



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Anthony J. Albanese
Acting Superintendent

**Insurance Circular Letter No. 7 (2015)
October 7, 2015**

TO: All Financial Guaranty Insurers

RE: Bond Purchases as an Inducement to the Purchase of Bond Insurance

STATUTORY REFERENCES: Insurance Law §§ 2324; 6902(a)(4); 6904(g); and 6908

I. Introduction

The purpose of this Circular Letter is to provide guidance to all financial guaranty insurers with respect to the applicability of New York's prohibition against rebating and improper inducements to bond purchases intended to induce the underwriter of the bond issuance to procure bond insurance from the insurer. As set forth more fully below, this practice would violate the New York Insurance Law.

II. Discussion

New York Insurance Law § 6904(g) prohibits financial guaranty insurers from providing anything of value to a prospective purchaser of bond insurance as an inducement to make such a purchase.¹ That section provides, in pertinent part, as follows:

No insurer authorized to transact the business of financial guaranty insurance shall pay any commission or make any gift of money, property or other valuable thing to any employee, agent or representative of any potential purchaser of a financial guaranty insurance policy, as an inducement to the purchase of such a policy, and no such employee, agent or representative of such potential purchaser shall receive any such payment or gift.

A financial guaranty insurer's purchase of bonds that it has insured is not *per se* problematic. Indeed, Insurance Law § 6902(a)(4) expressly permits a financial guaranty insurer to invest up to four percent (4%) of its admitted assets in any entity that it has insured.

¹ Section 6904(g) is similar in wording to Ins. Law § 2324, which prohibits rebating and improper inducements by property/casualty insurers (as well as by any agent or employee of an insurer or by any insurance broker). The anti-rebating and inducement provisions of that section also apply to financial guaranty insurers pursuant to Ins. Law § 6908, which subjects financial guaranty insurers to all of the provisions of the insurance law governing property/casualty insurers to the extent that they are not inconsistent with provisions of Article 69.

Notwithstanding this provision, however, a financial guaranty insurer or anyone acting on its behalf may not offer to purchase bonds in an effort to influence the bond underwriter to procure insurance. A bond underwriter's major objective is to sell the entire bond issue as quickly as possible in order to free up its capital for future underwritings. Accordingly, a financial guaranty insurer's commitment to purchase part of a bond offering, or its commitment to "clean up" an underwriting by purchasing any bonds that may otherwise remain unsold, constitutes a "valuable thing" to the underwriter and thus will be viewed by this Department as an improper inducement of the underwriter to purchase bond insurance.

Because of the potential for inducement inherent in a financial guaranty insurer's purchase of insured bonds, insurers should take care to bifurcate their investment and insurance functions so that investment decisions are made independently of insurance underwriting activities.

III. Conclusion

The Department expects that financial guaranty insurers will be mindful of the guidance set forth in this circular letter, which is intended to ensure both compliance with the Insurance Law and the maintenance of open and fair competition in the bond insurance marketplace.

Please direct any questions or comments regarding this Circular Letter to Michael Campanelli, Supervising Attorney, at (212) 480-5290 or michael.campanelli@dfs.ny.gov.

Very truly yours,

Maria Filipakis
Executive Deputy Superintendent for Capital Markets