



**MINUTES OF THE MEETING AND EXECUTIVE SESSION
 OF THE
 BOARD OF DIRECTORS
 OF THE
 ARIZONA LIFE AND DISABILITY INSURANCE GUARANTY FUND**

TUESDAY, MAY 16, 2023

Pursuant to a Public Notice dated May 11, 2023, the Meeting of the Board of Directors of the Arizona Life and Disability Insurance Guaranty Fund (“ALDIGF”) was convened on May 16, 2023, at 10:01 a.m. in a hybrid virtual and live conference format using Google Meet. Germaine L. Marks, Esq., Chair of the Board, determined a quorum was present and called the meeting to order.

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

Germaine L. Marks, Esq.	Chair
Mark A. Haydukovich, ChFC, CLU, CPA, FLMI, CFA ..	Vice Chair
John R. Mathews, Esq., CPA	Secretary/Treasurer
Robert C. Corn	Director
Elizabeth A. Heisler	Director
Michael Hickey	Director
Tod D. Lashway, CLU, ChFC, LUTCF	Director
Gregory S. Martino	Director
Paul Matson, CFA, FCSI	Director
Randi F. Reichel, Esq.	Director

Also present at the meeting were:

Seth S. Takata	Senior Vice President, Client Advisor, Insurance Solutions, Allspring Global Investments
Jonathan Buenaventura	Portfolio Manager, Global Liquidity Solutions, Allspring Global Investments
Joel A. Glover, J.D.	Partner, Faegre Drinker Biddle & Reath, LLP
Lynette Evans	Assistant Arizona Attorney General
Zachary Howard	Assistant Arizona Attorney General

Liane Kido.....	Deputy Receiver, Arizona Department of Insurance & Financial Institutions (DIFI)
Lori D. Nestor	ALDIGF Executive Director
Maria Souza	ALDIGF Controller
Sharyn Kerr	ALDIGF Administrative Support Specialist

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

1. ANNOUNCEMENT CONCERNING ALDIGF’S CONFLICT OF INTEREST POLICY AND ANTI-TRUST COMPLIANCE

Chairperson Germaine Marks announced that the Meeting would be conducted in accordance with ALDIGF’s Conflict of Interest Policy and in compliance with Arizona law concerning the disclosure of conflicts of interest with regard to any matter before the Board for consideration.

2. APPROVAL OF PREVIOUS MINUTES

Upon a motion made by Secretary/Treasurer John Mathews and seconded by Vice Chair, Mark A. Haydukovich, the minutes of the Meeting of the Board of Directors held November 1, 2022 were unanimously approved as previously circulated.

3. FINANCIAL REPORTS AND ANY DISCUSSION AND ACTION RELATED THERETO AS FOLLOWS:

a. Review of investment activity of ALDIGF through March 31, 2023;

The Chair recognized Executive Director Lori Nestor who introduced the new Allspring Relationship Manager, Mr. Seth Takata, and ALDIGF’s Allspring Portfolio Manager, Mr. Jonathan Buenaventura. Mr. Takata has assumed the responsibility for ALDIGF’s investment portfolio account following Mr. Thomas O’Malley’s departure from Allspring.

Mr. Takata began by giving a short background of his experience including that of working with Mr. Buenaventura for several years. He provided an overview of the assets managed by Allspring. Mr. Takata then recognized Mr. Buenaventura who briefly discussed the recent bank failures in response to the Chair’s question regarding potential risk to regional banks. He indicated that the ALDIGF portfolio was not invested in the banks involved and was not impacted directly. Mr. Buenaventura also briefly discussed the federal debt ceiling and potential impact on investments and the market. He then presented an overview of the ALDIGF portfolio changes over time. The portfolio has experienced a significant increase in yield in response to the

increase in interest rates by the Federal Government, which has resulted in the generation of income above the benchmark. He indicated that a flattening of rates is expected right now, so this is the time to think about locking in the rates a bit further out in duration for the portfolio. Mr. Buenaventura advised that he is watching for and acting on such opportunities where possible.

b. Review of the financial condition of ALDIGF through March 31, 2023;

The Chair recognized Executive Director Nestor who presented financial statements for ALDIGF as of March 31, 2023. Ms. Nestor indicated that the “Balance Sheet” provided information about current and anticipated assets, current and anticipated liabilities, and escrow. She further explained that future assets consisted primarily of unbilled assessments to fund future liabilities, the majority of which is presented by the claims of Penn Treaty policyholders.

Ms. Nestor then presented the “Profit & Loss YTD Comparison” report and commented that there was little unusual activity. She noted the lack of early access or receivership distribution as of March 31, 2023, and no unusual expenses. Ms. Nestor then presented a “Year to Year Comparison” report, which compared profit and loss between 2022 and 2023. She commented that receivership distributions are behind where they were in 2022, but as Mr. Buenaventura had commented earlier, noted that the investment income was higher than in 2022. Ms. Nestor further pointed out that total expenses for 2022 indicate \$1.3 million, which included over \$600,000 in claim payments and administrative expenses of approximately \$700,000 annually.

Ms. Nestor then presented a Schedule of Cash Balance by Fund for 2023 which illustrated monthly balances for each account in the Fund, a copy of which is attached hereto. She pointed out that the Life Account balance was just over \$3.4M, the Disability Account sat at just over \$7.6M, the Annuity Account contained approximately \$11.5M and the Administrative Account had a balance of \$1.8M.

c. Report concerning the financial audit of ALDIGF for the year ended December 31, 2022.

Ms. Nestor reported that the financial audit of ALDIGF for 2022 was completed by John C. Todd II, P.C. Certified Public Accountants. In lieu of Ms. Jennifer Tewhill, who was unable to attend, Secretary/Treasurer Mathews presented an overview of the audit results. Mr. Mathews stated that the audit went smoothly and that the accrual-based method of accounting makes the audit easier to conduct. He indicated that the Independent Auditor’s Report showed a clean audit, and that the Fund is using proper policies with no difficulties in conducting the audit. There were no disagreements with management. The Letter to Governance also indicated a good audit and that there were no issues to report.

No questions or discussion followed. Director Lashway made a motion to accept the auditor's report; Secretary/Treasurer Mathews seconded the motion, and the motion was carried.

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

The Chair entertained a motion to enter into Executive Session to receive information concerning the financial condition of certain member insurers. The motion was made by Director Lashway, was seconded by Vice Chair Haydukovich, and the motion carried. The Board entered into Executive Session at 10:42 a.m. No members of the Public were present. The Chair moved out of Executive Session and it was adjourned at 11:21 a.m.

5. REPORT CONCERNING THE DETECTION AND PREVENTION OF INSOLVENCIES

Executive Director Nestor reported that no one was available from the DIFI Financial Affairs Division (FAD) to present a report to the Board, however, they had advised her that there were currently no companies of concern to bring before the Board. She conveyed that FAD is continuing to monitor and continuing to educate staff in the detection and prevention of insolvencies.

6. REPORT FROM THE EXECUTIVE DIRECTOR

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

a. Report regarding the status of claims, liabilities and other matters with regard to the following companies for which ALDIGF *has* been activated:

- i. Executive Life Insurance Company (ELIC)
- ii. Executive Life Insurance Company of New York (ELNY)
- iii. Life and Health Insurance Company of America (LHICA)
- iv. Lincoln Memorial Life Insurance Company
- v. National States Insurance Company
- vi. Penn Treaty/ANIC
- vii. North Carolina Mutual Insurance Company
- viii. Southland National Insurance Company (SNIC)

Executive Director Nestor reported that the "Board Report" provided in the meeting materials contained the report regarding claim activity for the companies listed in the Agenda. She pointed out that the Board Report illustrates the amount of claims paid during and year to date through March 2023, amounts paid through inception, and data related to potential exposure for each of the companies and the Fund's accounts.

Ms. Nestor pointed out that, with regard to Penn Treaty/ANIC, an additional forthcoming distribution was discussed at the Board's last meeting. She stated that ALDIGF had completed both the true-up activity and the distribution of the assets mentioned at that time. Ms. Nestor explained that the true-up was a reallocation of claim liabilities from the original estimation that occurred in 2017. She further explained that ALDIGF also took advantage of a credit for anticipated early access in 2017. Money was forthcoming to ALDIGF as part of the true-up and that money was used to pay any outstanding amounts for the credit to LTC Re. As a result, she indicated that ALDIGF was current with LTC Re. Ms. Nestor further advised the Board that the actual distribution of assets resulted from the Pennsylvania Supreme Court's ruling against the liquidator's plan to establish a means for paying claims to policyholders that had exposure over the limit provided by the guaranty funds. The liquidator had allocated \$155 million for the plan, however, the Court's ruling against the liquidator's plan meant that those funds could be distributed to guaranty fund associations. Ms. Nestor advised that distribution had been completed, resulting in a distribution to ALDIGF of \$7.3 million. She stated that the distribution had been deposited to the Fund's Disability Account after March 31, 2023, and accordingly was not reflected in the Schedule of Cash Balances.

Ms. Nestor went on to provide additional information about North Carolina Mutual and Southland National Insurance Company (SNIC). She explained that North Carolina Mutual presented mostly life insurance exposure of an estimated \$600,000 in death benefits or \$136,000 in cash surrender value. She further stated that the Fund has reserved \$150,000 for current liabilities. Ms. Nestor also explained that SNIC was just declared insolvent this month, and it is too early to predict how many or how often claims for death benefits ALDIGF will receive annually. She stated that recently available data had indicated that there were approximately 1,250 Arizona policies as of the date of insolvency, with a potential exposure of \$5.3 million or an actual cash value of \$2.3 million. Ms. Nestor indicated that she saw no current need for ALDIGF to assess for either company in light of the balance in the life account and the long-tailed nature of the business, and she recommended revisiting actual experience at the Annual Meeting.

b. Report regarding claims appeals, if any.

Executive Director Nestor advised that there were no pending claim appeals at this time.

c. Discussion and possible action concerning ratification of the Executive Director's decision to pay the National Organization of Life and Health Insurance Guaranty Association

(NOLHGA) 2023 annual dues of \$77,426.00, and NOLHGA assessments for the third and fourth quarters of 2022 in the amounts of \$48,848.00 and \$44,599.00 respectively.

Executive Director Nestor requested that the Board ratify her decision to pay the NOLHGA assessments as stated in the Agenda. A motion was made by Vice Chair, Mark A. Haydukovich, seconded by Director Lashway and carried.

d. Report regarding the status of the assessment called for the Disability Account in 2022.

Executive Director Nestor reported that all but \$13,066 of the assessment that was called for at the Board's last meeting had been collected. She also advised that the assessment had been billed electronically, and that approximately 99 percent of payments were received electronically.

e. Guaranty Fund coverage for jointly owned annuities and annuities held in the name of revocable trusts.

Executive Director Nestor stated that the ALDIGF needs to decide how to approach coverage for jointly owned annuities and annuities held in the name of trusts as questions have been raised by the public as a result of insolvency activity.

Ms. Nestor began by addressing annuities held in the name of revocable trusts. She indicated that the question centered on whether these annuities can be considered unallocated as they aren't necessarily owned by a person. If they were unallocated, they would be excluded by Arizona statute. Ms. Nestor stated that she believed that these annuities shouldn't be excluded as unallocated and advised that many guaranty funds support that position. She explained that the Internal Revenue Code (IRC) treats these annuities the same as annuities owned by individuals. Trust property is generally owned by the grantor and is treated as owned by the grantor for other legal purposes as well. If such annuities are owned by the grantor, they would not fit the definition of unallocated as defined by Arizona statute. Instead, the trust simply provides a vehicle for transfer of ownership and protection from probate, etc. Ms. Nestor advised that member companies had been consulted and agreed unanimously that trust-owned annuities should be considered owned by the grantor. She therefore recommended that the ALDIGF consider covering these annuities and not deem them as unallocated. The Chair stated that she believes trust-owned annuities should be treated as allocated. Vice Chair Haydukovich inquired whether the successor trustee would become the grantor if the grantor died. The Chair opined that would be the case as the fundamental interest of the trust wouldn't generally change. Director Lashway further stated that it could also depend on how the annuity was established within the trust.

There was no further discussion, and The Chair entertained a motion to adopt Ms. Nestor's recommendation that annuities held in the name of revocable trusts be covered by the Fund. Director Hickey made the motion, which was seconded by Director Matson and carried by the Board.

Ms. Nestor then went on to discuss the issue of guaranty fund coverage for jointly owned annuities. She stated that the question centered more on coverage limits rather than whether coverage were afforded. Ms. Nestor explained the ALDIGF statutes applies coverage to one life. Some have wondered whether each annuity owner constitutes a life so that a different guaranty fund limit should be provided for each, or whether the owners should be considered one unit. One support for considering them a unit is that owners generally cannot make decisions independently but have to act as a team. Further, if the annuity is deferred, there remains only one measurable life of the first owner that passes away and triggers the payment of the benefit. Conversely, if the annuity is in payment status, each annuitant may be considered a life which would yield an inconsistent result. Ms. Nestor proposed the question of whether Arizona courts would support defining that two people are only one life for the purpose of Guaranty Fund protection if they are acting as joint annuity owners. She presented an example of a husband and wife each own their own annuity, which would afford them status of separate lives with separate coverage limits. If that same husband and wife own a joint annuity, treating them as one unit would yield only one limit of coverage available. Ms. Nestor recommended that ALDIGF explore how to handle this kind of situation. The Chair suggested that the issue should be looked at from a legal and holistic perspective and recommended that the Attorney General should look into the matter for ALDIGF. Director Lashway agreed. Mr. Lashway asked whether joint annuitants are considered when ALDIGF's covered and uncovered exposures are presented. The Chair indicated that she believes that to be unknown. She proposed that question be explored and that community property laws be evaluated as part of the Attorney General's review. Secretary/Treasurer Mathews further supported asking the Attorney General for legal advice on that issue. The Chair addressed Attorney General Lynette Evans who stated that she would be happy to look into the matter and provide an analysis to the Board. It was decided that Executive Director Nestor will coordinate with Attorney General Evans in researching the matter.

f. **Review Travel Policy**

The Chair indicated that she requested that this be on the Agenda in light of the anticipated uptick in post-pandemic traveling. She indicated that the NOHLGA Legal Seminar had been highly attended in 2022, and she reminded the Board that members must get approval from Executive Director Nestor and the Chair if they would like to attend the seminar this year to

prevent a strain on the budget. The Chair also requested that Board members review the travel policy and be mindful of its content when submitting reimbursement requests for travel. There were no questions or other discussion.

7. EXECUTIVE SESSION TO CONFER WITH LEGAL COUNSEL

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

8. ANNOUNCEMENT OF THE DATE, TIME AND PLACE OF FUTURE MEETINGS

The next meeting of the Board of Directors will be held on **Tuesday, November 14, 2023 at 10:00 a.m. Arizona time**. Meeting invitations have already been sent by Fund staff.

9. 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, a motion was made to adjourn the meeting by Director Lashway, seconded by Vice Chair Haydukovich, and without objection the meeting was adjourned at 11:45 a.m.

Dated this 16th day of May, 2023 and respectfully submitted,

APPROVED:

GERMAINE L. MARKS, ESQ.

JOHN R. MATHEWS, ESQ., CPA

CHAIR OF THE BOARD

SECRETARY/TREASURER