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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re	:
	: Chapter 15
Petition of David McGuigan, as foreign	:
representative of	: Case No. 10-10-14990 (___)
	:
Allianz Global Corporate & Specialty (France),	: (Joint Administration Requested)
Allianz IARD, Delvag Luftfahrtversicherungs-AG,:	
and Nürnberger Allgemeine Versicherungs-AG	:
	:
Debtors in a Foreign Proceeding.	:
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**VERIFIED PETITION UNDER CHAPTER 15 FOR RECOGNITION OF  
FOREIGN PROCEEDINGS AND MOTION FOR PERMANENT INJUNCTION**

David McGuigan, (the “Petitioner”), as the duly appointed and authorized foreign representative, as defined in section 101(24) of title 11 of the United States Code (the “Bankruptcy Code”), of Allianz Global Corporate & Specialty (France) (formerly known as Compagnie d’Assurances Maritimes Aeriennes et Terrestres when writing direct insurance and reinsurance business in the CUAL Pool, and hereinafter “Allianz Global”), Allianz IARD (formerly known as Assurances Générales de France I.A.R.T. when writing direct insurance and reinsurance business in the CUAL Pool and hereinafter “Allianz IARD”), Delvag Luftfahrtversicherungs-AG (“Delvag”) and Nürnberger Allgemeine Versicherungs-AG (“Nürnberger”) (each a “Scheme Company” or “Debtor” and, together the “Scheme Companies” or “Debtors”), which are subject to jointly administered adjustment of debt proceedings (the

“English Proceedings”) and bound by those certain schemes of arrangement pursuant to Part 26 of the Companies Act 2006 (the “Schemes”)<sup>1</sup> sanctioned by the High Court of Justice of England and Wales (the “English Court”) on July 9, 2010 for the Scheme Companies, by its U.S. counsel, Sidley Austin LLP, respectfully submits this Verified Petition Under Chapter 15 For Recognition Of Foreign Proceedings (the “Chapter 15 Petition”) And Motion For Permanent Injunction (the “Petition and Motion”) pursuant to sections 105(a), 1502, 1504, 1515, 1517, 1520 and 1521 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 65 of the Federal Rules of Civil Procedure as made applicable by Rule 7065 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) in furtherance of the Official Form Petitions (the “Petitions”) filed contemporaneously herewith pursuant to sections 1504 and 1515 commencing these chapter 15 cases (the “Chapter 15 Cases”) seeking recognition of, and requesting permanent injunctive and other relief in aid of, the foreign proceedings<sup>2</sup> described herein, and in support thereof respectfully represents as follows:

### **PRELIMINARY STATEMENT**

1. The Petitioner, as foreign representative of the Scheme Companies, has commenced these Chapter 15 Cases pursuant to section 1504 of the Bankruptcy Code by filing

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<sup>1</sup> All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Schemes.

<sup>2</sup> The Petitioner seeks recognition and relief respecting a foreign main proceeding, as defined in section 1502(4) of the Bankruptcy Code, with respect to each of the Schemes sanctioned by the English Court in England. Each of those foreign proceedings were before the English Court in England and the center of each of the Scheme Companies' main interest with respect to the Scheme's liabilities or CUAL Pool is in England. Nevertheless, should this Court determine that any of those proceedings are not foreign main proceedings, the Petitioner respectfully requests that the Court entertain the Petition of any such Scheme Company as one for recognition of, and relief respecting, a foreign nonmain proceeding, as defined in section 1502(5) of the Bankruptcy Code. Each of the Scheme Companies has a place of operations in England where it carries out nontransitory economic activity. Therefore, each of the Scheme Companies has an establishment, as defined in section 1502(2) of the Bankruptcy Code, in England. This assertion is not intended as, nor should it be construed or interpreted as, an admission for any purpose or proceeding, other than for satisfying the requirement of having an “establishment,” as defined in section 1502(2) of the Bankruptcy Code.

the Petitions contemporaneously herewith accompanied by all certifications, statements, lists and documents required pursuant to section 1515 of the Bankruptcy Code and Rule 1007(a)(4) of the Federal Rules of Bankruptcy Procedures (the “Bankruptcy Rules”), seeking recognition of, and requesting permanent injunctive and other relief necessary to aid, foreign main proceedings as defined in sections 101(23) and 1502(4) of the Bankruptcy Code in the English Courts.

2. The Declaration of David McGuigan (the “McGuigan Declaration”), filed contemporaneously herewith and incorporated by reference as if fully set forth herein, accurately recites the facts pertinent to, and necessary to sustain, the Chapter 15 Petition and the relief requested thereby, including, without limitation, evidence that:

- (a) foreign proceedings respecting the Scheme Companies were duly commenced in England;
- (b) the center of main interests of the Scheme Companies with respect to the Scheme liabilities and the CUAL Pool (as defined in ¶ 4 below ) is in England;
- (c) each of the Scheme Companies carries out nontransitory economic activity in England;
- (d) the Petitioner has been duly appointed and authorized to serve as the foreign representative of the Scheme Companies and to petition for relief under chapter 15; and
- (e) the Scheme Companies are entitled to the relief requested.

3. Each of the Scheme Companies is an insurance company. Allianz Global and Allianz IARD are both incorporated under the laws of France and maintain their registered offices in France. Delvag and Nürnberger are both incorporated under the laws of Germany and maintain their registered offices in Germany.

4. The Scheme Companies wrote both direct and reinsurance business in the London insurance market (“London Market”), through Camomile Underwriting Agencies

Limited (“CUAL”), collectively known as the “CUAL Business”, in a pooling<sup>3</sup> arrangement from 1978 to 1995 (the “CUAL Pool”).

5. CUAL was incorporated in the United Kingdom in April 1977. Its principal purpose was to carry on the business of insurance agents and brokers, underwriting agents and underwriters. CUAL principally functioned as the insurance underwriting agent in such transactions. CUAL ceased underwriting on December 31, 1995 and was subsequently dissolved.

6. The business written by the CUAL Pool was predominantly small lines of both direct and facultative non-marine business placed through London Market brokers. The CUAL Pool wrote some proportional and excess of loss treaty business. The Petitioner believes that all of the CUAL Business was written in the London Market. The Scheme is proposed by each Scheme Company in respect only of its involvement in the CUAL Business.<sup>4</sup>

7. The CUAL Business has been in solvent “run-off” since December 31, 1995 and no new CUAL Business has been written since that time. The run-off involves the management of liabilities arising from the CUAL Business. In the normal course, it is estimated that it would take at least another 30 to 40 years to run-off the remaining liabilities which are included in the Schemes.

8. Accordingly, to bring the run-off of the CUAL Business to a close, the Scheme Companies proposed a “cut off” scheme of arrangement which will result in their

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<sup>3</sup> Pooling is a method of spreading risk whereby a syndicate or association of insurers, writing a specific class of insurance, agree to share the premiums and losses in agreed proportions.

<sup>4</sup> Sovereign Marine & General Insurance Company Limited (“Sovereign”), a company which is now insolvent, also wrote business as part of the CUAL Pool. However, no business of Sovereign, whether written through CUAL or otherwise, is included in the Scheme. Sovereign has already entered into a scheme of arrangement with its creditors to bring finality in respect of all of the business which it wrote (including the CUAL Business), and the date for submitting Scheme Claims (as defined in that Scheme) has now passed. On October 23, 2007, the United States Bankruptcy Court made an order amending the permanent injunction order already in force in relation to Sovereign’s scheme of arrangement pursuant to section 304 of the Bankruptcy Code.

finalizing and paying all Scheme Claims in a much shorter time frame than would happen in the ordinary course of run-off. Since the Schemes are in materially identical terms, the provisions have been set out in one document. The key objectives of the Schemes are the crystallization and payment of Scheme Claims in an orderly fashion.

9. All of the Scheme Companies are solvent and the Scheme Companies anticipate that all claims addressed by the Schemes will be paid in full, subject to a time-value discount, in accordance with the Schemes.

10. A scheme of arrangement such as that which has become effective in respect of each Scheme Company is a statutory compromise or arrangement between a company and its creditors (or any class of them) pursuant to Part 26 of the Companies Act 2006. If a scheme is approved by the requisite majorities of creditors (or class of creditors), sanctioned by the English Court and the English Court's sanction order delivered to the Registrar of Companies for England and Wales ("Registrar of Companies"), it becomes binding on all scheme creditors (or any class of them). For a scheme to be approved or sanctioned by an English Court, the English Court must first permit a meeting or meetings of creditors to be called and, at such meeting(s), votes in favor of the scheme must be cast by creditors constituting, of those present and voting whether in person or by proxy, a majority in number representing at least three-fourths in value. Upon approval of the scheme by the requisite majorities of scheme creditors, the English Court then considers whether the scheme should be sanctioned. Once a scheme has been sanctioned by the English Court and a copy of the order sanctioning it is delivered to the Registrar of Companies, as a matter of English law the scheme becomes legally binding on all creditors that are affected by the scheme, wherever located and regardless of their votes on it.

11. The Schemes establish a method by which present and future claims of scheme creditors will be estimated and full and final payments, adjusted by the application of a time value discount, will be made to creditors holding such claims (the “Scheme Creditors”) considerably sooner than if the run-off of the Scheme Companies continued in the ordinary course.

12. On June 10, 2010, the requisite majorities of the Scheme Creditors of each of the Scheme Companies voted in favor of the Schemes. Indeed, each Scheme was unanimously approved. On July 9, 2010, the English Court, upon notice and a hearing, sanctioned the Schemes. A true and correct copy of each of the Sanction Orders is attached hereto as Exhibit A.

13. The Effective Date of each of the Schemes is July 26, 2010, the date on which a copy of the Sanction Order for each Scheme was delivered to the Registrar of Companies for England and Wales. See Exhibit B: Registrar of Companies Stamped Receipt of Sanction Order for each Scheme.

14. By this Petition and Motion, the Petitioner seeks recognition of the Schemes and a permanent injunction and other relief necessary to ensure the effective implementation of the Schemes through, inter alia, an Order of this Court, substantially in the form of the proposed Order Granting Recognition of Foreign Main Proceedings, a Permanent Injunction and Related Relief in Aid of the Schemes in the United States (the “Proposed Order”), a copy of which is annexed hereto as Exhibit C.

15. This Petition and Motion satisfies all the requirements set forth in section 1515 of the Bankruptcy Code. Moreover, given that the relief requested herein is necessary to give effect to the Scheme Companies’ Schemes in the United States, the relief requested is

appropriate under chapter 15 of the Bankruptcy Code. Granting recognition to the Scheme Companies' Schemes and the relief requested herein is consistent with the goals of international cooperation and assistance to foreign courts embodied in chapter 15 of the Bankruptcy Code and is in the best interests of the Scheme Companies and the Scheme Creditors.

### **JURISDICTION AND VENUE**

16. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157 and the "Standing Order of Referral of Cases to Bankruptcy Judges" of the United States District Court for the Southern District of New York (Ward, Acting C.J.), dated July 10, 1984. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

17. Venue is properly located in this District pursuant to 28 U.S.C. § 1410.

### **FACTUAL BACKGROUND**

(i) *Allianz Global Corporate & Specialty (France)*

18. Allianz Global was incorporated in France on May 4, 1955 under the name of Compagnie d'Assurances Maritimes Aeriennes et Terrestres, which was changed first to AGF Marine Aviation Transport on April 21, 1998, then to Allianz Marine & Aviation (France) on July 1, 2002, and finally to its present name on July 17, 2006. Allianz Global is an insurance undertaking which pursues the activity of direct insurance within the meaning of Article 1 of the first non-life insurance directive (Council Directive 73/239/EEC) (the "First Non-Life Insurance Directive"). It is authorized by its French home state regulator. Accordingly, Allianz Global is an "EEA insurer" within the meaning of the Insurers (Reorganisation and Winding Up) Regulations 2004 (the "2004 Regulations") authorized by its home state regulator and is therefore permitted to write insurance business in the United Kingdom. It is also an "Insurance Undertaking" within the meaning of Directive 2001/17/EC of 14 March 2001 on the

reorganization and winding up of insurance undertakings (the “Directive”). Allianz Global's registered office is at Tour Opus 12, 77, Esplanade du Général de Gaulle, La Défense 9, 92081 Paris, France.

19. Although Allianz Global is domiciled in France, the CUAL Business written by Allianz Global has a substantial connection to the London Market. More particularly, Allianz Global has approximately 3,243 UK CUAL policyholders. Allianz Global has approximately 3,689 US CUAL policyholders. Allianz Global has approximately 96 French CUAL policyholders. Allianz Global has approximately 93 German CUAL policyholders.

(ii) Allianz IARD

20. Allianz IARD was incorporated in France on February 7, 1912 under the name of Compagnie Assurances Générales Accidents, Vol, Maritimes, Risque Divers, Réassurances and was registered on February 12, 1912. Its name was changed to Assurances Générales de France Incendie, Accidents, Réassurances, Transport (“AGF”) on January 1, 1969 as a result of a merger between Assurances Générales de France A.G. IART and Assurances Générales de France, Le Phenix IARD. The company changed to its present name on September 13, 2009. Allianz IARD is an insurance company in the business of underwriting direct insurance within the meaning of Article 1 of the First Non-Life Insurance Directive. It is authorized by its French home state regulator. Accordingly, Allianz IARD is an EEA Insurer within the 2004 Regulations and is therefore permitted to write insurance business in the United Kingdom. It is also an Insurance Undertaking within the meaning of the Directive. Allianz IARD’s registered office is at 87 Rue de Richelieu, 75002, Paris, France.

21. Although Allianz IARD is domiciled in France, the CUAL Business written by Allianz IARD has a substantial connection to the London Market. More particularly,



Allianz IARD has approximately 866 UK CUAL policyholders. Allianz IARD has approximately 178 US CUAL policyholders. Allianz IARD has approximately 28 French CUAL policyholders. Allianz IARD has approximately 36 German CUAL policyholders.

(iii) Delvag Luftfahrtversicherungs-AG

22. Delvag was incorporated under the laws of Germany on August 12, 1924 under the name of Aero Lloyd AG, which was changed to Deutsche Luftversicherungs-AG on April 18, 1928. It then changed its name to Deutsche Lufthansa Selbstversicherungs-AG on August 25, 1954 and finally to its present name on September 6, 1968. Delvag is an insurance company in the business of underwriting direct insurance within the meaning of Article 1 of the First Non-Life Insurance Directive. It is authorized by its German home state regulator. Accordingly, it is an EEA Insurer within the meaning of the 2004 Regulations and is therefore permitted to write insurance business within the United Kingdom. It is also an Insurance Undertaking within the meaning of the Directive. Delvag's registered office is at Von-Gablenz-Straße 2-6 50679 Köln, Germany.

23. Although Delvag is domiciled in Germany, the CUAL Business written by Delvag has a substantial connection to the London Market. Delvag has approximately 1,058 UK CUAL policyholders. Delvag has approximately 317 US CUAL policyholders. Delvag has approximately 32 French CUAL policyholders. Delvag has approximately 44 German CUAL policyholders.

(iv) Nürnberger Allgemeine Versicherungs-AG

24. Nürnberger was incorporated under the laws of Germany on December 6, 1952 under its present name. Nürnberger is an undertaking which pursues the activity of direct insurance within the meaning of Article 1 of the First Non-Life Insurance Directive. It is

authorized by its German home state regulator. Accordingly, it is an EEA Insurer within the meaning of the 2004 Regulations and is therefore permitted to write insurance business within the United Kingdom. It is also an Insurance Undertaking within the meaning of the Directive. Nürnberger's registered office is at Ostendstraße 100, D- 90334 Nürnberg, Germany.

25. Although Nürnberger is domiciled in Germany, the CUAL Business written by Nürnberger has a substantial connection to the London Market. More particularly, Nürnberger has approximately 834 UK CUAL policyholders. Nürnberger has approximately 181 US policyholders. Nürnberger has approximately 28 French CUAL policyholders. Nürnberger has approximately 34 German CUAL policyholders.

26. All of the Scheme Companies have a significant connection with England. All of the Scheme Companies have conducted insurance business in the London Market for a number of years. In particular, the Petitioner believes that all of the business included in the Scheme was underwritten for the Scheme Companies by CUAL in London and was placed through the London Market. Further, an English corporation, Whittington Insurance Services Limited ("Whittington") has carried on the run-off of the CUAL Business in London since 1996. In addition, the Petitioner has been informed by Whittington that the vast majority of the policies that could give rise to Scheme Claims are governed by English law.

(iii) *U.S. Property Located Within This District*

27. The Scheme Companies have Scheme Creditors located throughout the United States, including in this District. Moreover, certain of the Scheme Companies have assets consisting of, among other things, reinsurance recoverables due from entities located in the United States, including in this District.

## THE CUAL POOL

28. As noted above, the Scheme Companies are all insurance companies that formerly underwrote insurance and reinsurance contracts in pooling arrangements through CUAL. The CUAL Pool ceased underwriting business in 1995 and is presently in run-off. In the normal course it is estimated that it would take at least another 30 to 40 years to run-off the remaining liabilities included in the Schemes. The Scheme Companies consider that it is in their interests and the interests of Scheme Creditors to try to finalize the run-off of the CUAL Business in a much shorter time frame than would happen in the ordinary course of a run-off.

29. The Scheme has been designed to enable the Scheme Companies and the Scheme Creditors to terminate their CUAL business involvements with each other simultaneously, to provide a mechanism for agreeing or determining Scheme Claims of the Scheme Creditors (including outstanding claims and IBNR claims) and to pay or discharge these claims, as agreed or determined under the Scheme, in full in the shortest practicable time subject to the application of any applicable set-off or time value discount at preferential discount rates.<sup>5</sup>

30. Under the CUAL Pool, CUAL wrote business on different underwriting “stamps,”<sup>6</sup> each representing a different distribution of the various Scheme Companies’ percentage participations. The underwriting stamps used for policies written by the CUAL Pool, together with the dates on which it is understood they operated from, include those set out below:

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<sup>5</sup> See First Witness Statement of John Alan Leppard, ¶¶ 23, 44.

<sup>6</sup> An underwriting stamp is a facility by which one Scheme Company or a combination of the Scheme Companies agreed to accept a proportion of the liability arising from an insurance contract.

<b>STAMP</b>						
<b>CODE</b>	<b>PERIOD</b>	<b>CAMAT (NOW ALLIANZ GLOBAL)</b>	<b>DELVAG</b>	<b>AGF (NOW ALLIANZ IARD)</b>	<b>NÜRNBERGER</b>	<b>SOVEREIGN</b>
C800	1978-1983	50%	50%			
C8018	1978-1995	100%				
C8026	1980-1983	25%	50%	25%		
C8034	1980-1983	25%	30%	25%	20%	
C8042	1980-1983	50%	30%		20%	
C8067	1989-1991	75%				25%
C8075	1989-1991					100%

### **THE SCHEMES OF ARRANGEMENT**

31. The Scheme Companies consider that it is in their interests and the interests of Scheme Creditors to finalize the run-off of the CUAL Business through the Schemes in a much shorter time frame than would happen in the ordinary course of a run-off. A true and correct copy of the Explanatory Statement and Schemes applicable to the Scheme Companies is attached hereto as Exhibit D.

32. The primary objective of the Schemes is to conclude the run-off of the CUAL Business, and make payments to Scheme Creditors earlier than would be the case if run-off were to continue until all claims had been materialized and been agreed upon and paid in the ordinary course.

33. The Schemes establish an orderly process by which the present and future Scheme Claims of Scheme Creditors against the Scheme Companies in respect of the CUAL Business will be agreed or determined and paid, adjusted where appropriate, for time value discount. The Schemes will replace a Scheme Creditor's right to payment in respect of claims which have arisen or may arise under an Insurance Contract against the Scheme Companies in

the normal course of business with the right to receive payment under the Scheme equal to the Scheme Creditor's Net Ascertained Claim.

34. Scheme Creditors were advised in the Explanatory Statement that each Scheme Company intended to seek a permanent injunction from this Court, pursuant to chapter 15 of the Bankruptcy Code, inter alia, ordering that the Schemes be given full force and effect, and be binding on and enforceable against, all Scheme Creditors in the United States. Schedule V to the Explanatory Statement contained an explanation of relief under chapter 15 of the United States Bankruptcy Code and a summary of the relief which the Scheme Companies are seeking in that regard.

35. Part 1 of the Schemes contains certain preliminary provisions, including definitions used in the Schemes and a guide to interpretation of the Scheme language.

36. Part 2 of the Schemes contains provisions regarding, among other things, (i) the application and purpose of the Schemes, (ii) information regarding Claim Forms and the Final Claims Submission Date, (iii) adjudication of Disputed Claims, (iv) determination of the value of the claims net of adjustments ("Net Ascertained Claims"), and (v) the effect of the Schemes on the rights of Scheme Creditors.

37. Part 3 of the Schemes contains provisions regarding the determination and payment of Net Ascertained Claims.

38. Part 4 of the Schemes contains provisions regarding, among other things (i) the stay of Proceedings and acts prohibited by Scheme Creditors, (ii) claims for Interest, and (iii) payment by means of Security.

39. Part 5 of the Schemes contains provisions regarding the role of the Scheme Manager and his powers, duties and obligations. Under the Schemes, the first Scheme

Manager was Whittington. On July 26, 2010, the Petitioner was appointed as the Scheme Manager pursuant to the Schemes.<sup>7</sup> The Scheme Manager has the power to manage and control the business and affairs of the Scheme Companies for the purpose of implementing the Schemes together with the powers specifically conferred on it by the Schemes.

40. Part 6 of the Schemes contains provisions regarding the Actuarial Adjudicator and the Scheme Adjudicator, conflicts of interest which may affect either party and instructions with respect to vacating and appointing the office of either party. The Actuarial Adjudicator and the Scheme Adjudicator will act as independent experts and not as arbitrators. The Actuarial Adjudicator is David Hindley of Deloitte LLP. If the relevant Scheme Creditor and Scheme Company do not object or where the Scheme Manager concludes that there are no matters of fact or law which require determination, the Actuarial Adjudicator will adjudicate all aspects of a disputed matter, including (where there is no objection to him so doing) any matters of fact and law (consulting with other experts if necessary) and determine the value of Disputed Claims. The Scheme also provides for the appointment of a Scheme Adjudicator in relation to issues of fact or law where the parties do not agree to such matters being determined by the Actuarial Adjudicator. A Scheme Adjudicator will be a suitably qualified, independent individual agreed between the Scheme Manager and relevant Scheme Creditor or, if such agreement cannot be reached, will be an individual nominated by the Chief Executive of the Centre for Effective Dispute Resolution (“CEDR”).

41. Part 7 of the Schemes contains provisions regarding the completion of the Schemes and other general provisions, including, among others, co-operation between Scheme

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<sup>7</sup> Since February 2008, the Petitioner has acted as a representative of the Scheme Companies in respect of the Schemes. In that capacity, the Petitioner has given instructions on their behalf to and worked very closely with the Scheme Companies’ other UK service providers.

Creditors, the Scheme Manager and the Scheme Companies, prohibited payments, notice and the governing law of the Schemes, which is that of England.

*Scheme Approval and Sanctioning Process*

42. In preparation for the approval of the Schemes and the sanctioning process, the Scheme Companies caused an extensive investigation to be made to identify all the policyholders who may be Scheme Creditors (the “Notice Parties”) based on the particular features of their policies, including claims history, the nature of the risks covered by their policies and the likelihood that claims might arise under them. A copy of the Policyholder Identification Report, which details the work done as at December 14, 2009 to identify policyholder addresses, and its results, is attached hereto as Exhibit E.

43. By a letter dated April 30, 2009 (the “Practice Statement Letter”), notice of the formulation of the Schemes and the Scheme Companies’ intent to seek approval of the Schemes by Scheme Creditors and sanction by the English Court was sent to all identified Notice Parties for whom an address had been obtained. Further mailings of the Practice Statement Letter were carried out in July and October 2009, in relation to CUAL policyholders whose addresses had not been identified as at April 30, 2009, or in relation to CUAL policyholders for which Whittington had found an updated address since such date. A true and correct copy of the Practice Statement Letter is attached hereto as Exhibit F.

44. The information contained in the Practice Statement Letter was published in (i) England in (a) the Financial Times (UK and worldwide) on June 1, 2009, (b) Insurance Day on June 1, 2009, and (c) the London Gazette on June 1, 2009; (ii) the USA in (a) Business Insurance magazine on June 1, 2009, and (b) The Wall Street Journal (USA National as part of Global) on June 30, 2009.

Commencement of the English Proceedings

45. On December 15, 2009, the Scheme Companies filed an application with the English Court seeking permission to convene creditors' meetings for the purpose of allowing Scheme Creditors to vote on the Schemes.

46. On December 17, 2009, the English Court conducted a hearing and entered an order (the "Convening Order"), determining it had jurisdiction over the Scheme Companies and directing that creditors' meetings relating to the Schemes (the "Creditors' Meetings") be convened for the purpose of considering and, if thought fit, approving the Schemes (with or without modification). A true and correct copy of the Convening Order is attached hereto as Exhibit G.

47. Among other things, the Convening Order required the Scheme Companies at least 56 calendar days before the Creditors' Meetings to send to all Notice Parties a Court approved cover letter (the "Covering Letter") containing copies of (a) the notice convening the Creditors' Meetings (the "Notice"); (b) the Explanatory Statement; and (c) the Form of Proxy and Voting Form (the "Voting Form").<sup>8</sup> See Convening Order, at ¶¶ 4-5. The Explanatory Statement contained notice of the Scheme Companies' intention to seek chapter 15 recognition of the Schemes. The Convening Order further required that the Covering Letter and enclosed documents be sent by pre-paid first class mail or airmail addressed to (i) each person or entity of which Whittington was aware and which it believed was or might be a Scheme Creditor, and for which it had a current address; and (ii) each existing broker or successor to a broker known by Whittington to have placed business falling within the scope of the Schemes and for which it had a current address, in each case to what Whittington reasonably believed to

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<sup>8</sup> Copies of the foregoing documents have also been made available on the Scheme Website at [www.cual-scheme.co.uk](http://www.cual-scheme.co.uk).



be its last known address. See id. As confirmed in the first witness statement of Geraldine Davis of Whittington, the Covering Letters were individually addressed and they and the Voting Forms, together with a copy of the Notice and Explanatory Statement, were put into envelopes addressed to each policyholder known to Whittington. However, where multiple copies of the Covering Letter were being sent to policyholders at the same address, they were combined in a single envelope. Each such envelope contained a separate Covering Letter and Voting Form in respect of each policyholder at the relevant address together with a single copy of the Notice and the Explanatory Statement. Each envelope had been printed with either a first class postage paid mark or an airmail paid mark (as appropriate) and a return address for Whittington was given.

48. The Convening Order also required the Scheme Companies, at least 56 calendar days before the Creditors' Meetings, to cause to be published an advertisement giving notice of the Creditors' Meetings. Such notice was advertised on the Scheme website (the "Website") and stated that the (a) Voting Form, (b) Explanatory Statement; and (c) Scheme rules and appendices thereto (the "Scheme Document") could be downloaded from the Website or obtained in hard copy, free of charge, by contacting the Scheme Manager on the contact details contained therein (the "Advertisement"). The Convening Order required that the Advertisement be published once in each of the newspapers and publications listed in the 10 publications (including Al Eqtisadiah) listed in Schedule 1 to the Convening Order or in such further publications as may be deemed appropriate by the Scheme Companies. Save in respect of publication in the Arabic language publication, Al Eqtisadiah (a Saudi Arabian publication), the Advertisement was placed in accordance with paragraph 8 of the Convening Order between March 17, 2010 and March 26, 2010. On March 18, 2010, the Scheme Companies' advertising agents TMP Worldwide ("TMP") contacted Sidley Austin LLP (the UK lawyers acting for the

Scheme Companies regarding the Schemes) to advise that, for reasons which the Petitioner believes remain unknown, Al Eqtisadiyah was unwilling to publish the Advertisement, notwithstanding that it had previously agreed to do so.

49. Sidley Austin LLP liaised with TMP and the Petitioner, on the Scheme Companies' behalf, in considering suitable replacement advertising in Saudi Arabia. Following these discussions, it was decided to place the Advertisement in Al Riyadh which TMP advised was the most appropriate available publication in which to attempt to bring the Scheme to the attention of Scheme Creditors in Saudi Arabia.

50. The Advertisements were published in (i) England in (a) the Financial Times (UK and worldwide) on March 18, 2010, (b) Insurance Day on March 18, 2010, and (c) the London Gazette on March 17, 2010; (ii) the USA in (a) Business Insurance magazine on March 22, 2010, (b) The Wall Street Journal (USA National as part of Global) on March 19, 2010, and (c) The Wall Street Journal (International as part of Global) on March 19, 2010; (iii) Iran in The Tehran Times on March 18, 2010; (iv) Saudi Arabia in Al Riyadh on March 25, 2010; (v) New Zealand in The New Zealand Herald on March 19, 2010; (vi) Spain in Expansion on March 23, 2010 and again on March 26 2010; and (viii) Australia in The Australian on March 19, 2010.

51. As will be noted from the preceding paragraph, the Advertisement was placed twice in the Spanish publication Expansion. The Advertisement was originally scheduled to be published in Expansion on March 19, 2009, 82 calendar days before the Creditors' Meetings. However, it was first published in Expansion on March 23, 2009, 78 calendar days before the Creditors' Meetings. As an apology for it not being published on March, 19, 2009, Expansion of its own volition published the Advertisement again on March 26, 2009. The latter

date was also well within the requirements of paragraph 8 of the Convening Order being 75 calendar days prior to the Creditors' Meetings.

52. The Convening Order also authorized each Scheme Company to hold two Creditors' Meetings: (i) one meeting of its Scheme Creditors in relation to their IBNR Claims (as defined therein) and (ii) one meeting of its Scheme Creditors in relation to their Scheme Claims other than IBNR Claims. In each case, the meetings were held on June 10, 2010 at Sidley Austin LLP, Woolgate Exchange, 25 Basinghall Street, London EC2V 5HA, United Kingdom. See Convening Order, at ¶¶ 1-3. Pursuant to the Convening Order, Frank Attwood was appointed to act as chairman of each of the Creditors' Meetings. See Convening Order, at ¶ 12.

53. On June 10, 2010, the meetings for the respective Scheme Companies took place and the requisite majorities of the Scheme Creditors voted in favor of the Schemes. On July 9, 2010, the English Court, upon notice and a hearing, sanctioned the Schemes. A true and correct copy of the each of the Sanction Orders is attached hereto as Exhibit A.

54. The Effective Date of each of the Schemes is July 26, 2010, the date on which a copy of the Sanction Order, made in respect of each Scheme Company, was delivered to the Registrar of Companies. See Exhibit B: Registrar of Companies Stamped Receipt.

#### Implementation of the Schemes

55. Between August 5, 2010 and August 9, 2010, the Scheme Manager caused to be sent by post, to each Scheme Creditor known to him as of the Effective Date, and for whom he had a current address: notification of the Effective Date, a Claim Form and the Final Claims Submission Date. Such notice has also been placed on the Website and advertised in (i) England in (a) the Financial Times (UK and worldwide) on July 30, 2010, (b) Insurance Day on July 30, 2010 (c) the London Gazette on July 30, 2010; (ii) the USA in (a) Business Insurance magazine

on August 2, 2010, (b) The Wall Street Journal (USA National as part of Global) on July 30, 2010 and (c) The Wall Street Journal (International as part of Global) on July 30, 2010; (iii) Iran in The Tehran Times on August 2, 2010; (iv) Saudi Arabia in Al Eqtisadiah on August 19, 2010; (v) Spain in Expansion on August 2, 2010; (vi) New Zealand in The New Zealand Herald on August 2, 2010; and (vii) Australia in The Australian on August 2, 2010.

56. Claim Forms sent to the Scheme Creditors included details of each Insurance Contract of which the Scheme Manager was aware and which may give rise to that Scheme Creditor having a Scheme Claim, together with details of any claim arising in relation to such Insurance Contracts which, as of the Effective Date, was valid and due having been agreed by or on behalf of the Scheme Company and the party to which it is due, but which had not been paid by it or discharged by the operation of set-off or otherwise (“Unpaid Agreed Claims”).

57. Scheme Creditors are required to submit their claims by the Final Claims Submission Date, which is 11:59 pm London Time on February 21, 2011. Where a Claim Form shows an Unpaid Agreed Claim this will be deemed to have been submitted by the Final Claims Submission Date even if the Scheme Creditor does not return its Claim Form by the Final Claims Submission Date. Scheme Creditors will therefore receive settlement of Unpaid Agreed Claims even if they do nothing.

58. Within 126 days of the Final Claims Submission Date, the Scheme Manager shall attempt in good faith to negotiate a mutually agreed value for each Scheme Creditor’s Scheme Claim. If a value is agreed upon, it shall become that Scheme Creditor’s Agreed Claim.

59. If no agreement has been reached by the end of this 126 day period, the Scheme Manager will send the Scheme Creditor an Inwards Valuation Form setting out either (i)

the amount which the Scheme Manager believes is due in respect of each of that Scheme Creditor's unagreed Scheme Claims or (ii) the total amount which the Scheme Manager believes is due to that Scheme Creditor (including any Agreed Claims). The Scheme Creditor has 56 days from such notification to dispute any amount set out in its Inwards Valuation Form by way of a Dispute Notice, failing which it shall be deemed to have accepted the notified value. Where a Scheme Creditor sends a Dispute Notice to the Scheme Manager, within 28 days of receipt of the notice, the Scheme Manager shall refer the Disputed Claim(s) to Adjudication. Disputed Claims shall be referred to the Actuarial Adjudicator or the Scheme Adjudicator in accordance with the procedure set out in the Schemes. The adjudication procedure is designed to deal with claims as expeditiously, economically and fairly as possible. Unless the Actuarial Adjudicator or a Scheme Adjudicator acts dishonestly or beyond his remit, his decision will, with respect to the Scheme Creditor's Agreed Claim, so far as English law permits, be final and binding on the Scheme Company, the Scheme Manager and the Scheme Creditor concerned as that Scheme Creditor's Agreed Claim.

60. The valuation of Scheme Claims (other than Unpaid Agreed Claims) will be subject to a time-value discount to reflect the time-value of money as of the Reference Date (the "as at date" of the calculation of a Scheme Creditor's Scheme Claim, being a date not earlier than December 31, 2008). Discount rates are set out in Appendix E to the Schemes.

61. The result of these processes will be that a Net Valuation Statement will be produced for each Scheme Creditor setting out the balance in favor of the Scheme Creditor or the Scheme Company. The Net Valuation Statement will be sent to each Scheme Creditor as soon as reasonably practicable. The Net Valuation Statement will set out the total value of each Scheme Creditor's Agreed Claims and for those who are reinsurers of the Scheme Companies or

otherwise are susceptible to set-off under the Schemes, their offset balances. Certain other adjustments, as described in clause 3.2 of the Schemes, will also be applied and the resulting amount will be the Scheme Creditor's Net Ascertained Claim or, if it shows a balance in favor of the Scheme Company, the Scheme Creditor's Net Debt. A Net Valuation Statement becomes binding upon the Scheme Creditor unless disputed within 21 days of its date. Any values shown on a Net Valuation Statement (to the extent that the Scheme Creditor has not seen them before) may be disputed on substantive grounds. The value of Agreed Claims, which the Scheme Creditor has had the chance to dispute prior to the Valuation Statement, may at this stage only be disputed on the grounds of Manifest Error. If agreement cannot be reached between the Scheme Manager and the Scheme Creditor within 21 days of the date of the Net Valuation Statement, the substantive disputes will be resolved by a Scheme Adjudicator. If the Net Valuation Statement shows a Net Debt, the Schemes do not purport to bind the Scheme Creditor to pay that amount to the Scheme Company.

62. The Scheme Manager shall procure that payment of Net Ascertained Claims be made to each Scheme Creditor as soon as reasonably practicable after the date on which such Scheme Creditor's Net Valuation Statement containing a Net Ascertained Claim has become final and binding, and in any event within 42 days thereof. The Scheme Manager has the discretion to make payment to Scheme Creditors prior to this, if their Net Ascertained Claim has become binding at an earlier stage.

### **RELIEF REQUESTED**

63. The Petitioner seeks the entry of an order of this Court, pursuant to sections 105(a), 1502, 1504, 1515, 1517, 1520 and 1521 of the Bankruptcy Code and Rule 65 of the Federal Rules of Civil Procedure, as made applicable by Rule 7065 of the Bankruptcy Rules,

substantially in the form of the Proposed Order, granting the following relief necessary to best advance the goals of the Schemes and to assure their effective implementation:

- (a) recognition of the Petitioner as a “foreign representative” pursuant to 11 U.S.C. § 101(24);
- (b) recognition of the English Proceedings as “foreign proceedings” pursuant to 11 U.S.C. § 1517(a);
- (c) recognition of the English Proceedings as “foreign main proceedings” pursuant to 11 U.S.C. § 1517(b)(1);<sup>9</sup>
- (d) all relief afforded foreign main proceedings automatically upon recognition pursuant to 11 U.S.C. § 1520;<sup>10</sup>
- (e) granting comity to and giving full force and effect to the Schemes and Sanction Orders;
- (f) awarding the Petitioner such other and further relief as this Court may deem just and proper;
- (g) additional relief, as authorized by section 1521 of the Bankruptcy Code, including, among other things:
  - (i) that the Schemes shall be given full force and effect in the United States, and shall be binding on and enforceable against all Scheme Creditors in the United States;
  - (ii) that the Schemes shall be given full force and effect and be binding on and enforceable against all Scheme Creditors, including without limitation, against a Scheme Creditor in its capacity as a debtor of the Scheme

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<sup>9</sup> Should the Court determine that the foreign proceeding in respect of any of the Scheme Companies is not a “foreign main proceeding,” the Petitioner respectfully requests that the Court treat such Scheme Companies’ Chapter 15 Petition as one requesting recognition and relief as a “foreign nonmain proceeding,” as defined in section 1502(5) of the Bankruptcy Code. The Schemes were sanctioned by the English Court in the United Kingdom where the Debtors clearly carry on a nontransitory economic activity. They each, therefore, have an “establishment” within the meaning of section 1502(2), entitling the Schemes to recognition as a foreign nonmain proceeding pursuant to section 1517(b)(2) of the Bankruptcy Code.

<sup>10</sup> Should the Court determine that the foreign proceeding in respect of any of the Scheme Companies is a foreign nonmain proceeding, the Petitioner respectfully requests that this Court grant, pursuant to section 1521 of the Bankruptcy Code, the same relief against individual creditors that the Scheme Companies will automatically enjoy under section 1520, including: (i) staying the commencement or continuation of any action or proceeding concerning the assets, rights, obligations or liabilities of each the Scheme Companies; (ii) staying execution against assets of the Scheme Companies; (iii) suspending the right to transfer or otherwise dispose of any assets of the Scheme Companies; and (iv) requiring all persons and entities in possession, custody or control of property in the United States, or the proceeds of such property of the Scheme Companies to turn over and account for such property or proceeds to the Petitioner for administration in the United Kingdom in accordance with the Schemes and finding that the interests of the Scheme Creditors in the United States are sufficiently protected by such administration and that, under the law of the United States, such property and proceeds should be administered in the English Proceeding.

Companies, in the United States;

- (iii) that all Scheme Creditors are hereby permanently enjoined and restrained from:
- (a) taking or continuing any act to obtain possession of, or exercise control over, any property of the Scheme Companies or the proceeds of such property in the United States, and its territories, that is not in compliance with the Schemes, and seizing, repossessing, transferring, relinquishing, or disposing of any property of the Scheme Companies, or the proceeds of such property in the United States, and its territories that is not in compliance with the Schemes; and
  - (b) commencing or continuing any legal or equitable action or proceedings (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative or regulatory action, proceedings or process whatsoever), including by way of counterclaim, against the Scheme Companies or any of their property in the United States, and its territories, that is involved in the English Proceedings, or the proceeds thereof, and seeking discovery of any nature against the Scheme Companies, that is not in compliance with the Schemes; and
  - (c) commencing or continuing any proceeding against the duly appointed Foreign Representative, each of the Scheme Companies, CEDR, any person who holds or has held the position of Chief Executive of CEDR, any person who holds or has held the position of President of the Institute of Actuaries in England, any person holding or who has at any time held the position of Scheme Manager, Scheme Adjudicator or Actuarial Adjudicator, the Chairman of the Creditors' Meetings, the Vote Assessor and any past or present director of the Scheme Companies, including their respective successors, delegates, directors, officers, agents, employees, representatives, advisers or attorneys, or any of them (the "Scheme Parties"), with respect to any claim or cause of action, in law or in equity, which may arise out of or relating to (i) any action taken or omitted to be taken as of the Effective Date by any of the Scheme Parties in connection with the Chapter 15 Cases or in preparing, disseminating, applying for or implementing the Schemes or the Order, (ii) the construction or interpretation of the Schemes, or (iii) out of any action taken or omitted to be taken by any of the Scheme Parties in connection with the administration of the Schemes; and
  - (d) in connection with any Scheme Claim, enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment



or order or arbitration award and commencing or continuing any act or any other legal or equitable action or proceedings (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative or regulatory action, proceedings or process whatsoever) obtained in connection with any Scheme Claim to create, perfect or enforce any lien or other security interest, set-off, attachment, garnishment, or other claim against the Scheme Companies or any of its property in the United States, and its territories, or any proceeds thereof, including, without limitation, rights under reinsurance or retrocession contracts; and

- (e) in connection with any Scheme Claim, invoking, enforcing or relying on the benefits of any statute, rule or requirement of federal, state, or local law or regulation requiring the Scheme Companies to establish or post security in the form of a bond, letter of credit or otherwise as a condition of prosecuting or defending any proceedings (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative or regulatory action, proceedings or process whatsoever) and such statute, rule or requirement will be rendered null and void for proceedings, provided, however, that nothing in the Order shall in any respect affect any security in existence at the Effective Date or the replacements for such security; and
  - (f) withdrawing from, setting off against, or otherwise applying property that is the subject of any trust or escrow agreement or similar agreement that relates to a Scheme Claim or the CUAL Business in which the Scheme Companies have an interest in excess of amounts expressly authorized by the terms of the trust, escrow, or similar agreement;
  - (g) drawing down any letter of credit established by, on behalf or at the request of that relates to a Scheme Claim, the Scheme Companies, in excess of amounts expressly authorized by the terms of the contract or other agreement pursuant to which such letter of credit has been established;
  - (h) declaring or treating the filing of the chapter 15 pleadings or the Schemes as a default or event of default under any agreement, contract or arrangement;
- (iv) that a Net Valuation Statement, including all amounts (including, without limitation, Scheme Debt) determined by a Scheme Adjudicator or the Actuarial Adjudicator, shall be final and binding on the Scheme Companies subject to sanctioned and effective Schemes and any person or entity that is a Scheme Creditor of a Scheme Company, including, without limitation, against such person or entity in its capacity as a debtor of a

Scheme Company in the United States;

- (v) that a Net Ascertained Claim or Net Debt determined under the Schemes shall be final and binding on the Scheme Companies and any person or entity that is a Scheme Creditor;
- (vi) that all persons and entities in possession, custody, or control of property of the Scheme Companies in the United States, or its territories, or the proceeds thereof, contrary to the terms of this Order or the Schemes, are required to turn over and account for such property or proceeds to the Scheme Companies;
- (vii) that nothing in this Order would prevent the continuance or commencement of proceedings against any person, entity, or other insurer other than the Scheme Companies, provided, however, that if any third party shall reach a settlement with, or obtain a judgment against, any person or entity other than the Scheme Companies, such settlement or judgment shall not be binding on or enforceable against the Scheme Companies or their property, or any proceeds thereof;
- (viii) that the security provisions of Rule 65(c) of the Federal Rules of Civil Procedure, pursuant to Rule 7065 of the Federal Rules of Bankruptcy Procedure, shall be, and the same hereby are, waived;
- (ix) that no action taken by the duly appointed Foreign Representative, the Scheme Companies, CEDR, any person who holds or has held the position of Chief Executive of CEDR, any person who holds or has held the position of President of the Institute of Actuaries in England, any person holding or who has at any time held the position of Scheme Manager, Scheme Adjudicator or Actuarial Adjudicator, the Chairman of the Creditors' Meetings, the Vote Assessor and any past or present director of the Scheme Companies, including their respective successors, delegates, directors, officers, agents, employees, representatives, advisers, or counsel, or any of them, in preparing, disseminating, applying for, implementing or otherwise acting in furtherance of the Schemes, this Order, these Chapter 15 Cases, any further order for additional relief in these Chapter 15 Cases, or any adversary proceedings in connection therewith as may be commenced under the Bankruptcy Code, will be deemed to constitute a waiver of the immunity afforded to the Scheme Companies, CEDR, any person who holds or has held the position of Chief Executive of CEDR, any person who holds or has held the position of President of the Institute of Actuaries in England, any person holding or who has at any time held the position of Scheme Manager, Scheme Adjudicator or Actuarial Adjudicator, the Chairman of the Creditors' Meetings, the Vote Assessor and any past or present director of the Scheme Companies, including their respective successors, delegates, directors, officers, agents, employees, representatives, advisers, or counsel

pursuant to section 306 or section 1510, as applicable, of the Bankruptcy Code, or under the law of the United States or otherwise;

- (x) that all Scheme Creditors that are beneficiaries of letters of credit established by, on behalf of, or at the request of, a Scheme Company or parties to any trust, escrow or similar arrangement in which a Scheme Company has an interest, and in any case which relates to a Scheme Claim or the CUAL Business has an interest, are required to:
  - (a) provide notice to the Scheme Manager's United States counsel of any drawdown on any letter of credit established by, on behalf or at the request of, a Scheme Company, or any withdrawal from, set-off against, or other application of property that is the subject of any trust or escrow agreement or similar arrangement in which any of the Scheme Companies has an interest, together with information sufficient to permit the Scheme Manager to assess the propriety of such drawdown, withdrawal, set-off or other application, including, without limitation, the date and amount of such drawdown, withdrawal, set-off or other application and a copy of any contract, related trust or other agreement pursuant to which any such drawdown, withdrawal, set-off, or other application was made, and provide such notice and other information contemporaneously therewith; provided however, no drawing against any letter of credit or withdrawal from any escrow, trust or similar arrangement shall be made in connection with any commutation unless the amount of such drawing has been agreed in writing with the Scheme Companies and the Scheme Manager; and
  - (b) turn over and account to the Scheme Manager for any funds resulting from the drawdown of any letter of credit or the application of funds subject to any trust, escrow or similar arrangement, withdrawal, set-off, or other application in excess of amounts expressly authorized by the terms of the contract, any related trust or other agreement pursuant to which such letter of credit, trust, escrow or similar arrangement has been established;
- (xi) that each Scheme Company and the Scheme Manager be authorized to transfer to the foreign proceedings for distribution pursuant to the Schemes any monies or assets of the relevant Scheme Company which that Scheme Company or the Scheme Manager have or may hereafter recover;
- (xii) that all persons that have a claim of any nature or source against a Scheme Company and who are parties to any proceedings (including, without limitation, arbitration or any judicial, quasi-judicial, administrative action, proceeding or process whatsoever) in which a Scheme Company is or was

named as a party, or as a result of which a liability of a Scheme Company may be established, is required to place the Petitioner's United States counsel (Sidley Austin LLP, 787 Seventh Avenue, New York, NY 10019, Attn: Lee S. Attanasio, Esq., and Alex R. Rovira, Esq.) on the master service list of any such action or other legal proceeding, and to take such other steps as may be necessary to ensure that such counsel receives:

- (a) copies of any and all documents served by the parties to such action or other legal proceeding or issued by the court, arbitrator, administrator, regulator or similar official having jurisdiction over such action or legal proceeding; and
  - (b) any and all correspondence or other documents circulated to parties named in any master service list;
- (xiii) that the English Court has exclusive jurisdiction to hear and determine any suit, action, claim or proceeding and to settle any dispute which may arise out of the construction or interpretation of the Schemes, or out of any action taken or omitted to be taken by any of the Scheme Parties (as defined in paragraph 63(g)(iii)(c) above) in connection with the administration of the Schemes; provided, however, that in relation to the determination of Scheme Claims nothing in the Order affects the validity of provisions determining governing law and jurisdiction, whether contained in any contract between a Scheme Company and any of its Scheme Creditors or otherwise;
- (xiv) that this Court shall retain jurisdiction with respect to the enforcement, amendment, or modification of the Order or requests for any additional relief in these Chapter 15 Cases and all adversary proceedings in connection therewith properly commenced and within the jurisdiction of this Court;
- (xv) that the Order shall be served:
- (a) by United States mail, first class prepaid, on or before such date as prescribed by this Court upon all known Scheme Creditors in the U.S. of whose address the Scheme Companies are aware; and
  - (b) by publication in The Wall Street Journal (US Edition) and Business Insurance magazine on or before such date; and
- (xvi) that such service will be good and sufficient service and adequate notice of this Order for all purposes.

64. Granting the above relief and recognizing the Schemes will ensure that the

Scheme Companies' affairs in respect of the CUAL Business are expeditiously resolved,

consistent with the goal of chapter 15 to provide assistance to foreign courts and foreign representatives.

### **BASIS FOR RELIEF**

65. Chapter 15 of the Bankruptcy Code was specifically designed to assist foreign representatives such as the Petitioner in the performance of their duties. One of its express objectives is the “fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor.” 11 U.S.C. § 1501(a)(3).

66. Under the auspices of the English Court, and with the ancillary assistance of this Court, the ultimate goal of the Petitioner and the Scheme Companies is to satisfy the claims of the Scheme Creditors in a fair and efficient manner sooner than would be achieved if the CUAL Business remained in run-off.

67. The Petitioner submits that the relief sought herein is well within the scope of chapter 15 and that the criteria for recognition and the issuance of an injunction under chapter 15 are clearly satisfied under the facts of these cases. Relief under chapter 15 of the Bankruptcy Code is necessary to ensure that United States Scheme Creditors will not be able to take action to their advantage and to the disadvantage of other creditors, thereby potentially jeopardizing the Schemes.

68. If the Scheme Creditors in the United States are permitted to seek their own remedies, assets of the Scheme Companies could be depleted unnecessarily to defend actions brought in the United States in contravention of the intent of the Schemes and the sanction orders granted by the English Court. Absent the relief requested, including injunctive relief, the Scheme Companies, their estates and creditors will be irreparably harmed. If the

Scheme Creditors in the United States are permitted to seek their own remedies, assets of the Scheme Companies could be depleted. In addition, those Scheme Creditors could gain an advantage over others, and there would be no orderly and uniform administration of claims against the Scheme Companies in one central forum.

69. In contrast to the hardships that would occur without the relief requested herein (as described above), preservation of the Scheme Companies' assets for distribution in accordance with the terms of the Schemes will not prejudice the Scheme Creditors in the United States.

70. To preserve the Scheme Companies' assets for equitable distribution among the Scheme Creditors pursuant to the Schemes, the Schemes bar any proceedings against the Scheme Companies or their property (wherever located) seeking to establish the existence or amount of any liability or to obtain payment of any liability, unless the Scheme Companies have failed to perform an obligation to make a payment to a Scheme Creditor in respect of a Net Ascertained Claim. Recognition of the Schemes under chapter 15 of the Bankruptcy Code and the grant of the relief requested herein are necessary to promote the goals of the Schemes and to ensure its effective implementation. In order to best preserve assets that may be made available to satisfy claims of Scheme Creditors, it is imperative that all claims and distributions be administered in accordance with the terms of the Schemes. If proceedings brought by Scheme Creditors are not stayed in the United States, the orderly determination and settlement of Scheme Claims may be jeopardized and the Scheme Companies may be forced to expend resources unnecessarily in order to defend collection and other actions brought by United States creditors.

71. In addition to the reasons set forth above, a Memorandum in Support of the Verified Petition Under Chapter 15 For Recognition Of Foreign Proceedings And Motion For

Permanent Injunction, filed contemporaneously herewith, sets forth more fully the Petitioner's legal support for, and position respecting entitlement to, recognition and the above-requested relief.

### **HEARING ON PETITION FOR RECOGNITION AND RELIEF**

72. By Application for Order Scheduling Hearing and Specifying the Form and Manner of Service of Notice filed contemporaneously with the Petition, the Petitioner has requested that the Court set the date for the hearing on recognition and relief at the earliest possible time, pursuant to section 1517(c) of the Bankruptcy Code, preferably November 8 or November 9 of this year, or as soon thereafter as this Court is available (the "Recognition Hearing").

73. Granting the above relief and recognizing the Schemes will ensure that the Scheme Companies' affairs are expeditiously resolved, consistent with the goal of chapter 15 to provide assistance to foreign courts.

### **NOTICE**

74. As soon as the Recognition Hearing is scheduled, the Petitioner will cause to be sent by first-class mail to all U.S. based Notice Parties, a Notice of Filing and Hearing which shall append: (i) the Petition; (ii) the Verified Petition and Motion (without exhibits); (iii) the Memorandum of Law in Support of the Petition and Motion; (iv) the List submitted pursuant to Bankruptcy Rule 1007(a)(4); (v) the Statement of Foreign Representative required pursuant to 11 U.S.C. §1515; and (vi) the Proposed Order. The Notice shall be sent in order to provide notice by mail to the parties at least 21 days prior to the hearing date, as required by Bankruptcy Rule 2002(q).

75. By such notice, all U.S. parties- in- interest will be advised of the commencement of the Chapter 15 Cases, the relief requested by the Petitions, the central documents filed with the Court respecting these Chapter 15 Cases, as well as the date, place and time of the Recognition Hearing and the date, time and manner for lodging a response or motion respecting the Petitions, in accordance with the Bankruptcy Rules and the Local Rules of Bankruptcy Procedure. The Petitioner also shall cause such notice in substantially the form of the Notice to be published expeditiously on the Website, Business Insurance Magazine and The Wall Street Journal (US Edition).



**CONCLUSION**

WHEREFORE, the Petitioner respectfully requests that this Court enter an order substantially in the form of the Proposed Order, attached hereto as Exhibit C, granting the relief requested herein and such other and further relief as is just and proper.

Dated: September 22, 2010  
New York, New York

SIDLEY AUSTIN LLP

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