New York State Insurance Department Published Guidelines for Financial Guaranty Insurers of Collateralized-Debt Obligations

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On September 22, 2008, the New York State Insurance Department (the "Department") issued Circular Letter No. 19 (the "Circular Letter") setting forth guidelines for "best practices" for financial guaranty insurers ("FGIs"). The guidelines are an after-the-fact effort by the Department to address what has become a significant issue in the present economic crisis - the largely unregulated utilization of credit default swaps ("CDS") as risk transfer devices. The guidelines address a variety of technical issues pertaining to the issuance of CDSs as a means of circumscribing market practices with the objective of carving out an area of insurance regulation for the CDS market. It is the Department's position that, under Section 1109 of the New York Insurance Law (the "Insurance Law"), a CDS is an insurance contract when it is purchased by a party who, at the time at which the agreement is entered into, holds, or reasonably expects to hold, a "material interest" in the "referenced obligation" and thus the seller of the CDS should be subject to regulation by the Department.

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