

STATE OF ALASKA  
 DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
 DIVISION OF BANKING, SECURITIES, AND CORPORATIONS  
 P.O. BOX 110807  
 JUNEAU, AK 99811-0807

BEFORE THE SECURITIES ADMINISTRATOR ) ORDER NUMBER 96-135  
 STATE OF ALASKA ) CONSENT ORDER  
 ) ADOPTING DEFINITIVE  
 ) AGREEMENT RESOLVING  
 ) DISPUTE REGARDING THE  
 ) LLOYD'S OF LONDON  
 ) MARKET

WHEREAS a Coordinating Committee of the North American Securities Administrators Association, Inc. and the Society incorporated by Lloyd's Act of 1871 by the name of Lloyd's ("Lloyd's") have negotiated the State Agreement (a copy of which is attached and incorporated by reference) in resolution of matters regarding the Lloyd's insurance market and questions as to the applicability of state securities law (the "Agreement"); and

WHEREAS the Alaska Administrator of Securities finds that the adoption of the Agreement in resolution of said matters is appropriate in the public interest;

NOW THEREFORE, IT IS ORDERED AS FOLLOWS:

1. The Agreement is hereby adopted.
2. With respect to matters covered in Article 5 of the Agreement, those matters shall be enforceable under the Alaska Securities Act unless otherwise provided in the Agreement.
3. The entry of this Order does not constitute a waiver by Lloyd's of any jurisdictional defenses or a consent to jurisdiction except as expressly provided in the Agreement.
4. The Agreement constitutes a final and complete resolution of all matters concerning Lloyd's and the persons who are to be released under Lloyd's Reconstruction and

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1 Renewal plan Settlement Agreement that are or may be before the Securities  
2 Administrator as of the date of this Order.

3 5. Names at Lloyd's who are Names as of the date hereof or become Names prior to  
4 their residence in this State or in accordance with the laws and regulations of this  
5 State may underwrite in the 1996 syndicate year of account in the Lloyd's market,  
6 and may participate in 1996 capacity auctions for syndicate participations, and  
7 thereafter, existing State Names shall be permitted to underwrite insurance in the  
8 Lloyd's market and participate in capacity auctions pursuant to such procedures as  
9 set forth in the applicable laws and regulations of this State.

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11 DATED this 12th day of July 1996.

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/s/ Lawrence P. Carroll

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Lawrence P. Carroll  
Securities Administrator  
Acting Director, DBSC

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In Witness Whereof, the undersigned, being duly authorized, have executed this Agreement as of the 12th day July 1996.

LLOYD'S

By: \_\_\_\_\_ /s/  
Name:  
Title:

THE STATE SECURITIES ADMINISTRATOR  
STATE OF ALASKA

/s/ Lawrence P. Carroll  
By: Lawrence P. Carroll  
Securities Administrator  
Acting Director  
Division of Banking, Securities  
and Corporations

## **STATE AGREEMENT**

This Agreement made as of this 11th day of July, 1996 (the "State Agreement") by and between:

- the Society incorporated by Lloyd's Act 1871 by the name of Lloyd's ("Lloyd's"), with an address at One Lime Street, London EC3M 7HA, and
- the participating State Securities Regulators who are signatories to this Agreement (the "State Securities Regulators"),

WHEREAS, Lloyd's regulates the international insurance and reinsurance market located in London, England known as the "Lloyd's market"; and

WHEREAS, insurers around the world, including participants in the Lloyd's market, have experienced unprecedented losses; and

WHEREAS, in order to prevent the failure of the Lloyd's market, Lloyd's has negotiated and proposed a comprehensive program known as the Lloyd's Reconstruction & Renewal plan ("R&R"); and

WHEREAS, certain State Securities Regulators have asserted the activities of Lloyd's and Lloyd's market participants fall within the scope of their regulatory jurisdiction and that the activities of Lloyd's and Lloyd's market participants may have violated laws subject to their enforcement authority; and

WHEREAS, Lloyd's denies it has violated any U.S. laws and denies it is subject to the jurisdiction of the State Securities Regulators with regard to the issues raised; and

WHEREAS, Lloyd's has cooperated fully with the Coordinating Committee of the North American Securities Administrators Association (the "Coordinating Committee") by responding

promptly and candidly to inquiries and providing documentary materials and analyses, all in the interest of facilitating the State Securities Regulators' access to relevant information; and

WHEREAS, Lloyd's wishes to address the concerns expressed by the State Securities Regulators by providing a special allocation of credits to qualified State Names against amounts due in respect of their Finality Statements; and

WHEREAS, Lloyd's and the Coordinating Committee entered into a Memorandum of Understanding dated July 2, 1996, attached hereto as Exhibit E, and Lloyd's and the Coordinating Committee entered into the NASAA Agreement on July 11, 1996 (the "NASAA Agreement"), attached hereto as Exhibit F; and

WHEREAS, Lloyd's Underwriters currently are required by State insurance laws to maintain two joint asset trust funds which are for the benefit of U.S. surplus lines policyholders and reinsureds, respectively, and these trusts presently are available under defined circumstances to meet the claims of those policyholders and reinsureds that are not otherwise satisfied; and the benefits currently afforded by these trusts will not be affected by the reinsuring of Names' liabilities into Equitas; and

WHEREAS, Lloyd's, in its regulatory capacity, recognizes the need for procedures reasonably expected to achieve compliance by all persons subject to Lloyd's regulatory authority with any applicable State laws; and

WHEREAS, the parties, recognizing the need for mutual cooperation and their respective regulatory responsibilities, wish to resolve all of their outstanding disputes;

**the parties hereto agree as follows:**

**Article 1 - The State Program**

- (A) Names resident in the States whose Securities Regulators will be listed on Exhibit A after the expiration of the periods set forth in Article 12 who otherwise accept and comply with all of the requirements of R&R ("State Names") shall be eligible for a special allocation to reduce the amounts due in respect of their Finality Statements, issued as a part of the R&R Settlement Offer ("State Credits") if the State Names qualify pursuant to the provisions of paragraphs (B) and (C) below, provided the R&R Settlement Offer is declared unconditional by the Council of Lloyd's. The maximum aggregate amount of State Credits offered to all State Names shall be U.K. £40 million.
- (B) By the date of the execution of this Agreement, State Credits will have been allocated among State Names pursuant to a uniform procedure determined solely by the Coordinating Committee (the "Process"). The Process, attached hereto as Exhibit B, involves no findings of fact or findings of law, and is not, in particular, based on factual or legal determinations concerning matters that have been in dispute between the State Securities Regulators and Lloyd's. It is expressly recognized by the parties that Lloyd's has not endorsed or approved any aspect of the Process.
- (C) A State Name shall be eligible to participate in the State Program if he or she has amounts due, before consideration of his or her funds on deposit with Lloyd's, in respect of his or her Finality Statements as a result of participation in the Lloyd's market as an individual unincorporated Name at Lloyd's as more fully described in Exhibit B attached hereto.
- (D) By the date of the execution of this Agreement, the Coordinating Committee will have delivered to Lloyd's a joint communication for the Coordinating Committee and Lloyd's to send to State Names (the "Communication"), that conforms to the requirements of the

NASAA Agreement. The Communication is attached to this Agreement as Exhibit C. The Communication shall be printed and dispatched to State Names with the Settlement Offer Document and the Finality Statement, at Lloyd's expense.

- (E) Lloyd's will compute the proposed allocations under the terms described in the Process. At Lloyd's sole cost, and no later than five days following the mailing of Lloyd's Settlement Offer Document to State Names, Lloyd's Director, Finance shall certify in writing to the State Securities Regulators who are signatories to this Agreement by letter delivered to the Coordinating Committee that the Finality Statement provided to each State Name (or his or her personal representative, executor, administrator, guardian or counsel) in connection with the R&R Settlement Offer Document includes a calculation of State Credits which conforms materially with the Process.
- (F) In the event State Credits are offered to State Names who decline to accept their R&R settlement offer, such credits (up to an amount equal to fifteen percent (15%) of the total State Credits, up to a maximum of U.K. £6.0 million) shall be reallocated to a separate fund (the "Reallocation Fund"). This Reallocation Fund shall be distributed to State Names by a neutral evaluator (the "Neutral Evaluator") in accordance with the NASAA Agreement, providing for reallocation on the basis set forth in Exhibit B. The distribution of the Reallocation Fund shall be final and nonreviewable by any person, entity or tribunal.
- (G) Under no circumstances shall the total amount of State Credits (including those credits reallocated in accordance with sub-paragraph (F)) allocated to any State Name exceed the amounts due in respect of his or her finality statement.
- (H) Names shall be required by Lloyd's, as part of the Names' acceptance of the R&R Settlement Agreement, to release the Neutral Evaluator, Lloyd's, and all persons to be

released under the R&R Settlement Agreement, with regard to any aspect of the performance of this Agreement, including, without limitation, the allocation and reallocation of State Credits.

- (I) State Names who were covered by the NASAA Conditional Standstill Agreement dated April 29, 1996, attached hereto as Exhibit G, may choose as their finality obligation the lowest of the final figures presented in their "indicative finality statements" of March and June 1996 and the finality statement of July 1996.

**Article 2 - Effect of this Agreement; Releases**

- (A) Among the parties hereto, and any person who is to be released under the R&R Settlement Agreement, this Agreement shall constitute a complete and final resolution of, and discharge with respect to, any inquiry, claim, demand, action or cause of action, whether known or unknown, and whether pending or unasserted, arising out of or in connection with the membership of any Name or any former Name at Lloyd's or his participation in the Lloyd's market (a "Claim"). The State Securities Regulators hereby waive, release and discharge from, and covenant not to sue, issue subpoenas or process or bring any administrative or judicial proceeding against, Lloyd's or any person who is to be released under the R&R Settlement Agreement in connection with any Claim. No person who is to be released under the R&R Settlement Agreement shall be entitled to the release provided for in the preceding sentences if such person shall have brought any action against any State or individual employee thereof that Lloyd's could not bring under this paragraph. Lloyd's hereby waives, releases and discharges from, and covenants not to sue, the State Securities Regulators and all individual employees thereof in connection with their assertion of Claims prior to the date hereof. Nothing in this Agreement shall be deemed to preclude any party from taking action consistent with Article 7 hereof to enforce the terms of this Agreement.



- (B) The State Securities Regulators agree to take the steps necessary to dismiss all litigation, withdraw all administrative orders, and terminate all administrative proceedings, formal investigations, informal inquiries, subpoenas or process pending against Lloyd's and any person to be released under the R&R Settlement Offer, all with prejudice, but the effectiveness of which shall be subject to (1) the declaration by the Council of Lloyd's that the R&R Settlement Agreement is unconditional, and (ii) that Lloyd's has fulfilled all its obligations under this Agreement. Provided that Lloyd's is not in material, uncured breach of any obligation under this Agreement, the State Securities Regulators will refrain from enforcing any existing order or decree or taking any enforcement action against Lloyd's and any person to be released under the R&R Settlement Agreement or taking any other action that would be prohibited upon the effectiveness of the actions described in the preceding sentence. Lloyd's shall execute any necessary process to achieve a termination or discontinuance by it of any proceeding with respect to any of the State Securities Regulators' actions. Each party (including, to the extent that he or she claims entitlement to the release provided for in Article 2(A) of this Agreement), shall bear his, her, or its own costs in such terminated proceedings. Nothing in this paragraph is intended to require the actual withdrawal of any order, proceeding or process until the conditions set forth above are satisfied.
- (C) Nothing in this Agreement shall be deemed to prohibit any State from responding to proper requests under Freedom of Information Act statutes or similar state governmental records statutes, or pursuant to proper subpoenas, or pursuant to a proper request by a government agency or tribunal.
- (D) Nothing in this Agreement shall be deemed to limit the jurisdiction of any state insurance regulator.
- (E) Nothing in this Agreement, and no allocation or reallocation of State Credits, shall:

- (1) constitute any admission of any fact or concession of any legal principle for any reason, or a finding or order for purposes of Rule 803 of the Federal Rules of Evidence or any comparable state provision;
  - (2) constitute a waiver with respect to any issue, including but not limited to submission to jurisdiction by any party to this Agreement, except for purposes of Article 7 of this Agreement;
  - (3) be deemed to involve any disciplinary or enforcement proceeding against any person within the meaning of any federal or state law;
  - (4) create any third party beneficiary right or entitlement of, or any obligation to, any State Name; or
  - (5) be deemed to constitute any finding or approval of any State Securities Regulator with respect to any materials disseminated by, or any activities of, Lloyd's or any person to be released under the R&R Settlement Agreement.
- (F) The terms of this Agreement shall be implemented by an order of the State Securities Regulator in each participating State substantially in the form attached hereto as Exhibit D, and which order, in particular:
- (1) shall not include any findings of fact or law, or recount any allegations previously made; and
  - (2) shall be consistent with the provisions of sub-paragraph (B) of this Article 2.

Except as set forth in this sub-paragraph (F), no order or findings shall be issued by any State Securities Regulator with respect to Lloyd's or any person to be released under the R&R Settlement Agreement.

- (G) Provided that Lloyd's is not in material, uncured breach of its obligations under this Agreement, no State Securities Regulator shall take any action or assist any other person or entity seeking to interfere with R&R settlement offers being made to any U.S. Name or the reinsurance of the liabilities of any U.S. Name into Equitas, or seeking to undo the implementation of R&R or Equitas reinsurance after it has been effected, except as provided in Article 2(C) above.

### **Article 3 - Announcements**

The parties to this Agreement shall use their best efforts to make any press release or similar public announcements consistent with the spirit of any Lloyd's-NASAA joint release or announcement.

### **Article 4 - Representations**

- (A) The State Securities Regulators enter into this Agreement after being advised of the following by Lloyd's:
- (1) Lloyd's has the authority to enter into this Agreement, and has secured any necessary approvals therefor.
  - (2) The Council of Lloyd's has the authority to implement the R&R proposals and relevant bye-laws.
  - (3) As part of R&R, and the reinsurance of liabilities of Names into Equitas, funds will be transferred from the Lloyd's American Trust Funds in payment of Equitas premiums to Equitas American Trust Fund ("EATF"). It is Lloyd's intention that the trust deeds for EATF will provide, in substance, that the assets of EATF, until used to meet the purposes of the trust, will be maintained within the United States, unless otherwise approved in writing by the Superintendent of Insurance for the

State of New York. Nothing in this Agreement shall be construed to prevent the use of EATF assets for the purposes of the trust, including the payment of insurance obligations in respect of "American Business," that includes dollar-denominated business that may originate from outside the United States.

- (4) While the EATF trust deed will provide for the payment of valid expenses of the trust from the trust fund, including payments that may be made to Lloyd's agents for services rendered to Equitas, no fees or commissions relating to the implementation of R&R and the formation of Equitas will be paid to managing agents or members' agents from the EATF.
- (5) If the R&R Settlement Agreement becomes unconditional, Lloyd's will undertake to each State Name, on the terms specified in the R&R Settlement Agreement, that following acceptance of the Settlement Offer, timely payment in full of his or her finality bills, and his or her cessation of membership in Lloyd's in accordance with the Membership Bye-law, such acceptance and payment will represent a full discharge of the Name's obligations to Lloyd's in respect of 1992 and Prior Business (as defined in the R&R Settlement Agreement), and no further claims on any such Name in respect thereto will be made by Lloyd's or Equitas (either in their own right or for the benefit of any policyholder) unless required to do so by any other governmental body or judicial authority, or pursuant to an Act of Parliament, or pursuant to a Name's Hardship Agreement. Nothing in this Agreement is intended to, or shall, create a novation or any release of Names from their obligations to policyholders.
- (6) Any State Name who ceases to be a member of Lloyd's, and who shall have surplus funds at Lloyd's after the satisfaction of all outstanding obligations and after meeting the requirements of the R&R Settlement Offer, shall be entitled to

receive any surplus funds as is consistent with the resolutions and bye-laws of the Council of Lloyd's.

(B) Lloyd's enters into this Agreement after being advised of the following by the State Securities Regulators:

- (1) Each of the State Securities Regulators has the authority to enter into this Agreement, and has secured any necessary approvals therefor.
- (2) The State Securities Regulators intend, to the maximum extent permissible by law, to resolve any and all civil and administrative liability issues in their jurisdictions that can be brought on behalf of any State Securities Regulator arising out of Claims or that have otherwise given rise to this Agreement.
- (3) Upon inquiry from any other State regulatory authorities, the State Securities Regulators will advise any other such State officials contemplating any action against Lloyd's or any persons to be released by the R&R Settlement Agreement of which the State Securities Regulators are aware regarding the facts and transactions giving rise to this Agreement that, in their view, the settlement embodied in the Agreement was intended by the parties as a complete and satisfactory resolution of all such regulatory claims. Lloyd's expressly acknowledges that the signatories to this Agreement do not have the power to preclude other State civil or administrative authorities from taking such action as such authorities may deem appropriate in the exercise of their statutory duties.
- (4) Provided that Lloyd's is not in breach of its obligations under this Agreement and subject to the provisions of Article 2(C) above, no State Securities Regulator shall take any action seeking to interfere with the R&R Settlement Offer to any U.S. Name or the reinsurance of the liabilities of any U.S. Name into Equitas, or

seeking to undo the implementation of R&R or Equitas reinsurance after it has been effected, or to assist any non-governmental person or entity who seeks to interfere with R&R settlement offers being made to any U.S. Name or the reinsurance of the liabilities of any U.S. Name into Equitas, or to undo the implementation of R&R or Equitas reinsurance after it has been effected.

- (5) Provided Lloyd's is not in breach of its obligations under this Agreement, and subject to the provisions of Article 2(C) above, no State Securities Regulator shall assist any private person or entity who seeks to pursue any action against Lloyd's or any of the persons to be released under the R&R Settlement Agreement, provided however that nothing in this sub-paragraph shall apply to requests or directives from any judicial or other governmental authority for any assistance or participation in any private lawsuit; and provided further that nothing in this Agreement shall apply to that portion of any private litigation in which forum selection is at issue.
- (C) Within two weeks after August 31, 1996, Lloyd's will provide to the State Securities Regulators, by delivery of a letter to the Coordinating Committee, the following:
- (1) A written report of its Director, Finance setting forth the readily ascertainable facts regarding the allocation of State Credits; the U.S. Names accepting the R&R settlement offer; the U.S. Names rejecting the R&R Settlement Offer; and an indication of the amounts available for reallocation to the Reallocation Fund; and
  - (2) A written confirmation of the approval of the Council of Lloyd's authorizing the entry of Lloyd's into this Agreement.
- (D) Lloyd's will promptly cause to be delivered a copy of the joint asset trusts (referred to on page 2, above) to each NASAA member State Securities Regulator.

- (E) Within two weeks after the State Securities Regulators have been notified by Lloyd's (i) that the R&R Settlement Offer has been declared unconditional by the Council of Lloyd's, and (ii) that Lloyd's has fulfilled all its obligations under this Agreement, the State Securities Regulators will provide Lloyd's with an appropriate certification from a duly authorized officer that all previous administrative or judicial orders or findings governed by Article 2(B) of this Agreement have been withdrawn, terminated, nullified or otherwise rendered of no effect.

#### **Article 5 - Future Activities**

- (A) Lloyd's will not solicit persons in the participating States as new Names or underwriting members of the Lloyd's insurance market except pursuant to procedures as may be agreed upon with each State Securities Regulator or as set forth in the applicable laws and regulations of such States.
- (B) Existing State Names shall be permitted to:
- (a) continue to underwrite insurance in the Lloyd's market in 1996; and
  - (b) participate in 1996 capacity auctions for syndicate participations.

Thereafter, existing State Names shall be permitted to underwrite insurance in the Lloyd's market and participate in capacity auctions pursuant to procedures as may be agreed upon with each State Securities Regulator or as set forth in the applicable laws and regulations of such States.

- (C) Nothing contained in this Agreement or in any order or proceeding terminated pursuant to Article 2(B) of this Agreement shall be deemed to affect, limit or restrict Lloyd's and any Lloyd's market participant's business or its ability to participate in offerings or rely on any

exemption, including, without limitation, the Uniform Limited Offering Exemption, as and to the extent now or hereafter adopted in the relevant State.

- (D) Nothing contained in this Agreement shall be deemed to authorize Lloyd's to solicit the sale, or to sell, securities interests in any Lloyd's insurance market participant.

**Article 6 - Notices**

- (A) Notices under this Agreement shall be given by telecopy, with a confirmatory letter by airmail, postage prepaid, to the persons indicated below or on the attached Exhibit A, or to such successor persons, addresses or telecopy numbers as each such person may indicate by notice hereunder. A notice hereunder shall be deemed to be given when received by telecopy if received between 9:00 a.m. and 5:00 p.m. local time at the place of receipt, or otherwise shall be deemed to be received at 9:00 a.m. on the next business day at the place of receipt. A telecopy confirmation shall serve as *prima facie* evidence that a telecopy has been received.

- (B) Notices shall be addressed as follows:

(1) If to a particular State Securities Regulator, as will be indicated on Exhibit A.

(2) If to Lloyd's, to:

Lloyd's  
One Lime Street  
London EC3M 7HA  
Attention: Secretary to the Council  
Telecopy: (44 171) 327-6122



with a copy to:

Fried, Frank, Harris, Shriver & Jacobson  
1001 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
Attention: Harvey L. Pitt  
Telecopy: 202/639-7003

**Article 7 - Governing Law and Jurisdiction**

- (A) This Agreement shall be governed by the laws of the State of New York without reference to its provisions on conflicts of laws, except to the extent that the constitution, statutes or the decisions of the highest judicial tribunal of a State require otherwise.
- (B) Except insofar as actions occurring after December 31, 1996 are addressed in Article 5 hereof, and subject to the provisions of Article 11(D) below, any claim or controversy arising from, or in connection with, this Agreement shall be subject to arbitration in the City of New York in accordance with the Expedited Procedures under the Commercial Arbitration Rules (the "Rules") of the American Arbitration Association (the "AAA") except to the extent that such referral is prohibited by the constitution, statutes or a decision of the highest judicial tribunal of a State. If the parties do not agree on the choice of an arbitrator within forty-eight hours, the arbitrator shall be selected in accordance with Rule 54 of the Rules, provided that all of the panelists presented by the AAA shall be retired federal judges, the list shall be returnable within forty-eight hours and the parties shall simultaneously notify the AAA of any non-preemptory objection to a proposed arbitrator, stating the reasons therefor. For good cause shown by either party, the arbitrator can reduce the notice period provided in Rule 55 of the Rules to three days. Notwithstanding Rule 57 of the Rules, unless otherwise agreed by the parties, the award (that can subsequently be confirmed in writing) shall be rendered not later than seven days from the date of the hearing. The arbitrator shall have the power to award legal fees

to the prevailing party if he determines it is just and equitable to do so. The arbitrator shall not have the power to award punitive damages. The order of the arbitrator shall be final and nonreviewable. If the constitution, statutes or a decision of the highest judicial tribunal of a State expressly prohibit a referral to arbitration, the proceedings contemplated by this paragraph shall be maintained in an appropriate action in federal district court, with parties hereto having been deemed to consent to the jurisdiction of such court.

- (C) Lloyd's hereby consents to the nonexclusive jurisdiction of the courts of any State for the limited purpose of (i) the grant of interim judicial relief pending arbitration; and (ii) the enforcement of an arbitral award issued to that State as a prevailing party pursuant to this Article 7. Each State Securities Regulator hereby consents to the jurisdiction of the courts of its own State and, unless expressly prohibited by the constitution, statutes or a decision of the highest judicial tribunal of the State, the jurisdiction of the state courts of the State of New York for the limited purpose of (i) the grant of interim judicial relief pending arbitration; and (ii) the enforcement of an arbitral award to Lloyd's as a prevailing party pursuant to this Article 7. Nothing in this Agreement shall be construed as effecting a general waiver or consent to jurisdiction by any party hereto.

#### **Article 8 - Amendments**

This Agreement may only be amended in writing. Any amendment agreed by Lloyd's and fewer than all of the State Securities Regulators may be, if so agreed by those parties executing the amendment, effective among those parties executing the amendment.

#### **Article 9 - Entire Agreement**

- (A) This Agreement and the Exhibits and Schedules attached hereto: (i) constitute the entire agreement between the parties with respect to the subject matter hereof; and (ii) except as

expressly provided, are not intended to and shall not be construed to confer upon any persons other than the parties hereto any rights or remedies hereunder.

- (B) The execution of this Agreement shall not operate to repeal the April 29, 1996 NASAA Conditional Standstill Agreement, except to the extent any provision of this Agreement is inconsistent with such Conditional Standstill Agreement.

#### **Article 10 - Waivers**

Any agreement on the part of a party to any extension or waiver shall be valid only if set forth in writing by the party granting the extension or waiver. No waiver of any of the provisions of this Agreement shall be deemed to or shall constitute a waiver of any other provision hereunder.

#### **Article 11 - Miscellaneous**

- (A) No party to this Agreement shall do indirectly that which it has undertaken in this Agreement to refrain from doing directly.
- (B) Time is of the essence with respect to provisions of this Agreement calling for performance by a specified time.
- (C) Each party hereto acknowledges that breach of certain obligations hereunder cannot be remedied by the payment of money damages. In such event, a party shall have the right, in addition to any other rights it may have, to an order of specific performance of this Agreement.
- (D) If any party to this Agreement believes that any State or Lloyd's is in material breach of any provision hereof, no action or proceeding to enforce compliance with this Agreement shall be instituted unless the party deemed to be in material breach is given written

notice, and ten (10) business days either to cure any such defect or to satisfy the complaining party that no material breach in fact has occurred.

- (E) Nothing in this Agreement is intended to bind or impose any obligation on any State Securities Regulator that is not a party to this Agreement.
- (F) The signatory State Securities Regulator states that he or she is entering into this Agreement solely for the purpose of effecting a resolution of the regulatory concerns of that specific jurisdiction regarding the facts and transactions giving rise to them, and the signatory State Securities Regulator states that he or she is entering into this Agreement without expressing any opinion, position or conclusion of fact or law or on the merits of any controversy.

**Article 12 - Effect of Failure of Certain State Securities Regulators to Execute Agreement**

- (A) In the event that, on or prior to 5:00 p.m. Pacific time on Saturday, July 13, 1996, this Agreement has not been executed by:
  - (1) State Securities Regulators whose State Names account for at least eighty percent (80%) of the eligible R&R Debt Credits allocable to U.S. Names pursuant to the indicative statements dispatched in June 1996; and
  - (2) The State Securities Regulators of each of the following States: Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Iowa, Massachusetts, Missouri, New York, Ohio, Pennsylvania, Tennessee, Texas, Utah, Virginia and West Virginia;

then the State Credits specified in Article 1(A) shall, if Lloyd's nonetheless determines to execute this Agreement, be reduced to a *pro rata* share of an amount in UK pounds sterling equal to forty million times the total R&R Debt Credits allocable to State Names

resident in States whose State Securities Regulators have executed this Agreement as of 5:00 p.m. Pacific time on July 13, 1996 (as specified in the indicative statements dispatched in June 1996) as a proportion of the total R&R Debt Credits allocable to all Names resident in the United States in those indicative statements.

- (B) In the event the requirements of sub-paragraph (A) are satisfied but all of the U.S. state members (including the District of Columbia) of NASAA do not execute this Agreement by July 13, 1996, then the State Credits specified in Article 1(A) shall be reduced in accordance with the reduction formula provided in sub-paragraph (A), provided, however, if the requirement of sub-paragraph A(1) has been met, any State that notifies Lloyd's in writing by 5:00 p.m. Pacific time on July 13, 1996 that its senior staff will recommend to the appropriate authority that the Agreement should be executed, and the Agreement is in fact executed by 5:00 p.m. Pacific time on July 16, 1996, such State Securities Regulator shall be deemed to have executed this Agreement as of July 13, 1996.
- (C) If Lloyd's chooses to void this Agreement pursuant to this Article, then any Agreement entered between Lloyd's and a participating State Securities Regulator shall be rendered null and void. Lloyd's shall inform any participating State Securities Regulator of its decision to void the Agreement by the latter of July 28, 1996 or the date upon which Lloyd's chooses to distribute the Finality Statement to State Names.

### **Article 13 - Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be considered one and the same instrument.

In Witness Whereof, the undersigned, being duly authorized, have executed this Agreement  
as of the 11<sup>th</sup> day of July, 1996.

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LLOYD'S

By: \_\_\_\_\_ /S/ \_\_\_\_\_

Name:

Title:

*Admission*  
THE STATE SECURITIES REGULATORS:

*July 12, 1996*  
STATE OF COLORADO

By: \_\_\_\_\_ /S/ \_\_\_\_\_

Name:

Title: