



## DOC Finds A Reorganization Can Include A Rehabilitation

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Until last year, Ambac Assurance, a Wisconsin domiciled insurer, was one of the largest monoline insurers in the world. Originally it insured low-risk, public finance bonds. However, in the 1990s it started to offer financial guarantee insurance on residential mortgage backed securities and collateralized debt obligations of asset-backed securities. Not surprisingly, Ambac was a casualty of the 2008 financial crisis. In response, Ambac stopped writing policies and began an informal run-off.

### The separate account and its rehabilitation

In 2010, Ambac created a segregated account for the purpose of isolating certain of its liabilities. The segregated account holds many of the policies against which there are significant existing claims or the likelihood of significant claims. Under Wisconsin insurance law, the segregated account is treated as a separate insurer from Ambac for purposes of rehabilitation. The Wisconsin Office of the Commissioner of Insurance (OCI) filed this [petition](#) for a rehabilitation for the segregated account.

The OCI defines a “rehabilitation” as:

*An action in which an insurance regulator takes control of an insurance provider and all aspects of its business. Rehabilitation can be triggered when an insurance provider enters a hazardous financial condition that adversely impacts its claims-paying ability and puts policyholders at risk.*

On January 24, 2011, a Wisconsin Circuit Court approved Ambac’s [plan of rehabilitation](#). The plan provides for the orderly run-off and/or settlement of the liabilities allocated to the segregated account. Under the plan, holders of valid policy claims will receive a combination of cash payments and unsecured notes.

### What does this have to do with California?

Earlier this year, Ambac requested an interpretive opinion from the Commissioner of Corporations concerning whether the rehabilitation constitutes a “sale” as defined in Corporations Code Section 25017. Last month, the Commissioner responded favorably with this [opinion](#). The Commissioner relied on the exclusion in Section 25017(f)(3) for any transaction incident to a reorganization approved by a state or federal court in which securities are issued in exchange for one or more outstanding securities, claims, or property interests, or partly in that exchange and partly for cash. To reach this conclusion, the Commissioner had to find that a

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“reorganization” includes a rehabilitation. The Commissioner, however, emphasized that the reorganization exclusion should be interpreted narrowly.

### **Section 3(a)(10) No–Action Letter**

Ambac also submitted this no–action [request](#) to the Securities and Exchange Commission with respect to the ability to rely upon the Section 3(a)(10) exemption under the Securities Act of 1933. The staff issued this favorable [response](#).

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