

STATE OF WISCONSIN :

CIRCUIT COURT

DANE COUNTY

In the Matter of the Rehabilitation of:

Case No.: 10-CV-1576

Segregated Account of Ambac Assurance Corporation

REPLY BRIEF OF BANK OF AMERICA, N.A., SOLELY IN ITS CAPACITY AS TRUSTEE FOR CERTAIN RMBS TRUSTS AND ON BEHALF OF THOSE TRUSTS' CERTIFICATEHOLDERS, IN FURTHER SUPPORT OF MOTION TO MODIFY ORDER FOR TEMPORARY INJUNCTIVE RELIEF

Bank of America, N.A., solely in its capacity as Trustee for certain RMBS Trusts and on behalf of the Trusts' Holders of RMBS, respectfully submits this Reply Brief in further support of its Motion to Modify the Court's Order for Temporary Injunctive Relief.¹

PRELIMINARY STATEMENT

Although most provisions of the Order are clearly designed to protect the assets of the Segregated Account or facilitate the Commissioner's efforts to achieve a successful Rehabilitation, it is not apparent that the provisions of paragraphs 6 and 9.B.2(iv) nullifying control-shifting terms in the Governing Document provide any direct benefit to the Segregated Account, and neither Ambac nor the Commissioner have demonstrated that these provisions further a legitimate purpose under Chapter 645. Ambac and the Commissioner hypothesize that certain negative consequences would result were effect given to control-shifting terms, but most of the supposed harms would impact only the

¹ Terms defined in the Bank of America RMBS Trustee's June 22, 2010 Brief in Support of Motion to Modify Order for Temporary Injunctive Relief shall have the same meaning in this Reply Brief.

discrete group of insured certificateholders that are the ultimate beneficiaries of the Policies at issue – the precise group of constituents that presently object to the Order. They are not able to identify with any particularity any harm that would result to other insureds with policies in the Segregated Account, Ambac’s creditors or the public generally, were effect given to control-shifting terms. Because Ambac and the Commissioner have failed to identify a legitimate purpose, the Order should be modified to allow effect to be given to Governing Document terms that would divest Ambac of control and direction rights. In the alternative, if Ambac or the Commissioner is to exercise such rights going forward, it/he should be ordered to provide indemnification by the General Account, or other indemnification acceptable to the Bank of America RMBS Trustee, as a prerequisite.

ARGUMENT

I. AMBAC AND THE COMMISSIONER HAVE FAILED TO DEMONSTRATE THAT THE ORDER’S INJUNCTION AGAINST CONTROL-SHIFTING TERMS SERVES A PROPER INTEREST UNDER CHAPTER 645

In their respective opposition briefs, Ambac and the Commissioner conjure certain harms that they claim will result were Ambac and the Rehabilitator required to abide by contractual terms that deprive Ambac of control rights due to its failure to perform contractual duties or its entry into Rehabilitation. They have not, however, demonstrated that the injunction against such control-shifting provisions furthers Chapter 645’s expressly stated purpose of protecting insureds, creditors or the public generally. The Order should therefore be modified to give effect to control-shifting terms in the Governing Documents.

Ambac's primary objection to modifying the Order appears to be that it does not want "to lose substantive rights simply because it entered rehabilitation." (Ambac Assurance Corporation's Second Brief in Opposition to Various Motions and Objections to Injunction Order, dated Aug. 17, 2010 ("Ambac Br."), at 4.) As an initial matter, it bears noting that the rights it would "lose" are rights that it agreed, at the time it issued the Policies, it would forfeit if it failed to honor its contractual obligations or entered rehabilitation. Ambac cannot be heard to suggest that there is any unfairness in being held to the bargain it struck.

Ambac claims that it would "defeat the purpose of Chapter 645" to give effect to the contractual terms to which it agreed in the Governing Documents at the time it issued the Policies. Chapter 645 is not, however, designed to permit an insurer to assert every conceivable "substantive right" it might have enjoyed prior to Rehabilitation. As set forth in Section 645.01(4), the chapter is designed to "protect the interests of insureds, creditors, and the public generally, with minimum interference with the normal prerogatives of proprietors." Wis. Stat. § 645.01(4). Significantly, the statute does not include among interested constituents the insurer itself. The "substantive rights" of the insurer thus cannot take precedence over the interests of insureds, creditors, and the public generally.

While Ambac never explicitly suggests how the injunction against control-shifting provisions protects Segregated Account insureds, creditors or the public, its arguments appear designed to convince the Court that the Order protects at least one category of insureds: the RMBS trustees that hold the Policies. *See* Ambac Br. at 5

("Ambac's continued exercise of control rights benefits issuers, policyholders, and Ambac itself."). In particular, Ambac claims that the Order benefits "policyholders in certain transactions" -- *i.e.*, trustee policyholders in RMBS transactions, as opposed to the entire population of Ambac policyholders -- because "[l]oss of these rights would harm policyholders with no offsetting gain." (*Id.*) In essence then, Ambac asks the Court to substitute Ambac's view of what is in the best interests of the RMBS policyholders, for the judgment that the policyholders made at the time they entered into Policies and Governing Documents that included control-shifting terms. Nothing in Chapter 645 or any other authority suggests that Rehabilitation can be used to rewrite contractual obligations to give a specific group of insureds a supposedly "better deal" than they struck at the time their policies issued, particularly where that group of insureds has voiced its objection, as it has done here.

Ambac's opposition to modification of the Order would carry more weight in light of Chapter 645's expressly articulated purpose were it able to demonstrate that loss of control rights will adversely affect the interests of other Segregated Account insureds, Ambac's creditors or the public at large, which it has not done. Instead, Ambac suggests that "issuers" will benefit from the nullification of control-shifting terms because Ambac would do a better job of responding to waiver requests and giving certain approvals than would investors or trustees. (*Id.* at 5-6) Issuers, which are nothing more than special purpose vehicles created to facilitate the issuance of securities to insured and uninsured investors, are not among the categories of protected constituents recited in Section 645.01(4). Even if they were, the supposed harms affect only the discrete group that are

parties to the Governing Documents containing the terms at issue, and, as explained above, rehabilitation should not be used simply as a vehicle for rewriting contracts after-the-fact.

Ambac does suggest that the Rehabilitation effort could be adversely affected because investors will liquidate mortgage loan and other collateral assets at “fire sale” prices, whereas Ambac supposedly has an interest in maximizing the return on collateral. (*See id.* at 6.) Ambac has provided no evidence that any RMBS investors are organizing to direct the sale of collateral at rock bottom prices. Instead, its argument appears to be predicated on the assumption that at least a majority of investors acquired their certificates or bonds “for pennies on the dollar” (*id.*), an assumption for which no basis is provided. Even were there evidentiary support, it is just as likely to be Ambac as the hypothesized discount investors that would have an economic incentive to see collateral sold quickly and cheaply. This is because in many, if not most, RMBS transactions, Ambac has insured only the most senior certificates and bonds, which securities enjoy a priority right of repayment. To the extent there is a disposition of collateral, those senior holders will generally be repaid first, extinguishing Ambac’s insurance obligation. Ambac thus has no interest in ensuring that subordinate holders receive any distributions and no incentive to work to achieve the highest return on collateral. Conversely, many of the hypothesized investors who purchased securities at a discount likely own junior certificates or bonds, the principal of which can be repaid (even in part) only if more senior certificates (including the ones insured by Ambac) have already been repaid. Those holders, many of whom would be entitled to vote and direct trustees in respect of

the sale of collateral in the absence of the Order, have an incentive to maximize the value of the deals' collateral to ensure that they see some return on their investment. The interests of the noteholders are thus aligned with, not contrary to, Ambac's interest in minimizing its RMBS policy payment obligations. There is thus no basis for Ambac's speculation that a shifting of control rights will have adverse consequences to the Segregated Account.²

The Commissioner at least pays lip service to Chapter 645's expressly stated purpose, but his papers are notably lacking in any specifics or evidence to support his conclusory assertion that the suspension of control-shifting provisions will benefit all of Ambac's policyholders. (See Rehabilitator's Consolidated Brief in Opposition to All Motions Scheduled for Hearing on September 9, 2010, dated Aug. 17, 2010 ("OCI Br."), at 38-39.) Unlike the Order's prohibitions against suing Ambac or suspending premium payments, the supposed benefit the Segregated Account will enjoy from the Rehabilitator's exercise of control rights is entirely speculative. For example, the Commissioner claims that he is better positioned to pursue "remediation efforts" than RMBS trustees or certificateholders and further that such "efforts, *if successful*, will serve the interest of Segregated Account policyholders." (*Id.* at 39 (emphasis added).) The Commissioner provides no evidence that he has, in fact, ever exercised the right to direct such litigation in any of the dozens of RMBS transactions for which he continues to wield control rights or that such efforts have yielded a successful outcome and a benefit

² Ambac's purported concern about investors organizing the disposition of collateral assets at fire sale prices also rings hollow in light of its earlier argument that policyholders cannot be counted on to coordinate to direct the exercise of consent and direction rights. (See *id.* at 5 ("The process of soliciting bondholder consent for waivers and other approvals is inefficient"))

to the Segregated Account. Even less convincing is the Commissioner's conclusory statement that "[a]ccess to information, management of waivers and amendments, and the ability to assert contractual rights and [] contractual duties are all necessary tools." (*Id.*) The Commissioner neither explains how these rights are linked to the success of Ambac's Rehabilitation nor provides any concrete examples demonstrating such a connection.

The Court need not, and should not, accept the Commissioner's conclusory and speculative arguments. The Commissioner touts the self-evident proposition that policyholders' and investors' "contractual rights are 'subject to the reasonable exercise of the state's police power'" (*id.* at 40, quoting *Carpenter v. Pacific Mutual Life Ins. Co.*, 74 P.2d 761, 774-75 (Cal. 1937)), but he essentially ignores Section 645.01(4)'s mandate that rehabilitation should entail "minimum interference with the normal prerogatives of proprietors."³ The current injunction against divesting Ambac of control rights directly interferes with the prerogative that trustees and investors would normally have to exercise control rights following an Ambac default. This interference cannot be supported by the hypothetical negative consequences that the Commissioner has conjured nor can it be considered a reasonable exercise of police power under Chapter 645.

Like Ambac, the Commissioner also takes the paternalistic view that, notwithstanding the terms of the transaction documents negotiated by the parties at the time the Policies issued, he knows that insured RMBS investors will be better off if control-shifting terms are nullified. (*Id.* at 39-40.) As explained above, Chapter 645 is not designed to allow an insurer or the Commissioner to rewrite the terms of a transaction

³ Chapter 645 does not define "proprietors," but at a minimum, the term should be construed to include the investors who purchased certificates insured by Ambac and the trustees who hold Ambac policies.

involving an insurer and a specific group of insureds simply because he claims he can get those insureds a better deal.⁴

II. THE RMBS TRUSTEES ARE ENTITLED TO INDEMNIFICATION THAT IS ACCEPTABLE TO THEM AND CANNOT BE REQUIRED TO ACCEPT A CLAIM AGAINST THE UNFUNDED SEGREGATED ACCOUNT

Neither Ambac nor the Commissioner dispute the Bank of America RMBS Trustee's right under the Governing Documents to insist upon indemnification acceptable to it as a prerequisite to carrying out controlling party directions. The Bank of America RMBS Trustee is therefore entitled to refuse to heed instructions given by Ambac or any other controlling party unless it is satisfied with the terms of the proffered indemnification. Notwithstanding its contractual rights, the Bank of America RMBS Trustee recognizes that, as a practical matter, Ambac's indemnification options are limited, and it has therefore proposed a reasonable compromise pursuant to which it would agree to accept a reasonable indemnification from the General Account. Ambac and the Commissioner have both refused to consider the Bank of America RMBS Trustee's proposed alternative and instead insist that it must simply accept the indemnification they are willing to give.

Nothing in the Governing Documents requires that the indemnitor be the directing party itself. Ambac's argument that the Segregated Account is the "insurer" for purposes of the Rehabilitation (Ambac Br. at 7-8) is thus irrelevant, since the Bank of America

⁴ Both the Commissioner and Ambac claim that the RMBS policyholders and investors will be harmed because certain of the rights at issue can only be exercised by Ambac (or the Rehabilitator), and the Governing Documents do not contemplate the exercise of those rights by anyone else. (See Ambac Br. at 39; OCI Br. at 5.) While it is true that in many RMBS transactions certain actions require Ambac's consent, the ceding of those insurer rights upon the occurrence of an insurer default does not mean that the transactions will grind to a halt. Instead, the actions will simply proceed without Ambac's consent.

RMBS Trustee always has the right to insist that a third-party provide indemnification against the consequences of heeding the directions of the controlling party.

Ambac and the Commissioner both falsely suggest that there is no material difference between indemnification given by the Segregated Account and indemnification given by the General Account. (*Id.* at 8; OCI Br. at 41.) The information that the Commissioner has disclosed thus far, however, reveals at least one critical difference. Unlike the General Account, the Segregated Account has no liquid assets of its own. While the Segregated Account holds a Secured Note that entitles it to demand payment from the General Account, the Commissioner has announced that he does not intend to avail himself of the right to satisfy claims against the Segregated Account at 100 cents on the dollar. *See* Affidavit of Roger A. Peterson, dated May 19, 2010 (Docket No. 86), at ¶ 33.⁵ Instead, the Commissioner intends to pay each dollar of claim against the Segregated Account with 25 cents in cash and 75 cents in Surplus Notes, which will pay interest and have ten year maturities. *See id.*; Ambac Financial Group, Inc.'s Form 8-K, filed on March 25, 2010, copy attached as Ex. B to the Affidavit of Bryan K. Nowicki in Support of Motion to Modify Order for Temporary Injunctive Relief Filed by Certain RMBS Policyholders, sworn to April 30, 2010 (Docket No. 53). Indemnification from the Segregated Account thus could unacceptably expose the Bank of America RMBS Trustee to ten years of credit risk, whereas an indemnification from

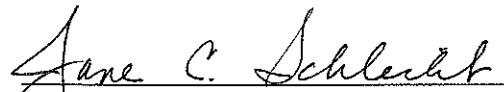
⁵ In his May 19, 2010 Affidavit, Mr. Peterson described the plan to satisfy a portion of claims against the Segregated Account through the delivery of Surplus Notes in the context of policyholder claims, not claims for indemnification by RMBS trustees. The Commissioner has not represented that indemnification claims will be satisfied any differently from claims on insurance policies, and even if he had, the RMBS trustees would still be exposed to the risk that he might change his mind.

Ambac's General Account insures that the Bank of America RMBS Trustee will have recourse to immediately available liquid assets.

CONCLUSION

For the foregoing reasons and the reasons set forth in its opening Brief, the Bank of America RMBS Trustee respectfully requests that the Court enter an order modifying paragraphs 6 and 9.B.2(iv) of the Order to permit Holders to direct RMBS trustees, and to permit RMBS trustees to accept such directions and refuse any directions delivered by the Commissioner in his capacity as Rehabilitator of the Segregated Account, where the relevant Governing Documents provide that direction or control rights have shifted from Ambac to Holders. In the alternative, the Bank of America RMBS Trustee requests that Paragraph 9.B.2(iv) be modified to require that the Commissioner be required to provide an indemnity payable from Ambac's General Account as a prerequisite to his exercise of direction or control rights. A proposed Amended Order for Temporary Injunctive Relief, which reflects the modifications to paragraphs 6 and 9.B.2(iv) sought by the Bank of America RMBS Trustee, is being filed contemporaneously with this Brief.⁶

Dated this 1st day of September, 2010.


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⁶ The proposed Amended Order for Temporary Injunctive Relief also reflects certain modifications requested by other RMBS trustees to which the Bank of America RMBS Trustee does not object.

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In the Matter of the Rehabilitation of:

Case No. 10CV1576

Segregated Account of Ambac Assurance Corporation

AMENDED ORDER FOR TEMPORARY INJUNCTIVE RELIEF

Based on the Motion for Injunctive Relief filed by the Commissioner of Insurance for the State of Wisconsin (hereinafter the "Commissioner" or the "Rehabilitator"), and the pleadings, motions, briefs and exhibits on file in this case, as well as oral argument, this Court finds that the temporary injunctive relief requested by the Commissioner is reasonable and necessary to promote the equitable and orderly rehabilitation of the segregated account of Ambac Assurance Corporation (the "Segregated Account"), a Wisconsin-domiciled insurer under Wis. Stat. § 611.24(3)(e). The Court further finds that the requested injunctive relief is authorized by Chapter 645 of the Wisconsin Statutes and that this Court has exclusive jurisdiction over matters relating to this rehabilitation proceeding.

Please note that, as explained in the Commissioner's Motion, the injunctive relief granted below does not apply to policies or other contracts which remain in the Ambac General Account. The injunctive relief specified below pertains to the Segregated Account, policies, contracts, assets and liabilities allocated to the Segregated Account, and the subsidiaries whose stock, limited liability member interests or other forms of ownership interests were allocated to the Segregated Account—namely, Ambac Credit Products, LLC and Ambac Conduit Funding, LLC, Juneau Investments, LLC, and Aleutian Investments, LLC.

The relief specified in this Order is complex and parties who may potentially be

affected by it are encouraged to review the entire Order, including the important points of clarification set forth near the end of the Order at paragraphs 12 through 14.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Commissioner's Motion for Injunctive Relief is GRANTED, and the following first-day, temporary injunctions are hereby ENTERED:

1. All persons and entities are enjoined and restrained from commencing or prosecuting any actions, claims, lawsuits or other formal legal proceedings in this state, other than before this Court, against: the Segregated Account; or against Ambac Assurance Corporation ("Ambac" or the "Ambac General Account") in respect of the Segregated Account or policies (including financial guarantee insurance policies and surety bonds), contracts or liabilities allocated to the Segregated Account; or against any subsidiary of Ambac whose stock, limited liability company member interests, or other forms of ownership interests were allocated to the Segregated Account —namely, Ambac Credit Products, LLC and Ambac Conduit Funding, LLC, Juneau Investments, LLC, and Aleutian Investments, LLC (collectively, "the Allocated Subsidiaries") – in respect of the Segregated Account or policies (including financial guarantee insurance policies and surety bonds), contracts or liabilities allocated to the Segregated Account; or against the Commissioner in respect of the Segregated Account or policies (including financial guarantee insurance policies and surety bonds), contracts or liabilities allocated to the Segregated Account. Wis. Stat. § 645.05(1)(f). This Court has exclusive jurisdiction over any such actions, claims or lawsuits.

2. All persons and entities are enjoined and restrained from seeking to impose civil liability upon the Commissioner, whether or not within the confines of this proceeding (this legal proceeding, together with all filings, motions, orders, writs, and other authorizations relating thereto and the findings made in connection herewith, the "Proceedings"), arising out of any

alleged act, error, or omission in the performance of his duties or involvement in this rehabilitation, unless such act or omission constitutes criminal misconduct. Wis. Stat. § 645.08(2).

3. All persons and entities claiming secured, priority, preferred or other interests in any property or assets of the Segregated Account or of any of the Allocated Subsidiaries, are hereby enjoined and restrained from taking any steps to transfer, foreclose, sell, assign, garnish, levy, encumber, attach, dispose of, or exercise purported rights in or against such property or assets. Wis. Stat. § 645.05(1)(d), (g), (h), (k).

4. All policyholders and/or counterparties whose policies or contracts have been allocated to the Segregated Account, or who are counterparties to contracts with an Allocated Subsidiary (including, without limitation, in each case noteholders and any other persons claiming by or through such policyholders and/or counterparties), are enjoined and restrained from terminating, collecting on, or claiming against—or attempting to terminate, collect on, or claim against—such policies or contracts, or the transaction documents executed in connection with the issuance of such policies or contracts or related to such policies or contracts, on the basis of the Events (as defined below), or the financial condition of the Segregated Account, the Allocated Subsidiaries, or the Ambac General Account, regardless of the existence of any language in those policies, contracts, or any other agreements that would otherwise permit or require early termination. Wis. Stat. § 645.05(1)(k). As used herein, the term "Events" refers to the Proceedings and any acts taken or not taken or authorized to be taken pursuant thereto, including without limitation the failure of the Segregated Account, the Allocated Subsidiaries, or Ambac to pay amounts due under any policies, contracts, or other obligations that have been allocated to the Segregated Account or to which any of the Allocated Subsidiaries is a party.

5. Consistent with paragraphs 1 and 9 of this Order, all policyholders and/or counterparties whose policies or contracts have been allocated to the Segregated Account, or who are counterparties to contracts with an Allocated Subsidiary (including without limitation in each case noteholders and any other persons claiming by or through such policyholders and/or counterparties), are enjoined and restrained from asserting market quotation, mark-to-market loss or "closeout amount" claims under or in relation to such policies or contracts, including financial guarantee insurance policies executed in connection with credit derivative master agreements, and are enjoined and restrained from commencing or prosecuting any actions, claims, lawsuits, administrative or other proceedings against the Segregated Account, against the Allocated Subsidiaries, against Ambac in relation to the Segregated Account, or against the Rehabilitator. Wis. Stat. § 645.05(1)(d), (f), (k).

6. All persons and entities are hereby enjoined and restrained from: (i) taking any action to exercise any approval, consent, direction, voting, veto, or other right (the "Rights") that the Segregated Account or the Allocated Subsidiaries may have (or that the Segregated Account, the Allocated Subsidiaries or Ambac would have but for the occurrence of the Events or the financial condition of the Segregated Account, the Allocated Subsidiaries, or the Ambac General Account) under any agreements relating to policies or contracts allocated to the Segregated Account or contracts with any Allocated Subsidiary, including any credit derivative transaction agreements (including credit default swaps), interest rate or currency rate swap agreements, basis swap agreements, total return swap agreements, indentures, trust deeds, collateral management or administration agreements, credit or loan agreements, residential mortgage-backed security transaction documents, guarantee investment certificates, custodial account agreements, note purchase agreements, or other financing or transaction documents of any kind (collectively, "Transaction Documents"); or (ii) willfully

failing to take any action directed to be taken (including any direction to omit to take action) under any Transaction Documents pursuant to the exercise by the Rehabilitator of such Rights that the Segregated Account or the Allocated Subsidiaries may have under such Transaction Documents. Wis. Stat. § 645.05(b), (d), (g), (k). For the avoidance of doubt, this paragraph does not enjoin or restrain any servicer (including any master servicer, sub-servicer or special servicer) from servicing underlying collateral to the extent it would be permitted to do so under the applicable Transaction Documents (without regard to the occurrence of the Events or the financial condition of the Segregated Account, the Allocated Subsidiaries, or the Ambac General Account). For the avoidance of doubt, this paragraph does not enjoin any person or entity from exercising any Rights that have shifted or been redirected from Ambac to such person or entity pursuant to the terms of the Transaction Documents as a result of the financial condition of the Segregated Account, the Allocated Subsidiaries or the Ambac General Account, the occurrence of the Events, or otherwise.

7. All persons and entities are enjoined and restrained from withholding or failing to pay premiums or other payments (including without limitation recoveries, reimbursements, interest, deferred interest, and default interest) owed (or that would have been owed but for the occurrence of the Events or the financial condition of the Segregated Account, the Allocated Subsidiaries, or the Ambac General Account) to the Segregated Account, any Allocated Subsidiary or the Ambac General Account under or in connection with policies or contracts allocated to the Segregated Account, or contracts with an Allocated Subsidiary or any Transaction Documents associated therewith or related thereto. Wis. Stat. § 645.05(1)(g), (k); Wis. Stat. § 645.56(2)(d). Notwithstanding the preceding sentence, a person or entity claiming a right to set off premiums or other payments may, in lieu of delivering such amounts to Ambac, deposit such amounts in an escrow account and provide

written notice to the Rehabilitator, pending further Order of the Court. Other than as set forth in the preceding sentence, a party's withholding or set-off of premiums or payments owed under or in connection with any of the aforementioned documents may result in the future disallowance or decrease of such party's claims.

8. All directors, trustees, officers, employees, agents or representatives, if any, of the Segregated Account, any Allocated Subsidiary, or the Ambac General Account are hereby enjoined and restrained from paying any claims or obligations of the Segregated Account or an Allocated Subsidiary without the consent of the Rehabilitator or his authorized representatives. Wis. Stat. § 645.05(b); Wis. Stat. § 645.07.

9. In recognition of the complex nature of these Proceedings, and for the avoidance of doubt, the following specific relief is hereby granted, the enumeration of which is intended to assist parties affected by the Proceedings to understand in detail how the more general provisions of this order may apply to their specific policies or contracts, and shall in no way limit the effect of the more general provisions of this order:

A. Credit Default Swaps: The Court has been advised by the Commissioner that among the policies, contracts, and contract liabilities allocated to the Segregated Account are financial guaranty insurance policies executed in connection with and/or as part of credit derivative transactions. Generally under such transactions, an issuer and trustee entered into an agreement pursuant to which a special purpose entity issued notes (the "Reference Obligations") secured by collateral, including without limitation mortgage-backed or other asset-backed securities. Certain entities (which may also have been purchasers of the Reference Obligations) entered into credit derivative transactions with Ambac Credit Products, LLC or one of the other Allocated Subsidiaries. Each of these credit derivative transactions (hereinafter "Credit Default Swaps") is governed by an ISDA Master Agreement, Schedule to the Master Agreement, and one or more confirmation(s) with respect to such Reference Obligation (the "Credit Default Swap Documents"). In connection with certain Credit Default Swaps, Ambac issued financial guaranty insurance policies (as a "Credit Support Provider"), now allocated to the Segregated Account, guaranteeing the obligations of its subsidiary under the Credit Default Swaps (each a "CDS Policy" and together the "CDS Policies"). For the purposes of this Paragraph 9(a), CDS Policies shall not include any policy that guarantees

the obligations of Ambac Credit Products, LLC under a Credit Default Swap (i) entered into with a Settling Counterparty (as defined in Paragraph 14 below) and (ii) with respect to which a forbearance agreement is in full force and effect.

In furtherance of the other injunctive relief granted above, all holders of CDS Policies (together, the "CDS Counterparties") are specifically enjoined from: (i) taking any action under or in connection with (x) Section 6(a) or 6(b) of the ISDA Master Agreement governing any Credit Default Swap entered into with Ambac Credit Products, LLC, including without limitation declaring an Event of Default, Potential Event of Default, or Termination Event or designating an Early Termination Date, and (y) Section 2 of the ISDA Master Agreement under such Credit Default Swap to suspend any payments due from such counterparties; and (ii) taking any action under or in connection with the Credit Default Swap that such CDS Counterparty would be contractually obligated to refrain from taking, or failing to take any action under or in connection with the Credit Default Swap that such CDS Counterparty would be contractually obligated to take, in each case but for the occurrence of an Event of Default or Termination Event (as defined in the applicable Credit Default Swap Documents) where an Allocated Subsidiary or Ambac is (or would be) the defaulting party or affected party, including without limitation:

1. Regardless of the occurrence or continuance of an Event of Default, Potential Event of Default or Termination Event, a CDS Counterparty shall not, without the prior written consent of the Rehabilitator (in the case of a Credit Default Swap to which Ambac is a party) or the Allocated Subsidiary (in the case of a Credit Default Swap to which such Allocated Subsidiary is a party), take or omit to take any action, or consent or withhold its consent, or otherwise exercise or refrain from exercising any rights, in each case in respect to matters that any holder of the Reference Obligation is entitled to take (or omit to take) action, give (or withhold) consent, or exercise (or refrain from exercising) rights as such holder, including without limitation the following:
 - (a) the timing and/or circumstances of redemption of such Reference Obligation at maturity or otherwise;
 - (b) the timing and/or determination of the amount of interest, principal, or other amounts payable in respect of such Reference Obligation from time to time; or
 - (c) any other action that is subject to any vote, approval, consent, or other action of any holder of a Reference Obligation, or to resolution by any holder of such Reference Obligation, whether or not such action would also require the consent of other persons.
2. Regardless of the occurrence or continuance of an Event of

Default, Potential Event of Default, or Termination Event, no CDS Counterparty shall fail to cause all of the holders of a principal amount of such Reference Obligation equal to the Reference Obligation Notional Amount (as defined in the applicable Credit Default Swap Documents) thereof to act in accordance with the timely instructions of the Rehabilitator or an Allocated Subsidiary, as the case may be, in taking or failing to take actions, giving or withholding of consent, or the exercise or non-exercise of the rights of such holder.

3. No CDS Counterparty shall fail, with respect to the Reference Obligation, to provide to the Rehabilitator or the Allocated Subsidiary, as the case may be, copies of trustee's or noteholder's reports, notices, or other formal communications relating to the Reference Obligation promptly upon, or in any event within five business days of, receipt thereof by such CDS Counterparty.
4. Each trustee, collateral manager, issuer, and administrator with respect to a Reference Obligation appearing in the list attached to the Plan of Operation that accompanies the Commissioner's Verified Petition is enjoined from taking any instruction to accelerate, liquidate or foreclose on the collateral underlying such Reference Obligation, including termination of derivatives forming part of such collateral without the prior written consent of the Rehabilitator.

B Residential Mortgage-Backed Securities ("RMBS"): The Court has been advised that a number of policies allocated to the Segregated Account cover RMBS that Ambac insured directly. RMBS are described in more detail in the Commissioner's Verified Petition and supporting brief. In furtherance of the other injunctive relief granted above, each party to the agreements pursuant to which the notes, certificates or other instruments (the "RMBS Notes") were issued and the other transaction documents related thereto (collectively, the "RMBS Transaction Documents") is specifically enjoined from:

1. Taking any action to (i) declare or cause an acceleration or Event of Default under the applicable RMBS Notes arising out of the occurrence of the Events or the financial condition of the Segregated Account, the Allocated Subsidiaries, or the Ambac General Account; (ii) effect a transfer, assignment, termination, foreclosure, or liquidation of the collateral underlying such Notes (other than servicing of the underlying mortgage notes and related loans by the mortgage loan servicer (including any master servicer, sub-servicer or special servicer) in accordance with the RMBS Transaction Documents) arising out of the occurrence of the Events or the financial condition of the Segregated Account, the Allocated Subsidiaries, or the Ambac General Account; (iii)

impede, impair, restrict, or delay the delivery of information, reports, data, or mortgage loan files required to be provided to or requested by Ambac pursuant to the RMBS Transaction Documents; or (iv) impede, impair, restrict, or delay the exercise by the Rehabilitator in his own right under the RMBS Transaction Documents or as "controlling party" or "control party" (or a term with similar effect, howsoever designated, under such agreements); or

2. Willfully failing to take any action (i) to cause payments of premium and other amounts due relating to the applicable policies or RMBS Notes, including without limitation recoveries, reimbursements, interest, deferred interest and default interest, except that, to the extent such party is otherwise permitted to exercise a right of set-off, such payments may be held in escrow pending further Order of the Court; (ii) in regard to the servicer (including any master servicer, sub-servicer or special servicer), to continue to service the underlying mortgage notes and related loans in accordance with the RMBS Transaction Documents without regard to the occurrence of the Events or the financial condition of the Segregated Account, the Allocated Subsidiaries, or the Ambac General Account; (iii) to provide or cause to provide such information, reports, data and mortgage loan files required to be provided to or requested pursuant to the RMBS Transaction Documents; or (iv) as directed by the Rehabilitator as "controlling party" or a term with similar effect, howsoever designated under the RMBS Transaction Documents, to the extent the RMBS Transaction Documents permit the Rehabilitator to give such direction, including without limitation directions in connection with the transfer of servicing; provided however, that the Segregated Account may provide to any Trustee under any RMBS Transaction Documents, to the extent such agreements permit such Trustee to request the same, reasonable indemnity to the Trustee in connection with any such direction, such indemnity to be acceptable to the Trustee, which may consist of an indemnity payable from Ambac's General Account.

C Other Structured Finance Transactions: The Court has been advised that a number of policies allocated to the Segregated Account relate to other transactions Ambac insured involving various types of securitizations, including commercial asset-backed transactions (where the subjects of the securitization are commercial or intellectual property such as pharmaceutical royalties or film rights), consumer asset-backed transactions (where the subjects of the securitization are student loans, auto loans, or rights to other consumer-related payments), and other types of structured transactions. In these transactions, Ambac typically was granted "control rights" that include rights to consent to, or withhold consent to, any amendments, modifications, or

waivers of the terms of the transactions or actions under the transaction documents, rights to declare or waive events of default, termination events, rapid amortization events, or similar events, as well as rights to direct the exercise of remedies following an event of default.

In connection with such other structured finance transactions under which notes, certificates, or other instruments (the "ABS Notes") are insured by a policy allocated to the Segregated Account (*see* Exhibit C to the Plan of Operation, which is attached at Tab 1 to the Commissioner's Verified Petition), and in furtherance of the other injunctive relief granted above, each Trustee and other transaction party (including without limitation issuers, borrowers, lenders, collateral agents, administrative agents, collateral administrators, swap counterparties, policyholders, and noteholders) is specifically enjoined from:

1. Taking any action to (i) declare an acceleration or Event of Default, Amortization Event, Rapid Amortization Event, Suspension Event, Termination Event, Early Amortization Event, or other similar event, howsoever designated, under the applicable ABS Notes and other transaction documents relating thereto (collectively, the "ABS Transaction Documents") arising out of the occurrence of the Events or the financial condition of the Segregated Account, the Allocated Subsidiaries, or the Ambac General Account; (ii) exercise rights and remedies arising from or related to the ABS Transaction Documents, or exercise other rights and remedies that, notwithstanding the occurrence of the Events or the financial condition of the Segregated Account, the Allocated Subsidiaries, or the Ambac General Account, are exercisable at the request or direction of, or with the consent of, Ambac under the terms of the ABS Transaction Documents; (iii) effect an acceleration, termination, foreclosure, or liquidation of the ABS Notes or the collateral underlying or securing such ABS Notes (other than servicing of the collateral underlying or securing such ABS Notes by the servicer (including any master servicer, sub-servicer or special servicer) to the extent such actions would otherwise be permitted without the consent of Ambac as control party pursuant to the documentation governing such servicer's obligations) arising out of the occurrence of the Events or the financial condition of the Segregated Account, the Allocated Subsidiaries, or the Ambac General Account; (iv) impede, impair, restrict, or delay the delivery of information, reports, data, or other files or access to information required to be provided to Ambac pursuant to the ABS Transaction Documents; or (v) modify, amend, waive, usurp, assume, limit, interfere with, impede, impair, restrict, delay, or fail to give full effect to the exercise by the Segregated Account of its rights as "controlling party," "series enhancer," "insurer," or "controlling secured party"

(or term with similar effect, howsoever designated, under the ABS Transaction Documents) or any other rights and powers afforded to Ambac, the "controlling party," "series enhancer," "insurer," or "controlling secured party"; or

2. Willfully failing to take any action (i) to cause payments of premiums and other amounts due pursuant to the ABS Transaction Documents or other agreements relating to the applicable policy or the ABS Notes, including without limitation recoveries, reimbursements, interest, deferred interest, and default interest, except that, to the extent such party is otherwise permitted to exercise a right of set-off, such payments may be held in escrow pending further Order of the Court; or (ii) as directed by Ambac as "controlling party," "series enhancer," "insurer," "controlling secured party," or term with similar effect, howsoever designated, under the ABS Transaction Documents, to the extent the RMBS Transaction Documents permit the Rehabilitator to give such direction; provided however, that the Segregated Account may provide to the Trustee under any ABS Transaction Documents, to the extent such agreements permit it to do so, reasonable indemnity to such Trustee in connection with any such direction, such indemnity to be acceptable to the Trustee, which may consist of an indemnity payable from Ambac's General Account.

D. Juneau and Aleutian Investments LLCs' Notes: The Court has been advised that a number of policies allocated to the Segregated Account relate to assets of and notes issued by, Juneau Investments, LLC ("Juneau") and Aleutian Investments, LLC ("Aleutian"). Juneau and Aleutian are finance companies that issued medium term notes (the "MT Notes") to fund purchases of debt securities. Ambac insured the payment of principal and interest by Juneau and Aleutian under the MT Notes, and also insured payments under most of the debt securities purchased by Juneau and Aleutian. Ambac also insures the obligations of subsidiary Ambac Financial Services, LLC, which entered into interest rate swap agreements with Juneau and Aleutian through which Juneau and Aleutian hedged their exposures to fluctuations in currency exchange rates and interest rates ("Related Derivatives").

In connection with the policies allocated to the Segregated Account that insure the MT Notes and certain assets owned by Juneau and Aleutian, and in furtherance of the other injunctive relief granted above, Citibank N.A. as trustee and securities intermediary is specifically enjoined from taking the following actions without the prior written consent of the Rehabilitator: (i) making payments in respect of the MT Notes or Related Derivatives other than payments at such times and in such amounts as would otherwise be required absent the occurrence of a Surety Event (as defined in the relevant transaction documents); and (ii) taking any action to effect a foreclosure or liquidation of the collateral

underlying such MT Notes.

E. Leveraged Leases: The Court has been advised that some of the policies allocated to the Segregated Account relate to leveraged lease transactions in which an owner trust entered into a series of transactions to purchase depreciable property from an entity (typically a transit authority or electrical power cooperative) and lease it back to the seller, with Ambac guaranteeing the seller/lessee's lease payments. Due to downgrades in Ambac's credit ratings, lessors currently have the right to terminate the leveraged leases and seek early termination damages.

In connection with the policies issued in leveraged lease transactions that have been allocated to the Segregated Account, and in furtherance of the other injunctive relief granted above, each party thereto (including without limitation, equity investors, equity participants, owners, owner trusts, owner trust trustees, note trustees, lenders, lessors, credit default swap counterparties, payment undertaking agreement providers, and equity defeasance providers) is specifically enjoined from: (i) asserting that an event of default, termination event, or other event entitling such person or entity to terminate a transaction or any portion thereof or otherwise exercise a right or remedy has occurred in connection with any such transaction, including without limitation taking any action to declare an event of default under the applicable lease or declaring a default or termination event under any applicable credit default swap; (ii) making any demand for any payment pursuant to any party's assertion that any such event of default or termination event occurred; and (iii) failing to give effect to any right accorded to Ambac or any affiliate thereof in connection with the issuance of policies allocated to the Segregated Account under any of the documents and agreements governing such transactions or withholding premiums or other payments, including without limitation recoveries, reimbursements, interest, deferred interest, and default interest, owed under or with respect to such policies.

F. Ambac-Insured Swaps: The Court has been advised that among the policies and contracts allocated to the Segregated Account are policies executed as a part of interest rate, basis, total return, and/or currency swap or other swap transactions. Most of such policies related to transactions in which issuers of interest-bearing bonds entered agreements with financial institutions to effectively fix the interest rate on the bonds. Among the policies allocated to the Segregated Account are policies that insure the issuers' obligations under such swap agreements.

In furtherance of the other injunctive relief granted above, each financial institution party to a swap agreement insured by Ambac (where the counterparty is not Ambac Financial Services, LLC or Ambac Credit Products, LLC) allocated to the Segregated Account (*see* Exhibit C to the Plan of Operation, which is attached at Tab 1 to the Commissioner's Verified Petition) is specifically enjoined from (i) taking any action under or in connection with

Section 6(a) or 6(b) of the relevant ISDA Master Agreement (including the schedule and confirmation(s) forming a part thereof) (the "Swap Agreement"), as heretofore amended or modified, including without limitation declaring an Event of Default, a Potential Event of Default, or a Termination Event (each such term as defined in the Swap Agreement) or designating an Early Termination Date (as defined in the Swap Agreement); (ii) taking any action under or in connection with the Swap Agreement that such party would be contractually obligated to refrain from taking, or failing to take any action under or in connection with the Swap Agreement and any related documents, agreements, and/or policies that such party would be contractually obligated to take, in each case but for the occurrence of an Event of Default, Potential Event of Default, or Termination Event (as defined in the applicable Swap Agreement) and/or the Events or the financial condition of the Segregated Account, the Allocated Subsidiaries, or the Ambac General Account, including without limitation withholding premiums, recoveries, reimbursements, interest, deferred interest, default interest, and any other payments owed under or with respect to the Swap Agreement and any related documents, agreements, and/or policies; and (iii) making any demand for any payment on the relevant counterparty to such Swap Agreement or the credit support provider for such counterparty, or exercising any rights in respect of any collateral or security for the performance of such counterparty's obligations under the Swap Agreement, pursuant to any party's assertion that any such Potential Event of Default, Event of Default, or Termination Event occurred.

10. Any person or entity violating the terms of this Order may be subject to the sanctions contained in Wis. Stat. § 601.64, including civil forfeiture and criminal penalties. Wis. Stat. § 645.07(4). Willful violation of this Order may also constitute good cause for the Commissioner to void or limit any policy or other contract obligations otherwise owed by the Segregated Account or an Allocated Subsidiary to the party violating this Order, including partial or full disallowance of claims.

11. The injunctive relief granted by this Order shall issue without the posting of any bond by the Rehabilitator and his Special Deputy Rehabilitator. Wis. Stat. § 645.08(1).

12. This Order shall remain effective until further order of the Court.

13. Notwithstanding anything set forth in the foregoing provisions of this Order enjoining actions, claims or lawsuits or the moratorium on making payments on account of policies or contracts allocated to the Segregated Account without the consent of the

Rehabilitator (but without prejudice to paragraph 5 hereof prohibiting any assertion of any market quotation, mark-to-market or close-out loss), policyholders or other claimants should submit their notices of claim or similar demands for payment pursuant to the procedures and service requirements specified in their policies or contracts and those notices of claim or other similar demands for payment shall be tracked and recorded by the Rehabilitator or his authorized representatives so that they may be processed for payment pursuant to the terms and conditions specified in whatever form of final plan of rehabilitation is approved by this Court following notice and hearing. CDS counterparties may not trigger and submit mark-to-market claims, but may submit scheduled payment claims.

14. The Rehabilitator may consent to actions or failure to act which would otherwise be enjoined or restrained by this Order.

15. The Rehabilitator or any other interested person or entity may petition this Court for such other or further relief as s/he or it deems appropriate as this rehabilitation proceeds.

Dated this _____, day of _____, 2010.

BY THE COURT:

William D. Johnston
Lafayette County Circuit Court Judge
Presiding by Judicial Assignment Order

In the Matter of the Rehabilitation of:

Case No. 10 CV 1576

Segregated Account of Ambac Assurance Corporation

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of September, 2010, I caused true and correct copies of the following documents:

1. Reply Brief Of Bank Of America, N.A., Solely In Its Capacity As Trustee For Certain RMBS Trusts And On Behalf Of Those Trusts' Certificateholders, In Further Support Of Motion To Modify Order For Temporary Injunctive Relief;
2. Amended Order for Temporary Injunctive Relief; and
2. Certificate of Service.

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