

## APPENDIX 2:

### SURPLUS LINES TRUST FUND

- 1 As a condition of being permitted to write insurance business in the United States as an alien insurer the Company was required to establish a trust fund in the United States for the benefit of certain beneficiaries as described in paragraph 7 (the “**Surplus Lines Trust Fund**”).
- 2 The trustee appointed in relation to the Surplus Lines Trust Fund is State Street Bank and Trust Company, N.A. (the “**Trustee**”). The relevant regulator in the state in which the Surplus Lines Trust Fund is principally administered is the New York State Department of Financial Services (“**DFS**”).
- 3 Certain Direct Scheme Creditors may also be beneficiaries under the Surplus Lines Trust Fund.
- 4 The Surplus Lines Trust Fund is a multi-beneficiary trust fund established by the Company by way of an agreement dated 7 August 2003 (as amended on 31 July 2006 and as it may be further amended) (the “**Surplus Lines Trust Agreement**”).
- 5 The Surplus Lines Trust Fund constitutes Security in relation to any Liability of the Company arising under an “American Policy”. “**American Policy**” is defined in the Surplus Lines Trust Agreement as:  
*“any contract or policy of insurance issued or any agreement to insure made by the Company pursuant to the excess or surplus lines laws of any state, district, territory, commonwealth or possession of the United States in which the Company is not licensed to do an insurance business, provided that such Policies shall not include reinsurance of life insurance.”*
- 6 The Company is not, and has never been licensed to undertake insurance business anywhere in the United States.
- 7 The beneficiaries of the Surplus Lines Trust Fund are:
  - (a) each holder of an American Policy resident or doing business in the United States (an “**American Policyholder**”), and any other persons or associations who are assignees, pledgees, or mortgagees named therein; and
  - (b) any person who is not a party to the relevant American Policy but has a claim for a loss under an American Policy excluding punitive or exemplary damages awarded to or against an American Policyholder and also excluding any extracontractual obligation not expressly covered by the American Policy, or a claim for unearned premium arising from an American Policy (“**Third Party Claimant**”).
- 8 American Policyholders and Third Party Claimants are entitled to make a claim on the Surplus Lines Trust Fund in respect of their claims under an American Policy. The rights of American Policyholders and Third Party Claimants under the Surplus Lines Trust Fund are not compromised by the Direct Scheme.
- 9 The Administrators will send information and guidance regarding the process for making claims in relation to the Surplus Lines Trust Fund to all creditors of the Company for which

they have contact details and which they consider are, or may be, American Policyholders or Third Party Claimants.

Entitlement to claim on the Surplus Lines Trust Fund

- 10 For the purposes of determining whether a U.S direct policyholder is an “**American Policyholder**”, as defined in the Surplus Lines Trust Agreement, and therefore entitled to make a claim on the Surplus Lines Trust Fund, it will be necessary to consider whether the relevant policy was issued “*pursuant to the excess or surplus lines laws of any state...*” The precise definition of “excess or surplus lines” insurance varies from state to state.
- 11 The following paragraphs provide general principles which may assist in determining whether a policy was issued on an excess or surplus lines (“**E&S**”) basis. For the avoidance of doubt, the following paragraphs do not constitute legal advice in relation to the circumstances of any Direct Scheme Creditor (and are intended to act as guidance only). Direct Scheme Creditors should take appropriate legal advice where necessary.
- 12 For the purposes of determining whether a policy was issued on an E&S basis, the following factors may be relevant:
  - 12.1.1 The insured was a U.S. resident or doing business in in the U.S.
  - 12.1.2 The insured or its broker or agent was unable to purchase the insurance from an insurer licensed in the state and sought assistance from a licensed E&S producer to obtain the policy from a non-admitted insurer pursuant to the insured’s home state E&S laws.
  - 12.1.3 The policy covers direct property and casualty exposures in the state; it does not cover reinsurance.
  - 12.1.4 The E&S laws of an individual U.S. jurisdiction generally list the specific types of insurance that may be placed in the E&S market and the types of insurance that may not be placed therein. Generally, all types of property & casualty insurance may be written in the E&S market. Life insurance and monoline policies (including financial guaranty, title and mortgage guaranty insurance) generally may not be written on an E&S basis. Depending on the jurisdiction, there may be other types of insurance that may not be placed in the E&S market.
  - 12.1.5 The policy was not procured on an independent procurement basis. This type of transaction is not considered an E&S placement.
  - 12.1.6 The coverage is not considered wet marine insurance. Generally, a licensed broker may place this directly with a non-admitted insurer. An E&S producer’s license is not required.
  - 12.1.7 The policy was placed by an E&S licensee directly with the non-admitted insurer or its authorised representative.
  - 12.1.8 The insured’s policy declaration page (“**Dec Page**”), includes a stamped notice, for example stating: (i) that the unauthorised insurer with which the coverage is being placed is not authorised to do an insurance business in this jurisdiction and is not subject to supervision by this jurisdiction, (ii) that in the event of the insolvency of the unauthorised insurer, losses will not be covered by any the jurisdiction’s guaranty fund

and (iii) that the policy may not be subject to all of the jurisdiction's regulations pertaining to policy forms.

12.1.9 The Dec Page may also have an additional stamp indicating that the policy documents were filed by the E&S producer with a "Stamping Office". However, not all U.S. jurisdictions have Stamping Offices.