Hearing Date: April 29, 2013 at 10:00 a.m. Eastern Time
Objection Deadline: April 22, 2013 at 4:00 p.m. Eastern Time

Peter A. Ivanick
Allison H. Weiss
HOGAN LOVELLS US LLP
875 Third Avenue
New York, New York 10022
Tel: (212) 918-3000
Fax: (212) 918-3100

Attorneys for the Debtor and Debtor in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----------	x	
	:	
In re	:	
	:	**Chapter 11**
AMBAC FINANCIAL GROUP, INC.	:	
	:	**Case No. 10-15973 (SCC)**
Debtor.	:	
	x	

NOTICE OF THE DEBTOR'S MOTION FOR AN ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS 105(a) AND 1127(b) AND BANKRUPTCY RULE 9019 (I) APPROVING AND AUTHORIZING THE DEBTOR TO ENTER INTO AN AMENDMENT TO THE TAX SHARING AGREEMENT AND (II) APPROVING MODIFICATION OF THE DEBTOR'S CONFIRMED PLAN OF REORGANIZATION TO INCORPORATE THE TAX SHARING AGREEMENT AMENDMENT

PLEASE TAKE NOTICE that a hearing on the attached motion (the "Motion") of Ambac Financial Group, Inc., as debtor and debtor in possession in the above-captioned case (the "Debtor"), for an order, pursuant to sections 105(a) and 1127(b) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), (i) approving and authorizing the Debtor to enter into an

1015973130408000000000004

amendment of the Amended TSA[1] (the "Amendment") as a settlement by and between, *inter alia*, the Debtor and Ambac Assurance Corporation ("AAC"), and (ii) approving the modification of the Debtor's confirmed plan of reorganization to incorporate the Amendment, all as more fully described in the Motion, will be held before the Honorable Shelley C. Chapman, United States Bankruptcy Judge, in Courtroom 621 of the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), located at One Bowling Green, New York, New York 10004, on **April 29, 2013 at 10:00 a.m. (prevailing Eastern Time)** (the "Hearing").

PLEASE TAKE FURTHER NOTICE that objections to the Motion must (i) be in writing; (ii) conform to the Bankruptcy Rules, the Local Bankruptcy Rules for the Southern District of New York, and the *Amended Order, Pursuant to Bankruptcy Rules 2002, 9007, and 9036, and Local Rule 2002-2, Establishing Certain Notice, Case Management, and Administrative Procedures* [Docket No. 75]; (iii) state with particularity the legal and factual basis for the objection; and (iv) be filed with the Bankruptcy Court, together with a proof of service, and served so as to be actually received on or before **April 22, 2013 at 4:00 p.m. (prevailing Eastern Time)** upon: (a) the chambers of the Honorable Shelley C. Chapman, United States Bankruptcy Judge, One Bowling Green, New York, New York 10004; (b) counsel for the Debtor, Hogan Lovells US LLP, Attn: Peter Ivanick and Allison Weiss, 875 Third Avenue, New York, New York 10022; (c) counsel for the Committee, Morrison & Foerster LLP, Attn: Anthony Princi, 1290 Avenue of the Americas, New York, New York 10104; (d) counsel for the Office of the Commissioner of Insurance for the State of Wisconsin, Foley & Lardner LLP, Attn: Frank W. DiCastri, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202; (e) counsel for AAC, Sidley Austin LLP, Attn: Jonathan L. Freedman, 787 Seventh Avenue, New York, New York 10019; (f) the Office of the United States Trustee for the Southern District of

[1] All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

New York, Attn: Brian S. Masumoto, 33 Whitehall Street, 21st Floor, New York, New York, 10004; and (f) all entities which have filed a written request for notice with the Bankruptcy Court pursuant to Bankruptcy Rule 2002.

PLEASE TAKE FURTHER NOTICE that the Hearing may be adjourned from time to time by the Debtor without further notice other than (i) announcing such adjournment in open court, or (ii) filing with the Bankruptcy Court a notice of adjournment and serving such notices upon parties entitled to receive notice in the Debtor's chapter 11 case and parties which have filed objections to the Motion.

PLEASE TAKE FURTHER NOTICE that if no objection to the Motion is timely filed and served, an order granting the relief requested in the Motion may be entered without further notice or opportunity to be heard afforded to any party.

Dated: April 8, 2013
New York, New York

Respectfully Submitted,

/*s*/ Allison H. Weiss

Peter A. Ivanick
Allison H. Weiss
HOGAN LOVELLS US LLP
875 Third Avenue
New York, New York 10022
Tel: (212) 918-3000
Fax: (212) 918-3100

Attorneys for the Debtor and Debtor in Possession

Hearing Date: April 29, 2013 at 10:00 a.m. prevailing Eastern Time
Objection Deadline: April 22, 2013 at 4:00 p.m. prevailing Eastern Time

Peter A. Ivanick
Allison H. Weiss
HOGAN LOVELLS US LLP
875 Third Avenue
New York, New York 10022
Tel: (212) 918-3000
Fax: (212) 918-3100

Attorneys for the Debtor and Debtor in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----------	x	
	:	
In re	:	
	:	**Chapter 11**
AMBAC FINANCIAL GROUP, INC.	:	
	:	**Case No. 10-15973 (SCC)**
Debtor.	:	
	x	

DEBTOR'S MOTION FOR AN ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS 105(a) AND 1127(b) AND BANKRUPTCY RULE 9019 (I) APPROVING AND AUTHORIZING THE DEBTOR TO ENTER INTO AN AMENDMENT TO THE TAX SHARING AGREEMENT AND (II) APPROVING MODIFICATION OF THE DEBTOR'S CONFIRMED PLAN OF REORGANIZATION TO INCORPORATE THE TAX SHARING AGREEMENT AMENDMENT

TO THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

Ambac Financial Group, Inc. (the "Debtor"), as debtor and debtor in possession in the above-captioned chapter 11 case, submits this motion (the "Motion") for entry of an order, pursuant to sections 105(a) and 1127(b) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code") and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), (i) approving and authorizing the Debtor to enter into an Amendment to the Amended TSA (both as defined below), as a settlement by and between the Debtor and Ambac Assurance Corporation ("AAC"); and (ii) approving a modification of the

Plan (as defined below) to incorporate the amendment to the Amended TSA. Through its undersigned counsel, the Debtor hereby respectfully represents:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider and determine this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

Chapter 11 Case Background

2. On November 8, 2010 (the "Petition Date"), the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business and manage its assets as debtor in possession as authorized by Bankruptcy Code sections 1107(a) and 1108.

3. The Debtor is a publicly reporting holding company and a Delaware corporation. The Debtor's principal operating subsidiary, AAC, is a Wisconsin-domiciled financial guarantee insurance company.

4. Additional information regarding the Debtor's business, capital structure, and the events leading up to the commencement of this chapter 11 case is contained in the *Affidavit of David W. Wallis in Support of the Debtor's Chapter 11 Petition and First Day Motions and Pursuant to Local Rule 1007-2, filed on the Petition Date* [Docket No. 2].

5. On November 17, 2010, pursuant to Bankruptcy Code section 1102, the United States Trustee for the Southern District of New York (the "U.S. Trustee") appointed a statutory committee of unsecured creditors (the "Committee") [Docket No. 27]. No trustee or examiner has been appointed.

The Plan and the Amended Plan Settlement

6. Following the commencement of the Debtor's chapter 11 case, the Debtor and its major creditor constituencies developed a proposed plan settlement (the "Plan Settlement") to settle claims and causes of action among the Debtor, AAC, the Segregated Account of AAC (the "Segregated Account")[2], the Office of the Commissioner of Insurance for the State of Wisconsin, as regulator of AAC ("OCI"), and the Commissioner of Insurance of the State of Wisconsin, as rehabilitator of the Segregated Account (the "Rehabilitator").

7. In August 2011, the Debtor, the Committee, AAC, OCI, and the Rehabilitator commenced difficult mediation discussions with respect to the Debtor's proposed Plan Settlement. After several weeks of negotiation, the parties reached an understanding memorialized by a mediation agreement (the "Mediation Agreement"), detailing the terms of a consensual resolution of the parties' issues (the "Amended Plan Settlement"). The Amended Plan Settlement, as outlined in the Mediation Agreement, formed the basis for the Debtor's Fifth Amended Plan of Reorganization (as including all subsequent modifications and amendments, the "Plan").[3] One of the key components of the Amended Plan Settlement was the resolution of certain tax issues through the Amended TSA (as defined below).

8. On March 14, 2012, the Bankruptcy Court entered its *Order Confirming Fifth Amended Plan of Reorganization of Ambac Financial Group, Inc.* [Docket No. 938]. As of the date hereof, the Plan has not gone effective.

---

[2] The creation of the Segregated Account is further explained in the *Second Amended Disclosure Statement of Ambac Financial Group, Inc*. [Docket No. 601].

[3] On March 4, 2013, the Debtor filed a motion seeking, *inter alia*, to modify the Fifth Amended Plan of Reorganization to change the number of directors required to serve on the board of the Reorganized Debtor (as that term is defined in the Plan) [Docket No. 1230] (the "March 4 Motion"). The March 4 Motion is scheduled for hearing on April 18, 2013. If the Court approves the March 4 Motion, the modification requested in this Motion will be a modification to the Debtor's First Modified Fifth Amended Plan of Reorganization, and if such modification as requested in this Motion is approved by the Court, the Plan, as modified, will be the Debtor's Second Modified Fifth Amended Plan of Reorganization.

The TSA and the Amended TSA

9. The Debtor is the common parent of an affiliated group of corporations that files a single consolidated U.S. federal income tax return (the "Ambac Consolidated Group"). On July 18, 1991, the Ambac Consolidated Group entered into a tax sharing agreement (the "TSA") governing the respective tax liabilities of each affiliate, including the Debtor and AAC.

10. The Ambac Consolidated Group entered into a first amendment to the TSA, effective as of October 1, 1997.

11. In 2008, the Debtor adopted a method of accounting for losses on certain credit-default swaps ("CDS") insured by AAC, and applied for a change in its method of accounting for CDS income. CDS losses led to the Debtor's reporting an approximately $33 million taxable loss for 2007 and a $3.2 billion taxable loss for 2008.

12. In September 2008, August 2009, and December 2009, the Debtor filed claims with the IRS for tentative carryback adjustments as a result of (i) the carryback to prior taxable years of approximately $33 million and $1.9 billion of net operating losses ("NOLs") in 2007 and 2008, respectively, as previously reported on the Ambac Consolidated Group's federal income tax returns. Based upon these claims, the IRS refunded to the Debtor approximately $708,115,837. The $1.3 billion balance of the 2008 taxable loss was included in the Ambac Consolidated Group's NOL carryforwards.

13. The Ambac Consolidated Group entered into a second amendment to the TSA, effective as of December 16, 2009, which granted to AAC a trust and/or security interest in U.S. federal income tax refunds allocable to NOL carryovers attributable to losses incurred by AAC. Pursuant to this second amendment, the Debtor transferred to AAC approximately $696,644,907

of the refund that the Debtor received from the IRS.

14. The Ambac Consolidated Group entered into a third amendment to the TSA, effective as of January 1, 2010, which divided the Ambac Consolidated Group into (i) one subgroup comprised of the Debtor and its non-AAC subsidiaries (the "AFG Subgroup") and (ii) one subgroup comprised of AAC and its subsidiaries (the "AAC Subgroup"). The third amendment further required the Debtor to compensate AAC on a current basis if it used NOLs attributable to losses incurred by members of the AAC Subgroup to offset income attributable to the AFG Subgroup, except to the extent the AFG Subgroup used the AAC Subgroup's NOLs to offset any income (including any increase in income resulting from a disallowance of any deduction, loss or credit) recognized by the AFG Subgroup related to the restructuring, modification, cancellation, settlement or any other similar transaction related to any debt, liability or other obligation outstanding as of March 15, 2010.

15. As part of the Amended Plan Settlement, the Ambac Consolidated Group entered into an amended and restated tax sharing agreement (the "Amended TSA"), which superseded, replaced, and nullified all prior versions of the TSA. Because the Ambac Consolidated Group's NOLs represent a significant asset, the Amended Plan Settlement was developed with a view toward preserving the NOLs and maximizing their potential value to the Debtor as well as to AAC and the Segregated Account. The Amended Plan Settlement provides, *inter alia*, that, except as otherwise approved by the Rehabilitator, the Reorganized Debtor shall use its best efforts to preserve the use of NOLs for the benefit of the Ambac Consolidated Group, including the AAC Subgroup, as contemplated by the Amended Plan Settlement.

16. The Amended TSA, as part of the Amended Plan Settlement, governs the allocation of NOLs generated by the Ambac Consolidated Group. The Amended TSA provides,

inter alia, that (i) the AAC Subgroup is entitled to use a certain amount of the Ambac Consolidated Group's NOLs generated before September 30, 2011, in exchange for "tolling" payments rendered to the Reorganized Debtor in an amount determined pursuant to the appropriate schedule provided in the Amended TSA, and (ii) the AAC Subgroup is entitled to use NOLs generated by the AAC Subgroup after September 30, 2011, at no cost.

17. The Amended TSA, attached to the Plan as Exhibit A, is incorporated into and made a part of the Plan, as confirmed by this Court.

The Amendment to the Amended TSA

18. In response to a change in the position of the IRS, as promulgated in *I.R.C. §166: LB&I Directive Related to Partial Worthlessness Deduction for Eligible Securities Reported by Insurance Companies*, issued on July 30, 2012 (the "Section 166 Directive"), the Ambac Consolidated Group, together with the Committee, OCI, and the Rehabilitator, have memorialized a settlement of issues regarding the allocation by and between the Reorganized Debtor and the AAC Subgroup of additional NOLs that the Ambac Consolidated Group is entitled to claim pursuant to the implementation of the Section 166 Directive (the "Section 166 Directive NOLs"). Such settlement comprises a first amendment to the Amended TSA (the "Amendment").

19. The Amendment provides for the equitable allocation of the Section 166 Directive NOLs (and the equitable distribution of the additional tax benefits) by and between the Reorganized Debtor and the AAC Subgroup. Specifically, 50 percent of the Section 166 Directive NOLs will be allocated to the AAC Subgroup. Such NOLs will be available for use by the AAC Subgroup to offset income, both for federal income tax purposes and federal alternative minimum tax purposes, at no cost to the AAC Subgroup. In contrast, other Section 166 Directive

NOLs that are not allocated to the AAC Subgroup may be utilized to offset income by (i) the Reorganized Debtor or (ii) the AAC Subgroup, in exchange for "tolling" payments to the Reorganized Debtor in accordance with the terms of the Amended TSA.

20. The amount of Section 166 Directive NOLs will be determined based upon the increase in the aggregate NOLs of the Ambac Consolidated Group that are carried forward into the taxable period beginning on January 1, 2013, after implementing the Section 166 Directive, as compared to the aggregate NOLs that would have been carried forward into such period if the Section 166 Directive had not been implemented.

21. As permitted by the Section 166 Directive, the Reorganized Debtor will implement the Section 166 Directive in an initial year (other than 2009) that maximizes the amount of Section 166 Directive NOLs.

22. Because the tax benefits of the Ambac Consolidated Group's NOLs are critical to the successful reorganization of the Debtor, and because litigating or arbitrating a dispute regarding the Section 166 Directive NOLs would be expensive and could delay the Debtor's emergence from chapter 11, the Debtor seeks the Court's approval of the Amendment and authority to enter into the Amendment.

23. The Amended TSA is an integral part of the Amended Plan Settlement and the confirmed Plan. Accordingly, the Amendment, if approved by this Court, will be incorporated into the Plan as part of the Amended TSA, as (i) an exhibit to the Plan, (ii) part of the definition of "Amended Plan Settlement" in Article I.A.19 of the Plan, and (iii) part of the definition of "Amended TSA" in Article I.A.20 of the Plan. Consequently, in addition to requesting approval of and the authority to enter into the Amendment, the Debtor seeks approval to modify the Plan to incorporate the Amendment.

RELIEF REQUESTED

24. Pursuant to Bankruptcy Code sections 105(a) and 1127(b), Bankruptcy Rule 9019, and Article X of the Plan, the Debtor hereby seeks the entry of an order, substantially in the form attached hereto as Exhibit A, (i) approving and authorizing the Debtor to enter into the Amendment, and (ii) approving the modification of the Plan to incorporate the Amendment.

Amendment of the Tax Sharing Agreement

25. The Debtor, as part of the Ambac Consolidated Group, seeks to amend the Amended TSA to provide for the distribution of additional tax benefits arising from the Section 166 Directive.

26. Pursuant to the Amendment, the Reorganized Debtor will cause the Ambac Consolidated Group to file consolidated federal returns claiming deductions permitted under the Section 166 Directive. The tax benefits of the Section 166 Directive NOLs will be divided between the Reorganized Debtor and the AAC Subgroup on a fifty-fifty basis. A copy of the Amendment is attached hereto as Exhibit B.

Modification of the Plan

27. The Debtor also seeks to modify the Plan to incorporate the Amendment. Specifically, the Debtor seeks approval to (i) file an amended Exhibit A to the Plan, adding the Amendment to the existing Amended TSA; (ii) incorporate the relevant portions of the Amendment into the definition of "Amended Plan Settlement" in Article I.A.19 of the Plan; and (iii) change the definition of "Amended TSA" in Article I.A.20 of the Plan to include the Amendment and any subsequent amendments. A blackline of the relevant provisions of the Plan as modified is attached hereto as Exhibit C.[4]

[4] As discussed in note 3 above, the Court has not yet ruled on the Debtor's March 4 Motion to modify the Plan. Following the disposition of the March 4 Motion, the Debtor will file an amended Exhibit C to this Motion, which

28. The Debtor requests approval to add the following language to the definition of "Amended Plan Settlement" in Article I.A.19(ii) of the Plan:

> (t) The Reorganized Debtor shall implement the directive (Control No. LB&I-04-0712-009), dated July 30, 2012, issued by the Large Business & International Division of the IRS, relating to partial worthlessness deductions for eligible securities reported by insurance companies (the "Section 166 Directive") by causing the Ambac Consolidated Group to (i) file, in accordance with the terms of the Section 166 Directive, a properly completed original (or amended, as the case may be) consolidated federal tax return for the taxable period beginning on January 1 of the taxable year for which the Ambac Consolidated Group first implements the Section 166 Directive, which return shall claim deductions pursuant to the Section 166 Directive in the maximum amount permitted to be claimed for such taxable period under the terms of the Section 166 Directive, and (ii) to file, in accordance with the terms of the Section 166 Directive, a properly completed original (or amended, as the case may be) consolidated federal tax return for each subsequent taxable period, which return shall claim deductions pursuant to the Section 166 Directive in the maximum amount permitted to be claimed for such taxable period under the terms of the Section 166 Directive.
>
> (u) Fifty percent (50%) of the excess (if any) of (i) the Ambac Consolidated Group's NOLs that are carried forward into the taxable period beginning on January 1, 2013 taking into account the group's implementation of the Section 166 Directive *over* (ii) the Ambac Consolidated Group's NOLs that are carried forward into the taxable period beginning on January 1, 2013 without taking into account the group's implementation of the Section 166 Directive shall be treated as Post-Determination Date NOLs. No portion of incremental NOLs triggered by implementation of the Section 166 Directive shall be treated as Pre-Determination Date NOLs.
>
> (v) The foregoing provisions and procedures reflected in I.A.19(ii)(t) and (u) above shall also apply for purposes of determining and allocating AMT NOLs attributable to the Ambac Consolidated Group's implementation of the Section 166 Directive.
>
> (w) The Reorganized Debtor will implement the Section 166 Directive in an initial taxable year (other than 2009) permitted by

---

will include a blackline of the full Plan showing the proposed modification.

the Section 166 Directive that results in the largest increase in the Ambac Consolidated Group's NOLs.

29. The Debtor requests approval to modify Article I.A.20 as follows:

"Amended TSA" means that certain amended and restated tax sharing agreement, and any subsequent amendments and/or modifications thereto, among the Debtor, AAC and certain of their Affiliates, substantially in the form attached hereto as Exhibit A, which shall replace, supersede and nullify in its entirety the TSA.

BASIS FOR RELIEF

I. The Amendment to the Amended TSA

30. The Amended TSA, as part of the Amended Plan Settlement that forms the basis for the Plan, is a settlement by and between the Ambac Consolidated Group of certain issues relating to the allocation of valuable NOLs. Accordingly, the Amendment, as an amendment to the Amended TSA, is also a settlement, and is thus subject to the requirements of Bankruptcy Rule 9019.

31. Bankruptcy Rule 9019(a) provides that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a). Additionally, Bankruptcy Code section 105(a) provides that "[t]he court may issue any order . . . that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. §105(a).

32. In determining whether to approve a settlement pursuant to Bankruptcy Rule 9019, courts must make an independent determination that the settlement is fair and equitable. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry Inc. v. Anderson,* 390 U.S. 414, 424 (1968). This does not, however, give the court license to substitute its judgment for the debtor's. *In re Carla Leather, Inc.*, 44 B.R. 457, 465 (Bankr. S.D.N.Y. 1984). Rather, a court should

"canvass the issues and see whether the settlement 'fall[s] below the lowest point in the range of reasonableness.'" *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983), *cert. denied,* 464 U.S. 822.

33. In *In re Iridium Operating LLC*, the Second Circuit set forth the following factors that a court should consider in evaluating whether a settlement should be approved as fair and equitable:

> (1) the balance between the litigation's possibility of success and the settlement's future benefits; (2) the likelihood of complex and protracted litigation, "with its attendant expense, inconvenience, and delay," including the difficulty in collecting on the judgment; (3) "the paramount interests of the creditors," including each affected class's relative benefits "and the degree to which creditors either do not object to or affirmatively support the proposed settlement;" (4) whether other parties in interest support the settlement; (5) the "competency and experience of counsel" supporting, and "[t]he experience and knowledge of the bankruptcy court judge" reviewing, the settlement; (6) "the nature and breadth of releases to be obtained by officers and directors;" and (7) "the extent to which the settlement is the product of arm's length bargaining."

478 F.3d 452, 462 (2d Cir. 2007) (citing *In re WorldCom, Inc.*, 347 B.R. 123, 137 (Bankr. S.D.N.Y. 2006)). *See also In re Adelphia Commc'ns Corp.*, 368 B.R. 140, 226 (Bankr. S.D.N.Y. 2007) (citing *In re Texaco Inc.*, 84 B.R. 893, 901 (Bankr. S.D.N.Y. 1988)).

34. This Court has already approved the Amended Plan Settlement as part of the Plan confirmation process. (*See* Confirmation Order, at 21-22 ¶15.) As further detailed in the Declaration of David Trick in support of this Motion (the "Trick Declaration"), filed contemporaneously herewith, application of the relevant *Iridium* factors[5] to the Amendment confirms that the Amendment, as part of the Amended Plan Settlement, is fair, equitable, and in the best interests of the Debtor and its estate, and should therefore be approved.

[5] The Amendment does not implicate the sixth *Iridium* factor because it does not provide for any releases of the Debtor's officers and directors.

The Benefits of the Amendment Outweigh the Potential Benefits of Litigating or Arbitrating the Underlying Claims

35. As the Debtor stated in its *Memorandum (I) in Support of Confirmation of Third Amended Plan of Reorganization of Ambac Financial Group, Inc., and (II) in Response to Objections Thereto* [Docket No. 863], the purpose of the Amended Plan Settlement, including the Amended TSA, is to consensually resolve numerous litigable issues in the Debtor's bankruptcy case so that the Debtor can successfully reorganize. Prior to the adoption of the Amended Plan Settlement, the Debtor and AAC disputed the ownership of the valuable NOLs claimed by the Ambac Consolidated Group; without the Amended Plan Settlement, the dispute would have to be litigated or arbitrated, adding considerable expense to the estate and potentially delaying the reorganization process even if the Debtor prevailed in the litigation or arbitration. Additionally, such litigation or arbitration would upset the delicate state of the Debtor's relationships with AAC, the Committee, OCI, and the Rehabilitator, all of whom are vital to the Debtor's successful reorganization.

36. Because the Section 166 Directive was promulgated after the Plan was confirmed, the Amendment is necessary to resolve the allocation issues with respect to the Section 166 Directive NOLs. Consequently, the Amendment is a key component of the Amended Plan Settlement, because it provides for the allocation of the Section 166 Directive NOLs as between the Debtor and AAC. The Committee, AAC, OCI, and the Rehabilitator have all consented to the Amendment and are satisfied with its resolution of the Section 166 Directive NOL allocation issues. Accordingly, the benefits of the Amendment far outweigh any potential benefits of litigating or arbitrating the Section 166 Directive NOL issues, and this factor weighs in favor of approval.

Litigation or Arbitration of the Section 166 Directive NOL Allocation Issues Would Be Complex and Protracted

37. Fully litigating or arbitrating the allocation of the Section 166 Directive NOLs as between the Debtor and AAC would require an arbitrator or trial court to consider complex tax issues related to the ownership of the Section 166 Directive NOLs, the use of the Section 166 Directive NOLs by an affiliate, and the appropriate remedies associated with such use. The determination of these issues would implicate the retention of numerous tax and legal professionals. Regardless of the result of the trial or arbitration proceeding, the decision would likely be appealed or challenged due to the substantial value of the assets at stake. Consequently, this factor weighs in favor of approval.

The Amendment is in the Best Interest of Creditors

38. The Amendment will provide the Reorganized Debtor and the Debtor's creditors with significant benefits. The Amendment will save the estate from the time and expense of litigating or arbitrating the Section 166 Directive NOL allocation issues, as well as from possible additional delay in emergence from bankruptcy. This factor weighs in favor of approval.

The Amendment is Supported by All Key Parties in Interest

39. As previously stated, the Committee, OCI, AAC, and the Rehabilitator have all consented to the Amendment and are satisfied with the Amendment's allocation of the additional NOLs. This factor thus weighs in favor of approval.

The Amendment is the Product of Arm's-Length Bargaining Among Experienced and Independent Counsel

40. The Amendment is the product of extensive and protracted arm's-length negotiations between the Debtor, AAC, the Committee, OCI, and the Rehabilitator. All of the

parties consulted knowledgeable and competent counsel with significant experience in complex litigation, tax, and bankruptcy issues. This factor weighs in favor of approval.

41. All of the relevant *Iridium* factors demonstrate that the Amendment is fair and equitable. As a result, the Debtor respectfully requests that the Court approve and authorize the Debtor to enter into the Amendment.

II. Modification of the Plan

42. The Debtor also seeks to modify the Plan by incorporating the Amendment to the Amended TSA, which is integral to the Plan. The modification, as detailed above, reflects the result of continued negotiations between the Debtor, OCI, the Rehabilitator, and AAC, and will significantly benefit the estate, its creditors, and other parties in interest because it saves the estate from incurring the risks, costs, and delays associated with litigation or arbitration.

43. Bankruptcy Code section 1127(b) provides that a plan proponent may modify a plan at any time after confirmation but before substantial consummation of such plan, if the plan as modified meets the requirements of Bankruptcy Code sections 1122 and 1123. Additionally, modification is permitted if circumstances warrant such a modification and the court, after notice and a hearing, confirms the modified plan under Bankruptcy Code section 1129. 11 U.S.C. §1127(b).

44. Further, Article X of the Plan permits the Debtor to modify the Plan with respect to the Amended Plan Settlement, including the Amended TSA, with the consent of the Committee, AAC, OCI, and the Rehabilitator. As stated above and in the Trick Declaration, the Committee, AAC, OCI and the Rehabilitator have consented to the Amendment and the subsequent modification of the Plan.

45. In considering whether modification of a confirmed plan is warranted, a court

must determine: (i) whether the debtor has standing to request this relief; (ii) whether the plan has been "substantially consummated" within the meaning of Bankruptcy Code section 1101(2); (iii) whether the circumstances warrant modification; (iv) whether the plan, as modified, complies with Bankruptcy Code sections 1122, 1123 and 1129; and (v) whether additional disclosure and voting is necessary under Bankruptcy Code section 1127(c). *See* 11 U.S.C. 1127(b); *see also In re Boylan Int'l Ltd.*, 452 B.R. 43, 47-48 (Bankr. S.D.N.Y. 2011).

The Debtor Has Standing to Modify as the Plan Proponent

46. Section 1127(b) provides that "the proponent of a plan or the reorganized debtor" is permitted to modify the plan. Here, the Debtor was the proponent of the Plan and is the party requesting modification. Therefore, this factor supports modification.

The Plan Has Not Been Substantially Consummated

47. Additionally, the Plan has not been substantially consummated. Bankruptcy Code section 1101 defines "substantial consummation" as:

> (A) transfer of all or substantially all of the property proposed by the plan to be transferred;
> (B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and
> (C) commencement of distribution under the plan.

11 U.S.C. §1101(2). The Plan has not yet gone effective, and thus distributions have not yet been made. Therefore, the Plan has not been substantially consummated, and this factor supports modification.

The Circumstances of This Case Warrant Modification

48. To prevail on a motion to modify the plan, the plan proponent must "demonstrate that the circumstances warrant modification." *Boylan*, 452 B.R. at 50. Courts have held that modification is not permitted where such modification "materially alters the plan and adversely

affects a claimant's treatment." *In re Best Products Co., Inc.*, 177 B.R. 791, 802 (S.D.N.Y. 1995).

49. In this case, the circumstances warrant modification to incorporate the Amendment. After the Amended TSA was executed and the Plan was confirmed, the IRS issued the Section 166 Directive, which allows the Ambac Consolidated Group to claim additional tax benefits for the taxable periods covered by the Amended TSA. Because the Section 166 Directive was issued after the confirmation of the Plan, modification of the Plan is necessary to incorporate the Amendment so that the Section 166 Directive NOLs can be equitably allocated between the Reorganized Debtor and AAC.

The Plan as Modified Complies with Bankruptcy Code Sections 1122, 1123, and 1129

50. In the Confirmation Order, this Court determined that the Plan satisfied the necessary criteria in Bankruptcy Code sections 1122 and 1123. (Confirmation Order, §II.J-P.) As the proposed modification has no effect on the classification of claims or the treatment of creditors and does not alter any provisions relating to the issuance of nonvoting equity securities, the Plan as modified satisfies the requirements of Bankruptcy Code sections 1122 and 1123.

51. Likewise, the Plan as modified satisfies the requirements for confirmation outlined in Bankruptcy Code section 1129. In sections II.I through II.MM of the Confirmation Order, the Court determined that the Plan meets all criteria for confirmation. (Confirmation Order, § II.I-MM.) The proposed modification to the Plan does not materially change the Court's analysis of the Plan, as the modification does not change the treatment of creditors or claims; the Debtor proposes the modification in good faith; and the Debtor has complied with all relevant sections of the Bankruptcy Code.

No Additional Disclosure or Solicitation Is Required

52. Bankruptcy Code section 1127(c) requires that the proponent of a modification

"comply with section 1125 of this title with respect to the plan as modified." 11 U.S.C. § 1127(c). Bankruptcy Code section 1125 in turn requires the plan proponent to disclose certain information and solicit acceptance or rejection of the plan in accordance with specific rules. *See* 11 U.S.C. §1125.

53. The determination of whether re-solicitation of votes and additional disclosure are required depends on whether the requested modification is material and whether it adversely affects the plan's treatment of any creditor. *See Boylan*, 452 B.R. at 51-52; *see also* 7 Collier on Bankruptcy ¶1127.03[4] (16th ed. 2012) (collecting cases). The court in *Boylan* found that no re-solicitation or additional disclosure was necessary where the proposed modification – the extension of the liquidation trust's existence by two years – would enable the trust to liquidate its "central asset," a cause of action that had not been resolved. 452 B.R. at 52.

54. Here, the proposed modification does not adversely affect the treatment of any creditor. On the contrary, the modification will benefit the estate and its creditors by (i) providing additional NOLs with which to offset income for federal tax purposes and (ii) incorporating the resolution of a disputed issue without incurring the costs, risks, and delays of litigation or arbitration. Therefore, because the modification does not adversely affect the treatment of creditors, additional disclosure and solicitation are not required. Accordingly, the Court should approve the proposed modification without the need for further disclosure or re-solicitation.

Notice

55. Notice of this Motion has been provided by first class mail, overnight mail, e-mail, fax, or hand delivery to the U.S. Trustee, counsel for the Committee, counsel for OCI and the Rehabilitator, counsel for AAC, and all entities which have filed a written request for notice with

the Bankruptcy Court pursuant to Bankruptcy Rule 2002. The Debtor submits that no other or further notice need be provided.

No Previous Request

56. No previous request for the relief sought herein has been made by the Debtor to the Bankruptcy Court.

WHEREFORE the Debtor respectfully requests entry of an order substantially in the form attached hereto as Exhibit A, (i) approving and authorizing the Debtor to enter the Amendment; (ii) approving the modification of the Plan to incorporate the Amendment, and (iii) granting such other relief as the Court deems just and proper.

Dated: April 8, 2013
New York, New York

Respectfully Submitted,

/s/ Allison H. Weiss
Peter A. Ivanick
Allison H. Weiss
HOGAN LOVELLS US LLP
875 Third Avenue
New York, New York 10022
Tel: (212) 918-3000
Fax: (212) 918-3100

Attorneys for the Debtor and Debtor in Possession

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	
	:	**Chapter 11**
AMBAC FINANCIAL GROUP, INC.,	:	
	:	**Case No. 10-15973 (SCC)**
Debtor.	:	

ORDER PURSUANT TO BANKRUPTY CODE SECTIONS 105(a) AND 1127(b) AND BANKRUPTCY RULE 9019 (I) APPROVING AND AUTHORIZING THE DEBTOR TO ENTER INTO AN AMENDMENT TO THE TAX SHARING AGREEMENT AND (II) APPROVING MODIFICATION OF THE DEBTOR'S CONFIRMED PLAN OF REORGANZATION TO INCORPORATE THE TAX SHARING AGREEMENT AMENDMENT

Upon the motion, dated April 8, 2013 (the "Motion")[6] of Ambac Financial Group, Inc., as debtor and debtor in possession in the above-captioned case (the "Debtor"), for an order, pursuant to Bankruptcy Code sections 105(a) and 1127(b) and Bankruptcy Rule 9019, (i) approving and authorizing the Debtor to enter into an amendment of the Amended TSA (the "Amendment") as a settlement by and between, *inter alia*, the Debtor and Ambac Assurance Corporation ("AAC"), substantially in the form attached to the Motion as Exhibit B, and (ii) approving a modification of the Debtor's confirmed Fifth Amended Plan of Reorganization (the "Plan") to incorporate the Amendment, substantially in the form attached to the Motion as Exhibit C, all as more fully described in the Motion; and the Bankruptcy Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion and the deadline for

[6] All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

objecting thereto having been provided; and the Bankruptcy Court having determined that (i) the Amendment is fair and equitable and that its approval is in the best interests of the Debtor and its estate, (ii) modification of the Plan is warranted under the circumstances of this case, without further need for additional disclosure or re-solicitation of votes, and (iii) the legal and factual bases set forth in the Motion and the Trick Declaration establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Motion is granted; and it is further

ORDERED that pursuant to Bankruptcy Code section 105(a) and Bankruptcy Rule 9019, the Amendment is hereby approved in all respects; and it is further

ORDERED that the Debtor is hereby authorized and directed to effectuate the Amendment and take any other actions as may be reasonably necessary to consummate the transactions contemplated thereby; and it is further

ORDERED that pursuant to Bankruptcy Code sections 105(a) and 1127(b), the modification of the Plan is hereby approved in all respects; and it is further

ORDERED that the Debtor is authorized pursuant to Bankruptcy Code section 1127(b) to take all steps and perform all acts necessary to modify the Plan as set forth in the Motion and all exhibits thereto, including filing an amended Exhibit A to the Plan to add the Amendment; and it is hereby

ORDERED that:

1. Article I.A.19(ii) of the Plan is hereby amended to add the following language:

> (t) The Reorganized Debtor shall implement the directive (Control No. LB&I-04-0712-009), dated July 30, 2012, issued by the Large Business & International Division of the IRS, relating to partial worthlessness deductions for eligible securities reported by insurance companies (the "Section 166 Directive") by causing the Ambac Consolidated Group to (i) file, in accordance with the

terms of the Section 166 Directive, a properly completed original (or amended, as the case may be) consolidated federal tax return for the taxable period beginning on January 1 of the taxable year for which the Ambac Consolidated Group first implements the Section 166 Directive, which return shall claim deductions pursuant to the Section 166 Directive in the maximum amount permitted to be claimed for such taxable period under the terms of the Section 166 Directive, and (ii) to file, in accordance with the terms of the Section 166 Directive, a properly completed original (or amended, as the case may be) consolidated federal tax return for each subsequent taxable period, which return shall claim deductions pursuant to the Section 166 Directive in the maximum amount permitted to be claimed for such taxable period under the terms of the Section 166 Directive.

(u) Fifty percent (50%) of the excess (if any) of (i) the Ambac Consolidated Group's NOLs that are carried forward into the taxable period beginning on January 1, 2013 taking into account the group's implementation of the Section 166 Directive *over* (ii) the Ambac Consolidated Group's NOLs that are carried forward into the taxable period beginning on January 1, 2013 without taking into account the group's implementation of the Section 166 Directive shall be treated as Post-Determination Date NOLs. No portion of incremental NOLs triggered by implementation of the Section 166 Directive shall be treated as Pre-Determination Date NOLs.

(v) The foregoing provisions and procedures reflected in I.A.19(ii)(t) and (u) above shall also apply for purposes of determining and allocating AMT NOLs attributable to the Ambac Consolidated Group's implementation of the Section 166 Directive.

(w) The Reorganized Debtor will implement the Section 166 Directive in an initial taxable year (other than 2009) permitted by the Section 166 Directive that results in the largest increase in the Ambac Consolidated Group's NOLs;

2. Article I.A.20 of the Plan is hereby amended to read as follows:

"Amended TSA" means that certain amended and restated tax sharing agreement, and any subsequent amendments and/or modifications thereto, among the Debtor, AAC and certain of their Affiliates, substantially in the form attached hereto as Exhibit A, which shall replace, supersede and nullify in its entirety the TSA;

and it is further

ORDERED that other than approval of the modification described in the Motion and set forth herein, nothing in this Order shall prejudice, nullify or override any provisions of the Confirmation Order, which confirmed the Plan pursuant to Bankruptcy Code section 1129 and which, as modified by this Order, shall govern in all respects; and it is further

ORDERED that the Bankruptcy Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

Dated: _____, 2013
New York, New York

THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

AMENDMENT NO. 1 TO TAX SHARING AGREEMENT

This Amendment No. 1 to Tax Sharing Agreement (the "Amendment") is executed on _____, __, 2013, by and among Ambac Financial Group, Inc. (formerly known as AMBAC Inc., and hereinafter referred to as "AFGI" or "Parent") and each of the other corporations that is a signatory to this Amendment below (each a "Subsidiary" and collectively the "Subsidiaries").

WHEREAS, AFGI and the Subsidiaries are parties to that certain Tax Sharing Agreement (the "Tax Sharing Agreement") executed on March 14, 2012;

WHEREAS, AFGI, Ambac Assurance Corporation (formerly known as AMBAC Indemnity Corporation) ("AAC") and the other Subsidiaries are entitled to additional federal income tax benefits arising from a change in the position of the IRS regarding the treatment of charge-offs under SSAP 43R (within the meaning of the National Association of Insurance Commissioners' Statements of Statutory Accounting Principles); and

WHEREAS, AFGI and the Subsidiaries desire to equitably distribute the additional tax benefits arising from such treatment of charge-offs.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. All capitalized terms used but not defined in this Amendment shall have the meanings set forth in the Tax Sharing Agreement. All amendments described below in this Amendment shall be treated as being effective on the Effective Date, and shall have effect for all Taxable Periods beginning on or after January 1, 2011, subject to subparagraphs 1(a) and 1(b) of the Tax Sharing Agreement.

2. Paragraph 1 of the Tax Sharing Agreement is hereby amended and restated to include the following new definitions:

"AAC Section 166 Directive AMT NOL Amount" shall mean fifty percent (50%) of the Section 166 Directive AMT NOL Amount.

"AAC Section 166 Directive NOL Amount" shall mean fifty percent (50%) of the Section 166 Directive NOL Amount.

"Section 166 Directive" shall mean the directive (Control No. LB&I-04-0712-009), dated July 30, 2012, issued by the Large Business & International Division of the IRS, relating to partial worthlessness deductions for eligible securities reported by insurance companies.

"Section 166 Directive AMT NOL Amount" shall mean the excess (if any) of (i) the Specified AMT NOL Amount taking into account the Group's implementation of the Section 166 Directive in accordance with the terms of the Section 166 Directive and in accordance with subparagraph 6(c) *over* (ii) the Specified AMT NOL Amount without taking into account the Group's implementation of the Section 166 Directive.

"Section 166 Directive Election Year" shall mean the taxable year for which the Group first implements the Section 166 Directive.

"Section 166 Directive NOL Amount" shall mean the excess (if any) of (i) the Specified NOL Amount taking into account the Group's implementation of the Section 166 Directive in accordance with the terms of the Section 166 Directive and in accordance with subparagraph 6(c) *over* (ii) the Specified NOL Amount without taking into account the Group's implementation of the Section 166 Directive.

"Specified AMT NOL Amount" shall mean the aggregate amount of AMT NOLs of the Group that are carried forward into the Taxable Period beginning on January 1, 2013.

"Specified NOL Amount" shall mean the aggregate amount of NOLs of the Group that are carried forward into the Taxable Period beginning on January 1, 2013.

3. The following definitions from paragraph 1 of the Tax Sharing Agreement are hereby amended and restated to read as follows:

"Post-Determination Date AMT NOLs" shall mean, subject to subparagraph 6(f), any AMT NOLs (other than any Section 166 Directive AMT NOL Amount) directly accruing and attributable to the AAC Subgroup (determined on a Separate Subsidiary Basis) after the Determination Date, plus the AAC Section 166 Directive AMT NOL Amount. The Section 166 Directive AMT NOL Amount shall not be treated, in whole or in part, as an amount of Pre-Determination Date AMT NOLs.

"Post-Determination Date NOLs" shall mean, subject to subparagraph 6(f), any NOLs (other than any Section 166 Directive NOL Amount) directly accruing and attributable to the AAC Subgroup (determined on a Separate Subsidiary Basis) after the Determination Date, plus the AAC Section 166 Directive NOL Amount. The Section 166 Directive NOL Amount shall not be treated, in whole or in part, as an amount of Pre-Determination Date NOLs.

"Pre-Determination Date AMT NOLs" shall mean, subject to subparagraph 6(f), any AMT NOLs generated by the Group on or prior to, and existing as of, the Determination Date, not taking into account the consequences of any settlement with respect to the IRS Dispute and not including, in whole or in part, the Section 166 Directive AMT NOL Amount.

"Pre-Determination Date NOLs" shall mean, subject to subparagraph 6(f), any NOLs generated by the Group on or prior to, and existing as of, the Determination Date, not taking into account the consequences of any settlement with respect to the IRS Dispute and not including, in whole or in part, the Section 166 Directive NOL Amount.

4. Subparagraph 6(c) of the Tax Sharing Agreement shall be amended and restated to read as follows:

(c) Payment of Tax. For every Taxable Period, Parent will pay or discharge, or cause to be paid or discharged, the consolidated Federal Tax liability or

AMT liability, including payments of estimated tax, of the Group. Parent shall implement the Section 166 Directive by causing the Group to (i) file, in accordance with the terms of the Section 166 Directive, a properly completed original (or amended, as the case may be) consolidated federal tax return for the Taxable Period beginning on January 1 of the Section 166 Directive Election Year, which return shall claim deductions pursuant to the Section 166 Directive in the maximum amount permitted to be claimed for such Taxable Period under the terms of the Section 166 Directive, and (ii) to file, in accordance with the terms of the Section 166 Directive, a properly completed original (or amended, as the case may be) consolidated federal tax return for each subsequent Taxable Period, which return shall claim deductions pursuant to the Section 166 Directive in the maximum amount permitted to be claimed for such Taxable Period under the terms of the Section 166 Directive.

5. New subparagraph 6(g) of the Tax Sharing Agreement will be added as follows:

(g) Section 166 Directive Election Year. Parent will select the Section 166 Directive Election Year (other than 2009) that results in the largest Section 166 Directive NOL Amount.

IN WITNESS WHEREOF, the parties have caused this Amendment No. 1 to be executed as of the date first above written.

AMBAC FINANCIAL GROUP, INC.

By: _____
Name:
Title:

AMBAC ASSURANCE CORPORATION

By: _____
Name:
Title:

AMBAC CAPITAL CORPORATION

By: _____
Name:
Title:

AMBAC INVESTMENTS, INC.

By: _____
Name:
Title:

AMBAC CAPITAL FUNDING, INC.

By: _____
Name:
Title:

AMBAC ASSET FUNDING CORPORATION

By: _____
Name:
Title:

AMBAC AII CORPORATION

By: _____
Name:
Title:

EVERSPAN FINANCIAL GUARANTEE CORP.

By: _____
Name:
Title:

CONNIE LEE HOLDINGS, INC.

By: _____
Name:
Title:

AMBAC (BERMUDA) LTD.

By: _____
Name:
Title:

EXHIBIT C

Article I.A.19

(ii) the Debtor and AAC shall, and shall cause their affiliates to, enter into the Amended TSA and the Amended TSA shall replace, supersede, and nullify in its entirety the existing TSA; provided once the Amended TSA becomes effective, it shall have effect for all taxable periods beginning on or after January 1, 2011; provided, however, the NOL tolling provisions, which shall have effect as of October 1, 2011 (and the portion of the taxable year beginning on October 1, 2011 and ending on December 31, 2011 shall be considered a separate taxable period for purposes of determining amounts payable pursuant to the Amended TSA). The Amended TSA shall address certain issues including, but not limited to, the following:

(a) Certain NOLs generated by the Ambac Consolidated Group on or prior to, and existing on, September 30, 2011 (the "Determination Date"), not taking into account the consequences of any settlement with respect to the IRS Dispute ("Pre-Determination Date NOLs"), shall be available for use by the AAC Subgroup as set forth in the Amended TSA and as described below.

(b) Any NOLs generated by the AAC Subgroup determined on a separate company tax basis after the Determination Date (the "Post-Determination Date NOLs") shall be available for use by the AAC Subgroup at no cost.

(c) The portion of any NOLs generated during the taxable year 2011 shall be allocated to either the Pre-Determination Date NOLs or the Post-Determination Date NOLs on the basis of a deemed closing of the books and records of the AAC Subgroup and members of the Ambac Consolidated Group other than the members included in the AAC Subgroup (the "AFGI Subgroup"), as the case may be, as of the end of the Determination Date. For purposes of determining the amount of any NOLs, AMT NOLs, AMT credits or taxable income pursuant to the Amended Plan Settlement, (I) the AAC Surplus Notes issued in June 2010 will be considered indebtedness issued by AAC for federal income tax purposes, (II) the aggregate issue price, for federal income tax purposes, of the AAC Surplus Notes issued in June 2010 and subject to a call option letter agreement shall be treated as equal to $232 million and (III) the aggregate issue price, for federal income tax purposes, of the remaining AAC Surplus Notes issued in June 2010 shall be treated as equal to $1,060 million.

(d) Unless and until there has been a Deconsolidation Event (as defined below), the amount of Pre-Determination Date NOLs allocated to, and available for use by, the AAC Subgroup to offset income for federal income tax purposes (the "Allocated AAC NOLs") shall be an amount (such amount being hereinafter referred to as the "Allocated AAC NOL Amount") equal to the lesser of

Article I.A.19

(1) $3.65 billion; and

(2) the total amount of Pre-Determination Date NOLs, MINUS the sum of (I) the amount of cancellation of indebtedness income realized within the meaning of IRC sections 61(a)(12) and 108(a), by the Debtor and any subsidiary not included in the AAC Subgroup in connection with the Plan, (II) the amount of interest expense of the AFGI Subgroup that is disallowed pursuant to IRC section 382(l)(5)(B) upon the consummation of the Plan or otherwise related to the case, and (III) the amount of NOLs reduced pursuant to the settlement of the IRS Dispute.

Pursuant to the Amended TSA, the AAC Subgroup may utilize the Allocated AAC NOL Amount to offset income for federal income tax purposes in exchange for a payment pursuant to the Amended TSA in an amount determined pursuant to the appropriate table contained in the Amended TSA, with the applicable percentage for the particular usage tier shown in such table being multiplied by the aggregate amount of the increase in the AAC Subgroup's federal income tax liability that would have been owed and payable with respect to such taxable period to the extent that no portion of the (i) (A) Allocated AAC NOL Amount or (B) Post-Deconsolidation Allocated NOL Amount (as defined below), in each case, within the applicable NOL usage tier or (ii) AFGI NOL Amount (as defined below), as the case may be, would have been available in connection with such determination with respect to such taxable period (the "AAC Notional Federal Tax Amount").

Any amounts due from AAC to the Debtor or the Reorganized Debtor, as applicable, for the use of NOLs pursuant to the Amended TSA shall be paid no later than forty-five (45) days after the due date (excluding extensions) of the consolidated tax return for the taxable period in question; provided that any such amounts due and owing prior to the Plan Settlement Closing Date shall be deposited in an escrow account established under section 6 of the Mediation Agreement, which will be transferred to the Debtor or the Reorganized Debtor, as applicable, on the Plan Settlement Closing Date; provided further, that AAC shall be entitled to offset and retain any portion of any amounts due pursuant to the tolling provisions of the Amended TSA to the extent that Debtor or the Reorganized Debtor have not previously made all payments to AAC required under the Amended TSA. The parties shall cooperate with each other and, upon reasonable request, provide information with respect to the tax matters set forth in the Amended Plan Settlement.

(e) Beginning on the fifth anniversary of the Plan Settlement Effective Date, prior to the occurrence of a Deconsolidation Event, and subject to the consent of the Debtor or the Reorganized Debtor, as applicable, not to be unreasonably withheld, the AAC Subgroup may utilize NOLs in excess of the sum of (i) the Allocated AAC NOL Amount and (ii) the portion of the Post-Determination Date NOLs that, in each case, has not been previously used to offset income for federal tax purposes (the "AFGI NOLs") in exchange for a payment pursuant to the Amended TSA in an amount equal to 25% multiplied by the AAC Notional Federal Tax Amount.

(f) Following the occurrence of a Deconsolidation Event, pursuant to the election set forth in clause 6(e)(i) of the Amended TSA, (1) the amount of Pre-Determination Date NOLs allocated to, and owned by, the AAC Subgroup (the "Post-Deconsolidation Allocated NOLs") shall be an amount (such amount being hereinafter referred to as the "Post-Deconsolidation Allocated NOL Amount") equal to (I) the Allocated AAC NOL Amount less (II) the AAC Pre-Deconsolidation Utilized NOL Amount (as defined below) and (2) all Post-Determination Date NOLs (to the extent not previously utilized by the AAC Subgroup) shall be allocated to, and owned by, the AAC Subgroup. The Debtor or the Reorganized Debtor, as applicable, in its sole discretion, may allocate incremental NOLs to the AAC Subgroup to increase the Post-Deconsolidation Allocated NOLs. AAC shall compensate the Debtor or the Reorganized Debtor, as applicable, for the use of the Post-Deconsolidation Allocated NOLs to offset income for federal income tax purposes in an amount determined pursuant to the appropriate table contained in the Amended TSA, with the applicable percentage for the particular usage tier shown in such table being multiplied by the AAC Notional Federal Tax Amount.

The "AAC Pre-Deconsolidation Utilized NOL Amount" is the portion of the Allocated AAC NOL Amount that is utilized to offset income for federal income tax purposes as provided in the Amended TSA by AAC following the Determination Date and prior to a Deconsolidation Event.

(g) To the extent that the AAC Subgroup has any available Post Determination Date NOLs solely for purposes of determining the amounts payable under the Amended TSA, such Post-Determination Date NOLs shall be treated as being used prior to utilization of any Allocated AAC NOL Amount, Post-Deconsolidation Allocated NOL Amount or AFGI NOL Amount. It is understood that to the extent that the AAC Subgroup carries back any portion of the Allocated AAC NOL Amount to taxable periods beginning prior to January 1, 2011, solely for

purposes of determining the amount of any NOL usage payments due to the Debtor under the Amended TSA, such portion of the Allocated AAC NOL Amount carried back to such prior taxable periods shall be treated as being utilized pursuant to subparagraph 3(c) of the Amended TSA. Any such carryback by the AAC Subgroup shall be deemed to be a carryback of Post-Determination Date NOLs prior to a carryback of any portion of the Allocated AAC NOL Amount.

(h) Solely for purposes of determining the amounts payable under the Amended TSA, the Debtor or the Reorganized Debtor, as applicable, shall be treated as using the AFGI Allocated NOLs and any NOLs generated by the members of the AFGI Subgroup after the Determination Date (determined on a separate company tax basis without inclusion of the AAC Subgroup) prior to utilization of any Allocated AAC NOLs or Post-Determination Date NOLs. Prior to a Deconsolidation Event, the Debtor and any AFGI Subsidiary shall be able to utilize NOLs of the Group (other than any portion of the Allocated AAC NOL Amount and the Post-Determination Date NOLs, except as provided in subclause 3(c)(vii)(3) of the Amended TSA) in an amount equal to the AFGI NOL Amount, and following a Deconsolidation Event, the Ambac Consolidated Group shall be able to utilize the aggregate amount of the Ambac Consolidated Group's NOLs, other than the Post¬Deconsolidation Allocated NOL Amount and the Post-Determination Date NOLs, in each case, to the fullest extent permitted by the Code without limitation or any requirement to pay or otherwise compensate AAC or any AAC Subsidiary. If and to the extent that the Debtor or the Reorganized Debtor, as applicable, or any subsidiary thereof other than a member of the AAC Subgroup (an "AFGI Subsidiary") utilizes (i) any Allocated AAC NOLs or (ii) any Post-Determination Date NOLs, the Debtor or the Reorganized Debtor, as applicable, shall make a payment pursuant to the Amended TSA in an amount equal to 50% of the aggregate amount of the AFGI Subgroup's federal income tax liability for the taxable year in which the NOLs are used that otherwise would have been paid by the Debtor or the Reorganized Debtor, as applicable, if such NOLs were not available for its use. Any use by the Debtor and the AFGI Subsidiaries of such NOLs shall be deemed to be a use of the Allocated AAC NOL Amount prior to a use of the Post-Determination Date NOLs.

(i) With respect to any taxable year that includes a Deconsolidation Event, the Debtor or the Reorganized Debtor, as applicable, so long as it is the common parent of the Ambac Consolidated Group, shall, subject to the prior review and approval of the Rehabilitator, make valid and timely elections pursuant to Treasury Regulation Section 1.1502-36 to the extent permitted thereunder such that (1) the NOLs

of the AAC Subgroup that exist immediately following a Deconsolidation Event will be an amount equal to the sum of the Post-Determination Date NOLs existing as of the Deconsolidation Event (to the extent not previously utilized by the AAC Subgroup) and the Post-Deconsolidation Allocated NOL Amount, and (2) no reduction in the tax basis of any asset of the AAC Subgroup will be required pursuant to Treasury Regulation Section 1.1502-36(d)(4)(i)(D), and no reduction in the amount of any deferred deduction will be required pursuant to Treasury Regulation Section 1.1502-36(d)(4)(i)(C). With respect to any taxable year that includes any event resulting in the application of Treasury Regulation Section 1.1502-36 to AAC or the AAC Subgroup other than a Deconsolidation Event (an "Adjustment Event"), the Debtor or the Reorganized Debtor, as applicable, so long as it is the common parent of the Ambac Consolidated Group, shall, subject to the prior review and approval of the Rehabilitator, make valid and timely elections pursuant to Treasury Regulation Section 1.1502-36 to the extent permitted thereunder such that (Y) the NOLs of the AAC Subgroup that exist immediately following such Adjustment Event will be an amount equal to the sum of the Post-Determination Date NOLs existing as of the Adjustment Event (to the extent not previously utilized by the AAC Subgroup prior to such Adjustment Event) and the Post-Deconsolidation Allocated NOL Amount determined as if the date of the Adjustment Event were a Deconsolidation Event and (Z) no reduction in the tax basis of any asset of the AAC Subgroup will be required pursuant to Treasury Regulation Section 1.1502-36(d)(4)(i)(D), and no reduction in the amount of any deferred deduction will be required pursuant to Treasury Regulation Section 1.1502-36(d)(4)(i)(C).

(j) With respect to each taxable year of the Ambac Consolidated Group, if AAC or the Rehabilitator notifies the Debtor or the Reorganized Debtor, as applicable, at least 30 days before the Ambac Consolidated Group tax return is filed, that AAC or the Rehabilitator has reasonably determined that there exists uncertainty as to whether or not a Deconsolidation Event or Adjustment Event has occurred during such taxable year, the Debtor or the Reorganized Debtor, as applicable, so long as it is the common parent of the Ambac Consolidated Group, shall, subject to the prior approval of the Rehabilitator, make such protective elections or take other similar actions so that if such a Deconsolidation Event or Adjustment Event were determined subsequently to have occurred during such taxable year, the results contemplated by clause 6(e)(i) of the Amended TSA (as described above) would be achieved to the maximum extent possible. In addition, if AAC or the Rehabilitator believes that a Deconsolidation Event or Adjustment Event may have occurred in a

taxable period for which no election or protective election was made pursuant to Treasury Regulation Section 1.1502-36, and if AAC or the Rehabilitator desires to obtain relief from the IRS (whether under Treasury Regulation Section 301.9100 or otherwise) for the failure to make such an election, the Debtor or the Reorganized Debtor, as applicable, shall reasonably cooperate with AAC and the Rehabilitator in obtaining such relief; provided, however, that (i) any costs incurred in connection with obtaining any such relief shall be borne solely by AAC and (ii) the Debtor or the Reorganized Debtor, as applicable, is permitted to review and comment on any written materials provided to the IRS with respect to such relief and attend any meetings or participate in any other communication with the IRS.

(k) If a Deconsolidation Event occurs on a date other than the last day of a taxable year of the Ambac Consolidated Group, no election under Treasury Regulation Sections 1.1502-76(b)(2)(ii) or (iii) (a so-called "ratable allocation" election) shall be made in connection with determining the allocation of the items of the AAC Subgroup between the portion of such taxable year that ends on the date of the Deconsolidation Event and the remaining portion of such taxable year.

(l) The amount due and payable from AAC to the Debtor or the Reorganized Debtor, as applicable, pursuant to the Amended TSA shall be the SUM of (i) any tax payable pursuant to IRC section 55 or any other similar provision under state or local law ("AMT") by the AAC Subgroup (the "AAC AMT"), (ii) any federal income tax owed by the AAC Subgroup as provided in the Amended TSA (the "AAC Federal Tax") (reduced by any available tax credits previously generated by payment of the AAC AMT, including prior to the Effective Date, and not used in any prior taxable year), (iii) the sum of the amounts due and payable under clauses 3(c)(i) and (ii) of the Amended TSA (the "AAC Federal Tax Usage Amount"), and (iv) the excess of the AAC AMT NOL Usage Amount determined under subclause 3(c)(iii)(3) of the Amended TSA OVER the AAC Federal Tax Usage Amount. For the avoidance of doubt, amounts shall be due and payable from AAC to the Debtor or the Reorganized Debtor, as applicable, pursuant to subparagraph 3(a) and clauses 3(c)(i), (ii), and (iii) of the Amended TSA, irrespective of whether the AAC Federal Tax Usage Amount or the AAC AMT NOL Usage Amount arises prior or subsequent to a Deconsolidation Event.

(m) Prior to a Deconsolidation Event and subject to clause 3(c)(iii) of the Amended TSA, the AAC Subgroup shall, for purposes of determining the AAC AMT, be permitted to utilize (subject to any

restrictions imposed under the IRC or the Treasury Regulations promulgated thereunder) the NOLs of the Group available for use to offset AMT ("AMT NOLs") in an aggregate amount (the "Allocated AAC AMT NOL Amount") equal to the lesser of (i) $2.934 billion and (ii) the total amount of Pre-Determination Date AMT NOLs MINUS the Debt Related Income MINUS the amount of AMT NOLs reduced pursuant to the settlement of the IRS Dispute. In addition, any AMT NOL generated by the AAC Subgroup determined on a separate company tax basis after the Determination Date (the "Post-Determination Date AMT NOLs") shall be available for use by the AAC Subgroup at no cost. Further, it is understood that to the extent that the AAC Subgroup has any available Post-Determination Date AMT NOLs, solely for purposes of determining the amounts payable under the Amended TSA, such Post-Determination Date AMT NOLs shall be treated as being used prior to utilization of any Allocated AAC AMT NOL Amount or any Post-Deconsolidation Allocated AMT NOL Amount.

(n) To the extent permitted under applicable law, upon a Deconsolidation Event the Debtor or the Reorganized Debtor, as applicable, shall allocate to AAC the amount of any unused AMT credits allocable to any AAC AMT not previously utilized by the AAC Subgroup. The "AAC Pre-Deconsolidation Utilized AMT NOL Amount" is the portion of the Allocated AAC AMT NOL Amount utilized to offset income for AMT purposes by the AAC Subgroup following the Determination Date and prior to a Deconsolidation Event (including any AMT NOLs to the extent that they were not subject to the payment requirements of the Amended TSA).

(o) The AAC Subgroup may utilize (i) prior to a Deconsolidation Event, the Allocated AAC AMT NOL Amount or (ii) following a Deconsolidation event, the Post-Deconsolidation Allocated AMT NOL Amount, in each case, to offset income for AMT purposes (the "AAC AMT NOLs"). During any taxable period that the AAC Subgroup offsets income for AMT purposes by utilizing any portion of the Allocated AAC AMT NOL Amount or Post¬Deconsolidation Allocated AMT NOL Amount, as the case may be, AAC shall make payments to the Debtor or the Reorganized Debtor, as applicable, within the time and in the manner prescribed under the Amended TSA in an amount equal to the excess of (Y) the AAC AMT NOL Usage Amount over (Z) the AAC Federal Tax Usage Amount. The AAC AMT NOL Usage Amount shall be equal to the product of (a) the applicable percentages set forth on the appropriate table contained in the Amended TSA, multiplied by (b) (X) the aggregate amount of the AAC Subgroup's AMT liability for the taxable year that otherwise would have been paid by the AAC Subgroup if such

AAC AMT NOLs were not available for its use MINUS (Y) the Annual AMT NOL Usage Credit.

(p) "Annual AMT NOL Usage Credit" shall generally mean with respect to the taxable period beginning on October 1, 2011, $1 million; during the second (2nd) through seventh (7th) taxable periods following the taxable period beginning on October 1, 2011, the sum of (1) $3 million and (2) the excess of $3 million over the lesser of (Y) the portion of the Annual AMT NOL Usage Credit actually utilized in the immediately prior taxable period and (Z) $3 million; during the eighth (8th) taxable period following the taxable period beginning on October 1, 2011, the sum of (1) $10 million and (2) the excess of $3 million over the lesser of (Y) the portion of the Annual AMT NOL Usage Credit actually utilized in the immediately prior taxable period and (Z) $3 million; and during the ninth (9th) taxable period following the taxable period beginning on October 1, 2011 and any taxable period thereafter, the Annual AMT NOL Usage Credit shall be equal to the sum of (1) $10 million and (2) the excess of $10 million over the lesser of (Y) the portion of the Annual AMT NOL Usage Credit actually utilized in the immediately prior taxable period and (Z) $10 million.

(q) Notwithstanding any other provision of the Amended TSA, (i) any AMT NOL carryover amounts described in the Annual AMT NOL Usage Credit attributable to any specific taxable year may only be carried to the next succeeding taxable year and may not be carried into any other taxable year, (ii) the sum of Annual AMT NOL Usage Credits utilized by the AAC Subgroup shall not exceed in the aggregate $60 million throughout the term of the Amended TSA, and (iii) the Annual AMT NOL Usage Credit shall not be utilized in the event that the Federal Tax Usage Amount exceeds the AAC AMT Usage Amount (as calculated before giving effect to such Annual AMT NOL Usage Credit).

(r) In any taxable year in which any portion (expressed in U.S. Dollars) of any Post-Determination Date NOLs (including any such NOLs comprising all or a portion of the Post-Deconsolidation Allocated NOL Amount) are deemed utilized, an equivalent portion (expressed in U.S. Dollars) of the Allocated NOL Amount (including any such NOLs comprising all or a portion of the Post¬Deconsolidation Allocated NOL Amount), to the extent that the Allocated NOL Amount has not been utilized in a prior taxable year, shall be characterized as arising in the same taxable year that such portion of the Post-Determination Date NOLs arose and such portion of the Allocated NOL Amount shall not expire until the latest taxable year to which such portion of the deemed utilized

Post-Determination Date NOLs can be carried forward pursuant to IRC section 172.

(s) In any taxable year in which any portion (expressed in U.S. Dollars) of any Post-Determination Date AMT NOLs (including any such NOLS comprising all or a portion of the Post-Deconsolidation Allocated AMT NOL Amount) are deemed utilized, an equivalent portion (expressed in U.S. Dollars) of the Allocated AMT NOL Amount (including any such NOLs comprising all or a portion of the Post-Deconsolidation Allocated AMT NOL Amount), to the extent that the Allocated AMT NOL Amount has not been utilized in a prior taxable year, shall be characterized as arising in the same taxable year that such portion of the Post-Determination Date AMT NOLs arose and such portion of the Allocated AMT NOL Amount shall not expire until the latest taxable year to which such portion of the deemed utilized Post-Determination Date AMT NOLs can be carried forward pursuant to IRC section 172.

(t) The Reorganized Debtor shall implement the directive (Control No. LB&I-04-0712-009), dated July 30, 2012, issued by the Large Business & International Division of the IRS, relating to partial worthlessness deductions for eligible securities reported by insurance companies (the "Section 166 Directive") by causing the Ambac Consolidated Group to (i) file, in accordance with the terms of the Section 166 Directive, a properly completed original (or amended, as the case may be) consolidated federal tax return for the taxable period beginning on January 1 of the taxable year for which the Ambac Consolidated Group first implements the Section 166 Directive, which return shall claim deductions pursuant to the Section 166 Directive in the maximum amount permitted to be claimed for such taxable period under the terms of the Section 166 Directive, and (ii) to file, in accordance with the terms of the Section 166 Directive, a properly completed original (or amended, as the case may be) consolidated federal tax return for each subsequent taxable period, which return shall claim deductions pursuant to the Section 166 Directive in the maximum amount permitted to be claimed for such taxable period under the terms of the Section 166 Directive.

(u) Fifty percent (50%) of the excess (if any) of (i) the Ambac Consolidated Group's NOLs that are carried forward into the taxable period beginning on January 1, 2013 taking into account the group's implementation of the Section 166 Directive *over* (ii) the Ambac Consolidated Group's NOLs that are carried forward into the taxable period beginning on January 1, 2013 without taking into account the group's

implementation of the Section 166 Directive shall be treated as Post-Determination Date NOLs. No portion of incremental NOLs triggered by implementation of the Section 166 Directive shall be treated as Pre-Determination Date NOLs.

(v) **The foregoing provisions and procedures reflected in I.A.19(ii)(t) and (u) above shall also apply for purposes of determining and allocating AMT NOLs attributable to the Ambac Consolidated Group's implementation of the Section 166 Directive.**

(w) **The Reorganized Debtor will implement the Section 166 Directive in an initial taxable year (other than 2009) permitted by the Section 166 Directive that results in the largest increase in the Ambac Consolidated Group's NOLs.**

Article I.A. 20

"Amended TSA" means that certain amended and restated tax sharing agreement**, and any subsequent amendments and/or modifications thereto,** among the Debtor, AAC and certain of their Affiliates, substantially in the form attached hereto as Exhibit A, which shall replace, supersede and nullify in its entirety the TSA.