

02-029

## CHAPTER 126

### GUARANTY ASSOCIATION LINES OF CREDIT (Reg. 26)

(Bureau of Insurance Rule Chapter 570)

#### **I. PURPOSE**

The purpose of this Rule is to establish the terms, conditions, standards, and form of any Line of Credit extended to the Maine Insurance Guaranty Association, Maine Life and Health Insurance Guaranty Association, or any of their member insurers, for purposes of facilitating the prompt payment of covered claims against insolvent insurers.

#### **II. AUTHORITY**

This Rule is adopted pursuant to Title 9-B M.R.S.A. § 215 and Title 24-A M.R.S.A. § 212, 4435(9), and 4605(11).

#### **III. DEFINITIONS**

- *Association* means the Maine Insurance Guaranty Association created pursuant to Title 24-A M.R.S.A. § 4436 or the Maine Life and Health Insurance Guaranty Association created pursuant to Title 24-A M.R.S.A. § 4606.
- *Line of Credit* or *Credit* is a standby commitment by a qualified financial institution or group of qualified financial institutions to the Association or a Member Insurer, as defined in Title 24-A M.R.S.A. § 4435(9) and 4605(11).
- *Member Insurer* has the same meaning that is set forth in Title 24-A M.R.S.A. § 4435(6) and 4605(6).
- *Equity capital* means the sum of common stock, perpetual preferred stock, surplus, undivided profits, reserves for contingencies and other capital reserves, and cumulative foreign currency translation adjustments, less the net unrealized loss on marketable equity securities, all as determined in accordance with generally accepted accounting principles.

#### **IV. QUALIFIED ISSUERS**

Unless other qualifications are provided in Title 24-A M.R.S.A. § 4435(10) or 4605(12), as amended, any issuer of a Line of Credit must be insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or a successor federal deposit insurance agency or agencies. The issuer's equity capital, as defined above, must be at least 6.5% of its total

assets as determined in accordance with generally accepted accounting principles.

## **V. SATISFACTORY TERMS AND STANDARDS**

No Line of Credit may take effect until a copy of the contract between the issuer(s) and the Association has been filed with and approved by the Superintendent of Insurance. The contract must contain, at a minimum, the following provisions:

- A provision that the Line of Credit is irrevocable until it expires or is terminated in a manner consistent with this Rule and Title 24-A M.R.S.A. § 4440(3)(B) or 4609(2)(D), as amended, and that no discretionary termination or nonrenewal may take effect without 30 days' advance notice to the Association and the Superintendent of Insurance.
- Specific language clearly setting forth all requirements for the Association or its authorized representatives to access a Line of Credit, including, but not limited to, votes of directors to levy an assessment, the time frame within which demand for funds must be honored by an issuer of a Credit, terms of debt service and retirement undertaken by the Association, and conditions pursuant to which a Line of Credit may be withdrawn;
- Any limitations that will be prospectively imposed regarding value and access conditions of the Line of Credit;
- Any restrictions upon use of assets, pledge of assets, or assignments of recovery to be imposed respecting the Association's future revenues or other rights;
- A provision that prohibits the diversion of funds for any purpose other than administration of the Association's obligation to claimants. The agreement shall identify those persons who shall have authority to negotiate or draw on the Credit;
- Any requirement regarding financial condition to be maintained by the Association when the Line of Credit is to be drawn upon, including repayment terms and schedule(s) to service the debt;
- If the Line of Credit is convertible or any other instrument may be substituted as an alternate form of debt obligation, the terms of any applicable side agreements;
- A provision allowing the Association to access funds under the credit within one business day after receipt by the issuer of satisfactory written evidence of a vote of the Association's directors authorizing a draw on the Credit upon notice of an insolvent insurer by the Superintendent of Insurance, without further documentary evidence;

- Conditions and limitations, respecting suspension of the Issuer's obligation to make funds available under the Line of Credit, due to noncompliance by the Association with its obligations or other good and sufficient cause, which are satisfactory to the Superintendent of Insurance;
- Procedures, if any, for resolution of disputes between the issuer(s) and the Association.

## **VI. EXTENSIONS OF CREDIT BY MEMBER INSURERS TO THE ASSOCIATION**

- If at any time there is no approved Line of Credit in force issued to an Association, each of that Association's Member Insurers must either:
  - obtain an approved Line of Credit pursuant to this Rule issued to the Member Insurer for the benefit of the Association, with all funds drawn on the Line of Credit credited to the Member Insurer's account;
  - enter into an agreement to extend credit to the Association, filed with and approved by the Superintendent of Insurance in a manner consistent with Section 5 of this Rule; or
  - pay a preinsolvency assessment to the Association in the amount specified in 24-A M.R.S.A. § 4440 or § 4609, as applicable.
- B. Any Member Insurer subject to the provisions of Paragraph A that has not chosen a method of funding within a reasonable time after receiving notice of its obligation, or that is not in compliance with the requirements applicable to its chosen method of funding, must within thirty days after receiving notice of noncompliance either cure the noncompliance or deposit the appropriate preinsolvency assessment with the Association.

## **VII. ASSESSMENTS**

Before any Line of Credit can be approved, the Association must file procedures with the Superintendent of Insurance for assessing its Member Insurers in the event that credit funds are inaccessible. If a dispute between the Association and an issuer affecting access to a Credit is not resolved within 7 days, the Superintendent of Insurance may order an assessment, to be collected by the Association or its servicing agent. Payment of the assessment by Member Insurers shall be due within 30 days after receipt of notice of the assessment; a United States Postal Service Certificate of Mailing shall constitute conclusive proof of receipt on the 5th calendar day after mailing.

## **VIII. EFFECTIVE DATE**

This Rule, as amended, shall become effective on July 16, 1994.

## **BASIS STATEMENT**

The Superintendents of Banking and Insurance have jointly adopted amendments to Chapter 126 (Chapter 570 of the Bureau of Insurance Rules), pursuant to Title 9-B M.R.S.A. § 215 and Title 24-A M.R.S.A. § 212, 4435(9), and 4605(11), to clarify the Rule providing for lines of credit to facilitate access to funds to pay claims and expenses in the event of an insurance insolvency, and to make the Rule applicable to the Maine Life and Health Insurance Guaranty Association as well as the Maine Insurance Guaranty Association (the property and casualty guaranty fund). The amendments also codify standards governing the lines of credit that are issued to the Guaranty Associations by member insurers in the event that no applicable financial institution line of credit is obtained.

Because no public hearing was requested by any member of the public, no hearing was held. The only comments submitted were by Paula Valente, the Chair of the Maine Life and Health Insurance Guaranty Association, and Daniel Wheeler, Executive Vice-President of Casco Northern Bank. They were concerned that the statutory requirement that thirty days' notice be given before termination, Title 24-A M.R.S.A. § 4440(3)(B)(1) & 4609(2)(D)(1), might be interpreted as allowing the Association thirty days of unlimited access to the Credit even if the Association is already in default on repaying a prior draw. That is not the intent of either the statute or the Rule, and clarifying language has been added to Subsection 5(I) of the Rule, which as originally worded allowed the Superintendent of Insurance to approve appropriate "Conditions and limitations, respecting dishonor of the Line of Credit." Subsection 5(H) was also reworded to clarify that funds must be made available not only "within a specific time period" after proper notice of insolvency, but within one business day, pursuant to Title 24-A M.R.S.A. § 4440(3)(B) and 4609(2)(D)). Otherwise, apart from stylistic changes, the amended Rule has been adopted as proposed.