

**MEMORANDUM**

**OF**

**UNDERSTANDING**

Between

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

And

**Swiss Financial Market Supervisory Authority  
(FINMA)**

Contents

**Overview.....3**

**Definitions.....4**

**Purpose and Objective of MoU.....5**

**Requests for Assistance .....5**

**Procedure for Making/Responding to Requests for Assistance.....6**

**Confidentiality.....7**

**On-Site Inspections.....9**

**Costs.....9**

**Consultation Between the Authorities.....9**

**Commencement and Termination of MoU.....10**

**Exhibit A.....11**

**Exhibit B.....12**

## 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 Swiss Financial Market Supervisory Authority (“**FINMA**”) (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 **FINMA** 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 FINMA** is the government body responsible for financial regulation in Switzerland, which includes the supervision of banks, insurance companies, stock exchanges and securities dealers, as well as other financial intermediaries.

## Definitions

### 1. For purposes of this MoU:

- (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 Switzerland, and where the context permits, includes:
  - (i) Any law, regulation or requirement applicable in the State of New York or Switzerland; and
  - (ii) Any rule, direction, requirement, guidance or policy made or given by, or to be taken into account by an Authority.
- (c) “Authority” or “Authorities” means the **NYSID** and/or the **FINMA**.
- (d) “Confidential Information” means:
 

Any documents or records deemed confidential by Swiss and 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.
- (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) “FINMA” means the Swiss Financial Market Supervisory Authority.
- (g) “Hosting Authority” means the Authority in whose jurisdiction the On-Site Inspection will be performed.
- (h) “Inspecting Authority” means the Authority performing the On-Site Inspection.

- (i) “**NYSID**” means State of New York Insurance Department.
- (j) “On-Site Inspection” means any routine or regulatory inspection or examination of the books, records or premises of a Regulated or Related Entity or Person.
- (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 **FINMA**.
- (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 **FINMA**.
- (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 **FINMA** 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 Switzerland. 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 that either Authority has entered into with third parties.

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.

### **Procedures for Making/Responding to Requests for Assistance**

7. To the extent possible, all requests for assistance shall be in writing and, if made orally, the provisions of Paragraph 13 below must be followed. Requests for assistance must be directed to the appropriate appointed contact person(s) identified in Exhibit A 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, and, where appropriate, the Requesting Authority will, upon request, identify the specific laws or regulations that are applicable to the request;

(c) The desired time period for reply, and where appropriate, an explanation of the urgency thereof; and

(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;
- (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); and
- (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 clearly mark or otherwise 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 **FINMA** states that pursuant to Articles 14 (Official Secrecy) and 42 (Cooperation with Foreign Authorities Responsible for Financial Market Supervision) of the FINMA Act, and Article 320 (Breach of Official Secrecy) of the Swiss Criminal Code, it has the legal authority necessary to request confidential information from the **NYSID** and to protect from disclosure, and otherwise preserve, the confidential or privileged nature of any Confidential Information that it receives pursuant to this MoU. A copy of the laws establishing the **FINMA**'s authority and responsibility 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; confirms that each recipient agrees to, and has the legal authority to, maintain the confidential status of the information provided; and seeks the prior consent of the Responding Authority prior to releasing the Confidential Information.

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 the 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 **FINMA** 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) To the extent permitted by the laws of the Hosting Authority's jurisdiction, the Hosting Authority will permit the Inspecting Authority to conduct on-site inspections;

(b) 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 two weeks prior to informing the Regulated or Related Entity or Person that it will be the subject of the On-Site Inspection; and

(c) 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 MoUs or information-sharing agreements, including Confidentiality Agreements entered into between the **NYSID** and the **FINMA** on April 28, 2010 (Zurich Financial Services) and June 29, 2010 (Swiss Reinsurance Group), and merges such Agreements into this MoU. Consequently, to the extent that confidential information was shared under such Agreements, this MoU now governs, and the **NYSID** and the **FINMA** will treat and protect from disclosure such information as if the information were shared pursuant to the terms of this MoU. 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.

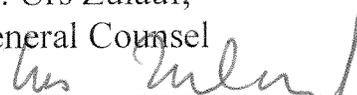
### Executed by the Parties:

**For the New York State  
Insurance Department**

  
James J. Wynn  
Superintendent of Insurance

**For the Swiss Financial  
Market Supervisory  
Authority**

  
Dr. Patrick Raaflaub  
CEO

Dr. Urs Zulauf,  
General Counsel  


Date: May 31, 2011

Date: June 7, 2011

**EXHIBIT A****Contact Person for:**

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

Name: Martha A. Lees or Successor  
Title: Deputy Superintendent and General Counsel  
Telephone Number: +1212 480-5282  
Fax Number: +1212 480-5272  
E-mail: [mlees@ins.state.ny.us](mailto:mlees@ins.state.ny.us)

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**Contact Person for:**

**Swiss Financial Market Supervisory Authority  
Einsteinstrasse 2  
CH-3003 Bern  
Switzerland**

Name: Marco Franchetti or Successor  
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**EXHIBIT B****New York Insurance Confidentiality Statute:****Insurance Law § 110. Cooperation with Other Regulatory Agencies**

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

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

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

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

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

**Switzerland's Confidentiality Provisions****Section 4: Cooperation with Foreign Authorities responsible for Financial Market Supervision****Art. 14 - Official secrecy**

1. The staff and the management bodies must observe secrecy on official matters.
2. The duty of secrecy continues to apply after termination of employment or membership of a management body of FINMA.

3. The staff and the individual members of the management bodies of FINMA may not without authorization from FINMA disclose in evidentiary hearings and in court proceedings as parties, witnesses or expert witnesses matters that have come to their knowledge in the course of their duties and that relate to their official tasks.

4. Official secrecy applies to all mandataries of FINMA (investigating agents, restructuring agents, liquidators, administrators in bankruptcy, mandataries).

#### **Art. 42 - Administrative assistance**

1. In order to enforce the financial market acts, FINMA may request foreign authorities responsible for financial market supervision to provide information and documents.

2. FINMA may hand over information and documents that are not publicly accessible to foreign authorities responsible for financial market supervision only if the foreign authorities are bound by official or professional secrecy and the information:

a. is used exclusively for the direct supervision of foreign institutions; and

b. is passed on to competent authorities or to bodies that are entrusted with supervisory duties that lie in the public interest only on the basis of a general authorization in a international treaty or with the consent of FINMA.

3. FINMA shall refuse consent if it is intended that the information be passed on to prosecution authorities and mutual assistance in criminal matters would be excluded. It decides in agreement with the Federal Office of Justice.

4. Where the information to be passed on by FINMA relates to individual clients, the Federal Act of 20 December 196822 on Administrative Procedure applies.

#### **Art. 43 - Cross-border audits**

1. In order to enforce the financial market acts, FINMA may itself carry out direct audits at the foreign establishments of supervised persons and entities where it is responsible for their consolidated supervision as part of home country supervision, or have such audits carried out by audit companies or mandataries.

2. It may permit foreign authorities responsible for financial market supervision to carry out direct audits at Swiss establishments of foreign institutions, provided these authorities:

a. are responsible for the consolidated supervision of the audited institutions as part of home country supervision; and

b. the requirements for administrative assistance under Article 42 paragraphs 2 and 3 are fulfilled.

3. Information may only be collected through cross-border direct audits if it is required for the consolidated supervision of foreign institutions. This includes in particular information on whether an institution throughout its group structure:

- a. is appropriately organized;
- b. records, limits and monitors in an appropriate manner the risks inherent in its business operations;
- c. is managed by persons who offer a guarantee of proper business conduct;
- d. fulfils the equity capital and risk diversification regulations on a consolidated basis; and
- e. properly complies with its reporting obligations vis-à-vis the supervisory authorities.

4. FINMA may accompany the foreign authorities responsible for financial market supervision on their direct audits in Switzerland or arrange for them to be accompanied by an audit company or third party. The supervised persons and entities concerned may request such accompaniment.

5. Establishments organized under Swiss law must provide the foreign financial market supervisory authorities and FINMA with the information required to carry out the direct audits or the information that FINMA requires to provide the administrative assistance, and must permit the inspection of their books.

6. Establishments are defined as:

- a. subsidiaries, branch offices and representative offices of supervised persons and entities or of foreign institutions; and
- b. other companies, provided their activity is included by a financial market supervisory authority in the consolidated supervision.

#### Title Eighteen: Offenses against Official or Professional Duty

##### Art. 320 - Breach of official secrecy

1. Any person who discloses secret information that has been confided to him in his capacity as a member of an authority or as a public official or which has come to his knowledge in the execution of his official duties shall be liable to a custodial sentence not exceeding three years or to a monetary penalty.

A breach of official secrecy remains an offence following termination of employment as a member of an authority or as a public official.

2. The offender is not liable to any penalty if he has disclosed the secret information with the written consent of his superior authority.