

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

STEVE COWPER, GOVERNOR

P. O. BOX D  
JUNEAU, ALASKA 99811-0800  
PHONE: (907) 465-2515

March 7, 1990

### FINANCIAL GUARANTY INSURANCE

#### ORDER R90-2

*The Director of Insurance does hereby find, as follows:*

#### *Background*

1. On October 17, 1989, the law firm of LeBoeuf, Lamb, Leiby & MacRae of New York, on behalf of Capital Markets Assurance Corporation (CapMAC), petitioned the Director of Insurance to exempt the CapMAC financial guaranty protection bond rates and forms from filing under AS 21.39.040 and AS 21.42.120.
2. AS 21.39.040(f) allows the Director of Insurance to exempt from rate filing, rates which in the directors opinion are not desirable or necessary for the protection of the public.
3. AS 21.42.120(d) allows the Director of Insurance to exempt from rate filing, rates which in the directors opinion are not desirable or necessary for the protection of the public.
4. The purpose of the filing and approval of insurance rates and forms is to protect the citizens of the State of Alaska and to ensure that insurers issuing such forms or utilizing such rates are in compliance with Alaska statutes.

#### *Financial Guaranty Insurance*

5. For purposes of this order, financial guaranty insurance is a surety bond, insurance policy or, when issued by an insurer or any person doing an insurance business, an indemnity contract, and any guaranty similar to these types, under which loss is payable, upon proof of occurrence of financial loss, to an insured claimant, obligee or indemnitee as a result of any of the following events:
  - (a) failure of any obligor on any debt instrument or other monetary obligation (including common or preferred stock guaranteed under a surety bond, insurance policy or

## **ORDER R90-2**

indemnity contract) to pay when due, principal, interest, premium, dividend or purchase price of or on, or other amounts due with respect to, such instrument or obligation, when such failure is the result of a financial default or insolvency, regardless of whether such obligation is incurred directly or as guarantor by or on behalf of another obligor that has also defaulted;

- (b) changes in the levels of interest rates, whether short or long term, or the differential in interest rates between various markets or products;
  - (c) changes in the rate of exchange of currency;
  - (d) changes in the value of specific assets or commodities, financial or commodity indices, or price levels in general; or
  - (e) other events which the Director of Insurance of the State of Alaska determines are substantially similar to (a)-(d) of this Section.
6. Certain kinds of insurance, known as financial guaranty insurance as outlined in Section 5 of this order, are included within the definition of surety insurance in AS 21.12.080. Unlike ordinary surety insurance, financial guaranty coverage involves the use of highly sophisticated forms and rating procedures whereby financial guaranty protection is offered to insureds with respect to scheduled payments, when due, of principal and interest of certain financial obligations, primarily corporate and municipal obligations.
7. Financial guaranty policies are not issued directly to average consumers in Alaska, but, rather, are negotiated between the insurer and highly sophisticated insureds (i.e. investment bankers) where the principle competitors are domestic and foreign banks with top credit ratings. Each entity is capable of acquiring the legal assistance necessary to protect its interest. Each agreement or policy is specifically tailored for each particular insured and for each particular transaction.
8. Rates for financial guaranty insurance are based on an individual credit analysis of the insurer, ultimate obligor and underlying security features and are specifically tailored for each transaction.

### *Conclusion*

9. The rates and forms utilized for financial guaranty insurance tends to be unique as to each insured. It is not practicable to require


**ORDER R90-2**

the filing of rates and forms for this kind of insurance. The filing of rates and forms is not desirable or necessary for the protection of the public.

***The Director of Insurance hereby orders:***

- A. Pursuant to AS 21.39.040(f) and AS 21.42.120(d), financial guaranty insurance as outlined in Section 5 of this order are exempt from the filing and approval requirements of AS 21.39.040(a) and AS 21.42.120(a).
- B. This order does not apply to mortgage guaranty insurance.
- C. This order takes effect immediately.

Done at Juneau, Alaska, this 7th day of March 1990.



David J. Walsh  
Director