

October 10, 2008

MEMORANDUM
OF
UNDERSTANDING

Between

NEW YORK STATE
INSURANCE
DEPARTMENT
("NYSID")

and

FINANCIAL SERVICES
AUTHORITY of the
UNITED KINGDOM
("FSA")

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Memorandum of Understanding Concerning Cooperation, Coordination, Consultation and Exchange of Information Related to Persons or Entities Engaged in the Business of Insurance

Overview

In light of the growing globalization of insurance markets, the New York State Insurance Department (“NYSID”) and the United Kingdom Financial Services Authority (“FSA”) (collectively, the “Authorities”) hereby enter into this Memorandum of Understanding (“MoU”) to provide a formal basis for cooperation and coordination, including for the exchange, handling, protection and return of information in their possession and, where appropriate, investigative assistance with respect to companies and persons engaged in the business of insurance. The NYSID and the FSA express, through this MoU, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates and functions.

The NYSID regulates all insurance business transacted in New York State and is the primary regulator for insurance entities domiciled therein. In its capacity as regulator, the NYSID administers, interprets and enforces the provisions of New York’s insurance laws and regulations, and is vested and charged with all rights, powers and duties as expressed or reasonably implied by the New York Insurance Law.

The FSA regulates insurance business transacted in the United Kingdom pursuant to its mandate to administer and enforce the Financial Services and Markets Act 2000 (“FSMA”) which provides, amongst other things, that no person may carry on a regulated activity in the United Kingdom unless authorized or exempt. Insurance was designated a regulated activity by Her Majesty’s Treasury under the FSMA Regulated Activities Order 2001/544.

Definitions

1. For purposes of this MoU, unless the context states otherwise:

- (a) “Administering” an applicable law, regulation or requirement includes enforcing the same.
- (b) “Applicable laws, regulations and requirements” means any law, regulation or requirement applicable in the State of New York and/or in the United Kingdom, and where the context permits, includes:
 - (i) Relevant European legislation that has not yet been transposed into the United Kingdom’s domestic law;
 - (ii) Any rule, direction, requirement, guidance or policy made or given by, or to be taken into account by an Authority.
- (c) “Authority” or “Authorities” means the NYSID and/or the FSA.
- (d) “Confidential Information” means:
 - (i) Any documents or records deemed confidential by New York law, regulation or privilege, including, but not limited to, draft examination reports; examination work papers; analyses of financial condition; reports of fraudulent activity; records regarding holding company transactions; and trade secrets or records maintained for the regulation of commercial enterprise, which if disclosed would cause substantial injury to the competitive position of the subject enterprise. Confidential information also includes records the disclosure of which would constitute unwarranted invasion of personal privacy, would impair present or imminent contract awards or collective bargaining negotiations, or would endanger the life or safety of any person; records compiled for law enforcement purposes; certain inter-agency or intra-agency correspondence; computer access codes; and examination questions or answers requested prior to the final administration of such questions.
 - (ii) Any documents or records deemed confidential by United Kingdom law, regulation or privilege including, but not limited to information which relates to the business or other affairs of any person, received by the FSA for the purpose of, or in the discharge of, any functions of the FSA and which is not otherwise prevented from being confidential information.
- (e) “Emergency Situation” means any situation or event that could materially affect or impair the financial or operational condition of a Regulated Entity or Person or substantially affect the public interest of the jurisdiction of either Authority and that, accordingly, must be handled in an expedited manner.

- (f) “FSA” means the Financial Services Authority.
- (g) “Hosting Authority” means the Authority in whose jurisdiction the On-Site Inspection will be performed.
- (h) “Inspecting Authority” means the Authority performing the On-Site Inspection.
- (i) “NYSID” means State of New York Insurance Department.
- (j) “On-Site Inspection” means any routine or regulatory inspection or examination of the books, records or premises of a Regulated or Related Entity or Person, but does not include visits to Regulated Entities solely for the purpose of meeting with the senior management of that entity.
- (k) “Person” means a natural person, legal entity, partnership or unincorporated association.
- (l) “Regulated Entity” or “Regulated Person” means a company or person engaged in insurance activities subject to the supervision of the NYSID and/or the FSA.
- (m) “Related Entity or Related Person” means legal entities or sub-groups of a Regulated Entity or Person, including affiliates, branches or subsidiaries, regulated by one or both Authorities.
- (n) “Requesting Authority” means the Authority seeking assistance/information.
- (o) “Responding Authority” means the Authority responding to a request for assistance/information.

Purpose and Objective of MoU

2. The purpose of this MoU is to establish a formal basis for consultation, cooperation and coordination between the FSA and the NYSID, and to provide for the exchange of information relevant to each Authority’s supervisory, regulatory and examination responsibilities.

Requests for Assistance

3. Requests for assistance include, among other things: (a) requests to confirm or verify information; (b) requests to obtain information about a specified person or entity; (c) requests for discussion of issues of mutual interest between the Authorities; (d) requests to participate in questioning or taking testimony of persons designated by the Requesting Authority (subject to Paragraphs 20-27 below); (e) requests to conduct inspections or examinations of Regulated/Related Entities or Persons; and (f) requests to permit representatives of the Requesting Authority to participate in the conduct of enquiries made by or on behalf of the Responding Authority pursuant to (d) – (e) above. Requests

for assistance that include requests for Confidential Information shall follow the procedure set forth in this MoU. If a request for assistance is made under this agreement, each Authority shall use reasonable efforts to assist the other, subject to its laws and overall policy.

4. This MoU sets forth a statement of intent and accordingly does not create any legally binding obligations, confer any rights, modify, or supersede any domestic laws or regulatory requirements in force in, or applying to, the State of New York or United Kingdom. This MoU does not confer upon any person the right or ability, directly or indirectly, to obtain, suppress or exclude any information or to challenge the execution of a request for assistance under this MoU. This MoU is not intended to affect any arrangements under any other MoUs in existence to which either of the Authorities is a party.

5. The Authorities acknowledge that they may only provide information under this MoU if permitted or not prevented under applicable laws, regulations and requirements.

6. Subject to Paragraphs 8 and 9 below, the Authorities shall consider and promptly respond to all requests for assistance regarding: (a) the safety, soundness, or financial condition of a Regulated Entity or Person, or (b) the insurance activities of a Regulated Entity or Person. Where Confidential Information is involved, the decision to share this information is at the sole discretion of the Responding Authority; however, the Responding Authority shall use reasonable efforts to obtain and share such information.

Procedures for Making/Responding to Requests for Assistance

7. To the extent possible, all requests for assistance shall be in writing and, if made orally, the provisions of Paragraph 13 below must be followed. Requests for assistance must be directed to the appropriate appointed contact person(s) identified in Exhibit A attached hereto, and should include the following:

(a) A description of the information, confirmation or verification sought by the Requesting Authority;

(b) A general description of the matter that is the subject of the request and the purpose for which the information is sought;

(c) The desired time period for reply, and where appropriate, an explanation of the urgency thereof. It is a condition of information provided by the FSA that it may only be used for the purpose of enabling or assisting the Requesting Authority to discharge its functions as a regulatory, supervisory, examination and enforcement authority;

(d) A description of other persons or entities, if any, to whom further disclosure of information provided to the Requesting Authority would be necessary, and the purpose such disclosure would serve. It is a condition of information provided by the FSA that it may only be used for the purpose of enabling or assisting the

Requesting Authority to discharge its functions as a regulatory, supervisory, examination and enforcement authority;

(e) If the request for assistance is for the purpose of actual or possible enforcement action (see Paragraphs 20-27 below); and

(f) Any other matters specified by the Responding Authority and by the applicable laws, regulations and requirements in relation to the Responding Authority.

8. Each Responding Authority shall use reasonable efforts to assess, on a case-by-case basis, whether any information or assistance that has been requested can be provided under the terms of this MoU. Where the request cannot be fulfilled in whole or in part, the Responding Authority shall consider whether it, or any other regulatory authority in its jurisdiction, has the ability to render assistance to the Requesting Authority and, to the extent possible, shall use reasonable efforts to facilitate such assistance.

9. In deciding whether and to what extent to fulfill a request, the Responding Authority may take into account:

(a) Whether the request for assistance conforms with this MoU;

(b) Whether the request for assistance involves the administration of a law, regulation or requirement that has no close parallel in the jurisdiction of the Responding Authority;

(c) Whether compliance with the request for assistance would be so burdensome as to disrupt the proper performance of the Responding Authority's regulatory functions or is otherwise prejudicial to the performance of such functions;

(d) Whether it would be detrimental or otherwise contrary to the public interest or the essential national interest of the Responding Authority's jurisdiction to provide the information requested;

(e) Whether the request for assistance is for the purpose of actual or possible enforcement action (see Paragraphs 20-27 below); and

(f) Any other matters specified by the laws, regulations and requirements of the Responding Authority's jurisdiction (in particular those relating to confidentiality, professional secrecy, data protection, privacy and procedural fairness).

Confidentiality

10. The Authorities may voluntarily and in their sole discretion provide information, including Confidential Information, without having received a request for assistance.

11. In responding to any request for assistance, the Responding Authority shall identify any information that is provided pursuant to this MoU that constitutes Confidential Information.

12. The Authorities agree to request Confidential Information only in relation to the performance of their functions and shall use the Confidential Information they receive under this MoU only for those purposes.

13. To the extent possible, all requests for Confidential Information shall be made in writing and addressed to the appropriate appointed contact person(s) identified in Exhibit A. Where, due to an Emergency Situation or exceptional circumstances, an oral request is necessary, such request shall thereafter be confirmed by the Requesting Authority in writing within ten (10) business days. Requests for Confidential Information made at in-person meetings between the Authorities do not require a subsequent written confirmation if such oral requests will be adequately noted in the agreed minutes of the meetings between the Authorities.

14. The NYSID states that pursuant to New York Insurance Law § 110, it has the legal authority necessary to enter into this MoU and undertakes to protect from disclosure, and otherwise preserve, the confidential or privileged nature of any Confidential Information that it requests and receives pursuant to this MoU, and to disclose such information only if permitted under all applicable laws, regulations and requirements. A copy of Insurance Law § 110 is attached hereto as Exhibit B.

15. The FSA states that, pursuant to ss348 and 349 of FSMA and regulations made thereunder, it has the legal authority to permit disclosure of confidential information as defined in FSMA as may be requested by the NYSID under this MoU and the legal obligation not to disclose confidential information not otherwise permitted by FSMA and the regulations made thereunder. Further, the FSA states that it has the legal authority to enter into this MoU. A copy of the ss348 and 349 are attached hereto as Exhibit B.

16. All Responding Authority Confidential Information belongs to, and shall remain the property of, the Responding Authority. The Requesting Authority shall, in accordance with applicable laws, regulations and pursuant to the terms of this MoU, take all actions reasonably necessary to preserve, protect, and maintain the confidentiality of such Confidential Information and any privileges associated therewith.

17. The Requesting Authority shall ensure that all persons who work for it, as well as any auditors, experts or agents instructed by it, are bound by a confidentiality obligation at least equivalent to that which the Requesting Authority is subject to. To the extent that the Requesting Authority's regime does not explicitly bind former employees, the Requesting Authority shall, where appropriate, consider legal action under relevant law for breach of fiduciary duty against any former employee who divulges confidential information obtained during his or her term of employment.

18. The Requesting Authority may provide Confidential Information received under this MoU to other state, federal or international regulatory or law enforcement officials who

have authority over the Regulated Entity that is the subject of the Confidential Information, provided that (a) information is provided solely to assist the Requesting Authority in the exercise of its own functions; (b) such disclosure is made in accordance with all applicable laws, regulations and requirements; (c) the Requesting Authority obtains the consent of the Responding Authority prior to such disclosure; (d) the Requesting Authority discloses to the Responding Authority the identity of each recipient with whom the Confidential Information will be shared; and (e) confirms that each recipient agrees to, and has the legal authority to, maintain a level of confidentiality at least equivalent to that which the Requesting Authority is subject to (including, where relevant, limitations imposed upon it by the Responding Authority).

19. Where there is a subpoena or other legally enforceable demand for information supplied under this MoU, the Requesting Authority shall notify the Responding Authority. The Requesting Authority shall use all reasonable legal means to resist such a demand, including asserting such appropriate legal exemptions or privileges with respect to that information as may be available, and shall afford the Responding Authority the opportunity to take whatever action it deems appropriate to preserve, protect and maintain the confidential nature of the information provided, including consenting to any application by the Responding Authority to intervene in any action to preserve the confidentiality of Responding Authority Confidential Information.

Procedures for Enforcement Matters

Details to be Contained in Requests for Assistance

20. If a request for assistance as described in this MoU relates to actual or possible enforcement action, the following further details shall be contained in the request:
- (a) a description of the conduct or suspected conduct which gives rise to the request;
 - (b) details of the applicable law, regulation or requirement to the administration of which the request is relevant;
 - (c) the link between the specified law, regulation or requirement, and the regulatory functions of the Requesting Authority;
 - (d) the relevance of the requested assistance to the specified law, regulation or requirement; and
 - (e) whether it is desired that, to the extent permitted by the laws applying to the Responding Authority, any persons from the country of the Requesting Authority should be present during interviews which form part of an investigation, and whether it is desired that such persons should be permitted to participate in the questioning (see Paragraph 22 below).

Possible Ground for Denial of Requests for Assistance

21. If a request for assistance as described in this MoU relates to actual or possible enforcement action, the following further matter may be taken into account by the Responding Authority in determining whether it would be reasonable to fulfil the request in whole or in part, that is, whether the request would lead to the prosecution of, or the taking of disciplinary or other enforcement action against, a person who in the reasonable opinion of the Responding Authority has already been the subject of appropriate and relevant disciplinary or other enforcement action or has otherwise been appropriately dealt with.

Requests to Sit in

22. If, following a request for assistance from the Requesting Authority, the Responding Authority conducts an interview of any Regulated or Related Entity or Person, the Responding Authority may permit a representative of the Requesting Authority to attend such an interview and to ask questions. Such requests will be in accordance with the applicable laws, regulations and requirements of the Responding Authority. Requests for such assistance should conform to any published guidance for the making of such requests issued by the Responding Authority.

Joint Investigations

23. The Authorities acknowledge that, subject to all applicable secrecy and confidentiality protections, an investigation, where it concerns suspected breaches of the law of both jurisdictions, may be conducted more effectively by the establishment of a joint investigation involving members from both Authorities.
24. The Authority suggesting the joint investigation will advise the other Authority of the background to the request for a joint investigation, and liaise with the other Authority to determine the likely objectives of the joint investigation, the expected resources required, and the approximate duration of the proposed joint investigation. Each Authority will advise the other as soon as possible as to whether it will agree to such joint investigation.
25. If the Authorities agree to take part in a joint investigation, a written initial action plan will be prepared setting forth, among other things, the objectives, expected duration, funding, publicity and accountability arrangements, management and allocation of responsibilities for the joint investigation.
26. Suggestions to NYSID for a joint investigation should be made, through Supervising Attorney, D. Monica Marsh. Suggestions to the FSA should be made to the Director, Enforcement.

Rights of Persons Preserved

27. Any person or entity providing testimony, information or documents as a result of a request for assistance made under this MoU will be entitled to all applicable rights and protections of the laws of the jurisdiction of the Responding Authority. Where such entity or person asserts other rights and privileges arising exclusively pursuant to the laws of the jurisdiction of the Requesting Authority, the Authorities will consult with each other to determine the most appropriate way to proceed.

On-Site Inspections

28. The NYSID and the FSA recognize that cooperation is particularly useful in assisting each other in carrying out On-Site Inspections of Regulated or Related Entities and Persons in both jurisdictions where that would be necessary for either the NYSID or the FSA (as the case may be) to carry out their relevant functions. To that end, the Authorities agree to comply with the following procedures prior to conducting On-Site Inspections:

- (a) The Inspecting Authority shall notify the Host Authority of the Inspecting Authority's intent to conduct an On-Site Inspection, by itself or by an authorized third party; the time frame for the inspection; and the scope of such inspection. Where practicable, the Inspecting Authority shall notify the Host Authority of the request to conduct an inspection at least one week prior to informing the Regulated or Related Entity or Person that it will be the subject of the On-Site Inspection;
- (b) The Host Authority may, in its discretion, accompany the Inspecting Authority to, and assist the Inspecting Authority with, any On-Site Inspections; and
- (c) If the On-Site Inspection is for the purpose of actual or possible enforcement action, the provisions set forth in Paragraphs 20 – 27 above shall apply.

Costs

29. Where the cost of fulfilling a request is deemed substantial, the Responding Authority may, on a case-by-case basis and as a condition of agreeing to give assistance under this MoU, require the Requesting Authority to bear some or all of such costs.

Consultation Between the Authorities

30. The Authorities shall keep the operation of this MoU under review and shall consult with each other as necessary with a view to improving its operation and resolving any concerns that have arisen out of its operation.

31. Where a specific conduct outlined in a request for assistance constitutes a breach of a law, regulation or requirement in the jurisdiction of both Authorities, the Authorities shall consult with each other to determine the most appropriate means for each Authority to provide the assistance requested.

Commencement and Termination of the MoU

32. This MoU shall take effect when both Authorities have signed it and shall continue to have effect until terminated by either Authority upon thirty (30) days written notice. Termination shall not in any way affect the rights or obligations of either Authority with respect to information previously provided under this MoU.

33. This MoU supersedes and replaces all other existing agreements or representations, either oral or written, between the parties to this MoU regarding the sharing of information. No waiver, alteration or modification of the provisions of this MoU shall have effect unless subsequently made in writing and signed by duly authorized representatives of the Authorities.

Executed by the Parties:

**For the New York State
Insurance Department**



ERIC R. DINALLO
Superintendent of Insurance

Date: _____

**For the United Kingdom
Financial Services Authority**



SARAH WILSON
Director & Sector Leader for
Insurance

Date: 14/10/08

EXHIBIT A**Contact Persons**

New York State Insurance Department
25 Beaver Street
New York, NY 10004

Name: Joseph Fritsch
Title: Director of Insurance Accounting Policy
Telephone Number: (212) 480-2299
Fax Number: (212) 480-2310
E-Mail: jfritsch@ins.state.ny.us

OR

Name: D. Monica Marsh
Title: Supervising Attorney
Telephone Number: (212) 480-5298
Fax Number: (212) 480-5272
E-Mail: dmarsh@ins.state.ny.us

United Kingdom Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Name: Tony Brooke-Taylor
Title: Head of Department, Wholesale Insurance Firms
Telephone Number: +44 20 7066 2164
Fax Number: +44 20 7066 2165
E-Mail: tony.brooke-taylor@fsa.gov.uk

OR (for enforcement related matters)

Name: Anila Bedi
Title: Manager
Telephone Number (Dina Ferrao): +44 20 7066 4264
Fax Number: +44 20 7066 9723
E-Mail: internationalrequests@fsa.gov.uk

EXHIBIT B

New York Insurance Confidentiality Statute:

Insurance Law § 110. Cooperation with Other Regulatory Agencies

(a) In order to assist in the performance of the superintendent's duties under this chapter, the superintendent:

(1) may share documents, materials or other information, including the confidential and privileged documents, materials or information with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries, and with state, federal, and international law enforcement authorities provided that the recipient has the authority and agrees to maintain the confidentiality and privileged status of the document, material or other information; provided, however, that this paragraph shall not be construed as limiting access to records pursuant to article six of the public officers law;

(2) may receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information;

(3) may enter into agreements governing sharing and use of documents, materials or information consistent with this subsection.

(b) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the superintendent under this section or as a result of sharing as authorized in this section.

ss348 and 349 of the UK Financial Services and Markets Act

348.— Restrictions on disclosure of confidential information by Authority etc.

(1) Confidential information must not be disclosed by a primary recipient, or by any person obtaining the information directly or indirectly from a primary recipient, without the consent of—

- (a) the person from whom the primary recipient obtained the information; and
- (b) if different, the person to whom it relates.

(2) In this Part “confidential information” means information which—

- (a) relates to the business or other affairs of any person;

- (b) was received by the primary recipient for the purposes of, or in the discharge of, any functions of the Authority, the competent authority for the purposes of Part VI or the Secretary of State under any provision made by or under this Act; and
- (c) is not prevented from being confidential information by subsection (4).
- (3) It is immaterial for the purposes of subsection (2) whether or not the information was received—
 - (a) by virtue of a requirement to provide it imposed by or under this Act;
 - (b) for other purposes as well as purposes mentioned in that subsection.
- (4) Information is not confidential information if—
 - (a) it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purposes for which, disclosure is not precluded by this section; or
 - (b) it is in the form of a summary or collection of information so framed that it is not possible to ascertain from it information relating to any particular person.
- (5) Each of the following is a primary recipient for the purposes of this Part—
 - (a) the Authority;
 - (b) any person exercising functions conferred by Part VI on the competent authority;
 - (c) the Secretary of State;
 - (d) a person appointed to make a report under section 166;
 - (e) any person who is or has been employed by a person mentioned in paragraphs (a) to (c);
 - (f) any auditor or expert instructed by a person mentioned in those paragraphs.
- (6) In subsection (5)(f) “expert” includes—
 - (a) a competent person appointed by the competent authority under section 97;
 - (b) a competent person appointed by the Authority or the Secretary of State to conduct an investigation under Part XI;
 - (c) any body or person appointed under paragraph 6 of Schedule 1 to perform a function on behalf of the Authority.

349.— Exceptions from section 348.

- (1) Section 348 does not prevent a disclosure of confidential information which is—
 - (a) made for the purpose of facilitating the carrying out of a public function; and
 - (b) permitted by regulations made by the Treasury under this section.
- (2) The regulations may, in particular, make provision permitting the disclosure of confidential information or of confidential information of a prescribed kind—
 - (a) by prescribed recipients, or recipients of a prescribed description, to any person for the purpose of enabling or assisting the recipient to discharge prescribed public functions;
 - (b) by prescribed recipients, or recipients of a prescribed description, to prescribed persons, or persons of prescribed descriptions, for the purpose of enabling or assisting those persons to discharge prescribed public functions;
 - (c) by the Authority to the Treasury or the Secretary of State for any purpose;
 - (d) by any recipient if the disclosure is with a view to or in connection with prescribed proceedings.
- (3) The regulations may also include provision—
 - (a) making any permission to disclose confidential information subject to conditions (which may relate to the obtaining of consents or any other matter);

(b) restricting the uses to which confidential information disclosed under the regulations may be put.

(3A) Section 348 does not apply to—

- (a) the disclosure by a recipient to which subsection (3B) applies of confidential information disclosed to it by the Authority in reliance on subsection (1);
- (b) the disclosure of such information by a person obtaining it directly or indirectly from a recipient to which subsection (3B) applies.

(3B) This subsection applies to—

- (a) the Panel on Takeovers and Mergers;
- (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;
- (c) any other person or body that exercises public functions, under legislation in an EEA State other than the United Kingdom, that are similar to the Authority's functions or those of the Panel on Takeovers and Mergers.

(4) In relation to confidential information, each of the following is a “recipient”—

- (a) a primary recipient;
- (b) a person obtaining the information directly or indirectly from a primary recipient.

(5) "Public functions" includes—

- (a) functions conferred by or in accordance with any provision contained in any enactment or subordinate legislation;
- (b) functions conferred by or in accordance with any provision contained in the Community Treaties or any Community instrument;
- (c) similar functions conferred on persons by or under provisions having effect as part of the law of a country or territory outside the United Kingdom;
- (d) functions exercisable in relation to prescribed disciplinary proceedings.

(6) "Enactment" includes—

- (a) an Act of the Scottish Parliament;
- (b) Northern Ireland legislation.

(7) "Subordinate legislation" has the meaning given in the Interpretation Act 1978 and also includes an instrument made under an Act of the Scottish Parliament or under Northern Ireland legislation.