

BANKING AND INSURANCE

BOARD OF DIRECTORS MINUTES

December 1, 2011, Thursday, 2:00pm

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

Antonita S. Camacho

William West Cassidy

Mark O. Fish

Cesar Garcia

Danilo Rapadas

Dave Silva

Also Present:

John Q. Carlos, Regulatory Programs Administrator

Ariana Villaverde, Senator Vicente C. Pangelinan's Office

Public Hearing for the Admission of Insurance Companies:

For the record, ten (10) persons attended the public hearing for the admission of insurance companies. Also in attendance were eight (8) Banking & Insurance Board Members and three (3) employees of the Regulatory Division of the Department of Revenue and Taxation.

The public hearing for the admission of insurance companies began at 2:08pm. Chairman Ilagan asked if there was any testimony for or against the following insurance companies:

Greenwich Insurance Company

SCOR Reinsurance Company

AXA Insurance Company

Great American Insurance Company

Berkely Insurance Company

Stonebridge Casualty Insurance Company

Odyssey Reinsurance Company

Catherine Cruz identified herself, and also stated that she is an assistant to Keith Nakamura (Slater & Nakamura) and that Keith Nakamura is the registered agent for Berkely Insurance Company and Stonebridge Casualty Insurance Company. Ms. Cruz did not provide any other information regarding the insurance companies.

Board Member Cesar Garcia stated that he had testimonial in favor of Odyssey Reinsurance Company and added that Odyssey Reinsurance Company was one of First Net's reinsurers. He also stated that they (Moylan's Insurance Company) are not representing Odyssey Reinsurance Company as a resident agent, and that Odyssey Reinsurance Company must have appointed another company. Mr. Garcia submitted written testimonial to Chairman Ilagan.

For the record, Mr. Garcia is currently employed as Vice President and Risk Manager of Moylan's Insurance Company, which is the general agent for First Net Insurance Company.

No testimony or comments were presented for Greenwich Insurance Company, AXA Insurance Company, SCOR Reinsurance Company, and Great American Insurance Company. The public hearing was concluded.

Guam S.A.F.E. Act Public Hearing

For the record, ten (10) persons attended the public hearing for the SAFE Act. Also in attendance were eight (8) Banking and Insurance Board Members and three (3) employees of the Regulatory Division of the Department of Revenue and Taxation.

Chairman Ilagan asked Mr. Carlos to proceed. Mr. Carlos stated that the issues that were presented in the August 25th Public Hearing, Board Meeting, as well as the ad-hoc meeting were addressed and included in the information packets presented to the Board Members. Mr. Carlos provided an overview of the issues that were addressed including the request of the Guam Association of Realtors for a de minimis exemption. Federal banking regulators were given the authority to grant de minimis exemption to banking institutions. However, the Department of Housing and Urban Development (HUD) was not given authority by the SAFE Act to grant de minimis exemption.

Chairman Ilagan asked if anyone else would like to testify on the SAFE Act. Oliver Bordallo identified himself, and stated that he had written the letters to the Banking & Insurance Commissioner (dated September 7th and November 16th, 2011). He stated that he is a lawyer that has been practicing for 24 years and that his main focus is in real estate law and that he is here on an individual capacity, not on behalf of a client. Attorney Bordallo provided testimony, mainly in favor of implementing a de minimis exception for Guam. He suggested that the Guam Regulations should be amended to include the HUD's clarification that the law is only intended for people that engage in the business of residential mortgage lending in a commercial or repetitive nature, or as an alternate, a de minimis rule should be adopted.

Liz Duenas identified herself, and stated that Anthony Goodwin is the current president and that she is the incoming president of the Guam Association of Realtors. She stated that they both agree with Oliver Bordallo's assessment and research. Ms. Duenas emphasized that given the current state of the economy, any additional regulations that restrict individual residential mortgage lending activities can cause further harm to Guam's economy.

Chairman Ilagan asked if anyone else would like to give testimony regarding the SAFE Act. No other testimony or comments was given, the public hearing was concluded at 2:47pm.

Call to Order:

Chairman Ilagan called the Banking and Insurance Board Meeting to order at 2:49pm and acknowledged the presence of the seven (7) board members. Ms. Rose Fejeran was absent.

Approval of minutes:

The minutes of the prior board meeting of August 25, 2011, was presented and opened for review and discussion. Mr. Cassidy requested that his comments listed on page six, item 5 be corrected to reflect the following, "Mr. Cassidy stated that with regards to property and casualty insurance, there really is no tail or end to the retention of documents and is dependent on whether it is a casualty line of business."

A motion to approve the amended Banking & Insurance Board Meeting Minutes was made by Mr. Cassidy and seconded by Mr. Silva. The minutes were unanimously approved.

The Chairman opened the board meeting to discuss the following:

Old Business:

1. The Secure and Fair Enforcement for Mortgage Licensing Act or Safe Act was approved as P.L. No. 30-151 on May 25, 2010.

The first publication notice for the public hearing (which was held on March 17, 2011) on the SAFE Act Regulations was on February 23, 2011, and the second publication notice was done on March 15, 2011. Since the Public Hearing on March 17, 2011, was not valid (lack of quorum) a new publication notice was made on August 18th & 23rd for the public hearing held today August 25, 2011.

The SAFE Act Regulations had been circulated via email to Board Members and other financial institutions.

Discussion regarding what the de minimis level should be for Guam. Attorney Bordallo added five other states have adopted a de minimis level of five (5). Also, the federal banking agencies allowed a de minimis level of 5 for federally regulated banking institutions. The de minimis level on the federal and state regulations are on an annual basis.

Mr. Fish made a motion to adopt the HUD definition and to include the repetitive language, but to define "repetitive" in the regulations to not exceed 5 loan transactions on a twelve (12) month period starting from the first transaction. Seconded by Ms. Ada, and unanimously approved by the board.

Board discussion regarding the testing and enforcement aspect of the regulations, Ms. Ada made a proposal to develop two (2) tests for licensing of the mortgage loan originators. One test (the uniform component) is to be taken in California or Hawaii, and the other (the local component) to be administered here on island. This has to be verified with HUD if this is acceptable. Also an inquiry will be made to HUD, regarding whether or not the waiver of the state component for testing in other jurisdictions is acceptable. The testing and enforcement aspect of the regulations will be discussed further at a later date.

2. Vincent Insurance Services Corporation. The main issue is whether or not the Commissioner has the authority to retroactively allow and approve the renewal of the certificates of authority. The company had not filed audited financial statements during the renewal period for certain years.

Chairman Ilagan briefed the board on the background of the case. Board members discussed the delay and procedures of this case. A hearing with the interested parties is scheduled for December 12, 2011.

3. Status of whether federal credit unions operating in Guam must pay a licensing fee for the establishment and operation of automated teller machines (ATMs).

Chairman Ilagan confirmed with Mr. Carlos that a response is still pending from the Attorney General's Office.

4. In regards to the letter requiring the Government of Guam autonomous agencies to deposit funds (particularly TCDs) with eligible banks.

The Chairman stated that the case is still pending a response from the Attorney General's Office.

New Business:

Chairman Ilagan opted to proceed with the Bank of Guam relocation next.

1. Bank of Guam has applied for relocation of their Mangilao Branch to another location, which is across the street from the current location of the Bank of Guam, Mangilao Branch. This has received prior approval from the FDIC.

A motion to approve the relocation was made by Mr. Fish, and seconded by Ms. Ada. The Board voted and was unanimously approved.

Old Business:

5. The Patient Protection Affordable Care Act (PPACA) became law on March 23, 2010. Guam is not included in the Temporary High Risk Pool. However, the funding for Medicaid and Children Health Improvement Program (CHIP) were increased together with all Territories. Several grants were applied for and awarded to Guam.

In regards to the Health Exchange Grant Funds that have been awarded, in the event that the Government of Guam does not establish and operate an exchange, it must reimburse all funds to the federal government. This will include expended funds and the remaining balance.

From the Health Exchange Grant Funds, the amount of \$11,000 was used to attend a Health Insurance Exchange Forum in Denver, Colorado in March 2011.

In regards to the exchange program, Mr. Carlos added that if an individual does not qualify for Medicaid, the individual will have to enroll in the exchange. Based on the household income, an individual may qualify for the Advance Premium Rate Subsidy. He emphasized that the Advance Premium Rate Subsidy will be a drain on the cash intake of the Government of Guam, because the amounts for the Advance Premium Rate Subsidies will have to be paid (by the Government of Guam) to any participating health insurance company that will participate into the Health Insurance Exchange.

Mr. Carlos briefed the Board that Guam was also awarded grants for consumer assistance, and rate review programs and he described those programs.

The Chairman added that based on the last meeting with the NAIC, it has become apparent that in regards to funding of the Affordable Care Act, the federal government is treating the territories differently compared with the states. He emphasized that Guam does not have the market size comparable to the states.

Mr. Schnabel asked if there were any memoranda stating that in fact, all of the federal subsidies had to be reimbursed by Guam. Mr. Carlos answered, that the issue was brought to Congresswoman Bordallo's attention. The response from her office is that, Guam will be held accountable for the Health Exchange Grant Funds in the event Guam does not establish an exchange.

However, no response in writing has been given by the Congresswoman regarding the reimbursement of the Advance Premium Rate Subsidies and the application of the individual mandate to Guam.

New Business:

2. Mr. Brion Kanda was not included in today's agenda, but requested time to be heard. Brion Kanda identified himself, and stated that he was here representing the Insurance Association of Guam. He presented to the Board a letter (dated December 1, 2011) identifying the need to simplify the procedures in getting reinsurers approved and licensed.

Mr. Kanda stated that due to the current procedure process, four (4) reinsurance companies have opted to not conduct reinsurance business in Guam. He also iterated that the approval process in the mainland is as simple as verifying that the reinsurer is licensed in another state. Mr. Kanda's concern is that the reinsurers may continue to be discouraged in filing a certificate of authority application because of the new regulations being enforced by the Regulatory Division.

Chairman Ilagan and Mr. Carlos, both stated that they had expressed their opposition to the current law requiring a publication and public hearing.

A discussion regarding the current approval procedures followed. A few members stated that they did not believe the procedures were onerous. Board members asked Mr. Kanda to provide in writing to clearly describe what he believes should be changed in order to improve the process. There was an apparent miscommunication regarding the requirements for approval between Mr. Kanda and the Regulatory Division Staff.

A motion to adjourn was made by Ms. Ada, seconded by Mr. Cassidy, the Meeting was adjourned at 4:20 P.M.

Please note, the minutes are subject to the approval of the Board Members.