



STATE OF NEW YORK  
INSURANCE DEPARTMENT  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004

David A. Paterson  
Governor

Eric R. Dinallo  
Superintendent

Ram Wertheim  
General Counsel  
MBIA, Inc.  
113 King Street  
Armonk, NY 10504

February 17, 2009

Re: Request from MBIA Insurance Corporation ("MBIA Corp." or "Applicant") and related subsidiaries and affiliates (collectively, the "MBIA Entities") for the approval of transactions under Articles 13, 14, 15, 41, 69 and 71 of the New York State Insurance Law (the "Insurance Law").

Dear Mr. Wertheim:

This letter is in reference to the above-captioned request by MBIA Corp., on behalf of itself and the other MBIA Entities, in its application (the "Application") to the Department dated December 5, 2008, as supplemented and/or amended on December 23, 2008, February 3, 4, 5, 10, 11, 13 and 16, 2009.

**I. The Application**

By the Application, the MBIA Entities seek the following:

1. Approval, pursuant to Insurance Law § 4105(a), for MBIA Corp. to declare and distribute to MBIA Inc. a dividend (the "MBIA Corp. Dividend") in the amount of \$1.147 billion in cash and securities.
2. Approval for MBIA Corp., pursuant to Insurance Law § 1411(d), to redeem from MBIA Inc., its sole shareholder, 32,064 shares of MBIA Corp. capital stock in exchange for approximately \$938 million in cash and securities and all of the issued and outstanding shares of MBIA Insurance Corp. of Illinois ("MuniCo"), MBIA Corp.'s wholly-owned subsidiary, pursuant to a plan to redeem and retire

shares of MBIA Corp.'s stock (the "Stock Redemption").

3. Approval, pursuant to Insurance Law §§ 1505(d) and 1308(e), for MBIA Corp. to enter into a reinsurance transaction (the "Reinsurance Transaction") with MuniCo. The Reinsurance Transaction would be effectuated through the execution of the following agreements between MBIA Corp. and MuniCo:
  - (i) a reinsurance agreement (the "MBIA Reinsurance Agreement");
  - (ii) an administrative services agreement (the "Administrative Services Agreement");
  - (iii) an assumption and assignment agreement (the "FGIC Services Assignment Agreement") pertaining to the services agreement between MBIA Corp. and Financial Guaranty Insurance Company ("FGIC"), dated December 1, 2008 (the "FGIC Services Agreement");
  - (iv) an assumption and assignment agreement (the "FGIC Reinsurance/Trust Assignment Agreement") pertaining to the reinsurance agreement between MBIA Corp. and FGIC, dated September 30, 2008 (the "FGIC Reinsurance Agreement"), and the trust agreement among MBIA Corp. FGIC, and the Bank of New York Mellon Corporation, dated October 22, 2008 (the "FGIC Trust Agreement"); and
  - (v) a commutation and release agreement pertaining to an existing reinsurance agreement between MBIA Corp. and MuniCo (the "Commutation Agreement" and, together with the MBIA Reinsurance Agreement, the Administrative Services Agreement, the FGIC Services Assignment Agreement, and the FGIC Reinsurance/Trust Assignment Agreement, the "Reinsurance Transaction Agreements").
4. Confirmation, pursuant to Insurance Law § 6906(a), that MBIA Corp. will receive full financial credit for the reinsurance provided by the MBIA Reinsurance Agreement, including the ability to release all unearned premium, contingency, and other reserves applicable to the policies covered by the terms of the MBIA Reinsurance Agreement.
5. Non-objection, pursuant to Insurance Law § 6904(e), to MuniCo's and MBIA Corp.'s proposed plans to reduce their respective exposures to loss to no more than permitted amounts under Insurance Law §§ 6904(c) and (d).
6. Approval, pursuant to Insurance Law § 1505(d), for MBIA Corp. to enter into a master services agreement (the "Master Services Agreement") with MuniCo.
7. Determination, pursuant to Insurance Law § 7105, that, in the aggregate, the series of transactions contemplated does not constitute a transfer of all or substantially all of the assets of MBIA Corp.

## II. The Transactions

### A. The Dividend and Stock Redemption

The series of transactions described in the Application (the “Transformation”) are designed to recapitalize MuniCo. In order to do so, MBIA Corp. will transfer cash and securities from its surplus to MBIA Inc., that will, in turn, be contributed to MuniCo.

Pursuant to the Stock Redemption, MBIA Corp. will redeem and retire 32,064 shares of its stock that are owned by MBIA Inc. in exchange for approximately \$938 million in cash and securities and all of the shares of MuniCo owned by MBIA Corp. (which constitute all of the outstanding shares of MuniCo). As a result of the Stock Redemption, MuniCo will cease to be a direct subsidiary of MBIA Corp. and will become a direct, wholly-owned subsidiary of MuniCo Holdings (as defined below). Pursuant to the MBIA Corp. Dividend, MBIA Corp. will declare and pay to MBIA Inc. a dividend in the amount of approximately \$1.147 billion in cash and securities. Thus, MBIA Corp. proposes to transfer, in the aggregate, approximately \$2.27 billion in cash, securities and the shares of MuniCo stock, to MBIA Inc. pursuant to the MBIA Corp. Dividend and Stock Redemption.

MBIA Inc. will contribute the approximately \$2.27 billion, which includes the shares of MuniCo stock, it receives from MBIA Corp. to MuniCo Holdings, Inc. (“MuniCo Holdings”), the intermediate holding company incorporated under the laws of the State of Delaware and wholly-owned by MBIA Inc. MuniCo Holdings will become the sole owner of MuniCo. MuniCo Holdings will retain 100% of the shares of MuniCo capital stock transferred to it, and will contribute \$2.085 billion in cash and securities to MuniCo.

After the Stock Redemption, MBIA Corp. will retire and cancel the redeemed shares and increase the par value of the remaining 67,936 shares of common stock of MBIA Corp. from \$150.00 to \$220.80, through a charter amendment, in order to maintain MBIA Corp.’s capital at an amount equal to or greater than \$15 million. The charter amendment has been submitted under separate cover to the Superintendent for review and approval pursuant to Insurance Law § 1206(a).

### B. The Reinsurance Transactions

Once MuniCo is recapitalized as described above, MuniCo and MBIA Corp. will enter into a number of transactions pursuant to which MuniCo will reinsure, on a cut-through basis, those financial guaranty insurance policies sold or reinsured by MBIA Corp. that insure securities issued by U.S. public entities (“Public Finance”).

#### 1. The MBIA Reinsurance Agreement and Administrative Services Agreement

Pursuant to the terms of the Reinsurance Transaction: (1) MuniCo will provide reinsurance, on a cut-through basis, to 100% of the Public Finance insurance policies written or reinsured by MBIA Corp. (excluding the policies reinsured pursuant to the FGIC Reinsurance Agreement), net of existing third-party reinsurance; (2) MBIA Corp. will transfer to MuniCo (together with the assets transferred pursuant to the FGIC Reinsurance/Trust Assignment

Agreement) approximately \$3.66 billion, which consists, as of December 31, 2008, of approximately \$3.48 billion of the net unearned premium reserve (the "UPR") associated with Public Finance policies and \$179.0 million of loss and loss adjustment expense reserves associated with the Public Finance being reinsured via the MBIA Reinsurance Agreement; (3) MuniCo will pay a ceding commission on the \$3.48 billion of net UPR of 22% (approximately \$765 million); and (4) pursuant to the Administrative Services Agreement, MuniCo will, at no cost to MBIA Corp., administer all claims and service those policies reinsured to MuniCo via the MBIA Reinsurance Agreement. The total premium paid for the Reinsurance Transaction will exceed 50% of the UPR on the net amount of MBIA Corp.'s insurance in-force.

## 2. The Commutation Agreement

Pursuant to the proposed Commutation Agreement, MuniCo and MBIA Corp. will commute an existing reinsurance agreement, dated January 1, 1999, pursuant to which MBIA Corp. reinsures 100% of the policies written by MuniCo. All liabilities ceded to MBIA Corp. under that existing reinsurance agreement will be returned to MuniCo, and MBIA Corp. will be released from any further liability in respect of such insurance policies. In consideration for MBIA Corp.'s release from such liability, MBIA Corp. will pay to MuniCo an amount equal to the loss reserves and UPR maintained by MBIA Corp. with respect to those liabilities.

In addition, MBIA Corp. and MuniCo will terminate the existing management agreement, dated June 1, 2000, between them, pursuant to which MBIA Corp. provides management and administrative services to MuniCo. According to MBIA Corp. that management agreement is no longer necessary because MuniCo and MBIA Corp. will enter into the Master Services Agreement.

## 3. The FGIC Reinsurance Transaction

In connection with the Transformation, MBIA Corp. and MuniCo will enter into the FGIC Reinsurance/Trust Assignment Agreement, pursuant to which MBIA Corp. will assign its rights, interests and/or obligations under the FGIC Reinsurance Agreement and FGIC Trust Agreement. In consideration therefor, MuniCo will effectively pay to MBIA Corp. an amount equal to 22% of the UPR received from MBIA Corp. in respect of the policies that FGIC ceded to MBIA Corp. pursuant to the FGIC Reinsurance Agreement.

In addition, MBIA Corp. will also assign to MuniCo its rights, interests and/or obligations under the FGIC Services Agreement. The assignment of the FGIC Services Agreement to MuniCo requires FGIC's consent, which MBIA Corp. will obtain prior to executing the FGIC Services Assignment Agreement. Pursuant to the FGIC Services Assignment Agreement, MBIA Corp. will assign to MuniCo, and MuniCo will assume from MBIA Corp., all of MBIA Corp.'s rights, interests and obligations to provide all administrative and other services on behalf of FGIC with respect to specified insurance policies for which liability is assumed by MuniCo.

#### 4. Second-to-Pay Policies

As part of the Transformation, MuniCo also plans to issue second-to-pay master trust policies (the “Second-to-Pay Policies”) in New York for the benefit of the holders of policies being reinsured by MuniCo as a result of the Transformation. The Second-to-Pay Policies will provide that if either MBIA Corp. or FGIC, as applicable, does not pay a claim of a covered policyholder or ceding insurer, then such policyholder or ceding insurer may assert a claim under the applicable Second-to-Pay Policy. If a claim is asserted under, and MuniCo makes payment on, the Second-to-Pay Policy, the obligations under the applicable reinsurance agreement will be discharged. Similarly, if MuniCo makes a payment on a claim pursuant to the cut-through provision in the applicable reinsurance agreement, the payee cannot assert a claim under the applicable Second-to-Pay Policy.

The Second-to-Pay Policies will be issued in accordance with Insurance Law § 6904(b)(3) and the forms of such policies will be filed with the Department under separate cover in accordance with Insurance Law § 6905.

##### C. The Master Services Agreement

MBIA Corp. further proposes to enter into the Master Services Agreement. Pursuant to the Master Services Agreement, MBIA Corp. will perform specified accounting, management, audit, financial and policy administration functions with respect to the insurance written or to be written by MuniCo. Additionally, MuniCo will periodically perform all functions that may be requested by MBIA Corp. and agreed to by MuniCo. The Master Services Agreement will remain in effect for 10 years and may be renewed for additional two-year periods upon the written agreement of MuniCo and MBIA Corp. at least 30 days prior to expiration. As compensation, MuniCo and MBIA Corp. will be reimbursed at cost for services provided under the Master Services Agreement.

##### D. Proposed Plan to Eliminate Violations of Single Risk Limits and Aggregate Risk Limits

As a result of the Reinsurance Transaction: (1) MBIA Corp. is expected to exceed the single-risk limit set forth in Insurance Law § 6904(d)(5) – limits on policies (“Structured Policies”) of financial guaranty insurance for debt issued by a single entity with a single revenue source – for eight issuers; (2) MuniCo is expected to exceed the unpaid principal single risk limit set forth in Insurance Law § 6904(d)(1)(B) – limits on policies (“Muni Policies”) of financial guaranty insurance issued by municipalities – for fifty-five issuers; and (3) MuniCo is expected to exceed the aggregate risk limit set forth in Insurance Law § 6904(c) by approximately \$1.37 billion.

Presently, MBIA Corp. is not writing new Structured Policies and has proposed that it will not write new financial guarantee policies on securities issued by the eight issuers in respect of which MBIA Corp. has exceeded the single risk limits of the Insurance Law until such time as MBIA Corp. decides to pursue writing Structured Policies. Prior to writing new Structured Policies, MBIA Corp. will ensure that it is in compliance with the single-risk limits for the eight risks.

With respect to MuniCo's violation of the Muni Policies single risk limit, MuniCo has proposed to refrain from writing new Muni Policies on the securities of those 55 issuers in respect of which MuniCo would exceed the single risk limit until MuniCo is in compliance with the applicable single risk limits for those issuers. As for the nearly \$1.37 billion worth of risks to be insured by MuniCo as a result of the Transformation in excess of the aggregate risk limit under Insurance Law § 6904(c), MuniCo believes that the increase in its capital and surplus resulting from writing new Public Finance insurance and the run-off of existing Public Finance policies will remedy the violation. MuniCo also intends to avail itself of other means by which it can strengthen its capital position, including securing additional capital from third parties or reinsurance.

### **III. Department Approvals**

The Department's Property Bureau, together with its colleagues in the Department, has considered the requests set forth in the Application and its accompanying submissions. In most instances the documents accompanying the Application were unexecuted agreements. The Department has made the following determinations upon the basis that the fully executed documents will be identical in all material respects to the unexecuted versions provided to the Department as of the close of business on February 13, 2009. In consideration of the foregoing, the Department issues the following approvals:

#### **A. The MBIA Corp. Dividend**

Insurance Law § 4105(a) prevents an insurer, within a 12 month period, from paying dividends to shareholders in excess of ten-percent of surplus to policyholders. That statute grants the Superintendent the discretion to permit an insurer to exceed such limitation upon a finding that the insurer will retain sufficient surplus to support its obligations and writings. Pursuant to the foregoing and based upon (1) the representations contained in the Application and its supporting submissions, and in reliance on the truth of those representations and submissions, (2) the Department's examination of the MBIA Entities' financial condition prior to the Transformation, and (3) the Department's analysis of the MBIA Entities' financial condition after the effectuation of the Transformation, the Department finds that MBIA Corp. will retain sufficient surplus to support its obligations and writings following the payment of the MBIA Corp. Dividend. Thus, the Department approves the MBIA Corp. Dividend under Insurance Law § 4105(a).

#### **B. The Stock Redemption**

Insurance Law § 1411(d) permits an insurer to repurchase its own capital shares pursuant to a plan of stock redemption and retirement that the Superintendent finds to be reasonable and equitable. Pursuant to the foregoing and based upon (1) the representations contained in the Application and its supporting submissions, and in reliance on the truth of those representations and submissions, (2) the Department's examination of the MBIA Entities' financial condition prior to the Transformation, and (3) the Department's analysis of the MBIA Entities' financial condition after the effectuation of the Transformation, the Department finds that the Stock Redemption is reasonable and equitable to MBIA Corp. Thus, the Department approves the

Stock Redemption under Insurance Law § 1411(d).

C. The MBIA Reinsurance Transaction

1. Insurance Law §§ 1308 and 6906

Insurance Law § 1308(e) provides that an insurer may not, without the Superintendent's permission, pay premiums on reinsurance in excess of 50% of unearned premiums on the net amount of insurance in force during any consecutive twelve-month period. Insurance Law § 6906 states that a financial guaranty insurer may purchase reinsurance from another licensed financial guaranty insurer (like MuniCo). Insurance Law § 6906(a) further provides, in relevant part, that the reinsurance purchased by a financial guaranty insurer must be subject to an agreement that, for its stated term, the reinsurance agreement may only be terminated or amended (i) at the option of the reinsurer or the ceding insurer, if the reinsurance agreement provides that the liability of the reinsurer with respect to policies in effect at the date of termination shall continue until the expiration or cancellation of each such policy, or (ii) with the consent of the ceding company, if the reinsurance agreement provides for a cutoff of the reinsurance in force at the date of termination.

Based upon (1) the requirements of Insurance Law §§ 1308 and 6906, (2) the representations made in the Application and its supporting submissions, and in reliance on the truth of those representations and submissions, (3) the Department's examination of the MBIA Entities' financial condition prior to the Reinsurance Transaction, (4) the Department's analysis of the MBIA Entities' financial condition after the consummation of the Reinsurance Transaction, and (5) the Department's expertise and knowledge about insurance companies, the business of insurance and reinsurance, and the market for reinsurance, the Department approves the Reinsurance Transaction pursuant to Insurance Law § 1308.

2. Article 15

Insurance Law § 1505(a) sets forth the standard for approval of transactions within a holding company system to which a controlled insurer is a party. Insurance Law § 1505(a) provides, in relevant part, that for each such transaction:

- a. The terms shall be fair and equitable;
- b. Charges or fees for services performed shall be reasonable; and
- c. Expenses incurred and payments received shall be allocated to the insurer on an equitable basis.

Insurance Law § 1505(d) provides that the parties may enter into the proposed holding company system transaction if the Superintendent does not disapprove the transaction after applying the factors set forth in Insurance Law § 1505(a) and considering whether the transaction may adversely affect the interests of policyholders.

Based upon (1) the factors set forth in Insurance Law §§ 1505(a) and 1505(d), (2) the representations made in the Application and its supporting submissions, and in reliance on the

truth of those representations and submissions, (3) the Department's examination of the MBIA Entities' financial condition prior to the Reinsurance Transaction, (4) the Department's analysis of the MBIA Entities' financial condition after the consummation of the Reinsurance Transaction, and (5) the Department's expertise and knowledge about insurance companies, the business of insurance and reinsurance, and the market for reinsurance, the Department does not disapprove of the Reinsurance Transaction pursuant to Insurance Law § 1505(d).

### 3. Full Financial Credit Pursuant to Insurance Law §§ 1308 and 6906(a)

MBIA Corp. will receive credit for reinsurance with MuniCo as an asset or as a reduction from liabilities provided that such reinsurance meets the requirements of Insurance Law § 1308(a)(2), § 6906(a) and § 6903(a)(5). The requirements of Insurance Law § 6906(a) are detailed above. Insurance Law § 6903(a)(5) provides that credit for reinsurance may be given if the reinsurance agreement requires that the reinsurer must, on or after the effective date of the reinsurance, establish and maintain a reserve in an amount equal to the amount by which the ceding insurer reduces its contingency reserves. Pursuant to Insurance Law § 1308(a)(2)(A), credit for reinsurance is available only if the reinsurance agreements provide that (i) the reinsurance is payable on the basis of the liability of the ceding insurer without diminution because of the insolvency of the ceding insurer and (ii) the liability for such reinsurance is assumed by the assuming insurer as of the same effective date .

Based upon (1) the requirements of Insurance Law § 6906(a), (2) the requirements of Insurance Law § 6903(a)(5), (3) the requirements of Insurance Law § 1308(a)(2), (4) the representations contained in the Application and its supporting submissions, and in reliance on the truth of those representations and submissions, and (5) the fact that the Reinsurance Agreement incorporates by reference all New York statutes and Department regulations necessary for MBIA Corp. to realize full credit for the reinsurance being provided, the Department confirms that MBIA Corp. will receive full financial credit, including the ability to release all unearned premium, contingency and other reserves applicable to the policies ceded pursuant to the MBIA Reinsurance Agreement and the FGIC Reinsurance/Trust Assignment Agreement.

**PLEASE BE ADVISED** that the foregoing confirmation is based, in part, upon the receipt by the Department on February 4, 2009 of written confirmation from MuniCo that it will establish and maintain contingency reserves in an amount equal to the amount by which MBIA Corp. reduces its contingency reserves.

#### D. Single-Risk Limits and Aggregate-Risk Limits

Insurance Law §§ 6904(c), 6904(d)(1)(B) and 6904(d)(5) (collectively, the "Risk Limits") limit the amount of insurance a financial guaranty insurer may provide on any single risk or on all risks in the aggregate. As described above, MuniCo and MBIA Corp. will exceed certain Risk Limits. Based upon (1) the representations contained in the Application and its supporting submissions, and in reliance on the truth of these representations and submissions, (2) the Department's examination of the MBIA Entities' financial condition prior to the Transformation, and (3) the Department's analysis of the MBIA Entities' financial condition after the effectuation of the Transformation, the Department does not object to MBIA Corp.'s



and MuniCo's proposed plans to reduce their exposure to loss to no more than permitted amounts under Insurance Law § 6904.

**PLEASE BE ADVISED** that as noted herein, the Department's non-objection is based, in part, on MBIA Corp.'s undertaking that prior to writing new Structured Finance policies, it will cure all eight violations of the single-risk limits that are identified in the Application. That undertaking will not, however, prevent MBIA Corp. from entering into transactions with any party in order to completely or partially terminate MBIA Corp.'s liability. Notwithstanding anything in this letter to the contrary, MBIA Corp. may, in connection with such a transaction, provide a new or replacement Structured Finance policy if the transaction will remedy, in whole or in part, a then current troubled credit.

**PLEASE BE FURTHER ADVISED** that the Department's non-objection is conditioned upon MBIA and MuniCo, as applicable, taking all commercially reasonable steps as quickly as possible to comply with the Risk Limits, which such steps may include, without limitation, procuring reinsurance, increasing their surplus to policyholders and contingency reserves by growth or by other additions to its capital. The MBIA Entities, by accepting this letter and consummating the Transformation based upon the approvals set forth herein, acknowledge and agree that beginning on or about March 2, 2009, they will provide monthly reports, in writing, to the undersigned, describing the steps being taken to remedy the violations and the status of such efforts. Moreover, the MBIA Entities, by accepting this letter and consummating the Transformation based upon the approvals set forth herein, acknowledge and agree that in the event that the violations have not been remedied by December 31, 2009, MBIA Corp. and/or MuniCo, as applicable, will, upon written notice from the Department, cease writing any and all financial guaranty insurance unless and until such remaining violations are remedied.

E. The Master Services Agreement

Based upon (1) the requirement set forth in Insurance Law § 1505(d), as set forth above, (2) the representations contained in the Application and its supporting submissions, and in reliance on the truth of those representations and submissions, (3) the Department's examination of the MBIA Entities' financial condition prior to the Transformation, and (4) the Department's analysis of the MBIA Entities' financial condition after the effectuation of the Transformation, the Department finds that the terms and conditions of the Master Services Agreement are fair and equitable and will not adversely affect the interests of policyholders. Thus, the Department approves the Master Services Agreement under Insurance Law § 1505(d).

F. Request for Determination under Article 71

Article 71 of the Insurance Law provides that an agreement for the acquisition of assets of or by a domestic insurance company must receive the approval of the Superintendent. Insurance Law § 7101(g) defines "acquisition of assets" as "the acquisition through the purchase or otherwise of all or substantially all of the assets of a domestic company." Based upon (1) the text of Article 71, (2) the Department's prior interpretations of "all or substantially all of the assets," particularly in its September 26, 2008 determination in connection with the FGIC Reinsurance Agreement, (3) the representations contained in the Application and its supporting submissions, including, for example, that MBIA Corp. will indirectly transfer less than half of its

admitted assets to MuniCo, and in reliance on the truth of these representations and submissions, (4) the Department's examination of the MBIA Entities' financial condition prior to the Transformation, and (5) the Department's analysis of the MBIA Entities' financial condition after the effectuation of the Transformation, the Department confirms that the Transformation does not involve the transfer of "all or substantially all of the assets" of MBIA Corp. under Insurance Law § 7105. Thus, the Department confirms that the Transformation does not require the Superintendent's approval under Article 71 of the Insurance Law.

Sincerely,

Handwritten signature of Michael Moriarty in cursive, with a circled "SAC" to the right.

Michael Moriarty  
Deputy Superintendent for Property  
And Capital Markets

Cc: Kermitt J. Brooks  
Robert H. Easton  
Larry Levine