses On Credit Derivatives Not Expected To Affect Bond Insurer Ratings, October 2007
[8] See Letters of Comments submitted to the Financial Accounting Standards Board regarding Exposure Draft *Accounting for Financial Guarantee Insurance Contracts*

markets. There has been much discussion regarding the CDS contracts issued by AIG that led to its near collapse. However, the CDS contracts sold by AIG required it to post collateral upon the occurrence of various events, including a downgrade of AIG by the rating agencies. The insured CDS contracts issued by MBIA have no such collateral posting requirements. In addition, in the documentation for its insured CDS contracts, MBIA has many rights that are designed to protect its interests.

Other Insurance Financial Instruments Carried at Other Than Fair Value

In accounting for other insurance financial instruments, the FASB has recognized that fair value may not be the most appropriate basis of reporting and allows for the financial instrument to be reported at other than fair value. For example, Financial Technical Bulletin 85-4-1, *"Accounting for Life Settlement Contracts by Third-Party Investors,"* allows for the reporting entity to elect either the investment method (i.e. amortized cost) or the fair value method for carrying and reporting life settlement contracts acquired. If the cost method is chosen for these life settlement contracts, their value is adjusted in the event that they become impaired. This fact recognizes that these financial instruments are often carried to maturity and that carrying the financial instrument at amortized cost is reasonable and supportable in U.S. GAAP literature. We believe that carrying our insured CDS contracts at amortized cost is a reasonable and supportable means of carrying and reporting these financial instruments.

Additionally, *FAS 159, The Fair Value Option for Financial Assets and Financial Liabilities—Including an amendment of FASB Statement No. 115*, permits companies to measure certain financial instruments at fair value (with the mark-to-market recorded in current income), which previously were not required by U.S. GAAP to be measured at fair value. Various insurance companies have elected the fair value option for certain of their financial instruments, including some insurance products, as the companies that exercised this election believed that fair value represents the best option for users of the financial statements. This can and has resulted in similar financial instruments being accounted for differently by different insurance companies. We believe that it would be prudent to expand this election to allow certain financial instruments that are currently required to be carried at fair value to be carried at another generally accepted basis of accounting (i.e. amortized cost). Guidelines would need to be provided on the circumstances under which this accounting would be acceptable,[9] what disclosures would be required and when this would be prohibited. We note that a company would still be required to disclose the reasoning behind their basis of reporting as well as the fair values of these financial instruments per current U.S. GAAP requirements in the notes to the financial statements. Allowing management to elect an other than fair value basis for reporting certain of their financial instruments gives a company the flexibility it needs to provide useful information to its constituents.

[9] See commentary above on when fair value is the best measure of a financial instrument (i.e. regularly traded, requires collateral postings, etc.)

Conclusion

We do not believe that suspending FAS 157 is in the best interests of investors or the users of financial statements, especially in this current market environment. We do, however, believe that with some minor adjustments to FAS 133, mark-to-market accounting can be applied only where it is most applicable and useful to the investors and users of the financial statements. We strongly encourage the SEC and the FASB to reconsider the definition of a financial guarantee insurance contract in FAS 133. As the SEC prepares its Study on Mark-to-Market Accounting as required by paragraph 133 of the EESA, we hope that the issues raised in our letter will be considered. We will continue to account for our insured CDS contracts in accordance with current standards until the appropriate changes to the accounting requirements can be issued by the SEC.

Thank you for the opportunity to contribute to the current discussions on mark-to-market and fair value accounting. Should you have any questions or require any clarification concerning the matters addressed in this letter please do not hesitate to contact our Managing Director of Accounting Policy, Huy Tran, at 914-765-3557.

Sincerely,

C. Edward Chaplin

C. Edward Chaplin
President and Chief Financial Officer
MBIA Inc.

cc: The Honorable Charles E. Schumer, Senator – New York
The Honorable Hillary Rodham Clinton, Senator – New York
The Honorable Nita M. Lowey, Representative – New York 18th District
Mr. Eric R. Dinallo, Superintendent, State of New York Insurance Department