MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS
OF THE
ARIZONA PROPERTY AND CASUALTY INSURANCE GUARANTY FUND

TUESDAY, MARCH 14, 2023

Pursuant to a Public Notice dated February 14, 2023, the Meeting of the Board of Directors of the Arizona Property and Casualty Insurance Guaranty Fund ("APCIGF") was convened on March 14, 2023, at 9:01 a.m. in a hybrid virtual and live conference format conference format using Google Meet. Noel Cole Young, Esq., Chair of the Board, determined that a quorum was present and called the meeting to order.

Present at the meeting were the following members of the Board of Directors:

Noel Cole Young, Esq.	Chair
Ronald E. Malpiedi	Vice Chair
Angela Doss, JD	Treasurer
Kathleen F. Oster	Secretary
Paul Matson, CFA, FCSI	Member
William P. Melchionni, III	Member
Kevin M. Kinross	Member
Athan M. Shinas	Member

Also present at the meeting were:

Barbara D. Richardson	Director, Arizona Department of Insurance and Financial Institutions (DIFI)
Liane Kido, Esq.	Deputy Receiver, DIFI
Lynette Evans	Assistant Arizona Attorney General
Zachary Howard	Assistant Arizona Attorney General
Tom O'Malley	Sr Vice President, Specialist-Insurance Solutions, Allspring Global Investments
Lori D. Nestor	APCIGF Executive Director
Christine Cohen	APCIGF Claims Manager
Maria Souza	APCIGF Controller
Sharyn Kerr	APCIGF Administrative Support Specialist

The following matters were discussed, considered and decided at the meeting:

1. **ANNOUNCEMENT CONCERNING ANTI-TRUST AND CONFLICT OF INTEREST COMPLIANCE**

   The Chair announced that the Meeting would be conducted in accordance with the Anti-Trust Compliance Policy adopted by the Board of Directors and in compliance with Arizona law (A.R.S. §§ 38-501 to 38-511) concerning the disclosure of conflicts of interest with regard to any matter before the Board for consideration.

2. **INTRODUCTION OF NEW GUARANTY FUND BOARD MEMBERS**

   The Chair introduced and welcomed two recently appointed members of the Board: Kevin Kinross, of CopperPoint Insurance Companies, and Athan Shinas, of Mutual of Enumclaw. The Chair also introduced the newly appointed Director of the Arizona Department of Insurance and Financial Institutions, Ms. Barbara D. Richardson.

3. **APPROVAL OF PREVIOUS MINUTES**

   Upon a motion made by Vice Chair Ron Malpiedi and seconded by the Chair, the Minutes of the meeting of the Board of Directors held September 13, 2022 were approved as previously circulated without objection.

4. **EXECUTIVE SESSION TO RECEIVE INFORMATION ABOUT THE FINANCIAL CONDITION OF ONE OR MORE MEMBER INSURERS.**

   Executive Director Nestor stated that it wasn't necessary to move into Executive Session at this time, as the Financial Affairs Division of DIFI reported no companies of concern that they felt might impact the Guaranty Fund.

5. **REPORT CONCERNING THE DETECTION AND PREVENTION OF INSOLVENCIES**

   Executive Director Nestor stated that the Financial Affairs Division continues to monitor, but had nothing of concern to report at this time.

6. **ELECTION OF OFFICERS**

   The Chair recognized Executive Director Nestor who began by stating that Director Malpiedi will be stepping down from the position of Vice Chair and from the Board when his term expires and thanking him for his many years of service to the Board. The Chair then nominated Director William Melchionni for APCIGF Vice Chair. The nomination was seconded by Director Shinas and carried by the Board.

7. FINANCIAL REPORTS AND ANY RELATED MATTERS

a. Review of the Performance of the APCIGF Investment Portfolios through January 31, 2023.

The Chair again recognized Executive Director Nestor, who introduced Tom O’Malley, SVP, Portfolio Specialist, Insurance Solutions, Allspring Global Investments for a report regarding the performance of the APCIGF investment portfolios through January 31, 2023. Mr. O’Malley began by stating that the changes in short term interest rates over the past year from approximately 0% to nearly 5% had dramatic impact on the fixed income market. A review of the Property & Casualty Portfolio summary indicated a Yield to Maturity over 4.44% which reflected that increase in short rates over the past 12 months. Portfolio changes over that time had reflected a sharp climb in yield to maturity and book yield (earning power of the portfolio) as “the Fed” raised interest rates. Mr. O’Malley indicated that the performance of the Workers’ Compensation portfolio reflected positive performance for January 2023 following dramatic changes in interest rates over the past year as well. He noted that credit quality remained very high in both portfolios, as both are made up of U.S. Treasury investments. Mr. O’Malley then presented a Short Duration Review that reflected a slight decrease in the Treasury Yield Curve over the past year related to the increase in interest rates by “the Feds” in their attempt to curb inflation. He indicated that it is expected that they will keep short rates at the current or a slightly higher level for the remainder of 2023, as it takes some time for the rates to influence the market and economy.

DIFI Director Richardson inquired as to whether Mr. O’Malley expected an impact to our portfolios as a result of the very recent failure of Silicon Valley Bank (SVB) and Signature Bank and any shifts to the larger banks that may follow. Mr. O’Malley stated that SVB and Signature Bank were unique banks with Signature Bank being a crypto currency bank and SVB being a bank geared more to tech start-up companies. He said that he does expect there to be dramatic focus on the regional banks as a result, with the market spending considerable time evaluating how those banks’ investment portfolios react. He also opined that the larger banks will be more regulated and scrutinized as a result of the failures. Such banks have more diverse funding sources, however, so he did not anticipate that what happened to these two banks is likely to happen to others.

The Chair then inquired as to whether Mr. O’Malley thought that the decision by the FDIC to guarantee all deposits had an effect on the current “snap-back” of the market after the collapse of

SVB. Mr. O'Malley said that he thought that to be the case and that the market has settled back down.

Mr. O'Malley then presented an economic summary, stating that economic growth has weakened as consumer spending has lost momentum. Employment remains resilient with moderate wage growth, however there are early indications of forthcoming layoffs and downsizing. Disinflation continues at a moderate pace. At this point, telephone communication with Mr. O'Malley was lost, and he was unable to complete presenting his report.

b. **Review of the financial condition of APCIGF through January 31, 2023.**

The Chair recognized Executive Director Nestor, who presented financial statements illustrating the financial condition of APCIGF through January 31, 2023 consisting of a Balance Sheet, Profit & Loss Month-to-Month Comparison, and Profit & Loss Year-to-Last-Year Comparison. The financial statements contained estimated APCIGF current and long-term liabilities as of the end of 2022, the biggest portion of which was Workers' Compensation exposure. Ms. Nestor pointed out in the Profit & Loss YTD Comparison that the Fund had received a receivership distribution of $200,390.38 in January 2023. In a Year to Year Comparison, she noted that the most notable change was that the investment income is now a positive balance as compared to the negative balance of last year.

Director Oster inquired how the Fund budgets for receivership distributions. Ms. Nestor stated that, due the nature of receivership, APCIGF is never certain how much money will be available to distribute when the receivership concludes. The Receiver is responsible for compiling assets, calculating liabilities and deciding what percentage of the claims filed against the receivership can be paid. It is therefore difficult for APCIGF to budget without knowing what percentage of the amount it paid out will ultimately be available. However, the Fund participates with NCIGF (National Conference of Insurance Guaranty Funds) task forces to discuss the status of receiverships as they progress and evaluate what assets appear to be available therein.

Ms. Nestor then presented a Schedule of Cash Balances by Fund which illustrated how much cash was in each of the APCIGF accounts: Auto, Other, Administrative, and Worker's Comp. She stated that the balances in the accounts as January 31, 2023 were:

Auto Account	$17,738,248.36
All Other Account	$12,637,131.24
Administrative Account	$2,279,182.02
Workers' Compensation Account	$174,767,978.03

Director Malpiedi made a motion to approve the financial statements, the Chair seconded the motion, and the motion was carried.

8. CLAIMS ACTIVITY THROUGH JANUARY 31, 2023 AND ANY RELATED MATTERS

The Chair recognized APCIGF Claims Manager, Christine Cohen, who reported regarding claim related matters.

a. **Auto Account.**

Ms. Cohen stated that the Fund was still processing claims for two companies that went into receivership in 2020. ACCC was down to 15 open claims from a total of 411 reported claims, and Western General was down to 4 open claims from a total of 66 reported claims. Most of the claims that remained open were in litigation as the statute of limitations has expired for them, but Ms. Cohen expected that they will be resolved by year end. She further noted that the remaining open claims from the ASI and Gateway insolvencies had larger policy limits, resulting in larger exposure to APCIGF from individual claims.

b. **Other Account.**

Ms. Cohen then went on to discuss claims activity in the Other Account. She stated that there were no open claims and zero reserves at that time. Capson Physicians, a medical malpractice insurer, was the largest exposure in the last four years. The policies issued by that company also had high limits, and although maximum APCIGF coverage was reduced to $300,000, claim payments were high in several cases. Ms. Cohen indicated that based on what was currently known, no additional claims in this category were expected in the near future. She expects the Fund to receive distributions from Capson as it appears that receivership is close to closing.

c. **Workers' Compensation Account.**

Ms. Cohen then presented an overview of Workers' Compensation claim activity. The Fund hasn't received new claims recently, so she indicated that that the majority are run-off files that are being closed at an approximate rate of 75 per year. Claimants are aging and dying from causes unrelated to their Worker's Comp claim, and claims are dropping off as a result. However, the aging of the injured workers is also resulting in the Fund receiving petitions to reopen their claims due to claimants alleging that health issues are related to their prior Worker's Comp claims. The Chair inquired as to the relationship with APCIGF's third party vendor, and Ms. Cohen replied that APCIGF's relationship with Broadspire as the third party vendor had involved some transitional challenges, particularly with regard to reporting data. She indicated those have been addressed, however.

9. REPORT OF EXECUTIVE DIRECTOR

The Chair recognized Executive Director Nestor, who reported on the following matters:

a. **Possible modifications to the Plan of Operation.**

Executive Director Nestor reported that she had proposed changes to the APCIGF *Plan of Operation (the Plan*) previously, and while the Board had discussed the suggestions, they'd not yet adopted them. She indicated that copies of the proposed changes were provided to each Board member prior to this meeting. Ms. Nestor then pointed out that one key change pertained to the number of votes required to take certain actions. As of the date of the meeting, *the Plan* required eight votes for the Board to call an assessment, modify *the Plan* itself or borrow money. Ms. Nestor stated that she had initially proposed changing that requirement from eight votes to just the vote of a quorum, as the Board had struggled to recruit and maintain members in the past and it was not always possible to obtain eight votes. Ms. Nestor indicated that she had submitted the recommended change to Ms. Lynette Evans of the Arizona Attorney General's Office, who actually found no statutory support for the current language in *the Plan* that required eight votes. Instead, Ms. Evans indicated that the statutes support that the actions of a quorum are the actions of the Board. Ms. Nestor stated that either the law needed to be changed or the Fund needed to change the language of *the Plan* to accept the vote of a quorum as the decision of the Board as a result. She recommended that her initial proposal to change the language be adopted by the Board. The Chair stated that he agreed that the change was necessary after discussing with both Ms. Nestor and Ms. Evans. There were no questions or discussion regarding the other proposed changes to *the Plan*. The Chair further recommended that the Board adopt all changes to *the Plan* as they were proposed to the Board. He made a motion to adopt the revised *Plan of Operation*, which was seconded by Secretary Oster and carried by the Board.

b. **Review of statutes and guaranty fund coverage as related to cyber insurance.**

Executive Director Nestor went on to discuss an emerging hot topic among Guaranty Funds, that being cyber insurance as related to Guaranty Fund coverage. Cyber threats and cyber-attacks have increased with increased virtual activity. The insurance to protect businesses against those losses is high profile, growing and changing from being provided as a general liability policy endorsement to now including the sale of direct policies. Ms. Nestor indicated that concern had risen among the guaranty fund community because cyber policies are often unique in the way that they indemnify the policyholder. Some provide for things like notification to impacted parties and government entities, public relations monitoring and credit management. These coverages may create challenges for the guaranty funds in an insolvency environment.

Ms. Nestor indicated that the NCIGF had requested that guaranty funds review their state statutes to determine whether issues may arise regarding coverage for cyber insurance. Ms. Nestor stated that she hadn't identified anything in Arizona statutes that specifically excluded cyber insurance. However, she pointed out that the last clause in the portion of the guaranty fund statute that lists excluded types of insurance does exclude, "Any new types of coverages approved or permitted after August 27, 1977." Mr. Zachary Howard, Assistant Arizona Attorney General, reviewed that exclusion at Ms. Nestor's request. He felt that, based on case law, if the classification of cyber insurance fell within a specific category of insurance that had been admitted prior to 1977, it may be covered and not excluded. Ms. Nestor then consulted the DIFI Product Filing and Compliance Division, who replied that cyber insurance would be categorized as casualty insurance by DIFI, and casualty insurance had been admitted for a very long time. Therefore, if casualty insurance was admitted before 1977, it did not appear that the Arizona guaranty fund statutes expressly exclude cyber coverage. Regarding the adjustment of claims for a cyber insurance insolvency, Ms. Nestor's initial interpretation would be that the Fund would provide the protection outlined in the policy, similar to the way other claims are adjusted by APCIGF, up to the limit of the policy or the APCIGF limit.

The Chair inquired whether cyber premiums would be included in the Fund's assessments should a cyber insolvency occur. Ms. Nestor replied that they would, and stated that such claims would be covered by the "All Other" APCIGF account. APCIGF coverage would be afforded only for policies written by member companies, and therefore not for policies written on a surplus lines basis.

DIFI Director Richardson requested that Ms. Nestor inquire on a national level as to whether ransomware demands would be considered part of the cyber insurance addressed by the guaranty fund community. She stated that some states would consider that a criminal act.

Director Melchionni commented that there is national conversation regarding whether cyber risks are actually an insurable event. He stated that he wondered if any Guaranty Fund has the capacity to manage a cyber event and whether cyber risks would be an insurable event for guaranty funds.

Director Malpiedi commented that cyber coverage for many carriers is embedded into accompanying coverages and the issuing insurers aren't breaking out the premium for that aspect of coverage. He indicated that ransomware is included in the coverage grants currently. In the case of ransomware attacks, response teams have to contact and do data forensics within hours of the attack. He cautioned that vendors supplying this type of resource could be very difficult to staff in time to respond to an attack. Director Malpiedi also stated that many cyber coverages usually have reporting periods of about a year, so they don't present a long tail period of liability and reporting is short and immediate.

Director Shinas inquired whether the Fund is considering amending the statute to exclude such coverage. Assistant Attorneys General Evans and Howard commented that based on previous cases reviewed, they believe there are grounds for a court to find coverage via APCIGF under the current statutes if cyber insurance falls within an already existing type of coverage. Therefore, a statutory change would probably be required to ensure that cyber would not be covered by the Fund if that was the goal. Ms. Nestor indicated that the effort of the guaranty fund community seemed to be toward providing coverage. She further advised that the NCIGF has recommended to the NAIC that the Model Act be changed to address cyber insurance and detail how coverage via a guaranty fund would look. Ms. Nestor stated that although it initially appears there is no exclusion of cyber from APCIGF coverage, the APCIGF Board may want to review the recommended changes to the model act to determine whether changes to the APCIGF statutes are warranted or desired.

Secretary Oster inquired whether anyone had addressed a national cost, and Ms. Nestor stated that she didn't think anyone has discussed it. The Chair inquired if there have been any claims for cyber insurance against a Guaranty Fund, and Ms. Nestor stated that she wasn't aware of any. Ms. Cohen stated that APCIGF's $300,000 limit would appear to apply per cyber incident.

c. **Audit of Claims Handling.**

Executive Director Nestor reported that she had discussed with State Procurement what will be necessary to bring a claims auditor on board. APCIGF staff will contact the Claims Committee when a contractor has been identified. Director Oster recommended that the contractor be familiar with Arizona law and also recommended reaching out to a larger brokerage as they will have better tools for gathering data. She also recommended letting Broadspire accrue more experience with the Fund before doing the audit. Ms. Nestor indicated that there is no set time frame for doing the audit.

10. EXECUTIVE SESSION TO CONFER WITH LEGAL COUNSEL

It was decided and agreed that an Executive Session was not necessary at this time.

11. DETERMINATION OF THE DATE, TIME AND PLACE OF FUTURE MEETINGS

It was decided that the next meeting of the Board of Directors will be held on **Tuesday, September 12, 2023, 9:30 a.m**.

12. CALL TO THE PUBLIC

The Chair made a call to the Public to which there was no response.

There being no further business to come before the Board, without objection the meeting was adjourned at 10:08 a.m.

Dated this 14th day of March, 2023 and respectfully submitted.

APPROVED:

NOEL COLE YOUNG, ESQ.	KATHLEEN F. OSTER
CHAIR OF THE BOARD	SECRETARY