

Article Title: Criteria | Insurance | Specialty: Evaluating Insurance Company Funding

Agreement-Backed Notes Data: (EDITOR'S NOTE: —On July 21, 2021, we republished this criteria article to make nonmaterial changes. See the "Revisions And Updates" section for details.) 1. This article outlines S&P; Global Ratings' criteria for rating notes secured primarily by funding agreements issued by a U.S. life insurance company in connection with a note issuance program. We base our rating on each series of notes on either the issuer credit rating or insurer financial strength rating on the applicable insurance company. In connection with our analysis of funding agreement-backed notes, we request the following legal opinions: An opinion to the effect that the issuer will not be subject to any U.S. federal income tax; An opinion to the effect that the funding agreements will be the valid and binding obligations of, and enforceable against, the insurance company issuing the funding agreements; If the issuer(s) will be a statutory trust, a usual and customary corporate opinion; An opinion to the effect that in any such rehabilitation proceeding with respect to the insurance company issuing the funding agreements, payments of principal and interest under the funding agreements have a priority equal to that of the policyholders of the insurance company issuing the funding agreements; and An opinion to the effect that under applicable state law, to the extent that the Uniform Commercial Code (UCC) 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 to the indenture trustee for the benefit of each applicable 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, (b) any lien creditor of the issuer, or (c) any other secured or unsecured creditor of the issuer. 2. S&P; Global Ratings requests the above legal opinions at the initial closing date of the program and annually thereafter, and we consider whether such opinions are prospective and apply to all transactions in the program that will be consummated in the succeeding year. 3. In addition to the foregoing opinions, S&P; Global Ratings may request additional legal comfort on a case-by-case basis. 4. If an issuer does not provide a form of collateral agreement opinion as set forth above, S&P; Global Ratings considers whether the issuer has provided the following forms of representations and warranties in the transaction documents: Under the applicable state 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 [collateral type] for purposes of the applicable UCC; The issuer 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); The issuer has duly and properly collaterally assigned the funding agreement to the indenture trustee for the benefit of each applicable 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, (b) any lien creditor of the issuer, or (c) any other secured or unsecured creditor of the issuer; 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; The issuer has given the applicable insurer written notice of the collateral assignment of the funding agreement from the issuer to the indenture trustee for the benefit of each applicable series noteholder; and The insurer 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 applicable series noteholder and (b) represented 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 or the indenture trustee for the benefit of each applicable series noteholder having any ownership or other interest in the funding agreement. 5. S&P; Global Ratings also considers whether the above representations and warranties are nonwaivable and survive the termination of the applicable agreement. 6. If a funding agreement is covered by an applicable state UCC, S&P; Global Ratings considers whether the issuer has provided representations and warranties with respect to the creation of a first-priority perfected security interest in such funding agreement in favor of the issuer and indenture trustee, as applicable. REVISIONS AND UPDATES This article was originally published on April 21, 2004. Changes introduced after original publication: Following our periodic review completed on June 9, 2016, we updated the contact information, added paragraph numbers, and updated historical references. We also updated criteria article references, deleted historical commentary, and

added the "Related Criteria" section. Following our periodic review completed on June 8, 2017, we updated the contact information and deleted paragraphs 21-23 because they were commentary. Following our periodic review completed on June 5, 2018, we updated the contact information and deleted commentary that had previously been moved to the "Revisions And Updates" section. On Feb. 14, 2019, we divided the article titled "Evaluating Insurance Company Separate Accounts And Funding Agreement-Backed Notes" into "Evaluating Insurance Company Separate Accounts" (separate accounts criteria) and this funding agreements criteria article, and we simultaneously retired the separate accounts criteria. We divided the articles because these criteria are wholly separate and independent, such that there is no need for them to be included in the same article. We retired the separate accounts criteria article because we no longer rate, or anticipate rating, transactions applying these criteria. In addition, we made certain nonmaterial changes to this article. Specifically, we deleted noncriteria text and edited the description of the criteria to enhance the criteria's transparency and clarity. We also revised the contact information. On Aug. 2, 2019, we republished this criteria article to make nonmaterial changes. We updated the contact information and criteria references. On July 21, 2021, we republished this criteria article to make nonmaterial changes to the contact information.

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