

**BANKING AND INSURANCE BOARD OF DIRECTORS
MINUTES OF THE MEETING**

March 14, 2013 Thursday, 2:00 pm

Director's Conference Room, Department of Revenue and Taxation
1240 Army Drive, Route 16, Barrigada, Guam 96913

ATTENDANCE:

Present:

Commissioner Art Ilagan
Regulatory Administrator,
John Carlos
Edelfrida A. Ada
Antonita S. Camacho

William West Cassidy
David Silva
Mark O. Fish
Danilo Rapadas
Cesar Garcia

Absent:

Rose Fejeran

The meeting was called to order at 2:15 pm. The presence of the Insurance and Banking Commissioner, Board of Directors who attended the meeting and the Regulatory Programs Administrator were acknowledged.

The meeting started with the approval of the minutes of the meeting held on June 21, 2012. The approval was moved by Antonita Camacho and seconded by Danilo Rapadas.

The following old businesses were discussed:

- **The SECURE and FAIR ENFORCEMENT for MORTGAGE LICENSING ACT (SAFE ACT)—**

Mark Fish voiced out his frustrations about the delay on the approval of the SAFE Act Regulation by the Legislature even after the Office of the Insurance Commissioner acted on the changes that the Legislature wanted to happen.

-the Act should have been in place two (2) years ago—it goes back and forth and back and forth and nothing is getting done.

-the penalty is \$10,000.00 per occurrence violence for making mortgage without license as mandated by federal law but not being implemented

-there might be liability involve with financial institutions that are forced to stop their mortgage loan activities because they cannot obtain licenses for their people.

-in the absence of the SAFE Act, can the Commissioner fall back in enforcing the HUD Regulation?

John Carlos cited that part of the delay is the changes that were asked by the Legislature. The Safe Act was revised accordingly and resubmitted again and still waiting for the Legislature's action. There was a scheduled meeting on December 6, 2012 but there was no quorum and therefore, this caused another delay.

Danilo Rapadas commented that this subject of implementing SAFE ACT maybe not be the concern of the banks but more of mortgage groups that have to be in compliance with the SAFE Act to carry out their business. Therefore, they should be the one to be pushing the SAFE Act to be implemented.

The discussion about SAFE Act ended up with the request from the Board of a 'redlined' changes required by the Legislature on the Regulations and take it from there till the next discussion and/or meeting of the Board. Mr. Carlos will email the documents to all Board members.

- **VINCENT INSURANCE--**

With the Vincent Insurance case, there was a ruling of the Insurance Commissioner and the Hearing Officer contracted by the Attorney General stating that Vincent Insurance cannot be granted a certificate retroactively for the years of not having the Certificate of Authority. The entity wants to have another hearing before the Banking and Insurance Board. After the hearing with the Banking and Insurance Board and it still does not yield a favorable result for Vincent, they are going to court to file an appeal.

- **DEPOSIT FUNDS (TCDs) WITH ELIGIBLE BANKS—**

This pertains to the GovGuam autonomous agencies. The letter requesting for the AG's opinion was sent to the Attorney General on August 4, 2010 and still waiting for the response. Danilo Rapadas requested to get the date when the request for opinion was sent to the AG and if need be, do a follow up every week till the AG attends to the matter.

The discussion revolved on the matter of hiring a Regulatory Counsel to attend to legal matters that are on hand so that the waiting time for the action to take or recommendation will be lessened and so that we are not dependent on the Attorney General's office time table to render an opinion. The question of funding the Counsel came up and the Commissioner disclosed that the Regulatory Division used to have a separate account funded from the examination fees of banks and insurance companies but was closed and consolidated into the General Funds.

Mark Fish suggested if we can invite Senator Michael San Nicolas (Oversight Chairman for Revenue and Taxation) so that the Board can express directly to him matters with regards to Banking and Insurance business of Guam.

The Insurance Commissioner agreed to invite Senator Michael San Nicolas on the next Banking and Insurance Board Meeting.

- **The PATIENT AFFORDABLE CARE ACT (PPACA)—**

Mr. Carlos talked the PPACA program by President Obama also known as ‘Obama Care’ that became law on March 23, 2010.

The National Association of Insurance Commissioner (NAIC) provides information on the establishment of Insurance Exchange for the states and territories.

The Affordable Care Act will provide a total of \$1 billion for territories to use granting Puerto Rico \$925 million and leaving the remaining \$75 million to be divided among the other four (4) territories with Guam having 32.58% or \$24,436,001 of the \$75 million.

The following factors are affecting Guam as to reaching a decision to establish and insurance exchange or to opt out of the program:

-Guam Administers the Territorial Income Tax which mirrors the income tax provisions of the US Internal Revenue Code (IRC). The Advance Premium Tax Credit or APTC is a subsidy for low household income qualified residents of Guam to be able to secure affordable health insurance. This provision of ACA is found in IRC Section 36B. The subsidy starts at 100% to 400% Federal Poverty Level (FPL) for each household. For a household with four (4) members, the income at 100% FPL is \$23,050 and \$92,200 at 400% FPL. The estimated APTC amount for Guam is \$74 million each 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. Although the IRS stated that Guam is not liable to pay APTC if Guam does not establish an Exchange, Government of Guam may face a lawsuit similar to EITC.

Guam was awarded \$1 million to fund the Insurance Exchange. To date, \$11,000 has been expended out of the total funds. In the event that Guam does not establish an Exchange, the total amount of \$1millionawarded grant must be reimbursed by Government of Guam to the Federal Government (funds that have been expended and not expended).

To date, Guam has not made a decision. The deadline to opt into an Exchange is on October 1, 2013. If Guam does not elect to establish an Exchange, the Department of Health and Human Services (HHS) will not operate a Federally-facilitated Exchange but instead, Guam will receive an increase in the federal funds for Guam’s Medicaid program.

- **PACIFIC AMUSEMENT, INC.—**

Pacific Amusement, Inc. is a non-bank institution. It is licensed to operate Automated Teller Machines (ATM). Pacific Amusement, Inc. has refused to submit audited financial statements and questions the requirement to post a \$1 million bond surety stating that it is discriminatory since the requirement is not similarly imposed on commercial banks and other banks. With Hearing Officer, Monte May of the AG's Office and the Insurance Commissioner, Mr. Artemio B. Ilagan, a hearing on the matter was held on August 24, 2012. The decision of the Hearing Officer was that the requirements being asked of the Pacific Amusement must not only be the result of an agreement among the Board Members for an audited financial statement pursuant to the Administrative Adjudication Act but requires a public hearing. The decision by the Hearing Officer will be appealed to the court by Pacific Amusement, Inc.

Danilo Rapadas commented that this is one of the reasons why is there a need of a Regulatory Counsel. Someone needs to be on top of the regulatory issues of the Department of Revenue and Taxation.

- **REQUEST FOR PROPOSAL (RFP) for FINANCIAL EXAMINATION OF INSURANCE COMPANIES LICENSED IN GUAM--**

This RFP includes services for financial examination, rate review and market conduct. The RFP has been published on February 15, 2013. At least two (2) financial examiner firms submitted responses: (1) Regulatory Examination Consultants was received on March 11, 2013 and (2) INS Regulatory Insurance Services, Inc. was also received on March 11, 2013. Both of the responses were opened in the presence of the Board Members. The responses are attached to this report. Dave Silva commented that the daily expenses per diem appears to be high. Danilo Rapadas suggested if daily per diem rate can be negotiated.

- **METROPOLITAN BANK & TRUST COMPANY of GUAM—**

The bank closed its Guam Branch effective June 30, 2012. There is no more assets and liabilities in Guam as of the closing date of the business. The Office of the Banking Commissioner directed Metropolitan Bank to post a Fifty Thousand (\$50,000.00) deposit by way of Time Certificate of Deposit. The deposit will be held by Treasurer of Guam for five (5) months from June 30, 2012 before it can be released. This is for consumer protection.

- **SYSTEM FOR ELECTRONIC RATE & FROM FILING (SERFF)—**

On August 21, 22 & 23, 2012, the Regulatory Examiners had on line training on reviewing and approving policy forms and rates via SERFF. In October 2012, Guam started receiving and reviewing policy forms and rates filing electronically.

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- **OCEANIC BANK Guam Branch** was purchased by FIRST NATIONAL BANK OF NORTHERN CALIFORNIA with the approval of FDIC. Effective September 24, 2012, Oceanic Bank Branch in Guam became First National Bank of Northern California.
- **ANTHONY GODWIN of Today's Realty** 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 prior to the adoption of the law using electronic signatures.

The meeting adjourned at 4:25pm. It was moved by Danilo Rapadas and seconded by David Silva.

The next Banking and Insurance Board meeting was set for May 9, 2013.

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