THE BANKING AND INSURANCE BOARD MEETING
DIRECTOR'S CONFERENCE ROOM MARCH 14, 2013, THURSDAY 2:00 PM

AGENDA

I. Approval of Minutes for meeting held on June 21, 2012.

II. 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 Legislature returned the Regulations to our office for further development. The SAFE Act was enacted under Title 18, Business Functions and not under Title 11 of the Banking Code. A banking activity that is set in the Banking code can be the subject of regulation by the Board. Since mortgage origination is a banking activity, the Commissioner submits the SAFE Act Regulations for the approval of the Board. Thereafter, these regulations shall be transmitted to the Guam Legislative Secretary.

   The Nationwide Mortgage Licensing System & Registry (NMLS) launch, an examiner conducted training in Hawaii to utilize the NMLS system. The other examiners are currently being trained on the system. The launch date has yet to be determined.

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 did file audited financial statements but beyond the license period. The filing was done as follows: Audited FS 2004 to 2007 filed on March 5, 2010; Audited FS 2008 to 2009 filed on December 16, 2011; Audited FS 2010 filed on January 12, 2012.
   The decision of the Commissioner and the hearing officer states that Vincent Insurance cannot be issued an insurance license retroactively. Counsel for Vincent Insurance has filed an appeal before the Banking and Insurance Board. A hearing will be held as soon as a hearing officer for the Board can be arranged with the assistance of the Attorney General.

3. In regards to the letter requiring the Government of Guam autonomous agencies to deposit funds (particularly TCDs) with eligible banks. A request for opinion was submitted to the Attorney General's Office.

4. 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 Medicaid and Children Health Improvement were increased together with all Territories. The

Affordable Care Act (ACA) as held in accordance with the US Constitution based on the taxing power of the US federal government.

The National Association of Insurance Commissioners (NAIC) has created a working committee for all NAIC members in relation to the establishment or non-establishment of Exchanges for the states and territories. Guam has submitted the issues stated below.

Guam administers the Territorial Income Tax which mirrors the income tax provisions of the US Internal Revenue Code (IRC). The provisions of ACA on advance premium tax credit or APTC are set forth in the IRC Section 36B. The APTC is a subsidy for low household income qualified residents of Guam to be able to secure affordable health insurance. The subsidy starts at 100% to 400% Federal Poverty Level (FPL) for each household. For a household with four members the household income at 100% FPL is $23,050 and at 400% FPL it is $92,200. The estimated APTC amount for Guam is $74 million every year. This mandate in the IRC is not funded by the federal government.

The Earned Income Tax Credit (EITC) provisions are also found in the income tax provisions of the IRC. Could Government of Guam in the administration of US Income Tax Code be held liable to pay for APTC? This is a legal question. The IRS stated that Guam is not liable to pay APTC if Guam does not establish the Exchange. However, Government of Guam may face a lawsuit similar to the EITC.

Several grants were applied for and awarded to Guam. In regards to the Exchange Grant Funds that have been awarded, in the event that Guam does not implement an exchange, all funds (that have been expended and not expended) by the Government of Guam must be reimbursed to the federal government. To date, of the $1 million grant funds for the exchange only $11,000 have been expended. This grant has been transferred to the Governor of Guam.

For insurers that issue health insurance plans, they are required to spend 80 cents for every dollar of premium received for payment of claims and wellness programs for the individual and small market. For the large market of 100 members the requirement for insurers is to pay 85 cents for every dollar of premium received for payment of claims and wellness programs. If the threshold of 80 cents and 85 cents is not met, the insurers must pay rebate. Health plans issued by Island Home Insurance Co are administered by StayWell. The health plans issued by Tokio Marine Pacific Insurance Ltd are administered by SelectCare have paid the rebates to policyholders (employers) on

August 1, 2012. The employers have 90 days from August 1, 2012 to pay the rebates to Subscribers. Subscribers are employees who pay a share of the premium to the insurer.

5. Pacific Amusement, Inc. has refused to submit their audited financial statements. The company has retained an attorney to challenge the requirement. Pacific Amusement Inc. is also stating that the $1 million surety bond requirement for nonbank ATM applicants is discriminatory. The Commissioner submitted an Order requesting documents be submitted for review or request for a Hearing on May 2, 2012. Counsel for Pacific Amusement issued a letter on May 17, 2012, requesting a Hearing. A hearing was held on August 24, 2012. The case was heard by the Commissioner and Assistant Attorney General Monte May as the hearing officer. The Commissioner delegated the authority to decide to the hearing officer because the issues are purely legal questions.

   The hearing officer agreed with Pacific Amusement Inc. that the requirement of financial statement of the board must comply with Administrative Adjudication Law. The proposed rule that required Pacific Amusement to submit audited financial statement in the interpretation of a comprehensive financial statement requires a public hearing and not just a meeting by the Board. It must be mentioned that Pacific Amusement, Inc. is contesting that the surety requirement for non-bank automated teller machines (ATM) is inorganic because the surety bond requirement is not similarly imposed on banks.

6. Request for Proposal for Financial (RFP) Examination of Insurance Companies licensed in Guam. The RFP include services for financial examination, rate review and market conduct. The RFP has been published on February 15, 2013. At least two financial examiner firms submitted responses. The Board needs to vote to approve or disapprove the proposals.

III. New Business

1. Metropolitan Bank and Trust Co Guam Branch closed effective June 30, 2012. As of June 30, 2012, the Guam Branch has no more assets and liabilities in Guam.
2. The Regulatory Examiners had an online training for reviewing policy forms and rates in the Systems for Electronic Rate and Form Filing (SERFF). The training was held on August 21, 22, and 23, 2012. Since October, 2012, Guam has been receiving and reviewing insurance policy form and rate filings that are filed online.

3. Oceanic Bank Guam has been purchased by the First National Bank of Northern California. The purchased was approved by the FDIC. Effective September 24, 2012, Oceanic Bank Branch in Guam became First National Bank of Northern California.

4. The Guam Branch of Allied Bank has informed our office that it has merged with Philippine National Bank in February 2013. Allied Bank has been informed that certified copies of the merger document shall be filed with the Department and with the Commissioner.

5. Anthony Godwin is lobbying with the Guam Legislature to propose legislation for Uniform Electronic Transaction Act (UETA). There is a companion federal law known as Electronic Signatures in Global and National Commerce (ESIGN). ESIGN requires that consumer be informed and consumer must consent to the use of Electronic Signatures. More information is needed in terms of consumer protection, legal certainty of electronic signatures, burdens to financial institutions and establishments using electronic signatures.