

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
FINANCIAL FRAUDS & CONSUMER PROTECTION DIVISION

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In the Matter of

BALBOA INSURANCE COMPANY, MERITPLAN  
INSURANCE COMPANY, BA INSURANCE GROUP, Inc.,  
QBE FINANCIAL INSTITUTION RISK SERVICES, Inc.,  
and QBE INSURANCE CORPORATION

Respondents.

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**CONSENT ORDER**

On October 3, 2011, the New York State Department of Financial Services (“DFS”), commenced an investigation, pursuant to the New York Insurance Law and Financial Services Law (“FSL”), of BA Insurance Group, Inc.’s (“BA Insurance Group”) subsidiary Balboa Insurance Company (“BIC”) and BIC’s subsidiary Meritplan Insurance Company (“MIC”), concerning force-placed insurance policies issued in New York State (the “Investigation”). This Consent Order contains the findings of the Investigation, allegations of DFS resulting from the Investigation, and the relief agreed to by DFS, BIC, MIC, BA Insurance Group, QBE Financial Institution Risk Services, Inc. (“QBE FIRST”) and QBE Insurance Corporation (“QBE Insurance”).

**FINDINGS**

The findings of DFS’s Investigation (“Findings”) are as follows:

## Relevant Entities

1. BA Insurance Group, a Delaware corporation that is an insurance holding company and a wholly owned subsidiary of Bank of America Corporation (“BOA”), is the parent of BIC. MIC is a wholly owned subsidiary of BIC. BIC wrote force-placed insurance policies that covered New York properties until May 31, 2012, and has policies in force in New York through no later than May 31, 2013. MIC continues to issue limited new and renewal force-placed insurance policies for one servicer, Ocwen Loan Servicing on the GMAC portfolio of mortgages it recently acquired, through May 31, 2013. Those policies will be in force through no later than May 31, 2014. Before June 1, 2011, BIC and MIC provided outsourced services to mortgage servicers, including insurance tracking services, through a third subsidiary of BA Insurance Group, Newport Management Corporation (“Newport”). (BIC and MIC are referred to collectively as “Balboa.”) Newport was a subsidiary of BIC until being acquired by QBE Holdings, Inc. (“QBE Holdings”) in the transaction described below. Balboa was a subsidiary of Countrywide Financial Corporation (“Countrywide”) until November 7, 2008, when BOA purchased from Countrywide 100% of the equity in Balboa’s indirect parent corporation. Balboa became the second largest force-placed insurer in New York soon after BOA acquired Balboa.
2. In June 2011, QBE Holdings acquired from BOA the force-placed insurance business of Balboa, substantially all of BIC’s and MIC’s assets and liabilities, and the Newport legal entity. Although BOA retained the BA Insurance Group and BIC and MIC legal entities, with the exception of MIC’s writing of new and renewal policies through May 31, 2013 for Ocwen Loan Servicing on the GMAC portfolio of mortgages it recently acquired, BIC’s and MIC’s existing force-placed insurance policies are in run-off and are being moved to and

rewritten by QBE Insurance. QBE Holdings' acquisition of Balboa's business greatly expanded QBE Insurance's market share, and QBE Insurance is now the second largest force-placed insurer in New York.

3. As part of the sale of assets to and assumption of liabilities by QBE Holdings, BIC and MIC entered into 100% quota share reinsurance agreements with QBE Insurance pursuant to which QBE Insurance receives BIC's and MIC's premiums and assumes the risk of BIC's and MIC's force-placed insurance. Pursuant to the reinsurance arrangements noted above, QBE Insurance has assumed and is responsible for the payment of all claims and liabilities related to the business transferred to and assumed by QBE Insurance under the reinsurance and other transaction agreements noted above. Under those reinsurance and other contractual agreements, QBE Insurance operates BIC's and MIC's force-placed insurance business and provides services to BIC and MIC, including without limitation, the administration of regulatory matters related to the business of those companies assumed by QBE Insurance, the filing of reports on behalf of BIC and MIC and the payment of claims and other obligations of those companies. QBE Insurance has subcontracted a number of its duties to its affiliate, QBE FIRST. As such, QBE Insurance, QBE FIRST and their affiliates are sometimes referred to as the Administrators of BIC and MIC.

#### **Background on Force-Placed Insurance**

4. Force-placed insurance is insurance taken out by a bank, lender or mortgage servicer when a borrower does not maintain the insurance required by the terms of the mortgage or applicable law. This can occur if the homeowner allows the homeowners' policy to lapse, or if the bank or mortgage servicer determines that the borrower does not have a sufficient amount of coverage. Homeowners have reported that when they are charged for force-placed insurance,

the premiums are far in excess of the premiums those homeowners were charged for voluntary homeowners insurance. Yet force-placed insurance often provides far less protection for the homeowner, while protecting the lender's or investors' interest in the property.<sup>1</sup> The high cost of force-placed insurance, including Balboa's force-placed policies, is due at least in part to relationships between mortgage servicers and their affiliates and payments by force-placed insurers and their affiliates, including Balboa, to such servicers and their affiliates. While servicers choose the force-placed product for their mortgage loan portfolio, the high premiums are charged to homeowners, and in the event of foreclosure, costs are passed onto investors.

5. Force-placed insurance involves a number of different actors. To start, there are the homeowners whose voluntary homeowner's policies have either been cancelled, have lapsed, or have not been renewed, most often because a homeowner is facing financial hardship. In some instances, insurance is force placed in error or due to a dispute about required coverage. Lenders (banks) from whom homeowners obtained their mortgages employ mortgage servicers as their agents, collecting and distributing payments from borrowers and handling defaults, modifications, settlements, and foreclosure proceedings. Servicers may or may not be subsidiaries of or otherwise affiliated with lenders, and may or may not also own portfolios of mortgage loans.
6. Some lenders and/or mortgage servicers have affiliated insurance agencies or brokers that receive commissions from force-placed insurers for services the agencies or brokers

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<sup>1</sup> In the case of Balboa's New York policies, homeowners are not protected for contents of their homes or for third-party liability.

purportedly provide. To the extent those agencies or brokers provide any services, most of those services are not ones that insurance agencies or brokers typically provide.<sup>2</sup>

7. Force-placed insurers perform insurance tracking and placement of force-placed policies. The mortgage servicer provides access to the necessary information for the force-placed insurer to monitor homeowners' insurance policies to ensure that there is adequate coverage in the case of damage or destruction. The force-placed insurers are also generally responsible for corresponding with homeowners to provide necessary information and update records.

### **Balboa's Rates and Loss Ratios**

8. Both BIC and MIC have force-placed insurance rates on file with DFS. The New York Insurance Department<sup>3</sup> first approved BIC's force-placed product on August 24, 1988. The rate was set at \$1.00 per \$100 of coverage, with an expected loss ratio of 50.5%.
9. Balboa introduced the MIC force-placed product in July 2004. MIC's rates introduced rudimentary underwriting data into Balboa's force-placed insurance with the stated intent of better modeling risk and reducing rates. In MIC's rate filing, it represented to the Insurance Department that the MIC program was designed so that the premium paid would better correspond to the individual risk elements of each covered property. Although MIC's rate filing indicated that its program would more accurately capture the expected risk in mortgage portfolios, MIC still selected the same expected loss ratio, 50.5%, and same base rate, \$1.00 per \$100 of coverage, as BIC's initial filing.

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<sup>2</sup> Balboa paid such commissions on properties that were force placed in various states other than New York. Balboa stopped paying commissions to BOA's affiliated insurance agency in February 2010.

<sup>3</sup> DFS was created by transferring the functions of the New York State Banking Department and the New York State Insurance Department into a new department. This transfer of functions became official on October 3, 2011.

10. Despite MIC's statement in its rate filing that MIC's program was intended to better model actual risk and thereby reduce premiums, MIC experienced loss ratios far below the expected loss ratios in its rate filing. In 2008 and 2009, MIC's actual loss ratios for force-placed hazard insurance in New York were 19.7% and 18.1%, respectively.<sup>4</sup> Although MIC responded to these extremely low loss ratios by filing for a rate reduction of approximately 14% in 2010, MIC continued to experience low loss ratios following the rate reduction. MIC's actual loss ratios for force-placed hazard insurance in New York were 20% in 2010 and 24.4% in 2011. While MIC was experiencing these low loss ratios, Balboa transitioned most of its New York business from the more standard BIC product to the MIC product. Balboa moved a majority of its business to MIC within a year of MIC's beginning to write force-placed insurance in New York, and moved more than 80% of its business to MIC by 2011.

#### **Balboa's Conflicted Relationship with Countrywide and BOA**

11. Balboa provided force-placed insurance on Countrywide and BOA-serviced mortgages (many of which were owned by investors) during the period that Countrywide and BOA owned Balboa. Because of the low loss ratios for force-placed hazard insurance, this arrangement was highly profitable for Countrywide and BOA. In addition, the arrangement created a potential conflict of interest insofar as Countrywide's and BOA's bottom line could improve as their Balboa subsidiaries force placed more policies, and to the extent claims might not be paid or submitted on investor-owned and real estate-owned ("REO") properties.

#### **Payments to Servicers and their Affiliates**

12. Balboa has made at least one lump sum payment to a servicer. In 2007, Balboa paid GMAC Mortgage, LLC ("GMAC") \$4.5 million to cover the conversion of GMAC's portfolio of

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<sup>4</sup> MIC did not begin writing a significant amount of force-placed insurance in New York until 2008.

mortgage loans from another force-placed insurer to Balboa. Whether or not this payment reimbursed GMAC for actual conversion costs, Balboa evidently determined that the benefit it would reap was sufficient to warrant an additional payment of \$4.5 million.

### **Violations**

13. DFS alleges that the foregoing acts and practices of Balboa with respect to New York properties violate Insurance Law §§ 2303, 2324 and 2403.

### **AGREEMENT**

**WHEREAS**, BIC and MIC neither admit nor deny DFS’s Findings and allegations set forth above;

**WHEREAS**, the terms of this Consent Order apply to BIC, MIC and any subsidiary or affiliate of BA Insurance Group through which they are acting in New York or may hereafter act in New York with respect to the subject matter of this Consent Order (collectively, the “New York FPI Companies”);

**WHEREAS**, BA Insurance Group is a party to this Consent Order solely for the purpose of binding the New York FPI Companies;

**WHEREAS**, QBE Insurance is a party to this Consent Order for the purpose of paying the penalty provided for in paragraph 31 and the costs of the Claims Administrator and the premium refunds provided for in paragraphs 18-30, and QBE Insurance and QBE FIRST are parties to this Consent Order for the purpose of satisfying the obligations of BIC and MIC pursuant to paragraphs 1-5 and 15-17 of this Consent Order as well as for the purpose of acting on behalf of BIC and MIC as set forth below in Section V;

**WHEREAS**, DFS is willing to accept the terms of this Consent Order pursuant to the Insurance Law and FSL, and to discontinue, as described in paragraph 46 below, its Investigation;

**IT IS HEREBY UNDERSTOOD AND AGREED**, by and between the parties, insofar as force-placed insurance is written on New York properties, that:

**I. Loss Ratios, Rate Filings and Reporting**

1. The New York FPI Companies shall not issue new or renewal force-placed policies on New York properties after May 31, 2013 unless they or QBE on their behalf file with DFS force-placed hazard premium rates with a permissible loss ratio of sixty-two (62) percent, supported by the required data and actuarial analysis that is acceptable both professionally and to DFS, together with any new forms for their force-placed hazard insurance, and DFS approves such rates.
2. On April 1, 2016, and every three years thereafter, QBE and the New York FPI Companies shall re-file the force-placed hazard premium rates of the New York FPI Companies with DFS, supported by required data and actuarial analysis that is acceptable both professionally and to DFS, taking into account the loss experience over the preceding period and an appropriate rating factor for catastrophe exposure and other factors.
3. Commencing in 2015 and continuing annually, QBE and the New York FPI Companies shall, within 30 days after filing the NAIC Annual Statements for the New York FPI Companies, re-file with DFS those companies' force-placed hazard premium rates for



any force-placed hazard insurance policy form that has had an Actual Loss Ratio<sup>5</sup> of less than 40 percent for the immediately preceding calendar year.

4. The New York FPI Companies shall have separate rates for (a) force-placed hazard insurance and (b) hazard insurance obtained by a mortgage servicer on real estate owned property.
5. No later than April 1<sup>st</sup> of each year, QBE and the New York FPI Companies shall report to the superintendent, for each of their force-placed insurance policy forms for the preceding calendar year:
  - a. Actual Loss Ratio;
  - b. earned premium;
  - c. itemized expenses;
  - d. paid losses;
  - e. loss reserves;
  - f. case reserves; and
  - g. incurred but not reported losses.

## **II. Prohibited Practices**

6. The New York FPI Companies shall not issue force-placed insurance on mortgaged property serviced by a servicer affiliated with BA Insurance Group. Nothing herein shall prohibit in-force BIC or MIC policies on mortgaged properties serviced by their affiliates during the period that BIC's and MIC's existing force-placed insurance policies are transitioned to QBE Insurance's policies. BIC will have policies in force in New York

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<sup>5</sup> For purposes of this Consent Order, "Actual Loss Ratio" shall mean the sum of paid losses, case reserves and incurred but not reported losses, expressed as a percentage of earned premium.

through no later than May 31, 2013. MIC will have policies in force in New York through no later than May 31, 2014.

7. The New York FPI Companies shall not pay commissions to a servicer or a person or entity affiliated with a servicer on force-placed insurance policies obtained by the servicer.
8. The New York FPI Companies shall not reinsure force-placed insurance policies with a person or entity affiliated with the servicer that obtained the policies.
9. The New York FPI Companies shall not pay contingent commissions based on underwriting profitability or loss ratios.
10. The New York FPI Companies shall not provide free or below-cost outsourced services to servicers, lenders, or their affiliates, provided, however, that outsourced services do not include expenses associated with tracking functions that the New York FPI Companies incur for their own benefit to identify and protect themselves from (a) exposure to lost premium and losses on properties on which no other insurance coverage is in effect, or (b) administrative costs associated with providing and subsequently canceling force-placed insurance on properties on which force-placed insurance is not required.
11. The New York FPI Companies shall not make any payments, including but not limited to the payment of expenses, to servicers, lenders, or their affiliates in connection with securing business.
12. The requirements and prohibitions of this section II shall take effect only if and when they apply to every New York licensed insurance company writing force-placed insurance on New York properties, whether by legislation, regulation, or agreement.

13. If any subsequently effective New York statute or regulation prescribes requirements inconsistent with the provisions set forth in this section II, the New York FPI Companies may request that DFS modify this Consent Order to conform to such statute or regulation, and DFS shall not unreasonably deny the requested modification.
14. Nothing in this Consent Order shall preclude any payments pursuant to the various agreements related to QBE Holdings' acquisition of the force-placed insurance business of Balboa, substantially all of BIC's and MIC's assets and liabilities, and the Newport legal entity. Notwithstanding the foregoing, it is understood and agreed that DFS has not approved the contract relating to the acquisition and no statement shall be made implying that DFS has approved, directly or by implication, the contractual arrangements between the parties.

### **III. Notices**

15. To the extent that QBE and the New York FPI Companies mail or deliver notices relating to force-placed insurance to a borrower on behalf of a mortgage servicer, QBE and the New York FPI Companies shall use all commercially reasonable efforts to obtain their servicer clients' consent to provide:
- a. A clear and conspicuous<sup>6</sup> disclosure in all notices provided to a borrower that QBE, a New York FPI Company or an affiliate is staffing the mortgage servicer's telephones, if that is the case; and
  - b. A clear and conspicuous disclosure, to be approved by DFS, on the front of envelopes that the mailing contains important homeowners' insurance information.

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<sup>6</sup> For purposes of this Consent Order, the term "clear and conspicuous" means that the statement, representation or term being disclosed is of such size, color, and/or contrast and is so presented as to be readily noticed and understood by the person to whom it is disclosed.

16. Any contract entered by QBE and the New York FPI Companies with mortgage servicers to provide force-placed insurance subsequent to the Effective Date of this Consent Order shall include requirements that QBE and the New York FPI Companies provide the disclosures set forth in 15.a., if applicable, and 15.b. above.

**IV. Coverage Amount**

17. The amount of coverage that QBE and the New York FPI Companies force place on any homeowner shall not exceed the last known amount of coverage, provided that if the last known amount of coverage did not comply with the mortgage, then the amount of coverage shall not exceed the replacement cost of improvements on the property.

**V. Premium Refunds**

18. Each Eligible Claimant (defined below) who submits a timely and complete Notice and Claim Form (in the form annexed hereto as Exhibit A) with the required supporting documentation to the Claims Administrator (defined below) shall be entitled to a premium refund in an amount calculated as set forth below.

19. “Eligible Claimant” is hereinafter defined to mean the following:

a. Any New York consumer who demonstrates that:

(1) the placement of force-placed insurance issued by BIC or MIC with an effective date on or after January 1, 2008 caused, directly or indirectly, the consumer to (a) default on his or her mortgage payments, or (b) incur the foreclosure of that mortgage, including loss of possession and title to the property, and

(2) he or she either (a) paid some or all of the premium for force-placed insurance issued by BIC or MIC to the mortgagee or loan servicer, or (b) remains liable to pay some or all of the premium for force-placed insurance issued by BIC or MIC

to the mortgagee or its assignee, as a part of a deficiency judgment following the foreclosure.

(3) For this category of claims:

(a) it shall be conclusively presumed that a force-placed insurance placement did not cause a default or foreclosure, if the force-placed placement occurred:

(i) six or more months before the claimant defaulted on his or her loan payments, or

(ii) after either (a) the date of the claimant's first default on his or her loan payments, or (b) the Effective Date of the Consent Order, whichever comes first;

(b) eligibility must be established by (a) a properly completed Notice and Claim Form and (b) available bank records and other bona fide documentation supporting the claim;

(c) claimants who satisfy the requirements for eligibility will receive a refund equal to the difference between the force-placed premium amount and the premium that would have been assessed for the period in question under the consumer's last known voluntary policy, had it remained in effect.

b. Any New York homeowner who demonstrates that the premium that he or she paid for force-placed insurance issued by BIC or MIC with an effective date on or after January 1, 2008 exceeded the amount authorized by the mortgage instrument. For this category of claims:

(1) eligibility must be established by (a) a properly completed Notice and Claim Form, (b) a copy of the mortgage instrument, and (c) supporting documentation

evidencing facts sufficient to demonstrate premium payments in excess of the amount authorized by the mortgage instrument;

(2) claimants who satisfy the requirements for eligibility will receive a premium refund amount equal to the difference between the premium for force-placed insurance issued by BIC or MIC that he or she paid and the amount authorized under the mortgage instrument.

c. any New York homeowner who demonstrates that he or she has incurred actual out-of-pocket premium expenses as a result of the placement of force-placed insurance issued by BIC or MIC on New York properties after January 1, 2008, if either (i) acceptable continuous voluntary coverage was in effect and, despite the presentation of written confirmation thereof, the applicable force-placed insurer charged and did not subsequently credit back or refund force-placed insurance premiums, or (ii) the applicable force-placed insurer charged commercial force-placed insurance rates on a one-to-four family residence that should have been rated using residential force-placed insurance rates.

(1) For this category of claims, eligibility must be established by (a) a properly completed Notice and Claim Form and (b) supporting documentation evidencing facts sufficient to satisfy the criteria in subsections V.19.c.(i) or c.(ii), above, and (c) either (1) a certificate of coverage or policy declaration page evidencing the voluntary insurance coverage that was in effect, or (2) real property records showing the single-family residence status of the property, as the case may be, provided, however, that, (A) within 10 business days of receipt, the Claims Administrator shall forward a copy of any such Notice and Claim Form by post-

paid U.S. mail to the address specified in the Consent Order for notices to QBE FIRST, and (B) no payment shall be made to the claimant if, within 10 business days after receipt of such Notice and Claim Form, QBE on behalf of BIC or MIC provides to the Claims Administrator documentary evidence that (i) after receipt of confirmation of acceptable continuous coverage, the applicable force-placed insurer cancelled the force-placed insurance and refunded or credited back any force-placed insurance premiums charged for the period when other acceptable coverage was in effect, or (ii) the property was, in fact, a commercial property, as the case may be.

(2) Claimants who satisfy the requirements for eligibility under this category will receive a premium refund in the amount of either (1) the force-placed insurance premium actually paid by the claimant and not subsequently refunded for periods when other acceptable coverage was in effect, or (2) the difference between the commercial force-placed insurance premiums actually paid by the claimant and the premium that should have been charged for residential force-placed insurance issued by BIC or MIC, as the case may be.

d. Eligible Claimants shall not include persons whose force-placed insurance policies were cancelled and the full force-placed insurance premium was refunded or credited back to them.

20. As soon as practicable, but no later than thirty (30) days from the Effective Date of the Consent Order, DFS shall select and retain an independent third party administrator to mail Notice and Claim Forms and review Notice Claim Forms submitted pursuant to this Consent Order (the “Claims Administrator”). Balboa shall be fully responsible for all

proper fees, expenses and disbursements of the Claims Administrator in connection with the claims process prescribed in this Consent Order; provided, however, that QBE Insurance will pay, pursuant to a pre-existing contractual arrangement between QBE Insurance and Balboa, all such costs of the Claims Administrator. Except as provided in paragraph 25, the Claims Administrator shall make the final determination concerning each claim's timeliness, completeness, adequacy of supporting documentation and eligibility for refund in accordance with the procedures, requirements and standards set forth in this Consent Order.

21. Within ten (10) days after the appointment and retention of the Claims Administrator, the Claims Administrator shall mail to all residents of New York who were placed into force-placed insurance issued by BIC or MIC at any time commencing January 1, 2008 through and including the Effective Date of this Consent Order ("Eligible Notice Consumers") -- not including any residents whose force-placed policies were cancelled as of the inception date and as to whom any premium charged was fully refunded or credited back -- a Notice and Claim Form in the form annexed hereto as Exhibit A, in an envelope whose return address shall be "New York State Department of Financial Services / Balboa Insurance Company (or Meritplan Insurance Company, as appropriate) Settlement Restitution Program, P.O. Box \_\_\_\_\_, [City], [State] \_\_\_\_\_" (the "Mail Notice"). The Claims Administrator shall identify the Claims Administrator's return address, including any P.O. Box, on the envelopes containing the Mail Notice. After the Claims Administrator has posted the Mail Notices with the United Postal Service, for any Mail Notices returned as undeliverable, the Claims Administrator shall use the National Change of Address database (the "NCOA") and attempt to obtain current mailing



addresses for such returned Mail Notices. Should the NCOA show a more current address, the Claims Administrator shall re-post the returned Mail Notice to such more current address, and the applicable time frames for Eligible Notice Consumers to submit a claim and for the Claims Administrator to determine the validity of the claims shall be extended accordingly. Mail Notices returned as undeliverable shall be re-posted 30, 60, or 90 days after the date of the initial mailing, depending on the date the returned Mail Notices are received by the Claims Administrator. After doing so, no further action shall be required by the Claims Administrator to complete the mailing process.

22. No later than the date that the Claims Administrator posts the Mail Notices, the Claims Administrator shall launch a website on which will be posted for public access the Consent Order, a set of agreed-upon Frequently Asked Questions (“FAQs”) and answers concerning the refund opportunity and the claims process and a claim form. These materials shall be printable and downloadable. The identifying Uniform Resource Locator will be NY-BalboaFPIRefund.com. The website will remain open and accessible through the date that all claims are paid. The information on the website will include instructions for submitting claims, either by fax (if original documentation is required, with such documents to be mailed to the Claims Administrator at a specified address) or by mail, at the election of the consumer.
23. No later than the date that the Claims Administrator posts the Mail Notices, the Claims Administrator shall establish a toll-free interactive voice response telephone number for consumers placed into force-placed insurance issued by BIC or MIC (the “IVR telephone line”) with recorded information about the settlement and the claims process, using abbreviated language from the FAQs and responses referred to in the section above. The

IVR telephone lines shall be posted on the website and remain open through the date that all claims are paid.

24. Blank Notice and Claim Forms may also be posted on DFS's website and on the NY-BalboaFPIRefund.com site.

25. Notice and Claim Forms completed by Eligible Notice Consumers must be postmarked within ninety (90) days of the date of the postmarked date of mailing by the Claims Administrator (the "Claims Deadline") and further be received by the Claims Administrator within an additional ten (10) days thereafter to be eligible for a premium refund pursuant to this Consent Order, except that any Claim Form rejected solely for untimeliness and received by the Claims Administrator after the Eligible Notice Consumer's deadline above shall be submitted by the Claims Administrator to DFS and if DFS determines that good cause exists for accepting the untimely Claim Form in its sole discretion DFS shall direct QBE on behalf of BIC or MIC to make the appropriate premium refund to said consumers.

26. QBE on behalf of BIC or MIC shall provide to the Claims Administrator access to all relevant information including, but not limited to, consumer records within ten (10) business days of receiving a request for information from the Claims Administrator.

27. Within forty-five (45) days of the Claims Deadline, the Claims Administrator shall:

- a. Determine the validity of each Notice and Claim Form it has received; and
- b. Submit to DFS, QBE, BIC and MIC a detailed summary of claims received, its determination for each claim, and the amounts it has determined to be payable for each such claim.

28. Within sixty (60) days of the Claims Deadline, QBE Insurance, on behalf of BIC and MIC, shall wire-transfer to the Claims Administrator the total amount of the claims to be paid to Eligible Claimants.
29. Within seventy (70) days of the Claims Deadline, the Claims Administrator shall deposit in the facilities of the U.S. Post Office, for delivery by prepaid first-class mail to each claimant a written notice stating (a) whether the claim has been accepted or denied; (b) if accepted, the amount of the proposed premium refund; and (c) if denied, the reasons for the denial; and (d) for each accepted claim, a check in the required amount, payable to the Eligible Claimant. Such payment shall be accompanied by a letter from DFS, the language of which shall not be inconsistent with the language contained in the Notice and Claim Form.
30. Within thirty (30) days of making the applicable premium refund payments under this Consent Order, the Claims Administrator shall provide a list to DFS showing (a) the total amount of refunded premium provided to consumers through the restitution process, (b) the number of consumers provided with refunded premium through the restitution process, and (c) the number of restitution claim forms that were rejected.

**VI. Penalty and Remedial Procedures as to Balboa**

31. No later than April 26, 2013, QBE Insurance, on behalf of BIC and MIC, shall pay a civil penalty of SIX MILLION (\$6,000,000) to the New York State Department of Financial Services, pursuant to a pre-existing contractual arrangement between QBE Insurance and Balboa, to address all underlying conduct relating to force-placed insurance issued by Balboa in New York State. The payment shall be in the form of a wire transfer in accordance with DFS instructions or a certified or bank check made out to “State of New

York Department of Financial Services” and mailed to: New York State Department of Financial Services, One State Street, New York, New York, 10004-1511, Att: Joy Feigenbaum, Executive Deputy Superintendent, Financial Frauds & Consumer Protection Division.

32. Neither BA Insurance Group, BIC, MIC, QBE Insurance nor any of their subsidiaries or affiliates shall, collectively or individually, seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to, payment made pursuant to any insurance policy, with regard to any or all of the amounts payable pursuant to this Consent Order; provided, however, that QBE Insurance has agreed, pursuant to a pre-existing contractual arrangement between QBE Insurance and Balboa, to pay the penalty provided for in paragraph 31 and the costs of the Claims Administrator and all restitution provided for in paragraphs 18-30.

**VII. Other Relief**

33. BA Insurance Group, BIC, MIC, QBE Insurance, and QBE FIRST admit to the authority of DFS to effectuate this Consent Order. BIC and MIC will cease and desist from engaging in any acts in violation of the Insurance Law and FSL and will comply with the Insurance Law and FSL.

**VIII. Breach of the Consent Order**

34. In the event that DFS believes BA Insurance Group, BIC, MIC, QBE Insurance or QBE FIRST to be materially in breach of the Consent Order (“Breach”), DFS will provide written notice to BA Insurance Group, BIC, MIC, QBE Insurance or QBE FIRST of the Breach and BA Insurance Group, BIC, MIC, QBE Insurance or QBE FIRST (as the case may be) must, within ten (10) business days from the date of receipt of said notice, or on

a later date if so determined in the sole discretion of DFS, appear before DFS and shall have an opportunity to rebut the evidence, if any, of DFS that a Breach has occurred and, to the extent pertinent, to demonstrate that any such Breach is not material or has been cured.

35. The Parties understand and agree that BA Insurance Group's, BIC's, MIC's, QBE Insurance's or QBE FIRST's failure to appear before DFS to make the required demonstration within the specified period as set forth in paragraph 34 is presumptive evidence of BA Insurance Group's, BIC's, MIC's, QBE Insurance's or QBE FIRST's Breach. Upon a finding of Breach, DFS has all the remedies available to it under the New York Insurance Law and FSL and may use any and all evidence available to DFS for all ensuing hearings, notices, orders and other remedies that may be available under the New York Insurance Law and FSL.

**IX. Other Provisions**

36. If QBE Insurance, BIC, or MIC defaults on their monetary obligations under this Consent Order, DFS may terminate this Consent Order, at its sole discretion, upon 10 days' written notice to QBE Insurance, BIC or MIC (as the case may be). In the event of such termination, QBE Insurance, BIC, and MIC expressly agree and acknowledge that this Consent Order shall in no way bar or otherwise preclude DFS from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Consent Order, against them, or from using in any way statements, documents or other materials produced or provided by QBE Insurance, BIC, or MIC prior to or after the date of this Consent Order, including, without limitation, such statements,

documents or other materials, if any, provided for purposes of settlement negotiations, except as may otherwise be provided in a written agreement with DFS.

37. DFS has agreed to the terms of this Consent Order based on, among other things, the representations made to DFS by BA Insurance Group, BIC, MIC, QBE Insurance, QBE FIRST or their counsel and DFS's own factual Investigation. To the extent that representations made by BA Insurance Group, BIC, MIC, QBE Insurance or QBE FIRST or their counsel are later found to be materially incomplete or inaccurate, this Consent Order is voidable by the DFS in its sole discretion.
38. BA Insurance Group, BIC, MIC, QBE Insurance or QBE FIRST shall, upon request by DFS, provide all documentation and information reasonably necessary for the DFS to verify compliance with this Consent Order.
39. All notices, reports, requests, and other communication to any party pursuant to this Consent Order shall be in writing and shall be directed as follows:

If to DFS:

New York State Department of Financial Services  
One State Street  
New York, New York 10004-1511  
Attention: Joy Feigenbaum, Executive Deputy Superintendent

If to BA Insurance Group:

Eric B. Chamberlain, Esq.  
SVP and Chief Legal Officer  
BA Insurance Group, Inc.  
20151 S.W. Birch Street, Suite 250  
Newport Beach, CA 92660

with a copy to:

Howard E. Heiss, Esq.  
O'Melveny & Myers LLP  
Times Square Tower  
7 Times Square  
New York, NY 10036

with a copy to:

Robert Barbarowicz, Esq.  
Michelman & Robinson, LLP  
15760 Ventura Boulevard, Suite 500  
Encino, CA 91436

If to BIC:

Eric B. Chamberlain, Esq.  
SVP and Chief Legal Officer  
Balboa Insurance Company  
3349 Michelson Drive, Suite 200  
Irvine, CA 92612

with a copy to:

Howard E. Heiss, Esq.  
O'Melveny & Myers LLP  
Times Square Tower  
7 Times Square  
New York, NY 10036

with a copy to:

Robert Barbarowicz, Esq.  
Michelman & Robinson, LLP  
15760 Ventura Boulevard, Suite 500  
Encino, CA 91436

If to MIC:

Eric B. Chamberlain, Esq.  
SVP and Chief Legal Officer  
Meritplan Insurance Company  
3349 Michelson Drive, Suite 200  
Irvine, CA 92612

with a copy to:

Howard E. Heiss, Esq.  
O'Melveny & Myers LLP  
Times Square Tower  
7 Times Square  
New York, NY 10036

with a copy to:

Robert Barbarowicz, Esq.  
Michelman & Robinson, LLP  
15760 Ventura Boulevard, Suite 500  
Encino, CA 91436

If to QBE Insurance:

Peter Maloney, Esq.  
Chief Legal Officer, QBE North America  
88 Pine Street  
New York, NY 10005

with a copy to:

Andrew L. Sandler, Esq.  
Robyn C. Quattrone, Esq.  
BuckleySandler LLP  
1250 24th Street NW, Suite 700  
Washington, DC 20037

If to QBE FIRST:

James Novak, Esq.  
General Counsel  
210 Interstate North Parkway  
Atlanta, GA 30339



with a copy to:

Andrew L. Sandler, Esq.  
Robyn C. Quattrone, Esq.  
BuckleySandler LLP  
1250 24th Street NW, Suite 700  
Washington, DC 20037

40. This Consent Order and any dispute thereunder shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.
41. BIC, MIC, QBE Insurance and QBE FIRST waive their right to further notice and hearing in this matter as to any allegations of past violations up to and including the Effective Date of this Consent Order and agree that no provision of the Consent Order is subject to review in any court or tribunal outside the Department.
42. This Consent Order may not be amended except by an instrument in writing signed on behalf of all the parties to this Consent Order.
43. This Consent Order constitutes the entire agreement between DFS, BA Insurance Group, BIC, MIC, QBE Insurance, and QBE FIRST with respect to force-placed insurance policies written in New York by BIC and MIC and supersedes any prior communication, understanding or agreement, whether written or oral, concerning the subject matter of this Consent Order. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Consent Order has been relied upon by any party to this Consent Order.
44. In the event that one or more provisions contained in this Consent Order shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Consent Order.

45. This Consent Order may be executed in one or more counterparts, and shall become effective when such counterparts have been signed by each of the parties hereto and So Ordered by the Superintendent of Financial Services or his designee.
46. Upon execution by the parties to this Consent Order, the DFS will discontinue the Investigation as and against BIC and MIC solely with respect to force-placed insurance policies issued in New York State by BIC and MIC. No further action will be taken by DFS against BIC or MIC for the conduct set forth in the Consent Order provided that BIC, MIC, QBE Insurance and QBE FIRST comply with the terms of the Consent Order.
47. The Effective Date of this Consent Order is the date on which it is fully executed by the parties to the Consent Order.
48. This Consent Order includes Findings of and allegations made by DFS. These Findings and allegations have not been subject to an adjudicatory hearing or judicial process in which BIC and MIC have had an opportunity to present evidence and examine witnesses.

**WHEREFORE**, the signatures evidencing assent to this Consent Order have been affixed hereto on the dates set forth below.

Dated: April \_\_, 2013

DEPARTMENT OF FINANCIAL SERVICES

By: \_\_\_\_\_  
Joy Feigenbaum  
Executive Deputy Superintendent  
Financial Frauds & Consumer Protection Division

April \_\_, 2013

BA INSURANCE GROUP, INC.

By: \_\_\_\_\_  
Lesley J. Collins, President

April \_\_, 2013

BALBOA INSURANCE COMPANY

By: \_\_\_\_\_  
Lesley J. Collins, President

April \_\_, 2013

MERITPLAN INSURANCE COMPANY

By: \_\_\_\_\_  
Lesley J. Collins, President

April \_\_, 2013

QBE INSURANCE CORPORATION

By: \_\_\_\_\_  
Peter T. Maloney, Chief Legal Officer

April \_\_, 2013

QBE FINANCIAL INSTITUTIONS RISK  
SERVICES, INC.

By: \_\_\_\_\_  
James P. Novak, General Counsel

April \_\_, 2013

THE FOREGOING CONSENT ORDER IS HEREBY APPROVED.

Dated: New York, NY  
April \_\_, 2013

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BENJAMIN M. LAWSKY  
Superintendent of Financial Services

**EXHIBIT A**

[ON CLAIM ADMINISTRATOR'S LETTERHEAD]

**Notice and Claim Form**

Re: NYS Department of Financial Services/QBE/  
Balboa Force-Placed Insurance Program

Dear :

We are writing to you pursuant to a settlement between the New York State Department of Financial Services and Balboa Insurance Company ("BIC"), Meritplan Insurance Company ("MIC"), QBE Financial Institution Risk Services, Inc. and QBE Insurance Corporation concerning force-placed insurance policies issued in New York State by BIC and MIC. You are receiving this Notice and Claim Form because you were charged for force-placed insurance by BIC or MIC.

Force-placed insurance is insurance taken out by your bank, lender or mortgage servicer when you do not maintain the insurance required by the terms of your mortgage. This can occur if you allow your homeowners' insurance policy to lapse or if your bank or mortgage servicer determines that you do not have a sufficient amount of coverage. On some occasions, homeowners have been force-placed erroneously. In many instances, the premiums for the force-placed coverage are far in excess of the premiums you were charged for your voluntary homeowners' insurance. Force-placed insurance is also sometimes referred to as lender-placed insurance.

Under the terms of the settlement, you may be entitled to a refund for some of the charges you incurred in connection with your force-placed insurance. Please complete the below questionnaire and provide copies of supporting documents, where applicable, if you believe you may qualify for a refund. **DO NOT SEND ORIGINAL DOCUMENTS.**

**To qualify for a refund, you must have been force-placed by BIC or MIC, on or after January 1, 2008 and meet the eligibility criteria for one of the following three categories of claimants:**

- 1. You defaulted on your mortgage or were foreclosed upon because of the forced placement.**
- 2. You were charged for force-placed insurance at an amount higher than the amount permitted by your mortgage.**
- 3. You had voluntary homeowner's coverage in effect or were charged commercial force-placed insurance rates on a one-to-four family residence.**

Please note that you are not eligible if the force-placed insurance policies for which you were charged were cancelled and if the **full** charge for the force-placed insurance premium was refunded or credited back to you or your escrow account with your lender.

For additional information regarding force-placed insurance and the settlement, please visit NY-BalboaFPIRefund.com.

**Eligibility 1**

1. Did the placement of force-placed insurance issued by BIC or MIC, on or after January 1, 2008 cause you to default on (i.e., miss) your mortgage payments or cause the foreclosure of your mortgage, including losing possession and title to your home?

Yes  No

2. Did you pay some or all of BIC's or MIC's force-placed insurance premium?

Yes  No

3. If your home was foreclosed on, do you remain liable to pay some or all of the force-placed insurance premium to your lender as part of a deficiency judgment?

Yes  No  Not Applicable

4. When did you stop making your loan payments?

---

5. When did the force-placement by BIC or MIC first occur?

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6. Did the force-placement occur after the date of your first default on your loan payments?

Yes  No

7. Did the force-placement occur after the **[effective date of the Consent Order]**

Yes  No

8. Do you have available bank records and other documentation supporting the above? If yes, please include copies of the supporting documents. Do not send originals.

Yes  No

If you satisfy the requirements for eligibility in this category, you will receive a refund equal to the difference between the force-placed premium amount and the premium that would have been assessed for the period in question under your last known voluntary policy had it remained in effect.

**Eligibility 2**

1. Did you pay premiums to BIC or MIC for force-placed insurance on or after January 1, 2008 for a coverage limit that exceeded the amount permitted by your mortgage?

Yes  No

2. Do you have a copy of the mortgage instrument and supporting documentation demonstrating you made premium payments in excess of the amount permitted by your mortgage? If yes, please include copies of all supporting documents. Do not send originals.

Yes  No

If you satisfy the requirements for eligibility in this category, you will receive a refund in the amount equal to the difference between BIC's or MIC's force-placed premium that you paid and the amount authorized under your mortgage.

**Eligibility 3**

1. Did you pay out-of-pocket premiums as a result of force-placed insurance issued by BIC or MIC after January 1, 2008?

Yes  No

2. Did you have acceptable continuous voluntary homeowners' coverage in effect at the time you were charged for force-placed insurance premiums by BIC or MIC ?

Yes  No

3. Did you receive from BIC or MIC a full refund or credit for the force-placed insurance premiums you paid?

Yes  No

4. Did you provide BIC or MIC written confirmation that you have voluntary homeowners' insurance in effect?  Yes  No

If yes, did BIC or MIC nevertheless charge you for force-placed insurance?

Yes  No

5. Did BIC or MIC charge commercial force-placed insurance rates on a one-to-four family residence owned by you?

Yes  No

6. Do you have supporting documentation evidencing facts sufficient to satisfy the above?

Yes  No

If yes, please enclose copies of all supporting documents. Do not send originals.

7. Do you have a certificate of coverage or policy declaration page evidencing the voluntary insurance coverage that was in effect?

Yes  No

If yes, please enclose a copy of the certificate of coverage or policy declaration page. Do not send originals

8. Do you have any real property records showing a single-family residence status of the property?

Yes  No

If yes, please enclosed a copy of the relevant real property records. Do not send originals.

If you satisfy the requirements for eligibility under this category you will receive a payment in the amount of either (1) the force-placed insurance premium actually paid by you and not subsequently refunded for periods when other acceptable coverage was in effect, or (2) the difference between the commercial force-placed insurance premiums actually paid by you and the BIC or MIC residential force-placed insurance premiums that should have been charged, as the case may be.



I state that the information provided above is true and accurate to the best of my knowledge.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date

**THIS NOTICE AND CLAIM FORM AND ALL SUPPORTING DOCUMENTS SHOULD BE MAILED TO '[THIRD PARTY ADMINISTRATOR] AT [ADDRESS] AND SHOULD BE POSTMARKED NO LATER THAN \_\_\_\_\_, 2013 FOR YOUR REFUND CLAIM TO BE CONSIDERED.**

**If you have a copy of your prior voluntary homeowner's insurance policy or declaration page, please provide a copy with your submission.**