

Article Title: ARCHIVE | Legal Criteria: New Opinion Criteria for Rating Notes Secured by Funding Agreements Issued by a U.S. Life Insurance Company Data: (EDITOR'S NOTE: —This article is no longer current. It has been superseded by "Legal Criteria For U.S. Structured Finance Transactions: Criteria Related To Asset-Backed Securities," published Oct. 1, 2006.) Standard & Poor's Ratings Services routinely provides ratings for notes that are secured primarily by funding agreements issued by a U.S. life insurance company in connection with a note issuance program. Standard & Poor's has recently revised its legal criteria to reduce the frequency with which legal opinions will be requested for these programs. The following are Standard & Poor's revised legal criteria relating to opinions that will be requested for programs in which series of notes are issued from time to time, and each series of notes is secured primarily by one or more funding agreements issued by the same U.S. life insurance company.

Structure of Transactions The issuer of notes (Issuer) in these programs is usually either a statutory trust or a common law trust.* If the Issuer is a statutory trust, either: (1) the statutory trust issues notes from time to time in discrete series, or (2) each series of notes is issued by a newly formed separate and distinct statutory trust. If the Issuer is a common law trust, each series of notes is usually issued by a newly formed separate and distinct common law trust. In these programs, the notes are issued pursuant to an indenture and sold to investors in either a private placement or public offering. The net proceeds from the sale of a series of notes are invested by the Issuer in one or more funding agreements issued by an insurance company. The Issuer then pledges and collaterally assigns its rights under the funding agreement(s) to the indenture trustee for the benefit of the holders of that series of notes. In each program, there is usually only one insurance company issuing all the funding agreements. The primary asset of the Issuer for each series of notes is the funding agreement(s) acquired with the net proceeds from the sale of such notes. Principal and interest payments on any series of notes are made primarily from the proceeds of the funding agreement(s) purchased with respect to that series of notes. The rating assigned to each series of notes generally is based on either the issuer credit rating or the insurer financial strength rating of the insurance company issuing the funding agreements.

Opinions Historically, Standard & Poor's has requested that legal opinions be delivered for each series of rated notes. Nevertheless, Standard & Poor's recognizes that in each program the primary asset backing each series of rated notes is one or more funding agreements issued by the same insurance company. Due to the structure of these programs, Standard & Poor's will now request that the opinions set forth below be delivered only on the date of the closing of the program and annually thereafter. The opinions delivered to Standard & Poor's should be prospective and apply to all transactions that will be consummated in the next succeeding year. This opinion requirement will apply to rated notes sold to either institutional or retail investors.

1. An opinion to the effect that neither the Issuer(s) nor (where relevant) any "series trust" will be subject to any U.S. federal income tax.
2. An opinion to the effect that the funding agreements will be the valid and binding obligations of the insurance company issuing the funding agreements, and will be enforceable against the insurance company.
3. If the Issuer(s) will be a statutory trust, a usual and customary corporate opinion.
4. An opinion addressing the priority of the claims of holders of funding agreements vis-à-vis policyholders and other creditors upon the insolvency of the insurance company issuing the funding agreements. Any proceedings relating to the rehabilitation, liquidation, conservation, dissolution, or reorganization of a U.S. life insurance company will be governed by state law and the priority of claims by holders of funding agreements in any such proceeding will also be governed by state law. Counsel generally should provide an opinion to the effect that in any such proceeding, payments of principal and interest under the funding agreements have a priority equal to that of the policyholders of the insurance company, that is, claims of holders of funding agreements rank *pari passu* with the claims of the policyholders of the insurance company.
5. An opinion to the effect that under the law of [New York]¶, to the extent that the Uniform Commercial Code of such jurisdiction(s) does not govern the creation or perfection of a security interest in the funding agreements, the funding agreements will be duly and properly collaterally assigned by the [Issuer] [series trust] to the indenture trustee for the benefit of each [series ____] noteholder and such collateral assignment will be valid and enforceable against and prior to: (a) any other claim of an interest in the funding agreements created by the [Issuer] [series trust]; (b) any lien creditor of the [Issuer] [series trust]; or (c) any other secured or unsecured creditor of the [Issuer] [series trust].

As discussed below, in lieu of providing the common law assignment opinion

described in paragraph 5, in general, an Issuer may, at its option, include in the transaction documents the representations and warranties specified below (see Common Law Collateral Assignment Representations and Warranties). In addition to the foregoing opinions, Standard & Poor's may request additional opinions on a case-by-case basis, depending on the structure of a program or any changes in applicable laws, rules, or regulations. Common Law Collateral Assignment Representations and Warranties As an alternative to providing the common law assignment opinion specified in paragraph 5 above, in general, an Issuer may, at its option, include the representations and warranties set forth in Exhibit A in the transaction documents. For a comprehensive discussion of the representations and warranties set forth in Exhibit A, see the article titled "New Criteria for Representations and Warranties for Collateral Assignments of Funding Agreements Issued by U.S. Life Insurance Companies," published Feb. 9, 2004. The article is available on RatingsDirect, Standard & Poor's Web-based credit analysis system, at www.ratingsdirect.com under Criteria. The article is also available on the Standard & Poor's Web site at www.standardandpoors.com, under Credit Ratings, select Credit Ratings Criteria, and then find the article under SF Legal Criteria. Exhibit A Form of Representations and Warranties (i) Under the applicable Uniform Commercial Code (UCC) either (a) the Funding Agreement constitutes insurance and the creation and perfection of a security interest therein is excluded from the coverage of the applicable UCC by virtue of Section 9-109(d)(8) thereof§ or (b) the Funding Agreement constitutes [specify one or more UCC classifications]** for purposes of the applicable UCC; (ii) The [Issuer] [series trust] owns and has good and marketable title to the Funding Agreement free and clear of any [Lien], claim, or encumbrance of any Person (other than the indenture trustee); (iii) Pursuant to the [assignment letter] [acknowledgment letter] [specify other relevant agreement[s]], the [Issuer] [series trust] has duly and properly collaterally assigned the Funding Agreement to the indenture trustee for the benefit of each [series ____] noteholder and such collateral assignment is valid against and prior to: (a) any other claim of an interest in the Funding Agreement created by the [Issuer] [series trust]; (b) any lien creditor of the [Issuer] [series trust]; or (c) any other secured or unsecured creditor of the [Issuer] [series trust]; (iv) All original executed copies of the Funding Agreement have been delivered to the indenture trustee for the benefit of each [series ____] noteholder or to a duly appointed agent for the indenture trustee; (v) The [Issuer] [series trust] has given [name of insurance company] written notice of the collateral assignment of the Funding Agreement from the [Issuer] [series trust] to the indenture trustee for the benefit of each [series ____] noteholder; and (vi) [Name of insurance company] has: (a) duly given its express written consent to the collateral assignment of the Funding Agreement to the indenture trustee for the benefit of each [series ____] noteholder; and (b) [represented and warranted] [affirmed]¶¶ in writing that it has marked its books and records to reflect such collateral assignment and that its books and records do not reflect any Person other than the [Issuer] [series trust] or the indenture trustee for the benefit of each [series ____] noteholder having any ownership or other interest in the Funding Agreement. Additional Items to Be Included in Agreement The following items should be included in the transaction documents: Survival of the foregoing representations and warranties; and Non-waiver of the foregoing representations and warranties. Footnotes *Some of the older programs were structured with an Issuer that was a Cayman Islands or Jersey entity. For programs with a foreign Issuer, Standard & Poor's will discuss its legal opinion requirements on a case-by-case basis. ¶¶The opinion must cover the law governing the conveyance document(s) (for example, the assignment letter, the acknowledgement letter, and other relevant documents). Typically, each of these documents will be governed by New York State law; however, to the extent the parties have selected the law of another jurisdiction, the opinion should cover such other law. §If the applicable UCC is the California UCC, then this representation cannot be given, as the California UCC is applicable to insurance. If the applicable UCC is California law, then the following should be substituted therefore: "under the applicable Uniform Commercial Code (a) the creation and perfection of a security interest in the Funding Agreement is subject to the applicable Uniform Commercial Code and the Funding Agreement constitutes either insurance or [specify one or more UCC classifications]." In addition to the Standard & Poor's model representations and warranties for the other UCC classifications selected, the representation and warranty in paragraph (v) above must also be included. **An Issuer will be expected to also include in the transaction documents the Standard & Poor's model representations and warranties for the UCC classifications that it inserts into clause (b). The Issuer

should consult with its counsel as to the appropriate UCC classifications to insert in clause (b). For a comprehensive discussion of Standard & Poor's model UCC representations and warranties, see the article titled "Revised Article 9 of the Uniform Commercial Code: New Standard & Poor's Criteria," published June 6, 2001, on RatingsDirect or on the Standard & Poor's Web site at www.standardandpoors.com. ¶¶ Issuer may select either "represented and warranted" or "affirmed."