

## **BANKING AND INSURANCE**

### **BOARD OF DIRECTORS MINUTES**

September 5, 2013, Thursday, 2:00 pm  
Director's Conference Room, Department of Revenue and Taxation  
1240 Army Drive (Route 16), Barrigada, Guam 96913

#### Attendance:

Artemio B. Ilagan, Chairman, and Banking & Insurance Commissioner

#### Board Members:

Edelfrida A. Ada  
Cesar Garcia  
Danilo Rapadas  
William West Cassidy

Rose Fejeran  
Mark O. Fish  
Dave Silva

Antonita S. Camacho  
(absent)

Also, present John Carlos, Regulatory Programs Administrator and Anita Superales, Regulatory Examiner I.

#### Call to Order:

The meeting started with a roll call as Chairperson Art Ilagan called the Banking and Insurance Board Meeting to order at 2:15 pm and acknowledged the presence of the seven (7) board members listed above. Antonita Camacho was not present.

#### I. Approval of minutes:

The approval of minutes for the board meeting of May 9, 2013, was presented for discussion. Motion to accept the minutes by Mark Fish followed second by Danilo Rapadas and unanimously in favor by the board.

#### II. Old Business:

##### **1. Approval of the SAFE Act Regulations.**

Chairperson Art Ilagan stated the Safe Act Regulations have been pending for the longest time. It has brought up to the Legislature and the Attorney General Office. There were some issues with the SAFE Act. Issues were brought up and discussions made but was later resolved. Chairperson presented the SAFE Act Regulation were presented for approval. A motion to approve the SAFE Act Regulations by Edelfrida Ada was seconded by Rose Fejeran. The board unanimously approved and to be sent down to the Legislature with the Attorney General approval.

## **2. Vincent Insurance Corporation:**

The hearing before the Commissioner was with the assistance of Mr. Bob Cruz, the Hearing Officer. The commissioner confirmed that the Certificate of Authority to write insurance could not be retroactively given. After the hearing, Vincent Insurance signified that it would appeal the decision of the Commissioner before the Board. The lawyer of Vincent Insurance was given a complete record. The counsel for Vincent Insurance is also asking for a transcript of the records. A transcript will be given on a later date, but a copy of the CD was provided to them.

Discussion with Vincent Insurance:

Vincent Insurance wants to appeal the decision on the hearing before the Commissioner of the Board's decision but they want the transcript first. Now, what happen if the board decision is adverse, the Vincent do they have further recourse or does it end there. Does the Board have the authority; so this has gone to the Attorney General and the Attorney General is stating that he cannot, and he is appealing the hearing officer's process. Does the board have the authority to overturn the Attorney General's ruling on it? Definitely, the board has the authority to overturn the ruling, which is provided for in the powers of the board.

The chairperson stated that the issue with this is that it is not retroactive it is the process of getting it done; Vincent is not in compliance with the audits in a timely manner. This was what the Attorney General was looking at. Their Audited Financial Statements were not filed on time, when this is one of the requirements and when it came out for their certificate that is when they started filing prior years. That is the issue with the Attorney General's Office. A timeline for Vincent Insurance has to be schedule for appeal to the Board for a ruling.

## **3. Deposits to the Banks of Government Agency:**

Government of Guam's deposit to Banks is still with the Attorney General's Office, Shanon Taitano is the Assistant Attorney General and her decision is still pending.

Mark Fish ask, what is the commissions' opinion on Government Agencies putting TCD's other than the bank.

The Commissioner replied when this law was written, there probably was not any credit union in Guam, so when they wrote the law it probably said bank.

If they pay their fair share of taxes then fine you can put them in the credit union, if not do not pay taxes so do not put them in there. Were not even allow to regulate them just board; and cannot charge fees through the ATM's.

It is on the record that the office of the commissioners sends some memorandums to all government agencies to stop depositing to the credit union but the autonomous agencies requested to send it over to the Attorney General.

#### **4. Patient Protection Affordable Care Act-Health Insurance:**

The U.S. Territories were given the implementation of the Affordable Care Act. In summary, the ACA to be successful on the implementation must include not only Market reforms but also individual mandates. Every person who is resident or citizen of Guam who has the capacity to pay and buy health insurance should buy insurance. Employer mandates, which require employers to get health insurance for their employees otherwise they will pay penalties. Of all the important provisions of the ACA, the two mandates are individual mandates; employer mandates were not made applicable to the territories. The NAIC formed the sub group because the territories were complaining that there were not any sufficient subsidies given. There were series of conference call and this is the product the end.

Without Federal subsidizes, without Individual mandates, without employer mandates, there will be a tendencies for the health insurance premiums either in the large or in small groups to go up. They will carry the burden of all those who are not insured. When those who are not insured will have some existing medical condition and they will take advantage of the system. It is just as if somebody making an analogy were going to get ourselves insurance when the fire is already there. This exposes the insurance companies and the insured to greater losses and into higher premiums without a bigger premium base. Therefore, this what it is going to boil down to? It is probably difficult to get any health assistance from the U.S. Congress right now, or some form of relief from HSS. In the event, there is no relief from the US Government and the HSS, the only other avenue is for the local legislature to enact individual mandate and the employer mandate. We are giving it to the board members for information maybe later on the board might want to develop and propose policy.

(Commissioner)

The OBAMA ACT is fragment in application to the territories. In a conference call with Health and Human services, Guam is going to oppose the law to health insurance providers to pay 2% of premiums they collect. The Federal government is going to enforce this law. Also for each member of the insured, you, your spouse, husband, children, are going to be assessed \$2 dollars each, collected by the federal government. These taxes take way from the island. The commissioners formed a sub-group of territories. The position paper will be presented for round table of Insurance Commissioners to take place in December 2013.

Part of the issue is a million dollar grant to Guam and the territories as a requirement for Guam and the territories to put up the Exchange. The states have a bigger and greater amount. The Exchange is similar to the exchanges like a stock market. Individuals who are not insured can go into the exchange and who want to participate and join to get coverage. The problem is they gave us a million dollars grant to do a study, if you do not put up the Exchange; you have to pay back the million dollars.

The cost of the exchange is about \$50 million. This exchange will communicate with Revenue and Tax to see if you qualify for Medicaid and if you are qualified, you will be sent to Medicaid. The exchange will also communicate with Homeland Security, to see if you are a U.S. citizen or a resident and that you can claim a credit for the advance premium tax credit. This advance premium tax credit is estimated about \$74 million for Guam. The resources that the Federal Government gave was \$925 million dollars to Puerto Rico and the four (4) territories split up the rest to about \$75 million for five (5) years. Guam will get \$24 million for five (5) years but will have to put 74 million dollars yearly. This is allowable in the Guam Territorial Income Tax Law. We could or may be face with another lawsuit if the advance premium tax credit is not paid out. We will be in trouble with the Obama care.

Also with the Obama care, certain thing that are given to the insured, like transplant, blood transfusion, all this is covered now and who is going to pay for the insured. All those that are uninsured, will come out and ask to be insured. With all those people who are healthy, do not need insurance and will get insurance until they are sick. The mandatory individual mandate is for us to get everybody insured so we can get some cash in from the people who are healthy. I hope that the NAIC looks in to this matter with the Territories and tell Congress, because we have a none voting delegate, we do not vote.

(JCarlos)

During the conversation with the territories, the representatives from the Virgin Island requested that at least all of the other states to help the territories because all of our territorial delegates are none voting; the Virgin Island delegate requested that assistance be given by the other states in order to assist the territories.

(Commissioner)

This is just for information. The Insurance companies expect to have a 35 to 55% increases in our health insurance rates based on what they have to payout.

(JCarlos)

Provision for transplants, and other health benefits will start whenever a new policies is issued starting 2014 or when your policy is renewed in 2014. It should contain those new benefits including transplant that is why it is going to become more costly.

There will be lifetime dollar limits on the health benefits. Insurance companies have this medical loss ratios, 85% what they collect must be use for insurance, health claims and 15% goes to administrative cost and their profits. Guam has only four (4) health insurance companies, if there is no profits for the insurance then they are able to pull out and we are going end up with no insurance.

How much is the penalty that an individual must pay if they do not buy insurance?

A maximum amount starting in 2014 would be at \$285 for a family. It increases in later years it gets higher and higher. Penalty is not applicable to Guam. Employer mandate and individual mandate are not applicable to Guam. The pre-existing condition is applicable. This has to balance out by the penalty coming from individual and the small employers. Big employers are ready insuring their employees.

#### **5. Oceanic Bank**

First National Bank of Northern California purchased Oceanic Bank. The branch was closed effective June 30, 2013. No discussion.

#### **6. Allied Bank-(JCarlos)**

Handouts were given regarding the asset loans and receivables, deposit liabilities and the capital of Allied Bank and Philippine National Bank individually. We have computed liquid ratios.

Is this in pesos? Yes. Allied Bank assets of 197,777,203,000 billion pesos are converted to \$4,819,133,000. The assets of PNB are 331,006,539.000 pesos converted to \$8,065,461.00 U.S. dollars.

The foreign bank is not allowed to take deposits. The only deposit they can take if they have somebody that has a loan with Allied Bank. You can only deposit to the matching of what is owed, cannot exceed to what owed, so there is no exposure as far as FDIC concern and plus they have a deposit with the Commissioner of \$525,000. There is no exposure as far as the territory in terms of deposit. They are lending out their own money.

Mark Fish inquired if he wanted to buy a car/condo in the Philippines, it had PNB finance it in the Philippines, pay my loans here but would you take Guam collateral here or is that allowed, does your registration in Guam allow you take Guam collateral as guarantee as purchase made in the Philippines.

Angel Bautista of Allied bank provided the answer that consumer loan, total housing loan, is processed in the head office. The collateral should be in the Philippines. Allied will not make a loan in the Philippines' while the secured assets are only here in Guam.

#### **New Business:**

- 1.** Antonita Camacho is retired. Maybe replace by somebody within the Bank. We wait for the official communication from the Bank of Hawaii. Declare the position vacant. Commissioner will ask the Governor to open up the appointment.

The Bank of Hawaii Branches located at Payless Yigo and Payless at Micronesia Mall were closed effective August 31, 2013. The automated teller machines will remain in place to serve customers.

2. A research of the issue that this bank brought up pursuant to the Uniform Consumer Credit Code (UCCC). There could be an overcharge in the same manner that American Express did some refund to some credit card holders. We are not sure whether American Express did it with in accordance with some state law or accordance with some federal statutes.

We have research this matter; look into our Uniform Consumer Credit Code (UCCC). If there, is an overcharging, compute the overcharging from 2 years from the date from last entry, but where is the date of last entry. There is no provision from our Guam banking code. We looked at the National Bank Act and it says a period of 2 years from the date when the transaction occurred. That is the look back period as far as the National Bank Act. How will it apply to Guam banks? We should look at forming on a committee of bankers to look into this matter. A bank made the inquiry verbally. The Board agreed to act on this matter with the banks inquiry if it were made in writing.

3. One consumer is saying that he has a credit card and bought some food in a convenience store. The convenience store refused to accept the credit card. The consumer asks why the store refused the credit card.  
Visa, Master card rules, charges network fee. Merchants pay a fee to credit card companies. If the purchase is small, the merchant will pay a minimum credit card fee. The acceptance of the credit card for a small purchase may result to a loss for the merchant.

Meeting adjourned at 3:10 pm

Next meeting will be on November 14, 2013