

THE BANKING AND INSURANCE BOARD MEETING
DIRECTOR'S CONFERENCE ROOM MAY 09, 2013, THURSDAY 2:00 PM

AGENDA

- I. Approval of Minutes for meeting held on March 14, 2013.
- 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. The Attorney General has not yet selected an outside counsel to represent the Board.
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. The original request was made to Attorney General John M. Weisenberger on August 4, 2010. On April 2, 2013, Commissioner Ilagan sent a follow up letter to Attorney General Leonardo M. Rapadas. Please see attachments.

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.

The Governor of Guam has until October 1, 2013 within which Guam shall opt in or out of the State Based Exchanges now called State Based Markets (SBM). The Federally Facilitated Markets (FFM), Federal and State Partnership Markets options are available only to the 50 states.

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. 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. 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. Currently, no court case has been served to the Commissioner.

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 companies are: INS Regulatory Insurance Services, Inc. and Regulatory Examination Consultants, LTD. The rates submitted by the two financial examiner firms are attached to the minutes of the of the Board meeting held on March 14, 2013. The maximum per diem rate Outside the Continental United States (OCONUS) for Guam is \$255.00. The Board needs to approve the two proposals. Without the approval of the board, the Commissioner cannot assign the financial examiners to start the examination of the domestic insurance companies in Guam.

III. New Business

1. 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. The Guam branch of First National Bank of Northern California will be closed effective June 30, 2013. Please see the communication from First National Bank of Northern California.
2. The Guam Branch of Allied Banking Corporation has informed our office that it has merged with Philippine National Bank in February 2013. The surviving bank is Philippine National Bank. The Philippine Banking Authorities have approved the merger. The approval from Bangko Central Ng Pilipinas (Central Bank of the Philippines), Philippine Deposit Insurance Corporation, certificate of filing with the Securities and Exchange Commission and Secretary's Certificate of Philippine National Bank are attached.

Philippine National Bank has filed the company's articles of incorporation and by-laws with the General Licensing and Registration Branch pursuant to 11 GCA §106722.

Allied Banking Corporation has deposit with the Commissioner in the form of a Time Certificate of Deposit with the First National Bank of California in the amount of \$525,000 pursuant to 11 GCA §106204. This deposit shall be deposited with a Guam commercial bank insured with the FDIC on May 16, 2013.

Philippine National Bank is requesting for the approval of the Board of the merger between Allied Banking Corporation and Philippine National Bank and for the surviving bank, the Philippine National Bank to be given the approval to submit an application for a foreign banking license pursuant to 11 GCA §72102 of this code.

**BANKING AND INSURANCE
BOARD OF DIRECTORS MINUTES**

May 9, 2013, 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

Members:

Edelfrida A. Ada	Antonita S. Camacho
William West Cassidy	Rose Fejeran
Cesar Garcia	Mark O. Fish

Also Present:

John Q. Carlos, Regulatory Programs Administrator
Camelita Gogue, VP & General Manager, Marianas Finance Corporation
Angel S. Bautista, Senior Manager, Allied Bank Guam Branch
John Paul Manuel, Analyst, Office of Senator San Nicholas
Julian Jankin, Analyst, Office of Senator San Nicholas

Call to Order:

The Commissioner stated that the publication requirements for the Board Meeting were met. The Board Members in attendance were acknowledged. Mr. Danilo Rapadas and Mr. David Silva were absent. The Commissioner called the Banking and Insurance Board Meeting to order at 2:45pm

Approval of minutes:

The minutes of the prior board meeting of March 14, 2013, was presented and opened for review and discussion. Mr. Fish moved to approve the minutes, seconded by Ms. Ada. The minutes were unanimously approved.

The Commissioner opened the 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 SAFE Act Regulations had been circulated via email to Board Members and other financial institutions. The regulations were submitted to the Legislature and was subsequently disapproved and returned for revision.

A motion to postpone (until the next Board Meeting) the voting on the approval of the SAFE Act Regulations for submittal to the Guam Legislature was made by Mr. Fish and seconded by Mr. Cassidy. Mr. Fish cited several concerns such as the fee structure, legal review by the Attorney General's Office, bond requirement, and ability to purchase bond due to potential losses from penalties. The Board agreed to postpone voting on the SAFE Act Regulations, until all Board Members have the opportunity to further review the regulations. In the interim, an Ad-Hoc Committee will be established to begin the review and revision process of the regulations.

2. Vincent Insurance Services Corporation. The Commissioner stated that he is still waiting on the Attorney General's Office for a hearing officer, since Vincent Insurance is requesting an appeal through the Board. No hearing date has been set as of today.
3. In regards to the letter requiring the Government of Guam autonomous agencies to deposit funds (particularly TCDs) with eligible banks.

The Commissioner stated that a request for opinion was made with the Attorney General's Office on August 4, 2010. But the Attorney General had not responded. A follow-up letter was made on April 2, 2013, and a response to that letter stated that Attorney Taitano-Lujan will be assigned as hearing officer. No hearing date has been set as of today.

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 Commissioner asked if Mr. Carlos can elaborate on PPACA.

Mr. Carlos briefed the board regarding the cost of implementing the State Based Exchange, which is now called State Based Market for Guam. The Commissioner added that Guam's market situation is quite different compared to the mainland. The Commissioner along with the other territories are requesting an extension from the HHS Secretary to delay the implementation (until the funding issues with the territories are addressed), which is scheduled for January 1, 2014.

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 stated that he is waiting on court action in order to proceed with addressing this issue. The Commissioner stated that certain language in the law should be revised to better define what is required, such as, to change from "comprehensive financial statements" to "audited financial statements." Mr. Fish added that the law should be amended to include the terminology.

The other item that the company is challenging is the surety bond requirement. The company feels that since banks are not required to post the bond, their company should not be required to comply with this requirement.

6. Request for Proposal (RFP) for Financial Examination of Insurance Companies licensed in Guam.

Two financial examiner firms submitted responses to the RFP. The companies are INS Regulatory Insurance Services, Inc. and Regulatory Examination Consultants, Ltd.

A new fee schedule was negotiated with the firms and the Board proposed to use both firms on an alternating basis or availability. Mr. Fish motioned to approve, seconded by Mr. Cassidy. The Board unanimously approved.

New Business:

1. Oceanic Bank Guam was purchased by the First National Bank of Northern California. Effective September 24, 2012, Oceanic Bank Branch in Guam became First National Bank of Northern California.

The Board was informed that the Guam Branch of First national Bank of Northern California will be closed effective June 30, 2013.

2. The Guam Branch of Allied Banking Corporation has informed our office that it has merged with the Philippine National Bank in February 2013. The surviving bank is Philippine National Bank. The Philippine banking authorities have approved the merger.

Philippine National Bank is requesting for the approval of the Board of the merger between Allied Banking Corporation and the Philippine National Bank and the surviving bank, the Philippine National Bank to be give approval to submit an application for a foreign banking license, pursuant to 11 GCA section 72102.

Mr. Angel S. Bautista, Senior Manager of Allied Bank Guam Branch, identified himself and presented the financial statements of both banks to the Board.

Mr. Fish asked if any financial due diligence was conducted. The Commissioner stated that he did not believe this was done. Mr. Fish moved to postpone the approval until the Board has had time to review the financial statements of both banks. Seconded by Ms. Ada and approved by the Board.

Mr. Bautista also presented to the Board the newspaper advertisement of the merger, which includes an amendment. He also briefed the board of the surviving bank's intention, which is to continue the business activities previously conducted by Allied Bank. The business activities are limited to commercial lending and foreign exchange only.

3. The Commissioner opted to bring this issue to the Board at this time:

Please note that Senator San Nicholas was not able to attend, due to illness. Mr. John Paul Manuel and Mr. Julian Jankin, analysts with the Office of Senator San Nicholas attended the Board Meeting.

The Commissioner continued by stating that he had invited Senator San Nicolas (Committee on Aviation, Ground Transportation, Regulatory Concerns, and Future Generations) to today's Board Meeting in order to discuss a few issues. One is to request the special funds that were taken away and given to the General Fund during the period when the OPA stated that there were too many special funds.

The Commissioner stated that one of those special funds was for Insurance and Banking. He emphasized that those funds should stay with Insurance and Banking Branch or the Department in order to operate more efficiently. He further clarified that by efficiently he meant that the branch would have the money to hire more personnel, and purchase more, and better equipment.

In general, the Commissioner is requesting from Senator San Nicholas to assist in a legislation to create and fund a special account for the Insurance, Securities, Banking and Real Estate Branch of the Department of Revenue & Taxation in order to provide faster and better service to the customers.

4. The next Board Meeting has been tentatively scheduled for July 18, 2013, at 2PM at the Director's Conference Room.

The motion to adjourn was made by Ms. Ada, and seconded by Ms. Camacho. The meeting was adjourned at 3:35pm.