

**EXHIBIT E**  
**SCHEME OF ARRANGEMENT**

**THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION**

If you are in any doubt as to what action you should take, you should consult your insurance broker or other professional adviser without delay.

In an endeavour to ensure that insurance brokers are in a position to advise their clients, a copy of this document has been sent to all brokers known to have placed business with or on behalf of The Home Insurance Company, in respect of its participation in the American Foreign Insurance Association (AFIA).

Further copies of this document and the enclosed voting form can be obtained from Ernst & Young LLP or The Home Insurance Company at the addresses listed on page 33.

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**PROPOSAL IN RELATION TO  
A SCHEME OF ARRANGEMENT**

**between**

**THE HOME INSURANCE COMPANY**

**and its**

**SCHEME CREDITORS**

**(as defined in the Scheme)**

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The meeting of Scheme Creditors to consider the Scheme will be held on 8 September 2004 commencing at 10.30 a.m. at the offices of Clifford Chance Limited Liability Partnership, 10 Upper Bank Street, London E14 5JJ. Notice of the meetings is set out on page 82.

The action required to be taken by you is set out on pages 8 to 9. Whether or not Scheme Creditors intend to be present at the meeting, they are requested to complete and return the voting form enclosed with this document as soon as possible.

23 July 2004

**PART I  
EXPLANATORY STATEMENT**

**IMPORTANT NOTICE**

This document has been prepared in connection with a proposed Scheme pursuant to section 425 of the Companies Act 1985 between The Home Insurance Company (the "Company") and its Scheme Creditors (as defined in the Scheme).

The information contained in this document has been prepared by the Company based upon information available to it.

The statements, opinions and information contained in this document are made, held or given respectively as at the date of this document unless another time is specified and such statements, opinions and information are made, held or given solely by or on behalf of the Company unless expressly attributed to another party. Service of this document shall not give rise to any implication that there has been no change in facts set out in it since such date.

Nothing contained in this document constitutes an admission of any fact or liability on the part of the Company or any other person in respect of any asset to which they may be entitled or any claim against them. No estimate of the amount of any claim against the Company specified in the voting form returned to the Company, or otherwise provided for voting purposes, shall be admissible against the Company or any other party, or shall be taken into account in calculating payments under the Scheme or in the New Hampshire Liquidation. Any such estimate shall only be used for voting purposes at the meeting of Scheme Creditors to consider the Scheme.

The summary of the principal provisions of the Scheme and related matters contained herein is qualified in its entirety by reference to the Scheme itself, the full text of which is set out on pages 35 to 81. Scheme Creditors are advised to read and consider carefully the text of the Scheme.

The Company has not authorised any person to make any representation, whether oral, written, express or implied, concerning the proposed Scheme which is inconsistent with the statements made in this document. Consequently, if such representations are made, they should not be relied upon.

The Informal Creditors' Committee is not responsible for the information contained in this document.

No Scheme Creditor shall construe the contents of this document as legal, tax, financial or other professional advice. Each Scheme Creditor should consult his own professional advisers as to the legal, tax, financial or other matters relevant to the action he should take in connection with the Scheme.

**PART I  
EXPLANATORY STATEMENT**

**OFFICEHOLDERS**

**Joint Provisional Liquidators and  
Proposed Scheme Administrators**

Gareth Howard Hughes  
Margaret Elizabeth Mills  
Ernst & Young LLP  
1 More London Place  
London SE1 2AF

**New Hampshire Liquidator**

Roger Sevigny  
The State of New Hampshire Insurance Department  
56 Old Suncook Road  
Concord, New Hampshire 03301-5151

**ADVISERS**

**Office of the Attorney General**

Department of Justice  
Office of the Attorney General  
33 Capitol Street  
Concord N.H. 03301

**Legal Advisers (US)**

Rackemann, Sawyer & Brewster  
One Financial Center  
Boston, MA 02111

**Legal Advisers (UK)**

Clifford Chance LLP  
10 Upper Bank Street  
London E14 5JJ

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**PROVISIONAL TIMETABLE**

- |  |                  |
|--|------------------|
| ● Scheme Creditors' meeting  | 8 September 2004 |
| ● Court hearing to sanction the Scheme and make the Global Liquidation Order | October 2004     |
| ● Scheme becomes effective   | October 2004     |

The above dates, other than that of the Scheme Creditors' meeting, are tentative only since the date of the Court hearing will only be confirmed if the Scheme is approved at the Scheme Creditors' meeting.

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**KEY DEFINITIONS**

The Explanatory Statement is intended to explain the main provisions of the Scheme. The definitions will apply throughout the Explanatory Statement. They correspond to defined words and phrases in the Scheme and are in some instances summaries of longer definitions. They are not intended to be comprehensive and, if there is any inconsistency with the terms as used in the Scheme, the Scheme prevails over them. The full definitions are those which appear in the Scheme on pages 38 to 44.

“**ACE-INA**” means ACE-INA Services UK Limited;

“**ACE Group**” means ACE Limited (based in Bermuda) and its subsidiaries;

“**AFIA**” means the American Foreign Insurance Association;

“**AFIA Creditors**” means the creditors of the Company in respect of the AFIA Treaties;

“**AFIA Reinsurers**” has the meaning given to that term in the Scheme;

“**AFIA Treaties**” has the meaning given to that term in Section C: paragraph 2.3;

“**BAFCO**” has the meaning given to that term in Section C: paragraph 4.1;

“**BAFCO 1**” has the meaning given to that term in Section C: paragraph 4.2;

“**BAFCO 2**” has the meaning given to that term in Section C: paragraph 4.3;

“**BAFCO 3**” has the meaning given to that term in Section C : paragraph 4.2;

“**CIC**” means Century Indemnity Company;

“**CIRC**” means Century International Reinsurance Company Limited;

“**CIGNA**” means CIGNA Corporation;

“**City**” means City Insurance Company – UK branch;

“**Claims Procedure Order**” means the order of the New Hampshire Court dated 19 December 2003, as amended, establishing procedures regarding claims filed with the Company;

“**Company**” means The Home Insurance Company (in liquidation);

“**Creditors’ Committee**” means the committee established in accordance with the provisions of the Scheme;

“**Driver**” means C.R. Driver & Company;

“**Effective Date**” means, following the date on which an office copy of the order of the English Court sanctioning the Scheme is delivered to the Registrar of Companies in England for registration, the first date on which all of the conditions described in Section E: paragraph 14 have been satisfied;

“**English Court**” means the High Court of Justice of England and Wales;

“**Established Scheme Liability**” means a Scheme Claim which has become established in accordance with the Scheme;

“**FSA**” means the Financial Services Authority;

“**Global Liquidation Order**” has the meaning given to that term in Section E: paragraph 14;

“**Gross Proceeds**” means all proceeds received from an AFIA Reinsurer and/or the Guarantor as the same relate to the reinsurance, indemnification or the guarantee of the Company’s obligations under the AFIA Treaties, net of set-off;



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- “**Guarantee**” means the guarantee described in Section C: paragraph 4.5
- “**Guarantor**” means CIGNA, or its successors in title, as guarantor and/or indemnitor under the Guarantee;
- “**INA**” has the meaning given to that term in Section C: paragraph 2.2;
- “**Indemnitees**” has the meaning given to that term in Section C: paragraph 4.7;
- “**Informal Creditors’ Committee**” means the informal committee of AFIA Creditors, whose members will become the first members of the Creditors’ Committee to be established under the Scheme (as listed in Section H: Appendix 1);
- “**Insurance and Reinsurance Assumption Agreement**” means the agreement described in Section C: paragraph 4.4;
- “**Joint Provisional Liquidators**” means Gareth Howard Hughes and Margaret Elizabeth Mills, partners in the United Kingdom firm of Ernst & Young LLP, acting in their capacity as joint provisional liquidators of the Company or such other person as may be appointed as joint provisional liquidator from time to time in addition or succession thereto;
- “**Net Proceeds**” has the meaning given to that term in Section E: paragraph 1.1;
- “**New Hampshire Approval Order**” means an order of the New Hampshire Court approving the proposal for the implementation of the Scheme;
- “**New Hampshire Court**” means the Merrimack County Superior Court of the State of New Hampshire;
- “**New Hampshire Liquidation**” means the liquidation being conducted in respect of the Company pursuant to the order of the New Hampshire Court dated 13 June 2003;
- “**New Hampshire Liquidator**” means the Commissioner of Insurance for the State of New Hampshire, being, as at the date of this explanatory statement, Roger Sevigny, and his successors in office, solely in his capacity as the liquidator of the Company;
- “**Notice of Determination**” has the meaning given to that term in Section F: paragraph 3.1;
- “**Order**” means the order of the English Court dated 8 May 2003 under which the Joint Provisional Liquidators were appointed, as amended from time to time;
- “**Payment Percentage**” means the percentage of an Established Scheme Liability that the Scheme Administrators determine from time to time should be paid to Scheme Creditors in accordance with the provisions of the Scheme;
- “**Purchase Agreement**” has the meaning given to that term in Section C: paragraph 4.4;
- “**Quota Share**” has the meaning given to that term in Section C: paragraph 4.7;
- “**Record Date**” means the date of the Scheme;
- “**Rehabilitator**” has the meaning given to that term in Section B: paragraph 1.3;
- “**Review Date**” has the meaning given to that term in Section E: paragraph 5.1;
- “**Scheme**” means the scheme of arrangement pursuant to section 425 of the Companies Act 1985 as set out on pages 35 to 81 of this document in its present form or as modified;
- “**Scheme Assets**” means those assets transferred by the Company to, and held by, the Scheme Administrators in accordance with the terms of the Scheme;
- “**Scheme Claim**” means a liability of the Company under or arising out of any of the AFIA Treaties;

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**“Scheme Creditor”** means a creditor of the Company in respect of a Scheme Claim;

**“Scheme Administrators”** means Gareth Howard Hughes and Margaret Elizabeth Mills, acting in their capacity as Scheme Administrators, or such other persons as may be appointed as Scheme Administrators from time to time in accordance with the terms of the Scheme;

**“Special Resolution”** has the meaning given to that term in Section E; paragraph 11.1;

**“Weavers”** has the meaning given to that term in Section B; paragraph 1.2.2.

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**SUMMARY**

**1. INTRODUCTION**

- 1.1 The Company was incorporated on 15 March 1973 under the laws of the State of New Hampshire, although its predecessor corporations were established as long ago as 1853 under the laws of the State of New York. The Company and its subsidiaries wrote insurance and reinsurance business in almost all states and territories in the United States, as well as in Canada, United Kingdom, Bermuda and Hong Kong.
- 1.2 The business of the Company's UK branch principally comprised two portfolios, both of which are in run-off, namely;
  - 1.2.1 assumed reinsurance business underwritten through AFIA; and
  - 1.2.2 business underwritten by City Insurance Company – UK branch (“City”) through the agency of HS Weavers (Underwriting) Agencies Ltd (“Weavers”) between 1970 and 1977 on the Weavers stamp and also through the agency of C.R Driver & Company (“Driver”). The Company and City were merged in 1995.
- 1.3 On 3 March 1997 the New Hampshire Insurance Department placed the Company and its insurance subsidiaries under its supervision pursuant to an Order of Supervision made by the New Hampshire Court. On 5 March 2003, the New Hampshire Court appointed Ms Paula Taft Rogers as Rehabilitator (the “Rehabilitator”) of the Company.
- 1.4 In or around May 2003, the Rehabilitator concluded that the Company was insolvent in accordance with the laws of the State of New Hampshire in that its assets were exceeded by its liabilities. The Rehabilitator also concluded that further attempts to rehabilitate the Company would be futile. As a result, on 8 May 2003 the Rehabilitator filed a petition with the New Hampshire Court for an order directing her to liquidate the Company and appointing her as the New Hampshire Liquidator of the Company. That order was granted on 11 June 2003 and was superseded by an order dated 13 June 2003. On 13 August 2003, Ms Rogers' tenure as the Commissioner of Insurance for the State of New Hampshire expired and the Governor of New Hampshire appointed Mr Roger Sevigny as her successor. As a consequence, Mr Sevigny became the New Hampshire Liquidator on the same date.
- 1.5 On 8 May 2003, the Company, acting by the Rehabilitator, presented a winding up petition to the English Court. On the same day, pursuant to an application by the Rehabilitator, Gareth Hughes and Margaret Mills, partners in the firm of Ernst & Young LLP, were appointed Joint Provisional Liquidators of the Company in order to safe-guard and protect the assets of the Company located in England and Wales.

**2. WHY HAVE YOU BEEN SENT THIS DOCUMENT?**

- 2.1 This document contains a proposal for a Scheme (under section 425 of the Companies Act 1985) between the Company and its AFIA Creditors. This proposal is made by the Joint Provisional Liquidators with the support of the New Hampshire Liquidator. The proposed Scheme will only apply to the creditors of the Company in respect of treaty reinsurance business underwritten by the Company's UK branch through AFIA. As such, this document has been sent to those parties who the Company's records indicate might be AFIA Creditors. However, receipt of this document does not mean that you are an AFIA Creditor or that you will be affected by the Scheme. Where appropriate, you may wish to ask your insurance broker, who should have received a copy of this document, for further details of your involvement with the Company.

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- 2.2 For the avoidance of doubt, this proposal is not directed to parties who are creditors of the Company solely in respect of business underwritten through the Weavers or Driver agencies.

**3. WHAT IS A SCHEME OF ARRANGEMENT AND HOW DOES IT BECOME BINDING?**

A scheme of arrangement, such as that which is proposed here, is an arrangement between a company and its creditors or any class of them as prescribed by section 425 of the Companies Act 1985. It becomes legally binding on a company and its affected creditors if:

- 3.1.1 a majority in number representing not less than 75% in value of the affected creditors, present and voting in person or by proxy, vote in favour of the scheme at a specially convened meeting;
- 3.1.2 the English Court subsequently makes an order approving the scheme; and
- 3.1.3 an office copy of that order is delivered to the Registrar of Companies in England.

**Please note that even when the steps referred to in this paragraph 3 have been taken, this Scheme will not become effective until the conditions described in Section E paragraph 14 have been fulfilled. If the Scheme becomes effective, it will bind all AFIA Creditors, whether or not any particular AFIA Creditor was notified of the Scheme and whether or not such AFIA Creditor voted for the Scheme.**

**4. WHY HAS THE SCHEME BEEN PROPOSED?**

- 4.1 When the Rehabilitator applied for the appointment of Joint Provisional Liquidators in respect of the Company it was recognised that, since the Company's place of incorporation was in the United States, the New Hampshire Liquidation should be the primary insolvency proceeding in respect of the Company. As a result, it was proposed (and accepted by the English Court) that the English winding up proceedings should be ancillary to the New Hampshire Liquidation.
- 4.2 Consistent with this, the order of the English Court appointing the Joint Provisional Liquidators contemplates that, following the appointment of the New Hampshire Liquidator, the Joint Provisional Liquidators should exercise their powers as requested and approved by the New Hampshire Liquidator, save where the English Court otherwise directs and save where to do so would cause them to contravene English law. At the hearing of the Rehabilitator's application to appoint Joint Provisional Liquidators, the English Court was not at that stage invited to allow assets situated within England and Wales to leave England. The English Court was informed that a further application (if appropriate) would be made if it was decided to seek the remission of such assets to New Hampshire for administration and distribution as part of the New Hampshire Liquidation. In addition, at a separate meeting with the FSA, the Joint Provisional Liquidators undertook to notify and consult with the FSA prior to any such application to the English Court.
- 4.3 Given that the Company is a New Hampshire – incorporated and domiciled insurance company subject to primary insolvency proceedings in New Hampshire, the administration and distribution of the estate under a single legal system would necessarily entail the application of New Hampshire insurance insolvency law and practice. Certainly, the English Court would expect English-situs assets to be remitted

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to New Hampshire in order to be distributed under New Hampshire insolvency law and practice unless creditors as a whole were likely to suffer any material substantive disadvantage as a result of such remission.

- 4.4 As a result, the New Hampshire Liquidator and the Joint Provisional Liquidators conducted a review of the comparative advantages and disadvantages of, on the one hand, a single administration of the Company's assets worldwide in accordance with New Hampshire insolvency law and practice and, on the other hand, a dual New Hampshire and English based administration (under which English-situs assets would be dealt with under an English procedure) in order to ascertain whether or not creditors as a whole were likely to suffer any material substantive disadvantage by reason of English assets being remitted to New Hampshire.
- 4.5 In short, having taken New Hampshire and English legal advice (including advice from English leading counsel), the New Hampshire Liquidator and the Joint Provisional Liquidators concluded that there were no material differences between the insolvency law applicable to an insurer like the Company in New Hampshire and that applicable in England and Wales, that creditors of the Company as a whole would not suffer any material substantive disadvantage if the liquidation of the Company were to be carried out in New Hampshire and that, therefore, there was no justification for a separate English insolvency proceeding to deal with the English-situs assets.
- 4.6 One significant common feature of New Hampshire and English insolvency law applicable to insurance companies is that in the liquidation of an insurance company holders of "insurance claims" – i.e. direct policyholders worldwide – rank ahead of reinsurance creditors in order of priority of payments from the insolvent estate. In England and Wales this priority is imposed by means of the Insurers (Reorganisation and Winding up) Regulations 2004 which implements Directive 2001/17/EC of the European Parliament on the reorganisation and winding up of insurance undertakings. Whilst the ultimate deficiency of assets to pay the Company's liabilities is not yet known to either the New Hampshire Liquidator or the Joint Provisional Liquidators, it seems unlikely that reinsurance creditors of the Company (which would include the vast majority, if not all, of the AFIA Creditors) will receive anything by way of distribution from the liquidation of the Company, either in New Hampshire or in England.
- 4.7 Due to the junior ranking afforded to reinsurance creditors under New Hampshire insolvency law, AFIA Creditors presently have an economic disincentive to prosecute their claims against the Company for agreement in the New Hampshire Liquidation. The direct consequence of this disincentive to prosecute claims would be that the Company, in turn, would have no right to seek an indemnity from Century Indemnity Company ("CIC") and/or Century International Reinsurance Company Limited ("CIRC") pursuant to the respective indemnity/reinsurance arrangements between the Company and those parties (which are described in more detail in Section C; paragraphs 4 to 6 below), notwithstanding that the AFIA Creditors will inevitably have suffered insured losses which in the ordinary course would have been submitted to the Company for payment. Thus, the AFIA Creditors suffer because they are incurring losses on their own inwards exposures without receiving any reinsurance payments from the Company under the AFIA Treaties, whilst the generality of creditors of the Company likewise suffer because of the absence of indemnity/reinsurance receipts from CIC and/or CIRC (which would otherwise swell the assets available for distribution to the generality of the Company's creditors). Indeed, the only parties which benefit from this state of affairs would be CIC and CIRC themselves, who would gain a windfall advantage. The purpose of the proposed

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Scheme – which has been developed following consultation with the Informal Creditors’ Committee and the FSA – is to redress this imbalance by providing that any indemnity/reinsurance recoveries received by the Company in respect of its liabilities under the AFIA Treaties will be shared (subject to certain deductions) on a 50:50 basis with the AFIA Creditors. This “sharing” arrangement should at least partially remove the AFIA Creditors’ disincentive to prosecute valid claims against the Company caused by the Company’s insolvency (and the junior ranking therein of reinsurance creditors), whilst preserving the integrity of the indemnity/reinsurance arrangements between the Company and CIC/CIRC, because valid and properly adjusted claims against the Company can trigger recovery from CIC/CIRC under the indemnity/reinsurance arrangements between those entities and the Company.

- 4.8 Following consultation between the New Hampshire Liquidator and the principal creditors of the Company in the New Hampshire Liquidation, the New Hampshire Liquidator filed a motion seeking the New Hampshire Court’s approval of the proposed “sharing” arrangement. Two objections to this motion were filed by parties who assert that they are creditors of the Company (the “**Objecting Parties**”). The New Hampshire Court rejected such objections and issued an order granting the New Hampshire Liquidator’s motion (the “**New Hampshire Approval Order**”). The Objecting Parties are currently appealing against the New Hampshire Approval Order.

**5. WHAT DOES THE SCHEME PROVIDE?**

- 5.1 The purpose of the Scheme is, firstly, to set aside as a separate ring-fenced ‘fund’ (to be known as the “**Scheme Assets**”) the 50% share of the indemnity/reinsurance proceeds as described in paragraph 4.7 above and, secondly, to distribute those Scheme Assets to the AFIA Creditors in accordance with the rules of the Scheme. In particular, the Scheme provides that:

5.1.1 AFIA Creditors’ claims shall be established in the New Hampshire Liquidation in accordance with the Claims Procedure Order;

5.1.2 the Scheme Administrators shall pay distributions out of the Scheme Assets to AFIA Creditors with established claims by reference to a Payment Percentage fixed by the Scheme Administrators in consultation with the Creditors’ Committee;

5.1.3 in fixing the Payment Percentage the Scheme Administrators must consider that there will be sufficient funds available when needed to pay the same Payment Percentage to AFIA Creditors whose claims are established in the future. The Scheme permits the Scheme Administrators to make certain assumptions about future cashflows when making this assessment.

- 5.2 In addition, the Scheme provides a mechanism for accelerating the payment of distributions to AFIA Creditors out of Scheme Assets and effecting an early closure of the Scheme.

**6. RISK FACTORS**

- 6.1 AFIA Creditors should bear in mind, without limitation, the following risk factors:

**Impact upon reinsurance/indemnity contracts protecting the AFIA Treaties**

- 6.2 The New Hampshire Liquidator and the Joint Provisional Liquidators have taken legal advice on the impact of the Scheme upon the indemnity and reinsurance contracts which protect the AFIA Treaties (which are described in more detail in Section C:

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paragraphs 4.4 and 4.6 below) and are satisfied that the Scheme does not prejudice the validity or value of those contracts. However, the Company cannot give any assurance that the counterparties to those contracts will not assert that the Scheme or its operation entitles them to deny liability (in whole or in part) for losses ceded to them by the Company under those contracts.

**Performance of the Company's reinsurers/indemnitors**

- 6.3 The timing and quantum of distributions under the Scheme will be entirely dependent upon the Company making collections from its indemnitors/reinsurers or, where applicable, from their guarantor. The Company cannot give any assurance as to what defences those parties may raise as grounds upon which to refuse to make payments, nor as to the ultimate solvency of any of those parties.

**Setting of the Payment Percentage**

- 6.4 Whilst the key principle underlying the scheme is essentially to distribute the Scheme Assets *pro rata* amongst all AFIA Creditors as and when their claims are established, the provisions of the Scheme controlling the fixing of the Payment Percentage entail a risk that the assumptions which the Scheme Administrators make when fixing the Payment Percentage (in particular, with respect to likely ultimate liabilities and to likely cash recoveries from the Company's reinsurers/indemnitors/guarantor) may turn out to be incorrect, with the result that too much money may be paid out too soon to certain AFIA Creditors. Whilst the Scheme contains certain provisions which ameliorate this risk, the Scheme nevertheless carries with it the risk that ultimately the Scheme Assets will not be distributed strictly *pro rata* amongst all AFIA Creditors.

**7. RECOMMENDATION**

- 7.1 The proposed Scheme offers to AFIA Creditors the real prospect of receiving a (possibly material) payment from the Company in respect of their claims. If the proposed Scheme is not approved, AFIA Creditors will rank as junior creditors in the New Hampshire Liquidation behind direct insureds and will most likely receive no distribution from the insolvent estate.
- 7.2 The Joint Provisional Liquidators, Gareth Hughes and Margaret Mills, as prospective Scheme Administrators, as well as Roger Sevigny, the New Hampshire Liquidator, have satisfied themselves that the Scheme is in the best interests not only of the AFIA Creditors but also of the generality of ordinary creditors of the Company and accordingly recommend that AFIA Creditors who are entitled to do so vote for the Scheme.
- 7.3 The members of the Informal Creditors' Committee have considered the advantages of the Scheme and, on the basis of the information contained in this document, have confirmed to the proposed Scheme Administrators that they intend to vote in favour of the Scheme.

**8. WHAT ARE YOU REQUIRED TO DO?**

- 8.1 All Scheme Creditors with agreed, outstanding or IBNR claims are entitled to vote on the Scheme.
- 8.2 Enclosed with the document you will find a voting form (consisting of a form of proxy and claims table) for voting at the Scheme Creditors' meeting. An explanation of how your claim against the Company is to be valued for voting purposes and guidance notes and instructions for completion of the voting form are set out on pages 84 to 95.

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- 8.3 If you are a Scheme Creditor, you are entitled to vote at the Scheme Creditors' meeting either in person (or, in the case of corporations, by a duly authorised representative) or by proxy. If you wish to appoint a proxy, please complete the form of proxy in the voting form where appropriate. This will not prevent you from attending in person at the Scheme Creditors' meeting.
- 8.4 The voting form should be returned to the Company at:
- Ernst & Young LLP  
1 More London Place  
London SE1 2AF
- for the attention of: Gareth Hughes/Sarah Ellis
- Facsimile: +44 20 7951 9002
- 8.5 In order to have your vote counted, the voting form (or a faxed copy) must be submitted to the above address by 5.00 p.m. on 6 September 2004 or at the start of the Scheme Creditors' meeting. However, it would be appreciated if you were to return the voting form in advance. Please also be aware that, if the original of a faxed voting form is not received within 7 days of the Scheme Creditors' meeting, it may not be counted.
- 8.6 You are required to estimate the amount of your present and future claims, if any, against the Company for voting purposes only. Claims will be admitted at the agreed amount or at an estimated amount in the case of claims which have been reported but not established or incurred but not reported, less the amount of any known letters of credit, trusts, mortgages, charges, liens, other security interests or set-off.
- 8.7 You will need to provide particulars of any estimated claim and include details of the basis upon which the figure has been calculated. In this respect you may wish to discuss with your insurance broker or other professional adviser the estimate of any claim. The chairman of the Scheme Creditors' meeting (who is to be one of the Joint Provisional Liquidators) will review these claims and will determine whether or not any estimates are fair and reasonable before they are counted for voting purposes. It is your responsibility to provide sufficient information to enable the chairman of the Scheme Creditors' meeting to judge whether and to what extent, your estimate of each claim can be accepted for voting purposes.
- 8.8 **These estimates will not be relevant for the purpose of establishing or settling claims under the Scheme or the New Hampshire Liquidation; they are for voting purposes only.** Even if you are currently in dispute with the Company with regard to any claim you will still be eligible to vote at the Scheme Creditors' meeting. Acceptance of a Scheme Creditor's estimate of any claim for voting purposes will not prejudice either party's rights to dispute the claim for any other purpose.
- 8.9 Particulars as to estimates of the amount of any future claims furnished by a Scheme Creditor for voting purposes may not be protected by privilege under English law (or any other relevant laws) and may be discoverable at the instance of a third party with a claim against the Scheme Creditor in any action or proceedings to which the Scheme Creditor may be party. **You should consult your own legal adviser as to the consequences for you or furnishing such particulars in the event you may be, or may become, involved in any litigation.**



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**9. THE SCHEME CREDITORS' MEETING**

The Scheme Creditors' meeting will be held on 8 September 2004 commencing at 10.30 a.m. at the offices of Clifford Chance Limited Liability Partnership, 10 Upper Bank Street, London E14 5JJ.

**10. AFTER THE SCHEME CREDITORS' MEETING**

After the Scheme Creditors' meeting the votes must be checked and verified. This process may take several days depending on the number of votes cast.

**11. SANCTION BY THE ENGLISH COURT**

11.1 If approved by the requisite majority of Scheme Creditors, the English Court's sanction of the Scheme is then required. The order of the Court sanctioning the Scheme will be delivered to the Registrar of Companies in England. The Scheme will not, however, become effective until the conditions described in Section E: paragraph 14 have been fulfilled.

11.2 Notification of the Effective Date of the Scheme will appear in the Financial Times (all editions), Times (UK national edition), New York Times (USA national edition), Wall Street Journal (international edition), Business Insurance, Insurance Day (London) and Lloyd's List (London).

**12. EFFECTIVE DATE OF THE SCHEME**

It is anticipated that if the English Court sanctions the Scheme, it will become effective in October 2004.

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**HISTORY OF THE UK BRANCH BUSINESS**

**1. THE UK BRANCH BUSINESS**

As already explained in Section B: paragraph 1.2 above, the business of the Company's UK branch principally consisted of two portfolios both of which were in run-off:

1.1.1 assumed reinsurance business underwritten through AFIA; and

1.1.2 business underwritten through Weavers and Driver by City prior to the merger of City with the Company in 1995.

**2. AFIA**

2.1 AFIA business in the UK was written in the names of the Company and St Paul Fire & Marine Insurance Company Limited, these being the only members of AFIA who were authorised to write insurance business in the UK. The Company effectively acted as a fronting company for the other AFIA members on the basis that it assumed the primary liability on AFIA business and reinsured that risk with the other AFIA members in accordance with Article XI of the AFIA Constitution. Three types of business were written by the Company as a front for AFIA – direct, marine & aviation and treaty reinsurance.

2.2 On 31 January 1984, pursuant to a purchase agreement, subsidiaries of CIGNA Corporation (“CIGNA”) acquired AFIA. It was one of the terms of the purchase agreement that CIGNA would use its best endeavours to procure a formal transfer by novation of the underlying business (i.e. the direct, marine & aviation and treaty reinsurance business) to Insurance Company of North America (“INA”) as soon as practicable but in any event no later than 31 January 1989. As matters transpired, only the direct and marine & aviation businesses were transferred by statutory novation pursuant to section 51 of the Insurance Companies Act 1982 to another CIGNA entity (in July 1986).

2.3 The AFIA treaty reinsurance business (“AFIA Treaties”) was not transferred and the Company remains primarily liable in respect of this business. Around 30% of this business appears to relate to the Ruddy Pool. The Company provides reinsurance cover for four of the six Ruddy Pool members in four separate contracts known as “Treaty R Contracts”. The operation and the structure of the business is explained in more detail in paragraph 4 below.

**3. WEAVERS AND DRIVER AGENCIES**

3.1 City wrote business through two pools managed by Weavers and Driver.

3.2 City participated on the Weavers stamp for the underwriting years 1972 through 1977. During this time Weavers arranged proportional reinsurance with a number of parties and non-proportional reinsurance with Lloyd's, the London market and overseas companies. Approximately 48% of the reinsurers to whom City had ceded reinsurance in respect of its Weavers exposure are currently either subject to insolvency proceedings or have commuted their contracts with the Company.

3.3 City participated in the Driver pool from 1971 to 1973, writing excess of loss reinsurance in the London market.

3.4 For the avoidance of doubt, the Scheme is not directed to parties who are creditors of the Company solely in respect of business underwritten through the Weavers or Driver agencies.

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**4. AFIA – THE STRUCTURE**

**Before the 1984 transfer of AFIA to INA**

- 4.1 The treaty business faced serious potential losses in the early 1980s. As a result, the Company entered into excess of loss arrangements with BAFCO Reinsurance Company Limited of Bermuda (“BAFCO”). BAFCO was one of many separate corporations owned worldwide by the members of AFIA (through a holding vehicle called AFIA Finance Corporation).
- 4.2 Under the first excess of loss reinsurance agreement (“BAFCO 1”) dated 23 December 1982, BAFCO agreed to indemnify Home for 100% of losses arising on or after May 1981 in respect of the Company’s liability arising from its acceptance of six specific treaty business contracts. By a first supplemental excess of loss agreement dated in February 1985 (“BAFCO 3”), BAFCO 1 was deemed to have been effective on and from 1 January 1981.
- 4.3 The second excess of loss reinsurance agreement (“BAFCO 2”) dated 23 December 1982 covered the Company for its entire inwards treaty reinsurance account for all underwriting years up to and including 1982. The cover written was in respect of net losses exceeding \$95 million in the aggregate, up to a limit of \$100 million. Net loss is defined as loss less claims on reinsurance actually recovered.

**The INA Purchase and subsequent changes to the AFIA structure**

- 4.4 INA acquired AFIA under purchase agreements dated 30 December 1983. This transaction included the AFIA Treaties. The purchases were completed on 31 January 1984 in a variety of documents. The three key documents were the “Insurance and Reinsurance Assumption Agreement”, the “Purchase Agreement” and the “Reinsurance Treaty and Management Agreement”, pursuant to which, amongst other matters:
- 4.4.1 certain of AFIA’s business and rights were assigned by AFIA to INA;
- 4.4.2 INA agreed to assume responsibility for the AFIA liabilities of the Company (and other AFIA members);
- 4.4.3 the Company (and other AFIA members) agreed to reinsure INA and others in relation to certain exposures;
- 4.4.4 INA took responsibility for the administration of the run-off of the Company’s AFIA business; and
- 4.4.5 INA was given authority to write new business in the name of the Company and was made responsible for managing the portfolio of new business being written by it in the Company’s name.
- 4.5 As party to the Purchase Agreement, CIGNA agreed to guarantee the performance by INA of, amongst other things, its obligations under the Purchase Agreement and the Insurance and Reinsurance Assumption Agreement.
- 4.6 As noted above, the structure of the Company’s reinsurance protection changed in the wake of the sale. Under the Insurance and Reinsurance Assumption Agreement, INA assumed responsibility for the business which the Company fronted for the AFIA pool, prior to December 1983. As long as the Company remained solvent, INA paid claims direct to the parties insured or reinsured by the Company. In the event of the Company’s insolvency, however, the Insurance and Reinsurance Assumption Agreement expressly provided that INA must make payments direct to the Company or to its liquidator.

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4.7 Two new reinsurance covers were put in place under a single quota share reinsurance agreement (the “**Quota Share**”). Under the Quota Share, the Company and the other AFIA members reinsured INA and certain of INA’s associates (the “**Indemnitees**”):

4.7.1 in relation to “**London Losses**” (i.e. losses on the reinsurance treaty business fronted by the Company in London). Under this the AFIA members provide reinsurance to INA in relation to adverse experience on the reinsurance treaty business fronted by the Company. The cover is 90% of losses between \$335 million and \$600 million. The Company’s share of this is 24.39%. This is net of “**London Outward Reinsurance**” (being certain external third party reinsurances which historically had protected the AFIA Treaties – see further below);

4.7.2 in relation to “**non-recoverable reinsurance**”. This covers the Indemnitees against inability to recover money on the London Outward Reinsurance in respect of London Losses. The Company and the other AFIA members cover the Indemnitees to the extent that such non-recoverable losses exceed \$45.9 million. The Company’s share of the excess above \$45.9 million is 15.12277% (and the total share of all AFIA companies is 50% – i.e. only 50% of the Indemnitees’ shortfall is covered).

4.8 By BAFCO 3, the Company, St Paul Fire & Marine Insurance Company Limited and BAFCO agreed to amend BAFCO 1 and BAFCO 2 in certain respects, including the definition of “net loss” and the provision of no aggregate limits of liability with respect to those covers.

**5. INA’S RESPONSIBILITY FOR RUNNING OFF THE COMPANY’S AFIA BUSINESS**

5.1 The obligations of INA to run off the Company’s AFIA business as a result of the January 1984 purchase, in summary, include:

5.1.1 administration of the run-off of the AFIA Treaties written before June 1983, including settling, defending and paying claims (including Ruddy pool exposures);

5.1.2 payment of all costs and expenses of running off the AFIA Treaties written before June 1983;

5.1.3 making appropriate reinsurance recoveries (e.g. on BAFCO and London Outward Reinsurance); and

5.1.4 management of the portfolio of new business written after June 1983 by the Company through the agency of INA and meeting all costs and expenses of doing so.

**6. THE SUCCESSION OF CIC AND CIRC**

6.1 BAFCO’s reinsurance obligations were assumed by CIGNA International Reinsurance Company Limited when BAFCO merged with that company in December 1992. CIGNA International Reinsurance Company Limited later changed its name to CIRC in 1999.

6.2 With effect from 31 December 1995, INA was divided into two separate corporations, INA and CCI Insurance Company (“**CCI**”). Pursuant to this restructuring, INA was allocated, amongst other things, the name and licenses of the former INA, in-force policies and all but one subsidiary of INA. CCI was allocated, amongst other things, all of the run-off operations of INA. CCI and CIGNA Specialty Insurance Company were then merged into CIC.

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**7. THE CONTINUING LIABILITIES OF THE COMPANY**

The Company remains exposed to two main liabilities in relation to AFIA:

7.1.1 to the AFIA Creditors on the AFIA Treaties (which were not part of the statutory novation to INA in 1986); and

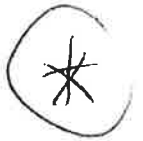
7.1.2 to the Indemnitees under the Quota Share.

**8. THE CONTINUING ASSETS OF THE COMPANY**

The Company's most valuable assets in relation to AFIA are its rights of indemnity and/or reinsurance in respect of its liabilities to the AFIA Creditors on the AFIA Treaties, being:

8.1.1 its cover from INA under the Insurance and Reinsurance Assumption Agreement (and the corresponding Guarantee from CIGNA); and

8.1.2 its cover from BAFCO under the BAFCO reinsurance. However, CIC, as successor to INA, does not accept that the BAFCO reinsurance is the Company's asset. CIC asserts that this reinsurance was assigned to INA in 1984. This remains an open issue.



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**IMPLICATIONS OF THE INSOLVENCY OF THE COMPANY FOR AFIA  
CREDITORS AND DEVELOPMENT OF THE SCHEME PROPOSAL**

1. **The insolvency of the Company has several significant implications for the Company's creditors (including the AFIA Creditors) under New Hampshire law**
  - 1.1 Claims against the Company must be filed with the New Hampshire Liquidator. Accordingly, AFIA Creditors' claims under the AFIA Treaties must be filed with the New Hampshire Liquidator, whereas previously AFIA Creditors only submitted their claims to the ACE Group (as current owners of CIC and CIRC) who would make direct payment to the AFIA Creditors (albeit as agents for and on behalf of the Company pursuant to the authority given to them by the Company under the Insurance and Reinsurance Assumption Agreement).
  - 1.2 The Company's assets must be paid or turned over to the responsible insolvency practitioner (whether the New Hampshire Liquidator or the Joint Provisional Liquidators), vested with the power to collect in the Company's assets. CIC/CIRC must thus make payments under, respectively, the Insurance and Reinsurance Assumption Agreement and the BAFCO reinsurances to such officeholder and not to the AFIA Creditors. In addition, the Insurance and Reinsurance Assumption Agreement contains an insolvency clause specifically requiring that:

*"in the event of the insolvency of [the Company], this reinsurance shall be payable directly to [the Company], or to its Liquidator, ... on the basis of the liability of [the Company] without diminution because of the insolvency of [the Company] or because the Liquidator ... failed to pay all or a portion of any claim";*
  - 1.3 The availability and amounts of any payments on allowed claims against the Company will depend on the available assets of the estate and the statutory priorities, which require that all claims in each successive priority class be paid in full (or adequate funds retained for payment) before any distribution to the next class. The New Hampshire Liquidator considers that the claims of the AFIA Creditors fall into the residual priority class, Class V – significantly, ranking junior to direct insureds in terms of priority. Whilst the ultimate assets of the Company and the total allowed claims in each class are not yet known, it appears unlikely that there will be sufficient assets for the Company to make a significant (or possibly any) distribution to this class. Thus, the AFIA Creditors are unlikely to receive any payment on their claims through distributions from the New Hampshire Liquidation.
2. **These changes to the pre-liquidation arrangements have created disputes and uncertainty over the filing, handling and payment of AFIA Creditors' claims and payment of amounts due under the Insurance and Reinsurance Assumption Agreement and the BAFCO reinsurances**
  - 2.1 AFIA Creditors have so far expressed reluctance to prosecute claims in the New Hampshire Liquidation on the basis that, since the New Hampshire Liquidator considers that they are Class V claimants who are unlikely to receive any distribution from the estate, there is little purpose in their doing so. The New Hampshire Liquidator and the Joint Provisional Liquidators have taken the position that the ability of AFIA Creditors to receive payments directly from CIC or from CIRC is precluded by virtue of the factors described in paragraph 1 above.
  - 2.2 Certain of the AFIA Creditors had been exploring alternative means of realising recovery with respect to the business protected by the AFIA Treaties, including possible circumvention of the Company by entering into side arrangements with the ACE Group (as current owners of CIC and CIRC). The New Hampshire Liquidator and the Joint Provisional Liquidators advised the ACE Group and the AFIA Creditors

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concerned that any such side arrangements would not be countenanced, would be subject to legal challenge and could lead to potential duplicative liability on the parts of the ACE Group.

- 2.3 Certain AFIA Creditors have questioned the application of New Hampshire claims and distribution procedures to claims and assets located in the United Kingdom, thereby raising the potential for complex international conflict of law questions.

**3. AFIA Proposal**

- 3.1 Resolution of these and other issues could require complex, protracted and costly litigation in both the United States and England. In the circumstances, the Joint Provisional Liquidators, supported by the New Hampshire Liquidator, sought to negotiate a compromise settlement to avoid competing claims to proceeds under the Insurance and Reinsurance Assumption Agreement and its BAFCO reinsurances and to facilitate a global liquidation. Thus, the New Hampshire Liquidator and the Joint Provisional Liquidators conducted discussions with members of the Informal Creditors' Committee established pursuant to the English Court's Order. The Informal Creditors' Committee includes most of the principal AFIA Creditors. These discussions culminated in a series of agreements entered into between the Joint Provisional Liquidators and the members of the Informal Creditors' Committee. These agreements serve in essence as a term sheet for the proposed Scheme. Copies of the signed agreements are available for inspection as provided in Section H: Appendix 3.

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**OPERATION OF THE SCHEME**

**1. DISPOSITION OF GROSS PROCEEDS**

- 1.1 All cash recoveries received from the AFIA Reinsurers (or from the Guarantor) will be subject to the following deductions; (i) the costs of the English provisional liquidation; (ii) the costs of collecting the Gross Proceeds; (iii) the costs of negotiating, implementing and carrying out the Scheme, including the costs of obtaining approvals for the Scheme proposal from the New Hampshire Court and the English Court, as well as from the FSA; (iv) the remuneration and expenses of the Scheme Administrators; (v) costs incurred by the Company in handling and managing claims; and (vi) payment to the Company of a sum equivalent in value to that element of the Gross Proceeds which have been generated by the claims of Scheme Creditors which will themselves be settled by way of off-set (between the Scheme Creditor concerned and the Company) against the obligation of the Scheme Creditor concerned to make a payment to the Company (for example, under a separate contract pursuant to which the AFIA Creditor agreed to reinsure the Company). The sums left after making these deductions shall be known as the “Net Proceeds”.
- 1.2 To the extent that there are insufficient Gross Proceeds from which to make the deductions referred to in paragraph 1.1 above, the Company will pay such costs as an administrative expense of the New Hampshire Liquidation. The Company shall provide the Creditors’ Committee with a periodical statement of all deductions made from Gross Proceeds.

**2. DISPOSITION OF NET PROCEEDS**

The Company shall deduct from Net Proceeds any amounts which are payable by it under the Scheme in respect of the indemnities given to the Scheme Administrators and the Creditors’ Committee. 50% of the proceeds remaining after this deduction has been made shall be transferred to or retained by the New Hampshire Liquidator, who will aggregate those funds with the rest of the estate under his control for the purpose of making distributions in accordance with the New Hampshire Liquidation. The other 50% – which will form the principal part of the Scheme Assets – shall be transferred to the Scheme Administrators, who will distribute them essentially on a *pari passu* basis (as far as reasonably practicable) to the Scheme Creditors according to the value of their Scheme Claims against the Company, as those claims are determined in the New Hampshire Liquidation. In addition, any adverse costs proceeds received from an AFIA Reinsurer or the Guarantor will be credited to the Scheme Assets for payment direct to the Scheme Creditor concerned – see further paragraph 3 below.

**3. ADVERSE COSTS PROCEEDS**

Where a Scheme Creditor has, in the context of either a disputed claim proceeding in the New Hampshire Liquidation or another dispute resolution proceeding permitted under the Scheme, obtained an adverse costs order against the Company, that adverse costs order shall not rank as an administrative expense in the New Hampshire Liquidation. Rather, the Scheme Creditor shall only be paid such adverse costs as are payable under that order to the extent that the Company recovers any cash from an AFIA Reinsurer or the Guarantor with respect to such adverse costs. Any amount so recovered by the Company will be credited to the Scheme Assets and paid in full (in the same currency in which it was received from the AFIA Reinsurer or Guarantor concerned) to the relevant Scheme Creditor in priority to any distribution of Scheme Assets to Scheme Creditors.



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**4. ESTABLISHMENT OF LIABILITIES**

- 4.1 Once a Payment Percentage has been set, a Scheme Creditor shall only become entitled to a distribution out of Scheme Assets if and to the extent that his Scheme Claim has become an Established Scheme Liability. Pursuant to the terms of the Scheme, a Scheme Creditor is required to have submitted a proof of claim in respect of his Scheme Claim in the New Hampshire Liquidation by 13 June 2004. Proofs of claim received after this filing deadline may be accepted by the New Hampshire Liquidator in certain circumstances. If, however, such a proof of claim is excluded by the New Hampshire Liquidator, it would then be ineligible for participation in the Scheme. For further information regarding the administration and adjudication of Scheme Claims, please refer to Section F.
- 4.2 Once admitted in the New Hampshire Liquidation, the Scheme Claim shall become an Established Scheme Liability under the Scheme, after account has been taken of (i) any security over the Company's property which the Scheme Creditor is entitled to enforce as a matter of New Hampshire law; (ii) any letter of credit issued by, or trust created in respect of, the Company of which the Scheme Creditor is a beneficiary; (iii) any right of set-off which may be taken into account as a matter of New Hampshire law and (iv) any recoveries made by the Scheme Creditor in respect of such Scheme Claim in the New Hampshire Liquidation.

**5. SETTING THE PAYMENT PERCENTAGE**

- 5.1 On the Effective Date and thereafter on 31 December each year (unless the Scheme Administrators, in consultation with the Creditors' Committee, determine otherwise) (the "**Review Date**"), the Scheme Administrators must consider whether it is appropriate to set a Payment Percentage or revise a previously set Payment Percentage.
- 5.2 In setting a Payment Percentage, the Scheme Administrators will seek to ensure that they will have sufficient Scheme Assets to pay to all Scheme Creditors whose Scheme Claims become Established Scheme Liabilities during the existence of the Scheme the same Payment Percentage, even if some Scheme Claims have not been established as at the date on which the relevant Payment Percentage is set. In order to make a determination as to the level at which to set the Payment Percentage, the Scheme Administrators are entitled to take into account the Scheme Assets currently in their possession as well as the Scheme Assets which they consider are likely to be received by them in the future.
- 5.3 In setting the Payment Percentage, the Scheme Administrators are also entitled to assume, if such assumption is approved by the Creditors' Committee and is not manifestly unreasonable, that the ratio of cash recoveries received from any AFIA Reinsurer and/or the Guarantor to Scheme Claims established in the period commencing with the last Review Date and ending on the Review Date concerned will remain consistent in future years, after making due allowance for any set-off. An example of when this assumption may become "manifestly unreasonable" is where an AFIA Reinsurer and/or the Guarantor become or appear likely to become insolvent.
- 5.4 The Scheme Administrators are entitled to reduce the level of the Payment Percentage if they consider that there will not be sufficient Scheme Assets to pay the same Payment Percentage to all Scheme Creditors whose Scheme Claims eventually become Established Scheme Liabilities. If the Scheme Administrators do reduce the Payment Percentage, a Scheme Creditor who has received the higher Payment Percentage will not be required to make a repayment to the Scheme Administrators. However, such a Scheme Creditor will not be entitled to receive any further payments if a further

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payment would mean that the total amount paid to him would be greater than the then current Payment Percentage in respect of his Established Scheme Liability. If information comes to light concerning the financial position of the Company as a result of which the Scheme Administrators are required to consider whether or not to set a reduced Payment Percentage, the Scheme Administrators may suspend payments to Scheme Creditors for up to six months to allow them to reassess the Company's financial position and the level of the Payment Percentage.

**6. PAYMENTS TO SCHEME CREDITORS**

- 6.1 Once the initial Payment Percentage has been set, Scheme Creditors with Established Scheme Liabilities as at that date will be paid the initial Payment Percentage out of the Scheme Assets as soon as possible but in any event within 90 days. If the Payment Percentage is subsequently increased, Scheme Creditors with Established Scheme Liabilities will be paid an additional amount so that the amount received in respect of their total Established Scheme Liability will be equal to the then current Payment Percentage.
- 6.2 Scheme Creditors whose Scheme Claims become Established Scheme Liabilities after the date upon which a Payment Percentage is initially set or increased shall be paid the current Payment Percentage as soon as possible, but in any event within 90 days of the date on which their Scheme Claim becomes an Established Scheme Liability.
- 6.3 Scheme Creditors should be aware that amounts payable to a Scheme Creditor of less than US\$100 in aggregate will not be paid until the Scheme terminates, unless the Scheme Creditor requests such payment.

**7. CURRENCY OF PAYMENT AND CALCULATION**

Subject to the payment of adverse costs proceeds as described in Section E, paragraph 3 above, Scheme Creditors will be entitled to receive payments under the Scheme in US dollars. An Established Scheme Liability which was incurred in a currency other than US dollars will be converted at the rate prevailing for the relevant currency on 8 May 2003, as published in the United States national edition of the Wall Street Journal on 9 May 2003. Any amounts to be deducted by way of set-off from an Established Scheme Liability shall, if denominated in a currency other than US dollars, be converted to US dollars as at the rate prevailing on 8 May 2003.

**8. ENFORCEMENT OF RIGHTS OUTSIDE THE SCHEME**

- 8.1 Scheme Creditors are prohibited from attempting to make any arrangement with an AFIA Reinsurer (in its capacity as a reinsurer and/or indemnitor of the Company in respect of the AFIA Treaties) and/or the Guarantor (in its capacity as the guarantor and/or indemnitor under the Guarantee), under which they seek to receive, whether directly or indirectly, any payment from that AFIA Reinsurer and/or the Guarantor in respect of their Scheme Claim.
- 8.2 Scheme Creditors are also prohibited from taking any proceedings against the Company for the purpose of establishing or enforcing the payment of a Scheme Claim, unless (i) the Scheme Creditor has obtained the consent of the Company to take such proceedings or (ii) the Scheme Creditor's action is by way of a counterclaim to proceedings commenced or continued by the Company (provided that the Scheme Claim arises out of the same transaction as that which is the subject of the Company's claim and the Scheme Claim does not require for its adjudication the presence of third parties over whom the court or tribunal does not have jurisdiction).

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8.3 If a Scheme Creditor does take any proceeding prohibited by the Scheme and as a result obtains any money, property or advantage at the expense of the Company, then without prejudice to any other remedy which the Company may have, the Scheme Creditor will be treated as having received an advance payment under the Scheme equal to the amount of any money, property or advantage obtained by the Scheme Creditor at the expense of the Company and the extent, if any, to which the Scheme Creditor is entitled to be paid a Payment Percentage under the Scheme will be reduced.

**9. RIGHTS IN RELATION TO SECURITY INTERESTS, TRUSTS, LETTERS OF CREDIT AND SET-OFF**

9.1 If a person has a security interest or is the beneficiary of a letter of credit or trust which can be enforced as a matter of New Hampshire law, nothing in the Scheme affects the proper enforcement of the letter of credit, trust or other security interest.

9.2 A Scheme Creditor who is under any liability to the Company may rely on any set-off upon which he could have relied as a matter of New Hampshire law. The way in which the New Hampshire Liquidator intends to apply set-off is discussed further in Section F: paragraph 4.

**10. COMMUTATIONS AND OTHER ARRANGEMENTS**

10.1 The Scheme recognises that the Company may enter into a commutation with an AFIA Reinsurer and/or the Guarantor whereby all or part of the liability of the AFIA Reinsurer or the Guarantor to the Company is discharged in full in consideration for a payment (in full or in part) by such AFIA Reinsurer or the Guarantor (or on their behalf) to the Company.

10.2 The Scheme provides that, prior to entering any such arrangement, the Company must consult with the Scheme Administrators and the Creditors' Committee as to any proposed commutation and provide the Creditors' Committee with all documentation relevant to the proposed commutation. In addition the Company must provide notice of any application to the New Hampshire Court to approve the terms of the proposed commutation.

10.3 The Company must advise the Scheme Administrators of any commutation agreement or similar compromise arrangement which is agreed with all or substantially all (by value) of the AFIA Reinsurers and/or the Guarantor. The Scheme Administrators, if requested by the Creditors' Committee, will then be required to call a Scheme Creditors' meeting for the purpose of passing a special resolution.

**11. SPECIAL RESOLUTION PROCEDURE**

11.1 If the Scheme Administrators call a meeting in accordance with paragraph 10.3, the Scheme Creditors may pass a special resolution (the "**Special Resolution**") which will trigger an accelerated claims valuation procedure under the Scheme. Under this procedure, Scheme Creditors' unliquidated Scheme Claims (including outstanding losses and IBNR items) will be subjected to a once-and-for-all valuation in order to produce a crystallised claim against the Company. In the first instance, the Scheme Administrators will seek to agree the existence and amount of a Scheme Creditor's Scheme Claim with the Scheme Creditor concerned. If no agreement is reached between the Scheme Administrators and the Scheme Creditor, the Scheme Administrators may refer the disputed Scheme Claim to an adjudicator appointed for the purpose.

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- 11.2 Once all Scheme Creditors' claims have been crystallised in this manner, the Scheme Administrators will distribute the remaining Scheme Assets to the Scheme Creditors on the basis of those crystallised figures. This valuation procedure would be implemented solely for the purpose of distributing the Scheme Assets and would not bind the New Hampshire Liquidator for the purposes of the New Hampshire Liquidation.
- 11.3 After the passing of a Special Resolution, all costs incurred in implementing the Scheme will be deducted from Scheme Assets, rather than from Gross Proceeds or Net Proceeds.

**12. INTEREST ON SCHEME CLAIMS**

Scheme Creditors will only receive payments in respect of interest as part of an Established Scheme Liability where, as a matter of New Hampshire law, that Scheme Creditor is entitled to interest in the New Hampshire Liquidation.

**13. INVESTMENT POLICY**

The Scheme Administrators have the power to invest all or any of the Scheme Assets in their possession, as they consider prudent from time to time. However, they shall invest the Scheme Assets in accordance with the investment policy to be formulated by the Scheme Administrators from time to time in consultation with the Creditors' Committee. In the absence of such a policy, the Scheme Administrators are required to invest any Scheme Assets held by them in accordance with prescribed provisions of the Trustee Investments Act 1961.

**14. CONDITIONALITY OF THE SCHEME**

The effectiveness of the Scheme will be conditional upon (i) the making of the New Hampshire Approval Order (in respect of which, see Section B, paragraph 4.8); (ii) the making of an order by the English Court (whereunder the English Court approves the remission of the Company's assets (save for the Scheme Assets) to the New Hampshire Liquidator for administration and distribution as part of the New Hampshire Liquidation) (the "Global Liquidation Order"); and (iii) the approval (or non-objection) of the FSA.

**15. DURATION OF THE SCHEME**

- 15.1 The duration of the Scheme will be dependent on (i) the extent to which it is possible to reach an agreement for the commutation of all or substantially all (by value) of the liabilities of the AFIA Reinsurers and/or the Guarantor and (ii) to the extent that no commutation agreement is reached, the length of time it takes for Scheme Claims to become crystallised and established. As a result, it is not currently possible to estimate how long the Scheme will last.
- 15.2 However, the Scheme will terminate if:
- (a) all the liabilities of the Company to the Scheme Creditors have been discharged in full; or
  - (b) the Scheme Administrators, with the agreement of the Creditors' Committee and the New Hampshire Liquidator, conclude that the Scheme is no longer in the interests of the Scheme Creditors as a whole;
  - (c) a resolution that the Scheme should be terminated is passed at a meeting of the Scheme Creditors, subject to the agreement of the New Hampshire Liquidator;
- or

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- (d) the New Hampshire Liquidator determines in his sole discretion (following consultation with the Scheme Administrators and Creditors' Committee) that the Scheme should terminate in the event that the New Hampshire Supreme Court enters a decision which has the effect of disapproving the proposal for the implementation of the Scheme.

The New Hampshire Liquidator, in deciding whether or not to agree to the Scheme's termination in the circumstances described in sub-paragraphs (b) and (c) above, would consider whether termination would be in the interests of the Company's creditors as a whole.

**16. TAXATION**

**Each Scheme Creditor who receives this document is strongly advised to consult his professional advisers as to his own tax position.**

The issue of taxation under the Scheme arises in two contexts; namely, the position of the Company and the position of the Scheme Creditors.

**The position of the Company**

- 16.1 Under the Scheme, none of the Company's liabilities to Scheme Creditors will be released or waived. The Joint Provisional Liquidators have been advised that, as no Scheme liabilities will be released or waived, the Scheme will not give rise to taxable trading receipts (arising out of such Scheme liabilities) by the Company under current United Kingdom tax legislation.
- 16.2 The Inland Revenue have required the UK branch of the Company to file a consolidated tax return with St Paul Fire & Marine Insurance Company under the name of "AFIA UK Branch". The AFIA UK Branch has significant past tax losses. We are advised by ACE-INA that historically the Inland Revenue has not permitted the AFIA UK Branch to utilise tax losses to offset any taxation suffered on investment income.

**The position of Scheme Creditors**

- 16.3 The Joint Provisional Liquidators are aware that certain creditors may wish to make deductions in respect of the debts due to them from the Company for United Kingdom tax purposes. In either case the Joint Provisional Liquidators have been advised that there is no difference in principle between tax relief for bad debts available in a liquidation and that available under the Scheme.
- 16.4 It is understood that the majority of Scheme Creditors are resident in the United Kingdom. For United Kingdom tax purposes, Scheme Creditors for whom amounts due from the Company are trading debts should be entitled to a tax deduction for the difference between the amount of the Scheme Claim and the amount of payments expected to be received under the Scheme. Any subsequent payments received under the Scheme in excess of the expected payments would generally be taxable for the Scheme Creditor. It should be noted however, that the amount and timing of taxation of payments received under the Scheme and of any available bad debt relief will depend upon all the particular facts and circumstances as they affect each creditor.

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**ADMINISTRATION AND ADJUDICATION OF SCHEME CREDITORS'  
CLAIMS AGAINST THE COMPANY**

All claims against the Company (including those of Scheme Creditors) must be submitted to the New Hampshire Liquidator, whereupon they will be administered in accordance with the terms of the Claims Procedure Order made by the New Hampshire Court. The full text of the Claims Procedure Order is available for inspection at the address cited in Section H: Appendix 3 and can also be accessed at the following website: [www.state.nh.us/insurance](http://www.state.nh.us/insurance). However, Scheme Creditors must bear in mind the following key features of the claims administration process.

**1. PROOFS OF CLAIM – FILING AND AMENDMENT**

- 1.1 In order to qualify for a distribution under the Scheme, a Scheme Creditor's claim must first be established in the New Hampshire Liquidation in accordance with the Claims Procedure Order. To this end, Scheme Creditors should have filed a proof of claim (the form of which is prescribed in the Order Approving Notice entered June 11 2003) in the New Hampshire Liquidation by no later than the claims filing deadline of **13 June 2004**. Proofs of claim received after this filing deadline may, by statute, be accepted by the New Hampshire Liquidator in certain circumstances. If however proofs of claim are excluded by the New Hampshire Liquidator they would then be ineligible for participation in the Scheme. It is important that Scheme Creditors include details of both liquidated and unliquidated items in their proof of claim (i.e. paid losses, outstanding losses and IBNR items).
- 1.2 Once the initial proof of claim has been submitted, it is possible for Scheme Creditors to amend or supplement their proofs of claim by making supplemental filings as and when individual items mature. The supplemental filings may be made after the claims filing deadline of 13 June 2004 but only if the initial proof of claim has been filed before that date. Where the initial proof of claim is filed late and accepted by the New Hampshire Liquidator, supplemental filings with respect thereto may be made after the date upon which such proof of claim is accepted. Forms of proof of claim can be obtained from the website described above.
- 1.3 There is a mandatory stay on proceedings against the Company as a result of the New Hampshire Liquidation. Thus, resolution of disputed claims must generally be carried out pursuant to the procedures laid down in the Claims Procedure Order and Scheme Creditors' pre-liquidation dispute resolution remedies (including contractual arbitration) will be extinguished, subject to Clause 2.4.1 of the Scheme.

**2. ADMINISTRATION OF SCHEME CREDITORS' CLAIMS**

- 2.1 Notwithstanding the liquidation of the Company, CIC remains obliged to administer the run-off of the AFIA Treaties and CIC is entitled to participate in the claims administration and adjudication procedures set out in the Claims Procedure Order. This includes the right for CIC to interpose defences to Scheme Creditors' claims, if it sees fit. The Company is currently seeking to agree detailed arrangements with CIC with respect to CIC's operational role in the claims administration and adjudication process. It is certainly the New Hampshire Liquidator's firm intention to ensure that, as far as reasonably practicable, CIC will carry out the day-to-day management and administration of claims arising under the AFIA Treaties. With this end in mind, the New Hampshire Liquidator and the Joint Provisional Liquidators envisage that Scheme Creditors' claims will be administered as set out below. Once discussions have been concluded, the Company will circulate to Scheme Creditors an update as appropriate.

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- 2.2 Scheme Creditors should have submitted proofs of claim (as per paragraph 1 above) to the New Hampshire Liquidator at The Home Insurance Company in Liquidation, PO Box 1720, Manchester, New Hampshire 03105-1720 by the claims filing deadline of 13 June 2004. Proofs of claim received after this date may, by statute, be accepted by the New Hampshire Liquidator in certain circumstances. If, however, proofs of claim are excluded by the New Hampshire Liquidator, they would then be ineligible for participation in the Scheme. Scheme Creditors may send a copy of their proofs of claim to ACE-INA Services UK Limited (“ACE-INA”), the agent of CIC, at Kent House, Romney Place, Maidstone, England marked for the attention of M. Durkin Esq. ACE-INA will then adjust the claims submitted.
- 2.3 ACE-INA will not have authority to agree Scheme Creditors’ claims on behalf of the Company. Rather, ACE-INA will make recommendations to the New Hampshire Liquidator with respect to the agreement (or otherwise) of Scheme Creditors’ claims. In practice, the New Hampshire Liquidator is likely in most cases simply to follow the recommendation of ACE-INA with respect to the agreement or rejection of individual claims.
- 2.4 If a Scheme Creditor’s claim is agreed (in whole or in part) by the New Hampshire Liquidator, the New Hampshire Liquidator will issue a notice (“**Notice of Determination**”) to this effect. It will then (after taking account of any applicable set-off and the other items referred to in Section E: paragraph 4.2) become “established” for the purposes of the Scheme and will rank for a distribution (at the then current Payment Percentage level) from the Scheme Assets.
- 3. REJECTION OF SCHEME CREDITORS’ CLAIMS AND APPEALS**
- 3.1 If the New Hampshire Liquidator rejects (in whole or in part) a Scheme Creditor’s claim, the New Hampshire Liquidator shall issue a Notice of Determination to the Scheme Creditor to this effect. Upon receipt of such rejection, the Scheme Creditor may:
- 3.1.1 within 30 days of issue of the Notice of Determination, submit a request (“**Request for Review**”) to the New Hampshire Liquidator, inviting the New Hampshire Liquidator to review his decision. The New Hampshire Liquidator will then issue a notice (“**Notice of Redetermination**”) to the Scheme Creditor in which he will either reconfirm his original determination or amend that determination; and/or
- 3.1.2 within 60 days of issue of the Notice of Determination (or Redetermination), file an objection with the New Hampshire Court. In this event, the Liquidator’s Clerk appointed by the New Hampshire Court will send a Notice of Disputed Claim to the Scheme Creditor concerned, initiating a disputed claim proceeding, which shall be conducted in accordance with the Claims Procedure Order. The resolution of disputed claims will be carried out by the Referee appointed by the New Hampshire Court. Once the Referee issues a decision, a dissatisfied party may appeal to the New Hampshire Court by filing a Motion to Recommit within 15 days in accordance with the Claims Procedure Order. Ultimately, Scheme Creditors will have a right to appeal determinations to the New Hampshire Supreme Court.
- 3.2 The New Hampshire Liquidator wishes to provide a stream-lined process to determine disputed claims by Scheme Creditors and will seek (and, in one instance, has already sought) the approval of amendments to the Claims Procedure Order to accomplish this end once the attributes of these claims are better understood. Therefore, the New

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Hampshire Liquidator will seek approval for amendments to the Claims procedure Order so that, for instance, small claims (those under \$50,000) may be heard at one hearing, without briefing and conferences and scheduling matters may be heard by telephone. The New Hampshire Liquidator will also recommend that hearings in respect of Scheme Claims will be held in England, should the Scheme Creditor concerned so desire. In addition to this, the New Hampshire Liquidator has already obtained the New Hampshire Court's approval to amendments to the Claims Procedure Order to provide that, where the reinsurance contract under which the Scheme Creditor's claim arises contemplates arbitration or other dispute resolution procedures with more limited discovery than that permitted under the Claims Procedure Order, discovery in the disputed claim proceeding (including, without limiting the generality of the foregoing, requests for documents, interrogatories, requests for admissions, or evidence depositions) shall be limited to that available under the contractually contemplated procedures. The New Hampshire Liquidator does not intend to apply to the New Hampshire Court to change this particular provision in the future.

- 3.3 The New Hampshire Liquidator will liaise with ACE-INA at each of the steps outlined above with a view to procuring ACE-INA's active involvement in the processes described therein.

**4. SET-OFF**

- 4.1 Scheme Creditors' set-off rights under the Scheme will be those which apply under New Hampshire insolvency law, which provides, in summary, that set-off of mutual debts and mutual credits between the insolvent insurer and another party are generally permissible, subject to certain specific exceptions. Whilst it is difficult to state with precision how set-off would operate between the Company and a Scheme Creditor in a particular set of circumstances, the New Hampshire Liquidator and the Joint Provisional Liquidators (as prospective Scheme Administrators) recognise that the impact which set-off is likely to have upon payment flows under the Scheme is of significant importance to Scheme Creditors. Therefore, for the purpose of establishing claims under the Scheme and for making distributions thereunder, as well as for the purpose of seeking to collect outstanding reinsurances due to the Company from Scheme Creditors on the Company's ceded business (i.e. where Scheme Creditors have reinsured the Company), the New Hampshire Liquidator and the Joint Provisional Liquidators (as prospective Scheme Administrators) intend to adopt the approach set out below.
- 4.2 **Set-off of the Company's unquantified inwards liabilities against the Company's quantified outwards reinsurance claims** (i.e. where an Scheme Creditor owes a liquidated balance to the Company on the Company's outwards reinsurance): the New Hampshire Liquidator recognises that the Scheme Creditor will wish to seek to off-set its unliquidated claim against the Company against its liquidated reinsurance debt owed to the Company. The New Hampshire Liquidator's likely approach will be, first, to seek to test the robustness of the alleged unquantified inwards liability and, subject to that, to seek to negotiate an agreement with the Scheme Creditor concerned. Under such an agreement, either payment of the liquidated debt will be deferred pending crystallisation of the inwards liability or a cash payment will be made by the Scheme Creditor in respect of its liquidated reinsurance obligation but subject to the establishment of appropriate escrow or similar "claw-back" arrangements to ensure that the Scheme Creditor is permitted to bring into the set-off account its hitherto unliquidated claim against the Company, as and when it is ultimately established.



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- 4.3 **Set-off of the Company's quantified inwards liability against the Company's unquantified outwards reinsurance claim:** if it appears likely that the Scheme Creditor concerned will ultimately be a net Scheme Creditor, the Scheme Administrators will endeavour to negotiate an agreement with the Scheme Creditor concerned whereunder an interim distribution is paid to that Scheme Creditor under the Scheme, possibly subject to an adjustment or escrow mechanism designed to ensure that the Company can ultimately bring its established outwards balances into the set-off account. However, if it is not yet clear whether or not the Scheme Creditor concerned will ultimately be a net Scheme Creditor, or if it appears likely that the Scheme Creditor concerned will ultimately be a net debtor of the Company, the Scheme Administrators are very unlikely to pay any interim distributions to the Scheme Creditor concerned until the position has been clarified.

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**CORPORATE GOVERNANCE**

**1. THE SCHEME ADMINISTRATORS**

- 1.1 A Scheme Administrator must be an individual qualified to act as an insolvency practitioner and whose appointment has been approved by the New Hampshire Liquidator. It is proposed that Gareth Howard Hughes and Margaret Elizabeth Mills, partners in the United Kingdom firm of Ernst & Young LLP, be appointed to act as the first Scheme Administrators, such appointment having been approved by the New Hampshire Liquidator. Their curricula vitae are set out in Section H: Appendix 2.
- 1.2 The Scheme Administrators will be responsible for the control of the Scheme Assets and for administering the Scheme. The Scheme grants wide powers to the Scheme Administrators in order to enable them to give effect to the Scheme. One of the main functions of the Scheme Administrators is to set the Payment Percentage.
- 1.3 In carrying out their functions under the Scheme, the Scheme Administrators must act *bona fide* and with reasonable care in the interests of Scheme Creditors as a whole.
- 1.4 A Scheme Administrator may resign his appointment by giving not less than six months' notice in writing to the New Hampshire Liquidator and to the Creditors' Committee, or such shorter period as he may agree with the Creditors' Committee.
- 1.5 The Scheme Administrators may be removed from office by a resolution passed at a Scheme Creditors' meeting. If any of the Scheme Administrators are so removed, the Scheme Creditors are entitled to appoint at the same meeting one or more (as applicable) new Scheme Administrators, provided that the persons to be appointed are (i) qualified to act in such capacity and (ii) have been approved by the New Hampshire Liquidator. If the Scheme Creditors do not appoint new Scheme Administrators and in any other case where the office of Scheme Administrator is vacated for one of the reasons set out in the Scheme, the Creditors' Committee will be able to appoint persons who are qualified to act in such capacity and who have been approved by the New Hampshire Liquidator as new Scheme Administrators.
- 1.6 The Scheme Administrators' remuneration must be approved by the Creditors' Committee.

**2. RESPONSIBILITY AND INDEMNITY OF THE SCHEME ADMINISTRATORS**

- 2.1 The Scheme provides that acts done or omitted to be done in good faith and with reasonable care by the Scheme Administrators, their respective employees and agents in carrying out their duties or exercising their powers under the Scheme may not be challenged by any Scheme Creditor, and that no such person will be liable for any loss, unless such loss is attributable to his own negligence, default, breach of duty, breach of trust, fraud or dishonesty. In addition, no Scheme Creditor is entitled to challenge the validity of any act done or the exercise of any power (conferred by the Scheme on the Scheme Administrators) in good faith by the Scheme Administrators (or any employee or delegate) in respect of the setting of a Payment Percentage. No such person is liable for any loss arising out of any act or omission relating to his powers in this regard unless such loss is attributable to his own fraud or dishonesty.
- 2.2 The Scheme Administrators, their employees and delegates are entitled to an indemnity out of the Net Proceeds (or, after the passing of a Special Resolution, the Scheme Assets) against all actions, claims, proceedings and demands brought or made against them in respect of any acts done or omitted to be done by them in good faith and, where applicable, with reasonable care in the course of carrying out their duties or exercising their powers under the Scheme.

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**3. THE CREDITORS' COMMITTEE**

- 3.1 The main functions of the Creditors' Committee are to supervise the Scheme Administrators in the carrying out of their functions under the Scheme and to provide the Scheme Administrators with its views on important issues relating to the Scheme. The key instances in which the views of the Creditors' Committee will be sought by the Scheme Administrators will be:
- (a) when the Scheme Administrators are considering at what level to set a Payment Percentage. In particular, the Scheme Administrators will not be entitled to rely upon the assumptions described in Section E: paragraph 5.3 without the express approval of the Creditors' Committee. The Scheme Administrator is also required to consult with the Creditors' Committee (and the New Hampshire Liquidator) with regard to determining whether it is appropriate to obtain financial or other actuarial advice in order to set the Payment Percentage; and
  - (b) where the Company is seeking to enter into a commutation with all or substantially all (by value) of the AFIA Reinsurers and/or the Guarantor.
- 3.2 The Creditors' Committee must act *bona fide* and in the interests of Scheme Creditors as a whole.
- 3.3 The Creditors' Committee may convene, adjourn and otherwise regulate its meetings as it considers appropriate in order to carry out its functions under the Scheme. It is, however, required to meet for the purposes of a receiving a report from the Scheme Administrators on the progress of the Scheme, which report is to be delivered on an approximately annual basis.
- 3.4 The Creditors' Committee has the power to request from the Scheme Administrators specific information concerning the operation of the Scheme. The Scheme Administrators are obliged to give to the Creditors' Committee reasonable information concerning the affairs of the Company and the operation of the Scheme, except where they determine that to divulge such information would be detrimental to the Company or to Scheme Creditors as a whole. The Creditors' Committee must keep information which is provided to them concerning the Scheme strictly private and confidential, unless they have received the prior written consent of the Scheme Administrators.
- 3.5 The Creditors' Committee may consist of between three and nine members (inclusive). The members of the initial Creditors' Committee are listed in Section H: Appendix 1. Subject to certain prescribed exceptions, any individual, company or partnership who is or which is a Scheme Creditor is eligible for appointment as a member of the Creditors' Committee.
- 3.6 When filling any vacancy and appointing additional Creditors' Committee members, the Creditors' Committee must ensure that the composition of the Creditors' Committee is such as to secure a proper balance of the interests of Scheme Creditors as a whole.
- 3.7 Provided that there are vacancies on the Creditors' Committee, an eligible person may be appointed to be a member of the Creditors' Committee by either (i) a resolution passed by at least two-thirds of the Creditors' Committee (but subject always to the consent of the Scheme Administrators and a resolution ratifying that appointment being passed by the Scheme Creditors at the next Scheme Creditors' meeting) or (ii) by a resolution of the Scheme Creditors. The Scheme Creditors may also pass a resolution

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to remove an existing member from the Creditors' Committee, provided that this does not result in the Creditors' Committee having less than the minimum number of members required under the Scheme.

- 3.8 Each member of the Creditors' Committee will be entitled to reimbursement by the Company out of Net Proceeds of its reasonable expenses in attending Creditors' Committee meetings.

**4. RESPONSIBILITY AND INDEMNITY OF THE CREDITORS' COMMITTEE**

- 4.1 The Scheme provides that acts done or omitted to be done in good faith by any member of the Creditors' Committee (or its nominated representative or alternate) in carrying out their duties or exercising their powers under the Scheme may not be challenged by any Scheme Creditor, and that no such person will be liable for any loss, unless such loss is attributable to his own wilful default, fraud, dishonesty or wilful breach of duty or trust.
- 4.2 In addition, no Scheme Creditor is entitled to challenge the validity of any act done or omitted to be done or the exercise of any power conferred upon the Creditors' Committee in good faith by any member of the Creditors' Committee (including a nominated representative or an alternate) in respect of its powers of approval and consultation with the Scheme Administrators in relation to the setting of the Payment Percentage. No member of the Creditors' Committee (nor its nominated representative nor its alternate) is liable for any loss arising out of any such act, omission or exercise of power, unless such loss is attributable to his own fraud or dishonesty.
- 4.3 The Creditors' Committee (their nominated representatives and alternates) are entitled to an indemnity out of the Net Proceeds (or, after the passing of a Special Resolution, the Scheme Assets) against all actions, claims, proceedings and demands brought or made against them in respect of any acts done or omitted to be done by them in good faith in the course of carrying out their duties or exercising their powers under the Scheme.

**5. THE NEW HAMPSHIRE LIQUIDATOR AND THE JOINT PROVISIONAL LIQUIDATORS**

- 5.1 The Scheme recognises that the New Hampshire Liquidator and the Joint Provisional Liquidators are entitled to act on behalf of the Company in collecting Gross Proceeds. The Scheme provides that they will then make the deductions described in the Scheme from Gross Proceeds and Net Proceeds (see further Section E: paragraph 1). After the relevant deductions have been made, the New Hampshire Liquidator and/or the Joint Provisional Liquidator, as appropriate, will transfer 50% of the remaining proceeds to the Scheme Administrators to hold as Scheme Assets. The remaining 50% of the proceeds will be remitted to the New Hampshire Liquidation estate to be applied in accordance with the New Hampshire Liquidation.
- 5.2 The New Hampshire Liquidator has certain rights of approval and consultation under the Scheme. In particular, the New Hampshire Liquidator has the right to approve (i) the appointment or removal of any person who is, or is to be, appointed as a Scheme Administrator (ii) any proposed amendments to the Scheme; and (iii) a proposal of the Scheme Administrators or the Scheme Creditors to terminate the Scheme.
- 5.3 Neither the New Hampshire Liquidator nor the Joint Provisional Liquidators, nor certain prescribed persons working with them or on their behalf, have any liability under the Scheme. Any claim which a Scheme Creditor seeks to bring against the New Hampshire Liquidator must be brought in the New Hampshire Court.

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**6. MEETINGS OF SCHEME CREDITORS**

- 6.1 The Scheme provides for meetings of Scheme Creditors to be held. Meetings will be held when convened by the Scheme Administrators, the Creditors' Committee or when either twenty Scheme Creditors or any ten Scheme Creditors owed liabilities of not less than 10% in value of all Scheme Claims request that meetings be held.
- 6.2 The voting procedure provides the value to be placed on a Scheme Creditor's claim for voting purposes will be the amount of the Established Scheme Liability, less any amounts paid and, in the case of any other Scheme Claim, and for the purposes of that meeting only, the amount reasonably estimated by the Scheme Administrators as being the value of the Scheme Claim.
- 6.3 A resolution may only be passed at a meeting of Scheme Creditors if it is passed by a majority in number representing not less than 75% in value of Scheme Creditors who, being entitled so to do, vote in person or by proxy at that meeting.
- 6.4 The Scheme Administrators must convene a meeting of Scheme Creditors in circumstances where the Company has entered into a commutation with all (or substantially all) by value of the AFIA Reinsurers and/or the Guarantor and the Creditors' Committee have requested that the Scheme Administrators convene a meeting for the purpose of considering a Special Resolution (as further described in Section E: paragraph 11).

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**APPENDIX 1**

**1. INITIAL CREDITORS' COMMITTEE**

The initial members of the Creditors' Committee are as follows:

- (a) Continental Insurance Company New York;
- (b) English and American Insurance Company Limited;
- (c) Equitas Limited;
- (d) Excess Insurance Company Limited;
- (e) KMS/KMSIS (as agent for and on behalf of the KWELM companies and The Bermuda Fire & Marine Insurance Company Limited);
- (f) Mentor UK Limited;
- (g) Riverstone Management Limited (as agent, for and on behalf of Sphere Drake);
- (h) Unionamerica Insurance Company Limited; and
- (i) Zurich Versicherung AG (Deutschland).

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**APPENDIX 2**

**2. CURRICULA VITAE**

**GARETH HOWARD HUGHES**

Gareth Hughes has been a partner in Ernst & Young LLP since 1988. He heads up the Financial Services Restructuring team in London. His formal insolvency assignments in the insurance sector include Mentor Insurance, Municipal Mutual Insurance, Pine Top Insurance, Scan Re Insurance, Ocean Mutual Marine Insurance, The New Cap Re Group, Carolina Re, Taisei Fire & Marine and The Home Insurance Company. Gareth is a Fellow of the Institute of Chartered Accountants in England & Wales and a licensed insolvency practitioner in the UK. He is President of R3, the Association of Business Recovery Professionals in the UK.

**MARGARET ELIZABETH MILLS**

Margaret Mills is a corporate restructuring partner at Ernst & Young LLP, who has been involved in a broad range of industries involving extensive cross border restructuring experience since 1979. She is currently the Global Coordinating partner for the firm's restructuring practices. Her formal insolvency assignments in the insurance sector include acting as joint provisional liquidator of Taisei Fire & Marine Insurance Company and The Home Insurance Company and acting as joint liquidator of Bradstocks Insurance Brokers, Telesure Ltd, P J Mosse & Partners Ltd and Durham Hadley Cannon Ltd, all insurance brokers.

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APPENDIX 3

**3. LIST OF DOCUMENTS AVAILABLE FOR INSPECTION**

- (a) Claims Procedure Order;
- (b) The letter from the Company to AFIA Creditors dated 22 January 2004
- (c) The letter from the Company to AFIA Creditors dated 25 May 2004, and
- (d) New Hampshire Approval Order.

The above documents or copy documents will be available for inspection on the following website:

[www.state.nh.us/insurance](http://www.state.nh.us/insurance)

and, on reasonable notice, at the following locations during ordinary business hours on business days:

Ernst & Young LLP  
1 More London Place  
London SE1 2AJ

Reference: Gareth Hughes/Sarah Ellis

The Home Insurance Company  
59 Maiden Lane  
New York, New York  
10038

Reference: Jonathan Rosen



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THE SCHEME

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION  
IN THE MATTER OF

No 4138 of 2004

THE HOME INSURANCE COMPANY

and

IN THE MATTER OF THE COMPANIES ACT 1985

**SCHEME OF ARRANGEMENT**

(pursuant to section 425 of the Companies Act 1985)

between

**THE HOME INSURANCE COMPANY**

and its

**SCHEME CREDITORS**

(as defined in the Scheme of Arrangement)

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THE SCHEME

**1. PART 1 – PRELIMINARY**

**1.1 Definitions**

1.1.1 In the Scheme, unless the context otherwise requires or otherwise expressly provides, the following expressions shall bear the meanings set opposite them:

- “ACE Group Company”** (i) BAFCO Reinsurance Company Limited of Bermuda;  
(ii) CCI Insurance Company;  
(iii) Century Indemnity Company;  
(iv) Century International Reinsurance Company Limited;  
(v) Insurance Company of North America;  
(vi) ACE Limited;  
(vii) any Subsidiary of ACE Limited,  
and/or any of their predecessors or successors in title;
- “Adverse Costs Proceeds”** shall have the meaning given to such expression in Clause 3.3;
- “AFIA”** the American Foreign Insurance Association;
- “AFIA Reinsurer”** (i) any ACE Group Company which has underwritten reinsurance or granted indemnities in relation to AFIA business directly in favour of the Company as the reassured or, as appropriate, the indemnified party; and/or  
(ii) a reinsurer (other than an ACE Group Company) which has underwritten reinsurance in relation to AFIA business directly in favour of the Home as the reassured;
- “AFIA Treaties”** any treaty or contract of reinsurance of any kind whatsoever underwritten by or on behalf of the Company through the Company’s UK branch as part of its AFIA business, the obligations under which have not been novated or otherwise transferred to any other entity;
- “Business Day”** a day (other than a Saturday or Sunday or a New Hampshire State holiday) on which the relevant financial markets are open for dealings between the banks in London and Concord, New Hampshire;
- “Claims Submission Period”** shall have the meaning set out in Appendix 1;
- “Claims Procedure Order”** the order establishing procedures regarding claims filed with the Company, entered by the New Hampshire Court on 19 December 2003 (as the same may be amended, varied, supplemented or replaced from time to time);

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<b>“Collection Costs”</b>	all costs, charges, expenses and disbursements incurred by the Company in the collection and calculation of the Gross Proceeds and Net Proceeds;
<b>“Commutations Order”</b>	the order establishing procedures for review of reinsurance commutation agreements entered by the New Hampshire Court on 23 July 2003 (as the same may be amended, varied, supplemented or replaced from time to time);
<b>“Companies Act”</b>	the Companies Act 1985 of England and Wales;
<b>“Company”</b>	The Home Insurance Company (incorporated under the laws of the State of New Hampshire and presently in liquidation);
<b>“Costs”</b>	Pre-Scheme Costs and Other Costs;
<b>“Creditors’ Committee”</b>	the committee established pursuant to Part 5;
<b>“Delegate”</b>	any person to whom a Scheme Administrator may delegate any of his functions and powers under Clause 4.2.2(m);
<b>“Designated Representative”</b>	shall have the meaning given to that term in Clause 5.1.4;
<b>“Effective Date”</b>	the first date on which all of the conditions set out in Clause 8.3 shall have been satisfied;
<b>“Employee”</b>	any partner in the same firm as the Scheme Administrators, or any individual employed, whether under a contract of service or a contract for services, by that firm or by any company owned by that firm, who is employed by the Scheme Administrators in accordance with Clause 4.2.2(f) in connection with the conduct of their functions and powers under the Scheme;
<b>“English Court”</b>	the High Court of Justice in England;
<b>“English Court Orders”</b>	(i) the Global Liquidation Order; and (ii) the Sanction Order;
<b>“Established Scheme Liability”</b>	a liability of the Company which has become an Established Scheme Liability in accordance with: (i) Clause 2.8.1; or (ii) (following the passing of a Special Resolution) the claims adjudication process set out in that Special Resolution;
<b>“Explanatory Statement”</b>	the statement of even date herewith (and the appendices thereto) explaining the effect of the Scheme, in compliance with section 426 of the Companies Act;

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<b>“Extension Letter”</b>	the letter dated 25 May 2004 from the Joint Provisional Liquidators to Scheme Creditors, copies of which are available for inspection as provided in Appendix 3 of the Explanatory Statement;
<b>“FSA”</b>	the Financial Services Authority;
<b>“FSA Approval”</b>	a notice of approval or “non-objection” from the FSA confirming that the FSA has approved or has no objection to the implementation of the Scheme and the making of the Global Liquidation Order;
<b>“Global Liquidation Order”</b>	an order of the English Court approving the remission of the Company’s assets situated in England and Wales (save for the Scheme Assets) to the New Hampshire Liquidator for administration and distribution as part of the New Hampshire Liquidation;
<b>“Gross Proceeds”</b>	all cash payments received by the Company from:  (i) an AFIA Reinsurer relating to that company’s reinsurance and/or indemnity obligations to the Company with respect to the AFIA Treaties; and/or  (ii) the Guarantor under or pursuant to the Guarantee, as it relates to the AFIA Treaties,  after deducting or taking into account, where applicable and/or appropriate, amounts offset or to be offset between the Company and such AFIA Reinsurer and/or the Guarantor;
<b>“Guarantee”</b>	means the guaranty granted by the Guarantor in section 12 of the Purchase Agreement No.1 dated and entered into on 30 December 1983 between the Company, the Guarantor, CIGNA International Corporation, Insurance Company of North America, AFIA, AFIA Finance Corporation, Hartford Fire Insurance Company and Aetna Insurance Company;
<b>“Guarantor”</b>	CIGNA Corporation, or its successors in title, as guarantor and/or indemnitor under the Guarantee;
<b>“Indemnity Costs”</b>	means all sums which the Company is obliged to pay by reason of the obligations imposed on it by Clauses 4.3.6, 4.3.7, 4.3.8, 5.6.3, 5.6.4, 5.6.5 and 5.8;
<b>“Informal Creditors’ Committee”</b>	means the informal creditors’ committee established by the Joint Provisional Liquidators, the members of which are listed at Appendix 1 to the Explanatory Statement;

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<b>“Insolvency Act”</b>	the Insolvency Act 1986 of England, Scotland and Wales;
<b>“Insolvency Rules”</b>	the Insolvency Rules 1986 of England, Scotland and Wales;
<b>“Insurer”</b>	any insurer or reinsurer (apart from the Company);
<b>“Interim Appointees”</b>	shall have the meaning given to that term in Clause 5.9.1;
<b>“Joint Provisional Liquidators”</b>	means Gareth Howard Hughes and Margaret Elizabeth Mills, partners in the United Kingdom firm of Ernst & Young LLP, acting in their capacity as joint provisional liquidators in respect of the affairs of the Company in this jurisdiction and such person as may be appointed from time to time in addition or succession thereto;
<b>“JPL Costs”</b>	all costs, charges, expenses and disbursements properly incurred by, and the remuneration of, the Joint Provisional Liquidators (acting in their capacity as such), whether incurred or arising pursuant to the Scheme or otherwise;
<b>“Letter”</b>	the letter dated 22 January 2004 from the Joint Provisional Liquidators to members of the Informal Creditors’ Committee (as amended by the Extension Letter and as further amended from time to time), copies of which are available for inspection as provided in Appendix 3 of the Explanatory Statement;
<b>“liability”</b>	any liability of a person, whether it is present, future, prospective or contingent, whether or not its amount is fixed or unliquidated, whether or not it involves the payment of money and whether it arises at common law, in equity or by statute, in any jurisdiction, or in any other manner whatsoever, but such expression does not include any liability which is barred by statute or otherwise unenforceable or which would be inadmissible in the New Hampshire Liquidation of the Company; and, for the avoidance of doubt, a person who does not have a legal liability under a contract or policy because such contract or policy is void or, being voidable, has been duly avoided will not have a liability for the purposes of the Scheme;
<b>“Net Proceeds”</b>	Gross Proceeds net of: (i) Pre-Scheme Costs; (ii) Other Costs;



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- (iii) the proceeds received by the Company from an AFIA Reinsurer with respect to those inwards liabilities of the Company under the AFIA Treaties which are, or will upon final adjudication be, settled by way of offset as between the Company (acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators) and the relevant Scheme Creditor concerned (whether such offset right derives from contract or statute); and
- (iv) Adverse Costs Proceeds (which shall be dealt with in accordance with Clause 3.3);
- “New Hampshire Approval Order”** an order of the New Hampshire Court approving in principle the Proposal;
- “New Hampshire Court”** the Merrimack County Superior Court of the State of New Hampshire;
- “New Hampshire Liquidation”** the liquidation being conducted in respect of the Company pursuant to the order of the New Hampshire Court dated 13 June 2003;
- “New Hampshire Liquidation Date”** 11 June 2003;
- “New Hampshire Liquidator”** the Commissioner of Insurance for the State of New Hampshire, and his successors in office, solely in his capacity as liquidator of the Company pursuant to his appointment by order of the New Hampshire Court;
- “New Hampshire RSA”** the Revised Statutes Annotated of the State of New Hampshire;
- “Nominated Representative”** shall have the meaning given to that term in Clause 5.1.5;
- “Operative Date”** the date on which a Special Resolution is passed in accordance with the terms of the Scheme;
- “Other Costs”** all such costs, charges, expenses, disbursements and remuneration as are referred to in Clause 8.2.2 (excluding, for the avoidance of any doubt, Indemnity Costs);
- “Payment Percentage”** in relation to an Established Scheme Liability, the percentage of such Established Scheme Liability which is payable by the Company (acting by the Scheme Administrators) from Scheme Assets from time to time under the Scheme, as the same is set from time to time under Clause 3.2;
- “Pre-Scheme Costs”** all such costs, charges, expenses, disbursements and remuneration as are referred to in Clause 8.2.1;

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<b>“Proceeding”</b>	any action or other legal proceeding including, for the avoidance of doubt, (i) arbitration (insofar as the same is provided for under the terms of a contract giving rise to a Scheme Claim) and (ii) any judicial action or proceeding;
<b>“Proposal”</b>	the proposal for the implementation of a scheme, which proposal was set out in the Letter;
<b>“Recovery”</b>	shall have the meaning given to that term in a Special Resolution;
<b>“Referee”</b>	a referee appointed by the New Hampshire Court upon motion of the New Hampshire Liquidator pursuant to the Claims Procedure Order;
<b>“Relevant Rate of Exchange”</b>	the rate of exchange, for the conversion of one currency into another, prevailing at the close of business New York time on 8 May 2003, being the date of the filing of the petition for the liquidation of the Company, as published in the United States national edition of the Wall Street Journal on 9 May 2003;
<b>“Review Date”</b>	the Effective Date and 31 December of each year or such other date as the Scheme Administrators may from time to time, in consultation with the Creditors’ Committee but otherwise in their absolute discretion, decide;
<b>“Sanction Order”</b>	the order of the English Court sanctioning the Scheme;
<b>“Scheme”</b>	this scheme of arrangement in its present form subject to any modification, term or condition which the English Court may think fit to approve or impose in accordance with Clause 8.4;
<b>“Scheme Administrators”</b>	in the first instance, Gareth Howard Hughes and Margaret Elizabeth Mills, or such other persons as may be appointed as scheme administrators in accordance with Clause 4.1.1(a) of this Scheme from time to time;
<b>“Scheme Assets”</b>	Subject to Clause 3.2.8: (i) 50% of Net Proceeds (net of Indemnity Costs); and (ii) Adverse Costs Proceeds (which shall be dealt with in accordance with Clause 3.3); and (iii) where a Special Resolution has been duly passed, any Recovery made in accordance with that Special Resolution; and (iv) any interest, dividends and/or other amounts (net of any applicable taxes) received or receivable

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by the Company (acting by the Scheme Administrators) pursuant to any investment of Scheme Assets made by the Scheme Administrators in accordance with Clause 2.13 of the Scheme or otherwise;

- “Scheme Claim”** any claim against the Company under or arising out of any AFIA Treaty and being a liability to which the Company is subject at the New Hampshire Liquidation Date or to which the Company may become subject after the New Hampshire Liquidation Date by reason of an obligation incurred before that date;
- “Scheme Creditor”** a creditor of the Company in respect of a Scheme Claim (and such expression shall include any assignee or other person entitled to claim in succession to or in substitution for any such Scheme Creditor in respect of such Scheme Claim);
- “Special Meeting”** a meeting of Scheme Creditors convened by the Scheme Administrators in accordance with Clause 6.5 to consider and, if thought fit, to pass a Special Resolution;
- “Special Resolution”** a resolution in substantially the form set out in Appendix 1 to the Scheme (but with such amendments and modifications as the New Hampshire Liquidator, the Scheme Administrators and the Creditors’ Committee shall deem appropriate in the light of the circumstances prevailing at the time when the Special Meeting is convened) which is passed by a majority in number representing at least three-fourths in value of the Scheme Creditors who, being entitled to do so, vote in person or by proxy at a Special Meeting;
- “Subsidiary”** shall be construed as a reference to any company or corporation which is a “subsidiary undertaking” according to the construction of such expression in section 258 of the Companies Act;
- “US Dollars”** the lawful currency of the United States of America.

1.1.2 Clause and part headings and the index to the Scheme are inserted for convenience of reference only and shall be ignored in the interpretation of the Scheme.

1.1.3 In the Scheme, unless the context otherwise requires or otherwise is expressly provided:

- (a) references to clauses and parts are to be construed as references to the clauses and the parts of the Scheme;

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- (b) references to the Scheme or to any specified provision thereof shall be construed as references to the Scheme or that provision as in force for the time being and as modified in accordance with the terms of the Scheme;
- (c) words importing the plural shall include the singular and *vice versa* and words importing one gender shall include all genders;
- (d) references to a person shall be construed as including references to an individual, firm, partnership, company, corporation, unincorporated body of persons, state or state agency;
- (e) references to any enactment shall be deemed to include references to such enactment as re-enacted, amended or extended.

**1.2 The Company**

- 1.2.1 The entity which originally underwrote insurance business as “The Home Insurance Company” was incorporated on 3 March 1853 under the laws of the State of New York and commenced trading on 13 April 1853.
- 1.2.2 The Company was incorporated under the name of ‘The Home Insurance Company, Inc.’ on 15 March 1973 under the laws of the State of New Hampshire to act as a vehicle for the transfer of the corporate domicile of The Home Insurance Company from New York to New Hampshire. The Company’s name was changed to its current name “The Home Insurance Company” on 30 June 1973.

**1.3 Parties other than the Company and the Scheme Creditors**

- 1.3.1 Gareth Howard Hughes and Margaret Elizabeth Mills have each given and not withdrawn their consent to act as the initial Scheme Administrators under the Scheme from the Effective Date.
- 1.3.2 The membership of the Creditors’ Committee shall be established pursuant to Part 5.

**1.4 Purpose of the Scheme**

The purpose of the Scheme is to distribute the Scheme Assets to the Scheme Creditors in accordance with the terms of this Scheme. In particular, the Scheme seeks to ensure that:

- (a) subject to the passing of a Special Resolution, the liabilities of the Company in respect of Scheme Claims shall be established and ascertained in accordance with the Claims Procedure Order; and
- (b) in accordance with Clause 3.2, distributions are paid by the Company (acting by the Scheme Administrators) out of Scheme Assets to those of its Scheme Creditors whose Scheme Claims have from time to time become Established Scheme Liabilities.

In addition, the Scheme provides a mechanism for accelerating the payment of dividends to Scheme Creditors out of Scheme Assets and effecting an early closure of the Scheme.

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**2. PART 2 – THE SCHEME**

**2.1 Application of the Scheme**

The Scheme shall apply to all liabilities of the Company in respect of Scheme Claims including all liabilities which have been established before or may be established after the New Hampshire Liquidation Date in respect of obligations incurred before that date.

**2.2 Collection of Gross Proceeds**

2.2.1 With effect from the Effective Date, the Company (acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators) shall procure that:

- (a) it uses all reasonable endeavours to collect in and realise the sums due and owing from time to time by the AFIA Reinsurers with respect to the AFIA Treaties; and
- (b) in determining what amounts an AFIA Reinsurer may set-off against the sums due and owing to the Company as aforesaid, for the purposes of calculating Gross Proceeds, the Company (acting by the New Hampshire Liquidators and/or the Joint Provisional Liquidators) shall assert all reasonable arguments and/or defences as regards the validity of such off-set, whether in the context of a claims agreement process, a commutation or similar compromise arrangement or a dispute resolution process.

2.2.2 With effect from the Effective Date, the Company (acting by the New Hampshire Liquidator) may, at its sole discretion, seek to enforce the Guarantee.

**2.3 Determination and application of Net Proceeds and Scheme Assets**

2.3.1 The Company (acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators) shall:

- (a) (in consultation with the Scheme Administrators and the Creditors' Committee) determine the quantum of Net Proceeds and Scheme Assets to be applied in accordance with the terms of the Scheme;
- (b) make such payments out of Gross Proceeds as are required by Clauses 7.1.2 and 8.2 of this Scheme;
- (c) make such payments out of Net Proceeds as are required by Clauses 4.3.6, 4.3.7, 4.3.8, 5.6.3, 5.6.4, 5.6.5 and 5.8 of this Scheme;
- (d) procure that 50% of the Net Proceeds (net of Indemnity Costs) are remitted to and/or retained by the New Hampshire Liquidator in accordance with the terms of the Global Liquidation Order;
- (e) procure that 50% of the Net Proceeds (net of Indemnity Costs) and all Adverse Costs Proceeds are transferred to the Scheme Administrators to be held as Scheme Assets; and
- (f) provide such information as the Scheme Administrators may reasonably require, including, but not limited to, information concerning the likely recoveries from the AFIA Reinsurers and/or the likely level of Scheme Claims that shall become established in accordance with Clause 2.8.

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**2.4 Stay of Proceedings**

- 2.4.1 Save where the Company (acting by the New Hampshire Liquidator) consents, no Scheme Creditor shall institute or continue any Proceeding or other judicial, quasi-judicial, administrative or regulatory process whatsoever against the Company (in the English Court, the New Hampshire Court or otherwise) to establish the existence or amount of a Scheme Claim or to seek any remedy with respect thereto otherwise than in accordance with the terms of the Claims Procedure Order and/or the Scheme.
- 2.4.2 If and to the extent that a Scheme Creditor obtains against the Company in relation to a Scheme Claim an order, judgment, decision or award of a court or tribunal in contravention of Clause 2.4.1, such order, judgment, decision or award shall not give rise to an Established Scheme Liability in respect of the Scheme Claim and shall be disregarded when determining the liability of the Company in respect of the Scheme Claim.
- 2.4.3 Nothing in the Scheme shall preclude the Company (whether acting by the New Hampshire Liquidator, the Joint Provisional Liquidators and/or the Scheme Administrators) from either:
- (a) commencing or continuing any Proceeding against a Scheme Creditor; or
  - (b) seeking to be joined into any subsisting Proceeding between a Scheme Creditor and an Insurer as an additional party thereto.
- 2.4.4 Where the Company commences, continues or is joined into any Proceeding against a Scheme Creditor as aforesaid, nothing in the Scheme shall preclude the Scheme Creditor from asserting and prosecuting against the Company in the Proceeding a Scheme Claim so long as:
- (a) the Scheme Claim arises out of the same transaction or occurrence that is the subject matter of the Company's claim in that Proceeding; and
  - (b) the Scheme Claim does not require for its adjudication the presence of third parties over whom the court or tribunal in question cannot acquire jurisdiction. For the purposes of this Clause 2.4.4, the Company shall not be deemed to be continuing any Proceedings which commenced prior to the New Hampshire Liquidation Date and in which the Company is not actively prosecuting its claims.

**2.5 Enforcement of Scheme Claims**

- 2.5.1 Except to the extent that the Company (acting by the Scheme Administrators) has failed to perform any obligation to make a payment to a Scheme Creditor under the provisions of the Scheme and subject to the rights of Scheme Creditors under Clauses 2.6 and 2.7 and subject to the limitations specified in Clause 3.4.4, no Scheme Creditor shall be entitled to take any proceeding or step (whether by way of demand, legal proceedings, execution of judgment, arbitration proceedings or otherwise howsoever) against the Company or its property in any jurisdiction whatsoever for the purpose of enforcing payment of any Scheme Claim or any part thereof.
- 2.5.2 If any Scheme Creditor takes any such action as is prohibited by Clause 2.5.1, it shall be treated as having received, on account of its Scheme Claim, an advance payment under Clause 3.4 equal to the amount or gross value of any money, property, benefit or advantage obtained by it at the expense of the

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Company as the result of such action; and the extent, if any, to which it is entitled to any payment under Clause 3.4.1 shall be reduced accordingly. For this purpose, the gross value of any such property, benefit or advantage shall be conclusively determined by the Scheme Administrators and, without limitation, may include such amount as the Scheme Administrators may consider to be appropriate by way of interest or costs, charges or expenses incurred by the Company as a consequence thereof.

**2.6 Security, letters of credit and trusts**

2.6.1 Nothing in the Scheme shall affect the right of any person to take any appropriate action to enforce:

- (a) any security over the property of the Company which can be enforced pursuant to New Hampshire law; or
- (b) any letter of credit issued or trust created (expressly, by implication or by operation of law) in respect of the Company and of which it is a beneficiary which can be enforced pursuant to New Hampshire law.

2.6.2 Nothing in the Scheme shall affect the rights of the Company against any person in respect of any wrongful drawdown or enforcement of any security, letter of credit issued or trust created in respect of the Company.

**2.7 Set-off**

A Scheme Creditor and the Company may rely on any right of set-off of mutual debts or credits which either of them may have under New Hampshire RSA 402-C:34.

**2.8 Established Scheme Liabilities**

2.8.1 Subject to Clauses 2.4, 2.5, 2.8.2, 2.9 and any claims adjudication process established pursuant to a duly passed Special Resolution, a liability of the Company in respect of a Scheme Claim shall be an “**Established Scheme Liability**” when a proof in respect of such Scheme Claim has been first lodged in the New Hampshire Liquidation in accordance with the terms of the Claims Procedure Order and there has been finally and conclusively established in accordance with the Claims Procedure Order (whether by agreement with the New Hampshire Liquidator or otherwise) a present obligation of the Company to pay an ascertained sum of money, after account has been taken of:

- (a) any security over the property of the Company which the Scheme Creditor is entitled (or claims to be entitled) to enforce in accordance with Clause 2.6.1(a); and
- (b) any letter of credit issued or trust created in respect of the Company which the Scheme Creditor is entitled (or claims to be entitled) to enforce in accordance with Clause 2.6.1(b); and
- (c) any set-off which may be taken into account in accordance with Clause 2.7; and
- (d) recoveries (net of the costs of recovery) made by the Scheme Creditor in respect of such Scheme Claim, from the Company in the New Hampshire Liquidation.

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2.8.2 For the purposes of the Scheme, the amount of an Established Scheme Liability shall be the amount at which it was established in accordance with either (i) Clause 2.8.1 or (ii) (following the passing of a Special Resolution in accordance with the provisions of this Scheme) any claims adjudication process set out in such Special Resolution, notwithstanding any payment which has been made (or is treated as having been made) under the Scheme.

**2.9 Interest**

For the purpose of paying or providing for payments under the Scheme and subject to any claims adjudication process established pursuant to a Special Resolution, there shall not be included as part of an Established Scheme Liability any interest liability of the Company except interest to which a Scheme Creditor is entitled pursuant to New Hampshire law in the New Hampshire Liquidation (“**Admissible Interest**”). No payment shall be made under the Scheme in respect of any part of a Scheme Claim which represents interest which is not Admissible Interest. For the avoidance of doubt, this clause does not affect a Scheme Creditor’s entitlement (if any) to assert a Scheme Claim in respect of that Scheme Creditor’s liability for interest to a third party.

**2.10 Currency of payment**

2.10.1 Any amount payable to a Scheme Creditor under the Scheme, other than an amount payable in accordance with Clause 3.3, shall be paid in US Dollars. A Scheme Claim of a Scheme Creditor which was incurred in a currency other than US Dollars shall be converted into US Dollars at the Relevant Rate of Exchange.

2.10.2 For the purpose of applying any set-off pursuant to the provisions of the Scheme, where the sum being applied in set-off is expressed in a currency other than US Dollars, such sum shall be converted into US Dollars at the Relevant Rate of Exchange.

**2.11 Method of payment**

2.11.1 Payments to a Scheme Creditor under the Scheme may be made, in the absolute discretion of the Scheme Administrators:

- (a) by cheque in favour of the Scheme Creditor concerned or as such Scheme Creditor may direct and sent through the post, at the risk of such Scheme Creditor, to the last known address of such Scheme Creditor or to such other address as such Scheme Creditor may from time to time notify the Scheme Administrators;
- (b) by telegraphic transfer to such bank account as the Scheme Creditor concerned may from time to time notify the Scheme Administrators; or
- (c) in such other manner or in favour of such other person (including any third party) as the Scheme Administrators may from time to time in their absolute discretion determine, following a request from the Scheme Creditor concerned, and the cost of using any such payment method in a particular case shall be an expense of the Scheme Creditor concerned,

provided however, that any payment to a Scheme Creditor located outside the United Kingdom shall only be paid in accordance with the method set out in sub-paragraph (b) above, unless otherwise requested by the Scheme Creditor concerned.



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- 2.11.2 Payment under or pursuant to the Scheme shall be deemed to have been made on the day that the cheque is posted or telegraphic transfer instruction given to the relevant bank (as the case may be). Payment of any such cheque by the banker on whom it is drawn shall be satisfaction of the monies in respect of which it was drawn; and receipt of the amount of such telegraphic transfer into such account shall be satisfaction of the monies in respect of which it was paid.
- 2.11.3 In the event that any payment is made under the Scheme to a Scheme Creditor which is uncashed or otherwise unclaimed after the date on which payment was posted to the Scheme Creditor pursuant to Clause 2.11.1(a) or otherwise made pursuant to Clause 2.11.1(c) then, upon the expiration of six years from the posting of the cheque or the making of the payment pursuant to Clause 2.11.1(a) or 2.11.1(c), the relevant Scheme Creditor's right to such payment shall be extinguished.
- 2.11.4 The Scheme Administrators may determine that any payment under the Scheme of less than 100 US Dollars (or such greater amount as the Scheme Administrators may reasonably determine from time to time) (the "*de minimis amount*") shall not be sent to a Scheme Creditor because of the costs involved in making and/or receiving such payment. Any *de minimis* amount so withheld shall be paid to such Scheme Creditor upon the earlier of (a) demand being made by that Scheme Creditor or (b) such time as the aggregate of sums owed to such Scheme Creditor under the Scheme exceed the *de minimis* amount, or (c) the termination of the Scheme.
- 2.11.5 Without prejudice to Clause 2.11.2, payment by the Company (acting by the Scheme Administrators) in respect of an Established Scheme Liability:
- (a) to a Scheme Creditor; or
  - (b) where two or more persons comprise a Scheme Creditor, to any one such person; or
  - (c) to any person acting on behalf of a Scheme Creditor (whether with actual or ostensible authority); or
  - (d) otherwise pursuant to Clause 2.11.1,
- shall for all purposes constitute a valid discharge of the Company in respect of such Established Scheme Liability to the extent of such payment.

**2.12 Commutations, settlements and other agreements**

- 2.12.1 Subject to Clause 2.12.2, the Company (acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators) shall be entitled to enter into any transaction or pursue any litigation against an AFIA Reinsurer and/or the Guarantor provided that if any such transaction or litigation is likely to have a material impact upon Gross Proceeds, Net Proceeds or Scheme Assets, the Company (acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators) shall consult with the Scheme Administrators and the Creditors' Committee prior to taking any such action.
- 2.12.2 The Company (acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators) may enter into any commutation or similar compromise arrangement with any AFIA Reinsurer and/or the Guarantor relating to that company's reinsurance and/or indemnity and/or guarantee obligations to the

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Company in respect of the AFIA Treaties provided that, prior to such commutation or similar compromise arrangement, the Company (acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators) shall first:

- (a) use reasonable efforts to obtain from the Scheme Creditors up-to-date information concerning the likely ultimate value of their Scheme Claims (including, without limitation, details of outstanding losses and IBNR items);
- (b) promptly consult the Scheme Administrators and the Creditors' Committee as to any such proposed commutation;
- (c) make available all relevant documentation to the Creditors' Committee at least 5 Business Days (where practicable) prior to such consultation (and to this end the members of the Creditors' Committee shall be deemed to have requested notice and entered into a confidentiality agreement with the New Hampshire Liquidator pursuant to paragraph 3 of the Commutations Order); and
- (d) provide notice to the Creditors' Committee in advance of any application to the New Hampshire Court to approve the terms of any such proposed commutation, in accordance with the provisions of the Commutations Order.

2.12.3 To the extent that it is not practicable for the Company (acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators) to comply with the 5 Business Day period referred to in Clause 2.12.2(c) above, the Company (acting as aforesaid) shall only be required to make all reasonable efforts to provide as much notice as is practicable in the circumstances.

2.12.4 Within 10 Business Days of the New Hampshire Court having approved a commutation agreement and/or similar compromise arrangement as referred to in Clause 2.12.1 with all or substantially all (by value) of the AFIA Reinsurers and/or the Guarantor, the Company (acting as aforesaid) shall notify the Scheme Administrators of the same and the Scheme Administrators shall convene a Special Meeting in accordance with the provisions of Clause 6.5.1, if requested to do so by the Creditors' Committee.

**2.13 Investment**

2.13.1 Subject to Clause 2.13.2, the Scheme Administrators shall have power to invest all or any of the Scheme Assets in their possession in such manner as they consider prudent from time to time, with full power from time to time to vary, alter and transpose any such investments into others of any nature.

2.13.2 The Scheme Administrators shall invest any monies held by the Scheme Administrators which constitute Scheme Assets in accordance with the investment policy to be formulated by the Scheme Administrators from time to time in consultation with the Creditors' Committee. In the absence of such a policy, the Scheme Administrators shall not invest any Scheme Assets held by them other than in the manner specified in Parts I or II of the First Schedule of the Trustee Investments Act 1961.

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**2.14 Scheme Creditors to assist the Company**

Without prejudice to the rights of Scheme Creditors under the Extension Letter, the Scheme Creditors shall provide to the Company (acting by the New Hampshire Liquidator, the Joint Provisional Liquidators and/or the Scheme Administrators) all reasonable assistance required by the Company (acting as aforesaid) in connection with the Scheme and shall provide such assistance as the Company (acting as aforesaid) may reasonably require in connection with the recovery of any Gross Proceeds, Net Proceeds or Scheme Assets or the enforcement of obligations or liabilities which are or may become owed to the Company. After consultation with the Company, any reasonable cost or expense incurred by a Scheme Creditor in providing such assistance shall be reimbursed to it by the Company out of Gross Proceeds and, for this purpose, shall constitute a cost within the scope of Clause 8.2.2(a).

**2.15 Scheme Creditors: Further Obligations**

2.15.1 No Scheme Creditor shall ever seek directly or indirectly to make or make any agreement or arrangement with an AFIA Reinsurer (in its capacity as a reinsurer and/or indemnitor of the Company in respect of the AFIA Treaties) and/or the Guarantor (in its capacity as the guarantor and/or indemnitor under the Guarantee) whereunder it receives payment directly or indirectly from such reinsurer or the Guarantor in respect of a Scheme Claim.

2.15.2 In determining its entitlement (if any) to receive any distribution payable to it in its capacity as a creditor in the New Hampshire Liquidation, each Scheme Creditor will bring into account, and give credit for, payments received by it, or deemed to have been received by it, under the Scheme.

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**3. PART 3 – PAYMENTS TO SCHEME CREDITORS**

**3.1 Application of assets of the Company**

On and from the Effective Date, the Scheme Assets shall be placed under the control of the Scheme Administrators and shall be applied for the benefit of Scheme Creditors in accordance with the provisions of the Scheme.

**3.2 Computation of the Payment Percentage**

3.2.1 Subject as hereinafter provided in this Part 3, the Scheme Administrators shall from time to time:

- (a) set the Payment Percentage; and
- (b) revise a Payment Percentage previously set by setting a new Payment Percentage of a greater or lesser amount.

3.2.2 As soon as practicable after each Review Date, before an initial Payment Percentage has been set, the Scheme Administrators shall consider, in the light of Clauses 3.2.4 and 3.2.5 and in consultation with the Creditors' Committee, whether an initial Payment Percentage should be set.

3.2.3 After the initial Payment Percentage has been set, the Scheme Administrators shall review the Payment Percentage as soon as practicable after each Review Date and consider, in the light of Clauses 3.2.4 and 3.2.5 and in consultation with the Creditors' Committee, whether it should be revised.

3.2.4 The Scheme Administrators shall not set a Payment Percentage unless they consider, on the basis of the information, advice and assumptions referred to in Clause 3.2.7, that after the Company (acting by the Scheme Administrators) has, by reference to a Payment Percentage at that rate, complied with the provisions of Clause 3.4 in relation to all Established Scheme Liabilities owed by it as at the Review Date concerned, the Company (acting by the Scheme Administrators) will have sufficient Scheme Assets to enable it to comply with the provisions of Clause 3.4 (by reference to a Payment Percentage at that rate) in relation to all liabilities of the Company in respect of Scheme Claims which the Scheme Administrators consider may become Established Scheme Liabilities after the Review Date concerned.

3.2.5 Subject to Clause 3.2.4, for the purposes of Clauses 3.2.2 or 3.2.3, the Payment Percentage, if set, shall be set at, or increased to, such rate as the Scheme Administrators consider will ensure that all the Scheme Assets of the Company remaining after the Company (acting by the Scheme Administrators) has retained sufficient Scheme Assets to enable it to comply with the provisions of Clause 3.4 (by reference to a Payment Percentage at that rate and in relation to all liabilities of the Company in respect of Scheme Claims which have become, or which the Scheme Administrators consider may become, Established Scheme Liabilities after the Review Date concerned) are distributed proportionately in respect of all the Established Scheme Liabilities owed by the Company as at the Review Date concerned.

3.2.6 If on considering the current Payment Percentage pursuant to Clause 3.2.3 the Scheme Administrators consider that there are not sufficient Scheme Assets for such Payment Percentage to be maintained at that level and for the provisions of Clauses 3.2.4 and 3.2.5 to be complied with, they shall reduce such Payment Percentage to such level as they consider appropriate. Any such reduction in the

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Payment Percentage shall not give rise to any obligation on the part of a Scheme Creditor to repay the difference between the amount which would be payable in respect of an Established Scheme Liability of such Scheme Creditor in accordance with such revised Payment Percentage and the amount actually paid to such Scheme Creditor in respect of such Established Scheme Liability under a previously existing Payment Percentage.

3.2.7 For the purpose of setting the Payment Percentage as at a particular Review Date, the Scheme Administrators shall:

- (a) obtain and consider such financial and/or actuarial information and advice as the Scheme Administrators, following consultation with the Creditors' Committee and the New Hampshire Liquidator with respect to such information and advice, shall consider appropriate; and
- (b) be entitled (with the approval of the Creditors' Committee) to assume (after making due allowance for any set-off) that the ratio of cash recoveries received from any AFIA Reinsurer and/or the Guarantor to Established Scheme Liabilities established in the period commencing with the last Review Date and ending on the Review Date concerned will remain the same in future years save to the extent that, based upon information actually in the possession of the Scheme Administrators at that time, such an assumption would be manifestly unreasonable.

3.2.8 For the purpose of this Clause 3.2, Scheme Assets may include sums which the Scheme Administrators consider are likely to be received by them in the future, following a transfer of Net Proceeds (net of any Indemnity Costs) pursuant to Clause 2.3.1(e), as well as sums already received and held by them.

**3.3 Adverse Costs Proceeds**

In circumstances where:

- (a) a claim is denied in the New Hampshire Liquidation and a disputed claim proceeding ensues (in accordance with the Claims Procedure Order); or
- (b) a Scheme Creditor commences or continues any Proceeding against the Company with the consent of the New Hampshire Liquidator as described in Clause 2.4.1 or asserts and prosecutes a Scheme Claim against the Company in the circumstances described in Clause 2.4.4,

nothing in the Scheme shall preclude a Scheme Creditor from seeking an adverse costs order (whether pursuant to New Hampshire RSA 402-C:6 or otherwise) in such proceeding. However, any Scheme Creditor successfully pursuing such an adverse costs order shall not be entitled to enforce payment by the Company of that order as an administrative expense in the New Hampshire Liquidation. Instead the Scheme Creditor shall be entitled to reimbursement to the extent, and in the currency, of any cash recovered by the Company (acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators) with respect thereto from an AFIA Reinsurer (the "Adverse Costs Proceeds"), which cash shall be credited directly to Scheme Assets and shall be payable in full to the Scheme Creditor concerned from Scheme Assets in priority to any distribution of Scheme Assets to Scheme Creditors.

**3.4 Payments to Scheme Creditors**

3.4.1 In respect of an Established Scheme Liability, the Company (acting by the Scheme Administrators) shall, subject to Clause 2.5.2:

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- (a) as soon as reasonably practicable but, in any event, within ninety days following the later of the date on which it becomes an Established Scheme Liability or the date on which the initial Payment Percentage is set, pay to the Scheme Creditor concerned an amount equal to the initial Payment Percentage of such Established Scheme Liability; and
  - (b) as soon as reasonably practicable, but in any event within ninety days following an increase in the Payment Percentage under Clause 3.2.5, pay to the Scheme Creditor concerned (whether or not the same person who received payment under Clause 3.4.1(a)) a further amount equal to the difference between (A) the amount equal to the Payment Percentage (as increased) of such Established Scheme Liability and (B) the amount of such Established Scheme Liability which has previously been discharged by the Company or is treated as having been discharged under Clause 2.5.2.
- 3.4.2 The Company shall not be liable to make any payment to a Scheme Creditor hereunder in respect of any Established Scheme Liability to the extent that such payment would, when aggregated with:
- (a) all payments previously made to that Scheme Creditor under Clause 3.4.1; and
  - (b) all amounts received in contravention of Clause 2.5,
- in respect of that Established Scheme Liability, exceed the lesser of the amount of that Established Scheme Liability of that Scheme Creditor and the amount equal to the then current Payment Percentage of that Established Scheme Liability.
- 3.4.3 The Scheme Administrators shall suspend payments under Clause 3.4.1 for such period (not exceeding six months) as they consider appropriate if information becomes available to them concerning the quantum of the Net Proceeds as a result of which they are required to consider whether or not to set a reduced Payment Percentage. As soon as practicable during, and in any event at the end of, such period, the Scheme Administrators shall set a reduced Payment Percentage or conclude that the Payment Percentage need not be reduced, and thereupon the suspension of payments shall be lifted.
- 3.4.4 The obligation of the Company to make any payment to Scheme Creditors in accordance with the terms of this Scheme and the recourse under this Scheme of Scheme Creditors against the Company shall be absolutely limited to the Scheme Assets.

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**4. PART 4 – THE SCHEME ADMINISTRATORS**

**4.1 Appointment of Scheme Administrators**

- 4.1.1 (a) A Scheme Administrator shall be an individual:
- (i) qualified to act as an insolvency practitioner within the meaning of section 390 of the Insolvency Act; and
  - (ii) approved by the New Hampshire Liquidator (which approval shall not be unreasonably withheld, as such is determined in accordance with the standards set forth in New Hampshire RSA 541:13).
- (b) The initial Scheme Administrators shall be Gareth Howard Hughes and Margaret Elizabeth Mills.
- 4.1.2 A Scheme Administrator may resign his appointment at any time by giving not less than six months' notice (or such shorter notice period as the Creditors' Committee may agree) in writing to the Creditors' Committee and the New Hampshire Liquidator.
- 4.1.3 The Creditors' Committee shall be entitled:
- (a) by a resolution passed by at least three-quarters of all the members of the Creditors' Committee for the time being, at any time to call upon a Scheme Administrator to resign, provided that:
    - (i) the New Hampshire Liquidator has expressly consented in writing (which consent shall not be unreasonably withheld, as such is determined in accordance with the standards set forth in New Hampshire RSA 541:13) to the proposed resolution; and
    - (ii) such Scheme Administrator has been given (x) at least twenty-eight days' notice of the proposed resolution and the reasons why the resolution is to be put to the Creditors' Committee and (y) a reasonable opportunity to make representations at the meeting at which the resolution is proposed (and if such Scheme Administrator declines to resign, a resolution requiring his removal shall be put before the next meeting of Scheme Creditors); and
  - (b) upon removal of a Scheme Administrator or if a Scheme Administrator ceases to hold office for any other reason, to appoint any person satisfying the conditions set out in Clause 4.1.1(a) to be a Scheme Administrator in his place (and a resolution requiring ratification of such appointment shall be put before the next meeting of Scheme Creditors pending which the appointee shall have full power to act as a Scheme Administrator save that if a resolution is passed at a meeting of Scheme Creditors requiring the removal of a Scheme Administrator pursuant to sub-clause (a), such appointment may be made by the Scheme Creditors at such meeting).
- 4.1.4 Subject to Clause 4.1.1, where more than one person has been appointed as a Scheme Administrator, the functions, powers and duties of the Scheme Administrators under the Scheme may be performed and exercised jointly or severally and any act required to be done by a Scheme Administrator pursuant to the Scheme may be done by all or any one or more of them.

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**4.2 Functions, powers and duties of the Scheme Administrators**

4.2.1 With immediate effect from the Effective Date, the Scheme Administrators shall be empowered to and shall supervise and ensure the carrying out of the Scheme, and for these purposes shall:

- (a) have the power to take possession of such Net Proceeds as are transferred to them by the Joint Provisional Liquidators and/or the New Hampshire Liquidator in accordance with Clause 2.3.1(e) and any other Scheme Assets (as are transferred to, or held by, them); and
- (b) apply the Scheme Assets in their possession for the benefit of Scheme Creditors in accordance with the terms of this Scheme.

4.2.2 Without prejudice to the generality of Clause 4.2.1, in carrying out their functions and powers under the Scheme, the Scheme Administrators shall:

- (a) be entitled to exercise all rights, powers and duties in this Scheme of the Company (to the extent that the Scheme expressly provides that such rights, powers and duties may be exercised by the Company acting by the Scheme Administrators) and/or the Scheme Administrators;
- (b) have full access at all reasonable times to all books, papers and other documents of the Company and receive all such information in relation to the Company as they may require or consider reasonably desirable in order to discharge and/or exercise their duties, functions and powers under the Scheme;
- (c) do all things which may be necessary or expedient for the protection of Scheme Assets;
- (d) be entitled to bring or defend any action or other legal proceedings in the name and on behalf of the Company in respect of the Scheme Assets;
- (e) be entitled to do all acts and to execute in the name and on behalf of the Company any deed, receipt or other document and to use the Company's seal in order to discharge and/or exercise their duties, functions and powers under the Scheme;
- (f) employ and remunerate accountants, actuaries, lawyers and other professional advisers or agents in any jurisdiction provided such employment is necessary or reasonably desirable for the purpose of performing their functions and powers under the Scheme;
- (g) be entitled to borrow (but only with the consent of the Creditors' Committee and the New Hampshire Liquidator) and to make any payment which is necessary or incidental to the performance of their functions and to give a valid discharge for amounts received by the Company;
- (h) to the extent that the English Court has jurisdiction, and subject to Clause 8.7.2, be entitled to apply, or to cause the Company to apply, to the English Court (as the case may be) in relation to any particular matter arising in the course of the Scheme;
- (i) subject to the agreement of the Creditors' Committee and the New Hampshire Liquidator, be entitled to propose, where they consider it to be in the interests of Scheme Creditors as a whole, a further scheme of



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arrangement under section 425 of the Companies Act, with a view either to amending the provisions of the Scheme or to implementing a new scheme of arrangement between the Company and the Scheme Creditors (or any class of them);

- (j) be entitled to attend meetings of the Creditors' Committee (subject to the provisions of Clause 5.3.4);
- (k) be entitled to consult with the New Hampshire Liquidator;
- (l) be remunerated in accordance with Clause 5.4.3 for the carrying out of their functions and powers under the Scheme and to be reimbursed for all expenses reasonably and properly incurred by them in connection therewith;
- (m) be entitled to delegate to any person (being a partner in the same firm as the Scheme Administrators and approved for the time being by the Creditors' Committee for the purposes of this Clause 4.2.2(m) (a "Delegate")), all or any of the functions, powers, rights, authorities and discretions conferred upon the Scheme Administrators under the Scheme and from time to time to revoke any such delegation, provided that the Scheme Administrators shall be personally responsible for any act or omission of any such Delegate to the same extent as if he had expressly authorised it; and
- (n) cooperate with any other Scheme Administrator appointed in accordance with Clause 4.1.1(a) (whether appointed in place of an existing Scheme Administrator or otherwise) and provide full access at all reasonable times to all books, papers and other documents of the Company as they have in their possession and as such newly appointed Scheme Administrator may require or consider reasonably desirable in order to discharge and/or exercise his duties, functions and powers under the Scheme;
- (o) be entitled to do all other things incidental to the exercise of the functions and powers referred to in this Clause 4.2.2 and in Clause 4.2.1.

4.2.3 In carrying out their functions and exercising their powers and duties under the Scheme, the Scheme Administrators shall consult with and consider the views expressed by the Creditors' Committee on any matter material to the Scheme, which for the avoidance of doubt shall include, without limitation, the setting of and revisions to a Payment Percentage pursuant to Clause 3.2.

**4.3 Responsibility and Indemnity**

4.3.1 In carrying out their functions and exercising their powers and duties under the Scheme, the Scheme Administrators shall act *bona fide* and with due care and diligence in the interests of Scheme Creditors as a whole and shall use their powers under the Scheme for the purpose of ensuring that the Scheme is operated in accordance with its terms.

4.3.2 Subject to Clause 4.3.5, no Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done in good faith and with due care by the Scheme Administrators in accordance with, and to implement the provisions of, the Scheme or the exercise by the Scheme Administrators in good faith and with due care of any power conferred upon them for the purposes of

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the Scheme if exercised in accordance with, and to implement the provisions of, the Scheme. A Scheme Administrator shall not be liable for any loss unless such loss is attributable to his own negligence, default, breach of duty, breach of trust, fraud or dishonesty (or to that of any Employee or Delegate).

- 4.3.3 Subject to Clause 4.3.5, no Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done in good faith and with due care by any Employee in accordance with and to implement the provisions of the Scheme if the act or omission is in accordance with, and to implement the provisions of, the Scheme and no Employee shall be liable for any loss unless such loss is attributable to his own negligence, default, breach of duty, breach of trust, fraud or dishonesty.
- 4.3.4 Subject to Clause 4.3.5, and without prejudice to Clause 4.3.2 or the proviso in Clause 4.2.2(m), no Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done in good faith and with due care by any Delegate in accordance with, and to implement the provisions of, the Scheme or the exercise by such Delegate in good faith and with due care of any power conferred upon the Scheme Administrators for the purposes of the Scheme if exercised in accordance with, and to implement the provisions of, the Scheme and no Delegate shall be liable for any loss unless such loss is attributable to his own negligence, default, breach of duty, breach of trust, fraud or dishonesty (or to that of any Employee).
- 4.3.5 No Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done or the exercise of any power conferred upon the Scheme Administrators in good faith by the Scheme Administrators or any Employee or Delegate pursuant to Clause 3.2 and no Scheme Administrator, Employee or Delegate shall be liable for any loss arising out of any such act, omission or exercise of power unless such loss is attributable to his own fraud or dishonesty (or to that of any Employee or Delegate, as the case may be).
- 4.3.6 Subject to the Companies Act (to the extent applicable), the Scheme Administrators (in their capacity as such) (and each Employee and Delegate) shall be entitled to an indemnity (payable by the Company acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators out of the Net Proceeds, but subject always to Clause 8.2.4) against:
- (a) all actions, claims, proceedings and demands brought or made against the Scheme Administrators (or Employee or Delegate) in respect of any act done or omitted to be done by the Scheme Administrators (or Employee or Delegate) in good faith without negligence, default, breach of duty, breach of trust, fraud or dishonesty in the course of implementing the Scheme in accordance with its terms; and
  - (b) all expenses and liabilities properly incurred by the Scheme Administrators (or Employees or Delegates) in carrying out their functions and powers (or the functions for which such Employee is employed by the Scheme Administrators or any Delegate) in the course of implementing the Scheme in accordance with its terms.
- 4.3.7 Without prejudice to the generality of Clause 4.3.6, each such person as is expressed to be entitled to an indemnity in accordance with that clause (in the capacity in which he is entitled to such an indemnity) shall be entitled to an

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indemnity (payable by the Company acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators out of the Net Proceeds, but always subject to Clause 8.2.4):

- (a) against any liability incurred by him in defending any proceedings, whether civil or criminal, in respect of any negligence, default, breach of duty, breach of trust, fraud or dishonesty in which judgment is given in his favour or in which he is acquitted; or
- (b) in connection with any application in any such proceedings in which relief is granted to him by a court from liability for negligence, default, breach of duty, breach of trust, fraud or dishonesty in relation to the affairs of the Company.

4.3.8 Subject to Clause 4.3.9, the Company (acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators) may, with the approval of the Creditors' Committee (such approval not to be unreasonably withheld or delayed):

- (a) purchase out of Net Proceeds and maintain for any such person as is referred to in Clause 4.3.6 insurance against any liability in respect of which the Company would be obliged to indemnify that person in accordance with Clauses 4.3.6 and 4.3.7; and
- (b) pay out of Net Proceeds costs incurred by any such person as is referred to in Clause 4.3.7 in defending proceedings of the nature described in Clause 4.3.7 provided that the Company obtains from such person an obligation to reimburse the Company (with interest) in respect of any sum which would not, in the event, have been payable by the Company under Clause 4.3.7 and any such sums if reimbursed shall be deemed to be Net Proceeds.

4.3.9 To the extent that a Special Resolution has been duly passed in accordance with the provisions of this Scheme, the provisions of Clause 8.2.4 shall apply in respect of any costs incurred in purchasing and/or maintaining the insurances referred to in Clause 4.3.8(a) and/or in respect of Clause 4.3.8(b).

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**5. PART 5 – THE CREDITORS’ COMMITTEE**

**5.1 Constitution of the Creditors’ Committee**

- 5.1.1 There shall be a Creditors’ Committee under the Scheme.
- 5.1.2 The Creditors’ Committee shall consist of not less than three nor more than nine Scheme Creditors (or their Designated Representatives) unless the Scheme Administrators (in consultation with the Creditors’ Committee) determine otherwise.
- 5.1.3 Any individual, body corporate or partnership who or which is a Scheme Creditor shall be eligible for appointment as a member of the Creditors’ Committee. If a partnership is appointed as a member, the appointment shall be treated as though the partnership were a body corporate and no person shall be entitled to act as a member of the Creditors’ Committee on behalf of (or by reason of being a partner in) such partnership except a person appointed by such partnership to represent it in accordance with Clause 5.1.5 or a person appointed as the alternate of such person in accordance with that clause.
- 5.1.4 Any body corporate or partnership (which may, but need not, be a Scheme Creditor) designated by notice in writing to the Creditors’ Committee by any two or more Scheme Creditors to act as a member of the Creditors’ Committee as their designated representative (a “**Designated Representative**”) shall be eligible for appointment as a member of the Creditors’ Committee.
- 5.1.5 Each member of the Creditors’ Committee which is a body corporate or a partnership may, by notice in writing to the Creditors’ Committee, appoint a director, senior executive, partner, professional adviser (including in-house counsel) or any other person duly authorised by the member concerned as its Nominated Representative to represent that member at meetings of the Creditors’ Committee (a “**Nominated Representative**”). Each Nominated Representative may, by notice in writing to the Creditors’ Committee, appoint any person qualified to act as a Nominated Representative as his alternate to attend and vote at any meeting of the Creditors’ Committee in his place. Any such alternate shall have the powers and shall be subject to the same duties and limitations as the Nominated Representative who has appointed him. Any person entitled to appoint a Nominated Representative or an alternate may from time to time revoke that appointment and appoint another person qualified to act as a Nominated Representative as a replacement, by notice in writing to the Creditors’ Committee.

**5.2 Membership of the Creditors’ Committee**

- 5.2.1 The initial Creditors’ Committee shall consist of the Informal Creditors’ Committee, the members of which are listed at Appendix 1 to the Explanatory Statement.
- 5.2.2 The Creditors’ Committee may, with the agreement of the Scheme Administrators (which agreement shall not be unreasonably withheld or delayed), resolve, by at least two-thirds of the members present, to appoint any eligible person to be a member, either to fill a vacancy or as an additional member, subject to (a) the maximum number of members provided for in Clause 5.1.2 and (b) a resolution requiring ratification of such appointment

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being put before the next meeting of the Scheme Creditors, pending which the appointee shall have full power to act as a member of the Creditors' Committee.

- 5.2.3 The Scheme Creditors in a meeting may, with the agreement of the Scheme Administrators (which agreement shall not be unreasonably withheld or delayed), resolve to remove any member of the Creditors' Committee from office and/or appoint any eligible Scheme Creditor as a member of the Creditors' Committee, subject to the limitations as to the minimum and maximum number of members of the Creditors' Committee as provided for in Clause 5.1.2.
- 5.2.4 An individual shall cease to be a member of the Creditors' Committee upon the occurrence of any of the following events:
- (a) if he ceases to be, or is found never to have been, a Scheme Creditor;
  - (b) if he resigns by notice in writing addressed to the Creditors' Committee;
  - (c) if he dies or becomes bankrupt or mentally disordered or becomes disqualified from acting as a director under the laws of England and Wales or New Hampshire;
  - (d) if he fails to attend three consecutive meetings of the Creditors' Committee and the Creditors' Committee resolves, by a majority of at least two-thirds of the members present, that he be removed; or
  - (e) if he is removed from office pursuant to Clause 5.2.3.
- 5.2.5 A body corporate or partnership shall cease to be a member of the Creditors' Committee upon the occurrence of any of the following events:
- (a) (other than in the case of a member which is a Designated Representative) if it ceases to be, or is found never to have been, a Scheme Creditor;
  - (b) if it is a Designated Representative of two or more Scheme Creditors, and it ceases to represent at least two Scheme Creditors as a result of persons it represents ceasing to be, or being found never to have been, Scheme Creditors and/or as a result of persons it represents notifying the Creditors' Committee in writing that such member has ceased to be their Designated Representative;
  - (c) if it resigns by notice in writing addressed to the Creditors' Committee;
  - (d) if it is dissolved;
  - (e) if it fails to attend (by its duly appointed Nominated Representative or his alternate) three consecutive meetings of the Creditors' Committee and the Creditors' Committee resolves, by a majority of at least two-thirds of the members present, that it be removed; or
  - (f) if it is removed from office pursuant to Clause 5.2.3.
- 5.2.6 The appointment of a Nominated Representative or his alternate shall terminate automatically upon the occurrence of any of the following events:
- (a) if the person whom that Nominated Representative represents ceases to be a member of the Creditors' Committee;

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- (b) if he ceases to be a director, senior executive, partner of or a professional adviser (including in-house counsel) to the member of the Creditors' Committee whom he represents or he otherwise ceases to be authorised by the member concerned;
- (c) if he dies or becomes bankrupt or mentally disordered or becomes disqualified from acting as a director under the laws of England and Wales or New Hampshire;
- (d) if his appointment is revoked by his appointor;
- (e) if the Creditors' Committee resolves, by a majority of at least two-thirds of all the members of the Creditors' Committee for the time being (excluding the member who has appointed such Nominated Representative or whose Nominated Representative has appointed such alternate), that such appointment shall terminate; or
- (f) in the case of an alternate, upon termination of the appointment of the Nominated Representative who appointed him.

5.2.7 Whenever there is a proposed change in the composition of the Creditors' Committee, the Creditors' Committee in consultation with the Scheme Administrators shall endeavour to ensure that the composition of the Creditors' Committee is such as to secure a proper balance of the interests of the Scheme Creditors in relation to the Company as between the members of the Creditors' Committee.

**5.3 Proceedings of the Creditors' Committee**

- 5.3.1 Save as otherwise specifically provided in the Scheme, the Creditors' Committee may convene, adjourn and otherwise regulate its meetings in such manner as it shall consider appropriate. The quorum at any meeting of the Creditors' Committee shall be at least two-thirds of the members, provided that if a quorum is not present within half an hour from the time appointed for a meeting, or if during a meeting such a quorum ceases to be present, the meeting shall stand adjourned to such time and place as may be determined by the majority of the members present (who shall inform the members of the Creditors' Committee of the date and time of the adjourned meeting) and the members present at any such adjourned meeting shall constitute a quorum. Each member of the Creditors' Committee shall have one vote and, except as otherwise provided in the Scheme, matters arising at a meeting shall be decided by a majority of votes cast at the meeting.
- 5.3.2 The Creditors' Committee shall meet for the purposes of receiving a report from the Scheme Administrators on the progress of the Scheme referred to in Clause 5.4.2(a) and shall hold such further meetings in accordance with 5.3.3 and 5.3.4 as it shall consider desirable for the purpose of performing its functions under the Scheme.
- 5.3.3 A meeting of the Creditors' Committee shall be called as soon as reasonably practicable if so requested by at least three members of the Creditors' Committee or if the Scheme Administrators otherwise consider it appropriate. Except with the consent of all members of the Creditors' Committee, the Scheme Administrators and the New Hampshire Liquidator, no meeting of the Creditors' Committee may be called upon less than fourteen clear days' notice and no business may be transacted at any such meeting other than that set out

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in the notice of that meeting. Each member of the Creditors' Committee, the Scheme Administrators (or their representative(s)) and the New Hampshire Liquidator (or his representative) shall be entitled to and shall receive notice of all meetings of the Creditors' Committee.

- 5.3.4 The Scheme Administrators (or their representative(s)) and the New Hampshire Liquidator (or his representative) shall be entitled to attend and speak, but not to vote, at all meetings of the Creditors' Committee and, if so requested by the Creditors' Committee, shall attend such meetings. If so requested by the Creditors' Committee, the Scheme Administrators (or their representative(s)) and/or the New Hampshire Liquidator (or his representative) shall absent themselves from such part of a meeting of the Creditors' Committee as the Creditors' Committee may specify.
- 5.3.5 Proper minutes shall be kept of all proceedings of the Creditors' Committee and such minutes shall be open to inspection at all reasonable times (subject to Clause 5.5.2) by any member of the Creditors' Committee. Copies of such minutes shall be sent as soon as practicable after their preparation to the Scheme Administrators.
- 5.3.6 A member of the Creditors' Committee, the New Hampshire Liquidator (or his representative) and the Scheme Administrators (or their representative(s)) may participate in a meeting of the Creditors' Committee through the medium of conference telephone or similar form of communication equipment if all persons participating in the meeting are able to hear and speak to each other throughout the meeting. A person participating in this way is deemed to be present in person at the meeting and, in the case of a member of the Creditors' Committee, is counted in a quorum and entitled to vote. All business transacted in this way by the Creditors' Committee is deemed to be validly and effectively transacted at a meeting of the Creditors' Committee although fewer than two-thirds of the members of the Creditors' Committee are physically present at the same place.
- 5.3.7 Save in respect of any resolution calling upon a Scheme Administrator to resign and subject to Clause 5.3.8, any resolution in writing signed by all members of the Creditors' Committee for the time being (or their Nominated Representatives) shall be as valid and effective as if passed at a meeting of the Creditors' Committee duly convened and held.
- 5.3.8 No written resolution shall take effect unless and until the Creditors' Committee has given each of (a) the Scheme Administrators and (b) the New Hampshire Liquidator at least 5 Business Days' written notice of the proposed resolution.

**5.4 Functions**

- 5.4.1 Without prejudice to the specific provisions of this Clause 5.4, the Creditors' Committee shall supervise the Scheme Administrators in the exercise of their functions under the Scheme.
- 5.4.2 With effect from the Effective Date:
- (a) on a date not later than the first anniversary of the Effective Date and not later than the end of each 15 month period thereafter, the Scheme Administrators shall submit to the Creditors' Committee and the New Hampshire Liquidator a report on the operation of the Scheme during the period since the last such report was prepared and shall (or shall

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appoint a representative to) attend at any meeting of the Creditors' Committee at which that report is considered for the purpose of giving such explanations and information as the Creditors' Committee may require. A copy of that report, incorporating such amendments (if any) as may be agreed by the Scheme Administrators and the Creditors' Committee, shall be provided to Scheme Creditors free of charge;

- (b) the Creditors' Committee may from time to time resolve what information it is desirable to seek from the Scheme Administrators concerning the affairs of the Company or the operation of the Scheme, and may depute to any one member of the Creditors' Committee to apply in writing to and receive from the Scheme Administrators all such information. The Scheme Administrators shall promptly give to the Creditors' Committee and the New Hampshire Liquidator all such information concerning the affairs of the Scheme Administrators or the operation of the Scheme as the Creditors' Committee shall from time to time reasonably resolve to seek and in respect of which a written request shall have been received by the Scheme Administrators. Each member of the Creditors' Committee shall be entitled at any time to raise questions or to request a meeting with the Scheme Administrators in connection with the performance of his responsibilities as a member of the Creditors' Committee and, subject to their duties under the Scheme, the Scheme Administrators shall use reasonable endeavours to respond to such questions or to comply with any such request for a meeting. Notwithstanding the preceding provisions of this Clause 5.4.2(b), the Scheme Administrators shall not be obliged to disclose any confidential information of the Company to a member of the Creditors' Committee if the information relates to any matter where such member (and, where such member is a Designated Representative, its appointors) has an interest in conflict with the Company (other than a general conflict arising as a result of the status of the members of the Creditors' Committee (or appointors) as creditors of the Company).

5.4.3 The Creditors' Committee shall consider and, if thought fit, approve (such approval not to be unreasonably withheld or delayed), on behalf of the Company, the level and payment of the fees and expenses of the Scheme Administrators from time to time (and such function may, with the prior written consent of the Company (acting by the Scheme Administrators), be delegated to one or more members of the Creditors' Committee) and the Scheme Administrators shall provide all information reasonably requested by the Creditors' Committee in relation thereto.

5.4.4 The Creditors' Committee shall:

- (a) so far as it is able, ensure that there is a Scheme Administrator in office at all times; and
- (b) comply with the conditions set out in Clause 4.1.1(a) in appointing any Scheme Administrator.



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5.5 **Duties**

- 5.5.1 Each member of the Creditors' Committee, each Nominated Representative and their respective alternates shall, in performing their functions as members of the Creditors' Committee in relation to the Company, act *bona fide* in the interests of the Scheme Creditors as a whole.
- 5.5.2 It shall be the duty of each member of the Creditors' Committee who is in any way interested, whether directly or indirectly, or, where such member is a Designated Representative, any of whose appointors is interested, whether directly or indirectly, in a contract or proposed contract with the Company (other than any which arises as a result of the provisions of the Scheme) to declare (or procure that its Nominated Representative shall declare) the nature of his, its or such appointor's interest at a meeting of the Creditors' Committee. For this purpose a general notice given to the Creditors' Committee to the effect that a member or an appointor of a Designated Representative is associated (within the meaning of section 435 of the Insolvency Act) with a specified company or firm and is to be regarded as interested in any contract with that company or firm is deemed a sufficient declaration of interest in relation to any such contract. If the Scheme Administrators (or, if there is no Scheme Administrator in attendance at the relevant meeting, a simple majority of Creditors' Committee members present at that meeting) reasonably conclude that the nature of the interest of the Creditors' Committee member concerned gives rise to a conflict of interest in any particular case, then, such member of the Creditors' Committee shall not be counted in the quorum, shall not be entitled to vote in relation to any matter relating specifically to any such contract, shall retire from the meeting for so long as the matter is discussed and voted upon and shall not receive any information, nor be entitled to inspect any part of the minutes of a meeting of the Creditors' Committee, relating thereto.
- 5.5.3 Each Nominated Representative shall be entitled to report to the member appointing him, and each Designated Representative shall be entitled to report to the Scheme Creditors appointing it, on the proceedings of the Creditors' Committee and, so far as necessary for that purpose, to disclose confidential information of the Company to those officers, employees and professional advisers of that member or appointor who need to know it in connection with (where a Nominated Representative is disclosing information) the performance of its responsibilities as a member of the Creditors' Committee or (where a Designated Representative is disclosing information) the performance of the Designated Representative's responsibilities as a member of the Creditors' Committee, provided that such information does not to his or its knowledge (after due enquiry) relate to any matter where any such appointor has an interest in conflict with the Company (other than a general conflict arising as the result of the status of the members of the Creditors' Committee or the appointors of a Designated Representative as creditors of the Company). Each member of the Creditors' Committee shall procure that its Nominated Representative and its officers, employees and professional advisers shall, and where such member is a Designated Representative shall procure that its appointors and their officers, employees and professional advisers shall, preserve the confidentiality of such information and shall use such information only for the purposes of performing their responsibilities and functions (or their Designated Representative's responsibilities and functions) in relation to the Creditors' Committee. Each member of the Creditors' Committee shall be

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entitled to share information with any third party that it was entitled to share confidential information with as a member of the Informal Creditors' Committee.

**5.6 Responsibilities and indemnity**

- 5.6.1 No Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done in good faith by any member of the Creditors' Committee (or Nominated Representative or alternate) in accordance with and to implement the provisions of the Scheme or the exercise by any such person in good faith of any power conferred upon it or him for the purposes of the Scheme if exercised in accordance with and to implement the provisions of the Scheme and no such person shall be liable for any loss unless such loss is attributable to its or his own wilful default, fraud, dishonesty or wilful breach of duty or trust.
- 5.6.2 No Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done or the exercise of any power conferred upon the Creditors' Committee, in good faith by any member of the Creditors' Committee (or Nominated Representative or alternate) pursuant to Clause 3.2 and no member of the Creditors' Committee, Nominated Representative or alternate shall be liable for any loss arising out of any such act, omission or exercise of power unless such loss is attributable to its or his own fraud or dishonesty.
- 5.6.3 Subject to the Companies Act (to the extent applicable), each member of the Creditors' Committee (and each Nominated Representative and alternate) (in each case in their capacity as such) shall be entitled to an indemnity (payable by the Company, acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators out of the Net Proceeds, but subject always to Clause 8.2.4) against all actions, claims, proceedings and demands brought or made against it or him in respect of any act done or omitted to be done in relation to the Company in good faith by such person in the course of implementing the Scheme in accordance with its terms; such indemnity shall include the costs of defending any such actions, claims, proceedings and demands.
- 5.6.4 Without prejudice to the generality of Clause 5.6.3, each such person as is expressed to be entitled to an indemnity in accordance with that clause (in the capacity in which it or he is entitled to such an indemnity) shall be entitled to an indemnity (payable by the Company, acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators, out of the Net Proceeds, but subject always to Clause 8.2.4):
- (a) against any liability incurred by it or him in defending any proceedings, whether civil or criminal, in respect of any wilful default, fraud, dishonesty or wilful breach of duty or trust in relation to the Company in which judgment is given in its or his favour or in which it or he is acquitted; or
  - (b) in connection with any application in any such proceedings in which relief is granted to it or him by a court from liability for wilful default, fraud, dishonesty or wilful breach of duty or trust in relation to the affairs of the Company.

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5.6.5 Subject to Clause 5.6.6 below, the Company (acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators) may, with the approval of the Creditors' Committee (such approval not to be unreasonably withheld or delayed):

- (a) purchase out of the Net Proceeds and maintain for any such person as is referred to in Clause 5.6.3 insurance against any liability in respect of which the Company would be obliged to indemnify that person in accordance with Clauses 5.6.3 and 5.6.4; and
- (b) pay out of the Net Proceeds costs incurred by any such person as is referred to in Clause 5.6.3 in defending any actions, claims, proceedings and demands of the nature described in Clauses 5.6.3 and 5.6.4 which relate to the Company provided that the Company obtains from such person (or, where such person is a Nominated Representative or an alternate, the member of the Creditors' Committee which such person represents) an obligation to reimburse the Company (with interest) in respect of any sum which would not, in the event, have been payable by the Company under those clauses.

5.6.6 To the extent that a Special Resolution has been duly passed in accordance with the provisions of this Scheme, the provisions of Clause 8.2.4 shall apply in respect of any costs incurred in purchasing and/or maintaining the insurances referred to in Clause 5.6.5(a) and/or in respect of Clause 5.6.5(b).

**5.7 Validation of acts**

All acts done by the Creditors' Committee, any meeting of the Creditors' Committee or any person acting as a member of the Creditors' Committee or as a Nominated Representative or alternate shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a member of the Creditors' Committee or person acting as aforesaid, or that any of them were disqualified, be valid as if every such person had been duly appointed and qualified.

**5.8 Expenses**

Each member of the Creditors' Committee, each Nominated Representative and their respective alternates shall be entitled to be reimbursed by the Company (acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators, out of Net Proceeds, but subject always to Clause 8.2.4) for their reasonable expenses (excluding, for the avoidance of doubt, legal expenses) in attending meetings of the Creditors' Committee, provided that such meetings are held in London or in such other place as the Scheme Administrators may from time to time agree with the Creditors' Committee.

**5.9 No Creditors' Committee**

5.9.1 If at any time there are less than the minimum number of Creditors' Committee members required by Clause 5.1.2, the Creditors' Committee may continue to exercise all its functions under the Scheme (other than those provided for in Clauses 4.1.3(a), 6.1.1(b), and 7.1.1(b)) for a period of twenty-eight days, during which time such members of the Creditors' Committee shall endeavour to fill the vacancies on the Creditors' Committee. If they shall fail to do so within such period, the Scheme Administrators shall, within a further fourteen days, appoint such additional Scheme Creditors ("Interim Appointees") as are required

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to fill such vacancies. In appointing any such Interim Appointees, the Scheme Administrators shall endeavour to ensure that the composition of the Creditors' Committee including such Interim Appointees is such as to secure a proper balance of the interests of the Scheme Creditors as between themselves and in relation to the Company. In the event of such vacancies being filled, whether by appointees of the Creditors' Committee or by Interim Appointees, the full powers and functions of the Creditors' Committee under the Scheme will be restored, provided that no Interim Appointee shall be entitled to vote in relation to any resolution to appoint an additional member of the Creditors' Committee. Any Interim Appointee will be liable to be removed as a member of the Creditors' Committee at any time without notice if the Creditors' Committee (excluding any Interim Appointees) appoints a Scheme Creditor to fill the vacancy which had been filled by such Interim Appointee (and the members of the Creditors' Committee (excluding any Interim Appointees) shall use their reasonable endeavours to fill any such vacancy accordingly as soon as possible).

- 5.9.2 If, following the procedure set out in Clause 5.9.1, there are less than the minimum number of Creditors' Committee members required in Clause 5.1.2 (including Interim Appointees appointed under Clause 5.9.1) then, for so long as that is the case, the Creditors' Committee shall not exercise any functions or have any powers under the Scheme and the following provisions shall apply:
- (a) the Scheme Administrators shall use all reasonable endeavours to find additional members of the Creditors' Committee to enable it to function;
  - (b) subject to obtaining the approval of the New Hampshire Liquidator (which approval shall not be unreasonably withheld, as such is determined in accordance with the standards set forth in New Hampshire RSA 541:13), a Scheme Administrator may be removed, and a new Scheme Administrator (who qualifies with the conditions set out in Clause 4.1.1(a)) may be appointed in his place, only at a meeting of the Scheme Creditors pursuant to a resolution proposed by any ten Scheme Creditors who have Scheme Claims of an aggregate value in excess of ten per cent. of all Scheme Claims or any twenty Scheme Creditors;
  - (c) the remuneration of the Scheme Administrators shall be payable at the same rate at which it had last been set by the Creditors' Committee unless and until varied by the Scheme Creditors; and
  - (d) the requirements for obtaining the consent, approval or agreement of and for consulting with or notifying the Creditors' Committee contained in Clauses 2.13.2, 3.2.2, 3.2.3, 3.2.7, 4.2.2(g), 4.2.2(i), 4.2.2(m), 4.2.3, 4.3.8, 5.1.2, 5.3.3, 5.4.2(b), 5.4.3, 5.6.5, 6.3.3, 7.1.1(b), and for submitting a report to the Creditors' Committee pursuant to Clause 5.4.2(a) shall be suspended.

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**6. PART 6 – MEETINGS OF SCHEME CREDITORS**

**6.1 Convening of meetings**

6.1.1 Meetings of Scheme Creditors are to be convened as follows:

- (a) the Scheme Administrators may at any time convene a meeting of the Scheme Creditors for such purpose as they think fit;
- (b) the Creditors' Committee may convene a meeting of Scheme Creditors to consider resolutions for such purpose as it thinks fit;
- (c) any ten Scheme Creditors who have Scheme Claims of an aggregate value in excess of ten per cent of all Scheme Claims or any twenty Scheme Creditors may, by notice in writing signed by them or on their behalf and delivered to the Scheme Administrators, require the Scheme Administrators to convene a meeting of Scheme Creditors for such purpose as they think fit. The notice must specify the purpose for which the meeting is required and it shall be the duty of the Scheme Administrators forthwith to summon a meeting of Scheme Creditors for that purpose and to give such notice of the meeting as is necessary to enable such purpose to be carried out effectively in accordance with the provisions of the Scheme.

6.1.2 At least twenty-eight days' notice shall be given of a meeting of Scheme Creditors. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place and time of the meeting (and where a meeting of Scheme Creditors is being convened to discuss the report referred to in Clause 5.4.2(a) the place from which a copy of the report referred to in Clause 5.4.2(a) can be obtained by Scheme Creditors free of charge prior to the meeting).

6.1.3 Notice of a meeting of Scheme Creditors shall be given:

- (a) to each Scheme Creditor to whom the Company owes an Established Scheme Liability, and to any other Scheme Creditor who has applied in writing to the Scheme Administrators to receive notice of such meeting, by sending notice by pre-paid post to such Scheme Creditor at his last known address; and
- (b) to all other Scheme Creditors by placing advertisements containing the requisite information in such newspaper or newspapers as the Scheme Administrators shall consider appropriate; and
- (c) to the Creditors' Committee, the New Hampshire Liquidator and the Scheme Administrators.

Any such notice shall be deemed to have been served on the date on which it is posted or as the case may be, the latest date on which the advertisement appears.

6.1.4 The accidental failure to give notice of a meeting of Scheme Creditors to, or the non-receipt of notice of such a meeting by, any Scheme Creditor entitled to receive notice shall not invalidate the proceedings at that meeting.

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**6.2 Resolutions**

- 6.2.1 If a meeting of Scheme Creditors is convened at a time when a resolution is to be put to the next meeting of Scheme Creditors pursuant to Clauses 4.1.3, 5.2.2 or 5.2.3, the business of the meeting shall include the resolution concerned and in the case of a resolution to remove a Scheme Administrator pursuant to Clause 4.1.3(a) which, if passed, would result in there being no Scheme Administrators in office, shall also include a resolution that a named person (i) who satisfies the conditions set out in Clause 4.1.1(a) and (ii) willing to be appointed as a Scheme Administrator be appointed in his place.
- 6.2.2 No meeting shall be convened unless the notice of the meeting sets out the text of each resolution which is to be proposed at the meeting, or an adequate summary thereof, or, if no resolution is to be proposed at the meeting, the nature of the business to be discussed thereat, and (in the case of a notice which is sent by post) is accompanied by a letter explaining in relation to each resolution why the meeting is being convened.

**6.3 Voting**

- 6.3.1 A resolution put to a meeting of Scheme Creditors shall be effective only if it is approved by a majority in number and three-quarters in value of the Scheme Creditors present and voting either in person or by proxy at the meeting.
- 6.3.2 Every Scheme Creditor entitled to vote shall have the right to appoint any person as his proxy to attend and vote instead of him. The instrument appointing a proxy may be in any form which the Company (acting through the Scheme Administrators) may approve and must be lodged at the place specified in the notice of the meeting for the lodging of proxies not less than forty-eight hours before the meeting (or adjourned meeting) at which it is to be used.
- 6.3.3 No business shall be transacted at any meeting of Scheme Creditors unless a quorum is present when the meeting proceeds to business. Twenty Scheme Creditors present in person or by proxy and having the right to vote at the meeting shall be a quorum, unless the Scheme Administrators and the Creditors' Committee agree a smaller number. All resolutions put to the vote of any meeting shall be decided on a show of hands, unless the Scheme Administrators determine in their absolute discretion that a poll should be taken.
- 6.3.4 A Scheme Administrator shall preside (or shall nominate a representative to preside) at each meeting of the Scheme Creditors (other than a meeting at which a resolution to remove a Scheme Administrator is proposed, when a member of the Creditors' Committee shall preside), but if such Scheme Administrator (or his nominated representative), or if relevant, the member of the Creditors' Committee is not present within thirty minutes after the time appointed for opening the meeting or is unwilling to preside, the Scheme Creditors present in person or by proxy shall choose one of themselves, to be chairman of the meeting. If no person is willing to preside as chairman of the meeting, the meeting shall be adjourned for seven days, and, if no person is willing to preside as chairman of the adjourned meeting, the meeting shall be dissolved.

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**6.4 Valuation of Scheme Claims for the purposes of meetings**

- 6.4.1 For the purposes of valuing any Scheme Claim for any of the purposes referred to in Clauses 5.9.2(b), 6.1.1(c) and 6.3.1 the value of the Scheme Claim shall, in the case of a Scheme Claim which has become an Established Scheme Liability, be the amount of the liability so established (less the amount of any payments paid, or treated as having been paid, by the Company under the Scheme in respect thereof), and, in the case of any other Scheme Claim, be such amount as may, for the purposes of such meeting only, be reasonably estimated as the value of such Scheme Claim by the Scheme Administrators.
- 6.4.2 In the event that a Scheme Creditor disputes the value which has been put on its Scheme Claim pursuant to Clause 6.4.1 or otherwise the amount for which its vote should be counted, the dispute shall be referred to the president for the time being of the Institute of Chartered Accountants in England and Wales (or any successor thereto) or, if the Scheme Administrator (or any of his partners) at such time occupies such office, the president at that time of the Law Society of England and Wales, or such other individual as he may nominate who shall consult with such relevant experts as he thinks appropriate and who shall act as an expert not an arbitrator and whose decision (including as to who should bear the costs of such referral) shall be final (but only as regards the convening of the meeting or the vote on that occasion).
- 6.4.3 For the purposes of ascertaining whether or not the requisite percentage for the convening of any meeting of Scheme Creditors or the requisite majority at any meeting of Scheme Creditors has been obtained, the amount of each Scheme Claim which is denominated in a currency other than US Dollars shall be converted into US Dollars at the Relevant Rate of Exchange.

**6.5 Special Meetings**

- 6.5.1 If requested to do so by the Creditors' Committee, the Scheme Administrators shall, as soon as reasonably practicable following notification in accordance with Clause 2.12.4 that the Company has entered into a commutation or similar compromise arrangement with all, or substantially all (by value), AFIA Reinsurers and/or the Guarantor as described in Clause 2.12.2, convene a Special Meeting of the Scheme Creditors.
- 6.5.2 The Scheme Administrators shall give notice of a Special Meeting in accordance with the provisions of Clause 6.1.
- 6.5.3 Clauses 6.1.4, 6.3, and 6.4 shall apply *mutatis mutandis* to a Special Meeting.
- 6.5.4 The provisions of a Special Resolution shall take effect forthwith upon its being duly passed in accordance with the provisions of the Scheme.

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**7. PART 7 – DURATION OF THE SCHEME**

**7.1 Termination events**

7.1.1 Subject to Clause 7.1.2 (which shall survive such termination), the Scheme shall terminate if:

- (a) all the liabilities of the Company to the Scheme Creditors have been discharged in full; or
- (b) the Scheme Administrators, with the agreement of the Creditors' Committee and the New Hampshire Liquidator, have concluded after due enquiry that the Scheme is no longer in the interests of the Scheme Creditors (as a whole); or
- (c) a resolution that the Scheme should be terminated is passed at a meeting of the Scheme Creditors, with the agreement of the New Hampshire Liquidator; or
- (d) the New Hampshire Liquidator determines in his sole discretion (following consultation with the Scheme Administrator and the Creditors' Committee) that the Scheme should terminate in the event that the New Hampshire Supreme Court enters a decision which has the effect of disapproving the Proposal.

7.1.2 If the Scheme terminates the following provisions shall apply:

- (a) termination of the Scheme shall be without prejudice to any right or obligation which shall have arisen under the Scheme as a result of any act or omission which took place prior to the termination of the Scheme including, without limitation, any right to an indemnity as a result of an act or omission which took place, or as a result of liabilities or expenses which were incurred, prior to the termination of the Scheme;
- (b) the provisions of Clauses 7.1.2, 8.2.3 and 8.2.4 shall continue in full force and effect; and
- (c) as soon as practicable following termination, the Scheme Administrators shall cause notices stating that the Scheme has terminated to be placed in such newspaper as the Scheme Administrators consider appropriate for one day a week for three consecutive weeks following such termination.



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**8. PART 8 – GENERAL SCHEME PROVISIONS**

**8.1 Effective Date**

The Scheme shall become effective on the Effective Date.

**8.2 Pre-Scheme Costs and Other Costs**

8.2.1 Subject to Clauses 8.2.3 and 8.2.4, as soon as practicable after the Effective Date there shall be paid by the Company (acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators) (to the extent not already paid) out of the Gross Proceeds (to the extent available):

- (a) all outstanding costs, charges, expenses and disbursements reasonably incurred by the Company prior to the Effective Date, in connection with:
  - (i) the negotiation, preparation and implementation of the Scheme, including the costs of holding the meeting of its Scheme Creditors convened to consider the Scheme; and
  - (ii) insofar as they do not fall within 8.2.1(a)(i) the costs of obtaining the New Hampshire Approval Order, the English Court Orders and the FSA Approval,

including, without prejudice to the generality of the foregoing, the costs of any legal and other professional advisors; and

- (b) insofar as they do not fall within 8.2.1(a), JPL Costs reasonably incurred prior to the Effective Date which are payable by the Company.

8.2.2 Subject to Clauses 8.2.3 and 8.2.4, so long as the Scheme remains in force (but subject to clause (f)) there shall be paid by the Company (acting by the New Hampshire Liquidator and/or the Joint Provisional Liquidators) in full out of the Gross Proceeds (to the extent available):

- (a) all costs, charges, expenses and disbursements incurred by the Company (whether acting by the New Hampshire Liquidator, the Joint Provisional Liquidators and/or the Scheme Administrators) in the course of carrying out the Scheme and of complying with the provisions of the Companies Act;
- (b) insofar as they do not fall within Clause 8.2.2(a), and without prejudice to the provisions of Clause 5.4.3, all costs, charges, expenses, and disbursements incurred by, and the remuneration of the Scheme Administrators and/or similar officeholder appointed to the Company in the discharge and/or exercise of their duties, functions and powers under the Scheme; and
- (c) insofar as they do not fall within Clauses 8.2.2(a) or 8.2.2(b), all Collection Costs; and
- (d) insofar as they do not fall within Clauses 8.2.2(a) to 8.2.2(c), all JPL Costs;
- (e) insofar as they do not fall within Clauses 8.2.2(a) to 8.2.2(d), all costs, charges, expenses and disbursements incurred by the Company in respect of the handling and/or management of claims insofar as the same relate to Scheme Claims; and

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(f) notwithstanding that the Scheme shall have terminated in relation to the Company, the costs of placing the notices required by Clause 7.1.2(c).

8.2.3 Subject to Clause 8.2.4, where there are insufficient Gross Proceeds available to pay Costs, such Costs shall be paid by the Company (acting by the New Hampshire Liquidator) as an administration expense of the New Hampshire Liquidation, provided that, as and when Gross Proceeds do become available, (or as soon as reasonably practicable thereafter), any Costs so paid shall be reimbursed from such Gross Proceeds.

8.2.4 Following the passing of the Special Resolution, any Other Costs and Indemnity Costs incurred from and including the Operative Date shall be paid by the Company (acting by the Scheme Administrators) from the Scheme Assets.

**8.3 Conditionality of the Scheme**

The provisions of this Scheme shall only apply from the Effective Date. The Scheme shall only become effective when a copy of the Sanction Order has been delivered for registration to the registrar of companies in England and Wales as required by section 425(3) of the Companies Act and the first day on which all of the following conditions have been met:

8.3.1 the New Hampshire Approval Order has been obtained from the New Hampshire Court; and

8.3.2 the Global Liquidation Order has been obtained from the English Court; and

8.3.3 the FSA Approval has been obtained.

**8.4 Modification of the Scheme**

The Company (acting by the Joint Provisional Liquidators with the express approval of the New Hampshire Liquidator) may, at any hearing to sanction the Scheme, consent on behalf of all those concerned to any modification of the Scheme or any terms or conditions which the English Court may think fit to approve or impose and which would not directly or indirectly have a materially adverse effect on the interests of any Scheme Creditor under the Scheme.

**8.5 Notice**

Any notice to be given to the Company and/or the Scheme Administrators under or in relation to this Scheme shall be given in writing and shall be deemed to have been duly given if it is delivered by hand or sent by pre-paid first class post, and by air mail where it is addressed to a different country from that in which it is posted, to the Company, c/o Ernst & Young LLP and marked for the attention of Gareth Hughes or Margaret Mills at 1 More London Place, London SE1 2AF (or such other person as may have been appointed as a Scheme Administrator in accordance with Clause 4.1.1(a) of this Scheme or at such other address as the Scheme Administrators may notify to Scheme Creditors for the purpose of this Clause 8.5 in such newspaper as the Scheme Administrators consider appropriate for one day a week for three consecutive weeks), and any notice posted as aforesaid shall be deemed to have been given on the seventh (or, if by airmail, the fourteenth) day following the date on which it is posted. The Scheme Administrators shall maintain at all times an office address in London for the purposes of giving notice to them and to the Company under this Scheme.

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**8.6 No Liability**

Neither the New Hampshire Liquidator (nor the New Hampshire Liquidator's special deputy, the employees of the Company, the Commissioner of Insurance for the State of New Hampshire, employees of the New Hampshire Insurance Department, the Attorney General of the State of New Hampshire nor employees of the New Hampshire Office of the Attorney General) nor the Joint Provisional Liquidators (nor the Joint Provisional Liquidators' firm, partners and/or employees) shall incur any liability in any capacity, under, or by virtue of, this Scheme, nor in relation to any related matter or claim howsoever, whenever and wherever arising, and whether such claim is formulated in contract and/or tort or by reference to any other remedy or right, and in whatever jurisdiction or forum.

**8.7 Governing law and jurisdiction**

8.7.1 Subject to Clause 8.7.2 below, the Scheme shall be governed by, and construed in accordance with, English law and the Scheme Creditors, the Company and the Scheme Administrators hereby agree that the English Court shall have exclusive jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of the Explanatory Statement or any provision of the Scheme, or out of any action taken or omitted to be taken under the Scheme or in connection with the administration of the Scheme, and, for such purposes, the Scheme Creditors, the Company and the Scheme Administrators irrevocably submit to the jurisdiction of the English Court provided, however, that nothing in this Clause 8.7 shall affect the validity of other provisions determining governing law and jurisdiction as between the Company and any Scheme Creditor, whether contained in any contract or otherwise.

8.7.2 The New Hampshire Court shall have exclusive jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which a Scheme Creditor seeks to bring against the New Hampshire Liquidator, whether arising (i) out of the Explanatory Statement (ii) out of any provision of the Scheme (iii) out of any action taken or omitted to be taken under the Scheme by the Company (acting by the New Hampshire Liquidator) (iv) in connection with the administration of the Scheme or (v) otherwise, and, for such purposes, the Scheme Creditors irrevocably submit to the jurisdiction of the New Hampshire Court.

Dated 23 July 2004

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APPENDIX 1

**DRAFT SPECIAL RESOLUTION**

THAT the Company, acting by the Scheme Administrators, shall, in accordance with the procedures set out in the Annex hereto, seek to agree or have adjudicated the values of Notifiable Claims (as defined in the Annex) which, as at the date of the passing of this Special Resolution (the “**Operative Date**”), by reason of their being subject to any contingency or for any other reason, do not bear a certain value, on the basis that such values (when agreed or adjudicated and all relevant appeal periods having expired) shall become Established Scheme Liabilities for the sole purpose of determining a Scheme Creditor’s entitlement to a distribution of Scheme Assets under the Scheme.

**ANNEX**

**1. Notification of claims**

- 1.1 Upon this Resolution being duly passed at the Special Meeting and subject to paragraph 2, no Scheme Creditor shall be entitled to receive any Payment Percentage payable under the Scheme in respect of any Scheme Claim which is not at the date of the Special Meeting an Established Scheme Liability unless prior to the expiration of the period of six calendar months from the Operative Date (“**Claims Submission Period**”) written notice of such Scheme Claim (“**Notifiable Claim**”) shall have been received by the Scheme Administrators from or on behalf of the Scheme Creditor concerned, such written notice to be given in the form and manner required by the Scheme Administrators on a form (a “**Claim Form**”) to be provided by the Scheme Administrators for such purpose.
- 1.2 Within 21 days after the Operative Date, the Scheme Administrators shall give notice to every Scheme Creditor to whom notice was given of the Special Meeting, and to any other person whom the Scheme Administrators believe to be a Scheme Creditor, at his last known address, that this Special Resolution has been passed, the action(s) to be taken and enclosing a Claim Form for use in respect of any claims of such Scheme Creditor.
- 1.3 The Scheme Administrators may, with the consent of the Creditors’ Committee but otherwise in their absolute discretion, and either generally or in respect of any particular Notifiable Claim, extend (by not more than 6 months and not on more than one occasion in relation to any claim) the time within which notice of a Notifiable Claim is to be received in accordance with paragraph 1.1.
- 1.4 Notifiable Claims notified in accordance with this paragraph 1 are referred to below as “**Notified Scheme Claims**”. For the avoidance of doubt, Notified Scheme Claims may be outstanding claims or estimates placed by Scheme Creditors on the value of a contract of reinsurance in respect of which there are currently no outstanding claims.

**2. Appointment of the Adjudicator**

- 2.1 There shall be an Adjudicator (the “**Adjudicator**”) appointed for the purposes mentioned in this Resolution. The Adjudicator may not be any of the New Hampshire Liquidator, the Joint Provisional Liquidators or the Scheme Administrators.
- 2.2 The first Adjudicator shall be [●].

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- 2.3 The Adjudicator may resign his appointment at any time by giving not less than one month's notice in writing to the Scheme Administrators and the Creditors' Committee.
- 2.4 The Creditors' Committee shall be entitled:
- 2.4.1 by a resolution passed by at least three-quarters of all the members of the Creditors' Committee for the time being at any time to call upon the Adjudicator to resign, provided that:
- (i) the Scheme Administrators' have expressly consented in writing to the proposed resolution; and
  - (ii) the Adjudicator has been given (x) at least twenty-eight days' notice of the proposed resolution and of the reasons why the resolution is to be put to the Creditors' Committee and (y) a reasonable opportunity to make representations at the meeting at which the resolution is proposed (and, if the Adjudicator declines to resign, a resolution requiring his removal shall be put before the next meeting of Scheme Creditors); and
- 2.4.2 upon removal of the Adjudicator or if the Adjudicator ceases to hold office for any other reason, to appoint any person qualified to act and approved by the Scheme Administrators to be the Adjudicator in his place (and a resolution requiring ratification of such appointment shall be put before the next meeting of Scheme Creditors pending which the appointee shall have full power to act as the Adjudicator) save that if a resolution is passed at a meeting of Scheme Creditors requiring the removal of the Adjudicator pursuant to paragraph 2.4.1, such appointment may be made by the Scheme Creditors at such meeting.
- 2.5 In the event that there is a vacancy in the office of the Adjudicator (otherwise than by reason of his removal from office at a meeting of Scheme Creditors at which another individual is appointed in his place) the Scheme Administrators may, with the consent of the Creditors' Committee, fill the vacated office by appointing another person as Adjudicator.

**3. Determination of Notified Scheme Claims**

- 3.1 Subject to the following provisions of this paragraph, in relation to each Notified Scheme Claim, the Scheme Administrators shall use their reasonable endeavours to reach agreement with the Scheme Creditor concerned, before the expiration of six months from the date on which a duly completed Claim Form has been received by the Scheme Administrator, as to the admissible amount in respect of such Notified Scheme Claim after taking into account:
- (a) any security over the property of the Company or any letters of credit or trust issued or created in respect of the Company which the Scheme Creditor is entitled to enforce in accordance with Clause 2.6 of the Scheme;
  - (b) any right of set-off upon which the Scheme Creditor is entitled to rely in accordance with Clause 2.7 of the Scheme;
  - (c) the valuation of any contingent or prospective debts owed by the Scheme Creditor to the Company (such valuation to be agreed between the Scheme Administrators and the Scheme Creditor or, absent such agreement, determined by the Adjudicator),

and upon agreement being reached, the Notified Scheme Claim shall be deemed to be an Established Scheme Liability of an amount equal to the amount so agreed.

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- 3.2 Any Notified Scheme Claim in respect of which such agreement has not been reached before the expiration of six months (or such longer period as may be provided under paragraph 3.3 below) after the end of the Claims Submission Period shall be referred immediately thereafter by the Scheme Administrators to the Adjudicator for determination by him in accordance with paragraph 4.
- 3.3 The Scheme Administrators may, with the consent of the Creditors' Committee, and either generally or in respect of any particular Notified Scheme Claim, extend the time after which the Scheme Administrators are required to refer claims to the Adjudicator pursuant to paragraph 3.2.
- 4. Determination of Notified Scheme Claims by the Adjudicator**
- 4.1 On any Notified Scheme Claim being referred to the Adjudicator for determination by him in accordance with this paragraph, the Adjudicator shall, before the expiration of six months from the date on which such claim was referred to him by the Scheme Administrators, certify in writing to the Scheme Administrators and to the Scheme Creditor concerned what he considers, subject to paragraph 3.1, to be the value of such Notified Scheme Claim and where applicable, of any debts owed to the Company under paragraph 3.1(c), and upon such certificate being given, the Scheme Claim concerned shall be deemed to be an Established Scheme Liability of an amount equal to the amount so certified.
- 4.2 The Adjudicator shall be entitled to lay down such reasonable provisions and prescribe such reasonable procedures as in his absolute discretion he may consider appropriate for the purpose of assisting him in reaching his decision and shall be entitled for such purpose to call for such information in relation to the relevant Notified Scheme Claim concerned as he may require.
- 4.3 At the time of the giving of any such certificate as is referred to in paragraph 4.1 in relation to a Notified Scheme Claim, the Adjudicator may make such directions as he thinks fit as to the payment by the Scheme Creditor and/or the Company (acting by the Scheme Administrators) of his remuneration and the costs, charges and expenses incurred by him.
- 4.4 If the Adjudicator shall direct that any such remuneration, costs, charges and expenses be paid by the Company (acting by the Scheme Administrators), the same shall forthwith be paid in full by the Company (acting by the Scheme Administrators) from Scheme Assets.
- 4.5 If the Adjudicator shall direct any such remuneration, costs, charges and expenses be payable by a Scheme Creditor and the Scheme Creditor does not pay the same in full within one month after such direction, the Company (acting by the Scheme Administrators) may pay any unpaid balance in full out of the Scheme Assets. In any such case, for the purposes of determining whether such Scheme Creditor is entitled to receive any payments pursuant to paragraph 6, he shall be treated as having received on account of all Scheme Claims in respect of which he is entitled an amount equal to the unpaid balance so paid by the Company (acting by the Scheme Administrators) and the extent, if any, to which he is entitled to any payment pursuant to paragraph 6 shall be reduced accordingly. The Company, acting by the Scheme Administrators, shall be entitled to pursue the Scheme Creditor for such unpaid costs.

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- 4.6 If and to the extent that the Scheme Administrators make a cash recovery from a Scheme Creditor (a “**Recovery**”) in relation to a payment obligation imposed upon that Scheme Creditor pursuant to paragraph 4.5, the amount of such Recovery shall be added to Scheme Assets.
- 4.7 Except as required by law, a certificate given by the Adjudicator in relation to a Notified Scheme Claim shall be final and neither the Company nor any Scheme Creditor shall have any right to appeal therefrom or any claim against the Adjudicator in respect thereof.
- 4.8 The Scheme Administrators may, with the consent of the Creditors’ Committee, but otherwise in their sole discretion, and either generally or in respect of any particular Notified Scheme Claim, extend the time within which the Adjudicator is to provide his certificate pursuant to paragraph 4.1.
- 5. Costs, charges and expenses**  
Subject to paragraph 4.3, the Company (acting by the Scheme Administrators) shall pay out of the Scheme Assets all costs, charges and expenses incurred by the Adjudicator in the course of exercising and performing his powers, duties and functions under the Scheme and shall pay such remuneration to the Adjudicator for the exercise of his performance, duties and functions as may be agreed between the Adjudicator and the Scheme Administrators and approved by the Creditors’ Committee. The terms of the indemnity provided for the Scheme Administrators in Clause 4.3 of the Scheme shall apply *mutatis mutandis* to the Adjudicator and such indemnity shall be paid by the Company (acting by the Scheme Administrators) from Scheme Assets.
- 6. Payment to Scheme Creditors**
- 6.1 Upon each Notified Scheme Claim becoming an Established Scheme Liability the provisions of part 3 of the Scheme shall take effect in relation to each such Established Scheme Liability.
- 6.2 For the avoidance of doubt, Scheme Claims which become Established Scheme Liabilities in accordance with the provisions of paragraphs 3 or 4 hereof, shall not be eligible for any distribution in the New Hampshire Liquidation (it being expressly agreed that the only purpose of the procedure set out in this Special Resolution is the distribution of the Scheme Assets to Scheme Creditors). Any claim in the New Hampshire Liquidation shall continue to be submitted in accordance with the Claims Procedure Order or in such other manner as the New Hampshire Liquidator shall direct. Furthermore, any valuation by the Scheme Administrators or the Adjudicator of any amount owed by the Scheme Creditors to the Company pursuant to paragraphs 3.1(c) or 4.1 shall not be binding upon the New Hampshire Liquidator.
- 6.3 Subject to paragraph 4, Scheme Claims which at the date of the Special Meeting are Established Scheme Liabilities shall continue to be eligible to receive the relevant Payment Percentage and otherwise dealt with under the Scheme, without being affected by the preceding provisions of this Special Resolution.

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**7. Effect on Scheme Claims**

Any Scheme Claim which is neither an Established Scheme Liability at the date of the Special Meeting nor becomes an Established Scheme Liability in accordance with the provisions of paragraphs 1 to 4 shall for all purposes cease to be, or to be capable of becoming, a liability of or enforceable against the Company for the purposes of a distribution of Scheme Assets.

**8. Interpretation**

- 8.1 References in this Special Resolution to paragraph numbers shall, unless the contrary intention appears, be construed as references to paragraphs of this Special Resolution.
- 8.2 Terms used but not defined in this Special Resolution that are defined in the Scheme shall, in this Special Resolution, have the meanings ascribed to them in the Scheme.
- 8.3 If there is any inconsistency between the provisions of this Special Resolution and the terms of the Scheme, the provisions of this Special Resolution shall prevail.