

June 12, 2008

**MEMORANDUM**  
**OF**  
**UNDERSTANDING**

Between

**New York State Insurance Department  
(NYSID)**

And

**Bundesanstalt für Finanzdienstleistungsaufsicht  
(BaFin)**

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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, and pursuant to Section 110 of the New York Insurance Law, the New York State Insurance Department (“NYSID”) and the Bundesanstalt für Finanzdienstleistungsaufsicht (“BaFin”) (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 BaFin 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 BaFin regulates and supervises all insurance business transacted in Germany. Under the German Insurance Supervision Act, BaFin administers the supervision of insurance undertakings operating in Germany, which are of material economic significance, as well as pension funds and domestic companies engaging in reinsurance business. The scope of supervision includes all aspects of prudent supervision and good business conduct.

## 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 Germany, and where the context permits, includes:
    - (i) Relevant Legislation that has not yet been transposed into Germany’s domestic law;
    - (ii) Any law, regulation or requirement applicable in the State of New York or Germany; and
    - (iii) 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 BaFin.
  - (d) “Confidential Information” means:
    - (i) Any documents or records deemed confidential by New York law, regulation, requirements 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 information deemed confidential by Section 84 of the German Insurance Supervision Act. This includes all information from BaFin’s examination and analysis process (e.g., examination reports, examination work papers, analyses of financial condition, reports on fraudulent activity, etc.).

- (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) “BaFin” means the Bundesanstalt für Finanzdienstleistungsaufsicht.
- (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.
- (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 BaFin.
- (m) “Related Entity or Person” means a company or person engaged in insurance activities, or legal entities or sub-groups of a Regulated Entity or Person, including affiliates, branches or subsidiaries, regulated by the NYSID and/or the BaFin.
- (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 BaFin 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, requests to confirm or verify information; requests to obtain information about a specified person or entity; requests for discussion of issues of mutual interest between the Authorities; requests to question or take testimony of persons designated by the Requesting Authority; and requests to conduct inspections or examinations of Regulated/Related Entities or Persons. 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 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 Germany. 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. The Authorities shall consider and promptly respond to all requests for assistance regarding: (1) the safety, soundness, or financial condition of a Regulated Entity or Person, or (2) 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.

### **Procedure 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 hereto, and should include the following:

(a) A description of the information, confirmation or verification sought by the Requesting Authority, identifying relevant persons and specific questions to be asked;

(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;

(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.

8. Each Responding Authority shall use reasonable efforts to assess, on a case-by-case basis, whether any Confidential Information 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;
- (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; and
- (e) 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).
- (f) Whether complying with the request may otherwise be prejudicial to the performance by the Responding Authority of its functions.

## **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 if it is relevant to their lawful supervision or examination of a Regulated Entity or Person, 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 noted in the minutes of the meetings between the Authorities.

14. In assessing a request for assistance or information, the Responding Authority may rely on the confirmation of equivalent confidentiality protections or other certification or confirmation by the Requesting Authority of its ability and authority to maintain the protected nature of Confidential Information. The Responding Authority may also rely on other relevant issues, such as its own knowledge of the Requesting Authority's practices and procedures.

15. The NYSID states that pursuant to New York Insurance Law § 110, it has the legal authority necessary to enter into this MoU and 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. A copy of the law establishing such authority is attached hereto as Exhibit B.

16. The BaFin states that Section 84 of the German Insurance Supervision Act authorizes it to enter into this MoU and 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. A copy of the law establishing such authority is attached hereto as Exhibit B.

17. 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.

18. The Requesting Authority shall restrict access to Responding Authority Confidential Information to those employees and agents of the Requesting Authority who are subject to the Requesting Authority's confidentiality obligations, are under its direct supervision and control, and who have a need for such information that is consistent with, and directly related to, the purposes for which the information was requested.

19. 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 the Requesting Authority: discloses to the Responding Authority the identity of each recipient with whom the Confidential Information will be shared; and confirms that each recipient agrees to, and has the legal authority to, maintain the confidential status of the information provided. In all other cases the Requesting Authority will seek consent from the Responding Authority before disclosing any Confidential Information that it receives pursuant to this MoU.

20. 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.

21. Each Authority will attach a copy of the confidentiality provisions applicable in its country to this MoU as Exhibit B. The Authorities will inform each other in due course if the confidentiality regime is significantly affected by a change of law or a court decision.

### **On-Site Inspections**

22. The NYSID and the BaFin 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. 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 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.

### **Costs**

23. Where the cost of fulfilling a request is deemed substantial, the Responding Authority may, on a case-by-case basis, require the Requesting Authority to bear some or all of such costs.

### **Consultation Between the Authorities**

24. 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.

25. 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**

26. 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 Confidential Information previously provided under this MoU or any privileges associated with such information.

27. 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 be binding 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**

**For the Bundesanstalt für  
Finanzdienstleistungsaufsicht**

Eric Orvallo  
Name and Title

Date: 6/12/08

[Signature]  
Name and Title

Date: 6/12/08

**EXHIBIT A****Contact Persons for:**

**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

**OR**

Name: D. Monica Marsh  
Title: Supervising Attorney  
Telephone Number: (212) 480-5298  
Fax Number: (212) 480-5272

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**Contact Persons for:**

**Bundesanstalt für Finanzdienstleistungsaufsicht  
Graurheindorfer Straße 108  
53117 Bonn  
Germany**

Name: Mr. Thomas Schmitz-Lippert  
Title: Head of International Department  
Telephone Number: +49 228 4108 2134  
Fax Number:  
E-mail: [Thomas.schmitz-lippert@bafin.de](mailto:Thomas.schmitz-lippert@bafin.de)

**OR**

Name: Mr. Juergen Dreyman  
Title: Director  
Telephone Number: +49 228 4108 1510  
Fax Number: +49 228 4108 61510

**EXHIBIT B****New York Confidentiality Statute:****§ 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.

**Germany Confidentiality Provisions****Section 84 of the German Insurance Supervision Act**

(1) Persons employed or commissioned by the insurance supervisory authorities and the members of the Insurance Advisory Council (section 92) may not pass on any confidential information obtained in connection with their activities to any other person or authority. This also applies to any other persons who gain access to the information mentioned in sentence 1 by way of official reporting. Sentences 1 and 2 do not apply to information passed on in summary or aggregate form, by which it is impossible to identify the individual insurance undertakings.

(2) The secrecy requirement in accordance with subsection (1) sentence 1 above, shall not prohibit the exchange of information with the competent authorities of other member states and signatories to the EEA Agreement and the Commission in compliance with the directives of the Council of the European Communities applicable to the insurance undertakings. The information obtained through such exchange is subject to the secrecy requirement of subsection (1) sentence 1. An exchange of information with the competent authorities of non-member states within the meaning of section 105 (1) sentences 2 and 3 is only permitted if these authorities and the persons commissioned by them are subject to a secrecy requirement in accordance with subsection (1) sentence 1 above.

(3) The supervisory authorities may use information obtained by virtue of subsections (1) and (2) above only for the following purposes:

(1) For the examination of an application by an insurance undertaking for the granting of authorization,

(2) For the monitoring of the activities of an insurance undertaking,

(3) For orders by the Supervisory Authority and for prosecution and punishment by the supervisory authorities of administrative offences,

(4) Within the framework of an administrative procedure concerning remedies against a decision by the Supervisory Authority,

(5) Within the framework of proceedings in administrative courts, insolvency courts, criminal prosecuting authorities or the courts having competent jurisdiction for administrative fines and criminal matters.

(4) The secrecy requirement in accordance with subsection (1) sentence 1 does not prohibit, in particular, the passing-on of information to

1. public prosecutors' offices or courts having competent jurisdiction for administrative fines and criminal matters or,

2. bodies, and persons commissioned by such bodies entrusted by law or by order of public authorities with the supervision of insurance undertakings, credit institutions, financial services institutions, investment companies, other financial institutions, the financial markets or the payments system,

2a. central banks,

3. agencies handling the liquidation or insolvency of an insurance undertaking, credit institution, a financial services institution, an investment company or other financial institution,

4. persons responsible for the statutory auditing of the accounts of insurance undertakings, credit institutions, financial services institutions, investment companies or other financial institutions, as well as agencies supervising these

auditors, or

5. institutions for the management of guarantee schemes,

provided these bodies require the information for the performance of their functions. The obligation to observe secrecy as specified in subsection (1) sentence 1 above shall apply accordingly to persons employed by such bodies. If the agency or institution in question is situated in another country, the information may not be passed on, unless the body in question and the persons commissioned by it are subject to a secrecy requirement in accordance with subsection (1) sentence 1. Agencies situated in a non-member state within the meaning of section 105 (1) sentences 2 and 3 shall be informed that the information forwarded may be used solely for the purpose for which it was passed on. Information obtained from other countries may only be passed on with the express permission of the competent agencies that have forwarded the information, and only for purposes approved by these agencies.

(4a) The provisions of sections 93, 97 and 105 (1), 111 (5) in conjunction with section 105 (1) and section 116 (1) of the German Fiscal Code (*Abgabenordnung*) shall not apply to the persons referred to in subsection (1), to the extent that they are acting in a capacity to implement this Act. This does not apply if the fiscal authorities require the information for criminal proceedings and any associated tax assessment.

(5) Confidential information received by the Supervisory Authority from the bodies mentioned in subsection (2) sentence 1 and subsection (4) nos. 2 to 4 may not be passed on by way of official reporting (subsection (1) sentence 2 above) without approval of the competent authority which has given the information. The same applies to information obtained during an on-site inspection of a branch in another Member or Signatory State (section 13b); in this case, approval by the competent authority of the member state or signatory to the EEA Agreement where the inspection was carried out is required.

(6) This is without prejudice to the provisions of the German Federal Data Protection Act (*Bundesdatenschutzgesetz*).