

ENSTAR GROUP LTD

FORM 10-K (Annual Report)

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-K
FOR ANNUAL AND TRANSITION REPORTS
PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934
 For the fiscal year ended December 31, 2012

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934

For the transition period from to

Commission File Number 001-33289

ENSTAR GROUP LIMITED

(Exact name of registrant as specified in its charter)

BERMUDA
*(State or other jurisdiction of
 incorporation or organization)*

N/A
*(I.R.S. Employer
 Identification No.)*

P.O. Box HM 2267
Windsor Place, 3rd Floor, 22 Queen Street
Hamilton HM JX
Bermuda

(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: (441) 292-3645

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of Each Class</u>	<u>Name of Each Exchange on Which Registered</u>
Ordinary shares, par value \$1.00 per share	The NASDAQ Stock Market LLC

Securities registered pursuant to Section 12(g) of the Act:

None

Indicate by check mark if the registrant is a well known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
 (Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes No

The aggregate market value of the voting and non-voting common equity held by non-affiliates, computed by reference to the closing price as of the last business day of the registrant's most recently completed second fiscal quarter, June 30, 2012, was approximately \$873,548,878.

As of February 24, 2013, the registrant had outstanding 13,897,894 voting ordinary shares and 2,725,637 non-voting convertible ordinary shares, each par value \$1.00 per share.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive proxy statement to be filed with the Securities and Exchange Commission pursuant to Regulation 14A relating to its 2013 annual general meeting of shareholders are incorporated by reference in Part III of this Form 10-K.

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PART I

ITEM 1. BUSINESS

Company Overview

Enstar Group Limited, or Enstar, is a Bermuda-based company that acquires and manages insurance and reinsurance companies in run-off and portfolios of insurance and reinsurance business in run-off, and provides management, consulting and other services to the insurance and reinsurance industry. Since our formation in August 2001, we have acquired 36 insurance and reinsurance companies and 21 portfolios of insurance and reinsurance business and are now administering those businesses in run-off. Of the 21 portfolios of insurance and reinsurance business, 11 were Reinsurance to Close, or “RITC” transactions, with Lloyd’s of London insurance and reinsurance syndicates in run-off, whereby the portfolio of run-off liabilities is transferred from one Lloyd’s syndicate to another. Insurance and reinsurance companies and portfolios of insurance and reinsurance business we acquire that are in run-off no longer underwrite new policies. We derive our net earnings from the ownership and management of these companies and portfolios of business in run-off primarily by settling insurance and reinsurance claims below the acquired value of loss reserves and from returns on the portfolio of investments retained to pay future claims. In addition, we provide management and consultancy services, claims inspection services and reinsurance collection services to our affiliates and third-party clients for both fixed and success-based fees.

Our primary corporate objective is to grow our net book value per share. We believe growth in our net book value is driven primarily by growth in our net earnings, which is in turn driven in a large part by successfully completing new acquisitions and effectively managing companies and portfolios of business that we have acquired.

We evaluate each acquisition opportunity presented by carefully reviewing the portfolio’s risk exposures, claim practices, reserve requirements and outstanding claims, and may seek an appropriate discount and/or seller indemnification to reflect the uncertainty contained in the portfolio’s reserves. Based on this initial analysis, we can determine if a company or portfolio of business would add value to our current portfolio of run-off business. If we determine to pursue the purchase of a company in run-off, we then proceed to price the acquisition in a manner we believe will result in positive operating results based on certain assumptions including, without limitation, our ability to favorably resolve claims, negotiate with direct insureds and reinsurers, and otherwise manage the nature of the risks posed by the business.

At the time we acquire a company in run-off, we estimate the fair value of liabilities acquired based on external actuarial advice, as well as our own views of the exposures assumed. While we earn a larger share of our total return on an acquisition from commuting the liabilities that we have assumed, we also try to maximize reinsurance recoveries on the assumed portfolio of business.

In the primary (or direct) insurance business, the insurer assumes risk of loss from persons or organizations that are directly subject to the given risks. Such risks may relate to property, casualty, life, accident, health, financial or other perils that may arise from an insurable event. In the reinsurance business, the reinsurer agrees to indemnify an insurance or reinsurance company, referred to as the ceding company, against all or a portion of the insurance risks arising under the policies the ceding company has written or reinsured. When an insurer or reinsurer stops writing new insurance business, either entirely or with respect to a particular line of business, the insurer, reinsurer, or the line of discontinued business is in run-off.

In recent years, the insurance industry has experienced significant consolidation. As a result of this consolidation and other factors, the remaining participants in the industry often have portfolios of business that are either inconsistent with their core competency or provide excessive exposure to a particular risk or segment of the market (i.e., workers compensation, property/casualty, asbestos, environmental, director and officer liability, etc.). These non-core and/or discontinued portfolios are often associated with potentially large

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exposures and lengthy time periods before resolution of the last remaining insured claims, resulting in significant uncertainty to the insurer or reinsurer covering those risks. These factors can distract management, drive up the cost of capital and surplus for the insurer or reinsurer, and negatively impact the insurer's or reinsurer's credit rating, which makes the disposal of the unwanted company or portfolio an attractive option. Alternatively, the insurer may wish to maintain the business on its balance sheet, yet not divert significant management attention to the run-off of the portfolio. The insurer or reinsurer, in either case, is likely to engage a third party that specializes in run-off management, such as us, to purchase or manage the company or portfolio in run-off.

In the sale of a company in run-off, a purchaser, such as us, may pay a discount to the book value of the company based on the risks assumed and the relative value to the seller of no longer having to manage the company in run-off. Such a transaction can be beneficial to the seller because it receives an up-front payment for the company, eliminates the need for its management to devote any attention to the disposed company and removes the risk that the established reserves related to the run-off business may prove to be inadequate. The seller is also able to redeploy its management and financial resources to its core businesses.

In some situations, an insurer or reinsurer may wish to divest itself of a portfolio of non-core legacy business that may have been underwritten alongside other ongoing core business that the insurer or reinsurer does not want to dispose of. In such instances, we are able to provide economic finality for the insurer or reinsurer by providing a loss portfolio reinsurance contract to protect the insurer or reinsurer against deterioration of the non-core portfolio of loss reserves.

Alternatively, if the insurer or reinsurer hires a third party, such as us, to manage its run-off business, the insurer or reinsurer will, unlike in a sale of the business, receive little or no cash up front. Instead, the management arrangement may provide that the insurer or reinsurer will retain the profits, if any, derived from the run-off with certain incentive payments allocated to the run-off manager. By hiring a run-off manager, the insurer or reinsurer can outsource the management of the run-off business to experienced and capable individuals, while allowing its own management team to focus on the insurer's or reinsurer's core businesses. Our preferred approach to managing run-off business is to align our interests with the interests of the owners through both fixed management fees and certain incentive payments. Under certain management arrangements to which we are a party, however, we receive only a fixed management fee and do not receive any incentive payments.

Following the purchase of a company in run-off, or acquisition of a portfolio of business in run-off, or a new consulting engagement to manage a company in run-off or portfolio of business, it is incumbent on the new owner or manager to conduct the run-off in a disciplined and professional manner in order to efficiently discharge the liabilities associated with the business while preserving and maximizing its assets. Our approach to managing our acquired companies and portfolios of business in run-off, as well as run-off companies or portfolios of businesses we manage on behalf of third-party clients, includes negotiating with third-party insureds and reinsureds to commute their insurance or reinsurance agreement (sometimes called policy buy-backs) for an agreed upon up-front payment by us, or the third-party client, and to more efficiently manage payment of insurance and reinsurance claims. We attempt to commute policies with direct insureds or reinsureds in order to eliminate uncertainty over the amount of future claims. Commutations and policy buy-backs provide an opportunity for the company to exit exposures to certain policies and insureds generally at a discount to the ultimate liability and provide the ability to eliminate exposure to further losses. Such a strategy also contributes to the reduction in the length of time and future cost of the run-off.

Following the acquisition of a company in run-off, or acquisition of a portfolio of business in run-off, or new consulting engagement, we will spend time analyzing the acquired exposures and reinsurance receivables on a policyholder-by-policyholder basis. This analysis enables us to identify those policyholders and reinsurers we wish to approach to discuss commutation or policy buy-back. Furthermore, following the acquisition of a company or portfolio of business in run-off, or entering into a new consulting engagement, we will often be approached by policyholders or reinsurers requesting commutation or policy buy-back. In these instances, we will also carry out a full analysis of the underlying exposures in order to determine the viability of a proposed

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commutation or policy buy-back. From the initial analysis of the underlying exposures it may take several months, or even years, before a commutation or policy buy-back is completed. In a number of cases, if we and the policyholder or reinsurer are unable to reach a commercially acceptable settlement, the commutation or policy buy-back may not be achievable, in which case we will continue to settle valid claims from the policyholder, or collect reinsurance receivables from the reinsurer, as they become due.

Insureds and reinsureds are often willing to commute with us, subject to receiving an acceptable settlement, as this provides certainty of recovery of what otherwise may be claims that are disputed in the future, and often provides a meaningful up-front cash receipt that, with the associated investment income, can provide funds to meet future claim payments or even commutation of their underlying exposure. Therefore, subject to negotiating an acceptable settlement, our insurance and reinsurance liabilities and reinsurance receivables are able to be either commuted or settled by way of policy buy-back over time. Many sellers of companies that we acquire have secure claims paying ratings and ongoing underwriting relationships with insureds and reinsureds, which often hinders their ability to commute the underlying insurance or reinsurance policies. Our lack of claims paying rating and our lack of potential conflicts with insureds and reinsureds of companies we acquire typically provides a greater ability to commute the newly acquired policies than that of the sellers.

We also attempt, where appropriate, to negotiate favorable commutations with reinsurers by securing the receipt of a lump-sum settlement from the reinsurer in complete satisfaction of the reinsurer's liability in respect of any future claims under a particular reinsurance contract. We, or the third-party client, are then fully responsible for any claims in the future.

Strategy

We aim to maximize our growth in net book value per share by using the following strategies:

- *Solidify Our Leadership Position in the Run-Off Market by Leveraging Management's Experience and Relationships.* We continue to utilize the extensive experience and significant relationships of our senior management team to solidify our position as a leader in the run-off segment of the insurance and reinsurance market. The experience and reputation of our management team is expected to generate opportunities for us to acquire or manage companies and portfolios in run-off, and to price effectively the acquisition or management of such businesses. Most importantly, we believe the experience of our management team will continue to allow us to manage the run-off of such businesses efficiently and profitably.
- *Professionally Manage Claims.* We are professional and disciplined in managing claims against companies and portfolios we own or manage. Our management understands the need to dispose of certain risks expeditiously and cost-effectively by constantly analyzing changes in the market and efficiently settling claims with the assistance of our experienced claims adjusters and in-house and external legal counsel. When we acquire or begin managing a company or portfolio, we initially determine which claims are valid through the use of experienced in-house adjusters and claims experts. We pay valid claims on a timely basis, while relying on well-documented policy terms and exclusions where applicable and litigation when necessary to defend against paying invalid claims under existing policies and reinsurance agreements.
- *Commute Assumed Liabilities and Ceded Reinsurance Assets.* Using detailed claims analysis and actuarial projections, we negotiate with the policyholders of the insurance and reinsurance companies or portfolios we own or manage with a goal of commuting insurance and reinsurance liabilities for one or more agreed upon payments at a discount to the ultimate liability. Such commutations can take the form of policy buy-backs and structured settlements over fixed periods of time. By acquiring companies that are direct insurers, reinsurers or both, we are able to negotiate favorable entity-wide commutations with reinsurers that would not be possible if our subsidiaries had remained independent entities. We also negotiate with reinsurers to commute their reinsurance agreements providing coverage to our subsidiaries

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on terms that we believe to be favorable based on then-current market knowledge. We invest the proceeds from reinsurance commutations with the expectation that such investments will produce income, which, together with the principal, will be sufficient to satisfy future obligations with respect to the acquired company or portfolio.

- *Continue to Commit to Highly Disciplined Acquisition, Management and Reinsurance Practices.* We utilize a disciplined approach designed to minimize risk and increase the probability of positive operating results from companies and portfolios we acquire or manage. We carefully review potential acquisition targets and management engagements for consistency with accomplishing our long-term objective of producing positive operating results. We focus our investigation on risk exposures, claims practices and reserve requirements. In particular, we carefully review all outstanding claims and case reserves, and follow a highly disciplined approach to managing allocated loss adjustment expenses, such as the cost of defense counsel, expert witnesses and related fees and expenses.
- *Prudent Management of Investments and Capital.* We strive to structure our investments in a manner that recognizes our liquidity needs for future liabilities. In that regard, we attempt to correlate the maturity and duration of our investment portfolio to our general liability profile. If our liquidity needs or general liability profile unexpectedly change, we may adjust the structure of our investment portfolio to meet new business needs. We pursue prudent capital management relative to our risk exposure and liquidity requirements with the objective of maximizing profitability and long-term growth in shareholder value. Our capital management strategy is to deploy capital efficiently to acquisitions and to establish, and re-establish when necessary, adequate loss reserves that we believe will protect against future adverse developments.

Recent Transactions

Acquisitions and certain portfolio transfers that we completed or signed since the beginning of 2012 are described below, as well as transactions that we completed in 2011 and 2010.

2013 / 2012 Acquisitions and Portfolio Transfers

SeaBright

On February 7, 2013, we completed the acquisition of SeaBright Holdings, Inc., or SeaBright, through the merger of our indirect wholly-owned subsidiary, AML Acquisition, Corp., or AML, with and into SeaBright, or the Merger, with SeaBright surviving the Merger as our indirect, wholly-owned subsidiary. SeaBright owns SeaBright Insurance Company, an Illinois-domiciled insurer that is commercially domiciled in California, which wrote workers compensation business. The aggregate cash purchase price of \$252.1 million was funded in part with \$111.0 million borrowed under a four-year term loan facility, or the SeaBright Facility, provided by National Australia Bank, or NAB, and Barclays Bank PLC, or Barclays.

American Physicians

On January 16, 2013, we, through our wholly-owned subsidiary, Providence Washington Insurance Company, or PWIC, entered into a definitive assignment and assumption agreement with American Physicians Assurance Corporation and APSpecialty Insurance Company relating to a portfolio of workers compensation business. The estimated total assets and liabilities to be assumed are approximately \$35.3 million. Completion of the transaction is conditioned upon, among other things, regulatory approvals and satisfaction of customary closing conditions. The transaction is expected to close in the second quarter of 2013.

HSBC

On September 6, 2012, we and our wholly-owned subsidiary, Pavonia Holdings (US), Inc., or Pavonia, entered into a definitive agreement for the purchase of all of the shares of Household Life Insurance Company of

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Delaware, or HLIC DE, and HSBC Insurance Company of Delaware, or HSBC DE, from Household Insurance Group Holding Company, an affiliate of HSBC Holdings plc. HLIC DE and HSBC DE are both Delaware-domiciled insurers in run-off. HLIC DE owns three other insurers domiciled in Michigan, New York, and Arizona, respectively (or, collectively with HLIC DE and HSBC DE, the HSBC Insurance Companies), all of which will be in run-off at the time the transaction closes. The HSBC Insurance Companies have written various U.S. and Canadian life insurance, including credit insurance, term life insurance, assumed reinsurance, corporate owned life insurance, and annuities.

The base purchase price of approximately \$181.0 million will be adjusted under the terms of the stock purchase agreement based upon changes to the capital and surplus of the HSBC Insurance Companies arising from the operation of the business prior to closing. We expect to finance the purchase price through a combination of cash on hand and a drawing under our Revolving Credit Facility with NAB and Barclays. We are a party to the acquisition agreement and have guaranteed the performance by Pavonia of its obligations thereunder. Completion of the transaction is conditioned on, among other things, governmental and regulatory approvals and satisfaction of various customary closing conditions. The transaction is expected to close by the end of the first quarter of 2013.

Claremont

On August 6 and December 17, 2012, we, through our wholly-owned subsidiary, Fitzwilliam Insurance Limited, or Fitzwilliam, entered into novation agreements with another of our wholly-owned subsidiaries, Claremont Liability Insurance Company, or Claremont, and two of Claremont's reinsurers with respect to their existing quota share contracts. Under the novation agreements, Fitzwilliam replaced the reinsurers on the quota share contracts in exchange for total assets and liabilities of approximately \$38.0 million.

Reciprocal of America

On July 6, 2012, PWIC entered into a definitive loss portfolio transfer reinsurance agreement with Reciprocal of America (in Receivership) and its Deputy Receiver relating to a portfolio of workers compensation business. The estimated total liabilities to be assumed are approximately \$174.0 million, with an equivalent amount of assets to be received as consideration. Completion of the transaction is conditioned upon, among other things, regulatory approvals and satisfaction of customary closing conditions. The transaction is expected to close in the second quarter of 2013.

Zurich Danish Portfolio

On June 30, 2012, we, through the Danish branch of our wholly-owned subsidiary, Marlon Insurance Company Limited, or Marlon, acquired, by way of loss portfolio transfer under Danish law, a portfolio of reinsurance and professional disability business from the Danish branch of Zurich Insurance Company, or Zurich. After reflecting the final balances reported by Zurich, Marlon received total assets and assumed liabilities of approximately \$60.0 million.

Shelbourne RITC Transactions

Through our wholly-owned U.K.-based subsidiary, Shelbourne Group Limited, or Shelbourne, we invest in RITC transactions (the transferring of liabilities from one Lloyd's syndicate to another) with Lloyd's of London insurance and reinsurance syndicates in run-off. Shelbourne was originally formed in December 2007 in conjunction with a newly-hired executive management team and JCF FPK I L.P., or JCF FPK (a joint investment program between Fox-Pitt, Kelton, Cochran, Caronia & Waller (USA) LLC and J.C. Flowers II L.P., which is a private investment fund affiliated with J. Christopher Flowers, who was formerly affiliated with us). Shelbourne owns 100% of Shelbourne Syndicate Services Limited, the Managing Agency for Lloyd's Syndicate 2008, or S2008, a syndicate approved by Lloyd's of London on December 16, 2007 to undertake RITC

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transactions with Lloyd's syndicates in run-off. On January 1, 2012, S2008 transferred the assets and liabilities relating to its 2009 and prior underwriting years of account into its 2010 underwriting year of account by means of an RITC transaction. Following the transfer, the existing noncontrolling interest held by JCF FPK ceased, resulting in us now providing 100% of the underwriting capacity for S2008, represented by the total Funds at Lloyd's capital commitment of £71.7 million (approximately \$116.5 million). The capital commitment was financed from available cash on hand.

Effective December 31, 2012, S2008 entered into a 100% quota share reinsurance agreement with another Lloyd's syndicate in respect of its 2009 and prior underwriting years of account, under which S2008 assumed total gross insurance reserves of approximately £193.0 million (approximately \$313.3 million) for consideration of an equal amount. The consideration received has been recorded as funds withheld in our consolidated balance sheet for the year ended December 31, 2012.

On January 1, 2013, S2008 transferred the assets and liabilities relating to its 2010 and prior underwriting years of account into its 2011 underwriting year of account by means of an RITC transaction.

S2008 has, to date, entered into 11 RITC agreements with Lloyd's syndicates.

2011 Acquisitions and Portfolio Transfers

Insurance Australia Group

On September 20, 2011, we, through our wholly-owned subsidiary, Gordian Run-off Limited, or Gordian, acquired an inwards reinsurance portfolio from Insurance Australia Group Limited via an Australian Federal Court approved scheme. Gordian received total assets and assumed total net reinsurance liabilities of approximately 9.7 million Australian dollars (approximately \$10.0 million).

Claremont

On September 1, 2011, Fitzwilliam entered into a novation agreement with Claremont and certain of its reinsurers with respect to three specific quota share contracts. Under the novation agreement, Fitzwilliam replaced those companies as reinsurer of Claremont on the quota share contracts, assuming total liabilities of approximately \$22.5 million and receiving assets of an equal amount.

Clarendon

On July 12, 2011, we, through our wholly-owned subsidiary, Clarendon Holdings, Inc., completed the acquisition of 100% of the shares of Clarendon National Insurance Company, or Clarendon, from Clarendon Insurance Group, Inc., an affiliate of Hannover Re, or Hannover. Clarendon is a New Jersey-domiciled insurer that is in run-off. Clarendon owns three other insurers, two domiciled in New Jersey and one domiciled in Florida, that are also in run-off. The cash purchase price was \$219.1 million and was financed in part by \$106.5 million under a four-year term loan facility, or the Clarendon Facility, provided by NAB.

In addition, on July 12, 2011, Fitzwilliam, in connection with the acquisition of Clarendon, entered into a reinsurance agreement with Hannover, which provides adverse development cover, or ADC, to Clarendon to reinsure Hannover for the first \$80.0 million of the ADC. We provided a parental guarantee to Hannover in the amount of \$80.0 million supporting the obligations of Fitzwilliam.

Laguna

On March 25, 2011, we, through our wholly-owned subsidiary, Kenmare Holdings Ltd., or Kenmare, completed the acquisition of Laguna Life Limited, formerly known as CitiLife Financial Limited, or Laguna,

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from Citigroup Insurance Holding Corporation, or Citigroup, an affiliate of Citigroup Inc. Laguna is an Ireland-based life insurer that is in run-off. The aggregate cash purchase price was €15.0 million (approximately \$21.2 million).

Shelbourne RITC Transactions

In February 2011, S2008 entered into RITC agreements with two Lloyd's syndicates assuming total gross insurance reserves of approximately \$129.6 million for consideration of an equal amount.

2010 Acquisitions and Portfolio Transfers

Claremont

On December 31, 2010, we, through our wholly-owned subsidiary, CLIC Holdings, Inc., completed the acquisition of Claremont for an aggregate cash purchase price of \$13.9 million. Claremont is a California-domiciled insurer that is in run-off.

Cigna Reinsurance

On December 31, 2010, Fitzwilliam entered into a 100% reinsurance agreement, administrative services agreement, and related transaction documents with three affiliates of Cigna Corporation, or Cigna affiliates, pursuant to which Fitzwilliam reinsured all of the run-off workers compensation and personal accident reinsurance business of those Cigna affiliates. Pursuant to the transaction documents, the Cigna affiliates have transferred assets into three reinsurance collateral trusts securing the obligations of Fitzwilliam under the reinsurance agreement and administrative services agreement. Fitzwilliam received total assets and assumed total net reinsurance reserves of approximately \$190.5 million. Fitzwilliam transferred approximately \$50 million of additional funds to the trusts to further support these obligations. We funded the contribution to the trusts through a draw on a \$115.0 million credit facility entered into with Barclays on December 29, 2010, which was fully repaid on June 30, 2011.

In addition to the trusts, we have provided a limited parental guarantee supporting certain obligations of Fitzwilliam initially in the amount of \$79.7 million. The amount of the guarantee will increase or decrease over time under certain circumstances, but will always be subject to an overall maximum cap with respect to reinsurance liabilities. As of December 31, 2012, the amount of the parental guarantee was \$106.5 million.

Inter-Hannover

On October 1, 2011, we, through our wholly-owned subsidiary, Brampton Insurance Company Limited, or Brampton, completed the portfolio transfer of certain run-off agency business from International Insurance Company of Hannover, or IICH, under part VII of the Financial Services and Markets Act 2000. The transferred business was previously reinsured by Fitzwilliam pursuant to a 100% quota share reinsurance agreement with IICH entered into on December 3, 2010. Fitzwilliam had received total assets and assumed total net reinsurance reserves of approximately \$137.1 million from IICH. In addition, we provided a parental guarantee supporting Fitzwilliam's obligations in the amount of approximately \$118.7 million. The amount of the guarantee will decrease over time in line with relevant independent actuarial assessments. This 100% quota share reinsurance, along with the associated guarantee, was novated in favor of Brampton as part of the portfolio transfer from IICH. As of December 31, 2012, the total amount of the parental guarantee was approximately \$15.5 million.

New Castle

On December 3, 2010, Kenmare completed the acquisition of New Castle Reinsurance Company Ltd., or New Castle, for an aggregate cash purchase price of \$22.0 million. New Castle is a Bermuda-domiciled insurer that is in run-off.

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Brampton

On November 2, 2010, we acquired the 49.9% of the shares of Hillcot Holdings Ltd., or Hillcot, from Shinsei Bank Ltd., or Shinsei, that we did not previously own for an aggregate cash purchase price of \$38.0 million, resulting in us owning 100% of Hillcot. At the time of acquisition, Hillcot owned 100% of the shares of Brampton, a London-domiciled insurer that is in run-off. The fair value of the assets acquired that we did not previously own was \$34.9 million. The excess of the purchase price over the fair value of assets acquired in the amount of \$3.1 million was recorded as a charge to additional paid-in capital.

Seaton

On August 3, 2010, we, through our wholly-owned subsidiary, Virginia Holdings Ltd., or Virginia, acquired 55.6% of the shares of Seaton Insurance Company, or Seaton, for a \$nil purchase price. Seaton is a Rhode Island-domiciled insurer that is in run-off and, at that time, was the subsidiary of Stonewall Acquisition Corporation, or Stonewall. At the time of the acquisition, Virginia held 44.4% of the outstanding capital stock of Stonewall and, therefore, indirectly owned 44.4% of Seaton through its holdings. The acquisition of the 55.6% of the Seaton shares that it previously did not own was a result of the distribution by Stonewall to Virginia of proceeds and certain other assets following its sale of another subsidiary, Stonewall Insurance Company, to Columbia Insurance Company, an affiliate of National Indemnity Company (an indirect subsidiary of Berkshire Hathaway, Inc.). The distribution resulted in Virginia owning 100% of Seaton following the distribution. The fair value of the assets acquired in the Seaton acquisition was \$nil.

Providence Washington

On July 20, 2010, we, through our wholly-owned subsidiary PWAC Holdings, Inc., completed the acquisition of PW Acquisition Company, or PWAC, for an aggregate cash purchase price of \$25.0 million. PWAC owns the entire share capital of PWIC. PWIC and its two subsidiaries are Rhode Island-domiciled insurers that are in run-off. The purchase price was financed by a term facility provided by Barclay's, which was fully repaid on September 13, 2010.

Torus Reinsurance

In July 2010, following the acquisition of the entire issued share capital of Glacier Insurance AG by Torus Insurance (Bermuda) Limited, or Torus, Fitzwilliam entered into two quota share reinsurance agreements with Torus protecting the prior year reserve development of two portfolios of business reinsured by them: a 79% quota share of Torus' 95% quota share reinsurance of Glacier Insurance AG, and a 75% quota share of Torus' 100% quota share reinsurance of Glacier Reinsurance AG. Fitzwilliam received total assets and assumed total gross reinsurance reserves of approximately \$105.0 million.

Bosworth

In May 2010, a specific portfolio of business in run-off underwritten by Mitsui Sumitomo Insurance Co., Ltd. of Japan, or Mitsui, was transferred to our 50.1% owned subsidiary, Bosworth Run-off Limited, or Bosworth. This transfer, which occurred under Part VII of the U.K. Financial Services and Markets Act 2000, was approved by the U.K. Court and took effect on May 31, 2010. As a result of the transfer, Bosworth received total assets and assumed net reinsurance reserves of approximately \$117.5 million.

Assuransinvest

On March 30, 2010, we, through our wholly-owned subsidiary, Nordic Run-Off Limited, completed the acquisition of Forsakringsaktiebolaget Assuransinvest MF, or Assuransinvest, for a cash purchase price of SEK 78.8 million (approximately \$11.0 million). Assuransinvest is a Swedish-domiciled reinsurer that is in run-off.

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Knapton Insurance

On March 2, 2010, we, through our wholly-owned subsidiary, Knapton Holdings Limited, or Knapton Holdings, completed the acquisition of Knapton Insurance Limited (formerly British Engine Insurance Limited), or Knapton, from RSA Insurance Group plc for an aggregate cash purchase price of approximately £28.8 million (approximately \$44.0 million). Knapton is a U.K.-domiciled reinsurer that is in run-off.

In April 2010, Knapton Holdings entered into a term facility agreement with NAB, or the Knapton Facility. On April 20, 2010, Knapton Holdings drew down \$21.4 million from the Knapton Facility. On June 30, 2011, the Knapton Facility was fully repaid.

Allianz Reinsurance

In February 2010, Fitzwilliam entered into a 100% quota share reinsurance agreement with Allianz Global Corporate & Specialty AG (UK) Branch, or Allianz, with respect to a specific portfolio of run-off business of Allianz. Fitzwilliam received total assets and assumed total gross reinsurance reserves of approximately \$112.6 million.

Shelbourne RITC Transactions

During 2010, S2008 entered into RITC agreements with three Lloyd's syndicates with total gross insurance reserves assumed of approximately \$192.6 million for consideration of an equal amount.

Management of Run-Off Portfolios

We are a party to several management engagements pursuant to which we have agreed to manage the run-off portfolios of third parties. We specialize in the collection of reinsurance recoverables through our subsidiary Kinsale Brokers Limited. Through our subsidiaries, Enstar (US) Inc. and our Cranmore companies, we also specialize in providing claims inspection services whereby we are engaged by third-party insurance and reinsurance providers to review certain of their existing insurance and reinsurance exposures, relationships, policies and/or claims history.

Claims Management and Administration

An integral factor to our success is our ability to analyze, administer, manage and settle claims and related expenses, such as loss adjustment expenses. Our claims teams are located in different offices within our organization and provide global claims support. We have implemented effective claims handling guidelines along with claims reporting and control procedures in all of our claims units. All claims matters are reviewed regularly, with all material claims matters being circulated to and authorized by management prior to any action being taken in furtherance of our goal of appropriately handling claims and reporting them in accordance with our guidelines.

When we receive notice of a claim, regardless of size and regardless of whether it is a paid claim request or a reserve advice, it is reviewed and recorded within the claims system, reserving our rights where appropriate. Claims reserve movements and payments are reviewed daily, with any material movements being reported to management for review. This enables "flash reporting" of significant events and potential insurance or reinsurance losses to be communicated to senior management worldwide on a timely basis irrespective from which geographical location or business unit location the exposure arises.

We are also able to efficiently manage claims and obtain savings through our extensive relationships with defense counsel (both in-house and external), third-party claims administrators and other professional advisors

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and experts. We have developed relationships and protocols to reduce the number of outside counsel by consolidating claims of similar types and complexity with experienced law firms specializing in the particular type of claim. This approach has enabled us to more efficiently manage outside counsel and other third parties, thereby reducing expenses, and to establish closer relationships with ceding companies.

When appropriate, we negotiate with direct insureds to commute or buy back policies either on favorable terms or to mitigate against existing and/or potential future indemnity exposures and legal costs in an uncertain and constantly evolving legal environment. We also pursue commutations on favorable terms with ceding companies of reinsurance business in order to realize savings or to mitigate against potential future indemnity exposures and legal costs. Such buy-backs and commutations typically eliminate all past, present and future liability to direct insureds and reinsureds in return for a lump sum payment.

With regard to reinsurance recoverables, we manage cash flow by working with reinsurers, brokers and professional advisors to achieve fair and prompt payment of reinsured claims, taking appropriate legal action to secure receivables where necessary. We also attempt where appropriate to negotiate favorable commutations with our reinsurers by securing a lump sum settlement from reinsurers in complete satisfaction of the reinsurer's past, present and future liability in respect of such claims. Properly priced commutations reduce the expense of adjusting direct claims and pursuing collection of reinsurance recoverables (both of which may often involve extensive legal expense), realize savings, remove the potential future volatility of claims and reduce required regulatory capital.

Reserves for Unpaid Losses and Loss Adjustment Expense

Applicable insurance laws and regulations and generally accepted accounting practices require us to maintain reserves to cover our estimated losses under insurance policies that we have assumed and for loss adjustment expenses, or LAE, relating to the investigation, administration and settlement of policy claims. Our LAE reserves consist of both reserves for allocated loss adjustment expenses, or ALAE, and for unallocated loss adjustment expenses, or ULAE. ALAE are linked to the settlement of an individual claim or loss, whereas ULAE reserves are based on our estimates of future costs to administer the claims.

We and our subsidiaries establish losses and LAE reserves for individual claims by evaluating reported claims on the basis of:

- our knowledge of the circumstances surrounding the claim;
- the severity of the injury or damage;
- the jurisdiction of the occurrence;
- the potential for ultimate exposure;
- the type of loss; and
- our experience with the line of business and policy provisions relating to the particular type of claim.

Because a significant amount of time can lapse between the assumption of risk, the occurrence of a loss event, the reporting of the event to an insurance or reinsurance company and the ultimate payment of the claim on the loss event, the liability for unpaid losses and LAE is based largely upon estimates. Our management must use considerable judgment in the process of developing these estimates. The liability for unpaid losses and LAE for property and casualty business includes amounts determined from loss reports on individual cases and amounts for losses incurred but not reported, or IBNR. Such reserves, including IBNR reserves, are estimated by management based upon loss reports received from ceding companies, supplemented by our own estimates of losses for which no ceding company loss reports have yet been received.

In establishing reserves, management also considers actuarial estimates of ultimate losses. Our independent actuaries employ generally accepted actuarial methodologies and procedures to estimate ultimate losses and loss

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adjustment expenses. Our loss reserves are largely related to casualty exposures including latent exposures primarily relating to asbestos and environmental losses, or A&E, as discussed below. In establishing the reserves for unpaid claims, management considers facts currently known and the current state of the law and coverage litigation. Liabilities are recognized for known claims (including the cost of related litigation) when sufficient information has been developed to indicate the involvement of a specific insurance policy, and management can reasonably estimate its liability. In addition, reserves are established to cover loss development related to both known and unasserted claims.

The estimation of unpaid claim liabilities is subject to a high degree of uncertainty for a number of reasons. Unpaid claim liabilities for property and casualty exposures in general are impacted by changes in the legal environment, jury awards, medical cost trends and general inflation. Moreover, for latent exposures in particular, developed case law and adequate claims history do not exist. There is significant coverage litigation involved with these exposures which creates further uncertainty in the estimation of the liabilities. Therefore, for these types of exposures, it is especially unclear whether past claim experience will be representative of future claim experience. Ultimate values for such claims cannot be estimated using reserving techniques that extrapolate losses to an ultimate basis using loss development factors, and the uncertainties surrounding the estimation of unpaid claim liabilities are not likely to be resolved in the near future. There can be no assurance that the reserves established by us will be adequate or will not be adversely affected by the development of other latent exposures. The actuarial methods used to estimate ultimate loss and ALAE for our latent exposures are discussed in further detail in “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations — Critical Accounting Policies”.

For the non-latent loss exposures, a range of traditional loss development extrapolation techniques is applied. Incremental paid and incurred loss development methodologies are the most commonly used methods. Traditional cumulative paid and incurred loss development methods are used where inception-to-date, cumulative paid and reported incurred loss development history is available. These methods assume that groups of losses from similar exposures will increase over time in a predictable manner. Historical paid and incurred loss development experience is examined for earlier underwriting years to make inferences about how later underwriting years’ losses will develop. Where company-specific loss information is not available or not reliable, industry loss development information published by reliable industry sources such as the Reinsurance Association of America is considered.

The reserving process is intended to reflect the impact of inflation and other factors affecting loss payments by taking into account changes in historical payment patterns and perceived trends. However, there is no precise method for the subsequent evaluation of the adequacy of the consideration given to inflation, or to any other specific factor, or to the way one factor may affect another.

The loss development tables below show changes in our gross and net loss reserves in subsequent years from the prior loss estimates based on experience as of the end of each succeeding year. The estimate is increased or decreased as more information becomes known about the frequency and severity of losses for individual years. A redundancy means the original estimate was higher than the current estimate; a deficiency means that the current estimate is higher than the original estimate. The “Reserve redundancy” line represents, as of the date indicated, the difference between the latest re-estimated liability and the reserves as originally estimated.

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Gross Loss and Loss Adjustment Expense Reserves

	December 31,										
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
	(in thousands of U.S. dollars)										
Reserves assumed	\$284,409	\$381,531	\$1,047,313	\$806,559	\$1,214,419	\$1,591,449	\$2,798,287	\$2,479,136	\$3,291,275	\$4,282,916	\$3,661,154
1 year later	302,986	365,913	900,274	909,984	1,227,427	1,436,051	2,661,011	2,237,124	3,057,032	3,991,764	
2 years later	299,281	284,583	1,002,773	916,480	1,084,852	1,358,900	2,422,291	2,039,141	2,907,956		
3 years later	278,020	272,537	1,012,483	853,139	1,020,755	1,284,304	2,245,557	1,943,121			
4 years later	264,040	243,692	953,834	778,216	949,595	1,235,982	2,160,144				
5 years later	242,278	216,875	879,504	733,151	905,043	1,216,989					
6 years later	238,315	204,875	835,488	717,413	889,681						
7 years later	229,784	195,795	820,168	715,574							
8 years later	216,969	190,281	819,018								
9 years later	212,755	188,831									
10 years later	211,772										
Reserve redundancy	\$ 72,637	\$192,700	\$ 228,295	\$ 90,985	\$ 324,738	\$ 374,460	\$ 638,143	\$ 536,015	\$ 383,319	\$ 291,152	

Gross Paid Losses

	December 31,										
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
	(in thousands of U.S. dollars)										
1 year later	\$ 43,721	\$ 19,260	\$ 110,193	\$117,666	\$ 90,185	\$ 407,692	\$ 364,440	\$ 377,159	\$ 430,284	\$ 699,414	
2 years later	64,900	43,082	226,225	198,407	197,751	575,522	727,205	575,814	808,213		
3 years later	84,895	61,715	305,913	268,541	353,032	688,946	912,401	768,828			
4 years later	101,414	75,609	375,762	402,134	423,731	726,332	1,095,603				
5 years later	110,155	87,274	509,319	442,624	455,414	772,070					
6 years later	121,000	101,958	549,033	458,532	481,114						
7 years later	135,426	108,901	564,900	477,456							
8 years later	140,492	111,350	583,225								
9 years later	142,638	113,636									
10 years later	143,840										

Net Loss and Loss Adjustment Expense Reserves

	December 31,										
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
	(in thousands of U.S. dollars)										
Reserves assumed	\$184,518	\$230,155	\$ 736,660	\$593,160	\$ 872,259	\$1,163,485	\$2,403,712	\$2,131,408	\$2,765,835	\$2,899,913	\$2,784,934
1 year later	176,444	220,712	653,039	590,153	875,636	1,034,588	2,216,928	1,851,268	2,533,710	2,742,168	
2 years later	178,088	164,319	652,195	586,059	753,551	950,739	1,940,472	1,673,922	2,422,811		
3 years later	138,251	149,980	649,355	532,804	684,999	874,961	1,783,372	1,596,536			
4 years later	129,923	136,611	600,939	454,933	611,182	816,039	1,719,195				
5 years later	119,521	108,666	531,666	408,270	557,109	797,815					
6 years later	112,100	104,127	485,392	388,471	543,052						
7 years later	108,447	92,972	466,303	385,410							
8 years later	93,188	87,451	464,060								
9 years later	89,460	85,428									
10 years later	88,311										
Reserve redundancy	\$ 96,207	\$144,727	\$ 272,600	\$207,750	\$ 329,207	\$ 365,670	\$ 684,517	\$ 534,872	\$ 343,024	\$ 157,745	

Net Paid Losses

	December 31,										
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
	(in thousands of U.S. dollars)										
1 year later	\$ 10,557	\$ 11,354	\$ 78,488	\$ 79,398	\$ 43,896	\$ 112,321	\$ 247,823	\$ 250,635	\$ 313,642	\$ 326,037	
2 years later	24,978	6,312	161,178	125,272	(70,430)	243,146	480,102	381,820	601,029		
3 years later	17,304	9,161	206,351	(14,150)	58,228	324,735	603,875	530,845			
4 years later	24,287	(1,803)	67,191	102,776	108,109	347,215	752,318				
5 years later	9,686	2,515	184,150	132,405	128,567	376,674					
6 years later	14,141	11,348	212,822	143,252	150,412						
7 years later	22,966	11,808	223,944	158,503							
8 years later	21,400	13,463	238,658								
9 years later	23,281	14,122									
10 years later	23,178										

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The following table provides a reconciliation of the liability for losses and LAE, net of reinsurance ceded:

	Years Ended December 31,		
	2012	2011	2010
	(in thousands of U.S. dollars)		
Net reserves for loss and loss adjustment expenses, beginning of period	\$2,899,913	\$2,765,835	\$2,131,408
Net reduction in ultimate loss and loss adjustment expense liabilities	(241,764)	(295,447)	(311,834)
Net losses paid	(310,695)	(284,611)	(294,996)
Effect of exchange rate movement	15,004	(9,170)	(3,836)
Assumed business	422,476	112,821	785,731
Acquired on purchase of subsidiaries	—	610,485	459,362
Net reserves for loss and loss adjustment expenses, end of period	<u>\$2,784,934</u>	<u>\$2,899,913</u>	<u>\$2,765,835</u>

In the table above, net reduction in ultimate loss and loss adjustment expense liabilities represents changes in estimates of prior period net loss and loss adjustment expense liabilities comprising net incurred loss movements during the period and changes in estimates of net IBNR reserves. Net incurred loss movements during the period comprise increases or reductions in specific case reserves advised during the period to us by our policyholders and attorneys, or by us to our reinsurers, less claims settlements made during the period by us to our policyholders, plus claim receipts made to us by our reinsurers. Prior period estimates of net IBNR reserves may change as our management considers the combined impact of commutations, policy buy-backs, settlement of losses on carried reserves and the trend of incurred loss development compared to prior forecasts.

Commutations provide an opportunity for us to exit exposures to entire policies with insureds and reinsureds, often at a discount to the previously estimated ultimate liability. Commutations are beneficial to us as they extinguish liabilities and reduce the potential for future adverse loss development. All prior historical loss development that relates to commuted exposures is eliminated to produce revised historical loss development for the remaining non-commuted exposures. Our independent actuaries apply their actuarial methodologies to the remaining aggregate exposures and revised historical loss development information to reassess their estimates of ultimate liabilities, and, after management's review of and, if necessary, adjustments to those estimates, we reassess our estimate of IBNR reserves. Because the majority of commutation activity takes place during the fourth quarter, the focus of our actuarial evaluation of ultimate liabilities also occurs in the fourth quarter.

Policy buy-backs provide an opportunity for us to settle individual policies and losses usually at a discount to carried advised loss reserves. As part of our routine claims settlement operations, claims will settle at either below or above the carried advised loss reserve. The impact of policy buy-backs and the routine settlement of claims updates historical loss development information to which actuarial methodologies are applied often resulting in revised estimates of ultimate liabilities. Our actuarial methodologies include industry benchmarking which, under certain methodologies, compares the trend of our loss development to that of the industry. To the extent that the trend of our loss development compared to the industry changes in any period, it is likely to have an impact on the estimate of ultimate liabilities.

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The following table provides a reconciliation between net reserve redundancy per the loss development triangle on page 14 and total net reduction in ultimate loss and loss adjustment expense liabilities for the years ended December 31, 2012, 2011 and 2010, respectively:

	Years Ended December 31,		
	2012	2011	2010
	(in millions of U.S. dollars)		
Net reserve redundancy	\$157.7	\$232.1	\$280.1
Foreign exchange movement	15.0	(9.2)	(3.8)
Net reduction in ultimate loss and loss adjustment expense liabilities relating to companies and portfolios acquired during the year	(2.1)	17.5	19.0
Premium and commission adjustments triggered by incurred losses	26.4	32.5	16.5
Claremont novation settlement	44.8	22.5	—
Net reduction in ultimate loss and loss adjustment expense liabilities	<u>\$241.8</u>	<u>\$295.4</u>	<u>\$311.8</u>

Information regarding net reduction in ultimate loss and loss adjustment expense liabilities is discussed further in “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations — Results of Operations”.

Asbestos and Environmental (A&E) Exposure

General A&E Exposures

A number of our subsidiaries wrote general liability policies and reinsurance prior to their acquisition by us under which policyholders continue to present asbestos-related injury claims and claims alleging injury, damage or clean-up costs arising from environmental pollution. These policies, and the associated claims, are referred to as A&E exposures. The vast majority of these claims are presented under policies written many years ago.

There is a great deal of uncertainty surrounding A&E claims. This uncertainty impacts the ability of insurers and reinsurers to estimate the ultimate amount of unpaid claims and related LAE. The majority of these claims differ from any other type of claim because there is inadequate loss development and there is significant uncertainty regarding what, if any, coverage exists, to which, if any, policy years claims are attributable and which, if any, insurers/reinsurers may be liable. These uncertainties are exacerbated by lack of clear judicial precedent and legislative interpretations of coverage that may be inconsistent with the intent of the parties to the insurance contracts and expand theories of liability. The insurance and reinsurance industry as a whole is engaged in extensive litigation over these coverage and liability issues and is, thus, confronted with continuing uncertainty in its efforts to quantify A&E exposures.

Our A&E exposure is administered out of our offices in the United Kingdom and Rhode Island and centrally administered from the United Kingdom. In light of the intensive claim settlement process for these claims, which involves comprehensive fact gathering and subject matter expertise, our management believes that it is prudent to have a centrally administered claim facility to handle A&E claims on behalf of all of our subsidiaries. Our A&E claims staff, working in conjunction with two U.S.-qualified attorneys experienced in A&E liabilities, proactively administers, on a cost-effective basis, the A&E claims submitted to our insurance and reinsurance subsidiaries.

Our independent, external actuaries use industry benchmarking methodologies to estimate appropriate IBNR reserves for our A&E exposures. These methods are discussed in detail in “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations – Critical Accounting Policies”.

The liability for unpaid losses and LAE, inclusive of A&E reserves, reflects our best estimate for future amounts needed to pay losses and related LAE as of each of the balance sheet dates reflected in the financial statements herein in accordance with U.S. GAAP. As of December 31, 2012, we had net loss reserves of

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\$478.2 million for asbestos-related claims and \$79.4 million for environmental pollution-related claims. The following table provides a reconciliation of our gross and net loss and ALAE reserves from A&E exposures and the movement in gross and net reserves:

	Years Ended December 31,					
	2012		2011		2010	
	Gross	Net	Gross	Net	Gross	Net
	(in thousands of U.S. dollars)					
Provisions for A&E claims and ALAE at January 1	\$702,801	\$621,487	\$825,212	\$736,172	\$ 750,972	\$667,632
A&E losses and ALAE incurred during the year	(308)	(5,882)	(61,120)	(81,286)	(71,302)	(78,801)
A&E losses and ALAE paid during the year	(73,850)	(58,054)	(61,291)	(33,399)	(101,917)	(67,756)
Provision for A&E claims and ALAE acquired during the year	—	—	—	—	247,459	215,097
Provision for A&E claims and ALAE at December 31	<u>\$628,643</u>	<u>\$557,551</u>	<u>\$702,801</u>	<u>\$621,487</u>	<u>\$ 825,212</u>	<u>\$736,172</u>

During 2012, 2011 and 2010, excluding the impact of loss reserves acquired during the year, our reserves for A&E liabilities decreased by \$74.2 million, \$122.4 million and \$173.2 million on a gross basis and by \$63.9 million, \$114.7 million and \$146.6 million on a net basis, respectively. The reductions in gross reserves arose from paid claims, successful commutations, policy buy-backs, generally favorable claim settlements during the year and reductions in IBNR resulting from actuarial analysis of remaining liabilities.

Asbestos continues to be the most significant and difficult mass tort for the insurance industry in terms of claims volume and expense. We believe that the insurance industry has been adversely affected by judicial interpretations that have had the effect of maximizing insurance recoveries for asbestos claims, from both a coverage and liability perspective. Generally, only policies underwritten prior to 1986 have potential asbestos exposure, since most policies underwritten after this date contain an absolute asbestos exclusion.

From 2001 through 2003 the industry experienced increasing numbers of asbestos claims, including claims from individuals who did not appear to be impaired by asbestos exposure. Since 2003, however, new claim filings have been fairly stable. It is possible that the increases observed in the early part of the decade were triggered by various state tort reforms (discussed immediately below). We cannot predict whether claim filings will return to pre-2004 levels, remain stable, or begin to decrease.

Since 2001, several U.S. states have proposed, and in many cases enacted, tort reform statutes that impact asbestos litigation by, for example, making it more difficult for a diverse group of plaintiffs to jointly file a single case, reducing “forum-shopping” by requiring that a potential plaintiff must have been exposed to asbestos in the state in which he/she files a lawsuit, or permitting consolidation of discovery. These statutes typically apply to suits filed after a stated date. When a statute is proposed or enacted, asbestos defendants often experience a marked increase in new lawsuits, as plaintiffs’ attorneys seek to file suit before the effective date of the legislation. Some of this increased claim volume likely represents an acceleration of valid claims that would have been brought in the future, while some claims will likely prove to have little or no merit. As many of these claims are still pending, we cannot predict what portion of the increased number of claims represent valid claims. Also, the acceleration of claims increases the uncertainty surrounding projections of future claims in the affected jurisdictions.

During the same timeframe as tort reform, the U.S. federal and various U.S. state governments sought comprehensive asbestos reform to manage the growing court docket and costs surrounding asbestos litigation, in

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addition to the increasing number of corporate bankruptcies resulting from overwhelming asbestos liabilities. Whereas the federal government has failed to establish a national asbestos trust fund to address the asbestos problem, several states, including Texas and Florida, have implemented a medical criteria reform approach that only permits litigation to proceed when a plaintiff can establish and demonstrate actual physical impairment.

Much like tort reform, asbestos litigation reform also spurred a significant increase in the number of lawsuits filed in advance of the law's enactment. We cannot predict whether the current drop off in the number of filed claims is due to the accelerated number of filings before the law's enactment or an actual trend in the decline of alleged asbestos injuries.

Environmental Pollution Exposures

Environmental pollution claims represent another significant exposure for us. However, environmental pollution claims have been developing as expected over the past few years as a result of stable claim trends. Claims against Fortune 500 companies are generally declining, and while insureds with single-site exposures are still active, in many cases claims are being settled for less than initially anticipated due to improved site remediation technology and effective policy buy-backs.

Despite the stability of recent trends, there remains significant uncertainty involved in estimating liabilities related to these exposures. Unlike asbestos claims which are generated primarily from allegedly injured private individuals, environmental claims generally result from governmentally initiated activities. First, the number of waste sites subject to cleanup is unknown. Approximately 1,316 sites are included on the National Priorities List (NPL) of the United States Environmental Protection Agency as of September 30, 2012, the end of its most recent fiscal year, an increase of 18 sites from the prior year. State authorities have separately identified many additional sites and, at times, aggressively implement site cleanups. Second, the liabilities of the insureds themselves are difficult to estimate. At any given site, the allocation of remediation cost among the potentially responsible parties varies greatly depending upon a variety of factors. Third, as with asbestos liability and coverage issues, judicial precedent regarding liability and coverage issues regarding pollution claims does not provide clear guidance. There is also uncertainty as to the U.S. federal "Superfund" law itself and, at this time, we cannot predict what, if any, reforms to this law might be enacted by the U.S. federal government, or the effect of any such changes on the insurance industry.

Other Latent Exposures

While we do not view health hazard exposures such as silica and tobacco as becoming a material concern, recent developments in lead litigation have caused us to watch these matters closely. Recently, municipal and state governments have had success, using a public nuisance theory, pursuing the former makers of lead pigment for the abatement of lead paint in certain home dwellings. As lead paint was used almost exclusively into the early 1970's, large numbers of old housing stock contain lead paint that can prove hazardous to people and, particularly, children. Although governmental success has been limited thus far, we continue to monitor developments carefully due to the size of the potential awards sought by plaintiffs.

Investments

Investment Strategy

We derive a significant portion of our income from our invested assets. As a result, our operating results depend in part on the performance of our investment portfolio. Because of the unpredictable nature of losses that may arise under our insurance and reinsurance subsidiaries' insurance or reinsurance policies and as a result of our opportunistic commutation strategy, our liquidity needs can be substantial and may arise at any time. Except for that portion of our portfolio that is invested in non-investment grade securities, we generally follow a conservative investment strategy designed to emphasize the preservation of our invested assets and provide sufficient liquidity for the prompt payment of claims and settlement of commutation payments.

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As of December 31, 2012, we had cash and cash equivalents, inclusive of restricted amounts, of \$954.9 million. Our cash and cash equivalent portfolio is comprised mainly cash, high-grade fixed deposits, commercial paper with maturities of less than three months and money market funds. Our investment portfolio consists primarily of investment grade, liquid, fixed maturity securities of short-to-medium duration and mutual funds.

We strive to structure our investments in a manner that recognizes our liquidity needs for future liabilities. In that regard, we attempt to correlate the maturity and duration of our investment portfolio to our general liability profile. If our liquidity needs or general liability profile unexpectedly change, we may adjust the structure of our investment portfolio to meet new business needs.

We utilize various companies to provide investment advisory and/or management services. We have agreed to pay investment management fees to the managers. These fees, which vary depending on the amount of assets under management, are included in net investment income. The total fees we paid to our investment managers for the year ended December 31, 2012 were \$3.4 million, including approximately \$1.1 million to our largest single investment manager.

Our investment performance is subject to a variety of risks, including risks related to general economic conditions, market volatility, interest rate fluctuations, foreign exchange risk, liquidity risk and credit and default risk. Interest rates are highly sensitive to many factors, including governmental monetary policies, domestic and international economic and political conditions and other factors beyond our control. A significant increase in interest rates could result in significant losses, realized or unrealized, in the value of our investment portfolio. A portion of our non-investment grade securities consists of alternative investments that subject us to restrictions on redemption, which may limit our ability to withdraw funds for some period of time after the initial investment. The values of, and returns on, such investments may also be more volatile. For more information on these risks, refer to “Item 1A. Risk Factors – Risks Relating to Our Investments”, beginning on page 34.

Investment Portfolio Composition as of December 31, 2012 and 2011

As of December 31, 2012 and 2011, the fair value of our aggregate invested assets was approximately \$4.31 billion and \$4.56 billion, respectively. Aggregate invested assets included:

- cash and cash equivalents, inclusive of restricted amounts;
- a trading portfolio of fixed maturity securities, short-term investments and equities as well as an available-for-sale portfolio of fixed maturity securities, all of which are recorded at fair value on our balance sheet; and
- investments in various private equity, fixed income, fixed income hedge, equity, real estate debt and other funds, all of which are recorded at fair value on our balance sheet.

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The following table shows the aggregate amount of our invested assets as of December 31, 2012 and 2011:

	December 31, 2012		December 31, 2011	
	Fair Value	% of Total Fair Value	Fair Value	% of Total Fair Value
	(in thousands of U.S. dollars)			
Cash and cash equivalents	\$ 954,855	22.2%	\$1,223,665	26.8%
U.S. government and agency	366,863	8.5%	418,837	9.2%
Non-U.S. government	389,578	9.0%	380,778	8.3%
Corporate	1,715,870	39.9%	1,968,243	43.2%
Municipal	20,446	0.5%	25,416	0.6%
Residential mortgage-backed	120,092	2.8%	110,785	2.4%
Commercial mortgage-backed	131,329	3.0%	86,694	1.9%
Asset-backed	79,264	1.8%	62,201	1.4%
Fixed maturities	2,823,442	65.5%	3,052,954	67.0%
Other investments	414,845	9.6%	192,264	4.2%
Equities	114,588	2.7%	89,981	2.0%
Total investments	3,352,875	77.8%	3,335,199	73.2%
Total cash and investments	\$4,307,730	100.0%	\$4,558,864	100.0%

For additional information regarding the investment portfolio, refer to “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations, Results of Operations — Liquidity and Capital Resources — Investments”.

Regulation

General

The business of insurance and reinsurance is regulated in most countries, although the degree and type of regulation varies significantly from one jurisdiction to another. We have a significant presence in Bermuda, the United Kingdom, Australia and the United States and are subject to extensive regulation under the applicable statutes in these countries. A summary of the material regulations governing us in these countries is set forth below.

Bermuda

As a holding company, we are not subject to Bermuda insurance regulations. However, the Insurance Act 1978 of Bermuda and related regulations, as amended, or, together, the Insurance Act, regulate the insurance business of our operating subsidiaries in Bermuda and provide that no person may carry on any insurance business in or from within Bermuda unless registered as an insurer by the Bermuda Monetary Authority, or BMA, under the Insurance Act. Insurance as well as reinsurance is regulated under the Insurance Act.

The Insurance Act also imposes on Bermuda insurance companies certain solvency and liquidity standards and auditing and reporting requirements and grants the BMA powers to supervise, investigate, require information and the production of documents and intervene in the affairs of insurance companies.

Our regulated Bermuda subsidiaries, which are incorporated to carry on general insurance and reinsurance business, are registered as Class 2 or 3A insurers in Bermuda and are regulated as such under the Insurance Act. These regulated Bermuda subsidiaries are not licensed to carry on long-term business, which broadly includes life insurance and disability insurance with terms in excess of five years. Significant requirements pertaining to Class 2 or 3A insurers include the appointment of a principal representative in Bermuda, the appointment of an independent auditor, the appointment of an approved loss reserve specialist, the filing of annual statutory financial statements and the filing of statutory financial returns.

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Our regulated Bermuda subsidiaries must also comply with a minimum liquidity ratio and minimum solvency margin. These are determined as a percentage of either net reserves for losses and loss expenses or premiums and, for some of our subsidiaries, pursuant to a risk-based capital measure introduced by the BMA in 2012. The risk-based capital measure establishes an enhanced capital requirement that takes account of eight categories of risk: fixed maturity investment risk, equity risk, interest rate/liquidity risk, premium risk, reserve risk, credit risk, catastrophe risk and operational risk.

Each of our regulated Bermuda insurance and reinsurance subsidiaries would be prohibited from declaring or paying any dividends if it were in breach of its minimum solvency margin or liquidity ratio or if the declaration or payment of such dividends would cause it to fail to meet such margin or ratio. In addition, each of our regulated Bermuda insurance and reinsurance subsidiaries is prohibited, without the prior approval of the Bermuda regulator, from reducing by 15% or more its total statutory capital as set out in its previous year's statutory financial statements.

Any person who, directly or indirectly, becomes a holder of at least 10%, 20%, 33% or 50% of our ordinary shares must notify the BMA in writing within 45 days of becoming such a holder. The BMA may, by written notice, object to such a person if it appears to the BMA that the person is not fit and proper to be such a holder. The BMA may require the holder to reduce their holding of ordinary shares and direct, among other things, that voting rights attaching to the ordinary shares shall not be exercisable. The BMA may also object to a person holding 10% or more of the ordinary shares if it appears to the BMA that the person is not, or is no longer, fit and proper to be such a holder, and may require the shareholder to reduce its holding of ordinary shares and direct, among other things, that such shareholder's voting rights attaching to ordinary shares shall not be exercisable. A person that does not comply with such notices or directions from the BMA will be guilty of an offense.

United Kingdom and Lloyd's

United Kingdom

Our U.K.-based insurance subsidiaries are regulated by the U.K. Financial Services Authority, or the FSA. The FSA carries out the prudential supervision of insurance companies through a variety of methods, including the collection of information from statistical returns, review of accountants' reports, close supervision of management, visits to insurance companies and regular formal interviews. Although in run-off, our regulated U.K. subsidiaries remain regulated by the FSA, but may not underwrite new business. E.U. directives also allow certain of our regulated U.K. subsidiaries to conduct business in E.U. states other than the U.K. within the scope of permission granted by the FSA without the necessity of additional licensing or authorization in E.U. countries.

Our U.K.-based insurance subsidiaries are required to maintain adequate financial resources, the rules for which are set out in the General Prudential Sourcebook, or GENPRU, and the Prudential Sourcebook for Insurers, or INSPRU, of the FSA's Handbook of Rules and Guidance. Through its rules, the FSA sets minimum capital resources requirements for its regulated insurance companies. The calculation of the minimum capital resources requirements in any particular case depends on, among other things, the type and amount of insurance business written and claims paid by the insurance company.

In addition, the FSA's Individual Capital Adequacy Standards framework, or ICAS framework, requires insurance companies to carry out various capital modeling and risk management exercises in order to calculate a company-specific Individual Capital Assessment amount, or ICA amount, which is the company's internal calculation of its capital requirements under the ICAS framework. The basis for this calculation is prescribed in GENPRU and is intended to ensure a company holds sufficient capital such that there is no material risk that its liabilities cannot be met as they fall due.

In 2009, the European Parliament approved the Solvency II framework directive. Solvency II was due to take effect January 1, 2014, but is now expected to be delayed until January 2016. Solvency II will set out new, strengthened E.U.-wide requirements on capital adequacy and risk management for insurers with the aim of increasing policyholder protection, instilling greater risk awareness and improving the international competitiveness of E.U. insurers.

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The FSA's rules require our U.K. insurance subsidiaries to obtain FSA approval for any proposed or actual payment of a dividend. The FSA uses the ICA and the estimated capital requirement for Solvency II purposes when assessing requests to make distributions and therefore dividends approved by the FSA will often significantly differ from any surplus capital above the entity's minimum capital resources requirements.

Under the Financial Services and Markets Act of 2000, any company or individual (together with its or his concert parties) proposing to directly or indirectly acquire "control" over a U.K. authorized insurance company (which is generally defined as acquiring 10% or more of the shares or voting power in a U.K. authorized insurance company or its parent company) must seek prior approval of the FSA of his intention to do so. The FSA would then have up to 60 working days to consider whether the acquirer is a fit and proper person to have such "control" and whether the interests of consumers would not be threatened by such acquisition of "control." Failure to make the relevant prior application could result in action being taken against us by the FSA. A person who is already deemed to have "control" will require prior approval of the FSA if the person increases the level of "control" beyond 20%, 30% and 50%.

It is expected that beginning April 1, 2013, the FSA's insurance regulatory functions will be divided and carried out by two new organizations, the Prudential Regulatory Authority and the Financial Conduct Authority.

Lloyd's

We participate in the Lloyd's market through our interest in Shelbourne, which consists of an approved Lloyd's managing agent, a corporate member and S2008, a wholly aligned syndicate. S2008 has permission to underwrite RITC and other legacy or discontinued business type transactions with other Lloyd's syndicates. Our Lloyd's operations are subject to regulation by the FSA and compliance with the Lloyd's Act(s) and Byelaws. In order to achieve finality and to release their capital (known as Funds at Lloyd's), Lloyd's members are usually required to have transferred their liabilities through an approved RITC, such as offered by S2008. The Lloyd's market is currently in the Solvency II internal model application process under Lloyd's supervision. Shelbourne will therefore be required to meet Solvency II standards when they come into effect.

United States

We own ten property and casualty insurance companies domiciled in the U.S., our U.S. Insurers, all of which are in run-off. Our U.S. insurance and reinsurance subsidiaries are subject to extensive governmental regulation and supervision by the states in which they are domiciled, licensed and/or approved to conduct business. The insurance laws and regulations of the state of domicile have the most significant impact on operations.

General . Generally, regulatory authorities have broad regulatory powers over such matters as licenses, standards of solvency, premium rates, policy forms, marketing practices, claims practices, investments, security deposits, methods of accounting, form and content of financial statements, reserves and provisions for unearned premiums, unpaid losses and loss adjustment expenses, reinsurance, minimum capital and surplus requirements, dividends and other distributions to shareholders, periodic examinations and annual and other report filings. In addition, transactions among affiliates, including certain reinsurance agreements or arrangements, as well as certain third-party transactions, require prior approval or non-disapproval from, or prior notice to, the applicable regulator under certain circumstances. Regulatory authorities also conduct periodic financial, claims and other types of examinations.

Oversight of Financial Condition. The Insurance Regulatory Information System, or IRIS, of the National Association of Insurance Commissioners, or NAIC, was developed by a committee of state insurance regulators and is intended primarily to assist state insurance departments in executing their statutory mandates to oversee the financial condition of insurance companies operating in their respective states. IRIS identifies certain industry ratios and specifies "usual values" for each ratio. Departure from the usual values of the ratios can lead to

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inquiries from individual state insurance commissioners regarding different aspects of an insurer's business. Insurers that report unusual values may be targeted for regulatory review. For 2012, certain of our U.S. Insurers generated IRIS ratios that were outside of the usual ranges. Only one of our U.S. Insurers (which was acquired whilst under regulatory supervision) has been subject to any increased regulatory review, but there is no assurance that our other U.S. Insurers will not be subject to increased scrutiny in the future.

Risk-Based Capital Requirements . The U.S. insurance and reinsurance subsidiaries are also required to maintain minimum levels of solvency and liquidity as determined by law, and to comply with risk-based capital requirements and licensing rules. In order to enhance the regulation of insurer solvency, the NAIC adopted a formula and model law to implement risk-based capital requirements for property and casualty insurance companies. These risk-based capital requirements change from time to time and are designed to assess capital adequacy and to raise the level of protection that statutory surplus provides for policyholder obligations. Insurers having less statutory surplus than required by the risk-based capital calculation will be subject to varying degrees of regulatory action, depending on the level of capital inadequacy. Under the approved formula, an insurer's statutory surplus is compared to its risk-based capital requirement. If this ratio is above a minimum threshold, no company or regulatory action is necessary.

Some of our U.S. Insurers, from time to time, may have risk-based capital levels that are below required levels and be subject to increased regulatory scrutiny and control by their domestic and possibly other insurance regulators. As of December 31, 2012 and 2011, all of our U.S. Insurers exceeded their required levels of risk-based capital, with the exception of one subsidiary that was acquired whilst under supervision. As a consequence of being under regulatory supervision, the subsidiary's regulator must approve any and all disbursements, new contracts or agreements. We do not believe this subsidiary's non-compliance presents material risk to our operations or financial condition.

Restrictions on Dividends and other Payments from Insurance Subsidiaries . Applicable insurance laws also restrict the amount of dividends our U.S.-regulated subsidiaries can pay to us. The restrictions are generally based on statutory net income and/or certain levels of statutory surplus as determined in accordance with the relevant statutory accounting requirements of the states or states in which our U.S. Insurers are domiciled. Generally, prior regulatory approval must be obtained before an insurer may pay a dividend or make a distribution above a specified level.

Statutory Accounting Principles. The U.S. Insurers are required to file annual statements with insurance regulatory authorities prepared on a statutory basis prescribed or permitted by such authorities. Statutory accounting principles differ from U.S. GAAP in the treatment of various items, including treatment of deferred acquisition costs, deferred income taxes, required investment reserves, reserve calculation assumptions and surplus notes. For our U.S. Insurers, there are no prescribed or permitted statutory accounting practices that differ significantly from the statutory accounting principles established by the NAIC. Statutory accounting practices established by the NAIC and adopted, in part, by state insurance departments, will determine, among other things, the amount of statutory surplus and statutory net income of our U.S. Insurers, which will affect, in part, the amount of funds they have available to pay dividends to us.

Ownership and Control. Before a person can acquire control of a domestic insurer (including a reinsurer) or any person controlling such insurer or reinsurer, including acquiring control of Enstar, prior written approval must be obtained from the insurance commissioner of the state in which the domestic insurer is domiciled and, under certain circumstances, from insurance commissioners in other jurisdictions. Prior to granting approval of an application to acquire control of a domestic insurer or person controlling the domestic insurer, the state insurance commissioner of the jurisdiction in which the insurer is domiciled will consider such factors as the financial strength of the applicant, the integrity and management of the applicant's board of directors and executive officers, the acquiror's plans for the future operations of the domestic insurer and any anti-competitive results that may arise from the acquisition of control. Generally, state statutes and regulations provide that "control" over a domestic insurer or person controlling a domestic insurer is presumed to exist if any person,

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directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10% or more of the voting securities or securities convertible into voting securities of the domestic insurer or of a person who controls the domestic insurer. Florida statutes presently create a presumption of control when any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 5% or more of the voting securities or securities convertible into voting securities of the domestic insurer or person controlling a domestic insurer. Because a person acquiring 5% or more of our ordinary shares would be presumed to acquire control of our Florida-domiciled insurers, and because a person acquiring 10% or more of our ordinary shares would be presumed to acquire control of the other U.S. Insurers, the U.S. insurance change of control laws will likely apply to such transactions.

Enterprise Risk. The NAIC has adopted amendments to the Insurance Holding Company System Regulatory Act and Regulation, which would need to be adopted by the individual states for the new requirements to take effect. To date, two of the states in which our U.S. Insurers are domiciled (California and Rhode Island) have adopted the amendments, but others may adopt the amendments in the future. The amendments impose more extensive informational requirements on parents and other affiliates of licensed insurers or reinsurers with the purpose of protecting them from enterprise risk, including requiring an annual enterprise risk report by the ultimate controlling person identifying the material risks within the insurance holding company system. The amendments also require, under certain circumstances, any controlling person of a U.S. insurance company seeking to divest its controlling interest in the insurance company to file with the commissioner a confidential notice of the proposed divestiture at least 30 days prior to the cessation of control; after receipt of the notice, the commissioner determines whether a filing for approval of the transaction is necessary. The NAIC has also adopted the Risk Management and Own Risk and Solvency Assessment Model Act, which also would need to be adopted by individual states to take effect. The model act requires every U.S. insurer (or its holding company group) to complete an Own Risk and Solvency Assessment on a yearly basis, including a self-assessment of risk management and capital adequacy.

Federal Regulation/Dodd-Frank Act. The Dodd Frank Wall Street Reform and Consumer Protection Act, or the Dodd-Frank Act, has significant implications for the insurance industry. Among other things, the Dodd-Frank Act established the Financial Services Oversight Council, or the FSOC, which is authorized to require supervision of certain significant non-bank financial companies, including insurance companies, by the Board of Governors of the Federal Reserve, or the Board of Governors. The Dodd-Frank Act also created within the United States Department of the Treasury a new Federal Insurance Office, or the FIO. The FSOC and the FIO are authorized to study, monitor and report to Congress on the U.S. insurance industry and the significance of global reinsurance to the U.S. insurance market. The Dodd-Frank Act authorizes the federal preemption of certain state insurance laws and streamlines the regulation of reinsurance and surplus lines/non-admitted insurance. Many provisions of the Dodd-Frank Act will become effective over time, and certain provisions of the Dodd-Frank Act require the implementation of regulations that have not yet been adopted. At this time, we cannot assess the potential impact of the Dodd-Frank Act on the U.S. insurance industry, or on us, including our subsidiaries, or our results of operations, financial condition or liquidity. However, our business could be affected by changes to the U.S. system of insurance regulation or if we or any of the insurers, reinsurers or other companies with which we do business become subject to supervision by the Board of Governors.

Australia

Our Australian regulated insurance entities (which include our insurance subsidiary and our non-operating holding company) are subject to prudential supervision by the Australian Prudential Regulation Authority, or APRA. APRA is the primary regulatory body responsible for regulating compliance with the Insurance Act 1973. APRA has issued prudential standards that apply to general insurers in relation to capital adequacy, the holding of assets in Australia, risk management, business continuity management, reinsurance management, outsourcing, audit and actuarial reporting and valuation, the transfer and amalgamation of insurance businesses, governance, and the fit and proper assessment of the insurer's responsible persons.

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APRA's prudential standards require that all insurers maintain and meet prescribed capital adequacy requirements to enable their insurance obligations to be met under a wide range of circumstances. This requires authorized insurers to hold eligible capital in excess of the minimum capital requirement, which may be determined using the Standard method or an internal model-based method. Our Australian insurance subsidiary has adopted the Standard method. As of January 1, 2013, APRA introduced capital reforms that have modified how Australian insurers meet their capital requirements and have introduced additional regulatory obligations with respect to capital oversight. The new capital requirements were brought in to enhance and strengthen capital adequacy in the market and increase the level of internal oversight and review for insurers. Our Australian insurance subsidiary meets the new capital requirements.

An insurer must obtain APRA's written consent prior to making any planned reductions in its capital, including any payment of dividends. Our insurance subsidiary must provide APRA a valuation prepared by an appointed actuary that demonstrates that the tangible assets of the insurer, after the proposed capital reduction, are sufficient to cover its insurance liabilities to a 99.5% level of sufficiency of capital before APRA will consent to a capital release or dividend.

Under the Financial Sector (Shareholdings) Act 1998, the interest of an individual shareholder or a group of associated shareholders in an insurer is generally limited to a 15% "stake" of the insurer. A person's stake is the aggregate of the person's voting power and the voting power of the person's associates. A higher percentage limit may be approved by the Treasurer of the Commonwealth of Australia on national interest grounds.

Europe

In addition to Bermuda, the United Kingdom, Australia and the United States, we have subsidiaries in various other countries, including Switzerland, Denmark, Ireland and Sweden, and in the future could acquire new subsidiaries in other countries.

Our Swiss insurance subsidiary is regulated by the Swiss Financial Market Supervisory Authority, or FINMA, pursuant to the Insurance Supervisory Act 2004. This subsidiary is obligated to maintain a minimum solvency margin based on the Solvency I and Swiss Solvency Test regulations as stipulated by the Insurance Supervisory Act. The amount of dividends that this subsidiary is permitted to distribute is restricted to freely distributable reserves, which consist of retained earnings, the current year profit and free reserves. Any dividend exceeding the current year profit requires FINMA's approval. The solvency and capital requirements must continue to be met following any distribution.

Our subsidiaries in other European jurisdictions are also regulated. Typically, such regulation is for the protection of policyholders and ceding insurance companies rather than shareholders. While the degree and type of regulation to which we are subject in each country may differ, regulatory authorities generally have broad supervisory and administrative powers over such matters as licenses, standards of solvency, investments, reporting requirements relating to capital structure, ownership, financial condition and general business operations, special reporting and prior approval requirements with respect to certain transactions among affiliates, methods of accounting, form and content of the consolidated financial statements, reserves for unpaid losses and LAE, reinsurance, minimum capital and surplus requirements, dividends and other distributions to shareholders, periodic examinations and annual and other report filings.

Competition

We compete in international markets with domestic and international reinsurance companies to acquire and manage insurance and reinsurance companies in run-off and portfolios of insurance and reinsurance business in run-off. The acquisition and management of companies and portfolios in run-off is highly competitive. Some of these competitors have greater financial resources than we do, have been operating for longer than we have and have established long-term and continuing business relationships throughout the insurance and reinsurance

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industries, which can be a significant competitive advantage. As a result, we may not be able to compete successfully in the future for suitable acquisition candidates or run-off portfolio management engagements.

Employees

As of December 31, 2012, we had 383 employees, 4 of whom were executive officers. All non-Bermudian employees who operate out of our Bermuda office are subject to approval of any required work permits. None of our employees are covered by collective bargaining agreements, and our management believes that our relationship with our employees is excellent.

Financial Information About Geographic Areas

We acquire and manage insurance and reinsurance companies in run-off and portfolios of insurance and reinsurance in run-off, and provide management, consulting and other services through our subsidiaries located in Bermuda, the United States, the United Kingdom, Australia and Europe to large multinational company clients with insurance and reinsurance companies and portfolios in run-off, relating to risks spanning the globe. As a result, extracting and quantifying revenues attributable to certain geographic locations would be impracticable given the global nature of the business.

Available Information

We maintain a website with the address <http://www.enstargroup.com>. The information contained on our website is not included as a part of, or incorporated by reference into, this filing. We make available free of charge (other than an investor's own Internet access charges) on or through our website our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and all amendments to these reports, as soon as reasonably practicable after the material is electronically filed with or otherwise furnished to the U.S. Securities and Exchange Commission, or the SEC. Our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports are also available on the SEC's website at <http://www.sec.gov>. In addition, copies of our corporate governance guidelines, codes of business conduct and ethics and the governing charters for the audit, investment, nominating and governance and compensation committees of our board of directors are available free of charge on our website. The public may read and copy any materials we file with the SEC at the SEC's Public Reference Room at 100 F Street, NE, Washington, DC 20549. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330.

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ITEM 1A. RISK FACTORS

Any of the following risk factors could cause our actual results to differ materially from historical or anticipated results. These risks and uncertainties are not the only ones we face. There may be additional risks that we currently consider not to be material or of which we are not currently aware, and any of these risks could cause our actual results to differ materially from historical or anticipated results.

You should carefully consider these risks along with the other information included in this document, including the matters addressed under “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations — Cautionary Note Regarding Forward-Looking Statements,” as well as risks included elsewhere in our documents filed with the SEC, before investing in any of our securities. We may amend, supplement or add to the risk factors described below from time to time in future reports filed with the SEC.

Risks Relating to Our Business

If we are unable to implement our business strategies, our business and financial condition may be materially and adversely affected.

Our future results of operations will depend in significant part on the extent to which we can implement our business strategies successfully, including our ability to realize the anticipated growth opportunities, expanded market visibility and increased access to capital. Our business strategies include generating opportunities to acquire or manage companies and portfolios in run-off, and to price effectively and review carefully these acquisitions or management arrangements; efficiently managing claims against companies or portfolios we own or manage; successfully commuting assumed liabilities and ceded reinsurance assets; and prudently managing our investments in a manner that recognizes our liquidity needs. We may not be able to implement our strategies fully or realize the anticipated results of our strategies as a result of significant business, economic and competitive uncertainties, many of which are beyond our control.

If we fail to price acquisitions appropriately, we may fail to achieve the anticipated financial benefits of an acquisition, and operating results may suffer. The run-off industry is becoming more attractive to investors, which may lead to an increase in competition for run-off acquisitions and management and consultancy engagements. Competitive conditions may negatively impact our ability to continue to acquire companies and portfolios in run-off, meaning we may be unable to continue to achieve future growth. Furthermore, if we do not manage claims efficiently, or if we experience negative effects of emerging claims and coverage issues, we may experience increased provisions for loss reserves and reduced profitability in our insurance and reinsurance subsidiaries. If we are unable to successfully commute assumed liabilities and ceded reinsurance assets, the operating results of our insurance and reinsurance subsidiaries may be adversely impacted. In addition, if we are unable to manage our investments in a manner that meets our liquidity needs, it could have a material adverse impact on our financial condition. Overall, if we are unable to successfully implement our business strategies, we may not be able to achieve future growth in our earnings and our financial condition may suffer and, as a result, holders of our ordinary shares may receive lower returns.

We may require additional capital and credit in the future that may not be available or may only be available on unfavorable terms.

Our future capital requirements depend on many factors, including acquisition activity, our ability to manage the run-off of our assumed policies and our ability to establish reserves at levels sufficient to cover losses. We may need to raise additional funds through equity or debt financings in the future. Our ability to secure this financing may be affected by a number of factors, including volatility in the worldwide financial markets and the strength of our capital position and operating results. Any equity or debt financing, if available at all, may be on terms that are not favorable to us. In the case of equity financings, dilution to our existing shareholders could result, and any securities that are part of such equity financing may have rights, preferences and privileges that are senior to those of our already outstanding securities. If we cannot obtain adequate capital or credit, our business, results of operations and financial condition could be adversely affected by, among other things, our inability to finance future acquisitions.

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If our insurance and reinsurance subsidiaries' loss reserves are inadequate to cover their actual losses, our insurance and reinsurance subsidiaries' net earnings and capital and surplus would be reduced, which could have a materially adverse impact on our results of operations and financial condition.

Our insurance and reinsurance subsidiaries are required to maintain reserves to cover their estimated ultimate liability for losses and loss adjustment expenses for both reported and unreported incurred claims. These reserves are only estimates of what our subsidiaries consider the settlement and administration of claims will cost based on facts and circumstances known to the subsidiaries, as well as actuarial methodologies and procedures. Our commutation activity and claims settlement and development in recent years has resulted in net reductions in provisions for loss and loss adjustment expenses of \$241.8 million, \$295.4 million and \$311.8 million for the years ended December 31, 2012, 2011 and 2010, respectively. Although past experience indicates that our loss reserves have been more than adequate to meet our liabilities, because of the uncertainties that surround estimating loss reserves and loss adjustment expenses, we cannot be certain that ultimate losses will not exceed these estimates of losses and loss adjustment expenses in the future. If our subsidiaries' reserves are insufficient to cover their actual losses and loss adjustment expenses, our subsidiaries would have to augment their reserves and incur a charge to their earnings. These charges could be material and would reduce our net earnings and capital and surplus.

The difficulty in estimating the subsidiaries' reserves is increased because our subsidiaries' loss reserves include reserves for potential asbestos and environmental, or A&E, liabilities. At December 31, 2012, our insurance and reinsurance companies had recorded gross A&E loss reserves of \$628.6 million, or 17.2% of the total gross loss reserves. Net A&E loss reserves at December 31, 2012 amounted to \$557.6 million, or 20.0% of total net loss reserves. A&E liabilities are especially hard to estimate for many reasons, including the long waiting periods between exposure and manifestation of any bodily injury or property damage, the difficulty in identifying the source of the asbestos or environmental contamination, long reporting delays and the difficulty in properly allocating liability for the asbestos or environmental damage. Developed case law and adequate claim history do not always exist for such claims, especially because significant uncertainty exists about the outcome of coverage litigation and whether past claim experience will be representative of future claim experience. In view of the changes in the legal and tort environment that affect the development of such claims, the uncertainties inherent in valuing A&E claims are not likely to be resolved in the near future. Ultimate values for such claims cannot be estimated using traditional reserving techniques and there are significant uncertainties in estimating the amount of our subsidiaries' potential losses for these claims. Our subsidiaries have not made any changes in reserve estimates that might arise as a result of any proposed U.S. federal legislation related to asbestos. To further understand this risk, see "Business — Reserves for Unpaid Losses and Loss Adjustment Expense" on page 12.

Reinsurers may not satisfy their obligations to our insurance and reinsurance subsidiaries, which could result in significant losses or liquidity issues for us.

Our insurance and reinsurance subsidiaries are subject to credit risk with respect to their reinsurers because the transfer of risk to a reinsurer does not relieve our subsidiaries of their liability to the insured. Many reinsurance companies have been negatively impacted by the difficult financial and economic conditions in recent years, including unprecedented financial market disruption. A number of these companies, including some of those with which we conduct business, have been downgraded and/or have been placed on negative outlook by various rating agencies. In addition, reinsurers may be unwilling to pay our subsidiaries even though they are able to do so, or disputes may arise regarding payment obligations. The failure of one or more of our subsidiaries' reinsurers to honor their obligations in a timely fashion may affect our cash flows, reduce our net earnings or cause us to incur a significant loss. Disputes with our reinsurers may also result in unforeseen expenses relating to litigation or arbitration proceedings.

As of December 31, 2012, the balances recoverable from reinsurers amounted to \$1.12 billion, of which \$144.1 million was associated with one reinsurer, which represented 10% or more of total reinsurance balances

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recoverable. The reinsurer had a credit rating, as provided by a major rating agency, of A+. Of the \$144.1 million recoverable from the reinsurer, \$121.6 million is secured by a trust fund held for our benefit. Our exposure to this reinsurer (and any other reinsurers who represent meaningful percentages of our total reinsurance balances recoverable) may increase the risks described above.

Uncertain conditions in the economy generally may materially adversely affect our business, results of operations and financial condition.

In the event of financial turmoil affecting the global banking system and financial markets (including the sovereign debt markets), additional consolidation of the financial services industry, or significant financial service institution failures, there could be a new or incremental tightening in the credit markets, low liquidity, and extreme volatility in fixed maturity, credit, currency, and equity markets. This could have a number of effects on our business, including our ability to obtain financing for future acquisitions. Even if financing is available, it may only be available at an unattractive cost of capital, which would decrease our profitability. Net investment income and net realized and unrealized gains or losses also could vary materially from expectations depending on gains or losses realized on the sale or exchange of financial instruments; impairment charges resulting from revaluations of debt and equity securities and other investments; interest rates; cash balances; and changes in the fair value of derivative instruments. Increased volatility in the financial markets and overall economic uncertainty would increase the risk that the actual amounts realized in the future on our financial instruments could differ significantly from the fair values currently assigned to them.

In addition, rating agency downgrades of the U.S. and U.K. government's credit rating and the credit ratings of certain European countries reflect a growing concern of the potential default of government issuers and have created broader financial turmoil and uncertainty, which has weighed heavily on the global banking system. These downgrades and any future downgrades of the U.S. and U.K. government's credit rating and the credit ratings of one or more European countries may materially adversely affect our business, financial condition and results of operations, including the return on and value of our investments.

Fluctuations in currency exchange rates may cause us to experience losses.

We maintain a portion of our investments, insurance liabilities and insurance assets denominated in currencies other than U.S. dollars. Consequently, we and our subsidiaries may experience foreign exchange losses, which could adversely affect our results of operations. We publish our consolidated financial statements in U.S. dollars. Therefore, fluctuations in exchange rates used to convert other currencies, particularly Australian dollars, Euros and British pounds, into U.S. dollars will impact our reported consolidated financial condition, results of operations and cash flows from year to year.

Fluctuations in the reinsurance industry may cause our operating results to fluctuate significantly.

The reinsurance industry historically has been subject to significant fluctuations and uncertainties. Factors that affect the industry in general may also cause our operating results to fluctuate. As a result, the industry's and our profitability may be affected significantly by:

- fluctuations in interest rates, inflationary pressures and other changes in the investment environment, which affect returns on invested capital and may affect the ultimate payout of loss amounts and the costs of administering books of reinsurance business;
- volatile and unpredictable developments, such as those that have occurred in recent years in the world-wide financial and credit markets, which may adversely affect the recoverability of reinsurance from our reinsurers;
- changes in reserves resulting from different types of claims that may arise and the development of judicial interpretations relating to the scope of insurers' liability; and
- the overall level of economic activity and the competitive environment in the industry.

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Emerging claim and coverage issues could adversely affect our business.

As industry practices and legal, judicial, social and other environmental conditions change, unexpected and unintended issues related to claims and coverage may emerge. These issues may adversely affect the adequacy of our provision for losses and loss adjustment expenses by either extending coverage beyond the intent of insurance policies and reinsurance contracts envisioned at the time they were written, or by increasing the number or size of claims. Our exposure to these uncertainties could be exacerbated by an increase in insurance and reinsurance contract disputes, arbitration and litigation. The full effects of these and other unforeseen emerging claim and coverage issues are extremely hard to predict. In some instances, these changes may not become apparent until some time after we have acquired companies or portfolios of insurance or reinsurance contracts that are affected by the changes. As a result, the full extent of liability under these insurance or reinsurance contracts may not be known for many years after a contract has been issued.

Exit and finality opportunities provided by solvent schemes of arrangement may not continue to be available, which may result in the diversion of our resources to settle policyholder claims for a substantially longer run-off period and increase the associated costs of run-off of our insurance and reinsurance subsidiaries.

With respect to our U.K., Bermudian and Australian insurance and reinsurance subsidiaries, we are able to pursue strategies to achieve complete finality and conclude the run-off of a company by promoting solvent schemes of arrangement. Solvent schemes of arrangement have been a popular means of achieving financial certainty and finality for insurance and reinsurance companies incorporated or managed in the U.K., Bermuda and Australia, by making a one-time full and final settlement of an insurance and reinsurance company's liabilities to policyholders. A solvent scheme of arrangement is an arrangement between a company and its creditors or any class of them. For a solvent scheme of arrangement to become binding on the creditors, a meeting of each class of creditors must be called, with the permission of the local court, to consider and, if thought fit, approve the solvent scheme of arrangement. The requisite statutory majority of creditors of not less than 75% in value and 50% in number of those creditors actually attending the meeting, either in person or by proxy, must vote in favor of a solvent scheme of arrangement. Once the solvent scheme of arrangement has been approved by the statutory majority of voting creditors of the company, it requires the sanction of the local court at a hearing at which creditors may appear. The court must be satisfied that the scheme is fair, following a full consideration of the relevant evidence and of the scheme's individual merits.

Should a solvent scheme of arrangement promoted by any of our insurance or reinsurance subsidiaries fail to receive the requisite approval by creditors or sanction by the court, we will have to run off these liabilities until expiry, which may result in the diversion of our resources to settle policyholder claims for a substantially longer run-off period and increase the associated costs of run-off, resulting potentially in a material adverse effect on our financial condition and results of operations.

We are dependent on our executive officers, directors and other key personnel and the loss of any of these individuals could adversely affect our business.

Our success substantially depends on our ability to attract and retain qualified employees and upon the ability of our senior management and other key employees to implement our business strategy. We believe that there are only a limited number of available qualified personnel in the business in which we compete. We rely substantially upon the services of Dominic F. Silvester, our Chief Executive Officer, Paul J. O'Shea and Nicholas A. Packer, our Executive Vice Presidents and Joint Chief Operating Officers, Richard J. Harris, our Chief Financial Officer, and our subsidiaries' executive officers and directors to identify and consummate the acquisition of insurance and reinsurance companies and portfolios in run-off on favorable terms and to implement our run-off strategy. The loss of the services of any of our management or other key personnel, or the loss of the services of or our relationships with any of our directors, could have a material adverse effect on our business.

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Under Bermuda law, non-Bermudians (other than spouses of Bermudians, holders of a permanent resident's certificate or holders of a working resident's certificate) may not engage in any gainful occupation in Bermuda without an appropriate governmental work permit. Work permits may be granted or extended by the Bermuda government upon showing that, after proper public advertisement in most cases, no Bermudian (or spouse of a Bermudian, holder of a permanent resident's certificate or holders of a working resident's certificate) is available who meets the minimum standard requirements for the advertised position. As a result, if we were to lose any of our key employees, the work permit laws and policies may hinder our ability to replace them.

We are a holding company, and we are dependent on the ability of our subsidiaries to distribute funds to us.

We are a holding company and conduct substantially all of our operations through subsidiaries. Our only significant assets are the capital stock of our subsidiaries. As a holding company, we are dependent on distributions of funds from our subsidiaries to pay dividends, fund acquisitions or fulfill financial obligations in the normal course of our business. Our subsidiaries may not generate sufficient cash from operations to enable us to make dividend payments, acquire additional companies or insurance or reinsurance portfolios or fulfill other financial obligations. The ability of our insurance and reinsurance subsidiaries to make distributions to us is limited by applicable insurance laws and regulations (which are described in "Business — Regulation" beginning on page 20), and the ability of all of our subsidiaries to make distributions to us may be restricted by, among other things, other applicable laws and regulations and the terms of our bank loans and our subsidiaries' bank loans.

Conflicts of interest might prevent us from pursuing desirable investment and business opportunities.

Our directors and executive officers may have ownership interests or other involvement with entities that could compete against us, either in the pursuit of acquisition targets or in general business operations. On occasion, we have also participated in transactions in which one or more of our directors or executive officers had an interest, and we may do so in the future. The interests of our directors and executive officers in such transactions or such entities may result in a conflict of interest for those directors and officers. The audit committee of our board of directors, which is comprised entirely of independent directors, reviews any material transactions involving a conflict of interest and may take actions as it deems appropriate in the particular circumstances. We may not be able to pursue all advantageous transactions that we would otherwise pursue in the absence of a conflict should our audit committee be unable to determine that any such transaction is on terms as favorable as we could otherwise obtain in the absence of a conflict.

If third-party administrators were to breach obligations owed to us, our business and results of operations could be adversely affected.

Certain of our subsidiaries rely on relationships with a number of third-party administrators, under contracts pursuant to which these third-party administrators manage and pay claims on our subsidiaries' behalf and advise with respect to case reserves. In these relationships, we rely on controls incorporated in the provisions of the administration agreement, as well as on the administrator's internal controls, to manage the claims process within our prescribed parameters. Although we monitor these administrators on an ongoing basis, our monitoring efforts may not be adequate or our administrators could exceed their authorities or otherwise breach obligations owed to us, which, if material, could adversely affect our business and results of operations.

Our failure to comply with covenants contained in our credit facilities could trigger prepayment obligations, which could adversely affect our results of operations and financial condition.

We and our subsidiaries currently have three outstanding credit facilities, including our Revolving Credit Facility, the Clarendon Facility and the SeaBright Facility. These credit facilities contain various business and financial covenants that impose restrictions on us and certain of our subsidiaries with respect to, among other things, limitations on mergers and consolidations, acquisitions, indebtedness and guarantees, restrictions as to certain dispositions of stock and dividends, investment constraints and limitations on liens on stock. We may also

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enter into future credit facilities or other debt arrangements containing similar or different restrictive covenants. Our failure to comply with these covenants could result in an event of default under the credit facilities, which could result in us being required to repay the amounts outstanding under these facilities prior to maturity. These prepayment obligations could have an adverse effect on our results of operations and financial condition. In addition, complying with these covenants could limit our financial and operational flexibility. Our credit facilities are described in more detail in “Management’s Discussion and Analysis of Financial Condition and Results of Operations — Long Term Debt” on page 96.

If we experience difficulties with our information technology assets or cyber security, our business could be adversely affected.

We rely heavily on the successful, uninterrupted functioning of our information technology assets, as well as those of any third-party service providers we use. Our business is dependent upon our ability to perform, in an efficient and uninterrupted fashion, necessary business functions, such as paying claims and performing actuarial and other modeling functions, acquisition work and other necessary legal, financial and business functions. A failure of our information technology assets could materially impact our ability to perform these functions, affect the confidentiality, availability or integrity of information or information systems, expose us to litigation and increase our administrative expenses.

Computer viruses, hackers and other external hazards, as well as any internal process failures, could expose our information technology assets to security breaches that may cause critical data to be corrupted or confidential or proprietary information to be exposed. The potential consequences of a cyber-security incident could include liability and reputational damage to our company and could cause us to commit resources, management time and money to remediate these breaches, any of which in turn could have an adverse impact on our business.

Risks Relating to Our Acquisitions

Our inability to successfully price acquisitions and manage our portfolio of insurance and reinsurance companies in run-off may adversely impact our ability to grow our business and may result in material losses.

Our business is acquiring and managing insurance and reinsurance companies and portfolios of insurance and reinsurance in run-off. Our run-off business differs from the business of traditional insurance and reinsurance underwriting in that our companies and portfolios in run-off no longer underwrite new policies and are subject to the risk that their stated provisions for losses and loss adjustment expense, or LAE, will not be sufficient to cover future losses and the cost of run-off. Because our companies and portfolios in run-off no longer collect underwriting premiums, our sources of capital to cover losses are limited to our stated reserves, reinsurance coverage and retained earnings. As of December 31, 2012, our gross reserves for losses and loss adjustment expense totaled \$3.66 billion, and our reinsurance balances recoverable totaled \$1.12 billion.

In order for us to achieve positive operating results, we must first price acquisitions on favorable terms relative to the risks posed by the acquired businesses and then successfully manage the acquired businesses by efficiently managing claims, collecting from reinsurers and controlling run-off expenses. Failure to do these things successfully could result in us having to cover losses sustained under assumed policies with retained earnings, which would materially and adversely impact our ability to grow our business and may result in material losses.

We have made, and expect to continue to make, acquisitions of insurance and reinsurance companies in run-off, and these activities may not be financially beneficial to us or our shareholders.

We have pursued and, as part of our strategy, we will continue to pursue growth through acquisitions. Since our formation in August 2001, we have acquired 36 insurance and reinsurance companies and 21 portfolios of

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insurance and reinsurance business, and we expect to continue to make such acquisitions in the future. We cannot be certain that any of these acquisitions will be financially advantageous for us or our shareholders.

The evaluation and negotiation of potential acquisitions, as well as the integration of an acquired business or portfolio, could result in a substantial diversion of management resources. Acquisitions could involve numerous additional risks such as potential losses from unanticipated litigation, levels of claims or other liabilities and exposures, an inability to generate sufficient revenue to offset acquisition costs and financial exposures in the event that the sellers of the entities we acquire are unable or unwilling to meet their indemnification, reinsurance and other obligations to us (if any such obligations are in place).

Our ability to manage our growth through acquisitions will depend, in part, on our success in addressing these risks. Any failure by us to effectively implement our acquisition strategies could have a material adverse effect on our business, financial condition or results of operations.

Our past and future acquisitions involve risks, and we may not realize the expected benefits because of underperformance relative to our expectations, unforeseen liabilities and expenses, integration difficulties and other challenges, which could have a material adverse effect on our business, financial condition or results of operations.

The acquisitions we have made and expect to make in the future may pose operational challenges, expose us to risks and divert management's time and energy, including relating to:

- funding cash flow shortages that may occur if anticipated revenues are not realized or are delayed, whether by general economic or market conditions or unforeseen internal difficulties;
- funding cash flow shortages that may occur if expenses are greater than anticipated;
- the value of assets being lower than expected or diminishing because of credit defaults or changes in interest rates, or liabilities assumed or acquired being greater than expected;
- integrating financial and operational reporting systems, including assurance of compliance with Section 404 of the Sarbanes-Oxley Act of 2002 and our reporting requirements under the Securities Exchange Act of 1934, as amended (or the Exchange Act);
- establishing satisfactory budgetary and other financial controls;
- leveraging our existing capabilities and expertise into the business acquired;
- funding increased capital needs and overhead expenses;
- integrating technology platforms;
- obtaining and retaining management personnel required for expanded operations; and
- fluctuating foreign currency exchange rates relating to the assets and liabilities we may acquire.

Our failure to manage successfully these operational challenges and risks could have a material adverse effect on our business, financial condition or results of operations.

We may not complete future acquisitions within the time frame we anticipate or at all, which could have a negative effect on our business, financial condition or results of operations.

A key part of our business strategy is completing acquisitions of insurance and reinsurance businesses in run-off and portfolios of insurance and reinsurance businesses in run-off. Once we have signed a definitive agreement to acquire a business or portfolio, conditions to closing, such as obtaining regulatory approvals or shareholder approvals, must be met before the acquisition can be consummated. These and other closing

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conditions may not be satisfied at all, or may cause a material delay in the anticipated timing of closing. In addition, our ability to complete the acquisition on the originally anticipated terms, or at all, could be jeopardized if a seller receives competing proposals, if litigation is brought challenging the transaction or certain of its terms, or if regulators impose unexpected terms and conditions on the transaction. Failure to consummate an acquisition on the originally anticipated terms, or a significant delay in the closing, could result in significant expense, diversion of time and resources, reputational damage, litigation and a failure to realize the anticipated benefits of the acquisition, all of which could materially adversely impact our business, financial condition and results of operations.

Our pending acquisition of the HSBC Insurance Companies will represent a substantial expansion of our life insurance run-off portfolio, and presents certain different risks and uncertainties than those of our existing business, which could cause a material adverse effect on our business, financial condition and results of operations.

On September 6, 2012, we entered into a definitive agreement pursuant to which one of our subsidiaries will acquire the HSBC Insurance Companies. The transaction is conditioned on, among other things, governmental and regulatory approvals and satisfaction of various customary closing conditions. We expect to complete the acquisition by the end of the first quarter of 2013. The companies to be acquired have written various U.S. and Canadian life insurance, including credit insurance, term life insurance, assumed reinsurance, corporate owned life insurance and annuities. The acquired businesses will represent a substantial increase to our life insurance portfolio. The future performance of the acquired businesses will be highly dependent on our ability to manage the run-off successfully and our ability to integrate and operate the business effectively and efficiently following closing.

Many of the risks and uncertainties associated with our existing business, which consists primarily of non-life property and casualty run-off, remain largely the same when applied to the life insurance business. However, the acquired business will also present certain risks that are different from our existing business. For example, the cost of claims and benefits of our subsidiaries' various life insurance products will be influenced by many factors, including mortality and morbidity rates, lapse rates and the performance of assets to support the liabilities. Our life subsidiaries will also be exposed to the risk of catastrophic mortality, such as a pandemic or other event that causes a large number of deaths. In addition, in an economic downturn characterized by higher unemployment, lower family income, lower corporate earnings, lower business investment and lower consumer spending, our life insurance subsidiaries may experience an elevated incidence of lapses of life insurance policies because there is a greater risk that policyholders may choose to defer paying insurance premiums or stop paying insurance premiums altogether. With respect to certain of our subsidiaries' life insurance products, our subsidiaries will be dependent upon the counterparty to an administrative services agreement in order to collect policy premiums and maintain necessary customer data. There is a risk that the counterparty may fail to perform its obligations under the agreement to provide accurate and timely premiums and data, or that we or the counterparty could experience difficulties with the operation of the supporting technology systems. Any of these risks could result in underperformance of the acquired business compared to our expectations, and could also have a material adverse effect on our business, financial condition and results of operations.

Risks Relating to Our Investments

The value of our insurance and reinsurance subsidiaries' investment portfolios and the investment income that our insurance and reinsurance subsidiaries receive from these portfolios may decline materially as a result of market fluctuations and economic conditions.

We derive a significant portion of our income from our invested assets, which consist primarily of investments in fixed maturity securities. The net investment income that our subsidiaries realize from investments in fixed maturity securities will generally increase or decrease with changes in interest rates. The fair

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market value of our subsidiaries' fixed maturity securities generally increases or decreases in an inverse relationship with fluctuations in interest rates, which are highly sensitive to many factors, including governmental monetary policies, domestic and international economic and political conditions and other factors beyond our control. The fair market value can also decrease as a result of any downturn in the business cycle that causes the credit quality of those securities to deteriorate. Any such deterioration of credit ratings on our fixed maturity security investments may result in the need to liquidate these securities in the financial markets. If we are required to liquidate these securities during a period of tightening credit, we may realize a significant loss.

In addition, some of our fixed maturity securities, such as mortgage-backed and other asset-backed securities, carry prepayment risk, or the risk that principal will be returned more rapidly or slowly than expected, as a result of interest rate fluctuations. When interest rates decline, consumers will generally make prepayments on their mortgages, causing us to be repaid more quickly than we might have originally anticipated, meaning that our opportunities to reinvest these proceeds back into the investment markets may be at reduced interest rates (with the converse being true in a rising interest rate environment). Mortgage-backed and other asset-backed securities are also subject to default risk on the underlying securitized mortgages, which would decrease the value of our investments.

The fair market value of our subsidiaries' fixed maturity securities classified as trading and/or available-for-sale in our subsidiaries' investment portfolios amounted to \$2.82 billion at December 31, 2012. The changes in the market value of our subsidiaries' securities that are classified as trading or available-for-sale are reflected in our financial statements. Other-than-temporary impairments in the value of our subsidiaries' fixed maturity securities are also reflected in our financial statements. As a result, a decline in the value of the securities in our subsidiaries' investment portfolios may materially reduce our net income or cause us to incur a significant loss. For more information on our subsidiaries' investment portfolios, see "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations, Liquidity and Capital Resources — Investments" on page 88.

Our investments in alternative investments may be illiquid and volatile in terms of value and returns, which could negatively affect our investment income and liquidity.

In addition to fixed maturity securities, we have invested, and may from time to time continue to invest, in alternative investments such as private equity, fixed income, fixed income hedge, equity and real estate debt funds. These and other similar investments may be illiquid due to restrictions on sales, transfers and redemptions, may have different, more significant risk characteristics than our investments in fixed maturity securities and may also have more volatile values and returns, all of which could negatively affect our investment income and liquidity. As of December 31, 2012, we had an aggregate fair market value of \$414.8 million of such investments, which comprised 12.4% of our total investments. For more information on our alternative investments, see "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations, Liquidity and Capital Resources — Investments" on page 88.

The valuation of our investments may include methodologies, estimations and assumptions that are subject to differing interpretations and could result in changes to investment valuations that may materially adversely affect our financial condition or results of operations.

Fixed maturity and alternative investments, such as private equity, fixed income, fixed income hedge, equity and real estate debt funds, represent the majority of our total cash and invested assets. These investments are reported at fair value on our consolidated balance sheet. Fair value prices for all securities in the fixed maturities portfolio are independently provided by our investment custodian, investment accounting service provider and investment managers, each of which utilize internationally recognized independent pricing services. We record the unadjusted price provided by our custodian, accounting service provider or manager, after we perform an internal validation process. Fair value for our alternative investments is estimated based primarily on

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the most recently reported net asset values reported by the fund manager, which we may adjust in our judgment following our internal review.

These valuation procedures for our alternative investments involve estimates and judgments, and during periods of market disruptions (such as periods of significantly rising or high interest rates, rapidly widening credit spreads or illiquidity), it may be difficult to value certain of our securities if trading becomes less frequent or market data becomes less observable. In addition, there may be certain asset classes that are now in active markets with significant observable data that become illiquid due to changes in the financial environment. In these cases, the valuation of a greater number of securities in our investment portfolio may require more subjectivity and management judgment. As a result, valuations may include inputs and assumptions that are less observable or require greater estimation as well as valuation methods that are more sophisticated or require greater estimation, which may result in values that could be less than the value at which the investments could ultimately be sold. Further, rapidly changing and unpredictable credit and equity market conditions could materially affect the valuation of securities as reported within our consolidated financial statements and the period-to-period changes in value could vary significantly. Decreases in value could have a material adverse effect on our financial condition and results of operations.

The nature of our business liquidity demands and the structure of our entities' investment portfolios may adversely affect the performance of our investment portfolio and financial results and our investing flexibility.

We strive to structure our investments in a manner that recognizes our liquidity needs for future liabilities. Because of the unpredictable nature of losses that may arise under our insurance and reinsurance subsidiaries' insurance or reinsurance policies and as a result of our opportunistic commutation strategy, our liquidity needs can be substantial and may arise at any time. In that regard, we attempt to correlate the maturity and duration of our investment portfolio to our general liability profile. If we are unsuccessful in managing our investment portfolio within the context of this strategy, we may be forced to liquidate our investments at times and at prices that are not optimal, and we may have difficulty in liquidating some of our alternative investments due to restrictions on sales, transfers and redemptions. This could have a material adverse effect on our business and the performance of our investment portfolio.

We maintain each company within our organization and each acquired portfolio of insurance and reinsurance business in separate stand-alone entities, and therefore, we have many individual portfolios of cash and investments. Each investment portfolio has its own regulatory admissibility requirements, and each entity is likely to have negative cash flows due to commutation activity, claims settlements and capital distributions. These factors reduce our overall investing flexibility.

Risks Relating to Laws and Regulation

Insurance laws and regulations restrict our ability to operate, and any failure to comply with these laws and regulations, or any investigations by government authorities, may have a material adverse effect on our business.

We are subject to extensive regulation under insurance laws and regulations of a number of jurisdictions. Existing laws and regulations limit the amount of dividends that can be paid to us by our insurance and reinsurance subsidiaries, prescribe solvency and capital adequacy standards that they must meet and maintain, impose restrictions on the amount and type of investments that they can hold to meet solvency and capital adequacy requirements and require them to maintain reserve liabilities. Failure to comply with these laws and regulations may subject our insurance and reinsurance subsidiaries to fines and penalties, restrict them from conducting business or result in commencement of insurance company delinquency proceedings against a non-compliant insurance or reinsurance subsidiary. The application of these laws and regulations may affect our liquidity and restrict our ability to expand our business operations through acquisitions or to pay dividends on our

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ordinary shares. Furthermore, compliance with legal and regulatory requirements may result in significant expenses, which could have a negative impact on our profitability. To further understand these risks, see “Business — Regulation” beginning on page 20.

In recent years, the insurance regulatory environment has become subject to increased scrutiny in many jurisdictions. Regulators are generally concerned with the protection of policyholders above other constituencies, including our shareholders. Additional laws and regulations have been and may continue to be enacted in the wake of the recent or future financial and credit crises that may have adverse effects on our business. For example, under the Dodd-Frank Act, the United States has proposed a change from a state-based system of regulation to a system involving more federal regulation under certain circumstances. The Dodd-Frank Act also established the Financial Services Oversight Council, which is authorized to require supervision of certain significant non-bank financial companies, including insurance companies, by the Board of Governors of the Federal Reserve. The NAIC, which is an association of the insurance commissioners of all 50 U.S. states and the District of Columbia and state regulators, regularly re-examines existing laws and regulations, which could impact our U.S. insurance and reinsurance subsidiaries. In Europe, Solvency II, the regulatory regime that is expected to be implemented in January 2016, sets out new, strengthened E.U.-wide requirements on capital adequacy and risk management for insurers with the aim of increasing policyholder protection, instilling greater risk awareness and improving international competitiveness of E.U. insurers, which could lead to increases in our subsidiaries’ regulatory capital requirements, reduced operational flexibility and increased compliance costs. In Bermuda, the BMA has implemented and imposed additional requirements on the companies it regulates, including certain of our insurance and reinsurance subsidiaries, as part of its efforts to achieve equivalence under Solvency II. Overall, the future impact and effect of these and other future regulatory initiatives on our operations, financial condition and liquidity, including the amount of capital we would be required to hold and the costs of compliance, remains uncertain.

In addition to legal and regulatory requirements, the insurance and reinsurance industry has experienced substantial volatility as a result of current investigations, litigation and regulatory activity by various insurance, governmental and enforcement authorities, including the SEC, concerning certain practices within the insurance and reinsurance industry. With our pending acquisition of the HSBC Insurance Companies, our life insurance subsidiaries may be subject to life industry-specific investigations, including ongoing industry-wide investigations into compliance with unclaimed property laws and practices related to forced-placed insurance. Insurance and reinsurance companies that we have acquired, or may acquire in the future, may have been or may become involved in these or other investigations and may have lawsuits filed against them. Our involvement in any investigations and related lawsuits would cause us to incur legal costs and, if we or any of our insurance or reinsurance subsidiaries were found to have violated any laws, we could be required to pay fines and damages, perhaps in material amounts.

If we fail to comply with applicable insurance laws and regulations, we may be subject to disciplinary action, damages, penalties or restrictions that may have a material adverse effect on our business.

Our subsidiaries may not have maintained or be able to maintain all required licenses and approvals or maintained or be able to maintain their businesses in full compliance with the laws and regulations to which they are subject, or the relevant insurance regulatory authority’s interpretation of those laws and regulations. In addition, some regulatory authorities have relatively broad discretion to grant, renew or revoke licenses and approvals. If our subsidiaries do not have the requisite licenses and approvals or do not comply with applicable regulatory requirements, the insurance regulatory authorities may preclude or suspend our subsidiaries from carrying on some or all of their activities, place one or more of them into rehabilitation or liquidation proceedings, or impose monetary penalties on them. These types of actions may have a material adverse effect on our business and may preclude us from making future acquisitions or obtaining future engagements to manage companies and portfolios in run-off.

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Risks Relating to Ownership of Our Ordinary Shares

Our stock price may experience volatility, thereby causing a potential loss of value to our investors.

The market price for our ordinary shares may fluctuate substantially and could cause investment losses due to, among other things, the following factors:

- announcements with respect to an acquisition or investment;
- changes in the value of our assets;
- our quarterly and annual operating results;
- sales, or the possibility or perception of future sales, by our existing shareholders;
- changes in general conditions in the economy and the insurance industry;
- the financial markets; and
- adverse press or news announcements.

A few significant shareholders may influence or control the direction of our business. If the ownership of our ordinary shares continues to be highly concentrated, it may limit your ability and the ability of other shareholders to influence significant corporate decisions.

The interests of Messrs. Silvester, O’Shea and Packer, Trident V, L.P. and its affiliates, or Trident, Beck Mack & Oliver LLC, or Beck Mack, and Goldman, Sachs & Co. and its affiliates, or Goldman Sachs, may not be fully aligned with your interests, and this may lead to a strategy that is not in your best interest. As of December 31, 2012, Messrs. Silvester, O’Shea and Packer, Trident, Beck Mack and Goldman Sachs beneficially owned approximately 11.2%, 3.6%, 3.4%, 9.7%, 8.5% and 4.8%, respectively, of our outstanding voting ordinary shares. Although they do not act as a group, Trident, Beck Mack, Goldman Sachs and each of Messrs. Silvester, O’Shea and Packer may exercise significant influence over matters requiring shareholder approval, and their concentrated holdings may delay or deter possible changes in control of Enstar, which may reduce the market price of our ordinary shares.

Some aspects of our corporate structure may discourage third-party takeovers and other transactions, limit voting rights of certain shareholders to 9.5% or prevent the removal of our board of directors and management.

Some provisions of our bye-laws have the effect of making more difficult or discouraging unsolicited takeover bids from third parties or preventing the removal of our current board of directors and management. In particular, our bye-laws make it difficult for any U.S. shareholder or Direct Foreign Shareholder Group (a shareholder or group of commonly controlled shareholders of Enstar that are not U.S. persons) to own or control ordinary shares that constitute 9.5% or more of the voting power of all of our ordinary shares. The votes conferred by such shares will be reduced by whatever amount is necessary so that after any such reduction the votes conferred by such shares will constitute 9.5% of the total voting power of all ordinary shares entitled to vote generally. The primary purpose of this restriction is to reduce the likelihood that we will be deemed a “controlled foreign corporation” within the meaning of Internal Revenue Code of 1986, as amended, or the Code, for U.S. federal tax purposes. However, this limit may also have the effect of deterring purchases of large blocks of our ordinary shares or proposals to acquire us, even if some or a majority of our shareholders might deem these purchases or acquisition proposals to be in their best interests. In addition, our bye-laws provide for a classified board, whose members may be removed by our shareholders only for cause by a majority vote, and contain restrictions on the ability of shareholders to nominate persons to serve as directors, submit resolutions to a shareholder vote and request special general meetings.

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These bye-law provisions make it more difficult to acquire control of us by means of a tender offer, open market purchase, proxy contest or otherwise. These provisions may encourage persons seeking to acquire control of us to negotiate with our directors, which we believe would generally best serve the interests of our shareholders. However, these provisions may have the effect of discouraging a prospective acquirer from making a tender offer or otherwise attempting to obtain control of us. In addition, these bye-law provisions may prevent the removal of our current board of directors and management. To the extent these provisions discourage takeover attempts, they may deprive shareholders of opportunities to realize takeover premiums for their shares or may depress the market price of the shares.

There are regulatory limitations on the ownership and transfer of our ordinary shares.

Insurance laws and regulations in the jurisdictions in which our insurance and reinsurance subsidiaries operate require prior notices or regulatory approval of changes in control of an insurer or its holding company. Different jurisdictions define changes in control differently, and generally any purchaser of 10% or more of our ordinary shares could become subject to regulation and required to file certain notices and reports with the applicable insurance authorities (although in certain jurisdictions these obligations apply to a purchaser of 5% or more of our ordinary shares). These laws may discourage potential acquisition proposals and may delay, deter or prevent a change in control of us, including transactions that some shareholders might consider to be desirable.

The market value of our ordinary shares may decline if large numbers of shares are sold, including pursuant to existing registration rights.

We have a registration rights agreement with Mr. Silvester, Trident and certain other of our shareholders. This agreement provides that Mr. Silvester and Trident may request that we effect a registration under the Securities Act of 1933, as amended (or the Securities Act) of certain of their ordinary shares. In addition, they and the other shareholders party to the agreement have “piggyback” registration rights, which may result in their participation in an offering initiated by us. We have also entered into a registration rights agreement with affiliates of Goldman, Sachs & Co. in connection with our private placement in 2011, which provides that these investors may make two requests that we effect a registration under the Securities Act of the ordinary shares and non-voting ordinary shares issued to them in the private placement. These investors also have “piggyback” registration rights with respect to our registration of ordinary shares for our own account or for the account of one or more of our shareholders.

As of December 31, 2012, an aggregate of approximately 2.6 million ordinary shares held by Mr. Silvester and Trident and 665,529 ordinary shares and 2,725,637 non-voting ordinary shares held by affiliates of Goldman, Sachs & Co. are subject to these agreements. By exercising their registration rights, these holders could cause a large number of ordinary shares to be registered and generally become freely tradable without restrictions under the Securities Act immediately upon the effectiveness of the registration. Our ordinary shares have in the past been, and may from time to time continue to be, thinly traded, and significant sales, pursuant to the existing registration rights or otherwise, could adversely affect the market price for our ordinary shares and impair our ability to raise capital through offerings of our equity securities.

Because we are incorporated in Bermuda, it may be difficult for shareholders to serve process or enforce judgments against us or our directors and officers.

We are a Bermuda company. In addition, certain of our officers and directors reside in countries outside the United States. All or a substantial portion of our assets and the assets of these officers and directors are or may be located outside the United States. Investors may have difficulty effecting service of process within the United States on our directors and officers who reside outside the United States or recovering against us or these directors and officers on judgments of U.S. courts based on civil liabilities provisions of the U.S. federal securities laws even though we have appointed an agent in the United States to receive service of process.

Further, no claim may be brought in Bermuda against us or our directors and officers for violation of U.S. federal securities laws, as such laws do not have force of law in Bermuda. A Bermuda court may, however,

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impose civil liability, including the possibility of monetary damages, on us or our directors and officers if the facts alleged in a complaint constitute or give rise to a cause of action under Bermuda law.

We believe that there is doubt as to whether the courts of Bermuda would enforce judgments of U.S. courts obtained in actions against us or our directors and officers, as well as our independent auditors, predicated upon the civil liability provisions of the U.S. federal securities laws or original actions brought in Bermuda against us or these persons predicated solely upon U.S. federal securities laws. Further, there is no treaty in effect between the United States and Bermuda providing for the enforcement of judgments of U.S. courts, and there are grounds upon which Bermuda courts may not enforce judgments of U.S. courts.

Some remedies available under the laws of U.S. jurisdictions, including some remedies available under the U.S. federal securities laws, may not be allowed in Bermuda courts as contrary to that jurisdiction's public policy. Because judgments of U.S. courts are not automatically enforceable in Bermuda, it may be difficult for you to recover against us based upon such judgments.

Shareholders who own our ordinary shares may have more difficulty in protecting their interests than shareholders of a U.S. corporation.

The Bermuda Companies Act, or the Companies Act, which applies to us, differs in certain material respects from laws generally applicable to U.S. corporations and their shareholders. As a result of these differences, shareholders who own our shares may have more difficulty protecting their interests than shareholders who own shares of a U.S. corporation. For example, class actions and derivative actions are generally not available to shareholders under Bermuda law. Under Bermuda law, only shareholders holding 5% or more of our outstanding ordinary shares or numbering 100 or more are entitled to propose a resolution at our general meeting.

We do not intend to pay cash dividends on our ordinary shares.

We do not intend to pay a cash dividend on our ordinary shares. Rather, we intend to use any retained earnings to fund the development and growth of our business. From time to time, our board of directors will review our alternatives with respect to our earnings and seek to maximize value for our shareholders. In the future, we may decide to commence a dividend program for the benefit of our shareholders. Any future determination to pay dividends will be at the discretion of our board of directors and will be limited by our position as a holding company that lacks direct operations, the results of operations of our subsidiaries, our financial condition, cash requirements and prospects and other factors that our board of directors deems relevant. In addition, there are significant regulatory and other constraints that could prevent us from paying dividends in any event. As a result, capital appreciation, if any, on our ordinary shares may be your sole source of gain for the foreseeable future.

Our board of directors may decline to register a transfer of our ordinary shares under certain circumstances.

Our board of directors may decline to register a transfer of ordinary shares under certain circumstances, including if it has reason to believe that any non-de minimis adverse tax, regulatory or legal consequences to us, any of our subsidiaries or any of our shareholders may occur as a result of such transfer. Further, our bye-laws provide us with the option to repurchase, or to assign to a third party the right to purchase, the minimum number of shares necessary to eliminate any such non-de minimis adverse tax, regulatory or legal consequence. In addition, our board of directors may decline to approve or register a transfer of shares unless all applicable consents, authorizations, permissions or approvals of any governmental body or agency in Bermuda, the United States or any other applicable jurisdiction required to be obtained prior to such transfer shall have been obtained. The proposed transferor of any shares will be deemed to own those shares for dividend, voting and reporting purposes until a transfer of such shares has been registered on our shareholders register.

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It is our understanding that while the precise form of the restrictions on transfer contained in our bye-laws is untested, as a matter of general principle, restrictions on transfers are enforceable under Bermuda law and are not uncommon. These restrictions on transfer may also have the effect of delaying, deferring or preventing a change in control.

Risks Relating to Taxation

We might incur unexpected U.S., U.K. or Australia tax liabilities if companies in our group that are incorporated outside those jurisdictions are determined to be carrying on a trade or business there.

We and a number of our subsidiaries are companies formed under the laws of Bermuda or other jurisdictions that do not impose income taxes; it is our contemplation that these companies will not incur substantial income tax liabilities from their operations. Because the operations of these companies generally involve, or relate to, the insurance or reinsurance of risks that arise in higher tax jurisdictions, such as the United States, United Kingdom and Australia, it is possible that the taxing authorities in those jurisdictions may assert that the activities of one or more of these companies creates a sufficient nexus in that jurisdiction to subject the company to income tax there. There are uncertainties in how the relevant rules apply to insurance businesses, and in our eligibility for favorable treatment under applicable tax treaties. Accordingly, it is possible that we could incur substantial unexpected tax liabilities.

U.S. persons who own our ordinary shares might become subject to adverse U.S. tax consequences as a result of “related person insurance income,” or RPII, if any, of our non-U.S. insurance company subsidiaries.

If the RPII rules of the Code were to apply to us, a U.S. person who owns our ordinary shares directly or indirectly through foreign entities on the last day of the taxable year would be required to include in income for U.S. federal income tax purposes the shareholder’s pro rata share of our non-U.S. subsidiaries’ RPII for the entire taxable year, determined as if that RPII were distributed proportionately to the U.S. shareholders at that date regardless whether any actual distribution is made. In addition, any RPII that is includible in the income of a U.S. tax-exempt organization would generally be treated as unrelated business taxable income. Although we and our subsidiaries intend to generally operate in a manner so as to qualify for certain exceptions to the RPII rules, there can be no assurance that these exceptions will be available. Accordingly, there can be no assurance that U.S. persons who own our ordinary shares will not be required to recognize gross income inclusions attributable to RPII.

In addition, the RPII rules provide that if a shareholder who is a U.S. person disposes of shares in a foreign insurance company that has RPII and in which U.S. persons collectively own 25% or more of the total combined voting power of all classes of stock entitled to vote, or the total value of the stock, any gain from the disposition will generally be treated as dividend income to the extent of the shareholder’s share of the corporation’s undistributed earnings and profits that were accumulated during the period that the shareholder owned the shares (whether or not those earnings and profits are attributable to RPII). Such a shareholder would also be required to comply with certain reporting requirements, regardless of the amount of shares owned by the shareholder. These rules should not apply to dispositions of our ordinary shares because we will not be directly engaged in the insurance business. The RPII rules, however, have not been interpreted by the courts or the U.S. Internal Revenue Service, or the IRS, and regulations interpreting the RPII rules exist only in proposed form. Accordingly, there is no assurance that our views as to the inapplicability of these rules to a disposition of our ordinary shares will be accepted by the IRS or a court.

U.S. persons who own our ordinary shares would be subject to adverse tax consequences if we or one or more of our non-U.S. subsidiaries were considered a “passive foreign investment company,” or PFIC, for U.S. federal income tax purposes.

We believe that we and our non-U.S. subsidiaries will not be PFICs for U.S. federal income tax purposes for the current year. Moreover, we do not expect to conduct our activities in a manner that will cause us or any of our

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non-U.S. subsidiaries to become a PFIC in the future. However, there can be no assurance that the IRS will not challenge this position or that a court will not sustain such challenge. Accordingly, it is possible that we or one or more of our non-U.S. subsidiaries might be deemed a PFIC by the IRS or a court for the current year or any future year. If we or one or more of our non-U.S. subsidiaries were a PFIC, it could have material adverse tax consequences for an investor that is subject to U.S. federal income taxation, including subjecting the investor to a substantial acceleration and/or increase in tax liability. There are currently no regulations regarding the application of the PFIC provisions of the Code to an insurance company, so the application of those provisions to insurance companies remains unclear in certain respects.

U.S. persons who own 10 percent or more of our shares may be subject to taxation under the “controlled foreign corporation,” or CFC, rules.

A U.S. person that is a “10% U.S. Shareholder” of a non-U.S. corporation (i.e., a U.S. person who owns or is treated as owning at least 10% of the total combined voting power of all classes of stock entitled to vote of the non-U.S. corporation) that is a CFC for an uninterrupted period of 30 days or more during a taxable year, that owns shares in the CFC directly or indirectly through non-U.S. entities on the last day of the CFC’s taxable year, must include in its gross income for U.S. federal income tax purposes its pro rata share of the CFC’s “subpart F income,” even if the subpart F income is not distributed. “Subpart F income” of a non-U.S. insurance corporation typically includes foreign personal holding company income (such as interest, dividends and other types of passive income), as well as insurance and reinsurance income (including underwriting and investment income).

A non-U.S. corporation is considered a CFC if “10% U.S. Shareholders” own (directly, indirectly through non-U.S. entities or by attribution by application of the constructive ownership rules of section 958(b) of the Code (i.e., “constructively”)) more than 50% of the total combined voting power of all classes of stock of that foreign corporation, or the total value of all stock of that foreign corporation. For purposes of taking into account insurance income, a CFC also includes a non-U.S. insurance company in which more than 25% of the total combined voting power of all classes of stock (or more than 25% of the total value of the stock) is owned directly, indirectly through non-U.S. entities or constructively by 10% U.S. Shareholders on any day during the taxable year of such corporation, if the gross amount of premiums or other consideration for the reinsurance or the issuing of insurance exceeds 75% of the gross amount of all premiums or other consideration in respect of all risks.

We believe that because of the dispersion of our share ownership, and provisions in our organizational documents that limit voting power, no U.S. person (including our subsidiary Enstar USA, Inc., which owns certain of our non-voting shares) should be treated as owning (directly, indirectly through non-U.S. entities or constructively) 10% or more of the total combined voting power of all classes of our shares. However, the IRS could successfully challenge the effectiveness of these provisions in our organizational documents. Accordingly, no assurance can be given that a U.S. person who owns our shares will not be characterized as a 10% U.S. Shareholder.

Changes in U.S. federal income tax law could materially affect us or our shareholders.

Legislation has been proposed on various occasions to eliminate perceived tax advantages of insurance companies that have legal domiciles outside the United States but have certain U.S. connections. For example, legislation has been proposed to disallow the deduction of reinsurance premiums paid by U.S. companies to certain non-U.S. affiliates, although no such provision has been enacted to date. It is possible that such legislation could be enacted or similar legislation could be introduced in and enacted by the current Congress or future Congresses and enactment of some version of such legislation, or other changes in U.S. tax laws, regulations or interpretations thereof, could have an adverse impact on us or our shareholders.

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UNRESOLVED**

None

ITEM 2. PROPERTIES.

We lease approximately 10,300 square feet of office space in Hamilton, Bermuda, where our principal executive office is located. We also lease office space in a number of U.S. states, the United Kingdom (including in London and Guildford), Australia, Ireland and Sweden. We renew and enter into leases in the ordinary course of our business.

We believe that this office space is sufficient for us to conduct our current operations for the foreseeable future, although in connection with future acquisitions from time to time, we may expand to different locations or increase space to support any such growth.

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ITEM 3. PROCEEDINGS LEGAL

In connection with our acquisition of SeaBright, two purported class action lawsuits were filed against SeaBright, the members of its board of directors, our merger subsidiary (AML Acquisition, Corp.) and, in one of the cases, us. The first suit was filed September 13, 2012 in the Superior Court of the State of Washington and the second suit was filed September 20, 2012 in the Court of Chancery of the State of Delaware. The lawsuits allege, among other things, that SeaBright's directors breached their fiduciary duties when negotiating, approving and seeking stockholder approval of the Merger, and that SeaBright and we or our merger subsidiary aided and abetted the alleged breaches of fiduciary duties. In the suits, plaintiffs sought to enjoin defendants from taking any action to consummate the transactions contemplated by the Merger Agreement, as well as monetary damages, including attorneys' fees and expenses. We believe these suits are without merit. Nevertheless, in order to avoid the potential cost and distraction of continued litigation and to eliminate any risk of delay to the closing of the Merger, we, SeaBright and the SeaBright director defendants agreed in principle to settle the two lawsuits, without admitting any liability or wrongdoing. The settlement required SeaBright to make supplemental information available to its stockholders through a filing of a Current Report on Form 8-K with the U.S. Securities and Exchange Commission. The settlement did not change the amount of the merger consideration that we paid to SeaBright's stockholders in any way, nor did it alter any deal terms. The settlement is subject to execution and delivery of definitive documentation, approval by the Washington court of the settlement and approval by the Delaware court of the dismissal of the Delaware suit. If the settlement becomes effective, both lawsuits will be dismissed.

We are, from time to time, involved in various legal proceedings in the ordinary course of business, including litigation regarding claims. We do not believe that the resolution of any currently pending legal proceedings, either individually or taken as a whole, will have a material adverse effect on our business, results of operations or financial condition. Nevertheless, we cannot assure you that lawsuits, arbitrations or other litigation will not have a material adverse effect on our business, financial condition or results of operations. We anticipate that, similar to the rest of the insurance and reinsurance industry, we will continue to be subject to litigation and arbitration proceedings in the ordinary course of business, including litigation generally related to the scope of coverage with respect to asbestos and environmental claims. There can be no assurance that any such future litigation will not have a material adverse effect on our business, financial condition or results of operations.

ITEM 4. SAFETY DISCLOSURES MINE

Not applicable

PART II

ITEM 5. MARKET FOR THE REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Our ordinary shares trade on the NASDAQ Global Select Market under the ticker symbol ESGR.

Price Range of Ordinary Shares

The price range per ordinary share presented below represents the highest and lowest sales prices for our ordinary shares on the NASDAQ Global Select Market during each quarter of the two most recent years.

	2012		2011	
	High	Low	High	Low
First Quarter	\$101.70	\$94.94	\$100.69	\$80.20
Second Quarter	\$101.00	\$89.00	\$114.56	\$96.23
Third Quarter	\$105.44	\$90.51	\$110.00	\$86.55
Fourth Quarter	\$112.06	\$97.00	\$101.26	\$87.53

Holdings

On February 24, 2013, there were 2,091 shareholders of record of our voting ordinary shares and 5 shareholders of record of our non-voting ordinary shares. The number of shareholders of record of our voting ordinary shares does not represent the actual number of beneficial owners of our voting ordinary shares because shares are frequently held in "street name" by securities dealers and others for the benefit of beneficial owners who may vote the shares.

Dividends

We are a holding company and have no direct operations. Our ability to pay dividends or distributions depends almost exclusively on the ability of our subsidiaries to pay dividends to us. Under applicable law, our subsidiaries may not declare or pay a dividend if there are reasonable grounds for believing that they are, or would after the payment be, unable to pay their liabilities as they become due, or the realizable value of their assets would thereby be less than the aggregate of their liabilities and their issued share capital and share premium accounts. Additional restrictions apply to the ability of our insurance and reinsurance subsidiaries to distribute capital and pay dividends, as described in "Business — Regulation" beginning on page 20. In addition, our outstanding credit facilities contain restrictions on our ability and certain of our subsidiaries' ability to pay dividends.

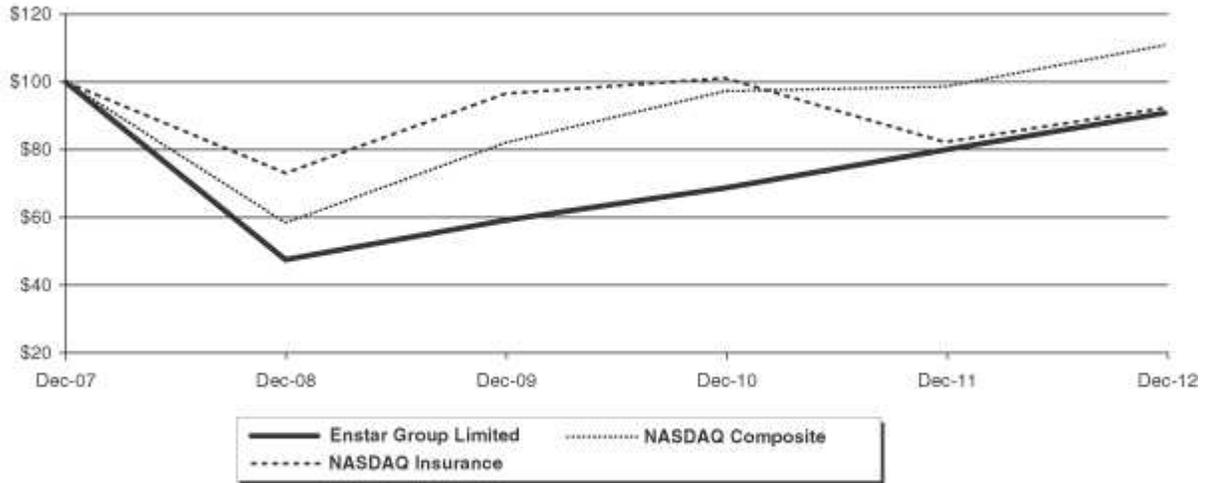
We do not intend to pay a dividend on our ordinary shares, and we did not pay any dividends on our ordinary shares in 2012 or 2011. Rather, we intend to reinvest distributions from our subsidiaries back into the company. For a further description, see "Risk Factors — Risks Relating to Ownership of Our Ordinary Shares — We do not intend to pay cash dividends on our ordinary shares" beginning on page 38.

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Company Stock Performance

A graph reflecting our stock performance is included below. The graph reflects the investment of \$100.00 on December 31, 2007 (assuming the reinvestment of dividends) in our ordinary shares, the NASDAQ Composite Index, and the NASDAQ Insurance Index.

COMPARISON OF 5 YEAR CUMULATIVE TOTAL RETURN*
Among Enstar Group Limited, the NASDAQ Composite Index,
and the NASDAQ Insurance Index



Source: Research Data Group, Inc.

* \$100 invested on December 31, 2007 in stock or index, including reinvestment of dividends.
Fiscal year ending December 31.

	12/07	12/08	12/09	12/10	12/11	12/12
Enstar Group Limited	\$100.00	\$48.31	\$59.65	\$ 69.09	\$80.22	\$ 91.47
NASDAQ Composite	\$100.00	\$59.03	\$82.25	\$ 97.32	\$98.63	\$110.78
NASDAQ Insurance	\$100.00	\$73.55	\$96.65	\$101.13	\$82.55	\$ 92.49

Issuer Purchases of Equity Securities

None.

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ITEM 6. SELECTED FINANCIAL DATA

The following selected historical financial information for each of the past five fiscal years has been derived from our audited historical financial statements. This information is only a summary and should be read in conjunction with “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our audited consolidated financial statements and notes thereto included elsewhere in this annual report. The results of operations for past accounting periods are not necessarily indicative of the results to be expected for any future accounting period.

Since our inception, we have made several acquisitions which impact the comparability between periods of the information reflected below. See “Business — Recent Transactions,” beginning on page 6 for information about our acquisitions.

	Years Ended December 31,				
	2012	2011	2010	2009	2008
	(in thousands of U.S. dollars, except share and per share data)				
Summary Consolidated Statements of					
Earnings Data:					
Consulting fees	\$ 8,570	\$ 17,858	\$ 23,015	\$ 16,104	\$ 25,151
Net investment income and net realized and unrealized gains (losses)	151,372	77,890	113,043	85,608	24,946
Gain on bargain purchase	—	13,105	—	—	—
Net reduction in ultimate loss and loss adjustment expense liabilities	241,764	295,447	311,834	259,627	242,104
Total other expenses	(210,187)	(195,842)	(242,865)	(184,331)	(194,837)
Share of earnings (loss) of equity method investee	—	—	10,704	—	(201)
Net earnings from continuing operations	191,519	208,458	215,731	177,008	97,163
Extraordinary gain — Negative goodwill	—	—	—	—	50,280
Net earnings	191,519	208,458	215,731	177,008	147,443
Less: Net earnings attributable to noncontrolling interests (including share of extraordinary gain of \$15,084 in 2008)	(23,502)	(54,765)	(41,645)	(41,798)	(65,892)
Net earnings attributable to Enstar Group Limited	<u>\$ 168,017</u>	<u>\$ 153,693</u>	<u>\$ 174,086</u>	<u>\$ 135,210</u>	<u>\$ 81,551</u>
Per Share Data(1):					
Earnings per share before extraordinary gain attributable to Enstar Group Limited ordinary shareholders — basic	\$ 10.22	\$ 11.03	\$ 12.91	\$ 10.01	\$ 3.67
Extraordinary gain per share attributable to Enstar Group Limited ordinary shareholders — basic	—	—	—	—	2.78
Net earnings per share attributable to Enstar Group Limited ordinary shareholders — basic	<u>\$ 10.22</u>	<u>\$ 11.03</u>	<u>\$ 12.91</u>	<u>\$ 10.01</u>	<u>\$ 6.45</u>
Earnings per share before extraordinary gain attributable to Enstar Group Limited ordinary shareholders — diluted	\$ 10.10	\$ 10.81	\$ 12.66	\$ 9.84	\$ 3.59
Extraordinary gain per share attributable to Enstar Group Limited ordinary shareholders — diluted	—	—	—	—	2.72
Net earnings per share attributable to Enstar Group Limited ordinary shareholders — diluted	<u>\$ 10.10</u>	<u>\$ 10.81</u>	<u>\$ 12.66</u>	<u>\$ 9.84</u>	<u>\$ 6.31</u>
Weighted average ordinary shares outstanding — basic	16,441,461	13,930,221	13,489,221	13,514,207	12,638,333
Weighted average ordinary shares outstanding — diluted	16,638,021	14,212,440	13,751,256	13,744,661	12,921,475

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	December 31,				
	2012	2011	2010	2009	2008
(in thousands of U.S. dollars, except per share data)					
Summary Balance Sheet Data:					
Total investments	\$ 3,352,875	\$ 3,335,199	\$ 2,429,106	\$ 1,620,992	\$ 1,278,055
Cash and cash equivalents	954,855	1,223,665	1,455,354	1,700,105	2,209,783
Reinsurance balances recoverable	1,122,919	1,789,582	961,442	638,262	672,696
Total assets	5,882,243	6,606,138	5,235,904	4,170,842	4,358,151
Loss and loss adjustment expense liabilities	3,661,154	4,282,916	3,291,275	2,479,136	2,798,287
Loans payable	107,430	242,710	245,278	254,961	391,534
Total Enstar Group Limited shareholders' equity	1,553,755	1,386,066	948,421	801,881	615,209
Book Value per Share(2):					
Basic	\$ 94.29	\$ 84.56	\$ 73.29	\$ 59.05	\$ 46.14
Diluted	\$ 93.30	\$ 82.97	\$ 71.68	\$ 58.06	\$ 45.18
Shares Outstanding:					
Basic	16,477,809	16,391,076	12,940,660	13,579,695	13,333,528
Diluted	16,653,120	16,705,767	13,231,320	13,811,247	13,616,844

- (1) Earnings per share is a measure based on net earnings divided by weighted average ordinary shares outstanding. Basic earnings per share is defined as net earnings available to ordinary shareholders divided by the weighted average number of ordinary shares outstanding for the period, giving no effect to dilutive securities. Diluted earnings per share is defined as net earnings available to ordinary shareholders divided by the weighted average number of shares and share equivalents outstanding calculated using the treasury stock method for all potentially dilutive securities. When the effect of dilutive securities would be anti-dilutive, these securities are excluded from the calculation of diluted earnings per share.
- (2) Basic book value per share is defined as total Enstar Group Limited shareholders' equity available to ordinary shareholders divided by the number of ordinary shares outstanding as at the end of the period, giving no effect to dilutive securities. Diluted book value per share is defined as total shareholders' equity available to ordinary shareholders divided by the number of ordinary shares and ordinary share equivalents outstanding at the end of the period, calculated using the treasury stock method for all potentially dilutive securities.

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ITEM 7. *MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS*

Cautionary Statement Regarding Forward-Looking Statements

This annual report and the documents incorporated by reference contain statements that constitute “forward-looking statements” within the meaning of Section 21E of the Exchange Act, with respect to our financial condition, results of operations, business strategies, operating efficiencies, competitive positions, growth opportunities, plans and objectives of our management, as well as the markets for our ordinary shares and the insurance and reinsurance sectors in general. Statements that include words such as “estimate,” “project,” “plan,” “intend,” “expect,” “anticipate,” “believe,” “would,” “should,” “could,” “seek,” “may” and similar statements of a future or forward-looking nature identify forward-looking statements for purposes of the federal securities laws or otherwise. All forward-looking statements are necessarily estimates or expectations, and not statements of historical fact, reflecting the best judgment of our management and involve a number of risks and uncertainties that could cause actual results to differ materially from those suggested by the forward-looking statements. These forward looking statements should, therefore, be considered in light of various important factors, including those set forth in this annual report and the documents incorporated by reference.

Factors that could cause actual results to differ materially from those suggested by the forward-looking statements include:

- risks associated with implementing our business strategies and initiatives;
- risks that we may require additional capital in the future, which may not be available or may be available only on unfavorable terms;
- the adequacy of our loss reserves and the need to adjust such reserves as claims develop over time;
- risks relating to the availability and collectability of our reinsurance;
- changes and uncertainty in economic conditions, including interest rates, inflation, currency exchange rates, equity markets and credit conditions, which could affect our investment portfolio, our ability to finance future acquisitions and our profitability;
- losses due to foreign currency exchange rate fluctuations;
- increased competitive pressures, including the consolidation and increased globalization of reinsurance providers;
- emerging claim and coverage issues;
- lengthy and unpredictable litigation affecting assessment of losses and/or coverage issues;
- continued availability of exit and finality opportunities provided by solvent schemes of arrangement;
- loss of key personnel;
- the ability of our subsidiaries to distribute funds to us;
- changes in our plans, strategies, objectives, expectations or intentions, which may happen at any time at management’s discretion;
- operational risks, including system or human failures and external hazards;
- the risk that ongoing or future industry regulatory developments will disrupt our business, or mandate changes in industry practices in ways that increase our costs, decrease our revenues or require us to alter aspects of the way we do business;
- risks relating to our acquisitions, including our ability to successfully price acquisitions, evaluate opportunities and address operational challenges;

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- risks relating to our ability to obtain regulatory approvals, including the timing, terms and conditions of any such approvals, and to satisfy other closing conditions in connection with our acquisition agreements, which could affect our ability to complete acquisitions;
- risks relating to our ability to structure our investments in a manner that recognizes our liquidity needs;
- tax, regulatory or legal restrictions or limitations applicable to us or the insurance and reinsurance business generally;
- changes in tax laws or regulations applicable to us or our subsidiaries, or the risk that we or one of our non-U.S. subsidiaries become subject to significant, or significantly increased, income taxes in the United States or elsewhere;
- changes in Bermuda law or regulation or the political stability of Bermuda; and
- changes in accounting policies or practices.

The factors listed above should be not construed as exhaustive and should be read in conjunction with the Risk Factors that are included in Item 1A above. We undertake no obligation to publicly update or review any forward looking statement, whether to reflect any change in our expectations with regard thereto, or as a result of new information, future developments or otherwise, except as required by law.

Business Overview

We are a Bermuda-based company that acquires and manages insurance and reinsurance companies in run-off and portfolios of insurance and reinsurance business in run-off, and provides management, consulting and other services to the insurance and reinsurance industry.

Since our formation in August 2001, we have acquired 36 insurance and reinsurance companies and 21 portfolios of insurance and reinsurance business and are now administering those businesses in run-off.

We operate our business internationally through our insurance and reinsurance subsidiaries and our consulting subsidiaries in Bermuda, the United States, the United Kingdom, Australia and Europe. We had a total of 383 employees as at December 31, 2012.

Key Performance Indicators

The financial measure that we believe is most meaningful in analyzing our performance and assessing whether we are achieving our objectives is growth in book value per share. As of December 31, 2012 and 2011, book value per share and diluted book value per share were as follows:

	As of December 31, 2012	As of December 31, 2011
Book value per share	\$ 94.29	\$ 84.56
Diluted book value per share	\$ 93.30	\$ 82.97

Our principal business consists of acquiring and managing property and casualty insurance and reinsurance companies that have ceased underwriting new business — meaning they are in “run-off.” We believe growth in our net book value is driven primarily by growth in our net earnings, which is in turn driven in large part by successfully completing new acquisitions and effectively managing companies and portfolios of business that we previously acquired. We generate our earnings in the following ways:

- settling net loss reserves of acquired businesses below their acquired fair value;
- generating investment income on the cash and investment portfolios of acquired businesses;

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- in some cases, purchasing companies at a discount to the fair value of the assets acquired, which has resulted in the recording of gains on bargain purchases; and
- providing expert run-off management services for a fixed and/or incentive-based fee in cases where vendors are not ready or able to dispose of their run-off operations, but require third-party services to stabilize the business and, where possible, add value to the core business.

During the year ended December 31, 2012, our book value per share on a basic and diluted basis increased by 11.5% and 12.5%, respectively. The increase in both basic and diluted book value per share was principally due to our net earnings for the year.

Drivers of Profitability

Net Reduction in Ultimate Loss and Loss Adjustment Expense Liabilities

Our insurance-related earnings comprise primarily reductions, or potential increases, of net ultimate loss and loss adjustment expense liabilities. These liabilities are comprised of outstanding loss or case reserves (or OLR), losses incurred but not reported (or IBNR) and unallocated loss adjustment expenses (or ULAE) reserves.

Net ultimate loss and loss adjustment expense liabilities established by management utilizing analysis performed by independent actuaries prepared on an annual basis are reviewed by our management each quarter. Reserves reflect management's best estimate of the remaining unpaid portion of these liabilities. Prior period estimates of net ultimate loss and loss adjustment expense liabilities may change as our management considers the combined impact of commutations, policy buy-backs, settlement of losses on carried reserves and the trend of incurred loss development compared to prior forecasts. Net reductions in ultimate loss and loss adjustment expense liabilities are reported as negative expenses by us. For more information on how the reserves are calculated, see "— Critical Accounting Policies — Loss and Loss Adjustment Expenses" on page 54.

Net Investment Income and Net Realized and Unrealized Gains

Our net investment income is a function of the average invested assets and the average yield that we earn on those invested assets. The investment yield on our fixed maturity investments is a function of market interest rates as well as the credit quality and duration of our fixed maturities portfolio. Our net realized and unrealized gains or losses on investments includes realized gains and losses on our fixed maturity securities and changes in fair value of our trading securities and other investments. We recognize realized gains and losses at the time of sale, and these gains and losses, along with the changes in fair value of our trading securities, reflect the results of changing market conditions, including changes in market interest rates and changes in the market's perception of the credit quality of our fixed maturity holdings. The change in fair value of other investments is principally a function of the success of the funds in which we are invested, which depends on, among other things, the underlying strategies of the funds, the ability of the fund managers to execute the fund strategies and general economic and investment market conditions.

Consulting Fee Income

We generate consulting fees based on a combination of fixed and success-based fee arrangements. Consulting income will vary from period to period depending on the timing of completion of success-based fee arrangements. Success-based fees are recorded when targets related to overall project completion or profitability goals are achieved.

Expenses

Salaries and Benefits

We are a service-based company and, as such, employee salaries and benefits are our largest expense. We have experienced significant increases in our salaries and benefits expenses as we have grown our operations, and we expect that trend to continue if we are able to expand our operations successfully.

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We provide for the annual grant of bonus compensation to our officers and employees, including our senior executive officers. Bonus awards are based on a percentage of our consolidated net after-tax profits. The percentage is 15% unless our Compensation Committee exercises its discretion to change the percentage no later than 30 days after our year end. Bonus awards are payable in cash, ordinary shares or a combination of both.

General and Administrative Expenses

General and administrative expenses include rent and rent-related costs, professional fees (legal, investment, audit and actuarial) and travel expenses. We have operations in multiple jurisdictions and our employees travel frequently in connection with the search for acquisition opportunities and in the general management of the business.

Income Taxes

We have operations in multiple jurisdictions where our subsidiaries are subject to taxation. Income tax expense is generated through our foreign operations outside of Bermuda. Our income tax expense will fluctuate depending on the geographic distribution of pre-tax net income.

Net Earnings Attributable to Noncontrolling Interest

Net earnings attributable to noncontrolling interest relates to the share of earnings of seven of our subsidiaries that is not attributable to us because a third party has an interest in such subsidiaries.

Critical Accounting Policies

We believe the following accounting policies affect the more significant judgments and estimates used in the preparation of our financial statements.

Accounting for Acquisitions — Fair Value Measurement

We use the purchase method in accounting for acquisitions. The difference between the fair value of net assets acquired and purchase price is recorded as goodwill.

The most significant liability of an acquired company is typically the liability for loss and loss adjustment expenses, and the most significant asset is typically the asset related to any reinsurance recoverable on these liabilities that may be contractually due to the acquired entity. The market for acquisition of run-off companies is not sufficiently active and transparent to enable us to identify reliable, market exit values for acquired assets and liabilities. Accordingly, consistent with provisions of U.S. GAAP, we have developed internal models that we believe allow us to determine fair values that are reasonable proxies for market exit values. We are familiar with the major participants in the acquisition run-off market and believe that the key assumptions we make in valuing acquired assets and liabilities are consistent with the kinds of assumptions made by such market participants. Furthermore, in our negotiation of purchase price with sellers, it is frequently clear to us that other bidders in the market are using models and assumptions similar in nature to ours during the competitive bid process. The majority of acquisitions are completed following a public tender process whereby the seller invites market participants to provide bids for the target acquisition.

We account for acquisitions using the purchase method of accounting, which requires that the acquirer record the assets and liabilities acquired at their estimated fair value. The fair values of each of the reinsurance assets and liabilities acquired are derived from probability-weighted ranges of the associated projected cash flows, based on actuarially prepared information and management's run-off strategy. Our run-off strategy, as well as that of other run-off market participants, is expected to be different from the seller's as generally sellers are not specialized in running off insurance and reinsurance liabilities whereas we and other market participants do specialize in such run-offs.

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The key assumptions used by us and, we believe, by other run-off market participants in the fair valuation of acquired companies are (i) the projected payout, timing and amounts of claims liabilities; (ii) the related projected timing and amount of reinsurance collections; (iii) a risk-free discount rate, which is applied to determine the present value of the future cash flows; (iv) the estimated unallocated loss adjustment expenses to be incurred over the life of the run-off; (v) the impact of any accelerated run-off strategy; and (vi) an appropriate risk margin.

The probability-weighted projected cash flows of the acquired company are based on projected claims payouts provided by the seller predominantly in the form of the seller's most recent independent actuarial reserve report. In the absence of the seller's actuarial reserve report, our independent actuaries will determine the estimated claims payout.

With respect to our U.K., Bermudian and Australian insurance and reinsurance subsidiaries, we are able to pursue strategies to achieve complete finality and conclude the run-off of a company by promoting solvent schemes of arrangement. Solvent schemes of arrangement are a popular means of achieving financial certainty and finality for insurance and reinsurance companies incorporated or managed in the U.K., Bermuda and Australia by making a one-time full and final settlement of an insurance and reinsurance company's liabilities to policyholders. On acquisition of a U.K., Bermudian or Australian company, the claims payout projection is weighted according to management's estimated probability of being able to complete a solvent scheme of arrangement. To the extent that solvent schemes of arrangement are not available to an acquired company, no weighting is applied to the projected claims payout.

On acquisition, we make a provision for unallocated loss adjustment expense liabilities. This provision considers the adequacy of the provision maintained and recorded by the seller in light of our run-off strategy and estimated unallocated loss adjustment expenses to be incurred over the life of the acquired run-off as projected by the seller's actuaries or, in their absence, our actuaries. To the extent that our estimate of the total unallocated loss adjustment expense provision is different from the seller's, an adjustment will be made. While it is our objective to accelerate the run-off by completing commutations of assumed and ceded business (which would have the effect of shortening the life, and therefore the cost, of the run-off), the success of this strategy is far from certain. Therefore, the estimates of unallocated loss adjustment expenses are based on running off the liabilities and assets over the actuarially projected life of the run-off. In those domiciles where solvent schemes of arrangement are available, management's estimates of the total unallocated loss adjustment expenses are probability-weighted in accordance with the estimated time that a solvent scheme of arrangement could be completed, which has the effect of reducing the period of the run-off and the related unallocated loss adjustment expenses. For those acquisitions in domiciles where solvent schemes of arrangement are not available, the unallocated loss adjustment expenses are estimated over the projected life of the run-off.

We believe that providing for unallocated loss adjustment expenses based on our run-off strategy is appropriate in determining the fair value of the assets and liabilities acquired in an acquisition of a run-off company. We believe that other participants in the run-off acquisition marketplace factor into the price to pay for an acquisition the estimated cost of running off the acquired company based on how that participant expects to manage the assets and liabilities.

The difference between the original carrying value of reinsurance liabilities and reinsurance assets acquired at the date of acquisition and the fair value is recorded as an intangible asset or other liability, which we refer to as the Fair Value Adjustment, or FVA. The FVA is amortized over the estimated payout period and adjusted for accelerations on commutation settlements or any other new information or subsequent change in circumstances after the date of acquisition. To the extent the actual payout experience after the acquisition is materially faster or slower than anticipated at the time of the acquisition, there is an adjustment to the estimated ultimate loss reserves, or there are changes in bad debt provisions or in estimates of future run-off costs following accelerated payouts, then the amortization of the FVA is accelerated or decelerated, as the case may be, to reflect such changes. The FVA is tested annually for impairment.

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Loss and Loss Adjustment Expenses

Our primary objective in running off the operations of acquired companies and portfolios of insurance and reinsurance business in run-off is to increase book value by settling loss reserves below their acquired fair value. The earnings created in each acquired company or portfolio of insurance and reinsurance business, together with the related decrease in loss reserves, lead to a reduction in the capital required for each company, thereby providing the ability to distribute both earnings and excess capital to the parent company.

To the extent that the nature of the acquired loss reserves are conducive to commutation, our aim is to settle the majority of the acquired loss reserves within a timeframe of approximately five to seven years from the date of acquisition. To the extent that acquired reserves are not conducive to commutation, we will instead adopt a disciplined claims management approach to pay only valid claims on a timely basis and endeavor to reduce the level of acquired loss adjustment expense provisions by withdrawing, where appropriate, from existing litigation and otherwise streamlining claims handling procedures.

By adopting either of the above run-off strategies, we would expect that over the targeted life of the run-off, acquired ultimate loss reserves would settle below their recorded fair value, resulting in reductions in ultimate loss and loss adjustment expense liabilities. There can be no assurance, however, that we will successfully implement our strategy.

Commutations of blocks of policies, along with disciplined claims management, have the potential to produce favorable claims development compared to established reserves. For each newly-acquired company, we determine a commutation strategy that broadly identifies commutation targets using the following criteria:

- Previous commutations completed by existing portfolio companies with policyholders of the newly-acquired company;
- Nature of liabilities;
- Size of incurred loss reserves;
- Recent loss development history; and
- Targets for claims audits.

Once commutation targets are identified, they are prioritized into target years of completion. At the beginning of each year, the approach to commutation negotiations is determined by the commutation team, including claims and exposure analysis and broker account reconciliations. On completion of this analysis, settlement parameters are set around incurred liabilities. Commutation discussions can take many months or even years to come to fruition. Commutation targets not completed in a particular year are re-prioritized for the following year.

Every commutation, irrespective of value, requires the approval of our Chief Financial Officer or one of our two Joint Chief Operating Officers. The impact of the commutation activity on the IBNR reserve is reflected as part of our annual actuarial reviews of reserves. However, if a significant commutation is completed during the year, loss reserves will be adjusted in the corresponding quarter to reflect management's then best estimate of the impact on remaining IBNR reserves.

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The following table provides a breakdown of gross loss and loss adjustment expense reserves by type of exposure as of December 31, 2012 and 2011:

	2012			2011		
	OLR	IBNR	Total	OLR	IBNR	Total
	(in thousands of U.S. dollars)					
Asbestos	\$ 179,917	\$ 355,006	\$ 534,923	\$ 207,288	\$ 386,147	\$ 593,435
Environmental	51,632	42,088	93,720	67,040	42,326	109,366
All other:						
General casualty	565,250	384,640	949,890	550,012	533,504	1,083,516
Workers compensation/personal accident	652,034	135,966	788,000	707,723	349,061	1,056,784
Marine, aviation and transit	163,367	26,898	190,265	238,209	43,686	281,895
Construction defect	92,279	150,520	242,799	120,258	182,583	302,841
Other	500,472	127,896	628,368	466,397	137,380	603,777
Total all other	1,973,402	825,920	2,799,322	2,082,599	1,246,214	3,328,813
Total	<u>\$ 2,204,951</u>	<u>\$ 1,223,014</u>	<u>\$ 3,427,965</u>	<u>\$ 2,356,927</u>	<u>\$ 1,674,687</u>	<u>\$ 4,031,614</u>
Unallocated loss adjustment expenses			233,189			251,302
Total			<u>\$ 3,661,154</u>			<u>\$ 4,282,916</u>

The following table provides a breakdown of loss and loss adjustment expense reserves (net of reinsurance balances recoverable) by type of exposure as of December 31, 2012 and 2011:

	2012		2011	
	Total Net Reserves	% of Total	Total Net Reserves	% of Total
	(in thousands of U.S. dollars)			
Asbestos	\$ 478,154	17.2%	\$ 528,398	18.2%
Environmental	79,397	2.9%	93,089	3.2%
All other:				
General casualty	728,976	26.2%	659,821	22.8%
Workers compensation/personal accident	451,980	16.2%	643,543	22.2%
Marine, aviation and transit	140,412	5.0%	171,664	5.9%
Construction defect	145,700	5.2%	184,419	6.4%
Other	527,127	18.9%	367,677	12.6%
Total all other	1,994,195	71.5%	2,027,124	69.9%
Unallocated loss adjustment expenses	233,189	8.4%	251,302	8.7%
Total	<u>\$2,784,935</u>	<u>100.0%</u>	<u>\$2,899,913</u>	<u>100.0%</u>

As of December 31, 2012, the IBNR reserves (net of reinsurance balances recoverable) accounted for \$939.7 million, or 33.7%, of our total net loss reserves. The reserve for IBNR (net of reinsurance balance recoverable) accounted for \$1,038.9 million, or 35.8%, of our total net loss reserves at December 31, 2011.

Annual Loss and Loss Adjustment Reviews

Because a significant amount of time can lapse between the assumption of risk, the occurrence of a loss event, the reporting of the event to an insurance or reinsurance company and the ultimate payment of the claim on the loss event, the liability for unpaid losses and loss adjustment expenses is based largely upon estimates.

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Our management must use considerable judgment in the process of developing these estimates. The liability for unpaid losses and loss adjustment expenses for property and casualty business includes amounts determined from loss reports on individual cases and amounts for IBNR reserves. Such reserves, including IBNR reserves, are estimated by management based upon loss reports received from ceding companies, supplemented by our own estimates of losses for which no ceding company loss reports have yet been received and the results of annual independent actuarial studies.

Loss advices or reports from ceding companies are generally provided via the placing broker and comprise treaty statements, individual claims files, electronic messages and large loss advices or cash calls. Large loss advices and cash calls are provided to us as soon as practicable after an individual loss or claim is made or settled by the insured. The remaining broker advices are issued monthly, quarterly or annually depending on the provisions of the individual policies or the ceding company's practice. For certain direct insurance policies where the claims are managed by Third Party Administrators (TPA's) and Managing General Agents (MGA's), loss bordereaux are received either monthly or quarterly depending on the arrangement with the TPA and MGA.

Where we provide reinsurance or retrocession reinsurance protection, the process of claim advice from the direct insurer to the reinsurers and/or retrocessionaires naturally involves more levels of communication, which inevitably creates delays or lags in the receipt of loss advice by the reinsurers/retrocessionaires relative to the date of first advice to the direct insurer. Certain types of exposure, typically latent health exposures such as asbestos-related claims, have inherently long reporting delays, in some cases many years, from the date a loss occurred to the manifestation and reporting of a claim and ultimately until the final settlement of the claim. For asbestos and environmental exposures, our actuaries apply explicit time lag assumptions in their reserving methodologies. This time lag varies by portfolio from one to five years depending on the relative mix of domicile, percentages of product mix of insurance, reinsurance and retrocessional reinsurance, primary insurance, excess reinsurance, reinsurance of direct and reinsurance of reinsurance within any given exposure category. Exposure portfolios written from a non-US domicile are assumed to have a greater time lag than portfolios written from a US-domicile. Portfolios with a larger proportion of reinsurance exposures are assumed to have a greater time-lag than portfolios with a larger proportion of insurance exposures.

An industry-wide weakness in cedant reporting affects the adequacy and accuracy of reserving for advised claims. We attempt to mitigate this inherent weakness as follows:

1. We closely monitor cedant loss reporting and, for those cedants identified as providing inadequate, untimely or unusual reporting of losses, we conduct, in accordance with the provisions of the insurance and reinsurance contracts, detailed claims audits at the insured's or reinsured's premises. Such claims audits have the benefit of validating advised claims, determining whether the cedant's loss reserving practices and reporting are adequate and identifying potential loss reserving issues of which our actuaries need to be made aware. Any required adjustments to advised claims reserves reported by cedants identified during the claims audits will be recorded as an adjustment to the advised case reserve.
2. Onsite claims audits are often supplemented by further reviews by our internal and external legal advisors to determine the reasonableness of advised case reserves and, if considered necessary, an adjustment to the reported case reserve will be recorded.
3. Our actuaries project expected paid and incurred loss development for each class of business, which is monitored on a quarterly basis. Should actual paid and incurred development differ significantly from the expected paid and incurred development, we will investigate the cause and, in conjunction with our actuaries, consider whether any adjustment to ultimate loss reserves is required.

Our actuaries consider the quality of ceding company data as part of their ongoing evaluation of the liability for ultimate losses and loss adjustment expenses, and the methodologies they select for estimating ultimate losses inherently compensate for potential weaknesses in this data, including weaknesses in loss reports provided by cedants.

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We strive to apply the highest standards of discipline and professionalism to our claims adjusting, processing and settlement and disputes with cedants are rare. However, we are from time to time involved in various disputes and legal proceedings in the ordinary course of our claims adjusting process. The majority of the losses ceded to us are from the subscription insurance market (where there are often many insurers and reinsurers underwriting each policy), and we often are involved in disputes commenced by other co-insurers who act in unison with any litigation or dispute resolution controlled by the lead underwriter. Coverage disputes arise when the insured/reinsured and insurer/reinsurer cannot reach agreement as to the interpretation of the policy and/or application of the policy to a claim. Most insurance and reinsurance policies contain dispute resolution clauses requiring arbitration or mediation. In the absence of a contractual dispute resolution process, civil litigation would be commenced. We aim to reach a commercially acceptable resolution to any dispute, using arbitration or litigation as a last resort. We regularly monitor and provide internal reports on disputes involving arbitration and litigation and engage external legal counsel to provide professional advice and assist with case management.

In establishing reserves, management includes amounts for IBNR reserves using information from independent actuarial estimates of ultimate losses. Our independent actuaries use generally accepted actuarial methodologies to estimate ultimate losses and loss adjustment expenses and those estimates are reviewed by our management.

Nearly all of our unpaid claims liabilities are considered to have a long claims payout tail. Gross loss reserves relate primarily to casualty exposures, including latent claims, of which approximately 18% relate to asbestos and environmental, or A&E, exposures.

Within the annual loss reserve studies produced by our independent actuaries, exposures for each subsidiary are separated into homogeneous reserving categories for the purpose of estimating IBNR. Each reserving category contains either direct insurance or assumed reinsurance reserves and groups relatively similar types of risks and exposures (for example, asbestos, environmental, casualty, property) and lines of business written (for example, marine, aviation, non-marine). Based on the exposure characteristics and the nature of available data for each individual reserving category, a number of methodologies are applied. Recorded reserves for each category are selected from the indications produced by the various methodologies after consideration of exposure characteristics, data limitations and strengths and weaknesses of each method applied. This approach to estimating IBNR has been consistently adopted in the annual loss reserve studies for each period presented.

We review the external actuaries' reports for consistency and appropriateness of methodology and assumptions, including assumptions of industry benchmarks, and discuss any concerns or changes with them. Our Chief Actuary and Chief Financial Officer then consider the reasonableness of loss reserves recommended by our external actuaries, in light of actual loss development during the year, using the following reports produced internally on a quarterly basis for each of our insurance and reinsurance subsidiaries:

1. Gross, ceded and net incurred loss report — This report provides, for each reporting period, the total (including commuted policies) gross, ceded and net incurred loss development for each company and a commentary on each company's loss development prepared by our Chief Actuary. The report highlights the causes of any unusual or significant loss development activity (including commutations) and includes commentary on quality and reliability of underlying data.
2. Actual versus expected gross incurred loss development report — This report provides a summary, and commentary thereon, of each company's (excluding companies or portfolios of business acquired in the current year) non-commuted incurred gross losses compared to the estimate of the development of non-commuted incurred gross losses provided by our external actuaries at the beginning of the year as part of the prior year's reserving process.
3. Commutations summary schedule — This schedule summarizes all commutations completed during the year for all companies, and identifies the policyholder with which we commuted, the incurred losses settled by the commutation (comprising outstanding unpaid losses and case reserves) and the amount of the commutation settlement.

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4. Analysis of paid, incurred and ultimate losses — This analysis for each company, and in the aggregate, provides a summary of the gross, ceded and net paid and incurred losses and the impact of applying our external actuaries' recommended loss reserves. This report, reviewed in conjunction with the previous reports, provides an analytical tool to review each company's incurred loss or gain and reduction in IBNR reserves to assess whether the ultimate reduction in loss reserves appears reasonable in light of known developments within each company.

The above reports provide our Chief Actuary and Chief Financial Officer with the relevant information to determine whether loss development (including commutations) during the year has, for each company, been sufficiently meaningful so as to warrant an adjustment to the reserves recommended by our external actuaries in the most recent actuarial study. It is not possible to quantify how much of any reserve release specifically relates to commutations or favorable development of non-commuted claims as the revised historical loss development used by the actuaries to estimate required reserves is a combination of both the elimination of historical loss development relating to commuted policies and non-commuted loss development.

When establishing loss reserves we have an expectation that, in the absence of commutations and significant favorable or unfavorable non-commuted loss development compared to expectations, loss reserves will not exceed the high, or be less than the low, end of the following ranges of gross loss and loss adjustment expense reserves implied by the various methodologies used by each of our insurance subsidiaries as of December 31, 2012.

The ranges of gross loss and loss adjustment expense reserves implied by the various methodologies used by each of our insurance and reinsurance subsidiaries as of December 31, 2012 were:

	<u>Low</u>	<u>Selected</u>	<u>High</u>
	(in thousands of U.S. dollars)		
Asbestos	\$ 475,580	\$ 534,923	\$ 600,166
Environmental	83,529	93,720	105,047
All other:			
General casualty	841,928	949,890	1,054,440
Workers compensation/personal accident	695,520	788,000	876,384
Marine, aviation and transit	161,938	190,265	196,314
Construction defect	210,425	242,799	280,161
Other	<u>562,736</u>	<u>628,368</u>	<u>692,207</u>
Total all other	2,472,547	2,799,322	3,099,506
Unallocated loss adjustment expenses	233,189	233,189	233,189
Total	<u>\$3,264,845</u>	<u>\$3,661,154</u>	<u>\$4,037,908</u>

Latent Claims

Our loss reserves are related largely to casualty exposures including latent exposures relating primarily to A&E. In establishing the reserves for unpaid claims, management considers facts currently known and the current state of the law and coverage litigation. Liabilities are recognized for known claims (including the cost of related litigation) when sufficient information has been developed to indicate the involvement of a specific insurance policy and management can reasonably estimate its liability. In addition, reserves are established to cover loss development related to both known and unasserted claims.

The estimation of unpaid claim liabilities is subject to a high degree of uncertainty for a number of reasons. First, unpaid claim liabilities for property and casualty exposures in general are impacted by changes in the legal environment, jury awards, medical cost trends and general inflation. Moreover, for latent exposures in particular, developed case law and adequate claim history do not exist. There is significant coverage litigation related to

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these exposures, which creates further uncertainty in the estimation of the liabilities. As a result, for these types of exposures, it is especially unclear whether past claim experience will be representative of future claim experience. Ultimate values for such claims cannot be estimated using reserving techniques that extrapolate losses to an ultimate basis using loss development factors, and the uncertainties surrounding the estimation of unpaid claim liabilities are not likely to be resolved in the near future. There can be no assurance that the reserves we establish will be adequate or will not be adversely affected by the development of other latent exposures.

Our asbestos claims are primarily products liability claims submitted by a variety of insureds who operated in different parts of the asbestos distribution chain. While most such claims arise from asbestos mining and primary asbestos manufacturers, we have also been receiving claims from tertiary defendants such as smaller manufacturers, and the industry has seen an emerging trend of non-products claims arising from premises exposures. Unlike products claims, primary policies generally do not contain aggregate policy limits for premises claims, which, accordingly, remain at the primary layer and, thus, rarely impact excess insurance policies. As the vast majority of our policies are excess policies, this trend has had only a marginal effect on our asbestos exposures thus far.

Asbestos reform efforts have been underway at both the federal and state level to address the cost and scope of asbestos claims to the American economy. While congressional efforts to create a federal trust fund that would replace the tort system for asbestos claims failed, several states, including Texas and Florida, have passed reforms based on “medical criteria” requiring certain levels of medically documented injury before a lawsuit can be filed, generally resulting in a drop of case filings in those states adopting this reform measure.

Asbestos claims primarily fall into two general categories: impaired and unimpaired bodily injury claims. Property damage claims represent only a small fraction of asbestos claims. Impaired claims primarily include individuals suffering from mesothelioma or a cancer such as lung cancer. Unimpaired claims include asbestosis and those whose lung regions contain pleural plaques.

Unlike traditional property and casualty insurers that either have large numbers of individual claims arising from personal lines such as auto, or small numbers of high value claims as in medical malpractice insurance lines, our primary exposures arise from A&E claims that do not follow a consistent pattern. For instance, we may encounter a small insured with one large environmental claim due to significant groundwater contamination, while a Fortune 500 company may submit numerous claims for relatively small values. Moreover, there is no set pattern for the life of an environmental or asbestos claim. Some of these claims may resolve within two years whereas others have remained unresolved for nearly two decades. Therefore, our open and closed claims data do not follow any identifiable or discernible pattern.

Furthermore, because of the reinsurance nature of the claims we manage, we focus on the activities at the reinsured level rather than at the individual claims level. The counterparties with whom we typically interact are generally insurers or large industrial concerns and not individual claimants. Claims do not follow any consistent pattern. They arise from many insureds or locations and in a broad range of circumstances. An insured may present one large claim or hundreds or thousands of small claims. Plaintiffs’ counsel frequently aggregate thousands of claims within one lawsuit. The deductibles to which claims are subject vary from policy to policy and year to year. Often claims data is only available to reinsurers, such as us, on an aggregated basis. Accordingly, we have not found claim count information or average reserve amounts to be reliable indicators of exposure for our reserve estimation process or for management of our liabilities. We have found data accumulation and claims management more effective and meaningful at the reinsured level rather than at the underlying claim level. As a result, we have designed our reserving methodologies to be independent of claim count information. As the level of exposures to a reinsured can vary substantially, we focus on the aggregate exposures and pursue commutations and policy buy-backs with the larger reinsureds.

As of December 31, 2012, we employed approximately 27 full-time equivalent employees, including attorneys, actuaries, and experienced claims-handlers, to directly administer our A&E liabilities.

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Our future environmental loss development may be influenced by other factors including:

- Existence of currently undiscovered polluted sites eligible for clean-up under the Comprehensive Environmental Response, Compensation, and Liability Act (or CERCLA) and related legislation.
- Costs imposed due to joint and several liability if not all potentially reliable parties (or PRPs) are capable of paying their share.
- Success of legal challenges to certain policy terms such as the “absolute” pollution exclusion.
- Potential future reforms and amendments to CERCLA, particularly as the resources of Superfund — the funding vehicle, established as part of CERCLA, to provide financing for cleanup of polluted sites where no PRP can be identified — become exhausted.

The influence of each of these factors is not easily quantifiable and, as with asbestos-related exposures, our historical environmental loss development is of limited value in determining future environmental loss development using traditional actuarial reserving techniques.

There have been recent positive developments concerning lead paint liability, an area previously viewed as an emerging trend in latent claim activity with the potential to adversely affect reserves. After a series of successful defense efforts by defendant lead pigment manufacturers in lead paint litigation, in 2005, a Rhode Island trial court ruled in favor of the government in a nuisance claim against the defendant manufacturers. Since the Rhode Island decision, other government entities have employed the same theory for recovery against these manufacturers. In 2008, the Rhode Island Supreme Court reversed the sole legal liability loss experienced by lead pigment manufacturers in lead paint litigation. The court rejected public nuisance as a viable theory of liability for use by the government against the defendants and thus invalidated the entire claim against the lead pigment manufacturers. Subsequent to the Rhode Island Supreme Court decision at least one other government entity, an Ohio municipality, voluntarily dropped its lead paint suit. Thereafter, the State of Ohio, voluntarily dismissed its pending action against lead pigment manufacturers. Other state supreme courts equally rejected the public nuisance theory of liability, whereas no highest state court has ever adopted this theory as an acceptable cause of action.

We believe that lead paint claims now pose a lower risk to adverse reserve adjustment than previously thought, as the only trial court decision against lead pigment manufacturers to date was reversed on the basis that public nuisance is an improper liability theory by which a plaintiff may seek recovery against the lead pigment manufacturers. Even if adverse rulings under alternative theories succeed or if other states ultimately permit recovery under a public nuisance theory, it is questionable whether insureds have coverage under their policies under which they seek indemnity. Insureds have yet to meet policy terms and conditions to establish coverage for lead paint public nuisance claims, as opposed to traditional bodily injury and property damage claims. Still, there is the potential for significant impact to excess insurers should plaintiffs prevail in successive nuisance claims pending in other jurisdictions and coverage is established.

Our independent, external actuaries use industry benchmarking methodologies to estimate appropriate IBNR reserves for our A&E exposures. These methods are based on comparisons of our loss experience on A&E exposures relative to industry loss experience on A&E exposures. Estimates of IBNR are derived separately for each of our relevant subsidiaries and, for some subsidiaries, separately for distinct portfolios of exposure. The discussion that follows describes, in greater detail, the primary actuarial methodologies used by our independent actuaries to estimate IBNR for A&E exposures.

In addition to the specific considerations for each method described below, many general factors are considered in the application of the methods and the interpretation of results for each portfolio of exposures. These factors include the mix of product types (e.g., primary insurance versus reinsurance of primary versus reinsurance of reinsurance), the average attachment point of coverages (e.g., first-dollar primary versus umbrella over primary versus high-excess), payment and reporting lags related to the international domicile of our

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subsidiaries, payment and reporting pattern acceleration due to large “wholesale” settlements (e.g., policy buy-backs and commutations) pursued by us, and lists of individual risks remaining and general trends within the legal and tort environments.

1. *Paid Survival Ratio Method.* In this method, our expected annual average payment amount is multiplied by an expected future number of payment years to get an indicated reserve. Our historical calendar year payments are examined to determine an expected future annual average payment amount. This amount is multiplied by an expected number of future payment years to estimate a reserve. Trends in calendar year payment activity are considered when selecting an expected future annual average payment amount. Accepted industry benchmarks are used in determining an expected number of future payment years. Each year, annual payments data is updated, trends in payments are re-evaluated and changes to benchmark future payment years are reviewed. Advantages of this method are of ease of application and simplicity of assumptions. A potential disadvantage of the method is that results could be misleading for portfolios of high excess exposures where significant payment activity has not yet begun.

2. *Paid Market Share Method.* In this method, our estimated market share is applied to the industry estimated unpaid losses. The ratio of our historical calendar year payments to industry historical calendar year payments is examined to estimate our market share. This ratio is then applied to the estimate of industry unpaid losses. Each year, calendar year payment data is updated (for both us and industry), estimates of industry unpaid losses are reviewed and the selection of our estimated market share is revisited. This method has the advantage that trends in calendar year market share can be incorporated into the selection of company share of remaining market payments. A potential disadvantage of this method is that it is particularly sensitive to assumptions regarding the time-lag between industry payments and our payments.

3. *Reserve-to-Paid Method.* In this method, the ratio of estimated industry reserves to industry paid-to-date losses is multiplied by our paid-to-date losses to estimate our reserves. Specific considerations in the application of this method include the completeness of our paid-to-date loss information, the potential acceleration or deceleration in our payments (relative to the industry) due to our claims handling practices, and the impact of large individual settlements. Each year, paid-to-date loss information is updated (for both us and the industry) and updates to industry estimated reserves are reviewed. This method has the advantage of relying purely on paid loss data and so is not influenced by subjectivity of case reserve loss estimates. A potential disadvantage is that the application to our portfolios that do not have complete inception-to-date paid loss history could produce misleading results. To address this potential disadvantage, a variation of the method is also considered by multiplying the ratio of estimated industry reserves to industry losses paid during a recent period of time (e.g., 5 years) times our paid losses during that period.

4. *IBNR:Case Ratio Method.* In this method, the ratio of estimated industry IBNR reserves to industry case reserves is multiplied by our case reserves to estimate our IBNR reserves. Specific considerations in the application of this method include the presence of policies reserved at policy limits, changes in overall industry case reserve adequacy and recent loss reporting history. Each year, our case reserves are updated, industry reserves are updated and the applicability of the industry IBNR:Case Ratio is reviewed. This method has the advantage that it incorporates the most recent estimates of amounts needed to settle open cases included in current case reserves. A potential disadvantage is that results could be misleading where our case reserve adequacy differs significantly from overall industry case reserve adequacy.

5. *Ultimate-to-Incurred Method.* In this method, the ratio of estimated industry ultimate losses to industry incurred-to-date losses is applied to our incurred-to-date losses to estimate our IBNR reserves. Specific considerations in the application of this method include the completeness of our incurred-to-date loss information, the potential acceleration or deceleration in our incurred losses (relative to the industry) due to our claims handling practices and the impact of large individual settlements. Each year incurred-to-date loss information is updated (for both us and the industry) and updates to industry estimated ultimate losses are reviewed. This method has the advantage that it incorporates both paid and case reserve information in projecting

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ultimate losses. A potential disadvantage is that results could be misleading where cumulative paid loss data is incomplete or where our case reserve adequacy differs significantly from overall industry case reserve adequacy.

Under the Paid Survival Ratio Method, the Paid Market Share Method and the Reserve-to-Paid Method, we first determine the estimated total reserve and then deduct the reported outstanding case reserves to arrive at an estimated IBNR reserve. The IBNR:Case Ratio Method first determines an estimated IBNR reserve which is then added to the advised outstanding case reserves to arrive at an estimated total loss reserve. The Ultimate-to-Incurred Method first determines an estimate of the ultimate losses to be paid and then deducts paid-to-date losses to arrive at an estimated total loss reserve and then deducts outstanding case reserves to arrive at the estimated IBNR reserve.

As of December 31, 2012, we had 30 separate insurance and/or reinsurance subsidiaries whose reserves are categorized into approximately 311 reserve categories in total, including 38 distinct asbestos reserving categories and 25 distinct environmental reserving categories.

To the extent that data availability allows, the five methodologies described above are applied for each of the 38 asbestos reserving categories and each of the 25 environmental reserving categories. As is common in actuarial practice, no one methodology is exclusively or consistently relied upon when selecting a recorded reserve. Consistent reliance on a single methodology to select a recorded reserve would be inappropriate in light of the dynamic nature of both the A&E liabilities in general, and our actual exposure portfolios in particular.

In selecting a recorded reserve, management considers the range of results produced by the methods, and the strengths and weaknesses of the methods in relation to the data available and the specific characteristics of the portfolio under consideration. Trends in both our data and industry data are also considered in the reserve selection process. Recent trends or changes in the relevant tort and legal environments are also considered when assessing methodology results and selecting an appropriate recorded reserve amount for each portfolio.

The following key assumptions were used to estimate A&E reserves at December 31, 2012:

1. *\$65 Billion Ultimate Industry Asbestos Losses* — This level of industry-wide losses and its comparison to industry-wide paid, incurred and outstanding case reserves is the base benchmarking assumption applied to Paid Market Share, Reserve-to-Paid, IBNR:Case Ratio and the Ultimate-to-Incurred asbestos reserving methodologies.
2. *\$38.5 Billion Ultimate Industry Environmental Losses* — This level of industry-wide losses and its comparison to industry-wide paid, incurred and outstanding case reserves is the base benchmarking assumption applied to Paid Market Share, Reserve-to-Paid, IBNR:Case Ratio and the Ultimate-to-Incurred environmental reserving methodologies.
3. *Loss Reporting Lag* — Our subsidiaries assumed a mix of insurance and reinsurance exposures generally through the London market. As the available industry benchmark loss information, as supplied by our independent consulting actuaries, is compiled largely from U.S. direct insurance company experience, our loss reporting is expected to lag relative to available industry benchmark information. This time-lag used by each of our insurance subsidiaries varies from 1 to 5 years depending on the relative mix of domicile, percentages of product mix of insurance, reinsurance and retrocessional reinsurance, primary insurance, excess insurance, reinsurance of direct, and reinsurance of reinsurance within any given exposure category. Exposure portfolios written from a non-U.S. domicile are assumed to have a greater time-lag than portfolios written from a U.S. domicile. Portfolios with a larger proportion of reinsurance exposures are assumed to have a greater time-lag than portfolios with a larger proportion of insurance exposures.

The assumptions above as to Ultimate Industry Asbestos and Environmental losses have not changed from the immediately preceding period. For our company as a whole, the average selected lag for asbestos has

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increased slightly from 2.6 years to 2.8 years and the average selected lag for environmental has decreased slightly from 2.3 years to 2.2 years. The changes to the selected lags arose largely as a result of the changes in the relative sizes of the various underlying asbestos and environmental portfolios during 2012.

The following tables provide a summary of the impact of changes in industry ultimate losses, from the selected \$65 billion for asbestos and \$38.5 billion for environmental, and changes in the time-lag, from the selected averages of 2.8 years for asbestos and 2.2 years for environmental, for us behind industry development that it is assumed relates to our insurance and reinsurance companies. Please note that the table below demonstrates sensitivity to changes to key assumptions using methodologies selected for determining loss and allocated loss adjustment expenses, or ALAE, at December 31, 2012 and differs from the table on page 58, which demonstrates the range of outcomes produced by the various methodologies.

<u>Sensitivity to Industry Asbestos Ultimate Loss Assumption</u>	<u>Asbestos Loss Reserves (in thousands of U.S. dollars)</u>
Asbestos — \$70 billion	\$ 636,465
Asbestos — \$65 billion (selected)	534,923
Asbestos — \$60 billion	433,381

<u>Sensitivity to Industry Environmental Ultimate Loss Assumption</u>	<u>Environmental Loss Reserves (in thousands of U.S. dollars)</u>
Environmental — \$43.5 billion	\$ 138,305
Environmental — \$38.5 billion (selected)	93,720
Environmental — \$33.5 billion	49,134

<u>Sensitivity to Time-Lag Assumption*</u>	<u>Asbestos Loss Reserves (in thousands of U.S. dollars)</u>	<u>Environmental Loss Reserves</u>
Selected average of 2.8 years asbestos, 2.2 years environmental	\$ 534,923	\$ 93,720
Increase all portfolio lags by six months	595,683	96,854
Decrease all portfolio lags by six months	468,392	90,223

* Using \$65 billion/\$38.5 billion Asbestos/Environmental Industry Ultimate Loss assumptions.

In the period from 2001-2009, industry publications generally indicated that the range of ultimate industry asbestos losses was estimated to be between approximately \$55 billion and \$65 billion. In late 2009, one commonly-referenced benchmark increased its estimate of ultimate industry asbestos losses from \$65 billion to \$75 billion. One of the reasons cited for this higher estimate was a shift of losses away from products liability claims to non-products claims. In considering the impact of this issue on our owned portfolios of asbestos exposures, it is important to understand how asbestos claims attach to policies issued by the insurance industry in general and to the policies issued by the companies owned by us in particular.

Historically, asbestos claims have been presented as “products liability” claims brought against manufacturers and distributors of asbestos-containing products. For a given manufacturer, distributor, or other entity involved in asbestos litigation, multiple claims are filed by numerous individuals. There is typically an allocation of the settlement costs for asbestos claims over time based on exposure to asbestos by the injured claimants. Many asbestos claims will aggregate within each individual policy period to exhaust the annual aggregate policy limits that exist within policies sold to cover products liability claims.

Beginning in the mid-1990’s, a trend began to emerge whereby certain policyholders began to assert that their asbestos claims should not fall within the “products liability” section of their policies and, therefore, should

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not be subject to the aggregate limits of products liability claims. Instead, the policyholder would assert that each individual bodily injury claim should be treated as a separate occurrence under the “premises/operations” section of their policies. Under such presentation, individual claim or occurrence limits apply separately to each claim and there is no aggregate limit for the amount of “premises” or “non-products” claims within a particular policy.

Our exposure to asbestos losses arises largely from direct excess policies and assumed reinsurance policies written through the London market. With respect to direct excess policies, our companies typically participated on policies whereby liability would only attach in excess of primary and umbrella policy limits. As non-products asbestos losses are not aggregated and are generally confined to the limits of the primary and other lower layer insurance policies, we believe we have very little exposure to non-products asbestos losses through direct insurance policies issued by our subsidiary companies. To date, we have seen no material reporting of non-products asbestos claims on direct insurance policies. The trend of asbestos losses shifting from products to non-products is not a new phenomenon. As our insurance entities have not received any material reporting of non-products claims to date and their direct insurance exposures are generally in excess of the layers of insurance impacted by non-products asbestos losses, we do not expect any material future liability in respect of non-products asbestos claims.

Losses with respect to assumed reinsurance exposures to non-products asbestos claims are unlikely to be aggregated and are generally confined to the limits of the primary and other lower layer insurance policies. There is limited ability for such claims to exceed retained levels. Our assumed reinsurance portfolio with respect to asbestos exposures is largely excess of loss in nature and, therefore, not especially subject to non-products asbestos liabilities. To date, we have seen no material reporting of non-products asbestos claims on assumed reinsurance policies.

As stated above, the trend of asbestos losses shifting from products to non-products is not a new phenomenon. As our assumed reinsurance entities have not received any material reporting of non-products claims to date and their assumed reinsurance exposures generally cover layers of insurance not impacted by non-products asbestos losses, management does not expect any material future liability in respect of non-products asbestos claims.

Other reasons cited for the 2009 increase in estimated industry ultimate asbestos losses include the ongoing uncertainty surrounding insurance coverage of asbestos claims and the ongoing reporting of significant numbers and values of malignant mesothelioma claims. We do not view these issues as new information, and therefore, any impact has already been factored into our actuarial reserving methodologies and does not create a need for any change in our assumptions.

In late 2012, one commonly-referenced benchmark increased its estimate of ultimate industry asbestos losses from \$75 billion to \$85 billion. Little reasoning was given to explain the increase other than the fact that the industry has reported ultimate losses of \$74 billion as of year-end 2011, and that the industry has been increasing its estimate of ultimate losses by approximately \$2 billion per year over recent years. Based on the lack of reasoning presented, it is unclear to what extent the phenomena of asbestos losses presenting as “non-products” has influenced the most recent increase.

It should be noted that our experience in recent years on its portfolio of asbestos exposures has not mirrored that of the industry. Over recent years, our ultimate loss estimates for asbestos have consistently decreased as a result of favourable commutation and policy buyback activity and a trend of favorable actual versus expected incurred loss emergence. Accordingly, we do not believe our recent loss development experience on our portfolio of asbestos exposures supports an increase to our loss reserve levels at this time.

One key measure of reserve strength for asbestos reserves is the three-year average paid survival ratio. This measure compares the asbestos carried-reserve amount with the average of the most recent three calendar years of asbestos loss payment activity. The most recent available information indicates that the insurance industry’s

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asbestos reserve survival ratio at year-end 2011 is 9.7. Using an ultimate loss estimate of \$85 billion (as opposed to \$74 billion based on industry reserves carried at year-end 2011) produces a survival ratio of 14.4. Our carried-reserve survival ratio at year-end 2012 is 14.0. It should be noted that this is consistent with the industry three-year survival ratio when lagged by 2.8 years.

In summary, estimates of ultimate asbestos losses for the insurance industry have increased in recent years, however, our recent history of favorable settlements on commutations and policy buybacks and of lower incurred loss emergence relative to expectations does not support an increase to our asbestos loss reserve levels. Finally, our carried reserve level compares favorably with the industry carried reserve level – even under an \$85 billion ultimate loss scenario – using the well-accepted three-year average paid survival ratio.

As the basis for our environmental reserving, we had, for a number of years and based on advice supplied by our independent consulting actuaries, selected an estimate of \$35 billion ultimate industry environmental losses. Based on the most recent information available, industry reported incurred losses have now exceeded \$35 billion. In addition, a notable industry publication has recently published a revised estimate of ultimate industry environmental losses of \$42 billion. In light of these facts, in 2011, we increased our estimate of ultimate environmental industry losses from \$35 billion to \$38.5 billion as the basis for our environmental loss reserving. This change of assumption had no material impact on our consolidated financial statements. We continue to experience only moderate incurred loss development on our own portfolios of environmental exposures, and believe our carried reserve level for environmental exposures is appropriate based on the analysis conducted by both our internal and our external independent actuaries.

Our current estimate of the time lag that relates to our insurance and reinsurance subsidiaries compared to the industry is considered reasonable given the analysis performed by our internal and external actuaries to date.

Over time, additional information regarding such exposure characteristics may be developed for any given portfolio. This additional information could cause a shift in the lag assumed.

All Other (Non-latent) Reserves

For our “All Other” (non-latent) loss exposure, a range of traditional loss development extrapolation techniques is applied by our independent actuaries and us. These methods assume that cohorts, or groups, of losses from similar exposures will increase over time in a predictable manner. Historical paid, incurred, and outstanding loss development experience is examined for earlier years to make inferences about how later years’ losses will develop. The application and consideration of multiple methods is consistent with the Actuarial Standards of Practice.

When determining which loss development extrapolation methods to apply to each company and each class of exposure within each company, we and our independent actuaries consider the nature of the exposure for each specific subsidiary and reserving segment and the available loss development data, as well as the limitations of that data. In cases where company-specific loss development information is not available or reliable, we and our independent actuaries select methods that do not rely on historical data (such as incremental or run-off methods) and consider industry loss development information published by industry sources such as the Reinsurance Association of America. In determining which methods to apply, we and our independent actuaries also consider cause of loss coding information when available.

A brief summary of the methods that are considered most frequently in analyzing non-latent exposures is provided below. This summary discusses the strengths and weaknesses of each method, as well as the data requirements for each method, all of which are considered when selecting which methods to apply for each reserve segment.

1. Cumulative Reported and Paid Loss Development Methods. The Cumulative Reported (Case Incurred) Loss Development method relies on the assumption that, at any given state of maturity, ultimate losses can be

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predicted by multiplying cumulative reported losses (paid losses plus case reserves) by a cumulative development factor. The validity of the results of this method depends on the stability of claim reporting and settlement rates, as well as the consistency of case reserve levels. Case reserves do not have to be adequately stated for this method to be effective; they only need to have a fairly consistent level of adequacy at all stages of maturity. Historical “age-to-age” loss development factors (or LDFs) are calculated to measure the relative development of an accident year from one maturity point to the next. Age-to-age LDFs are then selected based on these historical factors. The selected age-to-age LDFs are used to project the ultimate losses. The Cumulative Paid Loss Development Method is mechanically identical to the Cumulative Reported Loss Development Method described above, but the paid method does not rely on case reserves or claim reporting patterns in making projections. The validity of the results from using a cumulative loss development approach can be affected by many conditions, such as internal claim department processing changes, a shift between single and multiple payments per claim, legal changes, or variations in a company’s mix of business from year to year. Typically, the most appropriate circumstances in which to apply a cumulative loss development method are those in which the exposure is mature, full loss development data is available, and the historical observed loss development is relatively stable.

2. Incremental Reported and Paid Loss Development Methods. Incremental incurred and paid analyses are performed in cases where cumulative data is not available. The concept of the incremental loss development methods is similar to the cumulative loss development methods described above, in that the pattern of historical paid or incurred losses is used to project the remaining future development. The difference between the cumulative and incremental methods is that the incremental methods rely on only incremental incurred or paid loss data from a given point in time forward, and do not require full loss history. These incremental loss development methods are therefore helpful when data limitations apply. While this versatility in the incremental methods is a strength, the methods are sensitive to fluctuations in loss development, so care must be taken in applying them.

3. IBNR-to-Case Outstanding Method. This method requires the estimation of consistent cumulative paid and reported (case) incurred loss development patterns and age-to-ultimate LDFs, either from data that is specific to the segment being analyzed or from applicable benchmark or industry data. These patterns imply a specific expected relationship between IBNR, including both development on known claims (bulk reserve) and losses on true late reported claims, and reported case incurred losses. The IBNR-to-Case Outstanding method can be used in a variety of situations. It is appropriate for loss development experience that is mature and possesses a very high ratio of paid losses to reported case incurred losses. The method also permits an evaluation of the difference in maturity between the business being reviewed and benchmark development patterns. Depending on the relationship of paid to incurred losses, an estimate of the relative maturity of the business being reviewed can be made and a subsequent estimate of ultimate losses driven by the implied IBNR to case outstanding ratio at the appropriate maturity can be made. This method is also useful where loss development data is incomplete and only the case outstanding amounts are determined to be reliable. This method is less reliable in situations where relative case reserve adequacy has been changing over time.

4. Bornhuetter-Ferguson Expected Loss Projection Reported and Paid Methods. The Bornhuetter-Ferguson Expected Loss Projection Method based on reported loss data relies on the assumption that remaining unreported losses are a function of the total expected losses rather than a function of currently reported losses. The expected losses used in this analysis are based on initial selected ultimate loss ratios by year. The expected losses are multiplied by the unreported percentage to produce expected unreported losses. The unreported percentage is calculated as one minus the reciprocal of the selected cumulative incurred LDFs. Finally, the expected unreported losses are added to the current reported losses to produce ultimate losses. The calculations underlying the Bornhuetter-Ferguson Expected Loss Projection Method based on paid loss data are similar to the Bornhuetter-Ferguson calculations based on reported losses, with the exception that paid losses and unpaid percentages replace reported losses and unreported percentages. The Bornhuetter-Ferguson method is most useful as an alternative to other models for immature years. For these immature years, the amounts reported or paid may be small and unstable and therefore not predictive of future development. Therefore, future development is

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assumed to follow an expected pattern that is supported by more stable historical data or by emerging trends. This method is also useful when changing reporting patterns or payment patterns distort historical development of losses. Similar to the loss development methods, the Bornhuetter-Ferguson method may be applied to loss and ALAE on a combined or separate basis. The Bornhuetter-Ferguson method may not be appropriate in circumstances where the liabilities being analyzed are very mature, as it is not sensitive to the remaining amount of case reserves outstanding, or the actual development to date.

5. Reserve Run-off Method. This method first projects the future values of case reserves for all underwriting years to future ages of development. This is done by selecting a run-off pattern of case reserves. The selected case run-off ratios are chosen based on the observed run-off ratios at each age of development. Once the ratios have been selected, they are used to project the future values of case reserves. A paid on reserve factor is selected in a similar way. The ratios of the observed amounts paid during each development period to the respective case reserves at the beginning of the periods are used to estimate how much will be paid on the case reserves during each development period. These paid on reserve factors are then applied to the case reserve amounts that were projected during the first phase of this method. A summation of the resulting paid amounts yields an estimate of the liability. The Reserve Run-off Method works well when the historical run-off patterns are reasonably stable and when case reserves ultimately show a decreasing trend. Another strength of this method is that it only requires case reserves at a given point in time and incremental paid and incurred losses after that point, meaning that it can be applied in cases where full loss history is not available. In cases of volatile data where there is a persistent increasing trend in case reserves, this method will fail to produce a reasonable estimate. In several cases, reliance upon this method was limited due to this weakness.

Our independent actuaries select the appropriate loss development extrapolation methods to apply to each company and each class of exposure, and then apply these methods to calculate an estimate of ultimate losses. Our management, which is responsible for the final estimate of ultimate losses, reviews the calculations of our independent actuaries, considers whether the appropriate method was applied, and adjusts the estimate of ultimate losses as it deems necessary. Historically, we have not deviated from the recommendations of our independent actuaries. Paid-to-date losses are then deducted from the estimate of ultimate losses to arrive at an estimated total loss reserve, and reported outstanding case reserves are then deducted from estimated total loss reserves to calculate the estimated IBNR reserve.

Net Reduction in Ultimate Loss and Loss Adjustment Expense Liabilities

The change in our estimated total loss reserves for both latent and all other exposures compared to that of the previous period, less net losses paid during the period, is recorded as a reduction in net ultimate losses on our statement of earnings for the period. Our estimated total loss reserve at December 31, 2012 was determined by estimating the ultimate losses and deducting paid-to-date losses. The estimated ultimate losses, for both latent and all other (non-latent) liabilities, were determined by the amount of advised case reserves and the application of the actuarial methodologies described above to estimate IBNR reserves. Future changes in our estimates of ultimate losses are likely to have a significant impact on future operating results. Our operating objective is to commute our loss exposures and manage non-commuted loss development in a disciplined manner such that future incurred loss development will be less than expected. A combination of future commutations and better-than-expected incurred loss development of non-commuted exposures could improve the trend of loss development and, after the application of actuarial methodologies to the improved trend, reduce the December 31, 2012 estimates of ultimate losses with a positive impact on our future results. However, it is not possible to project future commutation settlements or whether incurred loss development will be better than expected, and it is possible that ultimate loss reserves could increase based on the factors discussed herein.

Quarterly Reserve Reviews

In addition to an in-depth annual review, we also perform quarterly reserve reviews. This is done by examining quarterly paid and incurred loss development to determine whether it is consistent with reserves

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established during the preceding annual reserve review and with expected development. Loss development is reviewed separately for each major exposure type (e.g., asbestos, environmental, etc.), for each of our relevant subsidiaries, and for large “wholesale” commutation settlements versus “routine” paid and advised losses. This process is undertaken to determine whether loss development experience during a quarter warrants any change to held reserves.

Loss development is examined separately by exposure type because different exposures develop differently over time. For example, the expected reporting and payout of losses for a given amount of asbestos reserves can be expected to take place over a different time frame and in a different quarterly pattern from the same amount of environmental reserves.

In addition, loss development is examined separately for each of our relevant subsidiaries. Companies can differ in their exposure profile due to the mix of insurance versus reinsurance, the mix of primary versus excess insurance, the underwriting years of participation and other criteria. These differing profiles lead to different expectations for quarterly and annual loss development by company.

Our quarterly paid and incurred loss development is often driven by large, “wholesale” settlements — such as commutations and policy buy-backs — which settle many individual claims in a single transaction. This allows for monitoring of the potential profitability of large settlements, which, in turn, can provide information about the adequacy of reserves on remaining exposures that have not yet been settled. For example, if it were found that large settlements were consistently leading to large negative, or favorable, incurred losses upon settlement, it might be an indication that reserves on remaining exposures are redundant. Conversely, if it were found that large settlements were consistently leading to large positive, or adverse, incurred losses upon settlement, it might be an indication — particularly if the size of the losses were increasing — that certain loss reserves on remaining exposures are deficient. Moreover, removing the loss development resulting from large settlements allows for a review of loss development related only to those contracts that remain exposed to losses. Were this not done, it is possible that savings on large wholesale settlements could mask significant underlying development on remaining exposures.

Once the data has been analyzed as described above, an in-depth review is performed on classes of exposure with significant loss development. Discussions are held with appropriate personnel, including individual company managers, claims handlers and attorneys, to better understand the causes. If it were determined that development differs significantly from expectations, reserves would be adjusted.

Quarterly loss development is expected to be fairly erratic for the types of exposure insured and reinsured by us. Several quarters of low incurred loss development can be followed by spikes of relatively large incurred losses. This is characteristic of latent claims and other insurance losses that are reported and settled many years after the inception of the policy. Given the high degree of statistical uncertainty, and potential volatility, it would be unusual to adjust reserves on the basis of one, or even several, quarters of loss development activity. As a result, unless the incurred loss activity in any one quarter is of such significance that management is able to quantify the impact on the ultimate liability for loss and loss adjustment expenses, reductions or increases in loss and loss adjustment expense liabilities are carried out in the fourth quarter based on the annual reserve review described above.

As described above, our management regularly reviews and updates reserve estimates using the most current information available and employing various actuarial methods. Adjustments resulting from changes in our estimates are recorded in the period when such adjustments are determined. The ultimate liability for loss and loss adjustment expenses is likely to differ from the original estimate due to a number of factors, primarily consisting of the overall claims activity occurring during any period, including the completion of commutations of assumed liabilities and ceded reinsurance receivables, policy buy-backs and general incurred claims activity.

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Provisions for Unallocated Loss Adjustment Expense Liabilities

Provisions for unallocated loss adjustment expense liabilities are estimated by management by determining the future annual costs to be incurred by us, comprising staff costs, consultancy and professional fees and overheads, in managing the run-off of claims liabilities for each of our insurance and reinsurance entities and is increased with outstanding losses and loss expenses. The provision is reviewed quarterly and adjusted in accordance with the related costs incurred each period.

Reinsurance Balances Recoverable

Our acquired reinsurance subsidiaries, prior to acquisition by us, used retrocessional agreements to reduce their exposure to the risk of insurance and reinsurance they assumed. Loss reserves represent total gross losses, and reinsurance receivables represent anticipated recoveries of a portion of those unpaid losses as well as amounts receivable from reinsurers with respect to claims that have already been paid. While reinsurance arrangements are designed to limit losses and to permit recovery of a portion of direct unpaid losses, reinsurance does not relieve us of our liabilities to our insureds or reinsureds. Therefore, we evaluate and monitor concentration of credit risk among our reinsurers, including companies that are insolvent, in run-off or facing financial difficulties. Provisions are made for amounts considered potentially uncollectible.

To estimate the provision for uncollectible reinsurance recoverable, the reinsurance recoverable is first allocated to applicable reinsurers. As part of this process, ceded IBNR is allocated by reinsurer. We use a detailed analysis to estimate uncollectible reinsurance. The primary components of the analysis are reinsurance recoverable balances by reinsurer and bad debt provisions applied to these balances to determine the portion of a reinsurer's balance deemed to be uncollectible. These provisions require considerable judgment and are determined using the current rating, or rating equivalent, of each reinsurer (in order to determine its ability to settle the reinsurance balances) as well as other key considerations and assumptions, such as claims and coverage issues.

Valuation of Investments

We invest in a trading portfolio of fixed maturity investments and equities and an available-for-sale portfolio of fixed maturity investments. We record both the trading and available-for-sale portfolios at fair value on our balance sheet. For our trading portfolio, the unrealized gain or loss associated with the difference between the fair value and the amortized cost of the investments is recorded in net earnings. For our available-for-sale portfolio, the unrealized gain or loss (other than credit losses) is recorded in accumulated other comprehensive income in the shareholders' equity section of our consolidated balance sheet.

Our other investments comprise investments in various private equity, fixed income, fixed income hedge, equity and real estate debt funds, all of which are recorded at fair value.

We measure fair value in accordance with Accounting Standards Codification (or ASC) 820, Fair Value Measurements. The guidance dictates a framework for measuring fair value and a fair value hierarchy based on the quality of inputs used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to unobservable inputs (Level 3 measurements). The three levels of the fair value hierarchy are described below:

- Level 1 — Quoted prices for identical instruments in active markets.
- Level 2 — Quoted prices for similar instruments in active markets; quoted prices for identical or similar instruments in markets that are not active; and model-derived valuations in which all significant inputs and significant value drivers are observable in active markets.
- Level 3 — Model-derived valuations in which one or more significant inputs or significant value drivers are unobservable.

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When the inputs used to measure fair value fall within different levels of the hierarchy, the level within which the fair value measurement is categorized is based on the lowest level input that is significant to the fair value measurement in its entirety. Thus, a Level 3 fair value measurement may include inputs that are observable (Level 1 and 2) and unobservable (Level 3).

The use of valuation techniques may require a significant amount of judgment. During periods of market disruption, including periods of rapidly widening credit spreads or illiquidity, it may be difficult to value certain of our securities if trading becomes less frequent or market data becomes less observable.

Fixed Maturity Investments

Fixed maturity investments are subject to fluctuations in fair value due to changes in interest rates, changes in issuer specific circumstances such as credit rating and changes in industry specific circumstances such as movements in credit spreads based on the market's perception of industry risks. As a result of these potential fluctuations, it is possible to have significant unrealized gains or losses on a security. At maturity, absent any credit loss, fixed maturity investments amortized cost will equal their fair value and no realized gain or loss will be recognized in income. If, due to an unforeseen change in loss payment patterns, we need to sell any available-for-sale investments before maturity, we could realize significant gains or losses in any period, which could result in a meaningful effect on reported net income for such period.

We perform regular reviews of our available-for-sale fixed maturities portfolios and utilize a process that considers numerous indicators in order to identify investments that are showing signs of potential other than temporary impairment losses. These indicators include the length of time and extent of the unrealized loss, any specific adverse conditions, historic and implied volatility of the security, failure of the issuer of the security to make scheduled interest payments, significant rating changes and recoveries or additional declines in fair value subsequent to the balance sheet date. The consideration of these indicators and the estimation of credit losses involve significant management judgment.

Any other-than-temporary impairment loss, or OTTI, related to a credit loss would be recognized in earnings, and the amount of the OTTI related to other factors (e.g. interest rates, market conditions, etc.) is recorded as a component of other comprehensive income. If no credit loss exists but either we have the intent to sell the fixed maturity investment or it is more likely than not that we will be required to sell the fixed maturity investment before its anticipated recovery, then the entire unrealized loss is recognized in earnings.

For the years ended December 31, 2012, 2011 and 2010, we did not recognize any other than temporary impairment charges through earnings.

Our fixed maturity portfolio is managed by our Chief Investment Officer and outside investment advisors with oversight from our Investment Committee. Fair value prices for all investments in the fixed maturity portfolios are independently provided by the investment custodian, investment accounting service provider and investment managers, each of which utilize internationally recognized independent pricing services. Interactive Data Corporation is, however, the main pricing service utilized to estimate the fair value measurements for our fixed maturity investments. We record the unadjusted price provided by the investment custodian, investment accounting service provider or the investment manager and validate this price through a process that includes, but is not limited to: (i) comparison of prices against alternative pricing sources; (ii) quantitative analysis (e.g. comparing the quarterly return for each managed portfolio to its target benchmark); (iii) evaluation of methodologies used by external parties to estimate fair value, including a review of the inputs used for pricing; and (iv) comparing the price to our knowledge of the current investment market. Our internal price validation procedures and review of fair value methodology documentation provided by independent pricing services have not historically resulted in adjustment in the prices obtained from the pricing service.

The independent pricing services used by the investment custodian, investment accounting service provider and investment managers obtain actual transaction prices for investments that have quoted prices in active

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markets. For determining the fair value of investments that are not actively traded, in general, pricing services use “matrix pricing” in which the independent pricing service uses observable market inputs including, but not limited to, reported trades, benchmark yields, broker-dealer quotes, interest rates, prepayment speeds, default rates and such other inputs as are available from market sources to determine a reasonable fair value. In addition, pricing services use valuation models, using observable data, such as an Option Adjusted Spread model, to develop prepayment and interest rate scenarios. The Option Adjusted Spread model is commonly used to estimate fair value for investments such as mortgage-backed and asset-backed investments.

Other Investments

Our other investments are comprised of private equity, fixed income, fixed income hedge, equity and real estate debt funds. Investments in the funds are carried at their net asset values, which approximate fair value. We believe the reported net asset value represents the fair value market participants would apply to an interest in the fund. The fund managers value their underlying investments at fair value in accordance with policies established by each fund, as described in each of their financial statements and offering memoranda. The change in fair value is included in net realized and unrealized gains on investments and recognized in net earnings. These investments are stated at fair value, which ordinarily will be the most recently reported net asset value as advised by the fund manager or administrator.

We have ongoing due diligence processes with respect to funds in which we invest and their managers. These processes are designed to assist us in assessing the quality of information provided by, or on behalf of, each fund and in determining whether such information continues to be reliable or whether further review is warranted. Certain funds do not provide full transparency of their underlying holdings; however, we obtain the audited financial statements for funds annually, and regularly review and discuss the fund performance with the fund managers to corroborate the reasonableness of the reported net asset values. The use of net asset value as an estimate of the fair value for investments in certain entities that calculate net asset value is a permitted practical expedient. While reported net asset value is the primary input to the review, when the net asset value is deemed not to be indicative of fair value, we may incorporate adjustments to the reported net asset value (and not use the permitted practical expedient) on an investment by investment basis. These adjustments may involve significant management judgment.

For our investments in private equity funds, we measure fair value by obtaining the most recently provided capital statement from the external fund manager or third-party administrator. The funds calculate net asset value on a fair value basis. Due to a lag in the valuations reported by the managers, we record changes in the investment value with up to a three-month lag. For all publicly-traded companies within these funds, we adjust the reported net asset value based on the latest share price as of our reporting date. We have classified our investments in private equity funds as Level 3 investments because they reflect our own judgment about the assumptions that market participants might use.

The fixed income funds and equity fund in which we invest have been classified as Level 2 investments because their fair value is estimated using the net asset value provided regularly and because the fixed income funds and equity fund are highly liquid.

For our investments in fixed income hedge funds, we measure fair value by obtaining the most recently published net asset value as advised by the external fund manager or third-party administrator. The investments in the funds are classified as Level 3.

The real estate debt fund in which we invest has been classified as a Level 3 investment because its fair value is estimated using the most recent published net asset value.

Our remaining other investments are valued based on the latest available capital statements and have been classified as Level 3.

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Certain funds included in other investments are subject to a lock-up period. A lock-up period refers to the initial amount of time an investor is contractually required to invest before having the ability to redeem the investment. Funds that do provide for periodic redemptions may, depending on the funds' governing documents, have the ability to deny or delay a redemption request, which is called a "gate." The fund may restrict redemptions because the aggregate amount of redemption requests as of a particular date exceeds a specified level. The gate is a method for executing an orderly redemption process that allows for redemption requests to be executed in a timely manner to reduce the possibility of adversely affecting the remaining investors in the fund. Typically, the imposition of a gate delays a portion of the requested redemption, with the remaining portion to be settled in cash sometime after the redemption date.

Certain funds included in other investments may be allowed to invest a portion of their assets in illiquid securities, such as private equity or convertible debt. In such cases, a common mechanism used is a "side-pocket", whereby the illiquid security is assigned to a separate memorandum capital account or designated account. Typically, the investor loses its redemption rights in the designated account. Only when the illiquid security is sold, or is otherwise deemed liquid by the fund, may investors redeem their interest in the side-pocket.

As at December 31, 2012, none of our funds included in other investments were subject to gates or had side-pockets.

A review of fair value hierarchy classifications is conducted on a quarterly basis. Changes in the observability of valuation inputs may result in a reclassification for certain financial assets and liabilities. Reclassifications impacting Level 3 of the fair value hierarchy are reported as transfers in/out of the Level 3 category as of the beginning of the quarter in which the reclassifications occur.

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Results of Operations

The following table sets forth our selected consolidated statements of earnings data for each of the periods indicated:

	Years Ended December 31,		
	2012	2011	2010
	(in thousands of U.S. dollars)		
INCOME			
Consulting fees	\$ 8,570	\$ 17,858	\$ 23,015
Net investment income	77,760	68,676	81,261
Net realized and unrealized gains	73,612	9,214	31,782
Gain on bargain purchase	—	13,105	—
	<u>159,942</u>	<u>108,853</u>	<u>136,058</u>
EXPENSES			
Net reduction in ultimate loss and loss adjustment expense liabilities:			
Reduction in estimates of net ultimate losses	(221,927)	(250,216)	(278,065)
Reduction in provisions for bad debt	(3,111)	(42,822)	(49,556)
Reduction in provisions for unallocated loss adjustment expense liabilities	(39,298)	(45,102)	(39,651)
Amortization of fair value adjustments	<u>22,572</u>	<u>42,693</u>	<u>55,438</u>
	(241,764)	(295,447)	(311,834)
Salaries and benefits	100,473	89,846	86,677
General and administrative expenses	56,592	71,810	59,201
Interest expense	8,426	8,529	10,253
Net foreign exchange losses (gains)	406	373	(398)
	<u>(75,867)</u>	<u>(124,889)</u>	<u>(156,101)</u>
Earnings before income taxes and share of net earnings of equity method investee	235,809	233,742	292,159
Income taxes	(44,290)	(25,284)	(87,132)
Share of net earnings of equity method investee	—	—	10,704
NET EARNINGS	<u>191,519</u>	<u>208,458</u>	<u>215,731</u>
Less: Net earnings attributable to noncontrolling interest	<u>(23,502)</u>	<u>(54,765)</u>	<u>(41,645)</u>
NET EARNINGS ATTRIBUTABLE TO ENSTAR GROUP LIMITED	<u>\$ 168,017</u>	<u>\$ 153,693</u>	<u>\$ 174,086</u>

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The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our consolidated financial statements and the related notes included elsewhere in this annual report. Some of the information contained in this discussion and analysis or included elsewhere in this annual report, including information with respect to our plans and strategy for our business, includes forward-looking statements that involve risks, uncertainties and assumptions. Our actual results and the timing of events could differ materially from those anticipated by these forward-looking statements as a result of many factors, including those discussed under “Risk Factors,” “Cautionary Statement Regarding Forward-Looking Statements” and elsewhere in this annual report.

Comparison of Years Ended December 31, 2012 and 2011

We reported consolidated net earnings, before net earnings attributable to noncontrolling interest, of approximately \$191.5 million and approximately \$208.5 million for the years ended December 31, 2012 and 2011, respectively. The decrease in earnings of approximately \$17.0 million was attributable primarily to the following:

- (i) an increase in net realized and unrealized gains of \$64.4 million due primarily to: (a) mark-to-market changes in the market value of our equity securities; (b) increases in realized gains on our fixed maturities; and (c) increased returns from our other investments;
- (ii) a decrease in general and administrative expenses of \$15.2 million due principally to decreased legal fees and settlement costs related to certain litigation settled in 2011; and
- (iii) an increase in net investment income of \$9.1 million primarily as a result of higher average cash and fixed maturities balances for 2012 as a result of the Clarendon National Insurance Company acquisition, which was partially offset by a decrease in yields due to declining yields in the global fixed maturities markets; partially offset by
- (iv) a lower net reduction in ultimate loss and loss adjustment expense liabilities of \$53.7 million;
- (v) an increase in income taxes of \$19.0 million due to increased tax liabilities recorded on the results of our taxable subsidiaries;
- (vi) a gain on bargain purchase of \$13.1 million in 2011, which arose in relation to our acquisition of Laguna Life Limited (as compared to no gain on bargain purchase in 2012);
- (vii) an increase in salaries and benefits costs of \$10.6 million due primarily to an increase in salary costs for our U.S. operations along with an increase in our discretionary bonus plan as a result of an increase in net earnings for the year; and
- (viii) a decrease in consulting fee income of \$9.3 million due to lower revenue from incentive-based fee arrangements.

Noncontrolling interest in earnings decreased by \$31.3 million to \$23.5 million primarily as a result of lower earnings in those companies in which there are noncontrolling interests. Net earnings attributable to Enstar Group Limited increased from \$153.7 million for the year ended December 31, 2011 to \$168.0 million for the year ended December 31, 2012.

Comparison of Years Ended December 31, 2011 and 2010

We reported consolidated net earnings, before net earnings attributable to noncontrolling interest, of approximately \$208.5 million and approximately \$215.7 million for the years ended December 31, 2011 and 2010, respectively. The decrease in earnings of approximately \$7.2 million was attributable primarily to the following:

- (i) a decrease in net investment income of \$12.6 million primarily as a result of a decrease, in 2011, in net investment income due primarily to lower yields earned on our fixed maturity investments;

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- (ii) a decrease in net realized and unrealized gains of \$22.6 million due primarily to a decrease in our realized and unrealized gains on our other investments along with a decrease in net realized gains on our fixed maturities and equities as a result of conditions in the U.S. equity markets;
- (iii) a lower net reduction in ultimate loss and loss adjustment expense liabilities of \$16.4 million;
- (iv) a decrease in consulting fee income of \$5.2 million due to lower revenue from incentive-based fee arrangements;
- (v) an increase in salaries and benefits costs of \$3.2 million due primarily to our increased overall headcount from 335 at December 31, 2010 to 412 at December 31, 2011, which was offset by a reduction in salary costs related to our discretionary bonus plan as a result of decreased net earnings for the year;
- (vi) an increase in general and administrative expenses of \$12.6 million due primarily to an increase in loan structure fees and letter of credit fees that were paid in 2011, along with an overall increase in other professional fees due primarily to legal fees and settlement costs associated with certain litigation; and
- (vii) a decrease of \$10.7 million in our share of net earnings of our equity method investee; partially offset by
- (viii) a gain on bargain purchase of \$13.1 million in 2011, which arose in relation to our acquisition of Laguna Life Limited;
- (ix) a decrease in income taxes of \$61.8 million due to decreased tax liabilities recorded on the results of our taxable subsidiaries and an additional tax liability of \$30.3 million provided for in 2010 arising in our Australian subsidiary from the formation of an Australian tax consolidated group that did not recur in 2011; and
- (x) a decrease in interest expense of \$1.7 million due primarily to lower interest rates on the loan facilities outstanding during 2011.

We recorded noncontrolling interest in earnings of \$54.8 million and \$41.6 million for the years ended December 31, 2011 and 2010, respectively. Net earnings attributable to Enstar Group Limited decreased from \$174.1 million for the year ended December 31, 2010 to \$153.7 million for the year ended December 31, 2011.

Consulting Fees:

	Years Ended December 31,			
	2012	Variance	2011	Variance
	(in thousands of U.S. dollars)			
Total	<u>\$8,570</u>	\$ (9,288)	<u>\$17,858</u>	\$ (5,157)
			<u>\$23,015</u>	

Comparison of Years Ended December 31, 2012 and 2011

Our consulting companies earned fees of approximately \$8.6 million and \$17.9 million for the years ended December 31, 2012 and 2011, respectively. The decrease in consulting fees of \$9.3 million related to the decrease in management fees earned from incentive-based engagements. Consulting fee income as a percentage of net earnings has declined in recent periods, and we would expect it to remain at or around current levels in future periods, excluding the impact of any one-time incentive based fees that we might receive. While we intend to continue to provide management and consultancy services, claims inspection services and reinsurance collection services to third-party clients in limited circumstances, our core focus continues to be acquiring and managing insurance and reinsurance companies and portfolios of business in run-off.

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Comparison of Years Ended December 31, 2011 and 2010

Our consulting companies earned fees of approximately \$17.9 million and \$23.0 million for the years ended December 31, 2011 and 2010, respectively. The decrease in consulting fees of \$5.2 million related to the decrease in management fees earned from incentive-based engagements.

Net Investment Income and Net Realized and Unrealized Gains:

	Net Investment Income				Years Ended December 31,					
	2012		2011		2012		2011		2010	
		Variance		Variance		Variance		Variance		
	(in thousands of U.S. dollars)									
Total	<u>\$77,760</u>	<u>\$ 9,084</u>	<u>\$68,676</u>	<u>\$ (12,585)</u>	<u>\$81,261</u>	<u>\$73,612</u>	<u>\$ 64,398</u>	<u>\$9,214</u>	<u>\$ (22,568)</u>	<u>\$31,782</u>

Comparison of Years Ended December 31, 2012 and 2011

Net investment income for the year ended December 31, 2012 increased by \$9.1 million to \$77.8 million, as compared to \$68.7 million for the year ended December 31, 2011. The increase was primarily a result of higher than average cash and fixed maturities for 2012 as a result of the 2011 acquisition of Clarendon National Insurance Company, or Clarendon. In 2012, we had a full year of net investment income from Clarendon as opposed to net investment income for approximately six months in 2011 from the date of acquisition. Lower absolute yields obtained on cash and fixed maturities due to declining yields in global fixed maturities markets offset part of this increase.

Net realized and unrealized gains for the years ended December 31, 2012 and 2011 were \$73.6 million and \$9.2 million, respectively. The increase of \$64.4 million was primarily attributable to a combination of the following:

- (i) an increase of \$12.8 million in net realized gains on our fixed maturities and short-term investments mostly due to increased trading in those asset classes;
- (ii) an increase of \$19.6 million in unrealized gains on trading securities as a result of increases in the value of our investments in equities and fixed maturities in line with increases in the global markets; and
- (iii) an increase of \$30.2 million in returns from other investments due to increases in global equity and fixed income markets, combined with greater amounts invested in those asset classes in 2012.

The average annualized return on the cash and fixed maturities (inclusive of net realized and unrealized gains, but excluding net investment income and net realized and unrealized gains related to our other investments and equities) for the year ended December 31, 2012 was 2.3% as compared to the average return of 1.7% for the year ended December 31, 2011. The average credit rating of our fixed maturities at December 31, 2012 and December 31, 2011 was AA-. The average annualized return on our other investments and equities (inclusive of net realized and unrealized gains) for the year ended December 31, 2012 was 11.8% as compared to the average return of 1.7% for the year ended December 31, 2011.

Comparison of Years Ended December 31, 2011 and 2010

Net investment income for the year ended December 31, 2011 decreased by \$12.6 million to \$68.7 million, as compared to \$81.3 million for the year ended December 31, 2010. The decrease was primarily attributable to a combination of the following:

- (i) a decrease of \$7.1 million in interest income from cash and fixed maturities (net of amortization of bond premiums and discounts) as a result of lower yields earned driven by lower interest rates in developed economies, primarily the United States;

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- (ii) a decrease of \$2.1 million in our income from other investments;
- (iii) a decrease of \$2.0 million in our other income; and
- (iv) an increase of \$1.8 million in our investment expenses due to the hiring of additional third-party investment managers in 2011.

The average annualized return on the cash and fixed maturities (inclusive of net realized and unrealized gains, but excluding net investment income and net realized and unrealized gains related to our other investments and equities) for the year ended December 31, 2011 was 1.7% as compared to the average return of 2.2% for the year ended December 31, 2010. The average annualized return on our other investments (inclusive of net realized and unrealized gains) for the year ended December 31, 2011 was 1.7% as compared to the average return of 14.7% for the year ended December 31, 2010.

Net realized and unrealized gains for the years ended December 31, 2011 and 2010 were \$9.2 million and \$31.8 million, respectively. The decrease of \$22.6 million was primarily attributable to a combination of the following:

- (i) a decrease of \$17.5 million in realized and unrealized gains on our other investments, largely related to net losses recorded on our private equity investments in 2011 (whereas net gains were recorded in 2010);
- (ii) a decrease of \$3.8 million in net realized gains on our fixed maturities and equities mostly related to lower realized gains from our equities as a result of conditions in the U.S. equity markets; and
- (iii) a decrease of \$1.3 million in the change of net unrealized gains on our fixed maturities and equities as a result of the lower performance of the global markets in 2011 versus 2010.

The average credit rating of our fixed maturities at December 31, 2011 was AA- (2010: AA-). During 2011, the rating agency Standard & Poors downgraded the U.S. sovereign debt from AAA to AA+. This, combined with the assets we acquired upon the acquisition of Clarendon, which had a lower proportion of investments with AAA credit ratings, has resulted in us having a lower percentage of AAA-rated investments than we had as at December 31, 2010.

Gain on Bargain Purchase:

	Years Ended December 31,				2010
	2012	Variance	2011	Variance	
Total	\$—	\$ (13,105)	\$13,105	\$ 13,105	\$—

Gain on bargain purchase of \$13.1 million was recorded for the year ended December 31, 2011. The gain on bargain purchase was earned in connection with our acquisition of Laguna Life Limited, or Laguna, and represents the excess of the cumulative fair value of net assets acquired of \$34.3 million over the cost of \$21.2 million. This excess was, in accordance with the provisions of the Business Combinations topic of the FASB ASC, recognized as income for the year ended December 31, 2011. The gain on bargain purchase arose mainly as a result of our reassessment, upon acquisition, of the total required estimated costs to manage the business to expiry. Our assessment of costs was lower than the acquired costs recorded by the vendor in the financial statements of Laguna.

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Net Reduction in Ultimate Loss and Loss Adjustment Expense Liabilities:

The following table shows the components of the movement in the net reduction in ultimate loss and loss adjustment expense liabilities for the years ended December 31, 2012, 2011 and 2010:

	Years Ended December 31,				2010
	2012	Variance	2011	Variance	
	(in thousands of U.S. dollars)				
Net losses paid	\$(310,695)	\$ (26,084)	\$(284,611)	\$ 10,385	\$(294,996)
Net reduction in case and LAE reserves	265,222	(44,814)	310,036	(26,105)	336,141
Net reduction in IBNR reserves	267,400	42,609	224,791	(12,129)	236,920
Reduction in estimates of net ultimate losses	221,927	(28,289)	250,216	(27,849)	278,065
Reduction in provisions for bad debt	3,111	(39,711)	42,822	(6,734)	49,556
Reduction in provisions for unallocated loss adjustment expense liabilities	39,298	(5,804)	45,102	5,451	39,651
Amortization of fair value adjustments	(22,572)	20,121	(42,693)	12,745	(55,438)
Net reduction in ultimate loss and loss adjustment expense liabilities	<u>\$ 241,764</u>	<u>\$ (53,683)</u>	<u>\$ 295,447</u>	<u>\$ (16,387)</u>	<u>\$ 311,834</u>

Net reduction in case and LAE reserves comprises the movement during the year in specific case reserve liabilities as a result of claims settlements or changes advised to us by our policyholders and attorneys, less changes in case reserves recoverable advised by us to our reinsurers as a result of the settlement or movement of assumed claims. Net reduction in IBNR reserves represents the change in our actuarial estimates of losses incurred but not reported, less amounts recoverable.

Comparison of Years Ended December 31, 2012 and 2011

The net reduction in ultimate loss and loss adjustment expense liabilities for the year ended December 31, 2012 of \$241.8 million was attributable to a reduction in estimates of net ultimate losses of \$221.9 million, a reduction in aggregate provisions for bad debt of \$3.1 million and a reduction in estimates of unallocated loss adjustment expense liabilities of \$39.3 million, relating to 2012 run-off activity, partially offset by the amortization, over the estimated payout period, of fair value adjustments relating to companies acquired amounting to \$22.6 million.

The reduction in estimates of net ultimate losses of \$221.9 million comprised net incurred loss development of \$45.5 million and reductions in net IBNR reserves of \$267.4 million. During the three months ended December 31, 2012, one of our insurance entities, following an exposure-based review of all advised claims, allocated \$52.4 million of net IBNR reserves to specific net case and LAE reserves. Excluding this allocation, net incurred loss development for the year ended December 31, 2012 was a favorable \$6.9 million and reductions in net IBNR reserves amounted to \$215.0 million. The decrease in the aggregate estimate of net IBNR reserves of \$215.0 million, excluding the allocation of \$52.4 million from net IBNR reserves to specific net case and LAE reserves (compared to \$224.8 million during the year ended December 31, 2011), was comprised of \$36.4 million relating to asbestos liabilities (compared to \$57.9 million in 2011), \$2.6 million relating to environmental liabilities (compared to \$2.8 million in 2011), \$96.3 million relating to general casualty liabilities (compared to \$91.6 million in 2011) and \$79.7 million relating to all other remaining liabilities (compared to \$72.5 million in 2011).

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The aggregate reduction in net IBNR reserves of \$215.0 million was a result of the application, on a basis consistent with the assumptions applied in the prior period, of our actuarial methodologies to revised historical loss development data, following 101 commutations, to estimate loss reserves required to cover liabilities for unpaid losses and loss adjustment expenses relating to non-commuted exposures. The prior period estimate of aggregate net IBNR reserves was reduced as a result of the combined impact on all classes of business of loss development activity during 2012, including commutations and the favorable trend of loss development related to non-commuted policies compared to prior forecasts. The net incurred favorable loss development, excluding the allocation of \$52.4 million from net IBNR reserves to specific net case and LAE reserves, of \$6.9 million, resulting from settlement of net advised case and LAE reserves of \$317.6 million for net paid losses of \$310.7 million, related to the settlement of non-commuted losses in the year and 101 commutations of assumed and ceded exposures. Net incurred liabilities settled by way of commutation during the year ended December 31, 2012 amounted to \$26.6 million (comprising \$163.1 million of assumed incurred liabilities partially offset by \$136.5 million of ceded incurred reinsurance recoverables) compared to the net aggregate reduction in advised case reserves during the same period of \$317.6 million (excluding the allocation of \$52.4 million from net IBNR reserves to specific net case and LAE reserves).

Commutations provide an opportunity for us to exit exposures to entire policies with insureds and reinsureds at a discount to the previous estimated ultimate liability. As a result of exiting all exposures to such policies, all advised case reserves and net IBNR reserves relating to that insured or reinsured are eliminated. This often results in a net gain irrespective of whether the settlement exceeds the advised case reserves. We adopt a disciplined approach to the review and settlement of non-commuted claims through claims adjusting and the inspection of underlying policyholder records such that settlements of assumed exposures may often be achieved below the level of the originally advised loss, and settlements of ceded receivables may often be achieved at levels above carried balances.

Of the 101 commutations completed, three related to our top ten insured and/or reinsured exposures, and one related to our top ten ceded reinsurance assets, all four of which commutations were completed in the three months ended June 30, 2012. The remaining 97 commutations, of which approximately 33% were completed during the three months ended December 31, 2012, were of a smaller size, consistent with our approach of targeting significant numbers of cedant and reinsurer relationships, as well as targeting significant individual cedant and reinsurer relationships. The combination of the claims settlement activity in 2012, including commutations, and the actuarial estimation of net IBNR reserves required for the remaining non-commuted exposures (which took into account the favorable trend of loss development in 2012 related to such exposures compared to prior forecasts), resulted in our management concluding that the loss development activity that occurred subsequent to the prior reporting period provided sufficient new information to warrant a reduction in net IBNR reserves of \$215.0 million (excluding the allocation of \$52.4 million from net IBNR reserves to specific net case and LAE reserves) in 2012.

The reduction in aggregate provisions for bad debt of \$3.1 million was a result of the collection of certain reinsurance recoverables against which bad debt provisions had been provided in earlier periods.

Comparison of Years Ended December 31, 2011 and 2010

The net reduction in ultimate loss and loss adjustment expense liabilities for the year ended December 31, 2011 of \$295.4 million was attributable to a reduction in estimates of net ultimate losses of \$250.2 million, a reduction in aggregate provisions for bad debt of \$42.8 million and a reduction in estimates of unallocated loss adjustment expense liabilities of \$45.1 million, relating to 2011 run-off activity, partially offset by the amortization, over the estimated payout period, of fair value adjustments relating to companies acquired amounting to \$42.7 million.

The reduction in estimates of net ultimate losses of \$250.2 million comprised net incurred favorable loss development of \$25.4 million and reductions in net IBNR reserves of \$224.8 million. The aggregate reduction in net

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IBNR reserves of \$224.8 million was a result of the application, on a basis consistent with the assumptions applied in the prior period, of our actuarial methodologies to revised historical loss development data, following 113 commutations (including three commutations completed shortly after December 31, 2011), to estimate loss reserves required to cover liabilities for unpaid losses and loss adjustment expenses relating to non-commuted exposures.

The prior period estimate of aggregate net IBNR reserves was reduced as a result of the combined impact on all classes of business of loss development activity during 2011, including commutations and the favorable trend of loss development related to non-commuted policies compared to prior forecasts. The lower reduction in asbestos IBNR reserves during 2010 was primarily due to reduced commutations of asbestos related exposures compared to the prior year. Total net loss reserves acquired from January 1, 2008 to December 31, 2010 amounted to \$3,197.3 million, of which \$2,634.5 million, or 82.4%, related to all other losses. This increase in all other loss reserves provided the basis for a greater reduction in all other IBNR reserves. The net incurred favorable loss development of \$25.4 million, resulting from settlement of net advised case and LAE reserves of \$310.0 million for net paid losses of \$284.6 million, related to the settlement of non-commuted losses in the year and approximately 110 commutations of assumed and ceded exposures, excluding the three commutations completed subsequent to December 31, 2011. Net incurred liabilities settled by way of commutation during the year ended December 31, 2011 (excluding the three commutations completed subsequent to December 31, 2011) amounted to \$71.5 million compared to the net reduction in advised case reserves during the same period of \$310.0 million.

Of the 113 commutations completed during 2011, nine related to our top ten insured and/or reinsured exposures and two related to our top ten ceded reinsurance assets, including three commutations completed shortly after December 31, 2011 whereby the related reduction in net IBNR reserves was recorded in the reduction in net ultimate losses for the year. The remaining 102 commutations, of which approximately 46% were completed during the three months ended December 31, 2011, were of a smaller size, consistent with our approach of targeting significant numbers of cedant and reinsurer relationships, as well as targeting significant individual cedant and reinsurer relationships. The combination of the claims settlement activity in 2011, including commutations, and the actuarial estimation of net IBNR reserves required for the remaining non-commuted exposures (which took into account the favorable trend of loss development in 2011 related to such exposures compared to prior forecasts), resulted in our management concluding that the loss development activity that occurred subsequent to the prior reporting period provided sufficient new information to warrant a reduction in net IBNR reserves of \$224.8 million in 2011.

The reduction in aggregate provisions for bad debt of \$42.8 million was a result of the collection, primarily during the three months ended December 31, 2011, of certain reinsurance receivables against which bad debt provisions had been provided in earlier periods.

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The table below provides a reconciliation of the beginning and ending reserves for losses and loss adjustment expenses for the years ended December 31, 2012, 2011, and 2010. Losses incurred and paid are reflected net of reinsurance recoverables.

	Years Ended December 31,		
	2012	2011	2010
	(in thousands of U.S. dollars)		
Balance as of January 1	\$4,282,916	\$3,291,275	\$2,479,136
Less: total reinsurance reserves recoverable	1,383,003	525,440	347,728
	2,899,913	2,765,835	2,131,408
Effect of exchange rate movement	15,004	(9,170)	(3,836)
Net reduction in ultimate loss and loss adjustment expense liabilities	(241,764)	(295,447)	(311,834)
Net losses paid	(310,695)	(284,611)	(294,996)
Acquired on purchase of subsidiaries	—	610,485	459,362
Assumed business	422,476	112,821	785,731
Net balance as at December 31	2,784,934	2,899,913	2,765,835
Plus: total reinsurance reserves recoverable	876,220	1,383,003	525,440
Balance as at December 31	<u>\$3,661,154</u>	<u>\$4,282,916</u>	<u>\$3,291,275</u>

Salaries and Benefits:

	Years Ended December 31,			
	2012	Variance	2011	Variance
	(in thousands of U.S. dollars)			
Total	<u>\$100,473</u>	<u>\$ (10,627)</u>	<u>\$89,846</u>	<u>\$ (3,169)</u>

Comparison of Years Ended December 31, 2012 and 2011

Salaries and benefits, which include expenses relating to our discretionary bonus and employee share plans, were \$100.5 million and \$89.8 million for the years ended December 31, 2012 and 2011, respectively.

The principal changes in salaries and benefits were:

- (i) an increase in the discretionary bonus provision of \$3.0 million due to the increase in net earnings for the year ended December 31, 2012 as compared to 2011. Expenses relating to our discretionary bonus plan will be variable and are dependent on our overall profitability;
- (ii) a lower expense for 2011 attributable to the release back to earnings of approximately \$4.0 million related to the unallocated portion of the 2010 year-end bonus accrual provision; and
- (iii) increased staff costs due to an increase in our average headcount from 378 in 2011 to 392 in 2012, attributable to staff acquired on completion of the Clarendon acquisition in July 2011, partially offset by reductions in headcount in both our U.K. and Australian subsidiaries.

For 2013, we expect costs related to salaries and benefits to increase over 2012 levels due primarily to the expected increase in headcount within our U.S. operations as a result of the recently completed SeaBright acquisition and the pending acquisition of the HSBC Insurance Companies, which is expected to close by the end of the first quarter of 2013.

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Comparison of Years Ended December 31, 2011 and 2010

Salaries and benefits, which include expenses relating to our discretionary bonus and employee share plans, were \$89.8 million and \$86.7 million for the years ended December 31, 2011 and 2010, respectively.

The principal changes in salaries and benefits were:

- (i) increased staff costs due to an increase in staff numbers from 335 for the year ended December 31, 2010 to 415 for the year ended December 31, 2011 attributable to staff acquired on completion of the Clarendon Acquisition in July 2011;
- (ii) increased U.S. dollar costs of our U.K.-based staff following an increase in the average British pound exchange rate from approximately 1.5458 for the year ended December 31, 2010 to 1.6041 for the year ended December 31, 2011. Approximately 61% and 67% of the average staff numbers for the years ended December 31, 2011 and 2010, respectively, had their salaries paid in British pounds; partially offset by
- (iii) the reduction in the discretionary bonus accrual of \$8.1 million due to the release back to earnings in 2011 of approximately \$4.0 million relating to the unallocated portion of the 2010 year-end bonus accrual provision and the reduction in net earnings for the year ended December 31, 2011 as compared to 2010.

General and Administrative Expenses:

	Years Ended December 31,				
	2012	Variance	2011	Variance	2010
	(in thousands of U.S. dollars)				
Total	<u>\$56,592</u>	\$ 15,218	<u>\$71,810</u>	\$ (12,609)	<u>\$59,201</u>

Comparison of Years Ended December 31, 2012 and 2011

General and administrative expenses decreased by \$15.2 million from \$71.8 million to \$56.6 million during the year ended December 31, 2012, as compared to the year ended December 31, 2011. The decrease in expenses in 2012 related primarily to:

- (i) a decrease in legal and professional fees of \$10.9 million due largely to higher 2011 legal fees and settlement costs associated with certain litigation that did not recur in 2012 along with reductions in audit, actuarial and consulting fees of approximately \$4.0 million; and
- (ii) a reduction in bank costs of \$5.6 million as a result of fewer costs associated with credit facility fees and letters of credit.

For 2013, we expect general and administrative expenses to increase over 2012 levels due primarily to the recently completed SeaBright acquisition and the pending acquisition of the HSBC Insurance Companies.

Comparison of Years Ended December 31, 2011 and 2010

General and administrative expenses increased by \$12.6 million from \$59.2 million to \$71.8 million during the year ended December 31, 2011, as compared to the year ended December 31, 2010. The increased expenses in 2011 related primarily to:

- (i) increased bank costs of \$5.2 million primarily associated with the costs of establishing and maintaining our letters of credit, along with the arrangement and agency fees paid in relation to the establishment of both our Clarendon and revolving credit facilities;
- (ii) additional general and administrative expenses of \$4.1 million incurred in relation to both new acquisitions and significant new business that we completed in 2011;

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- (iii) increased legal expenses of approximately \$9.7 million due primarily to legal fees and settlement costs associated with certain litigation and legal fees associated with ongoing due diligence projects; and
- (iv) an increase in actuarial consulting fees of approximately \$2.9 million due to costs associated with ongoing and completed due diligence projects; partially offset by
- (v) a reduction in general and administrative expense of \$9.2 million related to: (a) the recovery of \$5.8 million on a previously written-off asset; (b) the release of \$2.4 million related to provisions on certain other assets; and (c) savings of \$1.0 million associated with the settlement of other liabilities below their carried amount.

Interest Expense:

	Years Ended December 31,				
	<u>2012</u>	<u>Variance</u>	<u>2011</u>	<u>Variance</u>	<u>2010</u>
Total	<u>\$8,426</u>	<u>\$ 103</u>	<u>\$8,529</u>	<u>\$ 1,724</u>	<u>\$10,253</u>

Comparison of Years Ended December 31, 2012 and 2011

Interest expense of \$8.4 million and \$8.5 million was recorded for the years ended December 31, 2012 and 2011, respectively. The decrease in interest expense was attributable primarily to the lower interest rates on the loan facilities outstanding during the year ended December 31, 2012 as compared to the same period in 2011.

For 2013, we expect interest expense increase over 2012 levels due primarily to the increase in loans payable as a result of the borrowings under the SeaBright Facility on February 5, 2013 in connection with our acquisition of SeaBright along with additional borrowings in respect of the planned acquisition of the HSBC Insurance Companies.

Comparison of Years Ended December 31, 2011 and 2010

Interest expense of \$8.5 million and \$10.5 million was recorded for the years ended December 31, 2011 and 2010, respectively. The decrease in interest expense was attributable primarily to the lower interest rates on the loan facilities outstanding during the year ended December 31, 2011 as compared to the same period in 2010.

Income Tax Expense:

	Years Ended December 31,				
	<u>2012</u>	<u>Variance</u>	<u>2011</u>	<u>Variance</u>	<u>2010</u>
Total	<u>\$44,290</u>	<u>\$ (19,006)</u>	<u>\$25,284</u>	<u>\$ 61,848</u>	<u>\$87,132</u>

Comparison of Years Ended December 31, 2012 and 2011

We recorded income tax expense of \$44.3 million and \$25.3 million for the years ended December 31, 2012 and 2011, respectively.

Income tax expense is generated through our foreign operations outside of Bermuda, principally in the United States, Europe and Australia. The effective tax rate was 18.8% for the year ended December 31, 2012 compared with 10.8% in the year ended December 31, 2011. Our effective income tax rate may fluctuate significantly from period to period depending on the geographic distribution of pre-tax net income in any given period between different jurisdictions with different tax rates. Our tax expense increased by \$19.0 million for the year ended December 31, 2012 due principally to increased taxable earnings from our U.K.-based subsidiaries.

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Comparison of Years Ended December 31, 2011 and 2010

We recorded income tax expense of \$25.3 million and \$87.1 million for the years ended December 31, 2011 and 2010, respectively.

The decrease in taxes of \$61.8 million was due primarily to the combination of:

- (i) lower overall net earnings in our tax paying subsidiaries for the year ended December 31, 2011 as compared to those earned in the same period in 2010; and
- (ii) during 2010, in order to mitigate the tax impacts of inter-group transactions, the boards of our Australian group of companies elected to form a consolidated tax group. The impact of this tax consolidation resulted in resetting the cost basis of certain assets, which resulted in us recording a tax charge in 2010 of approximately \$30.3 million.

Share of Net Earnings of Equity Method Investee:

	Years Ended December 31,				
	<u>2012</u>	<u>Variance</u>	<u>2011</u>	<u>Variance</u>	<u>2010</u>
	(in thousands of U.S. dollars)				
Total	<u>\$—</u>	\$ —	<u>\$—</u>	<u>\$ (10,704)</u>	<u>\$10,704</u>

For the year ended December 31, 2010, we recorded \$10.7 million as our share of net earnings of our equity method investee. During 2010, we disposed of our 44.4% indirect interest in Stonewall Insurance Company and we acquired a 100% interest in Seaton Insurance Company.

Noncontrolling interest:

	Years Ended December 31,				
	<u>2012</u>	<u>Variance</u>	<u>2011</u>	<u>Variance</u>	<u>2010</u>
	(in thousands of U.S. dollars)				
Total	<u>\$23,502</u>	<u>\$ 31,263</u>	<u>\$54,765</u>	<u>\$ (13,120)</u>	<u>\$41,645</u>

Comparison of Years Ended December 31, 2012 and 2011

We recorded a noncontrolling interest in earnings of \$23.5 million and \$54.8 million for the years ended December 31, 2012 and 2011, respectively. The decrease for the year ended December 31, 2012 was due primarily to the decrease in earnings for those companies where there exists a noncontrolling interest. In addition, on January 1, 2012, S2008 transferred the assets and liabilities relating to its 2009 and prior underwriting years of account into its 2010 underwriting year of account by means of an RITC transaction. Following the transfer, the existing noncontrolling interest held by JCF FPK and JCF II ceased, resulting in us now providing 100% of the underwriting capacity for S2008. The number of subsidiaries with a noncontrolling interest decreased from 8 as at December 31, 2011 to 7 as at December 31, 2012.

Comparison of Years Ended December 31, 2011 and 2010

We recorded a noncontrolling interest in earnings of \$54.8 million and \$41.6 million for the years ended December 31, 2011 and 2010, respectively. The increase of \$13.1 million for the year ended December 31, 2011 was due primarily to the increase in earnings for those companies where there exists a noncontrolling interest.

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Liquidity and Capital Resources

Our capital management strategy is to preserve sufficient capital to enable us to make future acquisitions while maintaining a conservative investment strategy. As we are a holding company and have no substantial operations of our own, our assets consist primarily of investments in subsidiaries. The potential sources of the cash flows to Enstar as a holding company consist of dividends, advances and loans from our subsidiary companies.

Our future cash flows depend upon the availability of dividends or other statutorily permissible payments from our subsidiaries. The ability to pay dividends and make other distributions is limited by the applicable laws and regulations of the jurisdictions in which our insurance and reinsurance subsidiaries operate, including Bermuda, the United Kingdom, the United States, Australia and Europe, which subject these subsidiaries to significant regulatory restrictions. These laws and regulations require, among other things, certain of our insurance and reinsurance subsidiaries to maintain minimum capital resources requirements and limit the amount of dividends and other payments that these subsidiaries can pay to us, which in turn may limit our ability to pay dividends and make other payments. For more information on these laws and regulations, see “Business — Regulation” beginning on page 20.

As of December 31, 2012 and 2011, all of our insurance and reinsurance subsidiaries’ capital resources levels were in excess of the minimum levels required, with the exception of one of our U.S. insurance companies that was acquired whilst under supervision and is not in compliance with its minimum risk-based capital level. We do not believe this company’s non-compliance will have an impact on our ability to meet our cash obligations. In addition, our subsidiaries’ ability to pay dividends and make other forms of distributions may be further limited by repayment obligations in certain of our outstanding loan facility agreements.

We believe that restrictions on liquidity resulting from restrictions on the payments of dividends by our subsidiary companies will not have a material impact on our ability to meet our cash obligations. Retained earnings of our insurance and reinsurance subsidiaries are not currently restricted as minimum capital solvency margins are covered by share capital and additional paid-in-capital.

Our sources of funds primarily consist of the cash and investment portfolios acquired on the completion of the acquisition of an insurance or reinsurance company in run-off. These acquired cash and investment balances are classified as cash provided by investing activities. We expect to use these funds acquired, together with collections from reinsurance debtors, consulting income, investment income and proceeds from sales and redemptions of investments, to meet expected claims payments and operational expenses with the remainder used for acquisitions and additional investments. We expect a net use of cash from operations as total net claim payments and operating expenses will generally be in excess of investment income earned. We expect our operating cash flows, together with our existing capital base and cash and investments acquired on the acquisition of our insurance and reinsurance subsidiaries, to be sufficient to meet cash requirements and to operate our business. We currently do not intend to pay dividends on our ordinary shares.

At December 31, 2012, we had total cash and cash equivalents, restricted cash and cash equivalents and investments of \$4.31 billion, compared to \$4.56 billion at December 31, 2011. Our cash and cash equivalent portfolio is comprised mainly of cash, high-grade fixed deposits, commercial paper with maturities of less than three months and money market funds.

Reinsurance Recoverables

Our acquired insurance and reinsurance subsidiaries, prior to acquisition by us, used retrocessional agreements to reduce their exposure to the risk of reinsurance assumed. We remain liable to the extent that retrocessionaires do not meet their obligations under these agreements, and therefore, we evaluate and monitor concentration of credit risk. Provisions are made for amounts considered potentially uncollectible.

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As of December 31, 2012 and 2011, we had total reinsurance balances recoverable of \$1.12 billion and \$1.79 billion, respectively. The decrease of \$666.7 million in total reinsurance balances recoverable was primarily a result of commutations, cash collections and a reduction in estimated ultimate losses in the year ended December 31, 2012. At December 31, 2012 and 2011, the provision for uncollectible reinsurance recoverable relating to total reinsurance balances recoverable was \$343.9 million and \$341.1 million, respectively. To estimate the provision for uncollectible reinsurance recoverable, the reinsurance balances recoverable are first allocated to applicable reinsurers. As part of this process, ceded IBNR reserves are allocated by reinsurer. The ratio of the provision for uncollectible reinsurance recoverable to total reinsurance balances recoverable (excluding provision for uncollectible reinsurance recoverable) as of December 31, 2012 increased to 23.4% as compared to 16.0% as of December 31, 2011. This was primarily as a result of commutations and the collection of reinsurance balances recoverable against which there were minimal provisions for uncollectible reinsurance recoverable.

Cash Flows

We primarily generate our cash from the acquisitions we complete. These acquired cash and investment balances are classified as cash provided by investing activities.

We expect the net operating cash flows for us, to expiry, to be negative as we pay out cash in claims payments and operational expenses in excess of cash generated via investment income and consulting fees.

The following table summarizes our consolidated cash flows from operating, investing and financing activities in the last three years:

<u>Total cash (used in) provided by:</u>	<u>Years Ended December 31,</u>		
	<u>2012</u>	<u>2011</u>	<u>2010</u>
	<i>(in thousands of U.S. dollars)</i>		
Operating activities	\$ (187,350)	\$ (909,920)	\$ (609,211)
Investing activities	228,631	691,923	253,461
Financing activities	(233,773)	259,769	(124,697)
Effect of exchange rate changes on cash	(3,092)	9,548	13,156
(Decrease) increase in cash and cash equivalents	<u>\$ (195,584)</u>	<u>\$ 51,320</u>	<u>\$ (467,291)</u>

See “Item 8. Financial Statements and Supplementary Data — Consolidated Statements of Cash Flows for the years ended December 31, 2012, 2011 and 2010” for further information.

Operating

Net cash used in our operating activities for the year ended December 31, 2012 was \$187.4 million compared to \$909.9 million for the year ended December 31, 2011. This \$722.6 million decrease in cash used in operating activities was due primarily to the following:

- (i) an increase of \$1.0 billion in sales and maturities of trading securities between 2011 and 2012;
- (ii) a decrease in reinsurance balances recoverable of \$666.8 million in 2012 compared to a decrease of \$238.8 million in 2011;
- (iii) an increase of \$460.8 million in purchases of trading securities between 2011 and 2012; and
- (iv) an increase in funds held by reinsured companies of \$257.5 million in 2012 compared to a decrease of \$167.0 million in 2011, due primarily to the RITC transaction completed by S2008 on December 31, 2012.

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Net cash used in our operating activities for the year ended December 31, 2011 was \$909.9 million compared to \$609.2 million for the year ended December 31, 2010. This \$300.7 million increase in cash used in operating activities was due primarily to the following:

- (i) a decrease of \$675.1 million in loss and loss adjustment expense liabilities in 2011 compared to an increase of \$150.0 million in 2010;
- (ii) a decrease in reinsurance balances recoverable of \$238.8 million in 2011 compared to an increase of \$13.9 million in 2010; and
- (iii) a decrease in funds held by reinsurance companies of \$167.0 million in 2011 compared to an increase of \$206.0 million in 2010.

Investing

Investing cash flows consist primarily of cash acquired net of acquisitions along with net proceeds on the sale and purchase of available-for-sale securities and other investments. Net cash provided by investing activities was \$228.6 million during the year ended December 31, 2012 compared to \$691.9 million during the year ended December 31, 2011. This \$463.3 million decrease in investing cash flows was due primarily to the following:

- (i) a decrease of \$73.2 million in restricted cash and cash equivalents during 2012, compared to a decrease of \$290.2 million in 2011;
- (ii) a decrease of \$91.1 million in the sales and maturities of available-for-sale securities between 2012 and 2011; and
- (iii) an increase of \$173.0 million in the funding of other investments between 2012 and 2011 due to the increased allocation to other investments during 2012; partially offset by
- (iv) a decrease of \$88.5 million in net cash used for acquisitions between 2012 and 2011.

Net cash provided by investing activities was \$691.9 million during the year ended December 31, 2011 compared to \$253.5 million during the year ended December 31, 2010. This \$438.5 million increase in investing cash flows between 2011 and 2010 was due primarily to the following:

- (i) a decrease of \$290.2 million in restricted cash and cash equivalents during 2011, compared to an increase of \$187.0 million in 2010;
- (ii) an increase of \$92.1 million in the net sales, purchases and maturity of available-for-sale and held-to-maturity securities between 2011 and 2010 due to the decision of our investment committee to increase the allocation of our investment portfolio to trading securities;
- (iii) a decrease of \$91.9 million in the funding of other investments between 2011 and 2010 due to higher levels of capital calls related to our private equity investments during 2010; partially offset by
- (iv) the use of \$88.5 million in net cash for acquisitions during 2011, compared to net cash provided by acquisitions of \$173.7 million during 2010.

Financing

Net cash (used in) provided by financing activities was \$(233.8) million during the year ended December 31, 2012 compared to \$259.8 million during the year ended December 31, 2011. This \$493.5 million increase in cash used in financing activities was primarily attributable to the following:

- (i) \$287.4 million in net proceeds from the private placement of shares in 2011 to affiliates of Goldman, Sachs & Co. compared to \$nil in 2012; and

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- (ii) a decrease of \$274.2 million in cash received attributable to bank loans between 2012 and 2011 due largely to decreased acquisition-funding requirements partially offset by a decrease of \$142.9 million in the repayment of bank loans.

Net cash provided by (used in) financing activities was \$259.8 million during the year ended December 31, 2011 compared to \$(124.7) million during the year ended December 31, 2010. This \$384.5 million increase in cash provided by financing activities was primarily attributable to the following:

- (i) an increase of \$287.4 million in net proceeds from the private placement of shares in 2011 to affiliates of Goldman, Sachs & Co. compared to \$nil in 2010; and
- (ii) an increase of \$112.8 million in cash received attributable to bank loans between 2011 and 2010 largely due to increased acquisition-funding requirements, partially offset by an increase of \$51.2 million in the repayment of bank loans; and
- (iii) a decrease of \$41.1 million in dividends paid to noncontrolling interest in 2011, partially offset by an increase of \$5.6 million in net distributions of capital to noncontrolling interest.

Investments

The table below shows the aggregate amounts of our investments as of December 31, 2012 and 2011:

	December 31, 2012		December 31, 2011	
	Fair Value	% of Total	Fair Value	% of Total
	(in thousands of U.S. dollars)			
U.S. government and agency	\$ 366,863	10.9%	\$ 418,837	12.6%
Non-U.S. government	389,578	11.6%	380,778	11.4%
Corporate	1,715,870	51.2%	1,968,243	59.0%
Municipal	20,446	0.6%	25,416	0.8%
Residential mortgaged-backed	120,092	3.6%	110,785	3.3%
Commercial mortgaged-backed	131,329	3.9%	86,694	2.6%
Asset-backed	79,264	2.4%	62,201	1.8%
Fixed maturities	2,823,442	84.2%	3,052,954	91.5%
Other investments	414,845	12.4%	192,264	5.8%
Equities	114,588	3.4%	89,981	2.7%
Total investments	\$3,352,875	100.0%	\$3,335,199	100.0%

As at December 31, 2012, we held investments totaling \$3.35 billion, compared to \$3.34 billion at December 31, 2011, with net unrealized appreciation included in accumulated other comprehensive income of \$5.7 million compared to \$16.8 million at December 31, 2011. As at December 31, 2012, we had approximately \$1.0 billion of restricted assets compared to approximately \$1.2 billion at December 31, 2011.

We strive to structure our investments in a manner that recognizes our liquidity needs for future liabilities. In that regard, we attempt to correlate the maturity and duration of our investment portfolio to our general liability profile. If our liquidity needs or general liability profile unexpectedly change, we may adjust the structure of our investment portfolio to meet new business needs.

Our strategy of commuting our liabilities has the potential to accelerate the natural payout of losses. Therefore, we maintain a relatively short-duration investment portfolio in order to provide liquidity for commutation opportunities and avoid having to liquidate longer dated investments. Accordingly, the majority of our investment portfolio consists of highly rated fixed maturities, including U.S. government and agency

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investments, highly rated sovereign and supranational investments, high-grade corporate investments, and mortgage-backed and asset-backed investments. We allocate a portion of our investment portfolio to other investments, including private equity funds, fixed income funds, fixed income hedge funds, an equity fund and a real estate debt fund. At December 31, 2012, these other investments totaled \$414.8 million, or 12.4%, of our total investments (2011: \$192.3 million or 5.8%). The trend of increased allocation to our other investments is likely to continue in the future because we have not fully funded all existing investment commitments in this asset class.

Fixed Maturity Investments

Our investment guidelines govern the types of investments we make, including with respect to credit quality ratings.

The maturity distribution for our fixed maturity investments held as of December 31, 2012 and 2011 was as follows:

	December 31, 2012		December 31, 2011	
	Fair Value	% of Total	Fair Value	% of Total
		(in thousands of U.S. dollars)		
Due in one year or less	\$1,032,614	36.6%	\$1,158,546	38.0%
Due after one year through five years	1,342,257	47.5%	1,465,176	48.0%
Due after five years through ten years	99,957	3.5%	152,829	5.0%
Due after ten years	17,929	0.6%	16,723	0.6%
	<u>2,492,757</u>	<u>88.2%</u>	<u>2,793,274</u>	<u>91.6%</u>
Residential mortgage-backed	120,092	4.3%	110,785	3.6%
Commercial mortgage-backed	131,329	4.7%	86,694	2.8%
Asset-backed	79,264	2.8%	62,201	2.0%
Total	<u>\$2,823,442</u>	<u>100.0%</u>	<u>\$3,052,954</u>	<u>100.0%</u>

As at December 31, 2012 and 2011, our fixed maturity investments and short-term investment portfolio had an average credit quality rating of AA-. At December 31, 2012 and 2011, our fixed maturity investments rated BBB or lower comprised 11.3% and 11.5% of our total investment portfolio, respectively.

At December 31, 2012, we had \$319.1 million of short-term investments (2011: \$410.3 million). Short-term investments are managed as part of our investment portfolio and have a maturity of one year or less when purchased. Short-term investments are carried at fair value.

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The following table summarizes the composition of the amortized cost and fair value of our fixed maturity investments, short term investments and other investments at the date indicated by ratings as assigned by major rating agencies.

At December 31, 2012	Amortized		% of Total Investments	AAA Rated	AA Rated	A Rated	BBB Rated	Non-Investment Grade	Not Rated
	Cost	Fair Value							
(in thousands of U.S. dollars)									
Fixed maturity investments									
U.S. government & agency	\$ 362,288	\$ 366,863	10.9%	\$ —	\$ 366,863	\$ —	\$ —	\$ —	\$ —
Non-U.S. government	380,401	389,578	11.6%	244,366	103,515	39,051	2,646	—	—
Corporate	1,694,652	1,715,870	51.2%	140,708	434,903	803,663	301,787	27,409	7,400
Municipal	19,743	20,446	0.6%	—	14,470	5,837	139	—	—
Residential mortgage-backed	119,538	120,092	3.6%	17,218	81,253	2,858	16,940	1,823	—
Commercial mortgage-backed	130,841	131,329	3.9%	62,597	9,828	29,884	21,406	7,614	—
Asset-backed	78,644	79,264	2.4%	64,237	8,177	5,070	174	1,606	—
Total fixed maturity investments	\$2,786,107	2,823,442	84.2%	529,126	1,019,009	886,363	343,092	38,452	7,400
				18.7%	36.1%	31.4%	12.2%	1.4%	0.2%
Equities									
U.S.		92,406	2.8%	—	—	—	—	—	92,406
International		22,182	0.6%	—	—	—	—	—	22,182
Total equities		114,588	3.4%	—	—	—	—	—	114,588
				0.0%	0.0%	0.0%	0.0%	0.0%	100%
Other investments									
Private equity funds		127,696	3.8%	—	—	—	—	—	127,696
Fixed income funds		156,235	4.7%	—	—	—	—	—	156,235
Fixed income hedge funds		53,933	1.6%	—	—	—	—	—	53,933
Equity fund		55,881	1.7%	—	—	—	—	—	55,881
Real estate debt fund		16,179	0.5%	—	—	—	—	—	16,179
Other		4,921	0.1%	—	—	—	—	—	4,921
Total other investments		414,845	12.4%	—	—	—	—	—	414,845
				0.0%	0.0%	0.0%	0.0%	0.0%	100%
Total investments		\$3,352,875	100.0%	\$529,126	\$1,019,009	\$886,363	\$343,092	\$ 38,452	\$536,833
				15.8%	30.4%	26.5%	10.2%	1.1%	16.0%

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At December 31, 2011	Amortized	Fair Value	% of Total Investments	AAA Rated	AA Rated	A Rated	BBB Rated	Non-Investment	Not Rated
	Cost							Grade	
Fixed maturity investments									
U.S. government & agency	\$ 412,759	\$ 418,837	12.6%	\$ 413,168	\$ 5,669	\$ —	\$ —	\$ —	\$ —
Non-U.S. government	372,081	380,778	11.4%	297,320	37,569	28,247	6,311	—	11,331
Corporate	1,968,779	1,968,243	59.0%	216,497	442,881	953,950	335,461	5,000	14,454
Municipal	24,763	25,416	0.8%	—	19,582	5,834	—	—	—
Residential mortgaged-backed	110,923	110,785	3.3%	81,502	2,338	1,188	22,649	2,794	314
Commercial mortgaged-backed	83,479	86,694	2.6%	45,402	9,626	22,301	9,365	—	—
Asset-backed	62,446	62,201	1.9%	42,935	15,700	313	3,253	—	—
Total fixed maturity investments	3,035,230	3,052,954	91.6%	1,096,824	533,365	1,011,833	377,039	7,794	26,099
				35.9%	17.5%	33.1%	12.3%	0.3%	0.9%
Equities									
U.S.		54,378	1.6%	—	—	—	—	—	54,378
International		35,603	1.1%	—	—	—	—	—	35,603
Total equities		89,981	2.7%	—	—	—	—	—	89,981
				0.0%	0.0%	0.0%	0.0%	0.0%	100.0%
Other investments									
Private equity funds		107,388	3.2%	—	—	—	—	—	107,388
Fixed income funds		54,537	1.6%	—	—	—	—	—	54,537
Fixed income hedge funds		24,395	0.7%	—	—	—	—	—	24,395
Other		5,944	0.2%	—	—	—	—	—	5,944
Total other investments		192,264	5.7%	—	—	—	—	—	192,264
				0.0%	0.0%	0.0%	0.0%	0.0%	100.0%
Total investments		\$3,335,199	100.0%	\$1,096,824	\$533,365	\$1,011,833	\$377,039	\$ 7,794	\$308,344
				32.9%	16.0%	30.3%	11.3%	0.2%	9.3%

The value of our fixed maturity investments will fluctuate with changes in the interest rate environment and when changes occur in the overall investment market and in overall economic conditions.

Our fixed maturity portfolio is managed by our Chief Investment Officer and outside investment advisors with oversight from our Investment Committee.

As at December 31, 2012 and 2011, no investments were considered other-than-temporarily impaired. At December 31, 2012, our gross unrealized losses on available-for-sale investments totaled \$0.7 million. At December 31, 2012, we held 23 available-for-sale investments that were in an unrealized loss position for longer than twelve months.

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Other Investments

The table below shows the fair value of our portfolio of other investments held at December 31, 2012 and 2011:

	Total Fair Value 2012	Total Fair Value 2011
	(in thousands of U.S. dollars)	
Private equity funds	\$ 127,696	\$ 107,388
Fixed income funds	156,235	54,537
Fixed income hedge funds	53,933	24,395
Equity fund	55,881	—
Real estate debt fund	16,179	—
Other	4,921	5,944
Total other investments	<u>\$ 414,845</u>	<u>\$ 192,264</u>

We have committed capital to other investments of \$87.6 million as at December 31, 2012 and \$77.5 million as at December 31, 2011. In the future, we may enter into additional commitments in respect of private equity partnerships or individual portfolio company investment opportunities.

Measuring the Fair Value of Other Investments using Net Asset Valuations

The following table presents the fair value, unfunded commitments and redemption frequency for all of our other investments. These investments are all valued at net asset value as at December 31, 2012.

	Investments				
	Total Fair Value	Gated/ Side Pocket Investments	without Gates or Side Pockets	Unfunded Commitments	Redemption Frequency
Private equity funds	\$127,696	\$ —	\$ 127,696	\$ 86,936	Not eligible
Fixed income funds	156,235	—	156,235	—	Daily to monthly
Fixed income hedge funds	53,933	—	53,933	—	Quarterly after lock-up periods expire
Equity fund	55,881	—	55,881	—	Bi-monthly
Real estate debt fund	16,179	—	16,179	—	monthly
Other	4,921	—	4,921	655	Not eligible
Total	<u>\$414,845</u>	<u>\$ —</u>	<u>\$414,845</u>	<u>\$ 87,591</u>	

Management regularly reviews and discusses fund performance with their fund managers to corroborate the reasonableness of the reported net asset values and to assess whether any events have occurred within the lag period that would materially affect the valuation of the investments.

Private equity funds

This class is comprised of several private equity funds that invest primarily in the financial services industry. All of our investments in private equity funds are subject to restrictions on redemptions and sales that are determined by the governing documents and limit our ability to liquidate those investments. These restrictions have been in place since the dates the initial investments were made.

As of December 31, 2012 and 2011, we had \$127.7 million and \$107.4 million, respectively, of other investments recorded in private equity funds, which represented 3.8% and 3.2% of total investments, respectively.

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Fixed income funds

This class is comprised of a number of positions in diversified fixed income funds that are managed by third party managers. Underlying investments vary from high grade corporate bonds to below investment grade senior secured loans and bonds, but are generally invested in liquid fixed income markets. These funds have regularly published prices. The funds have liquidity terms that vary from daily to monthly.

Fixed income hedge funds

This class is comprised of hedge funds that invest in a diversified portfolio of debt investments. The advisor of the funds intends to seek attractive risk-adjusted total returns for the funds' investors by acquiring, originating, and actively managing a diversified portfolio of debt investments, with a focus on various forms of mortgage-backed investments and loans. The funds focus on investments that the advisor believes to be fundamentally undervalued with current market prices that are believed to be compelling relative to intrinsic value. The hedge funds are not currently eligible for redemption due to imposed lock-up periods of three years from the time of our initial investment. Once eligible, redemptions will be permitted quarterly with 90 days' notice. The first eligible redemption is March 2014.

Equity fund

This class is comprised of an equity fund that invests in a diversified portfolio of international publicly-traded equity investments. The manager of the fund seeks to maximize the intrinsic value of the portfolio by focusing on price and quality.

Real estate debt fund

This class is comprised of a real estate debt fund that invests primarily in U.S. commercial real estate loans and securities. A redemption request for this fund can be made 10 days after the date of any monthly valuation; the fund states that it will make commercially reasonable efforts to redeem the investment within the next monthly period.

Other

This class is comprised primarily of a fund that provides loans to educational institutions throughout the U.S. and its territories. Through this investment we participate in the performance of the underlying loans. This investment matures when the loans are paid down.

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Eurozone Exposure

At December 31, 2012, we did not own any investments in fixed maturity investments (which includes bonds that are classified as cash and cash equivalents) and fixed income funds issued by the sovereign governments of Portugal, Italy, Ireland, Greece or Spain. Our fixed maturity investments and fixed income funds exposures to Eurozone Governments (which includes regional and municipal governments including guaranteed agencies) by rating are highlighted in the following tables:

	Ratings					Total
	AAA	AA	A	BBB and below	NR	
	(in thousands of U.S. dollars)					
Germany	\$33,067	\$12,567	\$ —	\$ —	\$ —	\$ 45,634
Supranationals	30,696	901	—	—	—	31,597
Denmark	1,560	—	—	—	—	1,560
Netherlands	15,669	2,485	—	—	—	18,154
Norway	2,316	4,206	—	26,492	—	33,014
France	—	14,462	—	—	—	14,462
Finland	493	—	—	—	—	493
Sweden	1,998	20,293	4,780	—	—	27,071
Austria	—	11,461	—	—	—	11,461
	<u>85,799</u>	<u>66,375</u>	<u>4,780</u>	<u>26,492</u>	<u>—</u>	<u>183,446</u>
Euro Region Government Funds	<u>4,922</u>	<u>—</u>	<u>71</u>	<u>6,291</u>	<u>1,094</u>	<u>12,378</u>
	<u>\$90,721</u>	<u>\$66,375</u>	<u>\$4,851</u>	<u>\$32,783</u>	<u>\$1,094</u>	<u>\$195,824</u>

Our fixed maturities exposure to Eurozone Governments (which include regional and municipal governments including guaranteed agencies) by maturity date are highlighted in the following table. Our fixed income fund holdings have daily liquidity and are not included in the maturity table below.

	By Maturity Date					Total
	3 months or less	3 to 6 months	6 months to 1 year	1 to 2 years	more than 2 years	
	(in thousands of U.S. dollars)					
Germany	\$10,813	\$ 2,000	\$ 5,076	\$ 1,089	\$ 26,656	\$ 45,634
Supranationals	—	7,040	17,388	2,481	4,688	31,597
Denmark	—	—	1,560	—	—	1,560
Netherlands	—	5,001	4,331	3,732	5,090	18,154
Norway	1,000	17,394	—	—	14,620	33,014
France	—	—	10,877	480	3,105	14,462
Finland	—	—	—	493	—	493
Sweden	8,612	—	3,385	7,072	8,002	27,071
Austria	10,026	—	—	490	945	11,461
	<u>\$30,451</u>	<u>\$31,435</u>	<u>\$42,617</u>	<u>\$15,837</u>	<u>\$ 63,106</u>	<u>\$183,446</u>

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At December 31, 2012, we owned investments in corporate securities (which include bonds that are classified as cash and cash equivalents) where the ultimate parent company of the issuer was located within the Eurozone. This includes investments that were issued by subsidiaries whose location was outside of the Eurozone. Our exposures by country and listed by rating, sector and maturity date are highlighted in the following tables:

	Ratings					Total
	AAA	AA	A	BBB	BB and below	
	(in thousands of U.S. dollars)					
Germany	\$ —	\$ —	\$10,514	\$ —	\$ —	\$ 10,514
Belgium	—	—	6,692	—	—	6,692
Netherlands	335	20,093	13,680	58,884	540	93,532
Sweden	—	2,728	13,719	—	7,360	23,807
Norway	12,622	—	3,518	—	—	16,140
France	21,321	8,532	18,440	1,085	—	49,378
Spain	—	2,932	—	20,376	—	23,308
Italy	—	—	—	1,026	—	1,026
Luxembourg	—	—	1,121	14,871	—	15,992
	<u>\$34,278</u>	<u>\$34,285</u>	<u>\$67,684</u>	<u>\$96,242</u>	<u>\$7,900</u>	<u>\$240,389</u>

	Sector					Total
	Financial	Energy	Industrial	Telecom	Utility	
	(in thousands of U.S. dollars)					
Germany	\$ 8,274	\$ —	\$ 2,240	\$ —	\$ —	\$ 10,514
Belgium	6,427	—	265	—	—	6,692
Netherlands	55,761	10,471	5,319	8,856	13,125	93,532
Sweden	16,447	—	4,140	—	—	23,807
Norway	12,622	—	3,518	—	—	16,140
France	35,283	—	8,041	700	5,354	49,378
Spain	2,932	—	20,376	—	—	23,308
Italy	1,026	—	—	—	—	1,026
Luxembourg	1,120	704	—	8,479	5,689	15,992
	<u>\$139,892</u>	<u>\$11,175</u>	<u>\$43,899</u>	<u>\$18,035</u>	<u>\$24,168</u>	<u>\$240,389</u>

	By Maturity Date					Total
	3 months or less	3 to 6 months	6 months to 1 year	1 to 2 years	more than 2 years	
	(in thousands of U.S. dollars)					
Germany	\$ 2,240	\$ 5,087	\$ —	\$ 2,658	\$ 529	\$ 10,514
Belgium	265	—	—	—	6,427	6,692
Netherlands	12,896	10,800	16,394	18,756	34,686	93,532
Sweden	14,065	2,296	4,000	2,014	1,432	23,807
Norway	3,518	—	—	12,622	—	16,140
France	5,289	5,198	4,241	10,866	23,784	49,378
Spain	15,052	8,256	—	—	—	23,308
Italy	—	—	528	—	498	1,026
Luxembourg	5,688	—	7,492	2,812	—	15,992
	<u>\$59,013</u>	<u>\$31,637</u>	<u>\$32,655</u>	<u>\$49,728</u>	<u>\$67,356</u>	<u>\$240,389</u>

Investments issued by companies located in the United Kingdom and Switzerland are not included in the tables.

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None of the investments we owned at December 31, 2012 were considered impaired and we do not expect to incur any significant losses on these investments.

Long-Term Debt

Our long-term debt consists of loan facilities used to partially finance certain of our acquisitions or significant new business transactions. We draw down on the loan facilities at the time of the acquisition or significant new business transaction, although in some circumstances we have made additional draw-downs to refinance existing debt of the acquired company. Until they were fully repaid on December 3, 2012, we also had loans outstanding relating to the share repurchase agreements described below.

For the years ended December 31, 2012, 2011 and 2010, we incurred interest expense of \$8.4 million, \$8.5 million and \$10.3 million, respectively, on our loan facilities and loans related to the share repurchase agreements. All of our currently outstanding loan facilities are floating rate loans, and the fair values of these loans approximate their book values.

Amounts of loans payable outstanding, and accrued interest, as of December 31, 2012 and 2011 totaled \$107.4 million and \$242.7 million, respectively, and were comprised of:

<u>Facility</u>	<u>Date of Facility</u>	<u>Term</u>	<u>Facility Amount</u>	<u>December 31, 2012</u>	<u>December 31, 2011</u>
EGL Revolving Credit Facility	June 14, 2011	3 Years	\$250,000	\$ —	\$ 115,875
Clarendon Facility	July 12, 2011	4 Years	\$106,500	106,500	106,500
SeaBright Facility	December 21, 2012	4 Years	\$111,000	—	—
Total long-term bank debt				106,500	222,375
Repurchase agreements	October 1, 2010			—	18,667
Accrued interest on loans payable				930	1,668
Total loans payable				<u>\$ 107,430</u>	<u>\$ 242,710</u>

EGL Revolving Credit Facility

On June 14, 2011, we, as borrower, and certain of our subsidiaries, as guarantors, entered into a Revolving Credit Facility Agreement with NAB and Barclays, as bookrunners and mandated lead arrangers, certain financial institutions, as lenders, and NAB as agent, or the EGL Revolving Credit Facility. The EGL Revolving Credit Facility provides for a three-year revolving credit facility pursuant to which we are permitted to borrow up to an aggregate of \$250.0 million, which is available to prepay certain existing credit facilities of ours and certain of our subsidiaries, to fund permitted acquisitions and for general corporate purposes. Our ability to draw on the EGL Revolving Credit Facility is subject to customary conditions.

The EGL Revolving Credit Facility is secured by a first priority lien on the stock of certain of our subsidiaries and certain bank accounts held with Barclays in our name and into which amounts received in respect of any capital release from certain of our subsidiaries are required to be paid. Interest is payable at the end of each interest period chosen by us or, at the latest, each six months. The interest rate is LIBOR plus 2.75%, plus an incremental amount tied to certain regulatory costs, if any, that may be incurred by the lenders. Any unused portion of the EGL Revolving Credit Facility is subject to a commitment fee of 1.10%. The EGL Revolving Credit Facility is subject to various financial and business covenants applicable to us, the guarantors and certain other material subsidiaries, including limitations on mergers and consolidations, acquisitions, indebtedness and guarantees, restrictions as to dispositions of stock and dividends, and limitations on liens on stock. As of December 31, 2012, all of the covenants relating to the EGL Revolving Credit Facility were met.

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During the existence of any payment default, the interest rate is increased by 1.0%. During the existence of any event of default (as specified in the EGL Revolving Credit Facility), the agent may cancel the commitments of the lenders, declare all or a portion of outstanding amounts immediately due and payable, declare all or a portion of outstanding amounts payable upon demand or proceed against the security. The EGL Revolving Credit Facility terminates and all amounts borrowed must be repaid on June 14, 2014, the third anniversary of the facility.

On October 21, 2011 and December 30, 2011, we repaid \$25.0 million and \$26.8 million, respectively, of the outstanding principal balance of the EGL Revolving Credit Facility. On June 29, 2012, we repaid \$115.9 million of the outstanding principal balance and \$2.1 million of accrued interest on the facility. As of December 31, 2012, the outstanding EGL Revolving Credit Facility loan balance, inclusive of accrued interest, was \$nil. On February 5, 2013, we borrowed \$56.0 million under the EGL Revolving Credit Facility.

Clarendon Facility

On March 4, 2011, we, through Clarendon Holdings, Inc., entered into a \$106.5 million term facility agreement, or the Clarendon Facility, with NAB. The Clarendon Facility provides a four-year term loan facility, which was fully drawn upon on July 12, 2011 to fund 50% of the purchase price of Clarendon. As of December 31, 2012, the outstanding Clarendon Facility principal balance was \$106.5 million.

The Clarendon Facility is secured by a security interest in all of the assets of Clarendon Holdings, Inc., as well as a first priority lien on the stock of both Clarendon Holdings, Inc. and Clarendon. Interest is payable at the end of each interest period chosen by Clarendon Holdings, Inc. or, at the latest, each six months. The interest rate is LIBOR plus 2.75%. The Clarendon Facility is subject to various financial and business covenants, including limitations on mergers and consolidations, restrictions as to disposition of stock and limitations on liens on the stock.

During the existence of any payment default, the interest rate is increased by 1.0%. During the existence of any event of default (as specified in the term facility agreement), the lenders may declare all or a portion of outstanding amounts immediately due and payable, declare all or a portion of borrowed amounts payable upon demand, or proceed against the security. The Clarendon Facility terminates and all amounts borrowed must be repaid on July 12, 2015.

SeaBright Facility

On December 21, 2012, we, through AML Acquisition, entered into a Term Facility Agreement with NAB and Barclays, or the SeaBright Facility. The SeaBright Facility provides a four-year term loan facility, which AML Acquisition fully drew down on February 5, 2013 in an amount of \$111.0 million to partially fund our acquisition of SeaBright. We acquired SeaBright on February 7, 2013 by way of a merger of AML Acquisition with and into SeaBright, or the Merger, with SeaBright surviving the Merger as our indirect, wholly-owned subsidiary.

Following completion of the Merger, SeaBright (as the survivor of the Merger) became the borrower under the SeaBright Facility and the facility became secured by a security interest in all of the assets of SeaBright, a pledge of the stock of SeaBright by its sole stockholder, a pledge of the stock of SeaBright Insurance Company, Paladin Managed Care Services, Inc., and PointSure Insurance Services, Inc. (which are wholly-owned subsidiaries of SeaBright) by SeaBright, and a security interest in all of the assets of Paladin Managed Care Services, Inc. and PointSure Insurance Services, Inc.

From the date of the SeaBright Facility until the draw down on February 5, 2013, the undrawn and uncanceled amount of the SeaBright Facility incurred a fee of 1% per annum. Interest on amounts borrowed under the SeaBright Facility is payable at the end of each interest period chosen by the borrower or, at the latest,

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each six months. The interest rate is LIBOR plus 2.75% for the first 18 months from February 5, 2013, and increases to LIBOR plus 3.50% thereafter; the interest rate is subject to increase by an incremental amount tied to certain regulatory costs, if any, that may be incurred by the lenders. The SeaBright Facility imposes various financial and business covenants on SeaBright, including limitations on mergers and consolidations, acquisitions, indebtedness and guarantees, restrictions as to dispositions of stock and assets (except for certain permitted dispositions), restrictions on dividends, and limitations on liens on the stock.

During the existence of any payment default, the interest rate would be increased by 1.0%. During the existence of any event of default (as specified in the SeaBright Facility), the lenders may cancel their commitments, declare all or a portion of outstanding amounts immediately due and payable, declare all or a portion of borrowed amounts payable upon demand, or proceed against the security. The SeaBright Facility terminates and all amounts borrowed must be repaid on December 21, 2016, the fourth anniversary of the date the facility was put in place.

Share Repurchase

On October 1, 2010, we entered into repurchase agreements to repurchase an aggregate of 800,000 of our ordinary shares at a price of \$70.00 per share from three of our executives and certain trusts and a corporation affiliated with the executives. The aggregate purchase price of \$56.0 million was payable through promissory notes to the selling shareholders. The annual interest rate on the promissory notes was fixed at 3.5%, and the notes were repayable in three equal installments on December 31, 2010, December 1, 2011 and December 1, 2012. On December 1, 2012, we fully repaid the outstanding amount of \$19.3 million under the promissory notes, inclusive of accrued interest, relating to the share repurchase.

Investment by Affiliates of Goldman Sachs in 2011

On April 20, 2011, we entered into an Investment Agreement with GSCP VI AIV Navi, Ltd., GSCP VI Offshore Navi, Ltd., GSCP VI Parallel AIV Navi, Ltd., GSCP VI Employee Navi, Ltd., and GSCP VI GmbH Navi, L.P., or collectively, the Purchasers, each of which is an affiliate of Goldman, Sachs & Co. Under the Investment Agreement, we agreed to issue and sell, and the Purchasers agreed to purchase, at three different closings that occurred during 2011, securities representing 19.9% of our outstanding share capital pro forma for all the issuances, with the right to acquire an additional 2.0% on a fully diluted basis pro forma for all the issuances through the exercise of warrants as described below, although the Purchasers' voting interest purchased pursuant to the Investment Agreement is less than 4.9%. The total investment made by the Purchasers was \$291.6 million, and we received net proceeds (after transaction costs) of approximately \$287.4 million.

Aggregate Contractual Obligations

The following table shows our aggregate contractual obligations and commitments by time period remaining to due date as at December 31, 2012. The table does not reflect certain acquisition-related payments potentially due in the future.

	Payments Due by Period				More than 5 years
	Total	Less than 1 year	1 - 3 years	3 - 5 years	
(in thousands of U.S. dollars)					
Operating Activities					
Estimated gross reserves for loss and loss adjustment expenses	\$3,957.7	\$ 686.1	\$1,255.0	\$714.4	\$1,302.2
Operating lease obligations	15.4	4.8	9.9	0.7	—
Investing Activities					
Investment commitments	87.6	47.7	31.6	8.3	—
Financing Activities					
Loan repayments (including interest payments)	111.0	56.0	55.0	—	—
Total	<u>\$4,171.7</u>	<u>\$ 794.6</u>	<u>\$1,351.5</u>	<u>\$723.4</u>	<u>\$1,302.2</u>

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The reserves for loss and loss adjustment expenses represent management's estimate of the ultimate cost of settling losses. As more fully discussed in "— *Critical Accounting Policies — Loss and Loss Adjustment Expenses*" above, the estimation of losses is based on various complex and subjective judgments. Actual losses paid may differ, perhaps significantly, from the reserve estimates reflected in our financial statements. Similarly, the timing of payment of our estimated losses is not fixed and there may be significant changes in actual payment activity. The assumptions used in estimating the likely payments due by period are based on our historical claims payment experience and industry payment patterns, but due to the inherent uncertainty in the process of estimating the timing of such payments, there is a risk that the amounts paid in any such period can be significantly different from the amounts disclosed above.

The amounts in the above table represent our estimates of known liabilities as of December 31, 2012 and do not take into account corresponding reinsurance recoverable amounts that would be due to us. Furthermore, reserves for loss and loss adjustment expenses recorded in the audited consolidated financial statements as of December 31, 2012 are computed on a fair value basis, whereas the expected payments by period in the table above are the estimated payments at a future time and do not reflect the fair value adjustment in the amount payable.

Commitments and Contingencies

Investments

The following table provides a summary of our outstanding unfunded investment commitments for the years ended December 31, 2012 and 2011:

	Original Commitment	December 31, 2012		December 31, 2011	
		Funded	Unfunded	Funded	Unfunded
J.C. Flowers II L.P.	\$ 100,000	\$ 97,782	\$ 2,218	\$ 97,780	\$ 2,220
J.C. Flowers III L.P.	100,000	44,373	55,627	30,753	69,247
Other	51,000	21,254	29,746	9,932	6,068
	<u>\$ 251,000</u>	<u>\$163,409</u>	<u>\$87,591</u>	<u>\$138,465</u>	<u>\$77,535</u>

Guarantees

As at December 31, 2012 and 2011, we had, in total, parental guarantees supporting Fitzwilliam's obligations in the amount of \$213.3 million and \$219.9 million, respectively.

Acquisitions

We have entered into definitive agreements with respect to: (i) the Reciprocal of America loss portfolio transfer, which is expected to close in the second quarter of 2013; (ii) the American Physicians Assurance Corporation assignment and assumption agreement, which is expected to close in the second quarter of 2013; and (iii) the purchase of the HSBC Insurance Companies, which is expected to close by the end of the first quarter of 2013. All three agreements are described in "Business — Recent Transactions — 2013/2012 Acquisitions and Portfolio Transfers" beginning on page 6.

Legal Proceedings

Refer to "Item 3. Legal Proceedings" for a description of our litigation matters.

Off-Balance Sheet and Special Purpose Entity Arrangements

At December 31, 2012, we do not have any off-balance sheet arrangements, as defined by Item 303(a)(4) of Regulation S-K.

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ITEM 7A. QUANTITATIVE AND QUALITATIVE INFORMATION ABOUT MARKET RISK

Our balance sheets include a substantial amount of assets and, to a lesser extent, liabilities, whose fair values are subject to market risks, which represent the potential for an economic loss due to adverse changes in the fair value of a financial instrument. Our primary market risks are interest rate risk, credit risk, equity price risk, and foreign currency exchange rate risk. The following provides an analysis of the potential effects that these market risk exposures could have on our future earnings. This analysis is based on estimated changes. Actual results could differ significantly from amounts stated below, and our analysis should not be construed as our prediction for future market events.

Interest Rate Risk

Our cash and fixed maturities classified as trading and available-for-sale are exposed to interest rate risk, as any changes in interest rates have a direct effect on the market values of these investments. As interest rates rise, the market values fall, and the converse is also true.

We have estimated the effect that an immediate parallel shift in the U.S. interest rate yield curve would have on our cash and investments classified as trading and available-for-sale at December 31, 2012 and 2011. The results of this analysis are summarized in the table below.

Interest Rate Movement Analysis on Market Value of Cash and Investments Classified as Trading and Available-for-Sale

<u>At December 31, 2012</u>	Interest Rate Shift in Basis Points				
	<u>-100</u>	<u>-50</u>	<u>0</u>	<u>+50</u>	<u>+100</u>
	(in millions of U.S. dollars)				
Total Market Value	\$3,794	\$3,791	\$3,778	\$3,760	\$3,741
Market Value Change from Base	0.4%	0.3%	0%	(0.4)%	(0.9)%
Change in Unrealized Value	\$ 16	\$ 13	\$ 0	\$ (18)	\$ (37)
 <u>At December 31, 2011</u>	 <u>-100</u>	 <u>-50</u>	 <u>0</u>	 <u>+50</u>	 <u>+100</u>
Total Market Value	4,311	4,304	4,277	4,250	4,221
Market Value Change from Base	0.8%	0.6%	0%	(0.6)%	(1.3)%
Change in Unrealized Value	\$ 34	\$ 27	\$ 0	\$ (27)	\$ (56)

Credit Risk

As a holder of fixed maturity investments and mutual funds, we also have exposure to credit risk as a result of investments ratings downgrades or issuer defaults. In an effort to mitigate this risk, our investment portfolio consists primarily of investment grade-rated, liquid, fixed maturity investments of short-to-medium duration and mutual funds. At December 31, 2012, approximately 46.2% of our fixed maturity investments and short-term investment portfolio was rated AA or higher by a major rating agency (2011: 48.9%) with 11.4% (2011: 7.6%) rated BBB or lower. The portfolio as a whole had an average credit quality rating of AA- (2011: AA-). In addition, we manage our portfolio pursuant to guidelines that follow what we believe are prudent standards of diversification. The guidelines limit the allowable holdings of a single issue and issuers and, as a result, we do not believe we have significant concentrations of credit risk.

We also have exposure to credit risk as it relates to our reinsurance balances recoverable. Our acquired reinsurance subsidiaries, prior to acquisition, used retrocessional agreements to reduce their exposure to the risk of insurance and reinsurance assumed. Our reinsurance subsidiaries remain liable to the extent that retrocessionaires do not meet their obligations under these agreements and, therefore, we evaluate and monitor concentration of credit risk among our reinsurers.

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As at December 31, 2012 and 2011, reinsurance balances recoverable with a carrying value of \$144.1 million and \$235.8 million, respectively, were associated with one reinsurer, which represented 10% or more of total reinsurance balances recoverable. Of the \$144.1 million and \$235.8 million recoverable from the reinsurer as at December 31, 2012 and 2011, respectively, \$121.6 million and \$151.0 million, respectively, is secured by a trust fund held for the benefit of our reinsurance subsidiaries. As at December 31, 2012 and 2011, the reinsurer had a credit rating of A+, as provided by a major rating agency.

Equity Price Risk

Our portfolio of equity investments, including the equity fund included in other investments (collectively, “equities at risk”), has exposure to equity price risk, which is the risk of potential loss in fair value resulting from adverse changes in stock prices. Our global equity portfolio is correlated with a blend of the S&P 500 and MSCI World indices and changes in this blend of indices would approximate the impact on our portfolio. The fair value of our equities at risk at December 31, 2012 was \$170.5 million (2011: \$90.0 million). At December 31, 2012, the impact of a 10% decline in the overall market prices of our equities at risk would be \$17.0 million (2011: \$9.0 million), on a pre-tax basis.

Foreign Currency Risk

Through our subsidiaries located in various foreign countries, we conduct our insurance and reinsurance operations in a variety of non-U.S. currencies. As the functional currency for the majority of our subsidiaries is the U.S. dollar, fluctuations in foreign currency exchange rates related to these subsidiaries will have a direct impact on the valuation of our assets and liabilities denominated in local currencies. All changes in foreign exchange rates, with the exception of non-U.S. dollar denominated investments classified as available-for-sale, are recognized currently in net foreign exchange (losses) gains in our consolidated statements of earnings.

We have exposure to foreign currency risk due to our ownership of our Irish and Australian subsidiaries and our U.K. service companies, whose functional currencies are the Euro, Australian dollar and British pound.

The foreign exchange gain or loss resulting from the translation of our subsidiaries’ financial statements (expressed in Euro, Australian dollar and British pound functional currency) is recorded as a currency translation adjustment, which is a component of accumulated other comprehensive income in our shareholders’ equity.

Our foreign currency policy is to broadly manage, where possible, our foreign currency risk by seeking to match our liabilities under insurance and reinsurance policies that are payable in foreign currencies with assets that are denominated in such currencies, subject to regulatory constraints, and to selectively use foreign currency exchange contracts. The matching process is carried out quarterly in arrears and therefore any mismatches occurring in the period may give rise to foreign exchange gains and losses, which could adversely affect our operating results. We are, however, required to maintain assets in non-U.S. dollars to meet certain local country branch and regulatory requirements, which restricts our ability to manage these exposures through the matching of our assets and liabilities. In addition, we utilize foreign currency forward contracts to mitigate foreign currency risk.

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The table below summarizes our net exposure as of December 31, 2012 and 2011 to foreign currencies for our subsidiaries whose functional currency is U.S. dollars:

<u>2012</u>	<u>GBP</u>	<u>Euro</u>	<u>AUD</u>	<u>CDN</u>	<u>Other</u>	<u>Total</u>
	(in millions of U.S. dollars)					
Net foreign currency exposure	\$ 48.7	\$34.3	\$3.6	\$17.6	\$ 7.2	\$111.4
Foreign currency derivative amount	(27.6)	—	—	—	—	(27.6)
Total net foreign currency exposure	\$ 21.1	\$34.3	\$3.6	\$17.6	\$ 7.2	\$ 83.8
Pre-tax impact of a 10% movement of the U.S. dollar ⁽¹⁾	\$ 2.1	\$ 3.4	\$0.4	\$ 1.8	\$0.7	\$ 8.4

<u>2011</u>	<u>GBP</u>	<u>Euro</u>	<u>AUD</u>	<u>CDN</u>	<u>Other</u>	<u>Total</u>
	(in millions of U.S. dollars)					
Total net foreign currency exposure	\$(25.7)	\$28.8	\$1.5	\$13.4	\$ 3.4	\$21.4
Pre-tax impact of a 10% movement of the U.S. dollar ⁽¹⁾	\$ (2.6)	\$ 2.9	\$0.1	\$ 1.3	\$0.3	\$ 2.1

(1) Assumes 10% change in U.S. dollar relative to other currencies.

The table below summarize our net exposure as of December 31, 2012 and 2011 to foreign currencies for our subsidiaries whose functional currency is Australian dollars:

<u>2012</u>	<u>AUD</u>	<u>Euro</u>	<u>GBP</u>	<u>CDN</u>	<u>USD</u>	<u>NZD</u>	<u>Total</u>
	(in millions of Australian dollars)						
Net foreign currency exposure	\$ 98.0	\$1.9	\$1.7	\$(5.7)	\$38.5	\$2.5	\$136.9
Foreign currency derivative amount	(35.0)	—	—	—	—	—	(35.0)
Total net foreign currency exposure	\$ 63.0	\$1.9	\$1.7	\$(5.7)	\$38.5	\$2.5	\$101.9
Pre-tax impact of a 10% movement of the Australian dollar ⁽¹⁾	\$ —	\$0.2	\$0.2	\$(0.6)	\$ 3.9	\$0.2	\$ 3.9

<u>2011</u>	<u>AUD</u>	<u>Euro</u>	<u>GBP</u>	<u>CDN</u>	<u>USD</u>	<u>NZD</u>	<u>Total</u>
	(in millions of Australian dollars)						
Total net foreign currency exposure	\$115.2	\$1.4	\$1.7	\$(2.5)	\$100.6	\$2.4	\$218.8
Pre-tax impact of a 10% movement of the Australian dollar ⁽¹⁾	\$ —	\$0.1	\$0.2	\$(0.2)	\$ 10.1	\$0.2	\$ 10.4

(1) Assumes 10% change in Australian dollar relative to other currencies.

Effects of Inflation

We do not believe that inflation has had a material effect on our consolidated results of operations. Loss reserves are established to recognize likely loss settlements at the date payment is made. Those reserves inherently recognize the anticipated effects of inflation. The actual effects of inflation on our results cannot be accurately known, however, until claims are ultimately resolved.

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ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders of
Enstar Group Limited:

We have audited the accompanying consolidated balance sheet of Enstar Group Limited and subsidiaries (the “Company”) as of December 31, 2012, and the related consolidated statements of earnings, comprehensive income, changes in shareholders’ equity and cash flows for the year ended December 31, 2012. In connection with our audit of the consolidated financial statements, we also have audited financial statement schedule II as of, and for the period ended, December 31, 2012. These consolidated financial statements and financial statement schedule are the responsibility of the Company’s management. Our responsibility is to express an opinion on these consolidated financial statements and financial statement schedule based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Enstar Group Limited and subsidiaries as of December 31, 2012, and the results of their operations and their cash flows for the year ended December 31, 2012, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule as of, and for the period ended, December 31, 2012, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company’s internal control over financial reporting as of December 31, 2012, based on the criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and our report dated February 28, 2013 expressed an unqualified opinion on the effectiveness of the Company’s internal control over financial reporting.

/s/ KPMG Audit Limited

Hamilton, Bermuda
February 28, 2013

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders of
Enstar Group Limited

We have audited the accompanying consolidated balance sheet of Enstar Group Limited and subsidiaries (the “Company”) as of December 31, 2011, and the related consolidated statements of earnings, comprehensive income, changes in shareholders’ equity and cash flows for each of the two years ended December 31, 2011 and 2010. Our audits also included the financial statement schedule as of, and for the year ended, December 31, 2011 listed in the Index at Item 15. These consolidated financial statements and financial statement schedule are the responsibility of the Company’s management. Our responsibility is to express an opinion on these consolidated financial statements and financial statement schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of Enstar Group Limited and subsidiaries as of December 31, 2011, and the results of their operations and their cash flows for each of the two years ended December 31, 2011 and 2010 in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, such financial statement schedule as of and for the year ended December 31, 2011, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

/s/ Deloitte & Touche Ltd.

Hamilton, Bermuda
February 24, 2012

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ENSTAR GROUP LIMITED
CONSOLIDATED BALANCE SHEETS
As of December 31, 2012 and 2011

	<u>2012</u>	<u>2011</u>
	(expressed in thousands of U.S. dollars, except share data)	
ASSETS		
Short-term investments, trading, at fair value	\$ 319,111	\$ 410,269
Fixed maturities, available-for-sale, at fair value (amortized cost: 2012 — \$245,396; 2011 — \$590,588)	251,121	607,316
Fixed maturities, trading, at fair value	2,253,210	2,035,369
Equities, trading, at fair value	114,588	89,981
Other investments, at fair value	414,845	192,264
Total investments	3,352,875	3,335,199
Cash and cash equivalents	654,890	850,474
Restricted cash and cash equivalents	299,965	373,191
Accrued interest receivable	22,932	26,924
Accounts receivable	15,399	50,258
Income taxes recoverable	11,302	10,559
Reinsurance balances recoverable	1,122,919	1,789,582
Funds held by reinsured companies	365,252	107,748
Goodwill	21,222	21,222
Other assets	15,487	40,981
TOTAL ASSETS	\$ 5,882,243	\$ 6,606,138
LIABILITIES		
Losses and loss adjustment expenses	\$ 3,661,154	\$ 4,282,916
Reinsurance balances payable	143,123	208,540
Accounts payable and accrued liabilities	73,258	75,983
Income taxes payable	23,023	16,985
Loans payable	107,430	242,710
Other liabilities	99,022	95,593
TOTAL LIABILITIES	4,107,010	4,922,727
COMMITMENTS AND CONTINGENCIES		
SHAREHOLDERS' EQUITY		
Share capital		
Authorized, issued and fully paid, par value \$1 each (authorized 2012: 156,000,000; 2011: 156,000,000)		
Ordinary shares (issued and outstanding 2012: 13,752,172; 2011: 13,665,051)	13,752	13,665
Non-voting convertible ordinary shares:		
Series A (issued 2012: 2,972,892; 2011: 2,972,892)	2,973	2,973
Series B, C and D (issued and outstanding 2012: 2,725,637; 2011: 2,725,637)	2,726	2,726
Treasury shares at cost (Series A non-voting convertible ordinary shares 2012: 2,972,892; 2011: 2,972,892)	(421,559)	(421,559)
Additional paid-in capital	958,571	956,329
Accumulated other comprehensive income	24,439	27,096
Retained earnings	972,853	804,836
Total Enstar Group Limited Shareholders' Equity	1,553,755	1,386,066
Noncontrolling interest	221,478	297,345
TOTAL SHAREHOLDERS' EQUITY	1,775,233	1,683,411
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	\$ 5,882,243	\$ 6,606,138

See accompanying notes to the consolidated financial statements

ENSTAR GROUP LIMITED
CONSOLIDATED STATEMENTS OF EARNINGS
For the Years Ended December 31, 2012, 2011 and 2010

	<u>2012</u>	<u>2011</u>	<u>2010</u>
	(expressed in thousands of U.S. dollars, except share and per share data)		
INCOME			
Consulting fees	\$ 8,570	\$ 17,858	\$ 23,015
Net investment income	77,760	68,676	81,261
Net realized and unrealized gains	73,612	9,214	31,782
Gain on bargain purchase	—	13,105	—
	<u>159,942</u>	<u>108,853</u>	<u>136,058</u>
EXPENSES			
Net reduction in ultimate loss and loss adjustment expense liabilities:			
Reduction in estimates of net ultimate losses	(221,927)	(250,216)	(278,065)
Reduction in provisions for bad debt	(3,111)	(42,822)	(49,556)
Reduction in provisions for unallocated loss adjustment expense liabilities	(39,298)	(45,102)	(39,651)
Amortization of fair value adjustments	22,572	42,693	55,438
	<u>(241,764)</u>	<u>(295,447)</u>	<u>(311,834)</u>
Salaries and benefits	100,473	89,846	86,677
General and administrative expenses	56,592	71,810	59,201
Interest expense	8,426	8,529	10,253
Net foreign exchange losses (gains)	406	373	(398)
	<u>(75,867)</u>	<u>(124,889)</u>	<u>(156,101)</u>
EARNINGS BEFORE INCOME TAXES AND SHARE OF NET EARNINGS OF EQUITY METHOD INVESTEE			
	235,809	233,742	292,159
INCOME TAXES	(44,290)	(25,284)	(87,132)
SHARE OF NET EARNINGS OF EQUITY METHOD INVESTEE	—	—	10,704
NET EARNINGS	191,519	208,458	215,731
Less: Net earnings attributable to noncontrolling interest	(23,502)	(54,765)	(41,645)
NET EARNINGS ATTRIBUTABLE TO ENSTAR GROUP LIMITED	<u>\$ 168,017</u>	<u>\$ 153,693</u>	<u>\$ 174,086</u>
EARNINGS PER SHARE — BASIC:			
Net earnings attributable to Enstar Group Limited ordinary shareholders	<u>\$ 10.22</u>	<u>\$ 11.03</u>	<u>\$ 12.91</u>
EARNINGS PER SHARE — DILUTED:			
Net earnings attributable to Enstar Group Limited ordinary shareholders	<u>\$ 10.10</u>	<u>\$ 10.81</u>	<u>\$ 12.66</u>
Weighted average ordinary shares outstanding — basic	16,441,461	13,930,221	13,489,221
Weighted average ordinary shares outstanding — diluted	16,638,021	14,212,440	13,751,256

See accompanying notes to the consolidated financial statements

ENSTAR GROUP LIMITED
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
For the Years Ended December 31, 2012, 2011 and 2010

	<u>2012</u>	<u>2011</u>	<u>2010</u>
	(expressed in thousands of U.S. dollars)		
NET EARNINGS	<u>\$191,519</u>	<u>\$208,458</u>	<u>\$215,731</u>
Other comprehensive income, net of tax:			
Unrealized holding gains on investments arising during the period	69,721	5,393	38,367
Reclassification adjustment for net realized and unrealized gains included in net earnings	(73,612)	(9,214)	(31,782)
Increase in defined benefit pension liability	(2,461)	(3,718)	(1,000)
Currency translation adjustment	<u>3,556</u>	<u>(903)</u>	<u>32,077</u>
Total other comprehensive (loss) income	<u>(2,795)</u>	<u>(8,442)</u>	<u>37,662</u>
Comprehensive income	188,724	200,016	253,393
Less comprehensive income attributable to noncontrolling interest	<u>(23,365)</u>	<u>(54,244)</u>	<u>(53,000)</u>
COMPREHENSIVE INCOME ATTRIBUTABLE TO ENSTAR GROUP LIMITED	<u>\$165,359</u>	<u>\$145,772</u>	<u>\$200,393</u>

See accompanying notes to the consolidated financial statements

ENSTAR GROUP LIMITED
CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY
For the Years Ended December 31, 2012, 2011 and 2010

	<u>2012</u>	<u>2011</u>	<u>2010</u>
	(expressed in thousands of U.S. dollars)		
Share Capital — Ordinary Shares			
Balance, beginning of year	\$ 13,665	\$ 12,940	\$ 13,581
Issue of shares	43	674	80
Shares repurchased	—	—	(800)
Share awards granted/vested	44	51	79
Balance, end of year	<u>\$ 13,752</u>	<u>\$ 13,665</u>	<u>\$ 12,940</u>
Share Capital — Series A Non-Voting Convertible Ordinary Shares			
Balance, beginning and end of year	<u>\$ 2,973</u>	<u>\$ 2,973</u>	<u>\$ 2,973</u>
Share Capital — Series B, C and D Non-Voting Convertible Ordinary Shares			
Balance, beginning of year	\$ 2,726	\$ —	\$ —
Preferred shares converted	—	750	—
Issue of shares	—	1,976	—
Balance, end of year	<u>\$ 2,726</u>	<u>\$ 2,726</u>	<u>\$ —</u>
Share Capital — Preference Shares			
Balance, beginning of year	\$ —	\$ —	\$ —
Issue of shares	—	750	—
Shares converted	—	(750)	—
Balance, end of year	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>
Treasury Shares			
Balance, beginning and end of year	<u>\$ (421,559)</u>	<u>\$ (421,559)</u>	<u>\$ (421,559)</u>
Additional Paid-in Capital			
Balance, beginning of year	\$ 956,329	\$ 667,907	\$ 721,120
Equity attributable to Enstar Group Limited on acquisition of noncontrolling shareholders' interest in subsidiary	—	—	(3,229)
Issue of shares and warrants, net	(872)	284,983	514
Shares repurchased	—	—	(55,200)
Share awards granted/vested	343	776	3,202
Amortization of equity incentive plan	2,771	2,663	1,500
Balance, end of year	<u>\$ 958,571</u>	<u>\$ 956,329</u>	<u>\$ 667,907</u>
Accumulated Other Comprehensive Income Attributable to Enstar Group Limited			
Balance, beginning of year	\$ 27,096	\$ 35,017	\$ 8,709
Foreign currency translation adjustments	2,205	(972)	22,476
Increase in defined benefit pension liability	(2,461)	(3,718)	(1,000)
Net movement in unrealized holding (losses) gains on investments, net of deferred taxes	(2,401)	(3,231)	4,832
Balance, end of year	<u>\$ 24,439</u>	<u>\$ 27,096</u>	<u>\$ 35,017</u>
Retained Earnings			
Balance, beginning of year	\$ 804,836	\$ 651,143	\$ 477,057
Net earnings attributable to Enstar Group Limited	168,017	153,693	174,086
Balance, end of year	<u>\$ 972,853</u>	<u>\$ 804,836</u>	<u>\$ 651,143</u>
Noncontrolling Interest			
Balance, beginning of year	\$ 297,345	\$ 267,400	\$ 274,271
Return of capital	(30,245)	(16,200)	(39,381)
Contribution of capital	—	—	28,742
Dividends paid	(68,987)	(8,100)	(49,232)
Net earnings attributable to noncontrolling interest	23,502	54,765	41,645
Foreign currency translation adjustments	1,352	69	9,602
Net movement in unrealized holding (losses) gains on investments	(1,489)	(589)	1,753
Balance, end of year	<u>\$ 221,478</u>	<u>\$ 297,345</u>	<u>\$ 267,400</u>

See accompanying notes to the consolidated financial statements

ENSTAR GROUP LIMITED
CONSOLIDATED STATEMENTS OF CASH FLOWS
For the Years Ended December 31, 2012, 2011 and 2010

	<u>2012</u>	<u>2011</u>	<u>2010</u>
	(expressed in thousands of U.S. dollars)		
OPERATING ACTIVITIES:			
Net earnings	\$ 191,519	\$ 208,458	\$ 215,731
Adjustments to reconcile net earnings to cash flows provided by operating activities:			
Gain on bargain purchase	—	(13,105)	—
Share of undistributed net earnings of equity method investee	—	—	(10,704)
Net realized and unrealized investment gains	(42,233)	(8,020)	(13,137)
Net realized and unrealized investment gains from other investments	(30,151)	(1,194)	(18,645)
Share-based compensation expense	—	—	1,562
Other items	(765)	1,518	(550)
Depreciation and amortization	1,469	1,593	1,516
Net amortization of bond premiums and discounts	28,758	25,085	10,275
Net movement of trading securities held on behalf of policyholders	24,225	(6,816)	44,766
Sales and maturities of trading securities	2,468,584	1,463,637	563,729
Purchases of trading securities	(2,619,257)	(2,158,509)	(1,406,547)
Changes in assets and liabilities:			
Reinsurance balances recoverable	666,793	238,818	(13,899)
Funds held by reinsured companies	(257,504)	166,951	(206,040)
Other assets	63,952	(28,506)	19,793
Losses and loss adjustment expenses	(623,174)	(675,108)	150,009
Reinsurance balances payable	(65,475)	(24,833)	19,175
Accounts payable and accrued liabilities	(3,209)	(18,301)	18,557
Other liabilities	9,118	(81,588)	15,198
Net cash flows used in operating activities	<u>(187,350)</u>	<u>(909,920)</u>	<u>(609,211)</u>
INVESTING ACTIVITIES:			
Acquisitions, net of cash acquired	\$ —	\$ (88,505)	\$ 173,740
Sales and maturities of available-for-sale securities	353,913	445,052	347,214
Movement in restricted cash and cash equivalents	73,226	290,207	(187,025)
Funding of other investments	(197,822)	(24,787)	(116,720)
Redemption of other investments	103	66,925	—
Purchase of held-to-maturity securities	—	—	(780,889)
Sales and maturities of held-to-maturity securities	—	—	786,651
Sale of investment in partly owned company	—	—	31,554
Other investing activities	(789)	3,031	(1,064)
Net cash flows provided by investing activities	<u>228,631</u>	<u>691,923</u>	<u>253,461</u>
FINANCING ACTIVITIES:			
Net proceeds from issuance of shares	\$ —	\$ 287,377	\$ —
Distribution of capital to noncontrolling interest	(30,245)	(16,200)	(39,381)
Contribution to surplus of subsidiary by noncontrolling interest	—	—	28,742
Dividends paid to noncontrolling interest	(68,987)	(8,100)	(49,231)
Receipt of loans	—	274,150	161,400
Repayment of loans	(134,541)	(277,458)	(226,227)
Net cash flows (used in) provided by financing activities	<u>(233,773)</u>	<u>259,769</u>	<u>(124,697)</u>
TRANSLATION ADJUSTMENT	<u>(3,092)</u>	<u>9,548</u>	<u>13,156</u>
NET (DECREASE) INCREASE IN CASH AND CASH EQUIVALENTS	(195,584)	51,320	(467,291)
CASH AND CASH EQUIVALENTS, BEGINNING OF YEAR	850,474	799,154	1,266,445
CASH AND CASH EQUIVALENTS, END OF YEAR	<u>\$ 654,890</u>	<u>\$ 850,474</u>	<u>\$ 799,154</u>
Supplemental Cash Flow Information			
Net income taxes paid	\$ 27,938	\$ 64,679	\$ 73,368
Interest paid	\$ 9,155	\$ 6,948	\$ 10,404

See accompanying notes to the consolidated financial statements

ENSTAR GROUP LIMITED
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2012, 2011 and 2010
(Tabular information expressed in thousands of U.S. dollars except share and per share data)

1. DESCRIPTION OF BUSINESS

Enstar Group Limited (“Enstar” or the “Company”) was formed in August 2001 under the laws of Bermuda to acquire and manage insurance and reinsurance companies in run-off and portfolios of insurance and reinsurance business in run-off, and to provide management, consulting and other services to the insurance and reinsurance industry.

2. SIGNIFICANT ACCOUNTING POLICIES

Basis of Preparation

The consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America (“U.S. GAAP”).

Certain reclassifications have been made to the prior year reported amounts to conform to the current year presentation. These reclassifications had no impact on net earnings previously reported.

Basis of Consolidation

The consolidated financial statements include the assets, liabilities and results of operations of the Company as of December 31, 2012 and 2011 and for the years ended December 31, 2012, 2011 and 2010. Results of operations for subsidiaries acquired are included from the dates of their acquisition by the Company. Intercompany transactions are eliminated on consolidation.

Use of Estimates

The preparation of these consolidated financial statements requires management to make estimates and assumptions that affect the reported amount of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. While management believes that the amounts included in the consolidated financial statements reflect its best estimates and assumptions, actual results could differ from those estimates. The Company’s principal estimates include, but are not limited to:

- reserves for losses and loss adjustment expenses;
- reinsurance balances recoverable, including the provisions for uncollectible amounts;
- other-than-temporary impairments in the carrying value of available-for-sale investment securities;
- valuation of certain fixed maturities and other investments that are measured using significant unobservable inputs; and
- accounting for acquisitions.

Significant Accounting Policies

The Company’s significant accounting policies are described below:

(a) Cash and cash equivalents

The Company considers all highly liquid debt instruments purchased with an original maturity of 3 months or less to be cash and cash equivalents.

ENSTAR GROUP LIMITED
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

(b) Investments

Short-term and fixed maturity investments

Short-term investments comprise investments with a maturity greater than 3 months but less than one year from the date of purchase. Fixed maturities comprise investments with a maturity of one year and greater from the date of purchase.

Fixed maturity investments classified as available-for-sale are carried at fair value, with unrealized gains and losses excluded from net earnings and reported as a separate component of accumulated other comprehensive income. Realized gains and loss on sales of investments classified as available-for-sale are recognized in the consolidated statements of earnings. Amortization of premium or discount is recognized using the effective yield method and included in net investment income. For mortgage-backed and asset-backed investments, and any other holdings for which there is a prepayment risk, prepayment assumptions are evaluated and revised on a regular basis.

Short-term investments and fixed maturities classified as trading are carried at fair value, with realized and unrealized holding gains and losses included in net earnings and reported as net realized and unrealized gains and losses. Investment purchases and sales are recorded on a trade-date basis. Realized gains and losses on the sale of investments are based upon specific identification of the cost of investments.

Fixed maturity investments classified as available-for-sale are reviewed quarterly to determine if they have sustained an impairment of value that is, based on management's judgement, considered to be other than temporary. The process includes reviewing each fixed maturity investment that is below cost and: (1) determining if the Company has the intent to sell the fixed maturity investment; (2) determining if it is more likely than not that the Company will be required to sell the fixed maturity investment before its anticipated recovery; and (3) assessing whether a credit loss exists, that is, whether the Company expects that the present value of the cash flows expected to be collected from the fixed maturity investment is less than the amortized cost basis of the investment. In evaluating credit losses, the Company considers a variety of factors in the assessment of a fixed maturity investment including: (1) the time period during which there has been a significant decline below cost; (2) the extent of the decline below cost and par; (3) the potential for the investment to recover in value; (4) an analysis of the financial condition of the issuer; (5) the rating of the issuer; and (6) failure of the issuer of the investment to make scheduled interest or principal payments. If management concludes an investment is other-than-temporarily impaired ("OTTI") then the difference between the fair value and the amortized cost of the investment is presented as an OTTI charge in the consolidated statements of earnings, with an offset for any noncredit-related loss component of the OTTI charge to be recognized in other comprehensive income. Accordingly, only the credit loss component of the OTTI amount will have an impact on the Company's earnings.

Equities

Equities are classified as trading and are carried at fair value with realized and unrealized holding gains and losses included in net earnings and reported as net realized and unrealized gains and losses.

Other investments

Other investments include investments in limited partnerships and limited liability companies (collectively "private equities") and fixed income, hedge, equity and real estate debt funds (collectively "funds") that carry their investments at fair value. These funds are stated at fair value, which ordinarily will be the most recently reported net asset value as advised by the fund manager or administrator. Many of the Company's fund investments publish net asset values on a daily basis and provide daily liquidity, others report on a monthly basis. Private equities typically report quarterly. The Company believes the reported net asset value represents the fair

ENSTAR GROUP LIMITED

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

value market participants would apply to an interest in the various private equities or funds. The change in fair value is included in net realized and unrealized gains on investments and recognized in net earnings.

(c) Derivative instruments

The Company recognizes all derivatives as either assets or liabilities in the consolidated balance sheets and carries them at the fair value of the instrument. The Company participates in derivative instruments for purposes of its overall foreign currency risk management strategy. Changes in fair value and realized gains or losses on derivative instruments are recorded in net foreign exchange gains and losses.

(d) Losses and loss adjustment expenses

The liability for losses and loss adjustment expenses includes an amount determined from reported claims and an amount, based on historical loss experience and industry statistics, for losses incurred but not reported determined using a variety of actuarial methods. These estimates are continually reviewed and are necessarily subject to the impact of future changes in factors such as claim severity and frequency, changes in economic conditions including the impact of inflation, legal developments and changes in social attitudes. While management believes that the amount is adequate, the ultimate liability may be significantly in excess of, or less than, the amounts provided. Adjustments will be reflected as part of net increase or reduction in losses and loss adjustment expense liabilities in the periods in which they become known. Premium and commission adjustments may be triggered by incurred losses and any amounts are reflected in net loss and loss adjustment expense liabilities at the same time the related incurred loss is recognized.

Commutations provide an opportunity for the Company to exit exposures to entire policies with insureds and reinsureds for an agreed upon payment, or payments, often at a discount to the previously estimated ultimate liability. As a result of exiting all exposures to such policies, all advised case reserves and incurred but not reported (“IBNR”) reserves relating to the insured or reinsured are eliminated. A commutation is recognized upon the execution of a commutation release agreement. Following completion of a commutation, all the related balances, including insurance and reinsurance balances payable and/or receivable, funds held by ceding companies, and losses and loss adjustment expenses (including fair value adjustments and estimated IBNR), are written off with corresponding gain or loss recorded in the net reduction of ultimate losses. A commutation may result in a net gain irrespective of whether the settlement exceeds the advised case reserves. Advised case reserves are those reserve estimates for a specific loss or losses reported to the Company by either the broker or insured or reinsured. IBNR reserves are established by the Company at a class of business or exposure level for claims that have not yet been reported to the Company but can reasonably be expected to have occurred, as well as for the future development of reported claims. A commutation settlement is a negotiated settlement of both the advised case reserves and an estimate of the IBNR reserves that relate to the policies being commuted. For latent exposures with a long reporting tail, the estimated level of IBNR reserves may be significantly higher than the advised case reserves. In such an instance, the commutation settlement of a block of such policies may be greater than the advised case reserves but less than the aggregate of the advised case reserves plus the estimated related IBNR reserves, resulting in a total saving to the remaining liability.

To the extent possible, all prior historical loss development that relates to commuted exposures is eliminated to produce revised historical loss development for the remaining non-commuted exposures. The Company’s estimates of IBNR reserves are not determined at the policyholder level but at the aggregate class of business or exposure level. Therefore, the Company does not typically identify a specific amount of IBNR reserves settled with each commutation. Rather, on an annual basis in the fourth quarter, the Company’s actuaries apply their actuarial methodologies to the remaining aggregate exposures and revised historical loss development

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information to reassess their estimates of gross and net ultimate liabilities and required gross and net IBNR reserves. Should a commutation that the Company considers significant occur in one of the first three quarters, then the Company, in conjunction with its independent actuaries, would estimate the amount of IBNR that would be associated with the policies being commuted. If the financial impact (including release of IBNR) of the commutation is considered significant, the Company would adjust its estimate of ultimate loss and loss adjustment expense liabilities in the quarter that the commutation was concluded. The agreed commutation settlement is recorded in net losses paid.

To the extent that commuted policies are protected by reinsurance, then the Company will, on completion of a commutation with an insured or reinsured, negotiate with the reinsurers to contribute their share of the commutation settlement. Any amounts received from such reinsurers will be recorded in net losses paid and the impact of any savings or loss on reinsurance recoverable on unpaid losses will be included in the actuarial reassessment of net ultimate liabilities and net IBNR reserves.

Commutations of acquired companies' exposures have the effect of accelerating the payout of claims compared to the probability-weighted ranges of actuarially projected cash flows that the Company applies when estimating the fair values of assets and liabilities at the time of acquisition. Any material acceleration of payout together with the impact of any material loss reserve savings in any period will also accelerate the amortization of fair value adjustments in that period.

The Company's insurance and reinsurance subsidiaries also establish provisions for loss adjustment expenses relating to run-off costs for the estimated duration of the run-off, which are included in losses and loss adjustment expenses. These provisions are assessed at each reporting date and provisions relating to future periods are adjusted to reflect any changes in estimates, including the impact of any acceleration of the run-off period that may be caused by commutations, of the periodic run-off costs or the duration of the run-off. Provisions relating to the current period together with any adjustment to future run-off provisions are included in net reduction in ultimate loss and loss adjustment expenses in the consolidated statements of earnings.

(e) Reinsurance balances recoverable

Amounts billed to, and due from, reinsurers result from paid movements in the underlying assumed business and are calculated in accordance with the terms of the individual reinsurance contracts.

Similarly, reinsurance balances recoverable related to the Company's assumed case reserves are calculated by applying the terms of any applicable reinsurance coverage to movements in the underlying assumed case reserves. The Company's estimate of reinsurance balances recoverable related to its assumed IBNR reserves is recognized on a basis consistent with the underlying assumed IBNR reserves.

The Company's reinsurance balances recoverable are presented net of a provision for uncollectible amounts, reflecting the amount deemed not collectible due to credit quality, collection problems due to location of the reinsurer, contractual disputes with reinsurers over individual contentious claims, contract language or coverage or for some other reason.

(f) Business assumed and retroactive reinsurance

Consideration received for business assumed by way of novation and premiums on retroactive reinsurance is recorded in the balance sheet. The difference between the consideration received and liabilities assumed is presented as an intangible asset. The intangible asset is amortized into earnings over the settlement period of liabilities assumed.

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(g) Consulting fees

Fixed fee income is recognized in accordance with the term of the Company's third-party management agreements. Time-based fees are recognized as services are provided. Success-based fees are recognized when all of the contractual requirements specified in the agreement are met.

(h) Foreign exchange

The reporting currency of the Company is the U.S. dollar. Assets and liabilities of entities whose functional currency is not the U.S. dollar are translated at period end exchange rates. Revenue and expenses of such foreign entities are translated at average exchange rates during the year. The effect of the currency translation adjustments for foreign entities is included in accumulated other comprehensive income.

Other foreign currency assets and liabilities that are considered monetary items are translated at exchange rates in effect at the balance sheet date. Foreign currency revenues and expenses are translated at transaction date exchange rates. These exchange gains and losses are included in the determination of net earnings.

(i) Earnings per share

Basic earnings per share is based on the weighted average number of ordinary shares outstanding and excludes any dilutive effects of warrants, options and convertible securities. Diluted earnings per share is based on the weighted average number of ordinary and ordinary share equivalents outstanding calculated using the treasury stock method for all potentially dilutive securities. When the effect of dilutive securities would be anti-dilutive, these securities are excluded from the calculation of diluted earnings per share.

(j) Acquisitions

The Company uses the purchase method in accounting for acquisitions. The difference between the fair value of net assets acquired and purchase price is recorded as goodwill.

The Company accounts for acquisitions using the purchase method of accounting, which requires that the acquirer record the assets and liabilities acquired at their estimated fair value. The fair values of each of the reinsurance assets and liabilities acquired are derived from probability-weighted ranges of the associated projected cash flows, based on actuarially prepared information and management's run-off strategy. The Company's run-off strategy, as well as that of other run-off market participants, is expected to be different from the seller's as generally sellers are not specialized in running off insurance and reinsurance liabilities whereas the Company and other market participants do specialize in such run-offs.

The key assumptions used by the Company and, it believes, by other run-off market participants in the fair valuation of acquired companies are (i) the projected payout, timing and amount of claims liabilities; (ii) the related projected timing and amount of reinsurance collections; (iii) a risk-free discount rate, which is applied to determine the present value of the future cash flows; (iv) the estimated unallocated loss adjustment expenses to be incurred over the life of the run-off; (v) the impact of any accelerated run-off strategy; and (vi) an appropriate risk margin.

The difference between the original carrying value of reinsurance liabilities and reinsurance assets acquired at the date of acquisition and their fair value is recorded as an intangible asset or other liability, which the Company refers to as the fair value adjustment ("FVA"). The FVA is amortized over the estimated payout period and adjusted for accelerations on commutation settlements or any other new information or subsequent change in circumstances after the date of acquisition. To the extent the actual payout experience after the acquisition is

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materially faster or slower than anticipated at the time of the acquisition, there is an adjustment to the estimated ultimate loss reserves, or there are changes in bad debt provisions or in estimates of future run-off costs following accelerated payouts, then the amortization of the FVA is accelerated or decelerated, as the case may be, to reflect such changes. The FVA is tested annually for impairment.

(k) Goodwill

Goodwill represents the excess of the purchase price over the fair value of the net assets acquired. The Company performed an initial valuation of its goodwill assets and updates this analysis on an annual basis. If, as a result of the assessment, the Company determines the value of its goodwill asset is impaired, goodwill is written down in the period in which the determination is made. An annual impairment valuation has concluded that there is no impairment to the value of the Company's goodwill asset.

(l) Stock-based compensation

Share-based payment awards settled in ordinary shares are recorded in additional paid-in capital. The fair value of the award is measured at the grant date and expensed over the vesting period.

(m) Income taxes

Certain subsidiaries and branches of the Company operate in jurisdictions where they are subject to taxation. Current and deferred income taxes are charged or credited to net income, or, in certain cases, to accumulated other comprehensive income, based upon enacted tax laws and rates applicable in the relevant jurisdiction in the period in which the tax becomes accruable or realizable. Deferred income taxes are provided for all temporary differences between the bases of assets and liabilities used in the financial statements and those used in the various jurisdictional tax returns. When management's assessment indicates that it is more likely than not that deferred income tax assets will not be realized, a valuation allowance is recorded against the deferred tax assets.

The Company recognizes a tax benefit relating to uncertain tax positions only where the position is more likely than not to be sustained assuming examination by tax authorities. A liability is recognized for any tax benefit (along with any interest and penalty, if applicable) claimed in a tax return in excess of the amount allowed to be recognized in the financial statements under U.S. GAAP. Any changes in amounts recognized are recorded in the period in which they are determined.

New Accounting Standards Adopted in 2012

ASU 2011-04, Amendments to Achieve Common Fair Value Measurement and Disclosure

Effective January 1, 2012, the Company adopted new guidance issued by FASB related to disclosure requirements for common fair value measurement. These amendments result in a common definition of fair value and common requirements for measurement of and disclosure requirements under U.S. GAAP and International Financial Reporting Standards ("IFRS"). Consequently, the amendments change some fair value measurement principles and disclosure requirements. The implementation of this amended accounting guidance did not have a material impact on the consolidated financial statements.

ASU 2011-05, Presentation of Comprehensive Income

Effective January 1, 2012, the Company adopted new guidance issued by FASB related to disclosure requirements for presentation of comprehensive income. This guidance requires presentation of total comprehensive income, the components of net income, and the components of other comprehensive income either in a single continuous statement of comprehensive income or in two separate but consecutive statements. The implementation of this amended accounting guidance had no impact on the consolidated financial statements.

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ASU 2011-08, Testing Goodwill for Impairment

In September 2011, FASB issued amendments that simplify the two-step goodwill impairment test previously required, by permitting entities to first perform a qualitative assessment to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount. If the entity determines that it is more likely than not that the fair value of a reporting unit is less than its carrying amount, it would then perform the first step of the goodwill impairment test; otherwise, no further impairment test would be required. The Company adopted the amended guidance as of December 31, 2011. The adoption of the amended guidance did not have a material impact on the consolidated financial statements.

Recently Issued Accounting Standards Not Yet Adopted

ASU 2011-11, Disclosures About Offsetting Assets and Liabilities

In December 2011, FASB issued new disclosure requirements regarding the nature of an entity's rights of setoff and related arrangements associated with its financial instruments and derivative instruments. The new disclosures are designed to make financial statements that are prepared under U.S. GAAP more comparable to those prepared under IFRS. The new disclosure requirements are effective retrospectively for annual and interim reporting periods beginning on or after January 1, 2013. The Company is currently evaluating the impact of adopting these revised disclosure requirements on the consolidated financial statements.

The Company has determined that all other recently issued accounting pronouncements will not have a material impact on its consolidated financial statements, or do not apply to its operations.

3. ACQUISITIONS

2013/2012

SeaBright

On February 7, 2013, the Company completed its acquisition of SeaBright Holdings, Inc. ("SeaBright"), through the merger of its indirect, wholly-owned subsidiary, AML Acquisition, Corp. ("AML Acquisition"), with and into SeaBright (the "Merger"), with SeaBright surviving the Merger as the Company's indirect, wholly-owned subsidiary. SeaBright owns SeaBright Insurance Company, an Illinois-domiciled insurer that is commercially domiciled in California, which wrote workers compensation business. The aggregate cash purchase price paid by the Company for all equity securities of SeaBright was approximately \$252.1 million, which was funded in part with \$111.0 million borrowed under a four-year term loan facility provided by National Australia Bank ("NAB") and Barclays Bank PLC ("Barclays"). This business combination will be accounted for by the Company as an acquisition under U.S. GAAP purchase accounting requirements.

HSBC

On September 6, 2012, the Company and its wholly-owned subsidiary, Pavonia Holdings (US), Inc. ("Pavonia"), entered into a definitive agreement for the purchase of all of the shares of Household Life Insurance Company of Delaware ("HLIC DE") and HSBC Insurance Company of Delaware ("HSBC DE"), from Household Insurance Group Holding Company, an affiliate of HSBC Holdings plc. HLIC DE and HSBC DE are both Delaware-domiciled insurers in run-off. HLIC DE owns three other insurers domiciled in Michigan, New York, and Arizona, respectively (or, collectively with HLIC DE and HSBC DE, the "HSBC Insurance Companies"), all of which will be in run-off at the time the transaction closes. The HSBC Insurance Companies have written various U.S. and Canadian life insurance, including credit insurance, term life insurance, assumed reinsurance, corporate owned life insurance, and annuities.

The base purchase price of approximately \$181.0 million will be adjusted under the terms of the stock purchase agreement based upon changes to the capital and surplus of the HSBC Insurance Companies arising

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from the operation of the business prior to closing. The Company expects to finance the purchase price through a combination of cash on hand and a drawing under its Revolving Credit Facility with NAB and Barclays. The Company is a party to the acquisition agreement and has guaranteed the performance by Pavonia of its obligations thereunder. Completion of the transaction is conditioned on, among other things, governmental and regulatory approvals and satisfaction of various customary closing conditions. The transaction is expected to close by the end of the first quarter of 2013.

2011

Clarendon

On July 12, 2011, the Company, through its wholly-owned subsidiary, Clarendon Holdings, Inc., completed the acquisition of 100% of the shares of Clarendon National Insurance Company (“Clarendon”) from Clarendon Insurance Group, Inc., an affiliate of Hannover Re (“Hannover”). Clarendon is a New Jersey-domiciled insurer that is in run-off. Clarendon owns three other insurers, two domiciled in New Jersey and one domiciled in Florida, that are also in run-off. The aggregate cash purchase price was \$219.1 million and was financed in part by \$106.5 million under a four-year term loan facility provided by NAB.

In addition, on July 12, 2011, the Company, through its wholly-owned subsidiary, Fitzwilliam Insurance Limited (“Fitzwilliam”), in connection with the acquisition of Clarendon, entered into a reinsurance agreement with Hannover, which provides adverse development cover (“ADC”) to Clarendon to reinsure Hannover for the first \$80.0 million of the ADC. The Company provided a parental guarantee to Hannover in the amount of \$80.0 million supporting the obligations of Fitzwilliam.

The purchase price and fair value of the assets acquired in the Clarendon acquisition were as follows:

Purchase price	<u>\$219,077</u>
Net assets acquired at fair value	<u>\$219,077</u>

The following summarizes the estimated fair values of the assets acquired and the liabilities assumed at the date of the acquisition:

Cash	\$ 138,518
Restricted cash	7,198
Investments:	
Short-term investments, trading	60,376
Fixed maturities, trading	623,530
Equities	<u>5,014</u>
Total investments	688,920
Reinsurance balances recoverable	1,065,341
Accrued interest and other receivables	9,655
Losses and loss adjustment expenses	(1,654,436)
Insurance and reinsurance balances payable	(1,942)
Funds withheld	(26,277)
Accounts payable	<u>(7,900)</u>
Net assets acquired at fair value	<u>\$ 219,077</u>

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Laguna

On March 25, 2011, the Company, through its wholly-owned subsidiary, Kenmare Holdings Ltd. (“Kenmare”), completed the acquisition of Laguna Life Limited, formerly known as CitiLife Financial Limited (“Laguna”), from Citigroup Insurance Holding Corporation (“Citigroup”), an affiliate of Citigroup Inc. Laguna is an Ireland-based life insurer that is in run-off. The aggregate cash purchase price was €15.0 million (approximately \$21.2 million). The originally disclosed purchase price of €30.0 million (approximately \$42.4 million) was reduced, prior to completion of the acquisition, after Citigroup received approval from Laguna’s regulator to distribute €15.0 million (approximately \$21.2 million) to its shareholders.

The purchase price and fair value of the net assets acquired in the Laguna acquisition were as follows:

Purchase price	<u>\$ 21,223</u>
Net assets acquired at fair value	<u>\$ 34,328</u>
Excess of net assets over purchase price (gain on bargain purchase)	<u>\$(13,105)</u>

The gain on bargain purchase of approximately \$13.1 million, relating to the acquisition of Laguna, arose primarily as a result of the reassessment by the Company, upon acquisition, of the total required estimated costs to manage the business to expiry. The Company’s assessment of costs was lower than the acquired costs recorded by the vendor in the financial statements of Laguna.

The following summarizes the estimated fair values of the assets acquired and the liabilities assumed at the date of acquisition:

Cash	\$ 13,274
Investments:	
Short-term investments, trading	1,154
Fixed maturities, trading	<u>30,765</u>
Total investments	31,919
Reinsurance balances recoverable	1,459
Other assets	1,325
Losses and loss adjustment expenses	(11,898)
Accounts payable	<u>(1,751)</u>
Net assets acquired at fair value	<u>\$ 34,328</u>

2010

Claremont

On December 31, 2010, the Company, through its wholly-owned subsidiary, CLIC Holdings, Inc., completed the acquisition of Claremont Liability Insurance Company (“Claremont”), for an aggregate cash purchase price of \$13.9 million. Claremont is a California-domiciled insurer that is in run-off.

The purchase price and fair value of the assets acquired in the Claremont acquisition were as follows:

Total purchase price	<u>\$13,936</u>
Net assets acquired at fair value	<u>\$13,936</u>

ENSTAR GROUP LIMITED
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The following summarizes the estimated fair values of the assets acquired and the liabilities assumed at the date of the acquisition:

Cash	\$ 394
Investments:	
Fixed maturities, trading	15,990
Equities	138
Total investments	16,128
Accounts receivable and accrued interest	196
Reinsurance balances recoverable	44,966
Other assets	19
Losses and loss adjustment expenses	(47,516)
Accounts payable	(251)
Net assets acquired at fair value	<u>\$ 13,936</u>

New Castle

On December 3, 2010, the Company, through Kenmare, completed the acquisition of New Castle Reinsurance Company Ltd. (“New Castle”), for an aggregate cash purchase price of \$22.0 million. New Castle is a Bermuda-domiciled insurer that is in run-off.

The purchase price and fair value of the assets acquired in the New Castle acquisition were as follows:

Total purchase price	<u>\$21,950</u>
Net assets acquired at fair value	<u>\$21,950</u>

The following summarizes the estimated fair values of the assets acquired and the liabilities assumed at the date of the acquisition:

Cash	\$ 57,026
Reinsurance balances recoverable	4,818
Other assets	99
Losses and loss adjustment expenses	(38,603)
Insurance and reinsurance balances payable	(1,316)
Accounts payable	(74)
Net assets acquired at fair value	<u>\$ 21,950</u>

Brampton

On November 2, 2010, the Company acquired the 49.9% of the shares of Hillcot Holdings Ltd. (“Hillcot”) from Shinsei Bank, Ltd. (“Shinsei”) that it did not previously own for an aggregate purchase price of \$38.0 million, resulting in the Company owning 100% of Hillcot. At the time of acquisition, Hillcot owned 100% of the shares of Brampton Insurance Company of Europe Limited (“Brampton”). Brampton is a London-domiciled insurer that is in run-off. The fair value of the assets acquired that the Company did not previously own was \$34.9 million. The excess of the purchase price over the fair value of assets acquired in the amount of \$3.1 million was recorded as a charge to additional paid-in capital.

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Seaton Insurance

On August 3, 2010, the Company, through its wholly-owned subsidiary, Virginia Holdings Ltd. (“Virginia”), acquired 55.6% of the shares of Seaton Insurance Company (“Seaton”) for a \$nil purchase price. Seaton is a Rhode Island-domiciled insurer that is in run-off and, at that time, was the subsidiary of Stonewall Acquisition Corporation (“Stonewall”). At the time of the acquisition, Virginia held 44.4% of the outstanding capital stock of Stonewall and, therefore, indirectly owned 44.4% of Seaton through its holdings. The acquisition of the 55.6% of the Seaton shares that it previously did not own was a result of the distribution by Stonewall to Virginia of proceeds and certain other assets following its sale of another subsidiary, Stonewall Insurance Company, to Columbia Insurance Company, an affiliate of National Indemnity Company (an indirect subsidiary of Berkshire Hathaway, Inc.). The distribution resulted in Virginia owning 100% of Seaton following the distribution. The fair value of the assets acquired in the Seaton acquisition was \$nil.

The following summarizes the estimated fair values of 100% of the assets acquired and the liabilities assumed at the date of the acquisition:

Cash	\$ 3,949
Fixed maturity investments, trading	22,745
Accounts receivable and accrued interest	270
Reinsurance balances recoverable	170,344
Other assets	3,759
Losses and loss adjustment expenses	(171,010)
Insurance and reinsurance balances payable	(28,670)
Accounts payable	(1,387)
Net assets acquired at fair value	<u>\$ —</u>

Providence Washington

On July 20, 2010, the Company, through its wholly-owned subsidiary, PWAC Holdings, Inc., completed the acquisition of PW Acquisition Company (“PWAC”) for an aggregate purchase price of \$25.0 million. PWAC owns the entire share capital of Providence Washington Insurance Company. Providence Washington Insurance Company and its two subsidiaries are Rhode Island-domiciled insurers that are in run-off. The purchase price was financed by a term facility provided by a London-based bank (the “EGL Facility”), which was fully repaid on September 13, 2010.

The purchase price and fair value of the assets acquired in the PWAC acquisition were as follows:

Total purchase price	<u>\$25,000</u>
Net assets acquired at fair value	<u>\$25,000</u>

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NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The following summarizes the estimated fair values of the assets acquired and the liabilities assumed at the date of the acquisition:

Cash	\$ 19,278
Investments:	
Short-term investments, trading	4,181
Fixed maturity investments, trading	97,756
Equities	37
Other investments	4,985
Total investments	<u>106,959</u>
Accounts receivable and accrued interest	813
Reinsurance balances recoverable	31,718
Other assets	1,276
Losses and loss adjustment expenses	(120,745)
Insurance and reinsurance balances payable	(3,597)
Accounts payable	<u>(10,702)</u>
Net assets acquired at fair value	<u>\$ 25,000</u>

Assuransinvest

On March 30, 2010, the Company, through its wholly-owned subsidiary, Nordic Run-Off Limited, completed the acquisition of Forsakringsaktiebolaget Assuransinvest MF (“Assuransinvest”) for an aggregate cash purchase price of SEK 78.8 million (approximately \$11.0 million). Assuransinvest is a Swedish-domiciled reinsurer that is in run-off.

The purchase price and fair value of the assets acquired in the Assuransinvest acquisition were as follows:

Total purchase price	<u>\$11,042</u>
Net assets acquired at fair value	<u>\$11,042</u>

The following summarizes the estimated fair values of the assets acquired and the liabilities assumed at the date of the acquisition:

Cash	\$ 58,971
Fixed maturity investments, trading	579
Other assets	5
Losses and loss adjustment expenses	(45,021)
Insurance and reinsurance balances payable	(3,130)
Accounts payable	<u>(362)</u>
Net assets acquired at fair value	<u>\$ 11,042</u>

Knapton Insurance

On March 2, 2010, the Company, through its wholly-owned subsidiary, Knapton Holdings Limited (“Knapton Holdings”), completed the acquisition of Knapton Insurance Limited, formerly British Engine Insurance Company (“Knapton”), from RSA Insurance Group plc for an aggregate cash purchase price of

ENSTAR GROUP LIMITED

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

approximately £28.8 million (approximately \$44.0 million). Knapton is a U.K.-domiciled reinsurer that is in run-off. In April 2010, Knapton Holdings entered into a term facility agreement with a London-based bank (the “Knapton Facility”). On April 20, 2010, Knapton Holdings drew down \$21.4 million from the Knapton Facility. On June 30, 2011, the Knapton Facility was fully repaid.

The purchase price and fair value of the assets acquired in the Knapton acquisition were as follows:

Total purchase price	<u>\$44,031</u>
Net assets acquired at fair value	<u>\$44,031</u>

The following summarizes the estimated fair values of the assets acquired and the liabilities assumed at the date of the acquisition:

Cash	\$ 153,286
Restricted cash	35,515
Investments:	
Short-term investments, trading	5,990
Fixed maturity investments, trading	<u>27,923</u>
Total investments	33,913
Reinsurance balances recoverable	50,942
Other assets	5,840
Losses and loss adjustment expenses	(216,871)
Insurance and reinsurance balances payable	(12,347)
Accounts payable	<u>(6,247)</u>
Net assets acquired at fair value	<u>\$ 44,031</u>

4. SIGNIFICANT NEW BUSINESS

2013/2012

American Physicians

On January 16, 2013, the Company, through its wholly-owned subsidiary, Providence Washington Insurance Company (“PWIC”), entered into a definitive assignment and assumption agreement with American Physicians Assurance Corporation and APSpecialty Insurance Company relating to a portfolio of workers compensation business. The estimated total assets and liabilities to be assumed are approximately \$35.3 million. Completion of the transaction is conditioned upon, among other things, regulatory approvals and satisfaction of customary closing conditions. The transaction is expected to close in the second quarter of 2013.

Claremont

On August 6 and December 17, 2012, the Company, through Fitzwilliam, entered into novation agreements with Claremont and two of Claremont’s reinsurers with respect to their existing quota share contracts. Under the novation agreements, Fitzwilliam replaced the reinsurers on the quota share contracts in exchange for total assets and liabilities of approximately \$38.0 million.

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Reciprocal of America

On July 6, 2012, the Company, through PWIC, entered into a definitive loss portfolio transfer reinsurance agreement with Reciprocal of America (in Receivership) and its Deputy Receiver relating to a portfolio of workers compensation business. The estimated liabilities to be assumed are approximately \$174.0 million with an equivalent amount of assets to be received as consideration. Completion of the transaction is conditioned upon, among other things, regulatory approvals and satisfaction of customary closing conditions. The transaction is expected to close in the second quarter of 2013.

Zurich Danish Portfolio

On June 30, 2012, the Company, through the Danish branch of its wholly-owned subsidiary, Marlon Insurance Company Limited (“Marlon”), acquired, by way of loss portfolio transfer under Danish law, a portfolio of reinsurance and professional disability business from the Danish branch of Zurich Insurance Company (“Zurich”). After reflecting the final balances reported by Zurich, Marlon received total assets and assumed liabilities of approximately \$60.0 million.

Shelbourne RITC Transactions

The Company, through its wholly-owned U.K.-based subsidiary, Shelbourne Group Limited (“Shelbourne”), invests in RITC transactions (the transferring of liabilities from one Lloyd’s syndicate to another) with Lloyd’s of London insurance and reinsurance syndicates in run-off. Shelbourne was originally formed in December 2007 in conjunction with a newly-hired executive management team and JCF FPK I L.P. (“JCF FPK”) (a joint investment program between Fox-Pitt, Kelton, Cochran, Caronia & Waller (USA) LLC and J.C. Flowers II L.P., which is a private investment fund affiliated with J. Christopher Flowers, who was formerly affiliated with the Company). Shelbourne owns 100% of Shelbourne Syndicate Services Limited, the Managing Agency for Lloyd’s Syndicate 2008 (“S2008”), a syndicate approved by Lloyd’s of London on December 16, 2007 to undertake RITC transactions with Lloyd’s syndicates in run-off. On January 1, 2012, S2008 transferred the assets and liabilities relating to its 2009 and prior underwriting years of account into its 2010 underwriting year of account by means of an RITC transaction. Following the transfer, the existing noncontrolling interest held by JCF FPK ceased, resulting in the Company now providing 100% of the underwriting capacity for S2008, represented by the total Funds at Lloyd’s capital commitment of £71.7 million (approximately \$116.5 million). The capital commitment was financed from available cash on hand.

Effective December 31, 2012, S2008 entered into a 100% quota share reinsurance agreement with another Lloyd’s syndicate in respect of its 2009 and prior underwriting years of account, under which S2008 assumed total gross insurance reserves of approximately £193.0 million (approximately \$313.3 million) for consideration of an equal amount. The consideration received has been recorded as funds withheld in the Company’s consolidated balance sheet for the year ended December 31, 2012.

On January 1, 2013, S2008 transferred the assets and liabilities relating to its 2010 and prior underwriting years of account into its 2011 underwriting year of account by means of an RITC transaction.

2011

Insurance Australia Group

On September 20, 2011, the Company, through its wholly-owned subsidiary, Gordian Run-off Limited (“Gordian”), acquired an inwards reinsurance portfolio from Insurance Australia Group Limited via an

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Australian Federal Court approved scheme. Gordian received total assets and assumed total net reinsurance liabilities of approximately 9.7 million Australian dollars (approximately \$10.0 million).

Claremont

On September 1, 2011, the Company, through Fitzwilliam, entered into a novation agreement with Claremont and certain of its reinsurers with respect to three specific quota share contracts. Under the novation agreement, Fitzwilliam replaced those companies as reinsurer of Claremont on the quota share contracts, assuming liabilities of \$22.5 million and receiving assets of an equal amount.

Shelbourne RITC Transactions

In February 2011, S2008 entered into RITC agreements with two Lloyd's syndicates assuming total gross insurance reserves of approximately \$129.6 million for consideration of an equal amount.

2010

Cigna Reinsurance

On December 31, 2010, the Company, through Fitzwilliam, entered into a 100% reinsurance agreement, administrative services agreement, and related transaction documents with three affiliates of Cigna Corporation ("Cigna affiliates"), pursuant to which Fitzwilliam reinsured all of the run-off workers compensation and personal accident reinsurance business of those Cigna affiliates. Pursuant to the transaction documents, the Cigna affiliates have transferred assets into three reinsurance collateral trusts securing the obligations of Fitzwilliam under the reinsurance agreement and administrative services agreement. Fitzwilliam received total assets and assumed total net reinsurance reserves of approximately \$190.5 million. Fitzwilliam transferred approximately \$50.0 million of additional funds to the trusts to further support these obligations. The Company funded the contribution to the trusts through a draw on a \$115.0 million credit facility entered into with Barclays Bank PLC on December 29, 2010, which was fully repaid on June 30, 2011.

In addition to the trusts, the Company has provided a limited parental guarantee supporting certain obligations of Fitzwilliam initially in the amount of \$79.7 million. The amount of the guarantee will increase or decrease over time under certain circumstances, but will always be subject to an overall maximum cap with respect to reinsurance liabilities. As of December 31, 2012, the amount of the parental guarantee was \$106.5 million.

Inter-Hannover

On October 1, 2011, the Company, through its wholly-owned subsidiary, Brampton Insurance Company Limited ("Brampton"), completed the portfolio transfer of certain run-off agency business from International Insurance Company of Hannover ("IICH"), under part VII of the U.K. Financial Services and Markets Act 2000. The transferred business was previously reinsured by Fitzwilliam pursuant to a 100% quota share reinsurance agreement with IICH, which was entered into on December 3, 2010, and under which Fitzwilliam had received total assets and assumed total net reinsurance reserves of approximately \$137.1 million. In addition, the Company provided a parental guarantee supporting Fitzwilliam's obligations initially in the amount of approximately \$118.7 million. The amount of the guarantee will decrease over time in line with relevant independent actuarial assessments. This 100% quota share reinsurance, along with the associated guarantee, was novated in favor of Brampton as part of the portfolio transfer from IICH. As of December 31, 2012, the total amount of the parental guarantee was approximately \$15.5 million.

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Torus Reinsurance

In July 2010, following the acquisition of the entire issued share capital of Glacier Insurance AG by Torus Insurance (Bermuda) Limited (“Torus”), Fitzwilliam entered into two quota share reinsurance agreements with Torus protecting the prior year reserve development of two portfolios of business reinsured by them: (i) a 79% quota share of Torus’ 95% quota share reinsurance of Glacier Insurance AG, and (ii) a 75% quota share of Torus’ 100% quota share reinsurance of Glacier Reinsurance AG. Fitzwilliam received total assets and assumed total gross reinsurance reserves of approximately \$105.0 million.

Bosworth

In May 2010, a specific portfolio of business in run-off underwritten by Mitsui Sumitomo Insurance Co., Ltd. of Japan (“Mitsui”), was transferred to the Company’s 50.1% owned subsidiary, Bosworth Run-off Limited (“Bosworth”). This transfer, which occurred under Part VII of the U.K. Financial Services and Markets Act 2000, was approved by the U.K. Court and took effect on May 31, 2010. As a result of the transfer, Bosworth received total assets and assumed net reinsurance reserves of approximately \$117.5 million.

Allianz Reinsurance

In February 2010, Fitzwilliam, entered into a 100% quota share reinsurance agreement with Allianz Global Corporate & Specialty AG (UK) Branch (“Allianz”), with respect to a specific portfolio of run-off business of Allianz. Fitzwilliam received total assets and assumed total gross reinsurance reserves of approximately \$112.6 million.

Shelbourne RITC Transactions

During 2010, S2008 entered into RITC agreements with three Lloyd’s syndicates with total gross insurance reserves assumed of approximately \$192.6 million for consideration of an equal amount.

5. INVESTMENTS

Available-for-sale

The amortized cost and estimated fair values of the Company’s fixed maturity securities classified as available-for-sale were as follows:

	Amortized Cost	Gross Unrealized Holding Gains	Gross Unrealized Holding Losses Non-OTTI	Fair Value
<u>As at December 31, 2012</u>				
U.S. government and agency	\$ 4,503	\$ 454	\$ —	\$ 4,957
Non-U.S. government	120,634	3,373	(151)	123,856
Corporate	115,139	2,379	(524)	116,994
Residential mortgage-backed	4,308	230	(40)	4,498
Commercial mortgage-backed	474	7	—	481
Asset-backed	338	9	(12)	335
	<u>\$245,396</u>	<u>\$ 6,452</u>	<u>\$ (727)</u>	<u>\$251,121</u>

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NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

	Amortized Cost	Gross Unrealized Holding Gains	Gross Unrealized Holding Losses Non-OTTI	Fair Value
As at December 31, 2011				
U.S. government and agency	\$ 17,816	\$ 546	\$ (433)	\$ 17,929
Non-U.S. government	160,128	9,227	(828)	168,527
Corporate	366,954	7,937	(2,578)	372,313
Residential mortgage-backed	13,544	276	(108)	13,712
Commercial mortgage-backed	12,680	3,044	(7)	15,717
Asset-backed	19,466	65	(413)	19,118
	<u>\$590,588</u>	<u>\$ 21,095</u>	<u>\$ (4,367)</u>	<u>\$607,316</u>

Included within the residential and commercial mortgaged-backed securities as at December 31, 2012 are securities issued by U.S. governmental agencies with a fair value of \$3,500 (as at December 31, 2011: \$4,624).

The following tables summarize the Company's fixed maturity securities classified as available-for-sale in an unrealized loss position as well as the aggregate fair value and gross unrealized loss by length of time the security has continuously been in an unrealized loss position:

	12 Months or Greater		Less Than 12 Months		Total	
	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses
As at December 31, 2012						
Non-U.S. government	\$ 2,646	\$ (82)	\$ 2,399	\$ (69)	\$ 5,045	\$ (151)
Corporate	13,936	(86)	8,689	(438)	22,625	(524)
Residential mortgage-backed	1,124	(40)	—	—	1,124	(40)
Asset-backed	174	(12)	—	—	174	(12)
	<u>\$17,880</u>	<u>\$ (220)</u>	<u>\$11,088</u>	<u>\$ (507)</u>	<u>\$28,968</u>	<u>\$ (727)</u>

	12 Months or Greater		Less Than 12 Months		Total	
	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses
As at December 31, 2011						
U.S. government and agency	\$ —	\$ —	\$ 8,318	\$ (433)	\$ 8,318	\$ (433)
Non-U.S. government	14,982	(466)	16,305	(362)	31,287	(828)
Corporate	47,197	(1,367)	54,106	(1,211)	101,303	(2,578)
Residential mortgage-backed	1,299	(105)	36	(3)	1,335	(108)
Commercial mortgage-backed	—	—	215	(7)	215	(7)
Asset-backed	7,577	(187)	6,491	(226)	14,068	(413)
	<u>\$71,055</u>	<u>\$ (2,125)</u>	<u>\$85,471</u>	<u>\$ (2,242)</u>	<u>\$156,526</u>	<u>\$ (4,367)</u>

As at December 31, 2012 and 2011, the number of securities classified as available-for-sale in an unrealized loss position was 30 and 107, respectively, with a fair value of \$29.0 million and \$156.5 million, respectively. Of these securities, the number of securities that had been in an unrealized loss position for twelve months or longer was 23 and 59, respectively. As of December 31, 2012, none of these securities were considered to be other than temporarily impaired.

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The contractual maturities of the Company's fixed maturity securities classified as available-for-sale are shown below. Actual maturities may differ from contractual maturities because borrowers may have the right to call or prepay obligations with or without call or prepayment penalties.

	Amortized Cost	Fair Value	% of Total Fair Value
As at December 31, 2012			
Due in one year or less	\$173,113	\$173,949	69.3%
Due after one year through five years	64,089	68,298	27.2%
Due after ten years	3,074	3,560	1.4%
	<u>240,276</u>	<u>245,807</u>	<u>97.9%</u>
Residential mortgage-backed	4,308	4,498	1.8%
Commercial mortgage-backed	474	481	0.2%
Asset-backed	338	335	0.1%
	<u>\$245,396</u>	<u>\$251,121</u>	<u>100.0%</u>

	Amortized Cost	Fair Value	% of Total Fair Value
As at December 31, 2011			
Due in one year or less	\$230,550	\$230,377	37.9%
Due after one year through five years	308,062	322,131	53.0%
Due after five years through ten years	3,296	3,367	0.6%
Due after ten years	2,990	2,894	0.5%
	<u>544,898</u>	<u>558,769</u>	<u>92.0%</u>
Residential mortgage-backed	13,544	13,712	2.3%
Commercial mortgage-backed	12,680	15,717	2.6%
Asset-backed	19,466	19,118	3.1%
	<u>\$590,588</u>	<u>\$607,316</u>	<u>100.0%</u>

The following tables set forth certain information regarding the credit ratings (provided by major rating agencies) of the Company's fixed maturity securities classified as available-for-sale:

	Amortized Cost	Fair Value	% of Total Fair Value
As at December 31, 2012			
AAA	\$107,615	\$110,829	44.1%
AA	59,535	60,742	24.2%
A	72,773	73,935	29.4%
BBB or lower	5,281	5,197	2.1%
Not Rated	192	418	0.2%
	<u>\$245,396</u>	<u>\$251,121</u>	<u>100.0%</u>

	Amortized Cost	Fair Value	% of Total Fair Value
As at December 31, 2011			
AAA	\$204,967	\$214,873	35.4%
AA	131,092	132,971	21.9%
A	210,040	215,225	35.4%
BBB or lower	44,100	43,526	7.2%
Not Rated	389	721	0.1%
	<u>\$590,588</u>	<u>\$607,316</u>	<u>100.0%</u>

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Other-Than-Temporary Impairment Process

The Company assesses whether declines in the fair value of its fixed maturity investments classified as available-for-sale represent impairment losses that are other-than-temporary and whether a credit loss exists in accordance with its accounting policies. The Company had no planned sales of its fixed maturity investments classified as available-for-sale as at December 31, 2012. In assessing whether it is more likely than not that the Company will be required to sell a fixed maturity investment before its anticipated recovery, the Company considers various factors including its future cash flow requirements, legal and regulatory requirements, the level of its cash, cash equivalents, short-term investments and fixed maturity investments available-for-sale in an unrealized gain position, and other relevant factors. For the twelve months ended December 31, 2012, the Company did not recognize any other-than-temporary impairments/losses due to required sales. The Company determined that, as at December 31, 2012, no credit losses existed.

Trading

The estimated fair values of the Company's investments in fixed maturity securities, short-term investments and equities classified as trading securities were as follows:

	December 31,	December 31,
	<u>2012</u>	<u>2011</u>
U.S. government and agency	\$ 361,906	\$ 400,908
Non-U.S. government	265,722	212,251
Corporate	1,598,876	1,595,930
Municipal	20,446	25,416
Residential mortgage-backed	115,594	97,073
Commercial mortgage-backed	130,848	70,977
Asset-backed	78,929	43,083
Equities — U.S.	92,406	54,378
Equities — International	22,182	35,603
	<u>\$2,686,909</u>	<u>\$2,535,619</u>

The following tables set forth certain information regarding the credit ratings (provided by major rating agencies) of the Company's fixed maturity securities and short-term investments classified as trading:

	Fair Value	% of Total Fair Value
<u>As at December 31, 2012</u>		
AAA	\$ 418,297	16.3%
AA	958,267	37.2%
A	812,428	31.6%
BBB or lower	376,347	14.6%
Not Rated	6,982	0.3%
	<u>\$2,572,321</u>	<u>100.00%</u>

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<u>As at December 31, 2011</u>	<u>Fair Value</u>	<u>% of Total Fair Value</u>
AAA	\$ 881,951	36.0%
AA	400,394	16.4%
A	796,608	32.6%
BBB or lower	341,307	14.0%
Not Rated	25,378	1.0%
	<u>\$2,445,638</u>	<u>100.0%</u>

Other Investments

The estimated fair values of the Company's other investments were as follows:

	<u>December 31, 2012</u>	<u>December 31, 2011</u>
Private equity funds	\$ 127,696	\$ 107,388
Fixed income funds	156,235	54,537
Fixed income hedge funds	53,933	24,395
Equity fund	55,881	—
Real estate debt fund	16,179	—
Other	4,921	5,944
	<u>\$ 414,845</u>	<u>\$ 192,264</u>

These investments are discussed in further detail below.

Private equity funds

This class is comprised of several private equity funds that invest primarily in the financial services industry. All of the Company's investments in private equity funds are subject to restrictions on redemptions and sales that are determined by the governing documents and limit the Company's ability to liquidate those investments. These restrictions have been in place since the dates the initial investments were made by the Company.

As of December 31, 2012 and 2011, the Company had \$127.7 million and \$107.4 million, respectively, of other investments recorded in private equity funds, which represented 3.0% and 2.4% of total investments, cash and cash equivalents and restricted cash and cash equivalents at December 31, 2012 and 2011, respectively. Due to a lag in the valuations reported by the managers, the Company records changes in the investment value with up to a three-month lag. Management regularly reviews and discusses fund performance with their fund managers to corroborate the reasonableness of the reported net asset values and to assess whether any events have occurred within the lag period that would affect the valuation of the investments.

Fixed income funds

This class is comprised of a number of positions in diversified fixed income funds that are managed by third party managers. Underlying investments vary from high grade corporate bonds to non-investment grade senior secured loans and bonds, but are generally invested in liquid fixed income markets. These funds have regularly published prices. The funds have liquidity terms that vary from daily to monthly.

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Fixed income hedge funds

This class is comprised of hedge funds that invest in a diversified portfolio of debt securities. The hedge funds are not currently eligible for redemption due to imposed lock-up periods of three years from the time of the Company's initial investment. Once eligible, redemptions will be permitted quarterly with 90 days' notice. The first investment in the funds will be eligible for redemption in March 2014.

Equity fund

This class is comprised of an equity fund that invests in a diversified portfolio of international publicly-traded equity securities. The manager of the fund seeks to maximize the intrinsic value of the portfolio by focusing on price and quality.

Real estate debt fund

This class is comprised of a real estate debt fund that invests primarily in U.S. commercial real estate loans and securities. A redemption request for this fund can be made 10 days after the date of any monthly valuation; the fund states that it will make commercially reasonable efforts to redeem the investment within the next monthly period.

Other

This class is comprised of primarily a fund that provides loans to educational institutions throughout the U.S. and its territories. Through these investments, the Company participates in the performance of the underlying loans. This investment matures when the loans are paid down and cannot be redeemed before maturity.

Redemption restrictions on other investments

Certain funds included in other investments are subject to a lock-up period. A lock-up period refers to the initial amount of time an investor is contractually required to invest before having the ability to redeem the investment. Funds that do provide for periodic redemptions may, depending on the funds' governing documents, have the ability to deny or delay a redemption request, which is called a "gate." The fund may restrict redemptions because the aggregate amount of redemption requests as of a particular date exceeds a specified level. The gate is a method for executing an orderly redemption process that allows for redemption requests to be executed in a timely manner to reduce the possibility of adversely affecting the remaining investors in the fund. Typically, the imposition of a gate delays a portion of the requested redemption, with the remaining portion to be settled in cash sometime after the redemption date.

Certain funds included in other investments may be allowed to invest a portion of their assets in illiquid securities, such as private equity or convertible debt. In such cases, a common mechanism used is a "side-pocket", whereby the illiquid security is assigned to a separate memorandum capital account or designated account. Typically, the investor loses its redemption rights in the designated account. Only when the illiquid security is sold, or is otherwise deemed liquid by the fund, may investors redeem their interest in the side-pocket.

At December 31, 2012 and 2011, the Company had no investments subject to gates or side-pockets.

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The following table presents the fair value, unfunded commitments and redemption frequency for all other investments. These investments are all valued at net asset value as at December 31, 2012:

	Total Fair Value	Gated/Side Pocket Investments	Investments without Gates or Side Pockets	Unfunded Commitments	Redemption Frequency
Private equity funds	\$127,696	\$ —	\$ 127,696	\$ 86,936	Not eligible
Fixed income funds	156,235	—	156,235	—	Daily to monthly
Fixed income hedge funds	53,933	—	53,933	—	Quarterly after lock- up periods expire
Equity fund	55,881	—	55,881	—	Bi-monthly
Real estate debt fund	16,179	—	16,179	—	Monthly
Other	4,921	—	4,921	655	Not eligible
	<u>\$414,845</u>	<u>\$ —</u>	<u>\$ 414,845</u>	<u>\$ 87,591</u>	

Fair Value of Financial Instruments

Fair value is defined as the price at which to sell an asset or transfer a liability (i.e. the “exit price”) in an orderly transaction between market participants. The Company uses a fair value hierarchy that gives the highest priority to quoted prices in active markets and the lowest priority to unobservable data. The hierarchy is broken down into three levels as follows:

- Level 1 — Valuations based on unadjusted quoted prices in active markets for identical assets or liabilities that the Company has the ability to access. Valuation adjustments and block discounts are not applied to Level 1 instruments.
- Level 2 — Valuations based on quoted prices in active markets for similar assets or liabilities, quoted prices for identical or similar assets or liabilities in inactive markets, or for which significant inputs are observable (e.g. interest rates, yield curves, prepayment speeds, default rates, loss severities, etc.) or can be corroborated by observable market data.
- Level 3 — Valuations based on inputs that are unobservable and significant to the overall fair value measurement. The unobservable inputs reflect the Company’s own judgment about assumptions that market participants might use.

The following is a summary of valuation techniques the Company uses to measure fair value by asset and liability classes.

Fixed Maturity Investments

The Company’s fixed maturity portfolio is managed by the Company’s Chief Investment Officer and outside investment advisors with oversight from the Company’s Investment Committee. Fair values for all securities in the fixed maturities portfolio are independently provided by the investment custodian, investment accounting service provider and investment managers, each of which utilize internationally recognized independent pricing services. Interactive Data Corporation is, however, the main pricing service utilized to estimate the fair value measurements for the Company’s fixed maturity investments. The Company records the unadjusted price provided by the investment custodian, investment accounting service provider or the investment manager and validates this price through a process that includes, but is not limited to: (i) comparison of prices against alternative pricing sources; (ii) quantitative analysis (e.g. comparing the quarterly return for each

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managed portfolio to its target benchmark); (iii) evaluation of methodologies used by external parties to estimate fair value, including a review of the inputs used for pricing; and (iv) comparing the price to the Company's knowledge of the current investment market. The Company's internal price validation procedures and review of fair value methodology documentation provided by independent pricing services have not historically resulted in adjustment in the prices obtained from the pricing service.

The independent pricing services used by the investment custodian, investment accounting service provider and investment managers obtain actual transaction prices for securities that have quoted prices in active markets. For determining the fair value of securities that are not actively traded, in general, pricing services use "matrix pricing" in which the independent pricing service uses observable market inputs including, but not limited to, reported trades, benchmark yields, broker-dealer quotes, interest rates, prepayment speeds, default rates and such other inputs as are available from market sources to determine a reasonable fair value. In addition, pricing services use valuation models, using observable data, such as an Option Adjusted Spread model, to develop prepayment and interest rate scenarios. The Option Adjusted Spread model is commonly used to estimate fair value for securities such as mortgage-backed and asset-backed securities.

The following describes the techniques generally used to determine the fair value of the Company's fixed maturity investments by asset class.

- U.S. government and agency securities consist of securities issued by the U.S. Treasury and mortgage pass-through agencies such as the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation and other agencies. The significant inputs used to determine the fair value of these securities include the spread above the risk-free yield curve, reported trades and broker-dealer quotes. These are considered to be observable market inputs and, therefore, the fair values of these securities are classified within Level 2.
- Non-U.S. government securities consist of bonds issued by non-U.S. governments and agencies along with supranational organizations. The significant inputs used to determine the fair value of these securities include the spread above the risk-free yield curve, reported trades and broker-dealer quotes. These are considered to be observable market inputs and, therefore, the fair values of these securities are classified within Level 2.
- Corporate securities consist primarily of investment-grade debt of a wide variety of corporate issuers and industries. The fair values of these securities are determined using the spread above the risk-free yield curve, reported trades, broker-dealer quotes, benchmark yields, and industry and market indicators. These are considered observable market inputs and, therefore, the fair values of these securities are classified within Level 2. Where pricing is unavailable from pricing services, the Company obtains non-binding quotes from broker-dealers. This is generally the case when there is a low volume of trading activity and current transactions are not orderly. In this event, securities are classified within Level 3. As at December 31, 2012, the Company had one corporate security classified as Level 3.
- Municipal securities consist primarily of bonds issued by U.S.-domiciled state and municipal entities. The fair values of these securities are determined using the spread above the risk-free yield curve, reported trades, broker-dealer quotes and benchmark yields. These are considered observable market inputs and, therefore, the fair values of these securities are classified within Level 2.
- Asset-backed securities consist primarily of investment-grade bonds backed by pools of loans with a variety of underlying collateral. The significant inputs used to determine the fair value of these securities include the spread above the risk-free yield curve, reported trades, benchmark yields, broker-dealer quotes, prepayment speeds and default rates. These are considered observable market inputs and, therefore, the fair values of these securities are classified within Level 2.

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- Residential and commercial mortgage-backed securities include both agency and non-agency originated securities. The significant inputs used to determine the fair value of these securities include the spread above the risk-free yield curve, reported trades, benchmark yields, broker-dealer quotes, prepayment speeds and default rates. These are considered observable market inputs and, therefore, the fair values of these securities are classified within Level 2. Where pricing is unavailable from pricing services, the Company obtains non-binding quotes from broker-dealers. This is generally the case when there is a low volume of trading activity and current transactions are not orderly. In this event, securities are classified within Level 3. As at December 31, 2012, the Company had no residential or commercial mortgage-backed securities classified as Level 3.

Equities

The Company's equities are predominantly traded on the major exchanges and are primarily managed by two external advisors. The Company uses Interactive Data Corporation, an internationally recognized pricing service, to estimate the fair value for all of its equities. The Company's equities are widely diversified and there is no significant concentration in any specific industry.

The Company has categorized all of its investments in equities as Level 1 investments because the fair values of these investments are based on quoted prices in active markets for identical assets or liabilities. Because their fair value estimates are based on observable market data, the Company has categorized its investments in preferred stock as Level 2, with the exception of one investment in preferred stock that has been categorized as Level 3.

Other Investments

The Company has ongoing due diligence processes with respect to funds in which it invests and their managers. These processes are designed to assist the Company in assessing the quality of information provided by, or on behalf of, each fund and in determining whether such information continues to be reliable or whether further review is warranted. Certain funds do not provide full transparency of their underlying holdings; however, the Company obtains the audited financial statements for funds annually, and regularly reviews and discusses the fund performance with the fund managers to corroborate the reasonableness of the reported net asset values. The use of net asset value as an estimate of the fair value for investments in certain entities that calculate net asset value is a permitted practical expedient. While reported net asset value is the primary input to the review, when the net asset value is deemed not to be indicative of fair value, the Company may incorporate adjustments to the reported net asset value (and not use the permitted practical expedient) on an investment by investment basis. These adjustments may involve significant management judgment.

For its investments in private equity funds, the Company measures fair value by obtaining the most recently provided capital statement from the external fund manager or third-party administrator. The funds calculate net asset value on a fair value basis. For all publicly-traded companies within these funds, the Company adjusts the reported net asset value based on the latest share price as of the Company's reporting date. The Company has classified its investments in private equity funds as Level 3.

The fixed income funds and equity fund in which the Company invests have been classified as Level 2 investments because their fair value is estimated using the published net asset value and because the fixed income funds and equity fund are highly liquid.

For its investments in fixed income hedge funds, the Company measures fair value by obtaining the most recently published net asset value as advised by the external fund manager or third-party administrator. The investments in the funds are classified as Level 3.

ENSTAR GROUP LIMITED

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The real estate debt fund in which the Company invests has been valued based on the most recent published net asset value. This investment has been classified as Level 3.

The Company's remaining other investments are valued based on the latest available capital statements and have been classified as Level 3.

Fair Value Measurements

In accordance with the provisions of the Fair Value Measurement and Disclosure topic of the FASB Accounting Standards Codification ("ASC") 820, the Company has categorized its investments that are recorded at fair value among levels as follows:

	December 31, 2012			Total Fair Value
	Quoted Prices in Active Markets for	Significant Other Observable	Significant Unobservable	
	Identical Assets (Level 1)	Inputs (Level 2)	Inputs (Level 3)	
U.S. government and agency	\$ —	\$ 366,863	\$ —	\$ 366,863
Non-U.S. government	—	389,578	—	389,578
Corporate	—	1,715,330	540	1,715,870
Municipal	—	20,446	—	20,446
Residential mortgage-backed	—	120,092	—	120,092
Commercial mortgage-backed	—	131,329	—	131,329
Asset-backed	—	79,264	—	79,264
Equities – U.S.	83,947	5,058	3,401	92,406
Equities – International	10,377	11,805	—	22,182
Other investments	—	212,115	202,730	414,845
Total investments	\$ 94,324	\$ 3,051,880	\$ 206,671	\$3,352,875

	December 31, 2011			Total Fair Value
	Quoted Prices in Active Markets for	Significant Other Observable	Significant Unobservable	
	Identical Assets (Level 1)	Inputs (Level 2)	Inputs (Level 3)	
U.S. government and agency	\$ —	\$ 418,837	\$ —	\$ 418,837
Non-U.S. government	—	380,778	—	380,778
Corporate	—	1,967,724	519	1,968,243
Municipal	—	25,416	—	25,416
Residential mortgage-backed	—	110,785	—	110,785
Commercial mortgage-backed	—	86,694	—	86,694
Asset-backed	—	62,201	—	62,201
Equities – U.S.	51,403	4,625	2,975	59,003
Equities – International	30,978	—	—	30,978
Other investments	—	54,537	137,727	192,264
Total investments	\$ 82,381	\$ 3,111,597	\$ 141,221	\$3,335,199

During 2012 and 2011, the Company had no transfers between Levels 1 and 2.

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The following table presents a reconciliation of the beginning and ending balances for all investments measured at fair value on a recurring basis using Level 3 inputs during the year ended December 31, 2012:

	Fixed Maturity Investments	Other Investments	Equity Securities	Total
Level 3 investments as of January 1, 2012	\$ 519	\$ 137,727	\$ 2,975	\$141,221
Purchases	—	63,732	—	63,732
Sales	—	(16,839)	—	(16,839)
Total realized and unrealized gains through earnings	21	18,110	426	18,557
Net transfers into and/or (out of) Level 3	—	—	—	—
Level 3 investments as of December 31, 2012	<u>\$ 540</u>	<u>\$ 202,730</u>	<u>\$ 3,401</u>	<u>\$206,671</u>

The amount of net gains/(losses) for the year included in earnings attributable to the fair value of changes in assets still held at December 31, 2012 was \$18.2 million. All of this amount was included in net realized and unrealized gains.

The following table presents a reconciliation of the beginning and ending balances for all investments measured at fair value on a recurring basis using Level 3 inputs during the year ended December 31, 2011:

	Fixed Maturity Investments	Other Investments	Equity Securities	Total
Level 3 investments as of January 1, 2011	\$ 1,444	\$ 132,435	\$ 3,575	\$137,454
Purchases	—	13,753	—	13,753
Sales	(1,051)	(7,655)	—	(8,706)
Total realized and unrealized gains (losses) through earnings	126	(806)	(600)	(1,280)
Net transfers into and/or (out of) Level 3	—	—	—	—
Level 3 investments as of December 31, 2011	<u>\$ 519</u>	<u>\$ 137,727</u>	<u>\$ 2,975</u>	<u>\$141,221</u>

The amount of net gains (losses) for the year included in earnings attributable to the fair value of changes in assets still held at December 31, 2011 was \$16.3 million. All of this amount was included in net realized and unrealized gains.

Net Realized and Unrealized Gains (Losses)

Components of net realized and unrealized gains (losses) for the years ended December 31, 2012, 2011 and 2010 were as follows:

	2012	2011	2010
Gross realized gains on available-for-sale securities	\$ 5,850	\$ 808	\$ 1,587
Gross realized losses on available-for-sale securities	(727)	(471)	—
Net realized gains on trading securities	13,569	3,738	2,603
Net realized gains on held-to-maturity securities	—	—	3,671
Net unrealized gains on trading securities	23,541	3,945	5,276
Net realized and unrealized gains on other investments	31,379	1,194	18,645
Net realized and unrealized gains	<u>\$ 73,612</u>	<u>\$ 9,214</u>	<u>\$ 31,782</u>
Proceeds from sale of available-for-sale securities	<u>\$353,913</u>	<u>\$445,052</u>	<u>\$347,214</u>

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NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Net Investment Income

Major categories of net investment income are summarized as follows:

	<u>2012</u>	<u>2011</u>	<u>2010</u>
Interest from fixed maturity investments	\$ 78,767	\$ 70,753	\$59,187
Net amortization of bond premiums and discounts	(28,758)	(25,245)	(9,304)
Dividends from equities	2,961	1,786	1,172
Other investments	661	734	2,825
Interest from cash and cash equivalents and short-term investments	14,924	13,232	15,951
Interest on other receivables	6,887	6,572	6,816
Other income	5,229	3,118	5,117
Interest on deposits held with clients	1,368	1,188	1,172
Investment expenses	(4,279)	(3,462)	(1,675)
	<u>\$ 77,760</u>	<u>\$ 68,676</u>	<u>\$81,261</u>

Restricted Assets

The total restricted assets as of December 31, 2012 and 2011 were as follows:

	<u>2012</u>	<u>2011</u>
Restricted assets included in cash and cash equivalents	\$ 299,965	\$ 373,191
Restricted assets included in fixed maturity investments, at fair value	721,735	824,610
Restricted assets included in other investments	7,311	6,330
	<u>\$1,029,011</u>	<u>\$1,204,131</u>

As of December 31, 2012 and 2011, \$212.0 million and \$225.9 million, respectively, of cash and cash equivalents and investments were on deposit with various regulatory authorities to support the Company's insurance and reinsurance operations. The investments on deposit are available to settle insurance and reinsurance liabilities. The Company also utilizes trust accounts to collateralize business with its insurance and reinsurance counterparties. As at December 31, 2012 and 2011, \$570.4 million and \$798.3 million, respectively, of cash and cash equivalents and investments were used for collateral in trust for third-party agreements. The Company also has issued secured letters of credit collateralized against the Company's investment portfolio. As of December 31, 2012 and 2011, \$246.6 million and \$179.9 million, respectively, of cash and cash equivalents and investments were pledged as security in favor of letters of credit issued.

6. DERIVATIVE INSTRUMENTS

The Company uses foreign currency forward contracts as part of its overall foreign currency risk management strategy or to obtain exposure to a particular financial market and for yield enhancement. These derivatives were not designated as hedging investments.

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NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The following table sets out the foreign currency forward contracts outstanding during the periods ended December 31, 2012, 2011 and 2010 and the estimated fair value of derivative instruments recorded on the balance sheet:

Foreign Currency Forward Contract	Contract Date	Settlement Date	Contract Amount	Settlement Amount	Fair Value as at December 31,	Net Foreign Exchange (Losses) Gains
2012						
Australian dollar	February 8, 2012	May 10, 2013	AU\$35,000	\$ 36,099	\$ (238)	\$ (238)
British pound	March 6, 2012	March 6, 2013	UKP17,000	\$ 26,611	(1,023)	(1,023)
Australian dollar	February 8, 2012	December 19, 2012	AU\$25,000	\$ 26,165	—	—
					<u>(1,261)</u>	<u>(1,261)</u>
2011						
U.S. dollar	September 22, 2011	December 2, 2011	\$33,973	AU\$35,000	—	3,008
Australian dollar	August 23, 2011	December 2, 2011	AU\$35,000	\$ 36,981	—	—
Australian dollar	October 12, 2010	June 30, 2011	AU\$45,000	\$ 42,476	—	(1,917)
					<u>—</u>	<u>1,091</u>
2010						
Australian dollar	October 12, 2010	June 30, 2011	AU\$45,000	\$ 42,476	\$ (3,573)	\$ (3,573)

7. REINSURANCE BALANCES RECOVERABLE

	2012	2011
Recoverable from reinsurers on:		
Outstanding losses	\$ 665,303	\$ 837,693
Losses incurred but not reported	295,922	678,437
Fair value adjustments	(85,005)	(133,127)
Total reinsurance reserves recoverable	<u>876,220</u>	<u>1,383,003</u>
Paid losses recoverable	246,699	406,579
	<u>\$1,122,919</u>	<u>\$1,789,582</u>

The Company's acquired reinsurance subsidiaries, prior to acquisition, used retrocessional agreements to reduce their exposure to the risk of insurance and reinsurance assumed. The Company's reinsurance subsidiaries remain liable to the extent that retrocessionaires do not meet their obligations under these agreements, and therefore, the Company evaluates and monitors concentration of credit risk among its reinsurers. Provisions are made for amounts considered potentially uncollectible.

As of December 31, 2012 and 2011, the Company had total reinsurance balances recoverable of \$1.12 billion and \$1.79 billion, respectively. The decrease of \$666.7 million in total reinsurance balances recoverable was primarily a result of commutations, cash collections and a reduction in estimated ultimate losses in the year ended December 31, 2012. At December 31, 2012 and 2011, the provision for uncollectible reinsurance recoverable relating to total reinsurance balances recoverable was \$343.9 million and \$341.1 million, respectively. To estimate the provision for uncollectible reinsurance recoverable, the reinsurance balances recoverable are first allocated to applicable reinsurers. As part of this process, ceded incurred but not reported ("IBNR") reserves are allocated by reinsurer. The ratio of the provision for uncollectible reinsurance recoverable to total reinsurance balances recoverable (excluding provision for uncollectible reinsurance recoverable) as of December 31, 2012 increased to 23.4% as compared to 16.0% as of December 31, 2011. This was primarily as a result of commutations and the collection of reinsurance balances recoverable against which there were minimal provisions for uncollectible reinsurance recoverable.

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The fair value adjustments, determined on acquisition of reinsurance subsidiaries, are based on the estimated timing of loss and loss adjustment expense recoveries and an assumed interest rate equivalent to a risk free rate for securities with similar duration to the reinsurance recoverables acquired plus a spread to reflect credit risk, and are amortized over the estimated recovery period, as adjusted for accelerations in timing of payments as a result of commutation settlements.

At December 31, 2012 and 2011, the Company's top ten reinsurers accounted for 63.1% and 70.0%, respectively, of reinsurance recoverables (which includes loss reserves recoverable and recoverables on paid losses) and included \$194.5 million and \$451.3 million, respectively, of IBNR reserves recoverable. With the exception of one BBB+ rated reinsurer from which \$37.7 million was recoverable (December 31, 2011: \$55.2 million), the other top ten reinsurers, as at December 31, 2012 and 2011, were all rated A- or better. Reinsurance recoverables by reinsurer were as follows:

	2012		2011	
	Reinsurance Recoverable	% of Total	Reinsurance Recoverable	% of Total
Top 10 reinsurers	\$ 708,953	63.1%	\$1,252,929	70.0%
Other reinsurers' balances > \$1 million	409,666	36.5%	532,303	29.7%
Other reinsurers' balances < \$1 million	4,300	0.4%	4,350	0.3%
Total	<u>\$1,122,919</u>	<u>100.0%</u>	<u>\$1,789,582</u>	<u>100.0%</u>

As at December 31, 2012 and 2011, reinsurance balances recoverable with a carrying value of \$144.1 million and \$235.8 million, respectively, were associated with one reinsurer, which represented 10% or more of total reinsurance balances recoverable. Of the \$144.1 million and \$235.8 million recoverable from the reinsurer as at December 31, 2012 and 2011, \$121.6 million and \$151.0 million, respectively, is secured by a trust fund held for the benefit of the Company's reinsurance subsidiaries. As at December 31, 2012 and 2011, the reinsurer had a credit rating of A+, as provided by a major rating agency.

8. LOSSES AND LOSS ADJUSTMENT EXPENSES

	2012	2011
Outstanding	\$2,369,356	\$2,549,648
Incurred but not reported	1,588,310	2,110,299
Fair value adjustment	(296,512)	(377,031)
	<u>\$3,661,154</u>	<u>\$4,282,916</u>

The liability for losses and loss adjustment expenses includes an amount determined from reported claims and an amount based on historical loss experience and industry statistics for losses incurred but not reported using a variety of actuarial methods. The Company's loss reserves cover multiple lines of business which include workers compensation, general casualty, asbestos and environmental and construction defects.

In establishing the reserves for losses and loss adjustment expenses related to asbestos and environmental claims, management considers facts currently known and the current state of the law and coverage litigation. Liabilities are recognized for known claims (including the cost of related litigation) when sufficient information has been developed to indicate the involvement of a specific insurance policy, and management can reasonably estimate its liability. In addition, reserves have been established to cover additional exposures on both known and unasserted claims. Estimates of the reserves are reviewed and updated continually. Developed case law and

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NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

adequate claim history do not exist for such claims, especially because significant uncertainty exists about the outcome of coverage litigation and whether past claim experience will be representative of future claim experience.

In view of the changes in the legal and tort environment that affect the development of such claims, the uncertainties inherent in valuing asbestos and environmental claims are not likely to be resolved in the near future. Ultimate values for such claims cannot be estimated using traditional reserving techniques and there are significant uncertainties in estimating the amount of the Company's potential losses for these claims.

There can be no assurance that the reserves established by the Company will be adequate or will not be adversely affected by the development of other latent exposures. The Company's liability for unpaid losses and loss adjustment expenses as of December 31, 2012 and 2011 included \$557.6 million and \$621.5 million, respectively, that represented an estimate of its net ultimate liability for asbestos and environmental claims. The gross liability for such claims as at December 31, 2012 and 2011 was \$628.7 million and \$702.8 million, respectively.

The table below provides a reconciliation of the beginning and ending reserves for losses and loss adjustment expenses for the years ended December 31, 2012, 2011 and 2010. Losses incurred and paid are reflected net of reinsurance recoverables.

	<u>2012</u>	<u>2011</u>	<u>2010</u>
Balance as at January 1	\$4,282,916	\$3,291,275	\$2,479,136
Less: total reinsurance reserves recoverable	<u>1,383,003</u>	<u>525,440</u>	<u>347,728</u>
	2,899,913	2,765,835	2,131,408
Effect of exchange rate movement	15,004	(9,170)	(3,836)
Net reduction in ultimate loss and loss adjustment expense liabilities	(241,764)	(295,447)	(311,834)
Net losses paid	(310,695)	(284,611)	(294,996)
Acquired on purchase of subsidiaries	—	610,485	459,362
Assumed business	<u>422,476</u>	<u>112,821</u>	<u>785,731</u>
Net balance as at December 31	2,784,934	2,899,913	2,765,835
Plus: total reinsurance reserves recoverable	<u>876,220</u>	<u>1,383,003</u>	<u>525,440</u>
Balance as at December 31	<u>\$3,661,154</u>	<u>\$4,282,916</u>	<u>\$3,291,275</u>

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The net reduction in ultimate loss and loss adjustment expense liabilities for the years ended December 31, 2012, 2011 and 2010 was due to the following:

	<u>2012</u>	<u>2011</u>	<u>2010</u>
Net losses paid	\$(310,695)	\$(284,611)	\$(294,996)
Net reduction in case and LAE reserves	265,222	310,036	336,141
Net reduction in IBNR reserves	<u>267,400</u>	<u>224,791</u>	<u>236,920</u>
Reduction in estimates of net ultimate losses	221,927	250,216	278,065
Reduction in provisions for bad debt	3,111	42,822	49,556
Reduction in provisions for unallocated loss adjustment expense liabilities	39,298	45,102	39,651
Amortization of fair value adjustments	<u>(22,572)</u>	<u>(42,693)</u>	<u>(55,438)</u>
Net reduction in ultimate loss and loss adjustment expense liabilities	<u>\$ 241,764</u>	<u>\$ 295,447</u>	<u>\$ 311,834</u>

The net reduction in case and loss adjustment expense reserves (“LAE reserves”) comprises the movement during the year in specific case reserve liabilities as a result of claims settlements or changes advised to the Company by its policyholders and attorneys, less changes in case reserves recoverable advised by the Company to its reinsurers as a result of the settlement or movement of assumed claims. Net reduction in IBNR represents the change in the Company’s actuarial estimates of losses incurred but not reported, less amounts recoverable.

Year Ended December 31, 2012

The net reduction in ultimate loss and loss adjustment expense liabilities for the year ended December 31, 2012 of \$241.8 million was attributable to a reduction in estimates of net ultimate losses of \$ 221.9 million, a reduction in aggregate provisions for bad debt of \$3.1 million and a reduction in estimates of unallocated loss adjustment expense liabilities of \$39.3 million, relating to 2012 run-off activity, partially offset by the amortization, over the estimated payout period, of fair value adjustments relating to companies acquired amounting to \$22.6 million.

The reduction in estimates of net ultimate losses of \$221.9 million comprised net incurred loss development of \$45.5 million and reductions in net IBNR reserves of \$267.4 million. During the three months ended December 31, 2012, one of the Company’s insurance entities, following an exposure-based review of all advised claims, allocated \$52.4 million of net IBNR reserves to specific net case and LAE reserves. Excluding this allocation, net incurred loss development for the year ended December 31, 2012 was a favorable \$6.9 million and reductions in net IBNR reserves amounted to \$215.0 million. The decrease in the aggregate estimate of net IBNR reserves of \$215.0 million, excluding the allocation of \$52.4 million from net IBNR reserves to specific net case and LAE reserves (compared to \$224.8 million during the year ended December 31, 2011), was comprised of \$36.4 million relating to asbestos liabilities (compared to \$57.9 million in 2011), \$2.6 million relating to environmental liabilities (compared to \$2.8 million in 2011), \$96.3 million relating to general casualty liabilities (compared to \$91.6 million in 2011), and \$79.7 million relating to all other remaining liabilities (compared to \$72.5 million in 2011).

The aggregate reduction in net IBNR reserves of \$215.0 million was a result of the application, on a basis consistent with the assumptions applied in the prior period, of the Company’s actuarial methodologies to revised historical loss development data, following 101 commutations, to estimate loss reserves required to cover liabilities for unpaid losses and loss adjustment expenses relating to non-commuted exposures. The prior period

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NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

estimate of aggregate net IBNR reserves was reduced as a result of the combined impact on all classes of business of loss development activity during 2012, including commutations and the favorable trend of loss development related to non-commuted policies compared to prior forecasts. The net incurred favorable loss development, excluding the allocation by one of the Company's insurance entities of \$52.4 million from net IBNR reserves to specific net case and LAE reserves, of \$6.9 million, resulting from settlement of net advised case and LAE reserves of \$317.6 million for net paid losses of \$310.7 million, related to the settlement of non-commuted losses in the year and 101 commutations of assumed and ceded exposures. Net incurred liabilities settled by way of commutation during the year ended December 31, 2012 amounted to \$26.6 million (comprising \$163.1 million of assumed incurred liabilities partially offset by \$136.5 million of ceded incurred reinsurance recoverables) compared to the net aggregate reduction in advised case reserves during the same period of \$317.6 million (excluding the allocation of \$52.4 million from net IBNR reserves to specific net case and LAE reserves).

The reduction in aggregate provisions for bad debt of \$3.1 million was a result of the collection of certain reinsurance recoverables against which bad debt provisions had been provided in earlier periods.

Year Ended December 31, 2011

The net reduction in ultimate loss and loss adjustment expense liabilities for the year ended December 31, 2011 of \$295.4 million was attributable to a reduction in estimates of net ultimate losses of \$250.2 million, a reduction in aggregate provisions for bad debt of \$42.8 million and a reduction in estimates of unallocated loss adjustment expense liabilities of \$45.1 million, relating to 2011 run-off activity, partially offset by the amortization, over the estimated payout period, of fair value adjustments relating to companies acquired amounting to \$42.7 million.

The reduction in estimates of net ultimate losses of \$250.2 million comprised net incurred favorable loss development of \$25.4 million and reductions in net IBNR reserves of \$224.8 million. The decrease in the aggregate estimate of net IBNR reserves of \$224.8 million (compared to \$236.9 million during the year ended December 31, 2010) was comprised of \$57.9 million relating to asbestos liabilities (compared to \$67.8 million in 2010), \$2.8 million relating to environmental liabilities (compared to \$4.2 million in 2010) and \$164.1 million relating to all other remaining liabilities (compared to \$164.9 million in 2010). The aggregate reduction in net IBNR reserves of \$224.8 million was a result of the application, on a basis consistent with the assumptions applied in the prior period, of the Company's actuarial methodologies to revised historical loss development data, following 113 commutations (including three commutations completed shortly after December 31, 2011), to estimate loss reserves required to cover liabilities for unpaid losses and loss adjustment expenses relating to non-commuted exposures. The prior period estimate of aggregate net IBNR reserves was reduced as a result of the combined impact on all classes of business of loss development activity during 2011, including commutations and the favorable trend of loss development related to non-commuted policies compared to prior forecasts.

The net incurred favorable loss development of \$25.4 million, resulting from settlement of net advised case and LAE reserves of \$310.0 million for net paid losses of \$284.6 million, related to the settlement of non-commuted losses in the year and approximately 110 commutations of assumed and ceded exposures, excluding the three commutations completed subsequent to December 31, 2011. Net incurred liabilities settled by way of commutation during the year ended December 31, 2011 (excluding the three commutations completed subsequent to December 31, 2011) amounted to \$71.5 million compared to the net reduction in advised case reserves during the same period of \$310.0 million.

The reduction in aggregate provisions for bad debt of \$42.8 million was a result of the collection, primarily during the three months ended December 31, 2011, of certain reinsurance recoverables against which bad debt provisions had been provided in earlier periods.

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Year Ended December 31, 2010

The net reduction in ultimate loss and loss adjustment expense liabilities for the year ended December 31, 2010 of \$311.8 million was attributable to a reduction in estimates of net ultimate losses of \$278.1 million, a reduction in aggregate provisions for bad debt of \$49.6 million and a reduction in estimates of unallocated loss adjustment expense liabilities of \$39.7 million, relating to 2010 run-off activity, partially offset by the amortization, over the estimated payout period, of fair value adjustments relating to companies acquired amounting to \$55.4 million.

The reduction in estimates of net ultimate losses of \$278.1 million comprised net incurred favorable loss development of \$41.1 million and reductions in net IBNR reserves of \$236.9 million. The decrease in the aggregate estimate of net IBNR reserves of \$236.9 million was comprised of \$67.8 million relating to asbestos liabilities, \$4.2 million relating to environmental liabilities and \$164.9 million relating to all other remaining liabilities. The aggregate reduction in net IBNR reserves of \$236.9 million was a result of the application, on a basis consistent with the assumptions applied in the prior period, of the Company's actuarial methodologies to revised historical loss development data following 90 commutations to estimate loss reserves required to cover liabilities for unpaid losses and loss adjustment expenses relating to non-commuted exposures. The prior period estimate of aggregate net IBNR reserves was reduced as a result of the combined impact on all classes of business of loss development activity during 2010, including commutations and the favorable trend of loss development related to non-commuted policies compared to prior forecasts. The lower reduction in asbestos IBNR reserves during 2010 was primarily due to reduced commutations of asbestos related exposures compared to the prior year. Total net loss reserves acquired from January 1, 2008 to December 31, 2010 amounted to \$3,197.3 million, of which \$2,634.5 million, or 82.4% related to all other losses. This increase in all other loss reserves provided the basis for a greater reduction in all other IBNR reserves. The net incurred favorable loss development of \$41.1 million, resulting from settlement of net advised case and LAE reserves of \$336.1 million for net paid losses of \$295.0 million, related to the settlement of non-commuted losses in the year and approximately 90 commutations of assumed and ceded exposures. Net incurred liabilities settled by way of commutation during the year ended December 31, 2010 amounted to \$109.7 million compared to the net reduction in advised case reserves during the same period of \$336.1 million.

The reduction in aggregate provisions for bad debt of \$49.6 million was a result of the collection, primarily during the three months ended December 31, 2010, of certain reinsurance recoverables against which bad debt provisions had been provided in earlier periods.

9. LOANS PAYABLE

The Company's long-term debt consists of loan facilities used to partially finance certain of the Company's acquisitions or significant new business transactions. The Company draws down on the loan facilities at the time of the acquisition or significant new business transaction, although in some circumstances the Company has made additional draw-downs to refinance existing debt of the acquired company. Until they were fully repaid on December 3, 2012, the Company also had loans outstanding relating to the share repurchase agreements described below.

For the years ended December 31, 2012, 2011 and 2010, the Company incurred interest expense of \$8.4 million, \$8.5 million and \$10.3 million, respectively, on its loan facilities and loans related to the share repurchase agreements. All of the Company's currently outstanding loan facilities are floating rate loans, and the fair values of these loans approximate their book values.

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Amounts of loans payable outstanding, and accrued interest, as of December 31, 2012 and 2011 totaled \$107.4 million and \$242.7 million, respectively, and were comprised of:

Facility	Date of Facility	Term	Facility Amount	December 31,	December 31,
				2012	2011
EGL Revolving Credit Facility	June 14, 2011	3 Years	\$250,000	\$ —	\$ 115,875
Clarendon Facility	July 12, 2011	4 Years	\$106,500	106,500	106,500
SeaBright Facility	December 21, 2012	4 Years	\$111,000	—	—
Total long-term bank debt				106,500	222,375
Repurchase agreements	October 1, 2010			—	18,667
Accrued interest on loans payable				930	1,668
Total loans payable				<u>\$ 107,430</u>	<u>\$ 242,710</u>

EGL Revolving Credit Facility

On June 14, 2011, the Company, as borrower, and certain of its subsidiaries, as guarantors, entered into a Revolving Credit Facility Agreement with NAB and Barclays, as bookrunners and mandated lead arrangers, certain financial institutions, as lenders, and NAB as agent (the “EGL Revolving Credit Facility”). The EGL Revolving Credit Facility provides for a three-year revolving credit facility pursuant to which the Company is permitted to borrow up to an aggregate of \$250.0 million, which is available to prepay certain existing credit facilities of the Company and certain of its subsidiaries, to fund permitted acquisitions and for general corporate purposes. The Company’s ability to draw on the EGL Revolving Credit Facility is subject to customary conditions.

The EGL Revolving Credit Facility is secured by a first priority lien on the stock of certain of the Company’s subsidiaries and certain bank accounts held with Barclays in the name of the Company and into which amounts received in respect of any capital release from certain of the Company’s subsidiaries are required to be paid. Interest is payable at the end of each interest period chosen by the Company or, at the latest, each six months. The interest rate is LIBOR plus 2.75%, plus an incremental amount tied to certain regulatory costs, if any, that may be incurred by the lenders. Any unused portion of the EGL Revolving Credit Facility is subject to a commitment fee of 1.10%. The EGL Revolving Credit Facility is subject to various financial and business covenants applicable to the Company, the guarantors and certain other material subsidiaries, including limitations on mergers and consolidations, acquisitions, indebtedness and guarantees, restrictions as to dispositions of stock and dividends, and limitations on liens on stock. As of December 31, 2012, all of the covenants relating to the EGL Revolving Credit Facility were met.

During the existence of any payment default, the interest rate is increased by 1.0%. During the existence of any event of default (as specified in the EGL Revolving Credit Facility), the agent may cancel the commitments of the lenders, declare all or a portion of outstanding amounts immediately due and payable, declare all or a portion of outstanding amounts payable upon demand or proceed against the security. The EGL Revolving Credit Facility terminates and all amounts borrowed must be repaid on June 14, 2014, the third anniversary of the facility.

On October 21, 2011 and December 30, 2011, the Company repaid \$25.0 million and \$26.8 million, respectively, of the outstanding principal balance of the EGL Revolving Credit Facility. On June 29, 2012, the Company repaid \$115.9 million of the outstanding principal balance and \$2.1 million of accrued interest on the facility. As of December 31, 2012, the outstanding EGL Revolving Credit Facility loan balance, inclusive of accrued interest, was \$nil. On February 5, 2013, the Company borrowed \$56.0 million under the EGL Revolving Credit Facility.

ENSTAR GROUP LIMITED
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Clarendon Facility

On March 4, 2011, the Company, through Clarendon Holdings, Inc., entered into a \$106.5 million term facility agreement (the “Clarendon Facility”) with NAB. The Clarendon Facility provides a four-year term loan facility, which was fully drawn upon on July 12, 2011 to fund 50% of the purchase price of Clarendon. As of December 31, 2012, the outstanding Clarendon Facility principal balance was \$106.5 million.

The Clarendon Facility is secured by a security interest in all of the assets of Clarendon Holdings, Inc., as well as a first priority lien on the stock of both Clarendon Holdings, Inc. and Clarendon. Interest is payable at the end of each interest period chosen by Clarendon Holdings, Inc. or, at the latest, each six months. The interest rate is LIBOR plus 2.75%. The Clarendon Facility is subject to various financial and business covenants, including limitations on mergers and consolidations, restrictions as to disposition of stock and limitations on liens on the stock.

During the existence of any payment default, the interest rate is increased by 1.0%. During the existence of any event of default (as specified in the term facility agreement), the lenders may declare all or a portion of outstanding amounts immediately due and payable, declare all or a portion of borrowed amounts payable upon demand, or proceed against the security. The Clarendon Facility terminates and all amounts borrowed must be repaid on July 12, 2015.

SeaBright Facility

On December 21, 2012, the Company, through AML Acquisition, entered into a Term Facility Agreement with NAB and Barclays (the “SeaBright Facility”). The SeaBright Facility provides a \$111.0 million four-year term loan facility, which AML Acquisition fully drew down on February 5, 2013 to partially fund the Company’s acquisition of SeaBright. The Company acquired SeaBright on February 7, 2013 by way of a merger of AML Acquisition with and into SeaBright (the “Merger”), with SeaBright surviving the Merger as an indirect, wholly-owned subsidiary of the Company.

Following completion of the Merger, SeaBright (as the survivor of the Merger) became the borrower under the SeaBright Facility and the facility became secured by a security interest in all of the assets of SeaBright, a pledge of the stock of SeaBright by its sole stockholder, a pledge of the stock of SeaBright Insurance Company, Paladin Managed Care Services, Inc., and PointSure Insurance Services, Inc. (which are wholly-owned subsidiaries of SeaBright) by SeaBright, and a security interest in all of the assets of Paladin Managed Care Services, Inc. and PointSure Insurance Services, Inc.

From the date of the SeaBright Facility until the draw down on February 5, 2013, the undrawn and uncanceled amount of the SeaBright Facility incurred a fee of 1% per annum. Interest on amounts borrowed under the SeaBright Facility is payable at the end of each interest period chosen by the borrower or, at the latest, each six months. The interest rate is LIBOR plus 2.75% for the first 18 months from February 5, 2013, and increases to LIBOR plus 3.50% thereafter; the interest rate is subject to increase by an incremental amount tied to certain regulatory costs, if any, that may be incurred by the lenders. The SeaBright Facility imposes various financial and business covenants on SeaBright, including limitations on mergers and consolidations, acquisitions, indebtedness and guarantees, restrictions as to dispositions of stock and assets (except for certain permitted dispositions), restrictions on dividends, and limitations on liens on the stock.

During the existence of any payment default, the interest rate will be increased by 1.0%. During the existence of any event of default (as specified in the SeaBright Facility), the lenders may cancel their commitments, declare all or a portion of outstanding amounts immediately due and payable, declare all or a

ENSTAR GROUP LIMITED

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

portion of borrowed amounts payable upon demand, or proceed against the security. The SeaBright Facility terminates and all amounts borrowed must be repaid on December 21, 2016, the fourth anniversary of the date the facility was put in place.

Share Repurchase

On October 1, 2010, the Company entered into repurchase agreements to repurchase an aggregate of 800,000 of the Company's ordinary shares at a price of \$70.00 per share from three of its executives and certain trusts and a corporation affiliated with the executives. The aggregate purchase price of \$56.0 million was payable through promissory notes to the selling shareholders. The annual interest rate on the promissory notes was fixed at 3.5%, and the notes were repayable in three equal installments on December 31, 2010, December 1, 2011 and December 1, 2012. On December 1, 2012, the Company fully repaid the outstanding amount of \$19.3 million under the promissory notes, inclusive of accrued interest, relating to the share repurchase.

10. SHARE CAPITAL

As at December 31, 2012 and 2011, the authorized share capital was 156,000,000 ordinary shares and non-voting convertible ordinary shares, each par value \$1.00 per share. The following tables are a summary of changes in ordinary shares and non-voting convertible ordinary shares issued and outstanding:

Issued and fully paid ordinary shares of par value \$1.00 each:

	<u>2012</u>	<u>2011</u>
Balance, beginning of year	\$13,665	\$12,940
Issue of shares	43	674
Share awards granted/vested	44	51
Balance, end of year	<u>\$13,752</u>	<u>\$13,665</u>

Issued and fully paid Series A non-voting convertible ordinary shares of par value \$1.00 each:

	<u>2012</u>	<u>2011</u>
Balance, beginning and end of year	<u>\$2,973</u>	<u>\$2,973</u>

Issued and fully paid Series B, C and D non-voting convertible ordinary shares of par value \$1.00 each:

	<u>2012</u>	<u>2011</u>
Balance, beginning of year	\$2,726	\$ —
Preferred shares converted	—	750
Issue of shares	—	1,976
Balance, end of year	<u>\$2,726</u>	<u>\$2,726</u>

Investment by Affiliates of Goldman Sachs in 2011

On April 20, 2011, the Company entered into an Investment Agreement (the "Investment Agreement") with GSCP VI AIV Navi, Ltd., GSCP VI Offshore Navi, Ltd., GSCP VI Parallel AIV Navi, Ltd., GSCP VI Employee Navi, Ltd., and GSCP VI GmbH Navi, L.P. (collectively, the "Purchasers"), each of which is an affiliate of

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Goldman, Sachs & Co. Under the Investment Agreement, the Company agreed to issue and sell, and the Purchasers agreed to purchase, at three different closings that occurred during 2011, securities representing 19.9% of the Company’s outstanding share capital pro forma for all the issuances, with the right to acquire an additional 2.0% on a fully diluted basis pro forma for all the issuances through the exercise of warrants as described below, although the Purchasers’ voting interest in the Company purchased pursuant to the Investment Agreement is less than 4.9%.

The first closing occurred on April 20, 2011 and involved an issuance of 531,345 voting ordinary shares (“Voting Common Shares”) and 749,869 newly created Series A convertible non-voting preference shares. The Series A convertible non-voting preference shares were automatically converted into 749,869 non-voting ordinary shares (“Non-Voting Common Shares”) upon the receipt of the approval of the Company’s shareholders at the Annual General Meeting on June 28, 2011. At the first closing, the Company also issued to the Purchasers warrants to acquire Series A convertible non-voting preferred shares, which automatically converted to the right to acquire 340,820 Non-Voting Common Shares upon receipt of shareholder approval, for an exercise price of \$115.00 per share, subject to certain adjustments. The warrants expire on April 20, 2021. The second and third closings occurred simultaneously on December 22, 2011 and involved an aggregate issuance of 134,184 Voting Common Shares and 1,975,768 Non-Voting Common Shares. All Voting and Non-Voting Common Shares sold to the Purchasers were at a purchase price of \$86.00 per share. The total investment made by the Purchasers for the purchase of the Voting Common Shares, the Non-Voting Common Shares and the warrants was approximately \$291.6 million. The Company has accounted for the Purchaser’s investment under the Investment Agreement as equity under the applicable U.S. GAAP.

Following all three closings, the Purchasers total investment and shares/warrants owned were as follows:

	Voting Common Shares	Series C Non-Voting Common Shares	Warrant Shares (exercisable for Series C Non-Voting Common Shares)
<u>Aggregate Purchase Price</u>			
\$291,600	665,529	2,725,637	340,820

The Purchasers may elect to receive Series B Non-Voting Common Shares, Series C Non-Voting Common Shares or Series D Non-Voting Common Shares upon conversion of Voting Common Shares held by them. Holders of the Series B Non-Voting Common Shares would have the right to convert such shares on a share-for-share basis, subject to certain adjustments, into Voting Common Shares, Series C Non-Voting Common Shares or Series D Non-Voting Common Shares at their option. All Non-Voting Common Shares received by the Purchasers under the Investment Agreement are Series C Non-Voting Common Shares. Holders of the Series C Non-Voting Common Shares have the right to convert such shares, on a share-for-share basis, subject to certain adjustments, into Series D Non-Voting Common Shares at their option. There is no economic difference in the sub-series of Non-Voting Common Shares, but there are slight differences in the limited voting rights of each sub-series that are designed to address certain regulatory matters affecting the Purchasers.

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11. EMPLOYEE BENEFITS*Summary*

Components of salaries and benefits are summarized as follows:

	<u>2012</u>	<u>2011</u>	<u>2010</u>
Salaries and benefits	\$ 63,438	\$55,642	\$50,978
Defined contribution pension plan expense	4,491	4,864	3,477
2006 equity plan	2,894	2,662	1,500
Annual incentive plan	29,650	26,678	30,722
Total salaries and benefits	<u>\$100,473</u>	<u>\$89,846</u>	<u>\$86,677</u>

Employee share plans

Employee share awards are summarized as follows:

	<u>2012</u>		<u>2011</u>		<u>2010</u>	
	Number of Shares	Weighted Average Fair Value of the Award	Number of Shares	Weighted Average Fair Value of the Award	Number of Shares	Weighted Average Fair Value of the Award
Nonvested — January 1	203,930	\$ 20,026	153,930	\$ 13,019	1,636	\$ 102
Granted	5,633	472	71,621	5,957	238,465	16,214
Vested	(48,919)	4,736	(21,621)	1,907	(86,171)	5,829
Nonvested — December 31	<u>160,644</u>	\$ 17,989	<u>203,930</u>	\$ 20,026	<u>153,930</u>	\$ 13,019

2006-2010 Annual Incentive Compensation Program, 2011-2015 Annual Incentive Compensation Program and 2006 Equity Incentive Plan

For the years ended December 31, 2012, 2011 and 2010, 191, 16,328 and 78,664 shares, respectively, were awarded to directors, officers and employees under the 2006 Equity Incentive Plan. The total value of the awards for the year ended December 31, 2012 was \$0.1 million and was charged against the Enstar Group Limited 2011-2015 Annual Incentive Compensation Program (the “2011 Program”) accrual established for the year ended December 31, 2011. For the years ended December 31, 2011 and 2010, the total value of the awards was \$1.5 million and \$5.4 million, respectively, and was charged against the Enstar Group Limited 2006-2010 Annual Incentive Compensation Program (“2006 Program”) accruals established for the years ended December 31, 2011 and 2010, respectively. The 2006 Program ended effective December 31, 2010. On February 23, 2011, the Company adopted the 2011 Program.

In addition, for the years ended December 31, 2012 and 2011, nil and 50,000 restricted shares, respectively, were awarded under the 2006 Equity Incentive Plan. The total unrecognized compensation cost related to the Company’s non-vested share awards as at December 31, 2012 and 2011 was \$7.6 million and \$10.4 million, respectively. This cost is expected to be recognized evenly over the next 2.8 years. Compensation costs of \$2.8 million, \$2.7 million and \$1.5 million relating to share awards were recognized in the Company’s statement of earnings for the years ended December 31, 2012, 2011 and 2010.

The accrued expense relating to the 2011 Program for the year ended December 31, 2012 was \$29.6 million as compared to \$26.7 million and \$30.7 million, respectively, for the years ended December 31, 2011 and 2010 for the 2006 Program.

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NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Enstar Group Limited Employee Share Purchase Plan

As at December 31, 2012, 2011 and 2010, 5,442, 5,208 and 5,871 shares have been issued to employees under the Amended and Restated Enstar Group Limited Employee Share Purchase Plan. Compensation costs of less than \$0.1 million relating to the shares issued have been recognized in the Company's statement of earnings for the years ended December 31, 2012, 2011 and 2010.

Options

	Number of Shares	Weighted Average Exercise Price	Intrinsic Value of Shares
Outstanding — January 1, 2012	98,075	\$ 40.78	\$ 5,631
Exercised	(98,075)	40.78	5,788
Outstanding — December 31, 2012	<u>—</u>	\$ —	\$ —

Deferred Compensation and Stock Plan for Non-Employee Directors

For the years ended December 31, 2012, 2011 and 2010, 3,029, 4,193 and 6,463 restricted share units, respectively, were credited to the accounts of non-employee directors under the Enstar Group Limited Deferred Compensation and Ordinary Share Plan for Non-Employee Directors (the "Deferred Compensation Plan"). The Company recorded expenses related to the restricted share units for the years ended December 31, 2012, 2011 and 2010 of \$0.3 million, \$0.4 million and \$0.5 million, respectively.

Pension Plan

The Company provides pension benefits to eligible employees through various plans sponsored by the Company. All pension plans, except as disclosed below, are structured as defined contribution plans. Pension expense for the years ended December 31, 2012, 2011 and 2010 was \$4.5 million, \$4.9 million and \$3.5 million, respectively.

The Company acquired, as part of the acquisition of PWAC, a noncontributory defined benefit pension plan (the "PWAC Plan") that covers substantially all PWAC employees hired before April 1, 2003 and provides pension and certain death benefits. Effective April 1, 2004, PWAC froze the PWAC Plan. During 2012, an actuarial review was performed of the PWAC Plan, which determined that the PWAC Plan's unfunded liability, as at December 31, 2012, was \$13.9 million as compared to \$12.4 million as at December 31, 2011. As at December 31, 2012, PWAC had an accrued liability of \$13.9 million for the unfunded PWAC Plan liability.

The Company recorded pension expense relating to the PWAC Plan, for the years ended December 31, 2012 and 2011 and for the period from the date of acquisition to December 31, 2010, of \$0.8 million, \$0.6 million and \$0.6 million, respectively.

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12. EARNINGS PER SHARE

The following table sets forth the comparison of basic and diluted earnings per share for the years ended December 31, 2012, 2011 and 2010:

	2012	2011	2010
Basic earnings per share:			
Net earnings attributable to Enstar Group Limited	\$ 168,017	\$ 153,693	\$ 174,086
Weighted average shares outstanding — basic	16,441,461	13,930,221	13,489,221
Earnings per share attributable to Enstar Group Limited — basic	<u>\$ 10.22</u>	<u>\$ 11.03</u>	<u>\$ 12.91</u>
Diluted earnings per share:			
Net earnings attributable to Enstar Group Limited	\$ 168,017	\$ 153,693	\$ 174,086
Weighted average shares outstanding — basic	16,441,461	13,930,221	13,489,221
Share equivalents:			
Unvested shares	162,454	196,670	125,733
Restricted share units	19,478	69,723	16,423
Options	14,628	15,826	119,879
Weighted average shares outstanding — diluted	<u>16,638,021</u>	<u>14,212,440</u>	<u>13,751,256</u>
Earnings per share attributable to Enstar Group Limited — diluted	<u>\$ 10.10</u>	<u>\$ 10.81</u>	<u>\$ 12.66</u>

13. RELATED PARTY TRANSACTIONS

Following several private transactions occurring from May 2012 to July 2012, Trident V, L.P. and certain of its affiliates (“Trident”) acquired approximately 9.7% of the Company’s ordinary shares. The Company has investments in two funds affiliated with entities owned by Trident. As of December 31, 2012, the fair value of the investments in the two funds was \$58.9 million.

The Company has entered into certain transactions with companies and partnerships that are affiliated with J. Christopher Flowers. Since May 2012, when he ceased to be one of the Company’s largest shareholders, Mr. Flowers is no longer a related party of the Company. Mr. Flowers was a member of the Company’s Board of Directors until May 2011.

As at December 31, 2012, investments associated with Mr. Flowers accounted for 66.0% of the total unfunded capital commitments of the Company and 27.1% of the total amount of investments classified as other investments by the Company. The below table summarizes the Company’s investments with entities affiliated with Mr. Flowers.

	December 31, 2012 Unfunded Commitment	December 31, 2011 Unfunded Commitment	December 31, 2012 Fair Value	December 31, 2011 Fair Value
J.C. Flowers II L.P.	\$ 2,218	\$ 2,220	\$ 25,693	\$ 22,458
J.C. Flowers III L.P.	55,627	69,247	42,683	35,780
JCF III Co-invest L.P.	—	—	23,504	23,334
New NIB Partners L.P.	—	—	20,616	20,521
Varadero International Ltd.	—	—	—	24,395
Total	<u>\$ 57,845</u>	<u>\$ 71,467</u>	<u>\$ 112,496</u>	<u>\$ 126,488</u>

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As of December 31, 2012 and December 31, 2011, the Company included \$187.4 million and \$221.8 million, respectively, as part of noncontrolling interest on its balance sheet relating to five companies acquired in 2008 in which J.C. Flowers II L.P., a private investment fund, co-invested.

On January 1, 2012, S2008 transferred the assets and liabilities relating to its 2009 and prior underwriting years of account into its 2010 underwriting year of account by means of a reinsurance to close transaction. Following the transfer, the existing noncontrolling interest held by JCF FPK I L.P. and J.C. Flowers II L.P. ceased, resulting in the Company now providing 100% of the underwriting capacity for S2008. The Company paid JCF FPK I L.P. and J.C. Flowers II L.P. \$24.6 million in settlement of their accumulated noncontrolling interest balances. As at December 31, 2012, \$1.1 million remained outstanding and was included in the Company's balance sheet as part of accounts payable and accrued liabilities; the amount was settled on January 9, 2013.

On December 30, 2012, Varadero International Limited ("Varadero") acquired from an entity affiliated with Mr. Flowers all of that entity's interest in Varadero. As of the date of the sale, Varadero was no longer affiliated with Mr. Flowers.

The Company earned management fees for advisory services provided to J.C. Flowers II L.P. for the years ended December 31, 2012, 2011 and 2010 of \$0.5 million, \$0.5 million and \$0.3 million.

14. TAXATION

Earnings before income taxes includes the following components:

	<u>2012</u>	<u>2011</u>	<u>2010</u>
Domestic (Bermuda)	\$ 30,839	\$ 44,983	\$ 47,002
Foreign	204,970	188,759	255,861
Total	<u>\$235,809</u>	<u>\$233,742</u>	<u>\$302,863</u>

Tax expense (benefit) for income taxes is comprised of:

	<u>2012</u>	<u>2011</u>	<u>2010</u>
Current:			
Domestic (Bermuda)	\$ —	\$ —	\$ —
Foreign	34,704	28,924	57,443
	<u>34,704</u>	<u>28,924</u>	<u>57,443</u>
Deferred:			
Domestic (Bermuda)	—	—	—
Foreign	9,586	(3,640)	29,689
	<u>9,586</u>	<u>(3,640)</u>	<u>29,689</u>
Total tax expense	<u>\$44,290</u>	<u>\$25,284</u>	<u>\$87,132</u>

Under current Bermuda law, the Company and its Bermuda subsidiaries are exempted from paying any taxes in Bermuda on their income or capital gains until March 2035.

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The Company has operating subsidiaries and branch operations in the United Kingdom, Australia, the United States and Europe and is subject to federal, foreign, state and local taxes in those jurisdictions. In addition, certain distributions from some foreign sources may be subject to withholding taxes.

The expected income tax provision for the foreign operations computed on pre-tax income at the weighted-average tax rate has been calculated as the sum of the pre-tax income in each jurisdiction multiplied by that jurisdiction's applicable statutory tax rate.

The actual income tax rate differed from the amount computed by applying the effective rate of 0% under Bermuda law to earnings before income taxes as shown in the following reconciliation:

	2012	2011	2010
Earnings before income tax	<u>\$235,809</u>	<u>\$233,742</u>	<u>\$302,863</u>
Expected tax rate	—%	—%	—%
Foreign taxes at local expected rates	20.8%	19.2%	24.8%
Change in uncertain tax positions	0.1%	—%	—%
Benefit of loss carryovers	—%	—%	(1.3)%
Change in valuation allowance	(3.0)%	(8.4)%	(4.4)%
Impact of Australian tax consolidation	—%	0.8%	10.0%
Other	0.9%	(0.8)%	(0.3)%
Effective tax rate	<u>18.8%</u>	<u>10.8%</u>	<u>28.8%</u>

In 2010, in order to mitigate the tax impacts of inter-group transactions, the board of directors of the Company's Australian subsidiaries elected to form a consolidated tax group. The impact of this tax consolidation resulted in the resetting of the cost basis of certain assets of our Australian subsidiaries which resulted in an additional tax liability of approximately \$30.3 million.

Deferred income taxes arise from the recognition of temporary differences between income determined for financial reporting purposes and income tax purposes. The temporary differences that give rise to significant portions of the deferred tax assets and deferred tax liabilities are presented in the table below:

	As of December 31,	
	2012	2011
Deferred tax assets		
Benefit of losses, deductions, and other carryforwards	\$ 162,389	\$ 182,975
Claims reserves, principally due to discounting for tax	27,195	35,314
Allowance for doubtful accounts receivable	16,703	12,725
Investments	7,552	7,914
	<u>213,839</u>	<u>238,928</u>
Deferred tax liabilities		
Investments	(11,999)	(4,290)
Net deferred tax asset before valuation allowance	201,840	234,638
Valuation allowance	(202,365)	(224,750)
Net deferred tax (liability) asset	<u>\$ (525)</u>	<u>\$ 9,888</u>

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As of December 31, 2012 and 2011, U.K. insurance subsidiaries and branch operations had tax loss carryforwards, which do not expire, and deductions available for tax purposes of approximately \$346.9 million and \$382.8 million, respectively. Certain of the Company's U.K. insurance and reinsurance subsidiaries have tax loss carryforwards that arose prior to acquisition. Under U.K. tax law, these tax loss carryforwards are available to offset future taxable income generated by the acquired company without time limit.

As of December 31, 2012 and 2011, U.S. subsidiaries had deductible losses for tax purposes of approximately \$234.5 million and \$221.9 million, respectively. Under U.S. tax law, these tax losses can be carried forward and could be available to offset future taxable income of the companies that experienced the losses.

The Company has estimated future taxable income of its foreign subsidiaries and has provided a valuation allowance in respect of those loss carryforwards where it does not expect to realize a benefit. The Company has considered all available evidence using a "more likely than not" standard in determining the amount of the valuation allowance.

The Company had unrecognized tax benefits of \$5.8 million, \$5.6 million and \$5.6 million relating to uncertain tax positions as of December 31, 2012, 2011 and 2010, respectively.

During the years ended December 31, 2012, 2011 and 2010, there were certain reductions to unrecognized tax benefits due to the expiration of statutes of limitations of \$nil, \$0.1 million and \$0.3 million, respectively, which were included in net earnings.

A reconciliation of the beginning and ending amount of unrecognized tax benefits is as follows:

	<u>2012</u>	<u>2011</u>	<u>2010</u>
Balance, beginning of year	\$5,621	\$5,566	\$5,727
Gross increases — tax positions related to prior years	221	161	113
Gross decreases — tax positions related to prior years	(12)	—	—
Lapse of statute of limitations	(9)	(106)	(274)
Balance, end of year	<u>\$5,821</u>	<u>\$5,621</u>	<u>\$5,566</u>

Included in the balances for each of the years ended December 31, 2012, 2011 and 2010 was \$4.4 million of tax positions for which the ultimate deductibility is highly certain but for which there is uncertainty about the timing of such deductibility. Because of the impact of deferred tax accounting, other than interest and penalties, the disallowance of the shorter deductibility period would not affect the annual effective tax rate but could accelerate the payment of cash to the taxing authority to an earlier period.

It is reasonably possible that the amount of unrecognized tax benefits with respect to certain of the unrecognized tax positions could decrease by up to approximately \$3.7 million within the next 12 months if the statute of limitations expires on certain tax periods.

The Company recognizes accrued interest and penalties related to unrecognized tax benefits as a part of income tax expense. During the years ended December 31, 2012, 2011 and 2010, the Company recognized a benefit for the reversal of interest and penalties related to unrecognized tax benefits due to the expiration of the statute of limitations in the amount of \$nil, \$0.1 million and \$0.1 million, respectively. The Company had approximately \$1.5 million, \$1.2 million and \$1.0 million accrued for the payment of interest and penalties related to unrecognized tax benefits at December 31, 2012, 2011 and 2010, respectively.

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NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The Company's operating subsidiaries in specific countries may be subject to audit by various tax authorities and may have different statutes of limitations expiration dates. With limited exceptions, the Company's major subsidiaries that operate in the United States, United Kingdom and Australia are no longer subject to tax examinations for years before 2006, 2009 and 2006, respectively.

Because the Company operates in many jurisdictions, its net earnings are subject to risk due to changing tax laws and tax rates around the world. The current, rapidly changing economic environment may increase the likelihood of substantial changes to tax laws in the jurisdictions in which it operates. The Company cannot predict what, if any, legislation, will actually be proposed or enacted, or what the effect of any such legislation might be on the Company's financial condition and results of operations.

15. RETAINED EARNINGS AND STATUTORY RESTRICTIONS

Restrictions on the Payment of Dividends

The Company's ability to pay dividends to its shareholders is dependent upon the ability of its insurance and reinsurance subsidiaries to distribute capital and pay dividends to it. The Company's insurance and reinsurance subsidiaries are subject to certain regulatory restrictions on the distribution of capital and payment of dividends in the jurisdictions in which they operate as more fully described below. The restrictions are generally based on net income or levels of capital and surplus as determined in accordance with the relevant statutory accounting practices. Failure of these subsidiaries to meet their applicable regulatory requirements could result in restrictions on any distributions of capital or retained earnings and/or stricter regulatory oversight of the subsidiaries. In addition, the Company's ability to pay dividends and make other forms of distributions is further limited by repayment obligations in the Company's outstanding loan facility agreements.

As at December 31, 2012, the amount of consolidated retained earnings of the Company that was free of restrictions and therefore potentially available to be distributed to the Company's ordinary shareholders was \$972.9 million (2011: \$689.0 million). This amount is held primarily within our insurance and reinsurance subsidiaries and represents retained earnings held in those companies in excess of their minimum regulatory requirements. Although these amounts are in excess of statutory minimums, regulators may nonetheless further restrict distributions, and therefore actual amounts available for distribution to shareholders are likely to be significantly less. In addition, the Company does not intend to pay dividends on its ordinary shares, as it intends instead to reinvest any distributions from its subsidiaries back into the Company, primarily as a means to fund future acquisitions.

Statutory Restrictions

The Company's insurance and reinsurance subsidiaries prepare their statutory financial statements in conformity with statutory accounting practices prescribed or permitted by the applicable local regulatory authority. The statutory financial statements may vary materially from statements prepared in accordance with U.S. GAAP.

ENSTAR GROUP LIMITED

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The statutory capital and surplus amounts for the years ended December 31, 2012 and 2011 and statutory net income (loss) amounts for the years ended December 31, 2012, 2011 and 2010 for the Company's insurance and reinsurance subsidiaries based in Bermuda, the United Kingdom, Australia, the United States and Europe are as follows:

	Statutory Capital and Surplus				Statutory Income (Loss)		
	Minimum Required		Actual		2012	2011	2010
	2012	2011	2012	2011			
Bermuda	\$ 92,606	\$131,161	\$627,335	\$668,480	\$98,247	\$ 80,022	\$ 67,583
U.K.	\$ 80,324	\$ 84,495	\$506,459	\$561,562	\$64,015	\$114,403	\$129,099
Australia	\$ 82,007	\$ 93,019	\$ 94,042	\$138,199	\$ 4,651	\$ 13,979	\$ 10,791
U.S.	\$102,114	\$128,162	\$498,720	\$490,745	\$(2,145)	\$(8,234)	\$ 5,751
Europe	\$ 38,642	\$ 32,956	\$173,974	\$175,290	\$ 7,578	\$ 22,356	\$ 5,686

The Company's insurance and reinsurance subsidiaries are subject to insurance laws and regulations in the jurisdictions in which they operate, including Bermuda, the United Kingdom, Australia, the United States and Europe. Certain material aspects of these laws and regulations as they relate to solvency, dividends and capital and surplus are summarized below.

Bermuda

The Company's Bermuda-based insurance and reinsurance subsidiaries are registered under the Insurance Act 1978 of Bermuda and related regulations, as amended (the "Insurance Act"). The Insurance Act requires that the Company's Bermuda-based insurance and reinsurance subsidiaries maintain certain solvency and liquidity standards. These are determined as a percentage of either net reserves for losses and loss expenses or premiums and, for some of our subsidiaries, pursuant to a risk-based capital measure.

Each of the Company's regulated Bermuda insurance and reinsurance subsidiaries would be prohibited from declaring or paying any dividends if it is in breach of its minimum solvency margin (which is a function of outstanding losses) or liquidity ratio (which is a function of relevant assets) or if the declaration or payment of such dividends would cause it to fail to meet such margin or ratio. In addition, each of the Company's regulated Bermuda insurance and reinsurance subsidiaries is prohibited, without the prior approval of the Bermuda regulator, from reducing by 15% or more its total statutory capital as set out in its previous year's statutory financial statements.

As of December 31, 2012 and 2011, all of the Company's Bermuda-based insurance and reinsurance subsidiaries exceeded their respective minimum solvency and liquidity requirements. The Bermuda insurance and reinsurance subsidiaries in aggregate exceeded minimum solvency requirements by \$534.7 million as of December 31, 2012 (2011: \$537.3 million) and exceeded minimum liquidity requirements by \$369.4 million as of December 31, 2012 (2011: \$433.7 million).

United Kingdom

The Company's U.K. based insurance subsidiaries are regulated by the U.K. Financial Services Authority (the "FSA") and are required to maintain adequate financial resources, the rules for which are set out in the General Prudential Sourcebook ("GENPRU") and the Prudential Sourcebook for Insurers ("INSPRU") of the FSA's Handbook of Rules and Guidance.

ENSTAR GROUP LIMITED

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Through its rules, the FSA sets minimum capital resources requirements for its regulated insurance companies. The calculation of the minimum capital resources requirements in any particular case depends on, among other things, the type and amount of insurance business written and claims paid by the insurance company. As at December 31, 2012 and 2011, all of the Company's U.K. insurance subsidiaries maintained capital in excess of the minimum capital resources requirements (or received a waiver from the FSA from the requirement to remedy any shortfall) and complied with the relevant provisions of GENPRU and INSPRU. The U.K.-based insurance subsidiaries, in aggregate, maintained capital in excess of the minimum capital resources requirements by \$426.1 million and \$477.1 million as of December 31, 2012 and 2011, respectively.

In addition, the FSA's Individual Capital Adequacy Standards ("ICAS") framework requires insurance companies to carry out various capital modeling and risk management exercises in order to calculate a company-specific Individual Capital Assessment ("ICA") amount, which is the company's internal calculation of its capital requirements under the ICAS framework. The basis for this calculation is prescribed in GENPRU and is intended to ensure a company holds sufficient capital such that there is no material risk that its liabilities cannot be met as they fall due. In 2009, the European Parliament approved the Solvency II framework directive. Solvency II was due to take effect January 1, 2014, but is now expected to be delayed until January 2016. Solvency II will set out new, strengthened EU-wide requirements on capital adequacy and risk management for insurers with the aim of increasing policyholder protection, instilling greater risk awareness and improving the international competitiveness of EU insurers.

The FSA's rules require the Company's U.K. insurance subsidiaries to obtain FSA approval for any proposed or actual payment of a dividend. The FSA uses the ICA and the estimated capital requirement for Solvency II purposes when assessing requests to make distributions and therefore dividends approved by the FSA will often significantly differ from any surplus capital above the entity's minimum capital resources requirements.

Lloyd's

The Company participates in the Lloyd's market through its interest in S2008. The Company's Lloyd's operations are subject to regulation by the FSA and compliance with the Lloyd's Act(s) and Byelaws. In order to achieve finality and to release their capital (known as Funds at Lloyd's), Lloyd's members are usually required to have transferred their liabilities through an approved RITC, such as offered by S2008. The Lloyd's market is currently in the Solvency II internal model application process under Lloyd's supervision. Shelbourne will therefore be required to meet Solvency II standards when they come into effect. The Company's total capital commitment to S2008 required to be in place by February 28, 2013 was £71.7 million (approximately \$116.5 million). The capital commitment was financed from available cash on hand.

Australia

The Company's Australian insurance subsidiary is regulated and subject to prudential supervision by the Australian Prudential Regulation Authority ("APRA"). APRA is the primary regulatory body responsible for regulating compliance with the Insurance Act 1973. APRA's prudential standards require that all insurers maintain and meet prescribed capital adequacy requirements to enable its insurance obligations to be met under a wide range of circumstances. This requires authorized insurers to hold eligible capital in excess of the minimum capital requirement, which may be determined using the Standard method or an internal model based method. The Company's Australian insurance subsidiary has adopted the Standard method. An insurer must obtain APRA's written consent prior to making any planned reductions in its capital, including any payment of dividends. The Company's insurance subsidiary must provide APRA a valuation prepared by an appointed actuary that demonstrates that the tangible assets of the insurer, after the proposed capital reduction, are sufficient

ENSTAR GROUP LIMITED

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

to cover its insurance liabilities to a 99.5% level of sufficiency of capital before APRA will consent to a capital release or dividend.

As of December 31, 2012 and 2011, the Company's Australian-based insurance subsidiary exceeded the required 99.5% level of sufficiency by \$12.0 million and \$45.2 million, respectively.

United States

The Company's U.S. insurance and reinsurance subsidiaries are subject to the insurance laws and regulations of the states in which they are domiciled, licensed and/or approved to conduct business. These laws restrict the amount of dividends the subsidiaries can pay to the Company. The restrictions are generally based on statutory net income and/or certain levels of statutory surplus as determined in accordance with the relevant statutory accounting requirements of the individual domiciliary states or states in which any of the insurance or reinsurance subsidiaries are domiciled. Generally, prior regulatory approval must be obtained before an insurer may pay a dividend or make a distribution above a specified level.

The U.S. subsidiaries are required to file annual statements with insurance regulatory authorities prepared on a statutory basis prescribed or permitted by such authorities. Statutory accounting principles differ from U.S. GAAP in the treatment of various items, including treatment of deferred acquisition costs, deferred income taxes, required investment reserves, reserve calculation assumptions and surplus notes. For the Company's U.S. insurance and reinsurance subsidiaries, there are no prescribed or permitted statutory accounting practices that differ significantly from the statutory accounting principles established by the NAIC. The U.S. insurance and reinsurance subsidiaries are also required to maintain minimum levels of solvency and liquidity as determined by law, and to comply with risk-based capital requirements and licensing rules.

As of December 31, 2012 and 2011, all of the Company's U.S. insurance and reinsurance subsidiaries exceeded their required levels of risk-based capital, with the exception of one subsidiary that was acquired whilst under supervision. On an aggregate basis, the U.S.-based insurance and reinsurance subsidiaries (excluding the subsidiary under supervision) exceeded their minimum levels of risk-based capital as of December 31, 2012 and 2011 by \$407.2 million and \$374.9 million, respectively; the subsidiary under regulatory supervision was below its minimum required risk-based capital level by approximately \$10.6 million as of December 31, 2012 (2011: \$12.3 million). As a consequence of being under regulatory supervision, the subsidiary's regulator must approve any and all disbursements, new contracts or agreements. The Company does not believe this subsidiary's non-compliance presents material risk to the Company's operations or financial condition.

Europe

The Company's Swiss insurance subsidiary is regulated by the Swiss Financial Market Supervisory Authority ("FINMA") pursuant to the Insurance Supervisory Act 2004. This subsidiary is obligated to maintain a minimum solvency margin based on the Solvency I and Swiss Solvency Test regulations ("SST") as stipulated by the Insurance Supervisory Act. As of December 31, 2012 and 2011, this subsidiary exceeded the Solvency I requirements by \$103.9 million (2011: \$107.7 million) and exceeded the SST requirements by \$44.9 million (2011: \$32.6 million). The amount of dividends that this subsidiary is permitted to distribute is restricted to freely distributable reserves, which consist of retained earnings, the current year profit and legal reserves. Any dividend exceeding the current year profit requires FINMA's approval. The solvency and capital requirements must continue to be met following any distribution.

In addition to Switzerland, the Company has insurance and reinsurance subsidiaries located in Belgium, Denmark, Ireland and Sweden. Each insurance and reinsurance subsidiary is subject to the relevant statutory

ENSTAR GROUP LIMITED

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

regulations, provisions and laws in its respective country that require it to maintain certain measures of solvency and restrict dividend payments. As of December 31, 2012 and 2011, the Company's subsidiaries located in Belgium, Denmark, Ireland and Sweden exceeded their required levels of solvency. These companies, in aggregate, exceeded minimum solvency requirements by \$31.5 million and \$34.6 million as of December 31, 2012 and 2011, respectively.

Restricted net assets of consolidated subsidiaries

As at December 31, 2012, the total amount of net assets of the Company's consolidated subsidiaries that were restricted was \$617.2 million (2011: \$767.1 million).

16. COMMITMENTS AND CONTINGENCIES

Concentration of Credit Risk

The Company's portfolio of cash and fixed maturities is managed pursuant to guidelines that follow what it believes are prudent standards of diversification. The guidelines limit the allowable holdings of a single issue and issuers, and as a result the Company does not believe that there are any significant concentrations of credit risk associated with its portfolio of cash and fixed maturities.

The Company's portfolio of other investments is managed pursuant to guidelines that emphasize diversification and liquidity. Pursuant to these guidelines, the Company manages and monitors risk across a variety of investment funds and vehicles, markets and counterparties. The Company believes that there are no significant concentrations of credit risk associated with its other investments.

The Company's investments are held by 21 different custodians. These custodians are all large financial institutions that are highly regulated. These institutions have controls over their investment processes that are certified annually. The largest concentration of fixed maturities investments, by fair value, at a single custodian was \$1.8 billion and \$2.1 billion as of December 31, 2012 and 2011, respectively.

Leases

The Company leases office space under operating leases expiring in various years through 2018. The leases are renewable at the option of the lessee under certain circumstances. The following is a schedule of future minimum rental payments on non-cancellable leases as of December 31, 2012:

2013	\$ 4,766
2014	4,209
2015	3,453
2016	2,218
2017	399
2018	309
	<u>\$15,354</u>

Rent expense for the years ended December 31, 2012, 2011 and 2010 was \$3.9 million, \$3.0 million and \$2.9 million, respectively.

ENSTAR GROUP LIMITED
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Investments

The following table provides a summary of the Company's outstanding unfunded investment commitments for the years ended December 31, 2012 and 2011:

	Original Commitment	December 31, 2012		December 31, 2011	
		Funded	Unfunded	Funded	Unfunded
J.C. Flowers II L.P.	\$ 100,000	\$ 97,782	\$ 2,218	\$ 97,780	\$ 2,220
J.C. Flowers III L.P.	100,000	44,372	55,627	30,753	69,247
Other	51,000	21,254	29,746	9,932	6,068
	<u>\$ 251,000</u>	<u>\$163,408</u>	<u>\$87,591</u>	<u>\$138,465</u>	<u>\$77,535</u>

Guarantees

As at December 31, 2012 and 2011, the Company had, in total, parental guarantees supporting Fitzwilliam's obligations in the amount of \$213.3 million and \$219.9 million, respectively.

Acquisitions

The Company has entered into definitive agreements with respect to: (i) the Reciprocal of America loss portfolio transfer, which is expected to close in the second quarter of 2013; (ii) the American Physicians Assurance Corporation assignment and assumption agreement, which is expected to close in the second quarter of 2013; and (iii) the purchase of the HSBC Insurance Companies, which is expected to close by the end of the first quarter of 2013. The HSBC agreement is described in Note 2 – "Acquisitions," and the Reciprocal of America and American Physicians Assurance Corporation agreements are described in Note 3 – "Significant New Business."

Legal Proceedings

In connection with the Company's acquisition of SeaBright, two purported class action lawsuits were filed against SeaBright, the members of its board of directors, AML Acquisition, and, in one of the cases, the Company. The first suit was filed September 13, 2012 in the Superior Court of the State of Washington and the second suit was filed September 20, 2012 in the Court of Chancery of the State of Delaware. The lawsuits allege, among other things, that SeaBright's directors breached their fiduciary duties when negotiating, approving and seeking stockholder approval of the Merger, and that SeaBright and the Company or its merger subsidiary aided and abetted the alleged breaches of fiduciary duties. In the suits, plaintiffs sought to enjoin defendants from taking any action to consummate the transactions contemplated by the Merger Agreement, as well as monetary damages, including attorneys' fees and expenses. The Company believes these suits are without merit. Nevertheless, in order to avoid the potential cost and distraction of continued litigation and to eliminate any risk of delay to the closing of the Merger, the Company, SeaBright and the SeaBright director defendants agreed in principle to settle the two lawsuits, without admitting any liability or wrongdoing. The settlement required SeaBright to make supplemental information available to its stockholders through a filing of a Current Report on Form 8-K with the U.S. Securities and Exchange Commission. The settlement did not change the amount of the consideration that the Company paid to SeaBright's stockholders in any way, nor did it alter any deal terms. The settlement is subject to execution and delivery of definitive documentation, approval by the Washington court of the settlement and approval by the Delaware court of the dismissal of the Delaware suit. If the settlement becomes effective, both lawsuits will be dismissed.

ENSTAR GROUP LIMITED

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The Company is, from time to time, involved in various legal proceedings in the ordinary course of business, including litigation regarding claims. The Company does not believe that the resolution of any currently pending legal proceedings, either individually or taken as a whole, will have a material effect on its business, results of operations or financial condition. Nevertheless, the Company cannot assure you that lawsuits, arbitrations or other litigation will not have a material adverse effect on its business, financial condition or results of operations. The Company anticipates that, similar to the rest of the insurance and reinsurance industry, it will continue to be subject to litigation and arbitration proceedings in the ordinary course of business, including litigation generally related to the scope of coverage with respect to asbestos and environmental claims. There can be no assurance that any such future litigation will not have a material adverse effect on the Company's business, financial condition or results of operations.

ENSTAR GROUP LIMITED
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

17. CONDENSED UNAUDITED QUARTERLY FINANCIAL DATA

	2012 Quarters Ended			
	December 31	September 30	June 30	March 31
Consulting fees	\$ 2,657	\$ 1,944	\$ 1,775	\$ 2,194
Net investment income	16,765	19,658	20,894	20,443
Net realized and unrealized gains	18,259	28,280	1,691	25,382
	<u>37,681</u>	<u>49,882</u>	<u>24,360</u>	<u>48,019</u>
Net reduction in ultimate loss and loss adjustment expense liabilities:				
Reduction in estimates of net ultimate losses	(101,706)	(58,506)	(58,417)	(3,298)
Reduction in provisions for bad debt	(329)	—	(527)	(2,255)
Reduction in provisions for unallocated loss and loss adjustment expense liabilities	(2,206)	(12,579)	(11,661)	(12,852)
Amortization of fair value adjustments	4,207	8,538	2,240	7,587
	<u>(100,034)</u>	<u>(62,547)</u>	<u>(68,365)</u>	<u>(10,818)</u>
Salaries and benefits	30,505	25,138	24,379	20,451
General and administrative expenses	13,169	14,409	14,156	14,858
Interest expense	2,540	1,713	2,062	2,111
Net foreign exchange (gains) losses	(2,212)	977	(627)	2,268
	<u>(56,032)</u>	<u>(20,310)</u>	<u>(28,395)</u>	<u>28,870</u>
EARNINGS BEFORE INCOME TAXES	93,713	70,192	52,755	19,149
INCOME TAXES	(13,943)	(14,700)	(11,905)	(3,742)
NET EARNINGS	79,770	55,492	40,850	15,407
Less: Net earnings attributable to noncontrolling interest	(9,864)	(7,776)	(129)	(5,733)
NET EARNINGS ATTRIBUTABLE TO ENSTAR GROUP LIMITED	\$ 69,906	\$ 47,716	\$ 40,721	\$ 9,674
EARNINGS PER SHARE — BASIC:				
Net earnings attributable to Enstar Group Limited ordinary shareholders	<u>\$ 4.25</u>	<u>\$ 2.90</u>	<u>\$ 2.48</u>	<u>\$ 0.59</u>
EARNINGS PER SHARE — DILUTED:				
Net earnings attributable to Enstar Group Limited ordinary shareholders	<u>\$ 4.22</u>	<u>\$ 2.86</u>	<u>\$ 2.44</u>	<u>\$ 0.58</u>

ENSTAR GROUP LIMITED
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

	2011 Quarters Ended			
	December 31	September 30	June 30	March 31
Consulting fees	\$ 10,154	\$ 1,623	\$ 2,045	\$ 4,036
Net investment income	15,571	18,498	19,059	15,548
Net realized and unrealized gains (losses)	2,231	(8,512)	9,133	6,362
Gain on bargain purchase	—	—	—	13,105
	<u>27,956</u>	<u>11,609</u>	<u>30,237</u>	<u>39,051</u>
Net reduction in ultimate loss and loss adjustment expense liabilities:				
Reduction in estimates of net ultimate losses	(177,308)	(42,467)	(27,829)	(2,612)
Reduction in provisions for bad debt	(38,751)	(2,399)	(1,672)	—
Reduction in provisions for unallocated loss and loss adjustment expense liabilities	(7,669)	(14,113)	(11,783)	(11,537)
Amortization of fair value adjustments	16,782	8,865	6,969	10,077
	<u>(206,946)</u>	<u>(50,114)</u>	<u>(34,315)</u>	<u>(4,072)</u>
Salaries and benefits	41,818	20,923	16,723	10,382
General and administrative expenses	5,090	20,759	28,211	17,750
Interest expense	2,431	2,435	1,697	1,966
Net foreign exchange (gains) losses	(15)	(8,878)	1,932	7,334
	<u>(157,622)</u>	<u>(14,875)</u>	<u>14,248</u>	<u>33,360</u>
EARNINGS BEFORE INCOME TAXES	185,578	26,484	15,989	5,691
Income taxes	(19,256)	(4,436)	(975)	(617)
NET EARNINGS	166,322	22,048	15,014	5,074
Less: Net earnings attributable to noncontrolling interest	(37,571)	(9,984)	(5,639)	(1,571)
NET EARNINGS ATTRIBUTABLE TO ENSTAR GROUP LIMITED	<u>\$ 128,751</u>	<u>\$ 12,064</u>	<u>\$ 9,375</u>	<u>\$ 3,503</u>
EARNINGS PER SHARE — BASIC				
Net earnings attributable to Enstar Group Limited ordinary shareholders	<u>\$ 8.89</u>	<u>\$ 0.85</u>	<u>\$ 0.67</u>	<u>\$ 0.27</u>
EARNINGS PER SHARE — DILUTED				
Net earnings attributable to Enstar Group Limited ordinary shareholders	<u>\$ 8.71</u>	<u>\$ 0.83</u>	<u>\$ 0.66</u>	<u>\$ 0.26</u>

ENSTAR GROUP LIMITED
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

17. CONDENSED UNAUDITED QUARTERLY FINANCIAL DATA — (Continued)

	2010 Quarters Ended			
	December 31	September 30	June 30	March 31
Consulting fees	\$ 3,268	\$ 2,119	\$ 3,500	\$14,128
Net investment income	23,175	18,377	21,385	18,324
Net realized and unrealized gains (losses)	11,974	12,423	(2,614)	9,999
	<u>38,417</u>	<u>32,919</u>	<u>22,271</u>	<u>42,451</u>
Net reduction in ultimate loss and loss adjustment expense liabilities:				
Reduction in estimates of net ultimate losses	(220,129)	(20,890)	(35,104)	(1,942)
Reduction in provisions for bad debt	(35,145)	(1,304)	(7,768)	(5,339)
Reduction in provisions for unallocated loss and loss adjustment expense liabilities	(8,819)	(10,171)	(11,696)	(8,965)
Amortization of fair value adjustments	30,336	6,250	12,202	6,650
	<u>(233,757)</u>	<u>(26,115)</u>	<u>(42,366)</u>	<u>(9,596)</u>
Salaries and benefits	39,221	18,012	14,254	15,190
General and administrative expenses	19,728	13,185	15,801	10,487
Interest expense	2,093	2,961	2,805	2,394
Net foreign exchange (gains) losses	(1,785)	(586)	(5,615)	7,588
	<u>(174,500)</u>	<u>7,457</u>	<u>(15,121)</u>	<u>26,063</u>
EARNINGS BEFORE INCOME TAXES AND SHARE OF NET EARNINGS OF EQUITY METHOD INVESTEE	212,917	25,462	37,392	16,388
Income taxes	(64,116)	(979)	(16,115)	(5,922)
Share of net earnings of equity method investee	—	1,351	2,203	7,150
NET EARNINGS	148,801	25,834	23,480	17,616
Less: Net earnings attributable to noncontrolling interest	(24,509)	(4,391)	(11,050)	(1,695)
NET EARNINGS ATTRIBUTABLE TO ENSTAR GROUP LIMITED	<u>\$ 124,292</u>	<u>\$ 21,443</u>	<u>\$ 12,430</u>	<u>\$15,921</u>
EARNINGS PER SHARE — BASIC				
Net earnings attributable to Enstar Group Limited ordinary shareholders	<u>\$ 9.61</u>	<u>\$ 1.56</u>	<u>\$ 0.91</u>	<u>\$ 1.17</u>
EARNINGS PER SHARE — DILUTED				
Net earnings attributable to Enstar Group Limited ordinary shareholders	<u>\$ 9.37</u>	<u>\$ 1.53</u>	<u>\$ 0.89</u>	<u>\$ 1.15</u>

ENSTAR GROUP LIMITED
CONDENSED FINANCIAL INFORMATION OF THE REGISTRANT
BALANCE SHEETS – PARENT COMPANY ONLY
As of December 31, 2012 and 2011

	<u>2012</u>	<u>2011</u>
	(in thousands of U.S. dollars, except share data)	
ASSETS		
Cash and cash equivalents	\$ 180,810	\$ 171,322
Balances due from subsidiaries	308,364	116,368
Investments in subsidiaries	1,346,064	1,273,174
Goodwill	21,222	21,222
Accounts receivable and other assets	294	296
TOTAL ASSETS	<u>\$1,856,754</u>	<u>\$1,582,382</u>
LIABILITIES		
Accounts payable and accrued liabilities	\$ 3,757	\$ 7,512
Loans payable	138	82,814
Balances due to subsidiaries	299,104	105,990
TOTAL LIABILITIES	<u>302,999</u>	<u>196,316</u>
COMMITMENTS AND CONTINGENCIES		
SHAREHOLDERS' EQUITY		
Share capital		
Authorized issued and fully paid, par value \$1 each (Authorized 2012: 156,000,000; 2011: 156,000,000)		
Ordinary shares (Issued 2012: 13,752,172; 2011: 13,665,051)	13,752	13,665
Non-voting convertible ordinary shares:		
Series A (issued 2012: 2,972,892; 2011: 2,972,892)	2,973	2,973
Series B, C and D (issued and outstanding 2012: 2,725,637; 2011: 2,725,637)	2,726	2,726
Treasury stock at cost (Series A non-voting convertible ordinary shares 2012: 2,972,892; 2011: 2,972,892)	(421,559)	(421,559)
Additional paid-in capital	958,571	956,329
Accumulated other comprehensive income	24,439	27,096
Retained earnings	972,853	804,836
TOTAL SHAREHOLDERS' EQUITY	<u>1,553,755</u>	<u>1,386,066</u>
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	<u>\$1,856,754</u>	<u>\$1,582,382</u>

See accompanying report of independent registered public accounting firm

ENSTAR GROUP LIMITED
CONDENSED FINANCIAL INFORMATION OF REGISTRANT
STATEMENT OF EARNINGS – PARENT COMPANY ONLY
For the Years Ended December 31, 2012, 2011 and 2010

	<u>2012</u>	<u>2011</u>	<u>2010</u>
	(in thousands of U.S. dollars)		
INCOME			
Net investment income	\$ 8,365	\$ 3,928	\$ 3,528
Dividend income from subsidiaries	<u>92,450</u>	<u>18,900</u>	<u>8,872</u>
	<u>100,815</u>	<u>22,828</u>	<u>12,400</u>
EXPENSES			
Salaries and benefits	1,179	2,738	1,985
General and administrative expenses	3,816	17,566	11,028
Interest expense	11,505	9,813	8,182
Foreign exchange losses (gains)	<u>942</u>	<u>(29)</u>	<u>17</u>
	<u>17,442</u>	<u>30,088</u>	<u>21,212</u>
EARNINGS (LOSS) BEFORE EQUITY IN UNDISTRIBUTED EARNINGS OF SUBSIDIARIES	<u>83,373</u>	<u>(7,260)</u>	<u>(8,812)</u>
EQUITY IN UNDISTRIBUTED EARNINGS OF SUBSIDIARIES	<u>84,644</u>	<u>160,953</u>	<u>182,898</u>
NET EARNINGS	<u>\$168,017</u>	<u>\$153,693</u>	<u>\$174,086</u>

See accompanying report of independent registered public accounting firm

ENSTAR GROUP LIMITED
CONDENSED FINANCIAL INFORMATION OF REGISTRANT
STATEMENTS OF CASH FLOWS – PARENT COMPANY ONLY
For the Years Ended December 31, 2012, 2011 and 2010

	<u>2012</u>	<u>2011</u>	<u>2010</u>
	(in thousands of U.S. dollars)		
OPERATING ACTIVITIES:			
Net cash flows used in operating activities	\$(26,926)	\$(142,600)	\$(92,038)
INVESTING ACTIVITIES:			
Return of capital, net	100,516	18,838	8,407
FINANCING ACTIVITIES:			
Repayment of loans	(64,102)	(185,442)	(19,206)
Receipt of loans	—	167,650	115,000
Proceeds from issuance of ordinary shares	—	287,377	424
Net cash flows (used in) provided by financing activities	<u>(64,102)</u>	<u>269,585</u>	<u>96,218</u>
NET INCREASE IN CASH AND CASH EQUIVALENTS	9,488	145,824	12,587
CASH AND CASH EQUIVALENTS, BEGINNING OF YEAR	<u>171,322</u>	<u>25,498</u>	<u>12,911</u>
CASH AND CASH EQUIVALENTS, END OF YEAR	<u>\$180,810</u>	<u>\$ 171,322</u>	<u>\$ 25,498</u>

See accompanying report of independent registered public accounting firm

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders of
Enstar Group Limited

We have audited Enstar Group Limited's internal control over financial reporting as of December 31, 2012, based on the criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Enstar Group Limited's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Form 10-K under Item 9A, "Controls and Procedures". Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, Enstar Group Limited maintained, in all material respects, effective internal control over financial reporting as of December 31, 2012, based on the criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheet of Enstar Group Limited as of December 31, 2012, and the related consolidated statements of earnings, comprehensive income, changes in shareholders' equity and cash flows for the year ended December 31, 2012, and our report dated February 28, 2013 expressed an unqualified opinion on those consolidated financial statements.

/s/ KPMG Audit Limited

Hamilton, Bermuda
February 28, 2013

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ITEM 9. *CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE*

Not applicable

ITEM 9A. *CONTROLS AND PROCEDURES*

Disclosure Controls and Procedures

Our management has performed an evaluation, with the participation of our Chief Executive Officer and Chief Financial Officer, of the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act, as of December 31, 2012. Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures are effective to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC and is accumulated and communicated to management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure.

Management's Annual Report on Internal Control Over Financial Reporting

Our management was responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act). Our management has performed an assessment, with the participation of our Chief Executive Officer and our Chief Financial Officer, of our internal control over financial reporting as of December 31, 2012. In making this assessment, our management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in Internal Control — Integrated Framework.

Based upon that assessment, our management believes that, as of December 31, 2012, our internal control over financial reporting is effective.

The effectiveness of our internal control over financial reporting as of December 31, 2012 has been audited by our independent registered public accounting firm as stated in its report. This report appears on page 167.

All internal control systems, no matter how well designed, have inherent limitations. As a result, even those internal control systems determined to be effective can provide only reasonable assurance with respect to financial reporting and the preparation of financial statements.

Changes in Internal Control Over Financial Reporting

Our management has performed an evaluation, with the participation of our Chief Executive Officer and our Chief Financial Officer, of changes in our internal control over financial reporting that occurred during the year ended December 31, 2012. Based upon that evaluation there were no changes in our internal control over financial reporting that occurred during the quarter ended December 31, 2012 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. *OTHER INFORMATION*

Not applicable.

PART III

ITEM 10. *DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE*

The information required by this item is incorporated by reference from the definitive proxy statement for our 2013 Annual General Meeting of Shareholders that will be filed with the SEC not later than 120 days after the close of the fiscal year ended December 31, 2012 pursuant to Regulation 14A.

ITEM 11. *EXECUTIVE COMPENSATION*

The information required by this item is incorporated by reference from the definitive proxy statement for our 2013 Annual General Meeting of Shareholders that will be filed with the SEC not later than 120 days after the close of the fiscal year ended December 31, 2012 pursuant to Regulation 14A.

ITEM 12. *SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS*

The information required by this item is incorporated by reference from the definitive proxy statement for our 2013 Annual General Meeting of Shareholders that will be filed with the SEC not later than 120 days after the close of the fiscal year ended December 31, 2012 pursuant to Regulation 14A.

ITEM 13. *CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE*

The information required by this item is incorporated by reference from the definitive proxy statement for our 2013 Annual General Meeting of Shareholders that will be filed with the SEC not later than 120 days after the close of the fiscal year ended December 31, 2012 pursuant to Regulation 14A.

ITEM 14. *PRINCIPAL ACCOUNTING FEES AND SERVICES*

The information required by this item is incorporated by reference from the definitive proxy statement for our 2013 Annual General Meeting of Shareholders that will be filed with the SEC not later than 120 days after the close of the fiscal year ended December 31, 2012 pursuant to Regulation 14A.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

(a) Financial Statements, Financial Statement Schedules and Exhibits.

1. *Financial Statements*

Included in Part II — See Item 8 of this report.

2. *Financial Statement Schedules*

Included in Part II — See Item 8 of this report.

3. *Exhibits*

The information required by this Item is set forth on the exhibit index that follows the signature page of this report.

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized on February 28, 2013.

ENSTAR GROUP LIMITED

By: /s/ DOMINIC F. SILVESTER
Dominic F. Silvester
Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities indicated on February 28, 2013.

<u>Signature</u>	<u>Title</u>
<u>/s/ ROBERT J. CAMPBELL</u> Robert J. Campbell	Chairman and Director
<u>/s/ DOMINIC F. SILVESTER</u> Dominic F. Silvester	Chief Executive Officer and Director
<u>/s/ RICHARD J. HARRIS</u> Richard J. Harris	Chief Financial Officer (signing in his capacity as both principal financial officer and principal accounting officer)
<u>/s/ PAUL J. O'SHEA</u> Paul J. O'Shea	Executive Vice President and Director
<u>/s/ T. WHIT ARMSTRONG</u> T. Whit Armstrong	Director
<u>/s/ CHARLES T. AKRE, JR.</u> Charles T. Akre, Jr.	Director
<u>/s/ KENNETH J. LE STRANGE</u> Kenneth J. LeStrange	Director
<u>/s/ SUMIT RAJPAL</u> Sumit Rajpal	Director

Exhibit Index

<u>Exhibit No.</u>	<u>Description</u>
2.1 ♦	Agreement and Plan of Merger, dated as of May 23, 2006, as amended on November 21, 2006, by and among Castlewood Holdings Limited, CWMS Subsidiary Corp. and The Enstar Group, Inc. (incorporated by reference to Exhibit 2.1 (and Annex A) to the proxy statement/prospectus that forms a part of the Company's Form S-4 declared effective December 15, 2006).
2.2 ♦	Recapitalization Agreement, dated as of May 23, 2006, among Castlewood Holdings Limited, The Enstar Group, Inc. and the other parties signatory thereto (incorporated by reference to Exhibit 2.2 (and Annex C) to the proxy statement/prospectus that forms a part of the Company's Form S-4 declared effective December 15, 2006).
2.3 ♦	Stock Purchase Agreement among Clarendon Insurance Group, Inc., Hannover Finance, Inc. and Clarendon Holdings, Inc. and the Company, dated as of December 21, 2010 (incorporated by reference to Exhibit 2.1 of the Company's Form 10-Q filed on August 2, 2012).
2.4 ♦	Agreement and Plan of Merger, dated as of August 27, 2012, among Enstar Group Limited, AML Acquisition, Corp. and SeaBright Holdings, Inc. (incorporated by reference to Exhibit 2.1 of the Company's Form 8-K filed on August 28, 2012).
2.5 ♦	Stock Purchase Agreement, dated September 6, 2012, among Household Insurance Group Holding Company, Pavonia Holdings (US), Inc. and Enstar Group Limited (incorporated by reference to Exhibit 2.2 of the Company's Form 10-Q filed on November 8, 2012).
3.1	Memorandum of Association of Enstar Group Limited (incorporated by reference to Exhibit 3.1 to the Company's Form 10-K/A filed on May 5, 2011).
3.2	Third Amended and Restated Bye-Laws of Enstar Group Limited (incorporated by reference to Exhibit 3.1(b) of the Company's Form 10-Q filed on August 5, 2011).
3.3	Certificate of Designations for the Series A Convertible Participating Non-Voting Perpetual Preferred Stock (incorporated by reference to Exhibit 3.1 of the Company's Form 8-K filed on April 21, 2011).
10.1	Registration Rights Agreement, dated as of January 31, 2007, by and among Castlewood Holdings Limited, Trident II, L.P., Marsh & McLennan Capital Professionals Fund, L.P., Marsh & McLennan Employees' Securities Company, L.P., J. Christopher Flowers, Dominic F. Silvester and other parties thereto set forth on the Schedule of Shareholders attached thereto (incorporated by reference to Exhibit 10.1 of the Company's Form 8-K12B filed on January 31, 2007).
10.2+	Form of Director Indemnification Agreement (incorporated by reference to Exhibit 10.1 of the Company's Form S-3 (No. 333-151461) initially filed on June 5, 2008).
10.3+	Amended and Restated Employment Agreement, effective May 1, 2007 and amended and restated June 4, 2007, by and between Enstar Group Limited and Dominic F. Silvester, as amended by Letter Agreement, effective January 1, 2011, and Letter Agreement, dated April 19, 2012 (incorporated by reference to Exhibit 10.1 of the Company's Form 10-Q filed on May 4, 2012).
10.4+	Employment Agreement, effective May 1, 2007, by and between the Company and Paul J. O'Shea, as amended by Letter Agreement, effective January 1, 2011, and Letter Agreement, dated April 25, 2012 (incorporated by reference to Exhibit 10.2 of the Company's Form 10-Q filed on May 4, 2012).
10.5+	Employment Agreement, effective May 1, 2007, by and between Enstar Group Limited and Nicholas A. Packer, as amended by Letter Agreement, effective January 1, 2011, and Letter Agreement, dated April 25, 2012 (incorporated by reference to Exhibit 10.3 of the Company's Form 10-Q filed on May 4, 2012).
10.6+	Employment Agreement, effective May 1, 2007, by and between Enstar Group Limited and Richard J. Harris, as amended by Letter Agreement, effective January 1, 2011, and Letter Agreement, dated April 19, 2012 (incorporated by reference to Exhibit 10.4 of the Company's Form 10-Q filed on May 4, 2012).
10.7+	Castlewood Holdings Limited 2006 Equity Incentive Plan (incorporated by reference to Exhibit 10.11 to the proxy statement/prospectus that forms a part of the Company's Form S-4 declared effective December 15, 2006), as amended by the First Amendment to Castlewood Holdings Limited 2006 Equity Incentive Plan (incorporated by reference to Exhibit 10.2 of the Company's Form 8-K filed on April 6, 2007).

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<u>Exhibit No.</u>	<u>Description</u>
10.8+	Castlewood Holdings Limited 2006-2010 Annual Incentive Compensation Plan (incorporated by reference to Exhibit 10.12 to the proxy statement/prospectus that forms a part of the Company's Form S-4 declared effective December 15, 2006), as amended by the First Amendment to Castlewood Holdings Limited 2006-2010 Annual Incentive Compensation Plan (incorporated by reference to Exhibit 10.3 of the Company's Form 8-K filed on April 6, 2007).
10.9+	Form of Award Agreement under the Castlewood Holdings Limited 2006 Equity Incentive Plan (incorporated by reference to Exhibit 10.1 of the Company's Form 8-K filed on April 6, 2007).
10.10+	Enstar Group Limited Amended and Restated Employee Share Purchase Plan (incorporated by reference to Appendix A to the Company's Definitive Proxy Statement filed on April 29, 2008).
10.11+	Enstar Group Limited Deferred Compensation and Ordinary Share Plan for Non-Employee Directors, effective as of June 5, 2007 (incorporated by reference to Exhibit 10.1 of the Company's Form 8-K filed on June 11, 2007).
10.12+	The Enstar Group, Inc. 1997 Amended Omnibus Incentive Plan (incorporated by reference to Exhibit 10.1 to The Enstar Group, Inc.'s Form 10-Q filed on August 14, 2001), as amended by the Amendment to the 1997 Omnibus Incentive Plan (incorporated by reference to Annex A to the Proxy Statement for the Annual Meeting of Shareholders of The Enstar Group, Inc. filed on April 22, 2003).
10.13+	The Enstar Group, Inc. 2001 Outside Directors' Stock Option Plan (incorporated by reference to Annex B to the Proxy Statement for the Annual Meeting of Shareholders of The Enstar Group, Inc. filed on May 8, 2001).
10.14+	The Enstar Group, Inc. Deferred Compensation and Stock Plan for Non-Employee Directors, as amended (incorporated by reference to Exhibit 10.1 to the Company's Form 10-Q filed on May 8, 2009).
10.15+	Enstar Group Limited 2011-2015 Annual Incentive Compensation Program (incorporated by reference to Exhibit 10.25 to the Company's Form 10-K filed on March 7, 2011).
10.16+	Share Repurchase Agreement, dated as of October 1, 2010, by and among Enstar Group Limited, Dominic F. Silvester and R&H Trust Co. (NZ) Limited, as trustee of the Left Trust (incorporated by reference to Exhibit 10.1 to the Company's Form 8-K filed on October 1, 2010).
10.17+	Share Repurchase Agreement, dated as of October 1, 2010, by and among Enstar Group Limited, Paul J. O'Shea and R&H Trust Co. (BVI) Limited, as trustee of the Elbow Trust (incorporated by reference to Exhibit 10.2 to the Company's Form 8-K filed on October 1, 2010).
10.18+	Share Repurchase Agreement, dated as of October 1, 2010, by and among Enstar Group Limited, Nicholas A. Packer and Hove Investments Holding Limited (incorporated by reference to Exhibit 10.3 to the Company's Form 8-K filed on October 1, 2010).
10.19+	Separation Agreement and General Release, dated as of August 20, 2010, by and among Enstar Group Limited, Enstar (US), Inc. and John J. Oros (incorporated by reference to Exhibit 10.1 to the Company's Form 10-Q filed on November 5, 2010).
10.20	Investment Agreement, dated as of April 20, 2011, by and among Enstar Group Limited, GSCP VI AIV Navi, Ltd., GSCP VI Offshore Navi, Ltd., GSCP VI Parallel AIV Navi, Ltd., GSCP VI Employee Navi, Ltd., and GSCP VI GmbH Navi, L.P. (incorporated by reference to Exhibit 99.1 of the Company's Form 8-K filed on April 21, 2011).
10.21	Form of Warrant (incorporated by reference to Exhibit 99.2 of the Company's Form 8-K filed on April 21, 2011).
10.22	Registration Rights Agreement, dated as of April 20, 2011, by and among Enstar Group Limited, GSCP VI AIV Navi, Ltd., GSCP VI Offshore Navi, Ltd., GSCP VI Parallel AIV Navi, Ltd., GSCP VI Employee Navi, Ltd., and GSCP VI GmbH Navi, L.P. (incorporated by reference to Exhibit 99.3 of the Company's Form 8-K filed on April 21, 2011).
10.23	Facilities Agreement, dated as of December 29, 2010, by and among Enstar Group Limited, certain of its subsidiaries, Barclays Corporate and Barclays Bank PLC (incorporated by reference to Exhibit 10.24 to the Company's Form 10-K filed on March 7, 2011).
10.24	Term Facility Agreement dated March 4, 2011 between Clarendon Holdings, Inc. and National Bank Limited (incorporated by reference to Exhibit 10.1 of the Company's Form 10-Q filed on May 6, 2011).

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<u>Exhibit No.</u>	<u>Description</u>
10.25	Revolving Credit Facility Agreement dated June 14, 2011 among Enstar Group Limited and certain of its Subsidiaries, National Australia Bank Limited and Barclays Corporate as Arrangers, and National Australia Bank Limited as Agent and Security Agent (incorporated by reference to Exhibit 10.9 of the Company's Form 10-Q filed on August 5, 2011).
10.26	Amendment Letter, dated July 25, 2012, to Revolving Credit Facility Agreement dated June 14, 2011 among Enstar Group Limited and certain of its Subsidiaries, National Australia Bank Limited and Barclays Corporate as Arrangers, and National Australia Bank Limited as Agent and Security Agent (incorporated by reference to Exhibit 10.1 to the Company's Form 10-Q filed on November 8, 2012).
10.27*	Term Facility Agreement dated December 21, 2012 among SeaBright Holdings, Inc. (as successor by merger to AML Acquisition, Corp.) and certain of its subsidiaries, National Australia Bank Limited and Barclays Bank PLC as Mandated Lead Arrangers, and National Australia Bank Limited as Agent and Security Agent.
21.1*	List of Subsidiaries.
23.1*	Consent of KPMG Audit Limited.
23.2*	Consent of Deloitte & Touche Ltd.
31.1*	Certification of Chief Executive Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934 as adopted under Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification of Chief Financial Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934 as adopted under Section 302 of the Sarbanes-Oxley Act of 2002.
32.1**	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2**	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101**	Interactive Data Files.

* filed herewith

** furnished herewith

+ denotes management contract or compensatory arrangement

◆ certain of the schedules and similar attachments are not filed but Enstar Group Limited undertakes to furnish a copy of the schedules or similar attachments to the SEC upon request

AML Acquisition, Corp.
as Borrower

and

AML Acquisition, Corp.
as Original Guarantor

and

National Australia Bank Limited and Barclays Bank PLC
as Mandated Lead Arrangers and Bookrunners

and

National Australia Bank Limited
as Agent and Security Agent

US\$111,000,000 Term Facility Agreement

EXECUTION VERSION

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Term Facility Agreement

Dated 2012

Between:

- (1) **AML Acquisition, Corp** . a company incorporated under the laws of the State of Delaware, United States of America whose registered office is at c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801 with company number 5196545 (the **Borrower**);
- (2) **The members of the Group** listed in Part 1 of Schedule 1 (*The Original Parties*) as Original Guarantors (the **Original Guarantors**);
- (3) **National Australia Bank Limited and Barclays Bank PLC** as bookrunners and mandated lead arrangers (the **Arrangers**);
- (4) **The Financial Institutions** listed in Part 2 of Schedule 1 (*The Original Parties*) as lenders (the **Original Lenders**);
- (5) **National Australia Bank Limited** as agent of the other Finance Parties (the **Agent**); and
- (6) **National Australia Bank Limited** as Security Agent for the Secured Parties.

It is agreed:

1 Definitions and Interpretation

1.1 In this Agreement:

Acceptable Bank means a bank or financial institution which has a rating for its long-term unsecured and non-credit-enhanced debt obligations of A+ or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or A1 or higher by Moody's Investor Services Limited or a comparable rating from an internationally recognised credit rating agency or any other bank or financial institution approved by the Agent.

Accession Letter means a document substantially in the form set out in Schedule 7 (*Form of Accession Letter*).

Accounting Principles means:

- (a) in the case of the Annual Financial Statements and Quarterly Financial Statements for a Regulated Insurance Entity, SAP;
- (b) in the case of the Annual Financial Statements for a non Regulated Insurance Entity, GAAP; and
- (c) in the case of Quarterly Financial Statements of the Borrower, GAAP.

Acquisition means the acquisition of the Target Shares on the terms of the Acquisition Documents.

Acquisition Agreement means the agreement and plan of merger (including all documents and agreements attached thereto or otherwise referred to therein, copies of which have been provided to the Agent) relating to the merger of the Borrower with and into the Target dated 27 August 2012 and entered into and made between the Borrower, Enstar and the Target, as amended from time to time by amendments reasonably acceptable to the Agent.

Acquisition Costs means all fees, costs and expenses, stamp, registration and other Taxes incurred (or required to be paid) by the Borrower or any other member of the Group in connection with the Acquisition or the Transaction Documents.

Acquisition Documents means the Acquisition Agreement, the Disclosure Letter and any other document designated as an **Acquisition Document** by the Agent and the Borrower.

Additional Cost Rate has the meaning given to it in Schedule 4 (*Mandatory Cost Formula*).

Additional Guarantor means any company which becomes a Guarantor in accordance with Clause 26.2 (*Additional Guarantors*).

Additional Security Agent has the meaning given to it in Schedule 11 (*Security Agent*).

Affiliate means, in relation to any person, a Subsidiary or a Holding Company of that person or any other Subsidiary of that Holding Company.

Agent's Spot Rate of Exchange means the Agent's spot rate of exchange for the purchase of the relevant currency with the Base Currency in the London foreign exchange market at or about 11:00 a.m. on a particular day.

Assignment Agreement means an agreement substantially in the form set out in Schedule 6 (*Form of Assignment Agreement*) or any other form agreed between the relevant assignor and assignee.

Auditors means one of PricewaterhouseCoopers, Ernst & Young, KPMG or Deloitte or such other firm approved in advance by the Majority Lenders (such approval not to be unreasonably withheld or delayed).

Authorisation means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

Availability Period means the period from and including the date of this Agreement to and including the earlier of (i) the date falling one month after the Closing Date or (ii) the date falling six months from the date of this Agreement.

Available Commitment means a Lender's Commitment minus:

- (a) the amount of its participation in any outstanding Loans; and
- (b) in relation to any proposed Loan, the amount of its participation in any Loans that are due to be made on or before the proposed Utilisation Date.

Available Facility means the aggregate for the time being of each Lender's Available Commitment.

Base Currency means US Dollars.

Base Currency Equivalent means, the amount of the relevant currency required to purchase the relevant amount of US Dollars at the Agent's Spot Rate of Exchange.

Break Costs means the amount (if any) by which:

- (a) the interest, excluding the Margin, which a Lender should have received for the period from the date of receipt of all or any part of its participation in a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;

exceeds:

- (b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the London interbank market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

Business Day means a day (other than a Saturday or Sunday) on which banks are open for general business in London and New York.

Cash means, at any time, cash denominated in freely transferable and freely convertible currency in hand or at a bank and (in the latter case) credited to an account in the name of a member of the Group with an Acceptable Bank and to which a member of the Group is alone (or together with other members of the Group) beneficially entitled and for so long as:

- (a) that cash is repayable on demand; and
- (b) there is no Security over that cash except Transaction Security or any Permitted Security constituted by a netting or set-off arrangement entered into by members of the Group in the ordinary course of their banking arrangements.

Cash Equivalent Investments means at any time:

- (a) certificates of deposit maturing within one year after the relevant date of calculation and issued by an Acceptable Bank;
- (b) any investment in marketable debt obligations with a rating of not less than AA issued or guaranteed by the government of the United States of America, the United Kingdom, any member state of the European Economic Area or any Participating Member State or by an instrumentality or agency of any of them having an equivalent credit rating, maturing within one year after the relevant date of calculation and not convertible or exchangeable to any other security;
- (c) commercial paper not convertible or exchangeable to any other security:
 - (i) for which a recognised trading market exists;
 - (ii) issued by an issuer incorporated in the United States of America, the United Kingdom, any member state of the European Economic Area or any Participating Member State;
 - (iii) which matures within one year after the relevant date of calculation; and
 - (iv) which has a credit rating of either A-1 or higher by Standard & Poor's Rating Services or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's Investor Services Limited, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;

-
- (d) Sterling bills of exchange eligible for rediscount at the Bank of England and accepted by an Acceptable Bank (or their dematerialised equivalent);
 - (e) any investment accessible within 30 days in money market funds which have a credit rating of either A-1 or higher by Standard & Poor's Rating Services or F1 or higher by Fitch Rating Ltd or P-1 or higher by Moody's Investor Services Limited and which invest substantially all their assets in securities of the types described in sub-paragraphs (a) to (d) above; or
 - (f) any other debt security approved by the Majority Lenders,

in each case, to which any member of the Group is alone (or together with other members of the Group) beneficially entitled at that time and which is not issued or guaranteed by any member of the Group or subject to any Security (other than Security arising under the Transaction Security Documents).

Change of Control means other than as a consequence of the Acquisition:

- (a) the Shareholder ceases to have the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
 - (i) cast, or control the casting of, 100% of the maximum number of votes that might be cast at a general meeting of the Borrower;
 - (ii) appoint or remove all of the directors or other equivalent officers of the Borrower; or
 - (iii) give directions with respect to the operating and financial policies of the Borrower with which the directors or other equivalent officers of the Borrower are obliged to comply;
- (b) the cessation of full direct beneficial ownership by the Shareholder of all of the issued share capital of the Borrower;
- (c) Enstar ceases to have Control of the Borrower;
- (d) the cessation of full indirect beneficial ownership by Enstar of all of the issued share capital of the Borrower;
- (e) the cessation of full beneficial ownership by the Borrower of all of the issued share capital of the Target or a member of the Target Group;
- (f) any entity, person (within the meaning of Section 14(d) of the Securities Exchange Act of 1934, as amended (Exchange Act)) or group of persons (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) that before such event was beneficial owner (as defined in Rule 13d-3 under the Exchange Act) of less than 20 per cent. of a member of the Group's Voting Stock shall have acquired beneficial ownership (within the meaning of Rule 13d-3 of the SEC under the Exchange Act), directly or indirectly, of Voting Stock of that member of the Group (or other securities convertible into such Voting Stock) representing 20 per cent. or more of the combined voting power of all Voting Stock of the applicable member of the Group.

Charged Property means the assets of any member of the Group which from time to time are, or are expressed to be, the subject of the Transaction Security.

Chief Financial Officer means the finance director of the relevant company or group from time to time (or any director of the relevant company or group acting as such officer's deputy in that capacity or performing those functions).

Closing Date means the date on which Completion occurs.

Code means, at any date, the US Internal Revenue Code of 1986, as amended, and the regulations promulgated and the judicial and administrative decisions rendered under it, all as the same may be in effect at such date.

Commitment means:

- (a) in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading “Commitment” in Part 2 of Schedule 1 (*The Original Parties*) and the amount of any other Commitment transferred to it under this Agreement; and
- (b) in relation to any other Lender, the amount in the Base Currency of any Commitment transferred to it under this Agreement, to the extent not cancelled, reduced or transferred by it under this Agreement.

Completion means the Effective Time (as such term is defined in the Acquisition Agreement) of the Acquisition in accordance with Article II of the Acquisition Agreement.

Compliance Certificate means a certificate substantially in the form set out in Schedule 8 (*Form of Compliance Certificate*).

Confidential Information means all information relating to the Borrower, any Obligor, the Group or the Target Group, the Finance Documents or the Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or the Facility from either:

- (a) any member of the Group, the Target Group or any of their advisers, or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group, the Target Group or any of their advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (i) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 38 (*Confidentiality*); or
- (ii) is identified in writing at the time of delivery as non-confidential by any member of the Group, the Target Group or any of their advisers; or
- (iii) is known by that Finance Party before the date the information is disclosed to it in accordance with sub-clauses (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group or the Target Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

Confidentiality Undertaking means a confidentiality undertaking substantially in a recommended form of the LMA or in any other form agreed between the Borrower and the Agent.

Consolidated Net Surplus means as such term is defined in Clause 22.1 (*Financial definitions*).

Constitutional Documents means the certificate of incorporation and by-laws.

Control means:

- (a) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
 - (i) cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the relevant company;
 - (ii) appoint or remove all, or the majority, of the directors or other equivalent officers of the relevant company; or
 - (iii) give directions with respect to the operating and financial policies of the relevant company with which the directors or other equivalent officers of the relevant company are obliged to comply; or
- (b) the holding beneficially of more than 50% of the issued share capital of the relevant company (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

Debt Purchase Transaction means, in relation to a person, a transaction where such person:

- (a) purchases by way of assignment or transfer;
- (b) enters into any sub-participation in respect of; or
- (c) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of,

any Commitment or amount outstanding under this Agreement.

Default means an Event of Default or any event or circumstance specified in Clause 24 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

Delegate means any delegate, agent, attorney or co-trustee appointed by the Security Agent.

Disclosure Letter means the Target's Disclosure Letter as such term is defined in the Acquisition Agreement.

Disruption Event means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or

- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
 - (i) from performing its payment obligations under the Finance Documents; or
 - (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

Employee Plan means an employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which a member of the Group or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an employer as defined in Section 3(5) of ERISA.

Enstar means Enstar Group Limited, a company incorporated under the laws of Bermuda with registered number EC30916.

ERISA means the United States Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, and the regulations promulgated and rulings issued under it.

ERISA Affiliate means any person that would be deemed at any relevant time to be a single employer with a member of the Group, pursuant to Section 414(b), (c), (m) or (o) of the Code or Section 4001(b)(i) of ERISA.

ERISA Event means:

- (a) any reportable event, as defined in Section 4043 of ERISA, with respect to an Employee Plan, as to which PBGC has not by regulation waived the requirement of Section 4043(a) of ERISA that it be notified of such event;
- (b) (i) the filing of a notice of intent to terminate any Employee Plan, if such termination would require material additional contributions in order to be considered a standard termination within the meaning of Section 4041(b) of ERISA, (ii) the filing under Section 4041(c) of ERISA of a notice of intent to terminate any Employee Plan as a distress termination, or (iii) the termination of any Employee Plan under Section 4041(c) of ERISA as a distress termination;
- (c) the institution of proceedings under Section 4042 of ERISA by the PBGC for the termination of, or the appointment of a trustee to administer, any Employee Plan;
- (d) the failure to make a required contribution to any Employee Plan that would result in the imposition of an encumbrance under Section 430(k) of the Code or Section 303(k) of ERISA or the filing of any request for a minimum funding waiver under Section 412(c) of the Code with respect to any Employee Plan or Multiemployer Plan;

- (e) an engagement in a non-exempt prohibited transaction within the meaning of Section 4975(c) of the Code or Section 406 of ERISA;
- (f) the complete or partial withdrawal of any member of the Group or any ERISA Affiliate from a Multiemployer Plan; and
- (g) an Obligor or an ERISA Affiliate incurring any liability under Title IV of ERISA with respect to any Employee Plan (other than premiums due and not delinquent under Section 4007 of ERISA).

Event of Default means any event or circumstance specified as such in Clause 24 (*Events of Default*).

Facility means the term loan facility made available under this Agreement as described in Clause 2.1 (*The Facility*).

Facility Office means

- (a) in respect of a Lender, the office or offices notified by that Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement; or
- (b) in respect of any other Finance Party, the office in the jurisdiction in which it is resident for tax purposes.

FATCA means:

- (a) sections 1471 to 1474 of the Code or any associated regulations or other official guidance;
- (b) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of paragraph (a) above; or
- (c) any agreement pursuant to the implementation of paragraphs (a) or (b) above with the IRS, the US government or any governmental or taxation authority in any other jurisdiction.

FATCA Application Date means:

- (a) in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 January 2014;
- (b) in relation to a "withholdable payment" described in section 1473(1)(A)(ii) of the Code (which relates to "gross proceeds" from the disposition of property of a type that can produce interest from sources within the US), 1 January 2015; or
- (c) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 1 January 2017,

or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement.

FATCA Deduction means a deduction or withholding from a payment under a Finance Document required by FATCA.

FATCA Exempt Party means a Party that is entitled to receive payments free from any FATCA Deduction.

FATCA Protected Lender means any Lender irrevocably designated as a FATCA Protected Lender by the Borrower by notice to that Lender and the Agent at least six months prior to the earliest FATCA Application Date for a payment by a Party to that Lender.

Fee Letter means

- (a) any letter or letters dated on or about the date of this Agreement between the Agent, the Security Agent and/or the Arrangers and the Borrower setting out any of the fees referred to in Clause 13 (*Fees*); and
- (b) any agreement setting out fees payable to a Finance Party under any Finance Document.

Finance Document means this Agreement, any Accession Letter, any Compliance Certificate, any Fee Letter, the Subordination Deed, any Selection Notice, any Transaction Security Document, any Utilisation Request and any other document designated as a **Finance Document** by the Agent and the Borrower.

Finance Party means the Agent, the Arrangers, the Security Agent or a Lender.

Financial Indebtedness means any indebtedness for or in respect of:

- (a) moneys borrowed and debit balances at banks or other financial institutions;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with the Accounting Principles, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the marked to market value as at the relevant date on which Financial Indebtedness is calculated (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that amount) shall be taken into account);
- (g) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
- (h) any amount of any liability under an advance or deferred purchase agreement if (1) one of the primary reasons behind entering into the agreement is to raise finance or (2) the agreement is in respect of the supply of assets or services and payment is due more than 90 days after the date of supply;

(i) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing; and

(j) the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to (i) above.

Financial Quarter has the meaning given to that term in Clause 22.1 (*Financial definitions*).

Financial Year has the meaning given to that term in Clause 22.1 (*Financial definitions*).

First Utilisation Date means the first Utilisation Date.

Forecast Cash Flows means the forecast of cash flows in agreed form relating to the Group prepared by Enstar.

GAAP means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the US accounting profession), which are applicable to the circumstances as of the date of determination.

Governmental Authority means any nation or government, any state or other political sub-division thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

Group means the Borrower and each of its Subsidiaries from time to time.

Group Structure Chart means the group structure chart in Schedule 10 (*Group Structure*).

Guarantor means the Original Guarantor and each Additional Guarantor, unless it has ceased to be a Guarantor in accordance with Clause 26.4 (*Resignation and release of security on disposal*).

Holding Account means the account in the name of the Borrower held with the Agent at 88 Wood Street, London EC2V 7QQ, Sort Code: 16-55-90 and Account number: 3505 414956 501 (as the same may be redesignated, substituted or replaced from time to time).

Holding Company means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

Information Memorandum means the document concerning the Obligors and the Target Group which, at the request of the Borrower and on its behalf, is to be prepared in relation to this transaction, approved by the Borrower and distributed by an Arranger prior to the Syndication Date in connection with the syndication of the Facility.

Information Package means the Forecast Cash Flows and the Report.

Insolvency Representative means any liquidator, administrator, receiver, receiver and manager, administrative receiver, custodian, trustee or similar officer in any jurisdiction.

Insurance Code means the insurance laws, regulations and pronouncements applicable to each Regulated Insurance Entity or any person in connection with each Regulated Insurance Entity, including, without limitation, the laws and regulations of each Regulated Insurance Entity's state of domicile or state of deemed domicile and any successor statute, regulation or pronouncement of similar import, as amended or otherwise modified and in effect from time to time including, without limitation, the California and Illinois Insurance Code.

Insurance Regulator means the Government Authority charged with supervision of insurance companies in the jurisdiction of domicile or deemed domicile of the applicable entity.

Intellectual Property means

- (a) any patents, trade marks, service marks, designs, business names, copyrights, design rights, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests, whether registered or unregistered; and
- (b) the benefit of all applications and rights to use such assets of each member of the Group.

Interest Period means, in relation to a Loan, each period determined in accordance with Clause 11 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 10.3 (*Default Interest*).

IRS means the United States Internal Revenue Service or any successor.

Joint Venture means any joint venture entity, whether a company, unincorporated firm, undertaking, association, joint venture or partnership or any other similar entity.

Legal Opinion means any legal opinion delivered to the Agent under Clause 4.1 (*Initial conditions precedent*) or Clause 26 (*Changes to the Obligors*).

Legal Reservations means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;
- (c) similar principles, rights and defences under the laws of any Relevant Jurisdiction; and
- (d) any other matters which are set out as qualifications or reservations as to matters of law of general application in the Legal Opinions.

Lender means

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party in accordance with Clause 25 (*Changes to the Lenders*),

which in each case has not ceased to be a Party in accordance with the terms of this Agreement.

LIBOR means, in relation to any Loan:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for the currency or Interest Period of that Loan) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request quoted by the Reference Banks to leading banks in the London interbank market,

as of the Specified Time on the Quotation Day for the offering of deposits in US Dollars and for a period comparable to the Interest Period for that Loan and, if that rate is less than zero, LIBOR shall be deemed to be zero.

Limitation Acts means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984.

LMA means the Loan Market Association.

Loan means a loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan.

Majority Lenders means:

- (a) if there are no Loans outstanding, a Lender or Lenders whose Commitments aggregate more than $66\frac{2}{3}$ per cent of the Total Commitments (or if the Total Commitments have been reduced to zero, aggregate more than $66\frac{2}{3}$ per cent. of the Total Commitments immediately prior to the reduction); or
- (b) at any other time, a Lender or Lenders whose participations in the Loans then outstanding aggregate more than $66\frac{2}{3}$ per cent. of all the Loans then outstanding.

Mandatory Cost means the percentage rate per annum calculated by the Agent in accordance with Schedule 4 (*Mandatory Cost Formula*).

Mandatory Prepayment Account means the interest-bearing account in the name of the Borrower held with the Agent at 88 Wood Street, London EC2V 7QQ, Sort Code: 16-55-90 and Account number: 3505 414956 500 (as the same may be redesignated, substituted or replaced from time to time).

Margin means:

- (a) up to but excluding the date falling 18 months after the First Utilisation Date, 2.75 (two point seven five) per cent. per annum; and
- (b) thereafter, 3.50 (three point five zero) per cent. per annum.

Margin Stock means **margin stock** or **margin security** within the meaning of Regulations T, U and X.

Material Adverse Effect means a material adverse effect on:

- (a) the business, operations, property, condition (financial or otherwise) or prospects of the Group taken as a whole; or
- (b) the ability of an Obligor to perform its payment obligations under the Finance Documents and/or its obligations under Clause 22.2 (*Financial condition*); or

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- (c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or purporting to be granted pursuant to any of, the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents.

Month means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules will only apply to the last Month of any period. **Monthly** shall be construed accordingly.

Multiemployer Plan means a **multiemployer plan** (as defined in Section (3)(37) of ERISA) contributed to for any employees of a member of the Group or any ERISA Affiliate.

Obligor means the Original Obligors or an Additional Guarantor.

Obligors' Agent means the Borrower, appointed to act on behalf of each Obligor in relation to the Finance Documents pursuant to Clause 2.3 (*Obligors' Agent*).

Original Financial Statements means:

- (a) in relation to the Borrower, its opening balance sheet;
- (b) in relation to the Target, its unaudited financial statements for the financial half year ended 30 June 2012; and
- (c) in relation to each other member of the Target Group, its unaudited statutory annual statement and, if available on the date the Original Financial Statements are provided, its audited statutory financial statement, in each case for its Financial Year ended 31 December 2011,

or, for each such entity, any later financial statements as may be agreed between the Borrower and the Lenders prior to the date of this Agreement.

Original Obligor means the Borrower and the Original Guarantor.

NAIC means the National Association of Insurance Commissioners or any successor thereto, or in the absence of the National Association of Insurance Commissioners or such successor, any other association, agency or organisation performing advisory, coordination or other similar functions among insurance departments, insurance commissioners and similar Governmental Authorities of the various states of the United States with the goal of promoting uniformity in the practices of such Governmental Authorities.

Participating Member State means any member state of the European Communities that adopts or has adopted the euro as its lawful currency in accordance with legislation of the European Community relating to Economic and Monetary Union.

Party means a party to this Agreement.

Paying Agent means the paying agent under the Acquisition Agreement.

PBGC means the US Pension Benefit Guaranty Corporation, or any entity succeeding to all or any of its functions under ERISA.

Permitted Disposal means any sale, lease, licence, transfer or other disposal permitted by Clause 23.27 (*Intra-Group transactions*) or which is not an intra-Group transaction and is on arm's length terms:

- (a) of cash made by any member of the Group in the ordinary course of trading of the disposing entity;
- (b) of Cash Equivalent Investments for cash or in exchange for other Cash Equivalent Investments;
- (c) arising as a result of any Permitted Security;
- (d) of shares in PointSure Insurance Services, Inc. or Paladin Managed Care Services to any third party; and
- (e) of policy renewal rights held by a member of the Target Group to any third party.

Permitted Distribution means

- (a) a Target Distribution;
- (b) the payment of a dividend, the making of a loan or the movement of cash by way of a share buyback by the Borrower, in each case, declared as a result of the receipt of a Target Distribution into the Holding Account provided the following conditions are satisfied:
 - (i) the Borrower's obligations under Clause 8.2 (*Disposal, Insurance, Acquisition Proceeds and Target Distributions*) have been complied with in full;
 - (ii) no Default is continuing at the time such dividend is to be paid or would occur if such dividend is paid;
 - (iii) at the time the relevant dividend is to be paid no circumstances exist such that (in the opinion of the Agent) on the publication of any accounts by reference to which Net Surplus Cover in Clause 22.2 (*Financial condition*) is calculated, there would be a breach of that financial covenant on its next following test date if the dividend was paid;
 - (iv) the Borrower has given the Agent not less than 5 Business Days' written notice of the Borrower's intention to pay the proposed dividend and has at the same time delivered to the Agent a certificate signed by a duly authorised officer of the Borrower certifying that (1) he is not aware of any Default which is continuing or of any Default which is likely to occur on or prior to

the anticipated date of payment and (2) containing calculations to show that the Net Surplus Cover financial covenant in Clause 22.2 (*Financial condition*) will be complied with following the payment of the proposed dividend on the next following test date; and

- (v) the Agent shall not have (1) objected to the payment of such dividend before the expiry of the 5 Business Day notice period referred to in paragraph (iv) above because any of the conditions for payment under this paragraph (b) has not been met or (2) requested reasonable further information to establish whether the conditions established by this definition are met. If the Agent objects, it shall state which conditions of this paragraph (b) it does not consider to have been satisfied, in which case the Borrower shall not pay the proposed dividend unless (in the case of a breach of the Net Surplus Cover financial covenant) it obtains a certificate from the Auditors confirming to the Agent that in their opinion the financial conditions necessary to allow the payment of the relevant dividend have been satisfied, or in the case of any other Default the Agent becomes satisfied that the conditions for payment under this paragraph (b) have been met; and

(c) the payment of a dividend to the Target or its wholly-owned Subsidiaries,

provided that no such Target Distribution, payment, distribution or other action detailed in paragraphs (a) or (b) above will be permitted at any time after the occurrence of a Default which is continuing.

Permitted Financial Indebtedness means Financial Indebtedness arising under:

- (a) a Permitted Loan;
- (b) a Permitted Guarantee;
- (c) any Finance Document;
- (d) subject to Clause 23.38 (*US Surplus Notes*), the US Surplus Notes; or
- (e) any letters of credit existing at the date of this Agreement put in place for reinsurance purposes and secured through cash collateral provided by the Target Group.

Permitted Guarantee means

- (a) any guarantee of Permitted Financial Indebtedness which is referred to in the definition of, or otherwise constitutes, Permitted Financial Indebtedness provided that Clause 23.27 (*Intra-Group transactions*) is complied with; or
- (b) any guarantee given in respect of the netting or set-off arrangements permitted pursuant to paragraph (a) of the definition of Permitted Security,

provided that no new guarantee will be permitted at any time after the occurrence of a Default which is continuing.

Permitted Loan means

- (a) Financial Indebtedness which is referred to in the definition of, or otherwise constitutes, Permitted Financial Indebtedness provided Clause 23.27 (*Intra-Group transactions*) is complied with; or

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- (b) any loan permitted by Clause 23.27 (*Intra-Group transactions*); or
 - (c) any loan invested pursuant to Clause 22.4 (*Equity cure- Regulatory Cover*) or Clause 22.5 (*Equity cure- Net Surplus Cover*).

Permitted Payment means a payment of fees on arms' length terms by any member of the Group to any Subsidiary of Enstar that is not a member of the Group for management services up to a maximum aggregate amount of all such payments not exceeding:

- (a) in 2013, US\$9,560,000;
- (b) in 2014, US\$6,754,000;
- (c) in 2015, US\$4,172,000; and
- (d) in 2016, US\$2,454,000,

provided that no such payment will be permitted at any time after the occurrence of a Default which is continuing.

Permitted Security means

- (a) any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of members of the Group but only so long as (1) such arrangement does not permit credit balances of Obligors to be netted or set-off against debit balances of members of the Group which are not Obligors and (2) such arrangement does not give rise to other Security over the assets of Obligors in support of liabilities of members of the Group which are not Obligors;
- (b) any Quasi Security arising as a result of a disposal which is a Permitted Disposal;
- (c) any Transaction Security;
- (d) any lien arising by operation of law and in the ordinary course of trading and not as a result of any default or omission by any member of the Group;
- (e) any Security or Quasi-Security over or affecting any asset acquired by a member of the Group after the date of this Agreement if:
 - (i) the Security or Quasi-Security was not created in contemplation of the acquisition of that asset by a member of the Group;
 - (ii) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by a member of the Group; and
 - (iii) the Security or Quasi-Security is removed or discharged within 3 months of the date of acquisition of such asset;
- (f) any Security or Quasi-Security over or affecting any asset of any company which becomes a member of the Group after the date of this Agreement, where the Security or Quasi-Security is created prior to the date on which that company becomes a member of the Group if:
 - (i) the Security or Quasi-Security was not created in contemplation of the acquisition of that company;

- (ii) the principal amount secured has not increased in contemplation of or since the acquisition of that company; and
 - (iii) the Security or Quasi-Security is removed or discharged within 3 months of that company being a member of the Group; and
- (g) any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group.

Permitted Share Issue means an issue of shares:

- (a) by a member of the Group (other than the Borrower) which is a Subsidiary to its immediate Holding Company to the extent permitted by Clause 23.27 (*Intra-Group Transactions*) and where (if the existing shares of the Subsidiary are the subject of the Transaction Security) the newly-issued shares also become subject to the Transaction Security on the same terms provided that no such issue of shares will be permitted at any time after the occurrence of a Default which is continuing; or
- (b) by the Borrower to the Shareholder where the proceeds of such share issue are applied to remedy a breach of the Regulatory Cover or the Net Surplus Cover financial covenant in Clause 22.2 (*Financial condition*) pursuant to Clause 22.4 (*Equity cure- Regulatory Cover*) or Clause 22.5 (*Equity cure- Net Surplus Cover*).

Permitted Transaction means:

- (a) any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security or Quasi-Security given, or other transaction arising, under the Finance Documents; or
- (b) transactions (other than (i) any sale, lease, licence, transfer or other disposal; and (ii) the granting or creation of Security, the incurring or permitting to subsist of Financial Indebtedness or the disposal of the shares of any member of the Group), conducted in the ordinary course of trading on arm's length terms,

provided that no such disposal, transaction or other action detailed in paragraphs (a) or (b) above that is not already existing will be permitted at any time after the occurrence of a Default which is continuing.

Quarter Date has the meaning given to that term in Clause 22.1 (*Financial definitions*).

Quarterly Financial Statement has the meaning given to that term in Clause 21 (*Information Undertakings*).

Quasi-Security has the meaning given to that term in Clause 23.12 (*Negative pledge*).

Quotation Day means, in relation to any period for which an interest rate is to be determined, two Business Days before the first day of that period, unless market practice differs in the London interbank market for a currency, in which case the Quotation Day for that currency will be determined by the Agent in accordance with market practice in the London interbank market (and if quotations would normally be given by leading banks in the London interbank market on more than one day, the Quotation Day will be the last of those days).

Rating Agency means Standard & Poor's Rating Services or other equivalent internationally recognised statistical rating organisation.

Receiver means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property.

Reference Banks means National Australia Bank Limited, Barclays Bank PLC and such other banks as may be appointed by the Agent in consultation with the Borrower.

Regulated Insurance Entity means any member of the Target Group which:

- (a) operates in the insurance industry; and
- (b) is regulated by the relevant supervisory or regulatory body in the insurance market(s) in which it operates.

Regulations T, U and X means, respectively, Regulations T, U and X of the Board of Governors of the Federal Reserve System of the United States (or any successor) as now and from time to time in effect from the date of this Agreement.

Regulatory Cover has the meaning given to it in Clause 22.1 (*Financial definitions*).

Related Fund in relation to a fund (**first fund**), means a fund which is managed or advised by the same investment manager or adviser as the first fund or, if it is managed by a different investment manager or adviser, a fund whose investment manager or adviser is an Affiliate of the investment manager or adviser of the first fund.

Relevant Jurisdiction means, in relation to an Obligor:

- (a) its jurisdiction of incorporation;
- (b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated;
- (c) any jurisdiction where it conducts its business; and
- (d) the jurisdiction whose laws govern the perfection of any of the Transaction Security Documents entered into by it.

Relevant Period has the meaning given to that term in Clause 22.1 (*Financial definitions*).

Repeating Representations means each of the representations set out in Clauses 20.2 (*Status*) to 20.7 (*Governing law and enforcement*), Clause 20.10 (*No default*), paragraph 20.11.6 of Clause 20.11 (*No misleading information*), Clause 20.12 (*Original Financial Statements*), Clauses 20.17 (*Ranking*) to 20.19 (*Legal and beneficial ownership*) and Clause 20.31 (*Pensions*).

Representative means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

Report means the InsurMath report entitled "Actuarial Comments on SeaBright", in form and substance satisfactory to the Agent and capable of being relied upon by the Secured Parties.

SAP means, as to the Target Group, the statutory accounting practices prescribed or permitted by its Insurance Regulator.

Screen Rate means the rate of interest per annum for deposits in US Dollars and the relevant interest period which appears on Reuters screen LIBOR01 Page. If the agreed page is replaced or service ceases to be available, the Agent may specify another page or service displaying the appropriate rate after consultation with the Borrower and the Lenders.

SEC means the United States Securities and Exchange Commission or any successor thereto.

Secured Parties means each Finance Party from time to time party to this Agreement, any Receiver or Delegate.

Security means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

Security Agent means National Australia Bank Limited in its capacity as security agent and trustee for the other Finance Parties under this Agreement and the Transaction Security Documents and any Additional Security Agent or Delegate appointed by it in accordance with the terms of this Agreement.

Selection Notice means a notice substantially in the form set out in Part 2 of Schedule 3 (*Requests*) given in accordance with Clause 11 (*Interest periods*).

Shareholder means Enstar Investments Inc., a company incorporated under the laws of the State of Delaware, United States of America with registered number 3687413 and its, or any subsequent successors, assigns or transferees.

Specified Time means a time determined in accordance with Schedule 9 (*Timetables*).

Sterling and **£** means the lawful currency of the UK.

Subordination Deed means the subordination deed dated on or about the date of this Agreement between, inter alia, the Shareholder, the Original Obligors and the Agent.

Subsidiary means an entity of which a person:

- (a) has direct or indirect Control; or
- (b) owns directly or indirectly more than fifty per cent. (50%) of the share capital or similar right of ownership; or
- (c) is entitled to receive more than fifty per cent. (50%) of the dividends or distributions,

and any entity (whether or not so controlled) treated as a subsidiary in the latest financial statements of that person from time to time.

Syndication Date means any day on which an Arranger confirms that the primary syndication of the Facility has been completed.

Target means SeaBright Holdings, Inc, a company incorporated under the laws of the State of Delaware, United States of America with Tax ID Number 56-2393241.

Target Distribution means:

- (a) the payment of a dividend, the making of a loan or the movement of cash by way of a share buyback by a member of the Target Group to the Target; and/or
- (b) the payment (or subsequent payment) of a dividend, the making of a loan or the movement of cash by way of a share buyback by the Target to the Borrower,

where, in each case, it is deposited in the Mandatory Prepayment Account and the amount has been notified to the Agent in advance. For the avoidance of doubt it shall not be necessary to deposit into the Mandatory Prepayment Account a Target Distribution if it is excluded from the payment waterfall set out in sub-clause 8.2.2(d) of Clause 8.2 (*Disposal, Insurance, Acquisition Proceeds and Target Distributions*) pursuant to sub-clause 8.2.3 of Clause 8.2 (*Disposal, Insurance, Acquisition Proceeds and Target Distributions*).

Target Group means the Target and its Subsidiaries.

Target Shares means all of the issued shares of the Target.

Tax means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

Termination Date means the date falling four years from the date of this Agreement.

Total Commitments means the aggregate of the Commitments, being US\$111,000,000 at the date of this Agreement.

Transaction Documents means the Finance Documents, the Acquisition Documents and the Constitutional Documents of the Borrower.

Transaction Security means the Security created or expressed to be created in favour of the Security Agent pursuant to the Transaction Security Documents.

Transaction Security Documents means each of the documents listed under paragraph 2.4 of part 1A of Schedule 2 (*Conditions Precedent*) and any original documents of title to be provided under the Transaction Security Documents and required to be delivered to the Agent under Schedule 2 (*Conditions Precedent*) together with any other document entered into by any Obligor creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Obligors under any of the Finance Documents.

Transfer Certificate means a certificate substantially in the form set out in Schedule 5 (*Form of Transfer Certificate*) or any other form agreed between the Agent and the Borrower.

Transfer Date means, in relation to an assignment or transfer, the later of:

- (a) the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and
- (b) the date on which the Agent executes the relevant Assignment Agreement or Transfer Certificate.

Treasury Transactions means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price.

UK means the United Kingdom of Great Britain and Northern Ireland.

Unfunded Pension Liability means the excess of an Employee Plan's benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that plan's assets, determined in accordance with the assumptions used for funding the Employee Plan pursuant to Section 430 of the Code for the applicable plan year.

Unpaid Sum means any sum due and payable but unpaid by an Obligor under the Finance Documents.

US and United States means the United States of America, its territories, possessions and other areas subject to the jurisdiction of the United States of America.

US Dollars or **US\$** means the lawful currency of the United States of America.

US Surplus Notes means the Floating Rate Surplus Notes due 2034 issued by SeaBright Insurance Company on 26 May 2004 in the principal amount of US\$12,000,000.

Utilisation Date means the date on which a Loan is made.

Utilisation Request means a notice substantially in the relevant form set out in Schedule 3 (*Requests*).

VAT means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature payable in the United States or any other jurisdiction.

Voting Stock means capital stock issued by a corporation, or equivalent interests in any other person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such person, even if the right so to vote has been suspended by the happening of such a contingency.

1.2

Construction

1.2.1

Unless a contrary indication appears, a reference in this Agreement to:

- (a) the **Borrower**, the **Agent**, any **Arranger**, any **Finance Party**, any **Lender**, any **Obligor**, any **Party**, any **Secured Party**, the **Security Agent** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees and, in the case of the Security Agent, any person or persons for the time being appointed as Security Agent in accordance with this Agreement and in the case of the Borrower shall upon Completion include the Target;
- (b) a document in **agreed form** is a document which is previously agreed in writing by or on behalf of the Borrower and the Agent or, if not so agreed, is in the form specified by the Agent;
- (c) **assets** includes present and future properties, revenues and rights of every description;
- (d) a **Finance Document** or a **Transaction Document** or any other agreement or instrument is a reference to that Finance Document or Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated (in any case, however fundamentally);

- (e) **guarantee** means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- (f) **wholly owned subsidiary** means a company or corporation that has no members except for:
 - (i) another company or corporation and that other company's or corporation's wholly-owned subsidiaries; or
 - (ii) persons acting on behalf of that other company or corporation and that other company's or corporation's wholly-owned subsidiaries.
- (g) **including** and **in particular** shall not be construed restrictively but shall mean **including without prejudice to the generality of the foregoing** and **in particular, but without limitation** ;
- (h) **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (i) a **person** includes any individual, firm, company, corporation, government, state or agency of a state or any association, joint venture, trust or partnership (whether or not having separate legal personality) of two or more of the foregoing;
- (j) a **regulation** includes any regulation, rule, official directive, request, or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (k) a provision of law is a reference to that provision as amended or re-enacted and any subordinate legislation made under it; and
- (l) a time of day is a reference to London time.

1.3 Section, Clause and Schedule headings are for ease of reference only.

1.4 Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.

1.5 A Default (other than an Event of Default) is **continuing** if it has not been remedied or waived and an Event of Default is **continuing** if it has not been waived.

1.6 Any consent, waiver or approval required from a Finance Party under a Finance Document must be in writing and will be of no effect if not in writing.

1.7 Reference to a monetary sum specified in Sterling in Clause 19 (*Representations*), Clause 21 (*Information Undertakings*), Clause 22 (*Financial Covenants*), Clause 23 (*General Undertakings*) and/or Clause 24 (*Events of Default*) shall be deemed to include reference to the Base Currency Equivalent of such sum.

1.8 **Third Party Rights**

1.8.1 Unless expressly provided to the contrary in a Finance Document a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (**Third Parties Act**) to enforce or enjoy the benefit of any term of this Agreement.

1.8.2 Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

2 **The Facility**

2.1 **The Facility**

The Lenders make available to the Borrower a term loan facility in an aggregate amount equal to the Total Commitments.

2.2 **Finance Parties' rights and obligations**

2.2.1 The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.

2.2.2 The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor shall be a separate and independent debt.

2.2.3 A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

2.3 **Obligors' Agent**

2.3.1 Each Obligor (other than the Borrower) by its execution of this Agreement or an Accession Letter irrevocably appoints the Borrower to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:

- (a) the Borrower on its behalf to supply all information concerning itself contemplated by the Finance Documents to the Finance Parties and to give all notices and instructions, to execute on its behalf any Accession Letter, to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Obligor notwithstanding that they may affect that Obligor, without further reference to or the consent of that Obligor; and
- (b) each Finance Party to give any notice, demand or other communication to that Obligor pursuant to the Finance Documents to the Borrower,

and in each case that Obligor shall be bound as though that Obligor itself had given the notices and instructions or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

2.3.2 Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice or other communication given or made by the Obligors' Agent or given to the Obligors' Agent under any Finance Document on behalf of another Obligor or in connection with any Finance Document (whether or not known to any other Obligor and whether occurring before or after such other

Obligor became an Obligor under any Finance Document) shall be binding for all purposes on that Obligor as if that Obligor had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of the Obligor's Agent and any other Obligor, those of the Obligor's Agent shall prevail.

3 Purpose

3.1 **Purpose**

The Borrower shall apply all amounts borrowed by it under the Facility towards:

3.1.1 depositing with the Paying Agent an amount from the Facility not exceeding US\$111,000,000 in relation to the purchase of the Target Shares under the Acquisition Agreement provided that such amount equates to no more than 50% of the aggregate purchase price of the Target Shares (excluding fees and other expenses) as at the First Utilisation Date; and

3.1.2 paying the upfront fee payable pursuant to Clause 13.2 (*Upfront fee*).

3.2 **Monitoring**

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4 **Conditions of Loans**

4.1 **Initial conditions precedent**

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to any Loan if, on or before the Utilisation Date for that Loan, the Agent has received all of the documents and other evidence listed in Part 1 of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Agent. The Agent shall notify the Borrower and the Lenders in writing promptly upon being so satisfied.

4.2 **Further conditions precedent**

Subject to Clause 4.1 (*Initial conditions precedent*), the Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (a) all the representations and warranties in Clause 20 (*Representations*) (other than Clause 20.11 (*No misleading information*) which are made on the First Utilisation Date only) are true; and
- (b) none of the events described in Clause 12.2 (*Market disruption*) has occurred which has resulted in any Lender being unable to fund its participation in the proposed Loan.

4.3 **Maximum number of Loans**

4.3.1 The Borrower may not deliver a Utilisation Request if as a result of the proposed Loan more than one Loan would be outstanding.

4.3.2 The Borrower may not request that a Loan be divided.

5 **Loans**

5.1 **Delivery of a Utilisation Request**

The Borrower may utilise the Facility by delivery to the Agent of a duly completed Utilisation Request not later than the Specified Time.

5.2 **Completion of a Utilisation Request for Loans**

5.2.1 Each Utilisation Request for a Loan is irrevocable and will not be regarded as having been duly completed unless:

- (a) the proposed Utilisation Date is a Business Day within the Availability Period;
- (b) the currency and amount of the Loan comply with Clause 5.3 (*Currency*); and
- (c) the proposed Interest Period complies with Clause 11 (*Interest Periods*).

5.2.2 Only one Loan may be requested in each Utilisation Request.

5.3 **Currency**

The currency specified in a Utilisation Request must be US Dollars.

5.4 **Lenders' participation**

5.4.1 If the conditions set out in this Agreement have been met, each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.

5.4.2 The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.

5.5 **Cancellation of Commitment**

The Total Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period.

6 **Repayment**

The Borrower shall repay the Loan in full on the Termination Date.

7 **Illegality, Voluntary Prepayment and Cancellation**

7.1 **Illegality**

If it becomes unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in any Loan:

- (a) that Lender, shall promptly notify the Agent upon becoming aware of that event;
- (b) upon the Agent notifying the Borrower, the Commitment of that Lender will be immediately cancelled; and
- (c) the Borrower shall repay that Lender's participation in the Loans made to the Borrower on the last day of the Interest Period for each Loan occurring after the Agent has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law).

7.2 **Voluntary cancellation**

Subject to Clause 7.3 (*Voluntary prepayment of Loans*) the Borrower may, if it gives the Agent not less than seven Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of US\$5,000,000) of the Available Facility. Any cancellation under this Clause 7.2 shall reduce the Commitments of the Lenders rateably.

7.3 **Voluntary prepayment of Loans**

7.3.1 The Borrower may, if it gives the Agent not less than seven Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of a Loan as specified in the relevant notice (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of US\$5,000,000 or its equivalent).

7.3.2 A Loan may only be prepaid after the last day of the Availability Period (or, if earlier, the day on which the applicable Available Facility is zero).

7.4 **Right of cancellation and repayment in relation to a single Lender**

7.4.1 If:

- (a) any sum payable to any Lender by an Obligor is required to be increased under Clause 14.2 (*Tax gross-up*);
- (b) any Lender claims indemnification from the Borrower or an Obligor under Clause 14.3 (*Tax indemnity*) or Clause 15.1 (*Increased costs*); or
- (c) any FATCA Protected Lender notifies the Agent of a FATCA Event pursuant to Clause 7.5 (*Mandatory repayment and cancellation of FATCA Protected Lenders*),

the Borrower may, whilst the circumstance giving rise to the requirement or indemnification or FATCA Event continues, give the Agent notice of cancellation of the Commitment of that Lender and its intention to procure the repayment of that Lender's participation in the Loans.

7.4.2 On receipt of a notice referred to in Clause 7.4.1 above in relation to a Lender, the Commitment of that Lender shall immediately be reduced to zero.

7.4.3 On the last day of each Interest Period which ends after the Borrower has given notice under Clause 7.4.1 above in relation to a Lender (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay that Lender's participation in that Loan together with all interest and other amounts accrued under the Finance Documents.

7.5 **Mandatory repayment and cancellation of FATCA Protected Lenders**

If on the date falling six months before the earliest FATCA Application Date for any payment by a Party to a FATCA Protected Lender (or to the Agent for the account of that Lender), that Lender is not a FATCA Exempt Party and, in the opinion of that Lender (acting reasonably), that Party will, as a consequence, be required to make a FATCA Deduction from a payment to that Lender on or after that FATCA Application Date (a **FATCA Event**):

- (a) that Lender shall, reasonably promptly after that date, notify the Agent of that FATCA Event and the relevant FATCA Application Date; and
- (b) if, on the date falling one month before such FATCA Application Date, that Lender has not been repaid or replaced pursuant to Clause 7.4 (*Right of replacement or repayment and cancellation in relation to a single Lender*):
 - (i) that Lender may, at any time between one month and two weeks before such FATCA Application Date, notify the Agent;
 - (ii) upon the Agent notifying the Borrower, the Commitment of that Lender will be immediately cancelled; and
 - (iii) the Borrower shall repay that Lender's participation in the Loan on the last day of the Interest Period occurring after the Agent has notified the Borrower or, if earlier, the last Business Day before the relevant FATCA Application Date.

8 **Mandatory Prepayment**

8.1 **Exit**

8.1.1 For the purpose of this Clause 8.1:

Flotation : means

- (a) a successful application being made for the admission of any part of the share capital of any member of the Group (or Holding Company of any member of the Group other than Enstar) to the Official List of the UK Listing Authority or any equivalent in another country and the admission of any part of the share capital of any member of the Group (or Holding Company of any member of the Group other than Enstar or any of its Holding Companies) to trading on the London Stock Exchange plc or any equivalent in another country; or
- (b) the grant of permission to deal in any part of the issued share capital of any member of the Group (or Holding Company of any member of the Group other than Enstar or any of its Holding Companies) on the Alternative Investment Market or the European Acquisition of Securities Dealers Automated Quotation System or on any recognised investment exchange (as that term is used in the Financial Services and Markets Act 2000) or in or on any exchange or market replacing the same or any other exchange or market in any country.

8.1.2 Upon the occurrence of:

- (a) any Flotation;
- (b) a Change of Control; or
- (c) the total of all outstanding Loans falling below US\$5,000,000 after the First Utilisation Date,

the Facility will be cancelled and all outstanding Loans, together with accrued interest, and all other amounts accrued under the Finance Documents, shall become immediately due and payable.

8.2 **Disposal, Insurance, Acquisition Proceeds and Target Distributions**

8.2.1 For the purposes of Clauses 8.3 (*Application of mandatory prepayments*) and Clause 8.4 (*Mandatory Prepayment Accounts and Holding Accounts*):

Acquisition Proceeds : means the proceeds of a claim against (**Recovery Claim**) the provider of any Report (in its capacity as a provider of that Report) except for Excluded Acquisition Proceeds, and after deducting:

- (a) any reasonable expenses which are incurred by any member of the Group to persons who are not members of the Group; and
- (b) any Tax incurred and required to be paid by a member of the Group (as reasonably determined by the relevant member of the Group on the basis of existing rates and taking into account any available credit, deduction or allowance),

in each case in relation to that Recovery Claim.

Disposal : means a sale, lease, licence, transfer, loan or other disposal by a person of any asset, undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions).

Disposal Proceeds : means the consideration receivable by any member of the Group (including any amount receivable in repayment of intercompany debt) for any Disposal made by any member of the Group except for Excluded Disposal Proceeds and after deducting:

- (a) any reasonable expenses which are incurred by any member of the Group with respect to that Disposal to persons who are not members of the Group; and
- (b) any Tax incurred and required to be paid by the seller in connection with that Disposal (as reasonably determined by the seller, on the basis of existing rates and taking account of any available credit, deduction or allowance).

Excluded Acquisition Proceeds : means any proceeds of a Recovery Claim which the Borrower notifies the Agent are, or are to be, applied:

- (a) to satisfy (or reimburse a member of the Group which has discharged) any liability, charge or claim upon a member of the Group by a person which is not a member of the Group; or
- (b) in the replacement, reinstatement and/or repair of assets of members of the Group which have been lost, destroyed or damaged,

in each case as a result of the events or circumstances giving rise to that Recovery Claim, if those proceeds are so applied as soon as possible (but in any event within 180 days, or such longer period as the Majority Lenders may agree) after receipt.

Excluded Disposal Proceeds : means Disposal Proceeds which have been derived from a Disposal permitted by Clause 23.27 (*Intra-Group transactions*) or of a type described in paragraphs (a) or (b) or (c) (but only if and to the extent that such Disposal is in exchange for other Cash Equivalent Investments) of the definition of **Permitted Disposal** .

Excluded Insurance Proceeds : means any proceeds of an insurance claim which the Borrower notifies the Agent are, or are to be, applied:

- (a) to meet a third party claim; or
- (b) in amelioration of the loss in respect of which the relevant insurance claim was made,

in each case as soon as possible (but in any event within 180 days, or such longer period as the Majority Lenders may agree) after receipt.

Insurance Proceeds : means the proceeds of any insurance claim received by any member of the Group except for Excluded Insurance Proceeds and after deducting any reasonable expenses in relation to that claim which are incurred by any member of the Group to persons who are not members of the Group.

8.2.2 The Borrower shall prepay Loans in the following amounts at the times and in the order of application contemplated by Clause 8.3 (*Application of mandatory prepayments*):

- (a) the amount of Acquisition Proceeds;
- (b) the amount of Disposal Proceeds;
- (c) the amount of Insurance Proceeds; and
- (d) subject to Clause 8.2.3 below:
 - (i) if the total of all outstanding Loans is equal to or exceeds US\$55,500,000, the amount of all Target Distributions; or
 - (ii) if the total of all outstanding Loans is less than US\$55,500,000, the amount equal to the percentage of Target Distribution proceeds as set out in the second column below when the Net Surplus Cover ratio in Clause 22.2 (*Financial Condition*) is as specified in the first column below (as demonstrated in the most recent Compliance Certificate delivered to the Agent pursuant to Clause 21.3 (*Provision and contents of Compliance Certificate*)).

<u>Net Surplus Cover ratio</u>	Percentage of Target Distribution proceeds to be applied in prepayment of the Facility
Less than or equal to 2.50:1	100%
Greater than 2.50:1 but less than or equal to 3.00:1	75%
Greater than 3.00:1	50%

8.2.3 Notwithstanding any other provision of this Agreement, the first US\$28,000,000 of Target Distribution proceeds realised following the date of this Agreement shall be excluded from the prepayment waterfalls set out in Clause 8.2.2(d) above if:

- (a) such Target Distribution proceeds are received within three months of the Closing Date; and

- (b) no Default is continuing at such time as the Target Distribution proceeds are received or is likely to result from such Target Distribution proceeds being received.

8.3 **Application of mandatory prepayments**

8.3.1 A prepayment made under Clause 8.2 (*Disposal, Insurance, Acquisition Proceeds and Target Distributions*) shall:

- (a) be applied in prepayment of Loans as contemplated in Clauses 8.3.1(b) to 8.3.3 inclusive below; and
(b) unless the Borrower makes an election under Clause 8.3.2 below, be applied in prepayment of the Loans within 5 Business Days of receipt of such proceeds or Target Distribution.

8.3.2 Subject to Clause 8.3.3 below, the Borrower may elect that any prepayment under Clause 8.2 (*Disposal, Insurance, Acquisition Proceeds and Target Distributions*) be applied in prepayment of a Loan on the last day of the Interest Period relating to that Loan. If the Borrower makes that election then a proportion of the Loan equal to the amount of the relevant prepayment will be due and payable on the last day of its Interest Period.

8.3.3 If the Borrower has made an election under Clause 8.3.2 above but a Default has occurred and is continuing, that election shall no longer apply and a proportion of the Loan in respect of which the election was made equal to the amount of the relevant prepayment shall be immediately due and payable (unless the Majority Lenders otherwise agree in writing).

8.3.4 If the Borrower is not required to apply 100% of a Target Distribution in prepayment of the Facility under Clause 8.2.2(d)(ii) above then it may still apply up to 100% of such Target Distribution in prepayment of the Facility, and shall not be liable to pay a prepayment fee under Clause 9.3 (*Prepayment Fee*) in respect of such prepayment.

8.4 **Mandatory Prepayment Accounts and Holding Accounts**

8.4.1 The Borrower shall ensure that:

- (a) any Disposal Proceeds, Insurance Proceeds, Acquisition Proceeds and Target Distributions in respect of which the Borrower has made an election under Clause 8.3 (*Application of mandatory prepayments*) are paid into a Mandatory Prepayment Account as soon as reasonably practicable after receipt by a member of the Group; and
(b) Excluded Disposal Proceeds to be applied in replacement of assets, Excluded Insurance Proceeds and Excluded Acquisition Proceeds are paid into a Holding Account as soon as reasonably practicable after receipt by a member of the Group.

8.4.2 The Borrower irrevocably authorises the Agent to apply:

- (a) amounts credited to the Mandatory Prepayment Account; and
(b) amounts credited to the Holding Account which have not been duly applied as contemplated within 180 days of receipt of the relevant proceeds (or such longer time period as the Majority Lenders may agree),

to pay amounts due and payable under Clause 8.3 (*Application of mandatory prepayments*) and otherwise under the Finance Documents. The Borrower further irrevocably authorises the Agent to so apply amounts credited to the Holding Account in respect of Excluded Disposal Proceeds to be applied in replacement of assets whether or not 180 days have elapsed since receipt of those proceeds if a Default has occurred and is continuing. The Borrower also irrevocably authorises the Agent to transfer any amounts credited to the Holding Account referred to in this Clause 8.4.2 to the Mandatory Prepayment Account pending payment of amounts due and payable under the Finance Documents (but if all such amounts have been paid any such amounts remaining credited to the Mandatory Prepayment Account may (unless a Default is continuing) be transferred back to the Holding Account).

8.4.3 A Lender, Security Agent or Agent with which a Mandatory Prepayment Account or Holding Account is held acknowledges and agrees that (1) interest shall accrue at normal commercial rates offered by such Lender, Security Agent or Agent in Europe on amounts credited to those accounts and that the account holder shall be entitled to receive such interest (which shall be paid in accordance with the mandate relating to such account) unless a Default is continuing, and (2) each such account is subject to the Transaction Security.

8.4.4 If the Borrower is not required to apply 100% of a Target Distribution in prepayment of the Facility under Clause 8.2.2(d)(ii) (*Disposal, Insurance, Acquisition Proceeds and Target Distributions*) and does not apply the money towards prepayment in accordance with Clause 8.3.4 (*Application of mandatory prepayments*) then unless a Default is continuing the Borrower may withdraw such money from the Holding Account and apply such monies at its discretion.

8.5 **Excluded proceeds**

Where Excluded Acquisition Proceeds, Excluded Disposal Proceeds and Excluded Insurance Proceeds include amounts which are intended to be used for a specific purpose within a specified period (as set out in the relevant definition of Excluded Acquisition Proceeds, Excluded Disposal Proceeds or Excluded Insurance Proceeds), the Borrower shall ensure that those amounts are used for that purpose and shall promptly deliver a certificate to the Agent at the time of such application and at the end of such period confirming the amount (if any) which has been so applied within the requisite time periods provided for in the relevant definition.

9 **Restrictions**

9.1 **Notices of Cancellation or Prepayment**

Any notice of cancellation, prepayment, authorisation or other election given by any Party under Clause 7 (*Illegality, Voluntary Prepayment and Cancellation*), Clause 8.3 (*Application of mandatory prepayments*) or Clause 8.4 (*Mandatory Prepayment Accounts and Holding Accounts*) (subject to the terms of those Clauses) shall be irrevocable and, unless a contrary indication appears in this Agreement, any such notice shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

9.2 **Interest and other amounts**

Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any prepayment fee payable under Clause 9.3 (*Prepayment Fee*) and any Break Costs, without premium or penalty.

9.3 **Prepayment Fee**

In the event that all of the Loans are prepaid as a result of a refinancing with a third party funder or sale of one or more members of the Target Group on or before the first anniversary of the First Utilisation Date (other than under Clause 7.1 (*Illegality*), Clause 7.4 (*Right of repayment and cancellation in relation to a single Lender*), Clause 8.2 (*Disposal, Insurance, Acquisition Proceeds and Target Distributions*) except in the case of a sale of one or more members of the Target Group or Clause 24 (*Events of Default*)), the Borrower shall pay to the Agent for the account of the Lenders a fee computed at the rate of one per cent. (1%) of the amount prepaid. Any such fee will be paid on the same date as the prepayment which causes the fee to be payable.

9.4 **No Reborrowing of Facility**

The Borrower may not reborrow any part of the Facility which is repaid or prepaid.

9.5 **Prepayment in accordance with Agreement**

No Borrower shall repay or prepay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.

9.6 **No reinstatement of Commitments**

No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.

9.7 **Agent's receipt of Notices**

If the Agent receives a notice under Clause 7 (*Illegality, Voluntary Prepayment and Cancellation*) or an election under Clause 8.3 (*Application of mandatory prepayments*), it shall promptly forward a copy of that notice or election to either the Borrower or the affected Lender, as appropriate.

10 **Interest**

10.1 **Calculation of Interest**

The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is the aggregate of the applicable:

- (a) Margin;
 - (b) LIBOR; and
 - (c) Mandatory Cost, if any,
- (together the **Interest**).

10.2 **Payment of Interest**

The Borrower shall pay accrued interest on each Loan on the last day of each Interest Period (and, if the Interest Period is longer than six Months, on the dates falling at six Monthly intervals after the first day of the Interest Period).

- 10.3 Default interest**
- 10.3.1 If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the Unpaid Sum from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to Clause 10.3.2 below, is 1 per cent higher than the rate which would have been payable if the Unpaid Sum had, during the period of non-payment, constituted a Loan in the currency of the Unpaid Sum for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 10.3 shall be immediately payable by the Obligor on demand by the Agent.
- 10.3.2 If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
- (a) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
 - (b) the rate of interest applying to the overdue amount during that first Interest Period shall be 1 per cent higher than the rate which would have applied if the overdue amount had not become due.
- 10.3.3 Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.
- 10.4 Notification of rates of interest**
- The Agent shall promptly notify the Lenders and the Borrower of the determination of a rate of interest under this Agreement.
- 11 Interest Periods**
- 11.1 Selection of Interest Periods and Terms**
- 11.1.1 The Borrower may select an Interest Period for a Loan in the Utilisation Request for that Loan or (if the Loan has already been borrowed) in a Selection Notice.
- 11.1.2 Each Selection Notice for a Loan is irrevocable and must be delivered to the Agent by the Borrower not later than the Specified Time.
- 11.1.3 If the Borrower fails to deliver a Selection Notice to the Agent in accordance with Clause 11.1.2 above, the relevant Interest Period will be three Months.
- 11.1.4 Subject to this Clause 11, the Borrower may select an Interest Period of three or six Months or any other period agreed between the Borrower and the Agent (acting on the instructions of all the Lenders).
- 11.1.5 An Interest Period for a Loan shall not extend beyond the Termination Date.
- 11.1.6 Each Interest Period for a Loan shall start on the Utilisation Date or (if already made) on the last day of its preceding Interest Period.
- 11.2 Non-Business Days**
- If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

12 **Changes To The Calculation Of Interest**

12.1 **Absence of quotations**

Subject to Clause 12.2 (*Market disruption*), if LIBOR is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation by the Specified Time on the Quotation Day, the applicable LIBOR shall be determined on the basis of the quotations of the remaining Reference Banks.

12.2 **Market disruption**

12.2.1 If a Market Disruption Event occurs in relation to a Loan for any Interest Period, then the rate of interest on each Lender's share of that Loan for the Interest Period shall be the percentage rate per annum which is the sum of:

- (a) the applicable Margin;
- (b) the rate notified to the Agent by that Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to that Lender of funding its participation in that Loan from whatever source it may reasonably select; and
- (c) the Mandatory Cost, if any, applicable to that Lender's participation in the Loan.

12.2.2 In this Agreement **Market Disruption Event** means:

- (a) at or about noon on the Quotation Day for the relevant Interest Period the Screen Rate is not available and none or only one of the Reference Banks supplies a rate to the Agent to determine LIBOR for the relevant currency and Interest Period; or
- (b) before close of business in London on the Quotation Day for the relevant Interest Period, the Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed 30 per cent of that Loan) that the cost to it of obtaining matching deposits in the London Interbank market would be in excess of LIBOR.

12.3 **Alternative basis of interest or funding**

12.3.1 If a Market Disruption Event occurs and the Agent or the Borrower so requires, the Agent and the Obligors' Agent shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest.

12.3.2 Any alternative basis agreed pursuant to Clause 12.3.1 above shall, with the prior consent of all the Lenders and the Obligors' Agent, be binding on all Parties.

12.4 **Break Costs**

12.4.1 The Borrower shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by the Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.

12.4.2 Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

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- 13 **Fees**
- 13.1 **Commitment fee**
- 13.1.1 The Borrower shall pay to the Agent (for the account of each Lender) a fee in the Base Currency computed at the rate of one per cent. (1.00%) per annum on the daily undrawn and uncanceled amount of the Facility during the Availability Period.
- 13.1.2 The accrued commitment fee is payable on the last day of each successive period of three Months which ends during the Availability Period, on the last day of the Availability Period and on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.
- 13.2 **Upfront fee**
- The Borrower shall pay to the Arrangers an upfront fee in the amount, manner and at the times agreed in a Fee Letter.
- 13.3 **Agency fee**
- The Borrower shall pay to each of the Agent and the Security Agent (for their own account) an agency fee in the amount, manner and at the times agreed in a Fee Letter.
- 14 **Tax Gross Up And Indemnities**
- 14.1 **Definitions**
- 14.1.1 In this Agreement:
- (a) **Excluded Taxes** : means, with respect to any Finance Party or other recipient of a payment to be made by an Obligor, (a) any withholding tax imposed pursuant to U.S. Internal Revenue Code Sections 1471-74, and (b) in the case of a non-US Lender, any withholding tax that is imposed on amounts payable to such non-US Lender at the time such non-US Lender becomes a party hereto (or designates a new Facility Office), except to the extent that such non-US Lender (or its assignor, if any) was entitled, at the time of designation of a new Facility Office (or assignment), to receive additional amounts from an Obligor with respect to such withholding tax pursuant to Clause 14.2 (*Tax gross-up*). In this regard, it is the agreement and understanding of the Parties hereto that, under current law, the Borrower is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document to or for the benefit of any Original Lender, provided that such Original Lender provides a properly completed Internal Revenue Service Form W-8BEN with respect to its qualification for the benefit of the UK-US tax treaty or the Australia-US tax treaty (as applicable) as a financial institution and, at such time as Internal Revenue Code Sections 1471-74 become effective and would otherwise impose a withholding tax notwithstanding the UK-US tax treaty or the Australia-US tax treaty (as applicable), complies with applicable requirements, if any, for avoiding the imposition of withholding tax thereunder.
- (b) **Protected Party** : means a Finance Party which is or will be subject to any liability or required to make any payment for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

- (c) **Tax Credit** : means a credit against, relief or remission for, refund or repayment of, any Tax.
- (d) **Tax Deduction** : means a deduction or withholding for or on account of Tax from a payment under a Finance Document.
- (e) **Tax Payment** : means either the increase in a payment made by an Obligor to a Finance Party under Clause 14.2 (*Tax gross-up*) or a payment under Clause 14.3 (*Tax indemnity*).

14.1.2 Unless a contrary indication appears, in this Clause 14 a reference to **determines** or **determined** means a determination made in the absolute discretion of the person making the determination.

14.2 **Tax gross-up**

14.2.1 Each Obligor shall make all payments to be made by it under the Finance Documents without any Tax Deduction, other than a Tax Deduction for Excluded Taxes, unless a Tax Deduction is required by law.

14.2.2 The Borrower shall promptly upon becoming aware that an Obligor must make a Tax Deduction, other than a Tax Deduction for Excluded Taxes, (or that there is any change in the rate or the basis of a Tax Deduction that it must make) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall notify the Borrower and that Obligor.

14.2.3 If a Tax Deduction other than a Tax Deduction for Excluded Taxes is required by law to be made by an Obligor from any payment due from it under the Finance Documents, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

14.2.4 If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

14.2.5 Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

14.3 **Tax indemnity**

14.3.1 The Borrower shall (within three Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.

14.3.2

(a) Clause 14.3.1 above shall not apply:

- (i) with respect to any Finance Party or any other recipient of a payment to be made by or on account of any obligation of an Obligor hereunder, to:

- (A) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it, by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located;
 - (B) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which that Finance Party's Facility Office is located; or
- (ii) to the extent a loss, liability or cost, is compensated for by an increased payment under Clause 14.2 (*Tax gross-up*);
 - (iii) to the extent a loss, liability or cost relates to a FATCA Deduction required to be made by a Party.
- (b) A Protected Party making, or intending to make a claim under Clause 14.3.1 above, shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Borrower.
 - (c) A Protected Party shall, on receiving a payment from an Obligor under Clauses 14.3.1 to 14.3.2, notify the Agent.

14.4 **Tax Credit**

14.4.1 If an Obligor makes a Tax Payment and the relevant Finance Party determines that:

- (a) a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part or to that Tax Payment; and
- (b) that Finance Party has obtained, utilised and retained that Tax Credit, the Finance Party shall pay an amount to the Obligor which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Obligor.

14.5 **Stamp taxes**

The Borrower shall pay and, within three Business Days of demand, indemnify each Secured Party and the Arrangers against any cost, loss or liability such Secured Party or such Arranger incurs in relation to all stamp duty, registration, excise and other similar Taxes payable in respect of any Finance Document.

14.6 **Value added tax**

14.6.1 All consideration expressed to be payable under a Finance Document by any Party to a Finance Party shall be deemed to be exclusive of any VAT. Subject to Clause 14.6.2 below, if VAT is chargeable on any supply made by any Finance Party to any Party in connection with a Finance Document, that Party shall pay to the Finance Party (in addition to and at the same time as paying the consideration) an amount equal to the amount of the VAT (and such Finance party shall promptly provide an appropriate VAT invoice to such Party).

14.6.2 If VAT is chargeable on any supply made by any Finance Party (**Supplier**) to any other Finance Party (**Recipient**) in connection with a Finance Document, and any Party is required by the terms of any Finance Document to pay an amount equal to the consideration for such supply to the Supplier, such Party shall also pay to the Supplier (in addition to and at the same time as paying such amount) an amount equal to the amount of such VAT.

14.6.3 Where a Finance Document requires any Party to reimburse a Finance Party for any costs or expenses, that Party shall also at the same time pay and indemnify the Finance Party against all VAT incurred by the Finance Party in respect of the costs or expenses to the extent that the Finance Party reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of the VAT.

14.7 **FATCA Information**

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
- (i) confirm to that other Party whether it is:
 - (A) a FATCA Exempt Party; or
 - (B) not a FATCA Exempt Party; and
 - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA (including its applicable passthru percentage or other information required under the Treasury Regulations or other official guidance including intergovernmental agreements) as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA.
- (b) If a Party confirms to another Party pursuant to Clause 14.7(a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party promptly.
- (c) Paragraph (a) above shall not oblige any Finance Party to do anything which would or might in its reasonable opinion constitute a breach of:
- (i) any law or regulation;
 - (ii) any policy of that Finance Party;
 - (iii) any fiduciary duty; or
 - (iv) any duty of confidentiality.
- (d) If a Party fails to confirm its status or to supply forms, documentation or other information requested in accordance with paragraph (a) above (including, for the avoidance of doubt, where paragraph (c) above applies), then:
- (i) if that Party failed to confirm whether it is (and/or remains) a FATCA Exempt Party then such Party shall be treated for the purposes of the Finance Documents as if it is not a FATCA Exempt Party; and
 - (ii) if that Party failed to confirm its applicable passthru percentage then such Party shall be treated for the purposes of the Finance Documents (and payments made thereunder) as if its applicable passthru percentage is 100%,
- until (in each case) such time as the Party in question provides the requested confirmation, forms, documentation or other information.

14.8 **FATCA Deduction by Obligor**

- (a) If an Obligor is required to make a FATCA Deduction, that Obligor shall make that FATCA Deduction within the time allowed and in the minimum amount required by FATCA.
- (b) The Borrower shall promptly upon becoming aware that an Obligor must make a FATCA Deduction (or that there is any change in the rate or the basis of a FATCA Deduction) notify the Agent accordingly. Similarly, a Finance Party shall notify the Agent on becoming so aware in respect of a payment payable to that Finance Party. If the Agent receives such notification from a Finance Party it shall notify the Borrower and that Obligor.
- (c) Within thirty days of making either a FATCA Deduction or any payment required in connection with that FATCA Deduction, the Obligor making that FATCA Deduction shall deliver to the Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the FATCA Deduction has been made or (as applicable) any appropriate payment paid to the relevant governmental or taxation authority.

14.9 **FATCA Deduction by a Finance Party**

- (a) Each Finance Party may make any FATCA Deduction it is required by FATCA to make, and any payment required in connection with that FATCA Deduction, and no Finance Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction. A Finance Party which becomes aware that it must make a FATCA Deduction in respect of a payment to another Party (or that there is any change in the rate or the basis of such FATCA Deduction) shall notify that Party and the Agent.
- (b) The Agent shall promptly upon becoming aware that it must make a FATCA Deduction in respect of a payment to a Finance Party under Clause 30.2 (*Distributions by the Agent*) which relates to a payment by an Obligor (or that there is any change in the rate or the basis of such a FATCA Deduction) notify the Borrower, the relevant Obligor and the relevant Finance Party.

14.10 **Survival of Obligations**

Without prejudice to the survival of any other section of this Agreement, the agreements and obligations of each Obligor and each Finance Party contained in this Clause 14 shall survive the payment in full by the Obligors of all principal and interest here this Agreement until six (6) months after the expiry of the applicable statute of limitation with respect to the relevant Taxes and obligations related to them.

14.11 **Tax Shelter**

Notwithstanding anything to the contrary, it is hereby agreed that from the commencement of discussions with respect to transactions contemplated by this Agreement (**Transactions**), any party to this Agreement (and any employee, representative or other agent of any party to this Agreement) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transactions and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure.

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- 15 **Increased Costs**
- 15.1 **Increased costs**
- 15.1.1 Subject to Clause 15.3 (*Exceptions*) the Borrower shall, within three Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement.
- 15.1.2 In this Agreement **Increased Costs** : means
- (a) a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital;
 - (b) an additional or increased cost; or
 - (c) a reduction of any amount due and payable under any Finance Document,
- which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.
- 15.2 **Increased cost claims**
- 15.2.1 A Finance Party intending to make a claim pursuant to Clause 15.1 (*Increased costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Borrower.
- 15.2.2 Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.
- 15.3 **Exceptions**
- 15.3.1 Clause 15.1 (*Increased costs*) does not apply to the extent any Increased Cost is:
- (a)
 - (i) attributable to a Tax Deduction required by law to be made by an Obligor; or
 - (ii) attributable to a FATCA Deduction required to be made by a Party;
 - (b) compensated for by Clause 14.3 (*Tax indemnity*) (or would have been compensated for under Clause 14.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in Clause 14.3 (*Tax indemnity*) applied);
 - (c) compensated for by the payment of the Mandatory Cost; or
 - (d) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.
- 15.3.2 In this Clause 15 reference to a **Tax Deduction** has the same meaning given to the term in Clause 14.1 (*Definitions*).

- 16 **Indemnities**
- 16.1 **Currency indemnity**
- 16.1.1 If any sum due from an Obligor under the Finance Documents (**Sum**), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (**First Currency**) in which that Sum is payable into another currency (**Second Currency**) for the purpose of:
- (a) making or filing a claim or proof against that Obligor; or
 - (b) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,
 - (c) that Obligor shall as an independent obligation, within three Business Days of demand, indemnify the Arrangers and each other Secured Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (1) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (2) the rate or rates of exchange available to that person at the time of its receipt of that Sum.
- 16.1.2 Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.
- 16.2 **Other indemnities**
- 16.2.1 The Borrower shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify the Arrangers and each other Secured Party against any cost, loss or liability incurred by it as a result of:
- (a) the occurrence or continuance of any Default;
 - (b) a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 29 (*Sharing among the Finance Parties*);
 - (c) funding, or making arrangements to fund, its participation in a Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
 - (d) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.
- 16.2.2 The Borrower shall promptly indemnify each Finance Party, each Affiliate of a Finance Party and each officer or employee of a Finance Party or its Affiliate, against any cost, loss or liability incurred by that Finance Party or its Affiliate (or officer or employee of that Finance Party or Affiliate) in connection with or arising out of the Acquisition (whether or not completed) or the funding of the Acquisition (including but not limited to those incurred in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry concerning the Acquisition), unless such loss or liability is caused by the gross negligence or wilful misconduct of that Finance Party or its Affiliate (or employee or officer of that Finance Party or Affiliate). Any Affiliate or any officer or employee of a Finance Party or its Affiliate may rely on Clauses 16.2.1(c) to 16.2.1(d) subject to Clause 1.8 (*Third party rights*) and the provisions of the Third Parties Act.

16.3 **Indemnity to the Agent**

The Borrower shall promptly indemnify the Agent against any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:

- (a) investigating any event which it reasonably believes is a Default; or
- (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised.

16.4 **Indemnity to the Security Agent**

16.4.1 Each Obligor shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:

- (a) the taking, holding, protection or enforcement of the Transaction Security;
- (b) the exercise of any of the rights, powers, discretions and remedies vested in the Security Agent and each Receiver and Delegate by the Finance Documents or by law; and
- (c) any default by any Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents.

16.4.2 The Security Agent may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in Clause 16.4.1 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

17 **Mitigation By The Lenders**

17.1 **Mitigation**

17.1.1 Each Finance Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 14 (*Tax Gross Up and Indemnities*) or Clause 15.1 (*Increased costs*) or paragraph 3 of Schedule 4 (*Mandatory cost formula*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

17.1.2 Clause 17.1.1 above does not in any way limit the obligations of any Obligor under the Finance Documents.

17.2 **Limitation of liability**

17.2.1 The Borrower shall indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 17.1 (*Mitigation*).

17.2.2 A Finance Party is not obliged to take any steps under Clause 17.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

18 **Costs And Expenses**

18.1 **Transaction expenses**

The Borrower shall promptly on demand pay the Agent, the Arrangers and the Security Agent the amount of all costs and expenses (including legal fees and due diligence costs) reasonably incurred by any of them (and, in the case of the Security Agent, by any Receiver or Delegate) in connection with the negotiation, preparation, printing, execution, completion, syndication and perfection of:

- (a) this Agreement and any other documents referred to in this Agreement and the Transaction Security; and
- (b) any other Finance Documents executed after the date of this Agreement.

18.2 **Amendment costs**

If (a) an Obligor requests an amendment, waiver or consent or (b) an amendment is required pursuant to Clause 30.13 (*Change of currency*), the Borrower shall, within three Business Days of demand, reimburse each of the Agent and the Security Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by the Agent and the Security Agent (and, in the case of the Security Agent, by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

18.3 **Security Agent's ongoing costs**

18.3.1 In the event of (1) a Default; (2) the Security Agent considering it necessary or expedient or (3) the Security Agent being requested by an Obligor or the Majority Lenders to undertake duties which the Security Agent and the Borrower agree to be of an exceptional nature and/or outside the scope of the normal duties of the Security Agent under the Finance Documents, the Borrower shall pay to the Security Agent any additional remuneration that may be agreed between them.

18.3.2 If the Security Agent and the Borrower fail to agree upon the nature of the duties or upon any additional remuneration, that dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Borrower or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Borrower) and the determination of any investment bank shall be final and binding upon the parties to this Agreement.

18.4 **Enforcement and preservation costs**

The Borrower shall, within three Business Days of demand, pay to the Arrangers and each other Secured Party on a full indemnity basis the amount of all costs and expenses (including legal, valuation, accountancy and consulting fees and commission and out of pocket expenses) and any VAT thereon incurred by it in connection with the enforcement of or the preservation of or the release of any rights under any Finance Document or any of the documents referred to in such documents in any jurisdiction and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights.

19 **Guarantee and indemnity**

19.1 **Guarantee and indemnity**

19.1.1 **Each Guarantor irrevocably and unconditionally jointly and severally:**

- (a) guarantees to each Finance Party punctual performance by each other Obligor of all that Obligor's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever another Obligor does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of an Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 19 if the amount claimed had been recoverable on the basis of a guarantee.

19.2 **Continuing Guarantee**

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

19.3 **Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Guarantor under this Clause 19 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

19.4 **Waiver of defences**

The obligations of each Guarantor under this Clause 19 will not be affected by an act, omission, matter or thing which, but for this Clause 19, would reduce, release or prejudice any of its obligations under this Clause 19 (without limitation and whether or not known to it or any Finance Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;

- (e) any amendment, novation, supplement, extension restatement (however fundamental and whether or not more onerous) or replacement of a Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

19.5 **Guarantor Intent**

Without prejudice to the generality of Clause 19.4 (*Waiver of defences*), each Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

19.6 **Immediate recourse**

Each Guarantor waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Clause 19. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

19.7 **Appropriations**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, each Finance Party (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this Clause 19.

19.8 **Deferral of Guarantors' rights**

19.8.1 Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 19:

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;
- (d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under Clause 19.1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Obligor; and/or
- (f) to claim or prove as a creditor of any Obligor in competition with any Finance Party.

19.8.2 If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Finance Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Finance Parties and shall promptly pay or transfer the same to the Agent or as the Agent may direct for application in accordance with Clause 30 (*Payment mechanics*).

19.9 **Release of Guarantors' right of contribution**

If any Guarantor (a Retiring Guarantor) ceases to be a Guarantor in accordance with the terms of the Finance Documents for the purpose of any sale or other disposal of that Retiring Guarantor then on the date such Retiring Guarantor ceases to be a Guarantor:

- (a) that Retiring Guarantor is released by each other Guarantor from any liability (whether past, present or future and whether actual or contingent) to make a contribution to any other Guarantor arising by reason of the performance by any other Guarantor of its obligations under the Finance Documents; and
- (b) each other Guarantor waives any rights it may have by reason of the performance of its obligations under the Finance Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under any Finance Document or of any other security taken pursuant to, or in connection with, any Finance Document where such rights or security are granted by or in relation to the assets of the Retiring Guarantor.

19.10 **Additional security**

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Finance Party.

19.11 **Guarantee Limitations**

This guarantee does not apply to any liability to the extent that it would result in this guarantee constituting unlawful financial assistance within the meaning of sections 678 or 679 of the Companies Act 2006 or any equivalent and applicable provisions under the laws of the jurisdiction of incorporation of the relevant Guarantor and, with respect to any Additional Guarantor, is subject to any limitations set out in the Accession Deed applicable to such Additional Guarantor.

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- 20 **Representations**
- 20.1 **General**
- 20.1.1 Each Obligor makes the representations and warranties set out in this Clause 20 to each Finance Party in accordance with Clause 20.36 (*Times when representations made*).
- 20.1.2 In relation to the representations and warranties made on the date of this Agreement and any other date on or before the Closing Date, it is assumed that Completion has occurred and the Borrower has the full knowledge of the senior management of the Target.
- 20.2 **Status**
- 20.2.1 It and each of its Subsidiaries is a corporation, duly incorporated, validly existing and (to the extent applicable) in good standing under the law of its jurisdiction of incorporation.
- 20.2.2 It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.
- 20.3 **Binding obligations**
- Subject to the Legal Reservations:
- (a) the obligations expressed to be assumed by it in each Transaction Document to which it is a party are legal, valid, binding and enforceable obligations; and
- (b) (without limiting the generality of paragraph (a) above), each Transaction Security Document to which it is a party creates the security interests which that Transaction Security Document purports to create and those security interests are valid and effective.
- 20.4 **Non-conflict with other obligations**
- The entry into and performance by it of, and the transactions contemplated by, the Transaction Documents and the granting of the Transaction Security do not and will not conflict with:
- (a) any law or regulation applicable to it;
- (b) the constitutional documents of any member of the Group; or
- (c) any agreement or instrument binding upon it or any member of the Group or any member of the Group's assets or constitute a default or termination event (however described) under any such agreement or instrument or would result in any liability on the part of a Finance Party to any third party or require the creation of any security interest over any asset in favour of a third party.
- 20.5 **Power and authority**
- 20.5.1 It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Transaction Documents to which it is or will be a party and the transactions contemplated by those Transaction Documents.

- 20.5.2 No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Transaction Documents to which it is a party.
- 20.6 **Validity and admissibility in evidence**
- 20.6.1 All Authorisations required:
- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party; and
 - (b) to make the Transaction Documents to which it is a party admissible in evidence in its Relevant Jurisdictions, have been obtained or effected and are in full force and effect except any Authorisation referred to in Clause 20.9 (*No filing or stamp taxes*), which Authorisations will be promptly obtained or effected as soon as practicable after the date of this Agreement.
- 20.6.2 All Authorisations necessary for the conduct of the business, trade and ordinary activities of members of the Group have been obtained or effected and are in full force and effect and are not likely to be revoked or materially adversely amended and no notice of an intention to terminate any such Authorisation has been received by any member of the Group.
- 20.7 **Governing law and enforcement**
- 20.7.1 The law expressed to be the governing law in each Finance Document will be recognised and enforced in the Relevant Jurisdictions of each Obligor executing that Finance Document.
- 20.7.2 Any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its Relevant Jurisdictions.
- 20.8 **Insolvency**
- No:
- (a) corporate action, legal proceeding or other procedure or step described in Clause 24.7 (*Insolvency proceedings*); or
 - (b) creditors' process described in Clause 24.8 (*Creditors' process*),
- has been taken or, to the knowledge of the Borrower, threatened in relation to a member of the Group; and none of the circumstances described in Clause 24.6 (*Insolvency*) applies to any member of the Group.
- 20.9 **No filing or stamp taxes**
- Under the laws of its Relevant Jurisdiction it is not necessary that any Finance Document be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents except any filing, recording or enrolling or any tax or fee payable in relation to any Transaction Security Documents which are referred to in any Legal Opinion and which will be made or paid promptly after the date of the relevant Finance Document.

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- 20.10 **No default**
- 20.10.1 No Event of Default and, on the date of this Agreement and the First Utilisation Date, no Default is continuing or is reasonably likely to result from the making of any Loan or the entry into, the performance of, or any transaction contemplated by, any Transaction Document.
- 20.10.2 No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing would constitute) a default or termination event (however described) under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which has or is reasonably likely to have a Material Adverse Effect.
- 20.11 **No misleading information**
- 20.11.1 Any factual information contained in the Information Memorandum or the Information Package was true and accurate in all material respects as at the date of the relevant report or document containing the information or (as the case may be) as at the date the information is expressed to be given.
- 20.11.2 The Forecast Cash Flows have been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements and on the basis of recent historical information, are fair and based on reasonable assumptions and have been approved by the board of directors of the Borrower.
- 20.11.3 Any financial projection or forecast contained in the Information Memorandum or the Information Package has been prepared on the basis of recent historical information and on the basis of reasonable assumptions and was fair (as at the date of the relevant report or document containing the projection or forecast) and arrived at after careful consideration.
- 20.11.4 The expressions of opinion or intention provided by or on behalf of an Obligor for the purposes of the Information Memorandum or the Information Package were made after careful consideration and (as at the date of the relevant report or document containing the expression of opinion or intention) were fair and based on reasonable grounds.
- 20.11.5 Except as disclosed in the Acquisition Agreement or the Disclosure Letter, no event or circumstance has occurred or arisen and no information has been omitted from the Information Memorandum or the Information Package and no information has been given or withheld that results in the information, opinions, intentions, forecasts or projections contained in the Information Memorandum or the Information Package being untrue or misleading in any material respect.
- 20.11.6 All material information provided to a Finance Party by or on behalf of Enstar or the Borrower in connection with the Acquisition and/or the Target Group on or before the First Utilisation Date and not superseded before that date (whether or not contained in the Information Package) is accurate and not misleading in any material respect and all projections provided to any Finance Party on or before the First Utilisation Date have been prepared in good faith on the basis of assumptions which were reasonable at the time at which they were prepared and supplied.
- 20.11.7 All other written information provided by any Obligor or any member of the Group (including its advisers) to a Finance Party or the provider of any Report was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any respect.

- 20.11.8 As at the First Utilisation Date, there has been no reported insurance claim since the date of the most recent valuation of insurance liabilities report that would or, if adversely determined, is reasonably likely to, have a Material Adverse Effect.
- 20.11.9 As at the First Utilisation Date, there are no negative marked-to-market outstandings under any existing Treasury Transactions entered into by or on behalf of any member of the Group that would have a Material Adverse Effect.
- 20.12 **Original Financial Statements**
- 20.12.1 Its Original Financial Statements were prepared in accordance with the Accounting Principles consistently applied unless expressly disclosed to the Agent in writing to the contrary.
- 20.12.2 Subject to the Acquisition Agreement and the Disclosure Letter, its Original Financial Statements prior to them having been audited fairly represent its financial condition and results of operations (consolidated in the case of Target) for the relevant period unless expressly disclosed to the Agent in writing to the contrary prior to the First Utilisation Date.
- 20.12.3 Subject to the Acquisition Agreement and the Disclosure Letter, there has been no material adverse change in its assets, business or financial condition (or the assets, business or consolidated financial condition of the Group, in the case of the Borrower) since the date of the Original Financial Statements.
- 20.12.4 The Original Financial Statements of the Target and the Borrower do not consolidate the results, assets or liabilities of any person or business which does not form part of the Target Group.
- 20.12.5 Its most recent financial statements delivered pursuant to Clause 21.2 (*Financial statements*):
- (a) have been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements except as otherwise permitted in Clause 21.4 (*Requirements as to financial statements*); and
 - (b) give a true and fair view of (if audited) or fairly present (if unaudited) its consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate.
- 20.12.6 The budgets and forecasts supplied under this Agreement were arrived at after careful consideration and have been prepared in good faith on the basis of recent historical information and on the basis of assumptions which were reasonable as at the date they were prepared.
- 20.12.7 Since the date of the most recent financial statements delivered pursuant to Clause 21.2 (*Financial statements*) there has been no material adverse change in the business, assets or financial condition of the Group.
- 20.13 **No proceedings pending or threatened**
- No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which, if adversely determined, are reasonably likely to have a Material Adverse Effect, have (to the best of its knowledge and belief (having made due and careful enquiry)) been started or threatened against it or any of its Subsidiaries.

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- 20.14 **No breach of laws**
- 20.14.1 It has not (and none of its Subsidiaries has) has breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.
- 20.14.2 No labour disputes are current or, to the best of its knowledge and belief (having made due and careful enquiry), threatened against any member of the Group which have or are reasonably likely to have a Material Adverse Effect.
- 20.15 **Taxation**
- 20.15.1 It is not (and none of its Subsidiaries is) materially overdue in the filing of any Tax returns and it is not (and none of its Subsidiaries is) overdue in the payment of any amount in respect of Tax of \$200,000 (or its equivalent in any other currency) or more.
- 20.15.2 No claims or investigations are being or are reasonably likely to be made or conducted against it (or any of its Subsidiaries) with respect to Taxes such that a liability of, or claim against, any member of the Group of \$200,000 (or its equivalent in any other currency) or more is reasonably likely to arise.
- 20.15.3 It is resident for Tax purposes only in the jurisdiction of its incorporation.
- 20.16 **Security and Financial Indebtedness**
- 20.16.1 No Security or Quasi-Security exists over all or any of the present or future assets of any member of the Group other than as permitted by this Agreement.
- 20.16.2 No member of the Group has any Financial Indebtedness outstanding other than as permitted by this Agreement.
- 20.17 **Ranking**
- The Transaction Security ranks or will rank prior to all other Security other than Permitted Security.
- 20.18 **Good title to assets**
- It and each of its Subsidiaries has a good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted.
- 20.19 **Legal and beneficial ownership**
- 20.19.1 It and each of its Subsidiaries is the sole legal and beneficial owner of the respective assets over which it purports to grant Security to the Security Agent.
- 20.19.2 On and from the Closing Date, all the Target Shares are legally and beneficially owned by the Borrower free from any claims, third party rights or competing interests.
- 20.20 **Ownership**
- Each of the Obligors and their Subsidiaries is a direct or indirect wholly-owned subsidiary of Enstar.
- 20.21 **Shares**
- 20.21.1 The shares of any member of the Group which are subject to the Transaction Security are fully paid and not subject to any option to purchase or similar rights.

- 20.21.2 The constitutional documents of companies whose shares are subject to the Transaction Security do not and could not restrict or inhibit any transfer of those shares on creation or enforcement of the Transaction Security.
- 20.21.3 There are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of any member of the Group or member of the Target Group (including any option or right of pre-emption or conversion).
- 20.21.4 There is no Security or other restrictions in existence that may attach to any dividends or other distributions that may be made in respect of any shares of any member of the Group except, in connection with a Regulated Insurance Entity, restrictions arising under N.J.S.A §§ 17:27A-4(c) and 17:27A-9.1 and Fla. Stat. §§ 628.371 and 628.391 or similar provisions under the Insurance Code.
- 20.22 **Intellectual Property**
It and each of its Subsidiaries:
- (a) is the sole legal and beneficial owner of or has licensed to it on normal commercial terms all the Intellectual Property which is material in the context of its business and which is required by it in order to carry on its business as it is being conducted;
 - (b) does not (nor does any of its Subsidiaries), in carrying on its businesses, infringe any Intellectual Property of any third party in any respect which has or is reasonably likely to have a Material Adverse Effect; and
 - (c) has taken all formal or procedural actions (including payment of fees) required to maintain any material Intellectual Property owned by it to the extent that failure to do so has or is reasonably likely to have a Material Adverse Effect.
- 20.23 **Group Structure Chart**
The Group Structure Chart is true, complete and accurate in all material respects.
- 20.24 **Financial Year end**
The end of the Financial Year for each member of the Group is 31 December.
- 20.25 **Obligors**
Each member of the Group is or will be an Obligor on the First Utilisation Date excluding any Regulated Insurance Entity.
- 20.26 **Acquisition Documents, Disclosures and other Documents**
- 20.26.1 The Acquisition Documents contain all the terms of the Acquisition.
- 20.26.2 There is no disclosure made in the Disclosure Letter or any other disclosure to the Acquisition Documents which has or may have a material adverse effect on any of the information, opinions, intentions, forecasts and projections contained or referred to in the Information Package.
- 20.26.3 To the best of its knowledge no representation or warranty (as qualified by the Disclosure Letters) given by any party to the Acquisition Documents is untrue or misleading in any material respect.

- 20.26.4 As at the date of delivery, the documents delivered to the Agent under any Finance Document by or on behalf of any Obligor (including pursuant to Clause 4.1 (*Initial conditions precedent*)) are genuine (or, in the case of copy documents, are true, complete and accurate copies of originals which are genuine), are up-to-date and in full force and effect (or if a copy, the original is up-to-date and in full force and effect) and have not been amended.
- 20.27 **Insurance**
There has been no non-disclosure, misrepresentation or breach of any term of any material insurance policy (excluding those policies or contracts of insurance or reinsurance written or assumed in the ordinary course of business by any of the Subsidiaries of the Borrower) which would entitle any insurer to repudiate, rescind or cancel it or to treat it as avoided in whole or in part or otherwise decline any valid claim under it by or on behalf of any member of the Group.
- 20.28 **Immunity**
- 20.28.1 The execution by it of each Finance Document constitutes, and the exercise by it of its rights and performance of its obligations under each Finance Document will constitute private and commercial acts performed for private and commercial purposes.
- 20.28.2 It will not be entitled to claim immunity from suit, execution, attachment or other legal process in any proceedings taken in its Relevant Jurisdictions in relation to any Finance Document.
- 20.29 **No adverse consequences**
- 20.29.1 It is not necessary under the laws of its Relevant Jurisdictions:
- (a) in order to enable any Finance Party to enforce its rights under any Finance Document; or
 - (b) subject to the Legal Reservations, by reason of the execution of any Finance Document or the performance by it of its obligations under any Finance Document,
- that any Finance Party should be licensed, qualified or otherwise entitled to carry on business in any of its Relevant Jurisdictions.
- 20.29.2 No Finance Party is or will be deemed to be resident, domiciled or carrying on business in its Relevant Jurisdictions by reason only of the execution, performance and/or enforcement of any Finance Document, provided that certain enforcement actions may require a Finance Party to qualify in applicable Relevant Jurisdictions.
- 20.30 **Holding Company**
Except as may arise under the Transaction Documents and for Acquisition Costs and except as set forth on the opening balance sheet of the Borrower, before the date of this Agreement the Borrower has not traded or incurred any liabilities or commitments (actual or contingent, present or future).
- 20.31 **Pensions**
- 20.31.1 Each Employee Plan is in compliance in form and operation with ERISA and the Code and all other applicable laws and regulations save where any failure to comply would not reasonably be expected to have a Material Adverse Effect.

- 20.31.2 Each Employee Plan which is intended to be qualified under Section 401(a) of the Code has been determined by the IRS to be so qualified or is in the process of being submitted to the IRS for approval or will be so submitted during the applicable remedial amendment period, and, nothing has occurred since the date of such determination that would adversely affect such determination (or, in the case of an Employee Plan with no determination, nothing has occurred that would materially adversely affect such qualification).
- 20.31.3 There exists no Unfunded Pension Liability with respect to any Employee Plan, except as would not have a Material Adverse Effect.
- 20.31.4 Neither any member of the Group nor any ERISA Affiliate is making or accruing an obligation to make contributions or has within any of the five calendar years immediately preceding the date of this Agreement made or accrued an obligation to make contributions to any Multiemployer Plan.
- 20.31.5 There are no actions, suits or claims pending against or involving an Employee Plan (other than routine claims for benefits) or, to the knowledge of the Borrower, any member of the Group or any ERISA Affiliate, threatened, which would reasonably be expected to be asserted successfully against any Employee Plan and, if so asserted successfully, would reasonably be expected either singly or in the aggregate to have a Material Adverse Effect.
- 20.31.6 Each member of the Group and any ERISA Affiliate has made all contributions to or under each such Employee Plan required by law within the applicable time limits prescribed thereby, the terms of such Employee Plan, or any contract or agreement requiring contributions to an Employee Plan save where any failure to comply would not reasonably be expected to have a Material Adverse Effect.
- 20.31.7 Neither any member of the Group nor any ERISA Affiliate has ceased operations at a facility so as to become subject to the provisions of Section 4062(e) of ERISA, withdrawn as a substantial employer so as to become subject to the provisions of Section 4063 of ERISA, or ceased making contributions to any Employee Plan subject to Section 4064(a) of ERISA to which it made contributions.
- 20.31.8 Neither any member of the Group nor any ERISA Affiliate has incurred or reasonably expects to incur any liability to PBGC save for any liability for premiums due in the ordinary course or other liability which would not reasonably be expected to have a Material Adverse Effect.
- 20.31.9 No ERISA Event has occurred or is reasonably expected to occur. None of the assets of the Group or any ERISA Affiliates is subject to a lien under ERISA or Section 430 of the Code.
- 20.32 **Net Surplus**
On the First Utilisation Date, the Consolidated Net Surplus is, or will be, not less than US\$303,500,000.
- 20.33 **Federal Reserve Obligations**
- 20.33.1 No member of the Group is engaged nor will it engage principally, or as one of its important activities, in the business of owning or extending credit for the purpose of buying or carrying any Margin Stock.
- 20.33.2 None of the proceeds of the Loans or other extensions of credit under this Agreement will be used, directly or indirectly, for the purpose of buying or carrying any Margin Stock, for the purpose of reducing or retiring any Indebtedness that was originally incurred to buy or carry any Margin Stock or for any other purpose which might cause all or any Loans or other extensions of credit under this Agreement to be considered a purpose credit within the meaning of Regulation U or Regulation X.

- 20.33.3 No member of the Group nor any agent acting on its behalf has taken or will take any action which might cause the Finance Documents to violate any regulation of the Board of Governors of the Federal Reserve System of the United States.
- 20.34 **Investment Companies**
- No member of the Group is an investment company or an affiliated person of an investment company as such terms are defined in the Investment Company Act of 1940 of the United States (1940 Act) or otherwise subject to regulation under the 1940 Act or subject to regulation under the Public Utility Holding Company Act 2005, the Federal Power Act of 1935 of the United States or the 1940 Act or any United States federal or state statute or regulation restricting or limiting its ability to incur indebtedness excluding insurance regulations.
- 20.35 **Anti-Terrorism Laws**
- 20.35.1 No member of the Group or, to the knowledge of any of the Obligors, any of their Affiliates, is in violation of any laws relating to terrorism or money laundering (Anti-Terrorism Laws), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (Executive Order), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56.
- 20.35.2 No member of the Group or, to the knowledge of any of the Obligors, any of their Affiliates, or their respective brokers or other agents acting or benefiting in any capacity in connection with the Facility, is any of the following:
- (a) a person or entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;
 - (b) a person or entity owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;
 - (c) a person or entity with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism law;
 - (d) a person or entity that commits, threatens or conspires to commit or supports terrorism as defined in the Executive Order; or
 - (e) a person or entity that is named as a specially designated national and blocked person on the most current list published by the US Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list.
- 20.35.3 No member of the Group or, to the knowledge of any Obligor, any of its brokers or other agents acting in any capacity in connection with the Facility (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any person described in paragraph (b) above, (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

20.36 **Times when representations made**

- 20.36.1 All the representations and warranties in this Clause 20 are made by each Original Obligor on the date of this Agreement except for the representations and warranties set out in (a) Clause 20.11 (*No misleading information*) which are deemed to be made by each Obligor (i) with respect to the Information Memorandum on the date the Information Memorandum is approved by the Borrower and (ii) with respect to the Information Package, on the date of this Agreement, on the First Utilisation Date and on any later date on which the Information Package (or part of it) is released to an Arranger for distribution in connection with syndication and (b) Clause 20.20 (*Ownership*) to the extent that it relates to ownership of any member of the Target Group.
- 20.36.2 All the representations and warranties in this Clause 20 are deemed to be made by each Obligor on the First Utilisation Date other than Clauses 20.11.8 to 20.11.9 (*No misleading information*).
- 20.36.3 The representations and warranties in Clauses 20.11.1 to 20.11.7 (*No misleading information*) are also deemed to be made by each Obligor on the Syndication Date.
- 20.36.4 The Repeating Representations are deemed to be made by each Obligor on the date of each Utilisation Request, on each Utilisation Date and on the first day of each Interest Period and, if an Interest Period is longer than six Months, on the dates following at six Monthly intervals after the first day of that Interest Period (except that those contained in Clauses 20.12.1 to 20.12.4 (*Original Financial Statements*) will cease to be so made once subsequent financial statements have been delivered under this Agreement).
- 20.36.5 All the representations and warranties in this Clause 20 except Clause 20.11 (*No misleading information*), Clause 20.23 (*Group Structure Chart*), Clause 20.26 (*Acquisition Documents, Disclosures and other Documents*) and Clause 20.30 (*Holding Company*) are deemed to be made by the Borrower and each Additional Guarantor on the day on which it becomes (or it is proposed that it becomes) an Additional Guarantor.
- 20.36.6 Each representation or warranty deemed to be made after the date of this Agreement shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.
- 20.36.7 Notwithstanding anything to the contrary contained in this Agreement and any Finance Document, including without limitation Clauses 20.4(a) (*Non-conflict with other obligations*), 20.5.1 (*Power and Authority*), 20.6.1(a) (*Validity and admissibility in evidence*), 20.9 (*No filing or stamp taxes*), 20.29.1 (*No adverse consequences*) and 23.1 (*Authorisations*), with respect to the performance by any Obligor in connection with the exercise of certain rights and remedies under the Transaction Security Documents, notice, consents or approvals may be required under the Insurance Code.

21 **Information Undertakings**

21.1 **General**

The undertakings in this Clause 21 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

In this Clause 21:

- (a) **Annual Financial Statements** : means the financial statements for a Financial Year delivered pursuant to Clause 21.2 (*Financial statements*).
- (b) **Quarterly Financial Statements** : means the financial statements for a Financial Quarter delivered pursuant to Clause 21.2 (*Financial statements*).

21.2 **Financial statements**

21.2.1 The Borrower shall deliver to the Agent in sufficient copies for all the Lenders:

- (a) as soon as they are available, but in any event within 120 days after the end of each of its Financial Years;
 - (i) the audited consolidated financial statements of the Borrower for that Financial Year;
 - (ii) the audited statutory financial statement of each Regulated Insurance Entity for that Financial Year; and
 - (iii) the financial statements of any other Obligor for that Financial Year;
- (b) as soon as they are available, but in any event within 45 days after the end of each Financial Quarter of each of its Financial Years (excluding each Financial Quarter ending 31 December, which shall be governed by Section 20.2.1(a) above), the unaudited consolidated Quarterly Financial Statement of the Borrower and the unaudited statutory Quarterly Financial Statement of each Regulated Insurance Entity and any other Obligor for that Financial Quarter, to include:
 - (i) (in the case of the Borrower only) details of all Disposal Proceeds as defined in Clause 8.2 (*Disposal, Insurance, Acquisition Proceeds and Target Distributions*);
 - (ii) (in the case of the Borrower only) details of all surpluses in any fund or funds of each member of the Group which is an insurance company;
 - (iii) (in the case of the Borrower only) a summary of cash realisations of each of the Target Group; and
 - (iv) (in the case of the Borrower only) details of the proceeds of the cash realisations of each member of the Target Group; and
 - (v) a discussion of major incurred claims movements with appropriate narrative;
- (c) as soon as it is available but in any event within 30 days after the start of each of its Financial Years, an updated forecast of cashflows for the Borrower for that Financial Year in the same form as the Forecast Cash Flows;

- (d) as soon as they are available, but in any event within 45 days after the end of each Financial Quarter of each of its Financial Years:
 - (i) a written breakdown of all reinsurance and retrocession balances of the Group at the end of that Financial Quarter including details of the counterparty from whom such balances are owed, an ageing of such balances, and details of any movements in any receivables and recoveries made during such period;
 - (ii) details of any bad debt or other provisions held by the Group at the end of that Financial Quarter including details of changes made in relation to such bad debts or other provisions together with the reasons for such provisions being made; and
- (e) as soon as it is available but in any event within 60 days after the start of each of its Financial Years an actuarial review (including a study of actual reserves) conducted by a duly qualified actuarial company in respect of each Regulated Insurance Entity.

21.3 **Provision and contents of Compliance Certificate**

21.3.1 The Borrower shall supply a Compliance Certificate to the Agent with each set of its audited consolidated Annual Financial Statements and each set of its consolidated Quarterly Financial Statements.

21.3.2 The Compliance Certificate shall, amongst other things, set out (in reasonable detail) computations as to compliance with Clause 22 (*Financial Covenants*) including confirmation that the Borrower is in compliance with Clause 22.2.1(c) (*Requisite Rating*).

21.3.3 Each Compliance Certificate shall be signed by two duly authorised officers, one of whom must be the Chief Financial Officer of the Group and, if required to be delivered with the consolidated Annual Financial Statements of the Borrower, shall be reported on by the Borrower's Auditors in the form agreed by the Borrower and the Majority Lenders.

21.4 **Requirements as to financial statements**

21.4.1 The Borrower shall procure that each set of Annual Financial Statements and Quarterly Financial Statements includes a balance sheet, profit and loss account and cashflow statement as required by SAP in the case of each Regulated Insurance Entity and GAAP in the case of the Borrower and any Obligor that is not a Regulated Insurance Entity. In addition the Borrower shall procure that:

- (a) each set of Annual Financial Statements shall where required be audited by the Auditors;
- (b) each set of Quarterly Financial Statements of the Borrower includes:
 - (i) a cashflow forecast in respect of the Group relating to the twelve month period commencing at the end of the relevant Financial Quarter; and
 - (ii) a statement by the directors of the Borrower commenting on the performance of the Group for the quarter to which the financial statements relate and the Financial Year to date and any material developments or material proposals affecting the Group or its business.

- 21.4.2 Each set of financial statements delivered pursuant to Clause 21.2 (*Financial Statements*):
- (a) shall be certified by the Chief Financial Officer of the Group as giving a true and fair view of (in the case of Annual Financial Statements for any Financial Year), or fairly representing (in other cases), the financial condition and operations of the relevant person or persons covered by those financial statements as at the date as at which those financial statements were drawn up and, in the case of the Annual Financial Statements, shall be accompanied by any letter addressed to the management of the relevant company by the Auditors and accompanying those Annual Financial Statements;
 - (b) in the case of consolidated financial statements of the Borrower, shall be accompanied by a statement by the Chief Financial Officer of the Group comparing actual performance for the period to which the financial statements relate to the actual performance for the corresponding period in the preceding Financial Year of the Group; and
 - (c) shall be prepared using the Accounting Principles, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements, unless, in relation to any set of financial statements, the Borrower notifies the Agent that there has been a change in the Accounting Principles or the accounting practices and its Auditors (or, if appropriate, the Auditors of the Obligor) deliver to the Agent:
 - (i) a description of any change necessary for those financial statements to reflect the Accounting Principles or accounting practices upon which the Original Financial Statements were prepared; and
 - (ii) sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Lenders to determine whether Clause 22 (*Financial Covenants*) has been complied with and to make an accurate comparison between the financial position indicated in those financial statements and the Original Financial Statements.

Any reference in this Agreement to any financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

21.4.3 If the Agent receives a report from the Borrower's Auditors pursuant to Clause 21.4.2(c) above, the Majority Lenders (in consultation with the Borrower and the Auditors) may require such changes to the covenants set out in Clause 22 (*Financial Covenants*) as are necessary solely to reflect the changes notified to them.

21.4.4 If the Agent wishes to discuss the financial position of any member of the Group with the Auditors, the Agent may notify the Borrower, stating the questions or issues which the Agent wishes to discuss with the Auditors. In this event, the Borrower must ensure that the Auditors are authorised (at the expense of the Borrower):

- (a) to discuss the financial position of each member of the Group with the Agent on request from the Agent;
- (b) to verify any financial information required by the Finance Documents to be provided to the Agent;
- (c) to disclose to the Agent for the Finance Parties any information which the Agent may reasonably request; and
- (d) to verify any figures required to calculate the financial covenants in Clause 22 (*Financial covenants*).

21.5 **Presentations**

Once in every Financial Year, or more frequently if requested to do so by the Agent if a Lender reasonably suspects a Default is continuing or may have occurred or may occur, at least two directors of the Borrower (one of whom shall be the Chief Financial Officer of the Borrower) must give a presentation to the Finance Parties in London about the on-going business and financial performance of the Group.

21.6 **Year-end**

21.6.1 The Borrower shall procure that the end of each Financial Year of each member of the Group falls on 31 December.

21.6.2 The Borrower shall procure that each quarterly accounting period and each Financial Quarter of each member of the Group ends on a Quarter Date.

21.7 **Information: miscellaneous**

The Borrower shall supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests):

- (a) within 30 days after submission to the relevant governmental or regulatory authority, all returns required to be prepared by any member of the Group in accordance with any applicable law, rule, regulation or direction of the Bermuda Monetary Authority, the SEC or any other Governmental Authority;
- (b) at the same time as they are dispatched, copies of all documents dispatched by the Borrower to its shareholders generally (or any class of them) or dispatched by the Borrower or any Obligors to its creditors generally (or any class of them) (excluding documents provided to persons insured under policies or contracts of insurance or reinsurance written or assumed in the ordinary course of business by any of the Regulated Insurance Entities);
- (c) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group (excluding those relating to policies or contracts of insurance or reinsurance written or assumed in the ordinary course of business by any of the Regulated Insurance Entities), and which, if adversely determined would involve a liability, or a potential or alleged liability, exceeding US\$150,000 (or its equivalent in other currencies);
- (d) written notice of any business or transaction undertaken by the Borrower or any member of the Group involving (directly or indirectly) any of Sudan, Iran, Myanmar (Burma), Cuba, North Korea or Syria, to the extent possible in advance of, and in any event promptly upon, the Borrower or such member of the Group commencing such business or transaction, together with sufficient details of such business or transaction as any Finance Party may require to satisfy any sanctions related laws, regulations or requirements to which it is subject;

- (e) promptly, copies of any material correspondence, documentation or other material communication dispatched by or to an Insurance Regulator or other relevant regulatory body in respect of any member of the Group's regulatory capital requirements;
- (f) promptly upon becoming aware of the relevant claim, the details of any claim which is current, threatened or pending against any person in respect of the Acquisition Documents and details of any disposal or insurance claim which will require a prepayment under Clause 8.2 (*Disposal, Insurance, Acquisition Proceeds and Target Distributions*);
- (g) promptly, such information as the Security Agent may reasonably require about the Charged Property and compliance of the Obligor with the terms of any Transaction Security Documents; and
- (h) promptly on request, such further information regarding the financial condition, assets and operations of the Group and/or any member of the Group (including any requested amplification or explanation of any item in the financial statements, budgets or other material provided by any Obligor under this Agreement and an up to date copy of its shareholders' register (or equivalent in its jurisdiction of incorporation)) as any Finance Party through the Agent may reasonably request.

21.8 **Notification of default**

21.8.1 Each Obligor shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).

21.8.2 Promptly upon a request by the Agent, the Borrower shall supply to the Agent a certificate signed by two of its duly authorised officers certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

21.9 **"Know your customer" checks**

21.9.1 If:

- (a) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
- (b) any change in the status of an Obligor or the composition of the shareholders of an Obligor after the date of this Agreement; or
- (c) a proposed assignment or transfer by a Lender of any of its rights and/or obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,
- (d) obliges the Agent or any Lender (or, in the case of Clause 21.9.1(c) above, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor shall (and the Borrower shall ensure that each Obligor shall) promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or

any Lender (for itself or, in the case of the event described in Clause 21.9.1(c) above, on behalf of any prospective new Lender) in order for the Agent, such Lender or, in the case of the event described in Clause 21.9.1(c) above, any prospective new Lender to carry out and be satisfied with the results of all necessary “know your customer” or other checks in relation to any relevant person pursuant to the transactions contemplated in the Finance Documents.

- 21.9.2 Each Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent to carry out and be satisfied with the results of all necessary “know your customer” or other checks on Lenders or prospective new Lenders pursuant to the transactions contemplated in the Finance Documents.
- 21.9.3 The Borrower shall, by not less than 10 Business Days’ prior written notice to the Agent, notify the Agent (which shall promptly notify the Lenders) of its intention to request that one of its Subsidiaries becomes an Additional Guarantor pursuant to Clause 26.2 (*Additional Guarantors*).
- 21.9.4 Following the giving of any notice pursuant to Clause 21.9.3 above, if the accession of such Additional Guarantor obliges the Agent or any Lender to comply with “know your customer” or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective new Lender) in order for the Agent, or such Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary “know your customer” or other checks in relation to any relevant person pursuant to the accession of such Subsidiary to this Agreement as an Additional Guarantor.

21.10 **ERISA-Related Information**

The Borrower shall supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests):

- (a) promptly and in any event within fifteen days after any member of the Group or any ERISA Affiliate files a Schedule B (or such other schedule as contains actuarial information) to IRS Form 5500 in respect of an Employee Plan with Unfunded Pension Liabilities, a copy of such IRS Form 5500 (including the Schedule B);
- (b) promptly and in any event within thirty days after any member of the Group or any ERISA Affiliate knows or has reason to know that any ERISA Event has occurred, the written statement of the Chief Financial Officer of such member of the Group or ERISA Affiliate, as applicable, describing such ERISA Event and the action, if any, which it proposes to take with respect to such ERISA Event and a copy of any notice filed with the PBGC or the IRS pertaining to such ERISA Event; providing that, in the case of ERISA Events under paragraph (d) of its definition, the 30 (thirty) day period set forth above shall be a 10 (ten) day period, and, in the case of ERISA Events under paragraph (b) of its definition, in no event shall notice be given later than the occurrence of the ERISA Event; and

- (c) promptly, and in any event within thirty days, after becoming aware that there has been (A) a material increase in Unfunded Pension Liabilities; (B) the existence of potential withdrawal liability under Section 4201 of ERISA, if the Borrower and its ERISA Affiliates were to completely or partially withdraw from all Multiemployer Plans; (C) the adoption of, or the commencement of contributions to, any Employee Plan subject to Section 412 of the Code by any member of the Group or any ERISA Affiliate; or (D) the adoption of any amendment to an Employee Plan subject to Section 412 of the Code which results in a material increase in contribution obligations of any Obligor, the detailed written description of such Employee Plan from the Chief Financial Officer of each affected member of the Group or ERISA Affiliate, as applicable.

21.11

Tax Documentation

Any non-US Lender that is entitled to an exemption from or reduction of withholding tax under United States law, or any treaty to which the United States is a party, with respect to payments hereunder or under any other Finance Document shall deliver to the Borrower (with a copy to the Agent), at the time or times reasonably requested by the Borrower or the Agent, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if requested by the Borrower or the Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Agent as will enable the Borrower or the Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

Without limiting the generality of the foregoing, any non-US Lender shall use its reasonable endeavours to deliver to the Borrower and the Agent (in such number of copies as shall be reasonably requested by the recipient) the following:

- (a) on or prior to the date on which such non-US Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Agent, but only if such non-US Lender is legally entitled to do so), whichever of the following is applicable:
- (i) duly completed copies of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States of America is a party;
 - (ii) duly completed copies of Internal Revenue Service Form W-8ECI;
 - (iii) in the case of a non-U.S. Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate to the effect that such non-US Lender is not (A) a “bank” within the meaning of section 881(c)(3)(A) of the Code, (B) a “10 percent shareholder” of the Borrower within the meaning of section 881(c)(3)(B) of the Code, or (C) a “controlled foreign corporation” described in section 881(c)(3)(C) of the Code and (y) duly completed copies of Internal Revenue Service Form W-8BEN; or
 - (iv) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower to determine the withholding or deduction required to be made; and

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- (b) for payments made after 31 December 2012, by the later of (a) the date on which a non-U.S. Lender becomes a Lender hereunder or (b) 30 days prior to the date on which a payment after December 31, 2012 to such non-U.S. Lender is due, evidence of such non-US Lender's agreement with the Secretary of the Treasury pursuant to Section 1471(b) of the Internal Revenue Code, or, in the case of a non-US Lender that is a non-financial foreign entity under Section 1472 of the Internal Revenue Code, (a) a certification that such non-US Lender does not have any substantial United States owners or (b) the name, address and TIN of each substantial United States owner of the non-US Lender. For purposes of the preceding sentence, "substantial United States owners" shall have the meaning set forth in Section 1473(2) of the Internal Revenue Code.

22

Financial Covenants

22.1

Financial definitions

In this Clause 22:

- (a) **Actual Statutory Surplus** means, at any time, the surplus figure on Line 35 of Page 3 of the most recent financial statements of the Regulated Insurance Entities delivered pursuant to Clause 21.2 (*Financial statements*) and determined in accordance with SAP. References to amounts on particular lines and pages of the financial statements are based on the format promulgated by the Illinois Department of Insurance for the Original Financial Statements. If such format is changed in future years so that different information is contained in such items or they no longer exist, it is understood that the reference is to information consistent with that reported in the referenced item in the Original Financial Statements of that entity.
- (b) **Consolidated Net Surplus** means, at any time, the aggregate Actual Statutory Surplus of each Regulated Insurance Entity based on the most recent Annual Financial Statements delivered pursuant to Clause 21.2 (*Financial statements*).
- (c) **Facility Debt** : means on the last day of the Relevant Period, the aggregate of the Group's consolidated Financial Indebtedness in respect of the Facility.
- (d) **Financial Quarter** : means the period commencing on the day after one Quarter Date and ending on the next Quarter Date.
- (e) **Financial Year** : means each period of twelve months ending on 31 December.
- (f) **Net Surplus Cover** : means the ratio of Consolidated Net Surplus to Facility Debt.
- (g) **Quarter Date** : means each of 31 March, 30 June, 30 September and 31 December.
- (h) **Regulatory Cover** : means, with respect to any Regulated Insurance Entity, the ratio of Actual Statutory Surplus to the Authorised Control Level Risk Based Capital (as defined by the NAIC) of such Regulated Insurance Entity.

- (i) **Relevant Period** : means each period of twelve months (or, if shorter, the period from the date of this Agreement) ending on each Quarter Date.

22.2 **Financial condition**

22.2.1 The Borrower shall ensure that:

- (a) **Regulatory Cover:** Regulatory Cover of the Target and each Regulated Insurance Entity shall at all times exceed 1.1:1;
- (b) **Minimum Net Surplus Cover:** Net Surplus Cover shall not at any time be less than 2:1; and
- (c) **Requisite Rating:**
- (i) the average rating of the aggregate investment portfolio (determined by reference to the individual rating given by the Rating Agency to each investment) of the Target Group shall not at any time be less than A-;
 - (ii) the short term rating and/or long term rating of investments as determined by the Rating Agency for at least 80% of the total value of the investments held by the Target Group have a rating of not less than BBB or are held in Cash or Cash Equivalent Investments;
 - (iii) no more than 1% of the total value of investments of the Target Group that have a rating of less than BBB shall be held in investments advised by or held with one issuer or its associated parties; and
 - (iv) no more than 5% of the total value of investments of the Target Group shall be held in private equity investments.

22.3 **Financial testing**

22.3.1 The financial covenants set out in Clauses 22.2.1(a) (*Regulatory cover*) and 22.2.1(b) (*Minimum Net Surplus Cover*) shall be calculated in accordance with the Accounting Principles and tested first by reference to the Quarterly Financial Statements and where available, by reference to the Annual Financial Statements (each delivered in accordance with Clause 21.2 (*Financial statements*)) and each Compliance Certificate delivered pursuant to Clause 21.3 (*Provision and contents of Compliance Certificate*)).

22.3.2 No item shall be deducted or credited more than once in any calculation.

22.3.3 Where an amount in any financial statement or Compliance Certificate is not denominated in US Dollars, it shall be converted into US Dollars at the rate specified in the financial statements so long as such rate has been set in accordance with the Accounting Principles.

22.3.4 The financial covenants in Clause 22.2 (*Financial condition*) shall apply on a continuing basis but shall be tested on each Quarter Date commencing with the first Quarter Date following the date of this Agreement.

22.4 **Equity cure- Regulatory Cover**

22.4.1 No Event of Default under Clause 24.2 (*Financial covenants and other obligations*) in relation to Clauses 22.2.1(a) (*Regulatory Cover*) will occur if:

- (a) the proceeds of an additional contributed surplus or any Permitted Share Issue permitted by paragraph (b) of the definition of that term (which are designated in writing by the Borrower to the Agent as being provided for the purpose of this Clause 22.4 (*Equity cure- Regulatory Cover*)) and/or any debt (subordinated on terms approved by the Agent acting reasonably) (in each case the **New Regulatory Investment**) is invested in the relevant Regulated Insurance Entity within 5 Business Days of the date on which the Borrower becomes aware of a breach of Clause 22.2.1(a) (*Regulatory Cover*).
- (b) promptly following receipt by the relevant Regulated Insurance Entity of the proceeds of such New Regulatory Investment (and in any event prior to the expiry of such 5 Business Day period), a certificate signed by the finance director of the Borrower is delivered to the Agent confirming that on recalculating the Regulatory Cover financial covenant set out in Clause 22.2.1(a) (*Regulatory Cover*) would be complied with and attaching reasonable details of such calculations.

No more than two New Regulatory Investments may be made until the Termination Date and no two New Regulatory Investments may be made in consecutive Financial Quarters.

22.5 Equity cure- Net Surplus Cover

No Event of Default under Clause 24.2 (*Financial covenants and other obligations*) in relation to Clauses 22.2.1(b) (*Minimum Net Surplus Cover*) will occur if:

- (a) the proceeds of an additional contributed surplus or any Permitted Share Issue permitted by paragraph (b) of the definition of that term (which are designated in writing by the Borrower to the Agent as being provided for the purpose of this Clause 22.5) and/or any debt (subordinated on terms approved by the Agent acting reasonably) (in each case the **New Investment**) is invested in the Borrower within 5 Business Days of the date on which the Borrower becomes aware of a breach of Clause 22.2.1(b) (*Minimum Net Surplus Cover*).
- (b) promptly following receipt by the Borrower of the proceeds of such New Investment (and in any event prior to the expiry of such 5 Business Day period), a certificate signed by the finance director of the Borrower is delivered to the Agent confirming that on recalculating the financial covenant set out in Clause 22.2.1(b) (*Minimum Net Surplus Cover*) for the period (and for these purposes the amount of the New Investment shall be included in calculating Consolidated Net Surplus) in respect of which the breach arose, and on the basis that the New Investment is deemed to have been made immediately prior to the relevant Quarter Date, such financial covenant would be complied with (and such certificate shall attach reasonable details of such calculations).

No more than two New Investments may be made until the Termination Date and no two New Investments may be made in consecutive Financial Quarters.

23 **General Undertakings**

The undertakings in this Clause 23 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

23.1 **Authorisations**

Each Obligor shall (and the Borrower shall ensure that each member of the Group will) promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Agent of,

any Authorisation required under any law or regulation of a Relevant Jurisdiction to enable it to: (i) perform its obligations under the Finance Documents and the Acquisition Documents; (ii) ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document or Acquisition Document; and (iii) carry on its business (including, without limitation, to transact insurance and reinsurance business) where failure to do so has or is reasonably likely to have a Material Adverse Effect.

23.2 **Compliance with laws**

Each Obligor shall (and the Borrower shall ensure that each member of the Group will) comply in all respects with all laws, rules and regulations (including, without limitation, the establishment of all insurance reserves required to be established under SAP and applicable laws restricting the investments of each member of the Group) to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

23.3 **Taxation**

23.3.1 Each Obligor shall (and the Borrower shall ensure that each member of the Group will) pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:

- (a) such payment is being contested in good faith;
- (b) adequate reserves are being maintained for those Taxes and the costs required to contest them have been disclosed in its latest financial statements delivered to the Agent under Clause 21.2.1(a) (*Financial statements*); and
- (c) such payment can be lawfully withheld and failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect.

23.3.2 No member of the Group may change its residence for Tax purposes without the prior written consent of the Agent.

23.4 **Merger**

Other than in the case of a Permitted Transaction which is referred to in paragraph (a) of the definition of that term or in the implementation of the Acquisition, no Obligor shall (and the Borrower shall ensure that no other member of the Group will) enter into (or agree to enter into) any amalgamation, demerger, merger, consolidation or corporate reconstruction other than any solvent liquidation or reorganisation.

23.5 **Change of business**

The Borrower shall procure that no substantial change is made to the general nature of the business of the Group taken as a whole from that carried on by the Target Group at the date of this Agreement.

23.6 **Acquisitions**

Other than in the case of a Permitted Transaction, which is referred to in paragraph (a) of the definition of that term, or the Acquisition no Obligor shall (and the Borrower shall ensure that no other member of the Group will):

- (a) acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them); or
- (b) incorporate a company.

23.7 **Joint ventures**

No Obligor shall (and the Borrower shall ensure that no member of the Group will):

- (a) enter into, invest in or acquire (or agree to acquire) any shares, stocks, securities or other interest in any Joint Venture; or
- (b) transfer any assets or lend to or guarantee or give an indemnity for or give Security for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing).

23.8 **Holding Companies**

The Borrower shall not trade, carry on any business, own any assets or incur any liabilities except for:

- (a) the provision of administrative services (excluding treasury services) to other members of the Group of a type customarily provided by a holding company to its Subsidiaries;
- (b) ownership of shares in its Subsidiaries, intra-Group debit balances, intra-Group credit balances and other credit balances in bank accounts, cash and Cash Equivalent Investments but only if those shares, credit balances, cash and Cash Equivalent Investments are subject to the Transaction Security; or
- (c) any liabilities under the Transaction Documents to which it is a party and professional fees and administration costs in the ordinary course of business as a holding company,

and this Clause 23.8 shall prevail if but for this Clause a transaction would otherwise be a Permitted Disposal, Permitted Financial Indebtedness, a Permitted Guarantee, a Permitted Loan, Permitted Security or a Permitted Transaction or be permitted by Clause 23.27 (*Intra-Group Transactions*).

23.9 **Preservation of assets**

Each Obligor shall (and the Borrower shall ensure that each member of the Group will) maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary or desirable in the conduct of its business if failure to do so has or is reasonably likely to have a Material Adverse Effect.

23.10 **Pari passu ranking**

Each Obligor shall ensure that at all times any unsecured and unsubordinated claims of a Finance Party against it under the Finance Documents rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

23.11 **Acquisition Documents**

23.11.1 The Borrower shall promptly deposit the Merger Consideration (as such term is defined in the Acquisition Agreement) required to be paid to the Paying Agent as and when such amount becomes due (except any portion of the Merger Consideration in respect of any Dissenting Shares (as such term is defined in the Acquisition Agreement) for which adequate reserves are set aside by the Borrower).

23.11.2 The Borrower shall (and will procure that each relevant member of the Group will), take all reasonable and practical steps to preserve and enforce its rights (or the rights of any other member of the Group) and pursue any claims and remedies arising under any Acquisition Documents.

23.11.3 No Obligor shall (and the Borrower shall procure that no relevant member of the Group will) amend, vary, novate, supplement, supercede, waive or terminate any term of an Acquisition Document without the prior written consent of the Agent (such consent not to be unreasonably withheld or delayed)

23.12 **Negative pledge**

23.12.1 Except as permitted under Clause 23.12.2 below:

- (a) No Obligor shall (and the Borrower shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets.
- (b) No Obligor shall (and the Borrower shall ensure that no other member of the Group will) sell, transfer or otherwise dispose of any of its receivables.
- (c) No Obligor shall (and the Borrower shall ensure that no other member of the Group will):
 - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by any other member of the Group;
 - (ii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
 - (iii) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset. A transaction referred to in this paragraph (c) is termed **Quasi-Security** .

23.12.2 Clause 23.12.1 above does not apply to any Security or (as the case may be) Quasi-Security, which is Permitted Security.

23.13 **Disposals**

23.13.1 Except as permitted under Clause 23.13.2 below, no Obligor shall (and the Borrower shall ensure that no member of the Group will) enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer, licence or otherwise dispose of any asset.

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- 23.13.2 Clause 23.13.1 above does not apply to any sale, lease, transfer or other disposal which is:
- (a) a Permitted Disposal; or
 - (b) a Permitted Transaction which is referred to in paragraph (a) of the definition of that term.
- 23.14 **Arm's length basis**
- 23.14.1 Except as permitted by Clause 23.14.2 below, no Obligor shall (and the Borrower shall ensure no member of the Group will) enter into any transaction with any person except on bona fide arm's length terms.
- 23.14.2 The following transactions shall not be a breach of Clause 23.14.1:
- (a) intra-Group transactions permitted under Clause 23.27 (*Intra-Group transactions*);
 - (b) fees, costs and expenses payable under the Transaction Documents in the amounts set out in the Transaction Documents delivered to the Agent under Clause 4.1 (*Initial conditions precedent*) or agreed by the Agent; and
 - (c) the provision of administrative services by an Affiliate of the Borrower to any Obligor (at the date of this Agreement the Borrower contemplates the Affiliate will be Enstar (US), Inc.) provided that any payments under such transactions shall remain subject to the restrictions in Clause 23.17 (*Dividends and share redemption*).
- 23.15 **Loans or credit**
- 23.15.1 Except as permitted under Clause 23.15.2 below, no Obligor shall (and the Borrower shall ensure that no member of the Group will) be a creditor in respect of any Financial Indebtedness.
- 23.15.2 Clause 23.15.1 above does not apply to:
- (a) a Permitted Loan (which is consistent with Clause 23.8 (*Holding Companies*)); or
 - (b) a Permitted Transaction which is referred to in paragraph (a) of the definition of that term; or
 - (c) a Permitted Distribution.
- 23.16 **No Guarantees or indemnities**
- 23.16.1 Except as permitted under Clause 23.16.2 below, no Obligor shall (and the Borrower shall ensure that no member of the Group will) incur or allow to remain outstanding any guarantee, bond or indemnity in respect of any obligation of any person.
- 23.16.2 Clause 23.16.1 above does not apply to a guarantee, bond or indemnity which is:
- (a) a Permitted Guarantee (which is consistent with Clause 23.8 (*Holding Companies*));
 - (b) a Permitted Transaction which is referred to in paragraph (a) of the definition of that term; or

- (c) a policy or contract of insurance or reinsurance written or assumed in the ordinary course of business by any of the Regulated Insurance Entities.

23.17 **Dividends and share redemption**

23.17.1 Except as permitted under 23.17.2 below, the Borrower shall not (and will ensure that no other member of the Group will):

- (a) declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital) or any additional paid in capital;
- (b) repay or distribute any dividend or share premium reserve;
- (c) pay or allow any member of the Group to pay any management, advisory or other fee to or to the order of any of the shareholders of the Borrower; or
- (d) redeem, repurchase, defease, retire, reduce, cancel or repay any of its share capital or resolve to do so.

23.17.2 Clause 23.17.1 above does not apply to:

- (a) a Permitted Distribution;
- (b) a Permitted Payment; or
- (c) a Permitted Transaction which is referred to in paragraph (a) of the definition of that term.

23.18 **Financial Indebtedness**

23.18.1 Except as permitted under Clause 23.18.2 below, no Obligor shall (and the Borrower shall ensure that no member of the Group will) incur or allow to remain outstanding any Financial Indebtedness.

23.18.2 Clause 23.18.1 above does not apply to Financial Indebtedness which is:

- (a) Permitted Financial Indebtedness; or
- (b) contemplated by paragraph (a) of the definition of Permitted Transaction.

23.19 **Share capital**

No Obligor shall (and the Borrower shall ensure no member of the Group will) issue any shares except pursuant to a Permitted Share Issue.

23.20 **Compliance with ERISA**

No Obligor shall:

- (a) allow, or permit any of its ERISA Affiliates to allow, (i) any Employee Plan with respect to which any member of the Group or any of its ERISA Affiliates may have any liability to terminate, (ii) any member of the Group or ERISA Affiliates to withdraw from any Employee Plan or Multiemployer Plan, (iii) any ERISA Event to occur with respect to any Employee Plan, or (iv) any failure to meet the minimum funding standard (within the meaning of Section 302 of ERISA and Section 412 of the Code), whether or not waived, with respect to any of its Employee Plans; to the extent that any of the events described in (i), (ii), (iii) or (iv), singly or in the aggregate, would be reasonably likely to have a Material Adverse Effect;

- (b) allow, or permit any of its ERISA Affiliates to allow an Unfunded Pension Liability to the extent that such Unfunded Pension Liability would be reasonably expected to result in material liability; or
- (c) fail, or permit any of its ERISA Affiliates to fail, to comply in any material respect with ERISA or the related provisions of the Code, if any such non-compliance, singly or in the aggregate, would be reasonably likely to have a Material Adverse Effect.

23.21 **Access**

Each Obligor shall, and the Borrower shall ensure that each member of the Group will (not more than once in every Financial Year unless the Agent reasonably suspects a Default is continuing or may occur), permit the Agent and/or the Security Agent and/or accountants or other professional advisers and contractors of the Agent or Security Agent free access at all reasonable times and on reasonable notice at the risk and cost of the Obligor to (a) the premises, assets, books, accounts and records of each member of the Group and (b) meet and discuss matters with Richard Harris and David Roche.

23.22 **Intellectual Property**

23.22.1 Each Obligor shall and the Borrower shall procure that each member of the Group will:

- (a) preserve and maintain the subsistence and validity of the Intellectual Property necessary for its business;
- (b) use reasonable endeavours (including the institution of legal proceedings) to prevent any infringement in any material respect of the Intellectual Property;
- (c) promptly notify the Agent if it becomes aware of any infringement or challenge to the validity, enforceability or ownership of any Intellectual Property and supply the Security Agent with all information relating to it which is reasonably requested by the Agent;
- (d) make registrations and pay all registration fees and taxes necessary to maintain the Intellectual Property in full force and effect and record its interest in that Intellectual Property;
- (e) not use or permit the Intellectual Property to be used in a way or take any step or omit to take any step in respect of that Intellectual Property which may materially and adversely affect the existence or value of that Intellectual Property or imperil the right of any member of the Group to use such property; and
- (f) not discontinue the use of the Specified Intellectual Property (as defined in any Transaction Security Document),

where failure to do so in the case of Clauses 23.22.1(a) and 23.22.1(b) above, or, in the case of Clauses 23.22.1(d) and 23.22.1(e) above, such use, permission to use, omission or discontinuation is reasonably likely to have a Material Adverse Effect – *wording to be discussed* .

23.22.2 Failure to comply with any part of Clause 23.22.1 above shall not be a breach of Clause 23.22.1 to the extent that any dealing with Intellectual Property which would otherwise be a breach of Clause 23.22.1 is contemplated by paragraph (a) of the definition of Permitted Transaction.

23.23 **Amendments**

No Obligor shall (and the Borrower shall ensure that no other Obligor or member of the Group will) amend, vary, novate, supplement, supersede, waive or terminate any term of a Transaction Document or any other document delivered to the Agent pursuant to Clause 4.1 (*Initial conditions precedent*) or Clause 25.10 (*Changes to the Obligors*) or enter into any agreement with any shareholders of the Borrower except in writing:

- (a) in accordance with the provisions of Clause 36 (*Amendments and Waivers*) or the Subordination Deed; or
- (b) prior to the First Utilisation Date, with the prior written consent of the Original Lenders; or
- (c) after the First Utilisation Date, in a way which (i) could not reasonably be expected to materially and adversely affect the interests of the Lenders or the ranking and/or subordination arrangements provided for in the Subordination Deed and (ii) would not change the date, amount or method of payment of the dividends on the Borrower's shares.

The Borrower shall promptly supply to the Agent a copy of any document relating to any of the matters referred to in paragraphs (a) to (c) above.

23.24 **Financial assistance**

Each Obligor shall (and the Borrower shall procure each member of the Group will) comply in all respects with any legislation governing the granting of financial assistance in its jurisdiction of incorporation including in relation to the execution of the Transaction Security Documents and payment of amounts due under this Agreement.

23.25 **Treasury Transactions**

No Obligor shall (and the Borrower shall procure that no members of the Group will) enter into any Treasury Transaction.

23.26 **Further assurance**

23.26.1 Each Obligor shall (and the Borrower shall procure that each member of the Group will) promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify and in such form as the Security Agent may reasonably require (in favour of the Security Agent or its nominee (s)) in order to:

- (a) perfect or protect the Security created or intended to be created under or evidenced by the Transaction Security Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of the Security Agent or the Finance Parties provided by or pursuant to the Finance Documents or by law;
- (b) confer on the Security Agent or confer on the Finance Parties, Security over any property and assets of that Obligor located in any jurisdiction which is (to the extent permitted by local law) equivalent or similar to the Security intended to be conferred by or pursuant to the Transaction Security Documents; and/or

- (c) facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.
- 23.26.2 Each Obligor shall (and the Borrower shall procure that each member of the Group shall) take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Finance Parties by or pursuant to the Finance Documents.
- 23.27 **Intra-Group transactions**
- 23.27.1 Without the prior consent of the Agent, no member of the Group may enter into any transaction (whether by way of disposal, investment, loan, borrowing, guarantee or otherwise) with, or in respect of the obligations of, any other member of the Group save and except where such transaction is a Permitted Transaction and is not unlawful under any law or regulation in any relevant jurisdiction including under any applicable financial assistance legislation.
- 23.27.2 Without the prior consent of the Agent, no member of the Group may enter into any transaction (whether by way of disposal, investment, loan, borrowing, guarantee or otherwise and including, without limitation, any insurance or reinsurance relating to any member of the Group) with, or in respect of the obligations of, Enstar or any of its Subsidiaries (excluding other members of the Group) where the value of such transaction exceeds US\$100,000 or where the aggregate value all such transactions completed after the date of this Agreement exceeds (or would as a result of such transaction exceed) US\$1,000,000 save and except where such transaction is conducted in the ordinary course of trading on arm's length terms or is a Permitted Transaction.
- 23.27.3 If the relevant intra-Group transaction contemplated by Clause 23.27.1 above:
- (a) is a disposal of assets from one Obligor to another and if Transaction Security had been granted by the Obligor disposing of such asset then the asset must be either transferred subject to such Security or the acquiring Obligor must grant equivalent Security over that asset in favour of the Security Agent; or
 - (b) results in Financial Indebtedness being owed by an Obligor to another Obligor then the creditor of such Financial Indebtedness shall grant Security over its rights in respect of such Financial Indebtedness in favour of the Lenders on terms acceptable to the Agent (acting on the instructions of the Majority Lenders).
- 23.28 **Cash Management**
- 23.28.1 Subject to Clause 23.28.2 below, no Obligor shall and each Obligor will procure that none of its Subsidiaries will, at any time hold cash or Cash Equivalent Investments greater than required for its projected cashflow requirements (the amount being the **Cash Balance**) and such Cash Balance shall only be lent by such member of the Group by way of a Permitted Distribution.
- 23.28.2 No Obligor shall be obliged at any time to procure that a Subsidiary transfer any Cash Balance under Clause 23.28.1 above:

- (a) at a time when to do so would cause the Obligor or the Subsidiary (despite that person using all reasonable effects to avoid the relevant Tax liability) to incur a materially greater Tax liability in respect of the Cash Balance than it would otherwise incur if the transfer were made at a later date;
- (b) if (despite using all reasonable efforts to avoid the breach or the result) to do so would breach any applicable law, regulatory requirement or result in personal liability for the Obligor or the Subsidiary or any such person's directors or management; or
- (c) which would leave an amount which is less than US\$50,000 in that Subsidiary.

23.29 **Insurance**

- (a) Each Obligor shall (and the Borrower shall ensure that each member of the Group will) maintain insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business.
- (b) All insurances must be with reputable insurance companies or underwriters.

23.30 **Obligors**

23.30.1 The Borrower shall ensure that at all times after the date falling 10 days after the First Utilisation Date, each member of the Group that is not a Regulated Entity is an Obligor.

23.30.2 The Borrower need only perform its obligations under Clause 23.29.1 above if it is not unlawful for the relevant person to become an Obligor and that person becoming an Obligor would not result in personal liability for that person's directors or other management. Each Obligor that is not a Regulated Entity must use, and must procure that the relevant person uses, all reasonable endeavours lawfully available to avoid any such unlawfulness or personal liability. This includes agreeing to a limit on the amount guaranteed. The Agent may (but shall not be obliged to) agree to such a limit if, in its opinion, to do so would avoid the relevant unlawfulness or personal liability.

23.31 **Syndication**

The Borrower shall provide reasonable assistance to the Arranger in the preparation of the Information Memorandum and the primary syndication of the Facility (including, without limitation, by making senior management available for the purpose of making presentations to, or meeting, potential lending institutions) and will comply with all reasonable requests for information from potential syndicate members prior to completion of syndication.

23.32 **Federal Reserve Regulations**

The Borrower will use the Facility without violating Regulations T, U and X.

23.33 **Compliance with US Regulations**

No Obligor shall (and the Borrower shall ensure that no other member of the Group will) become an **investment company**, or an **affiliated person** of, or **promoter** or **principal underwriter** for, an **investment company**, as such terms are defined in the 1940 Act. Neither the making of any Loan, or the application of the proceeds or repayment of any Loan by any member of the Group nor the consummation of the other transactions contemplated by this agreement will violate any provision of such act or any rule, regulation or order of the SEC under the 1940 Act.

23.34 **Anti-Terrorism Law**

No member of the Group shall (i) conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any person described in Clause 20.35 (*Anti-Terrorism Laws*) above, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or any other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purposes of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law (and the Borrower shall deliver to the Lenders any certificating or other evidence requested from time to time by any Lender or the Agent in its reasonable discretion, confirming such member of the Group's compliance with this Clause 23.34.

23.35 **Embargoed Person**

At all times through the term of the Facility, (a) none of the funds or assets of the Obligors that are used to repay the Facility shall constitute property of, or shall be beneficially owned directly or, to the knowledge of any Obligor, indirectly by, any person subject to sanctions or trade restrictions under United States law (**Embargoed Person** or **Embargoed Persons**) that is identified on (1) the **List of Specially Designated Nationals and Blocked Persons** maintained by the Office of Foreign Assets Control (OFAC) of the US Department of the Treasury, and/or to the knowledge of any Obligor, as at the date of this Agreement, based upon reasonable inquiry by such Obligor, on any other similar list maintained by OFAC pursuant to any authorising statute including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§1701 et seq., The Trading with the Enemy Act, 50 USC App. 1 et seq., and any Executive Order or regulation promulgated thereunder, with the result that the investment in the Obligors (whether directly or indirectly), is prohibited by law, or the Facility made by the Lenders would be in violation of law, or (2) the Executive Order, any related enabling legislation or any other similar Executive Orders, and (b) no Embargoed Person shall have any direct interests, and to the knowledge of any Obligor, as at the date of this Agreement, based upon reasonable inquiry by any Obligor, indirect interest of any nature whatsoever in the Obligors, with the result that the investment in the Obligors (whether directly or indirectly), is prohibited by law or the Facility are in violation of law.

23.36 **Anti-Money Laundering**

At all times throughout the term of the Facility, to the best knowledge of the Borrower (based upon reasonable inquiry by the Borrower), none of the funds of the Borrower that are used to repay the Facility shall be derived from any unlawful activity.

23.37 **Conditions Subsequent**

The Borrower shall use all reasonable endeavours to deliver to the Agent, in form and substance satisfactory to it, each document listed in Schedule 2 Part 1B (*Conditions Subsequent*) on the First Utilisation Date. To the extent it is not reasonably practical to do so, such document will be delivered within three Business Days of the First Utilisation Date.

- 23.38 **US Surplus Notes**
The Borrower shall procure that the US Surplus Notes are repaid in full within 120 days of the date of Completion.
- 23.39 **Municipal Bonds**
No member of the Target Group may (and the Borrower shall procure that no member of the Target Group shall) at any time after the date of this Agreement increase its investments in municipal bonds provided that this clause shall not restrict members of the Target Group from holding or dealing in any such investment purchased by it prior to the date of this Agreement.
- 24 **Events Of Default**
Each of the events or circumstances set out in this Clause 24 is an Event of Default.
- 24.1 **Non-payment**
An Obligor does not pay on the due date any amount payable pursuant to a Finance Document in the manner in which it is expressed to be payable unless:
- (a) its failure to pay is caused by:
 - (i) administrative or technical error by a bank in the transmission of funds; or
 - (ii) a Disruption Event; and
 - (b) payment is made within 5 Business Days of its due date.
- 24.2 **Financial covenants and other obligations**
- 24.2.1 Any requirement of Clause 22 (*Financial Covenants*) is not satisfied.
- 24.2.2 An Obligor does not comply with the provisions of Clauses 21 (*Information Undertakings*), Clause 23.4 (*Merger*) to 23.8 (*Holding Companies*) (inclusive), Clauses 23.12 (*Negative pledge*) to 23.20 (*Compliance with ERISA*) (inclusive) or Clause 23.23 (*Amendments*).
- 24.2.3 An Obligor does not comply with any provision of any Transaction Security Document.
- 24.3 **Other obligations**
- 24.3.1 An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 24.1 (*Non-payment*) and Clause 24.2 (*Financial covenants and other obligations*)).
- 24.3.2 No Event of Default under Clause 24.3.1 above will occur if the failure to comply is capable of remedy and is remedied within 10 Business Days after the earlier of the Agent giving notice to the Borrower or relevant Obligor or the Borrower or an Obligor becoming aware of the failure to comply.
- 24.4 **Misrepresentation**
- 24.4.1 Any representation, warranty or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of any Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading when made or deemed to be made.

- 24.4.2 No Event of Default under Clause 24.4.1 above will occur if the failure to comply is capable of remedy and is remedied within 10 Business Days after the earlier of the Agent giving notice to the Obligor's Agent or relevant Obligor or the Obligor's Agent or an Obligor becoming aware of the failure to comply.
- 24.5 **Cross default**
- 24.5.1 Any Financial Indebtedness of any member of the Group is not paid when due nor within any originally applicable grace period.
- 24.5.2 Any Financial Indebtedness of any member of the Group is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- 24.5.3 Any commitment for any Financial Indebtedness of any member of the Group is cancelled or suspended by a creditor of any member of the Group as a result of an event of default (however described).
- 24.5.4 Any creditor of any member of the Group becomes entitled to declare any Financial Indebtedness of any member of the Group due and payable prior to its specified maturity as a result of an event of default (however described).
- 24.5.5 No Event of Default will occur under Clauses 24.5.1 to 24.5.4 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within Clauses 24.5.1 to 24.5.4 above is less than US\$400,000.
- 24.6 **Insolvency**
- 24.6.1 Any member of the Group is unable or admits inability to pay its debts as they fall due or is deemed to or declared to be unable to pay its debts under applicable law, suspends or threatens to suspend making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- 24.6.2 The value of the assets of any member of the Group is less than its liabilities (taking into account contingent and prospective liabilities).
- 24.6.3 A moratorium is declared in respect of any indebtedness of any member of the Group. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.
- 24.7 **Insolvency proceedings**
- 24.7.1 Any corporate action, legal proceedings or other procedure or step is taken in relation to:
- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, liquidation, arrangement or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any member of the Group or the composition or readjustment of its debts;
 - (b) a composition, compromise, assignment or arrangement with any creditor of any member of the Group;
 - (c) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager, custodian, trustee, examiner, rehabilitator, conservator, supervisor or other similar officer in respect of any member of the Group or any of its assets;

- (d) enforcement of any Security over any assets of any member of the Group; or
- (e) any analogous procedure or step to those listed in paragraphs (a) to (d) above is taken in any jurisdiction or an order for relief against any member of the Group shall be entered in an involuntary case under Title II of the United States of America Code entitled Bankruptcy (or any successor thereto) as amended.

24.7.2 Any member of the Group shall in any US jurisdiction:

- (a) apply for, or consent to, the appointment of, or the taking of possession by, a receiver, custodian, trustee, examiner or liquidator of itself or of any of its property;
- (b) make a general assignment for the benefit of its creditors;
- (c) commence a voluntary case under Title II of the United States of America Code entitled Bankruptcy (or any successor thereof), as amended;
- (d) file a petition with respect to itself seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganisation, liquidation, dissolution, arrangement or winding up, or composition or readjustment of debts; or
- (e) take any corporate action for the purpose of effecting any of the foregoing with respect to itself.

24.7.3 Clause 24.7.1 above shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement, or, if earlier, the date on which it is advertised.

24.8 **Creditors' process**

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of an Obligor or a member of the Group having an aggregate value of US\$750,000 or more and is not discharged within 7 days.

24.9 **Unlawfulness and invalidity**

24.9.1 It is or becomes unlawful for an Obligor, or any other member of the Group that is party to the Subordination Deed, to perform any of its obligations under the Finance Documents or any Transaction Security created or expressed to be created or evidenced by the Transaction Security Documents ceases to be effective or any subordination created under the Subordination Deed is or becomes unlawful.

24.9.2 Any obligation or obligations of any Obligor under any Finance Document or any member of the Group under the Subordination Deed are not (subject to the Legal Reservations) or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents.

24.9.3 Any Finance Document ceases to be in full force and effect or any Transaction Security or any subordination created under the Subordination Deed ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than a Finance Party) to be ineffective.

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- 24.10 **Subordination Deed**
- 24.10.1 Any party to the Subordination Deed (other, in each case, than a Finance Party) fails to comply with the provisions of, or does not perform its obligations under, the Subordination Deed or a representation or warranty given by that party in the Subordination Deed is incorrect in any material respect.
- 24.10.2 No Event of Default under Clause 24.10.1 above will occur if the non-compliance or circumstances giving rise to the misrepresentation are capable of remedy, and it is remedied within 10 Business Days of the earlier of the Agent giving notice to that party or that party becoming aware of the non-compliance or misrepresentation.
- 24.11 **Cessation of business**
- Any Obligor or any member of the Group suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business except as a result of The Acquisition, a disposal which is a Permitted Disposal or a Permitted Transaction which is contemplated in paragraph (a) of the definition of that term.
- 24.12 **Change of ownership**
- 24.12.1 An Obligor (other than the Borrower) ceases to be a wholly-owned Subsidiary of the Borrower.
- 24.12.2 The Borrower ceases to be a wholly-owned Subsidiary of the Shareholder.
- 24.12.3 The Shareholder ceases to be a wholly-owned Subsidiary of Enstar.
- 24.13 **Amending Constitutional Documents**
- The Borrower amends, varies, supplements, supersedes, waives or terminates any provision of its Constitutional Documents which could adversely affect the interests of the Finance Parties without the prior written consent of the Majority Lenders.
- 24.14 **Audit qualification**
- The Auditors of the Group qualify the audited annual consolidated financial statements of the Borrower.
- 24.15 **Expropriation**
- The authority or ability of any Obligor or any member of the Group to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any Obligor or any member of the Group or any of its assets.
- 24.16 **Repudiation and rescission of agreements**
- 24.16.1 An Obligor (or any other relevant party other than a Finance Party) or the Shareholder rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or any of the Transaction Security or evidences an intention to rescind or repudiate a Finance Document or any Transaction Security.
- 24.16.2 Any party to the Acquisition Documents or the Subordination Deed rescinds or purports to rescind or repudiates or purports to repudiate any of those agreements or instruments in whole or in part where to do so has or is, in the reasonable opinion of the Majority Lenders, likely to have a material adverse effect on the interests of the Lenders under the Finance Documents.

- 24.17 **Litigation**
Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to the Transaction Documents or the transactions contemplated in the Transaction Documents or against any Obligor or any member of the Group or its assets and which if successful would be reasonably likely to have a Material Adverse Effect.
- 24.18 **Regulatory Sanctions**
Any fine, levy or sanctions are imposed upon any member of the Target Group by any Governmental Authority which the Majority Lenders reasonably believe has or is reasonably likely to have a Material Adverse Effect.
- 24.19 **Material adverse change**
Any event or circumstance occurs which the Majority Lenders reasonably believe has or is reasonably likely to have a Material Adverse Effect.
- 24.20 **Employee Plans**
Any ERISA Event shall have occurred, or Clause 23.20 (*Compliance with ERISA*) shall be breached, and the liability of a member of the Group or its ERISA Affiliates, either individually or in the aggregate, related to such ERISA Event or breaches, individually or when aggregated with all other ERISA Events and all such breaches, would have or would be reasonably expected to have a Material Adverse Effect.
- 24.21 **Acceleration**
On and at any time after the occurrence of an Event of Default which is continuing the Agent may, and shall if so directed by the Majority Lenders, by notice to the Borrower:
- (a) cancel the Total Commitments at which time they shall immediately be cancelled;
 - (b) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, at which time they shall become immediately due and payable;
 - (c) declare that all or part of the Loans be payable on demand, at which time they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders; and/or
 - (d) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.
- 24.22 **Effect of Insolvency**
At any time after the occurrence of an Event of Default under Clause 24.6 (*Insolvency*) or Clause 24.7 (*Insolvency proceedings*) in respect of any Obligor the Loans made to such Obligor shall be immediately due and payable without notice from the Agent (together with accrued interest and commission and any other sums then owed by such Obligor under this Agreement).

- 25 **Changes To The Lenders**
- 25.1 **Assignments and transfers by the Lenders**
- Subject to this Clause 25, a Lender (**Existing Lender**) may:
- (a) assign any of its rights; or
 - (b) transfer by novation any of its rights and obligations, under any Finance Document to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (**New Lender**).
- 25.2 **Conditions of assignment or transfer**
- 25.2.1 The consent of the Borrower is required for an assignment or transfer by an Existing Lender, unless the assignment or transfer is:
- (a) to another Lender or an Affiliate of a Lender;
 - (b) if the Existing Lender is a fund, to a fund which is a Related Fund of the Existing Lender; or
 - (c) made at a time when an Event of Default is continuing.
- 25.2.2 The consent of the Borrower to an assignment or transfer by an Existing Lender must not be unreasonably withheld or delayed. The Borrower will be deemed to have given its consent five Business Days after the Existing Lender has requested it unless consent is expressly refused by the Borrower within that time.
- 25.2.3 The consent of the Borrower to an assignment or transfer by an Existing Lender must not be withheld solely because the assignment or transfer may result in an increase to the Mandatory Cost.
- 25.2.4 An assignment will only be effective on:
- (a) receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties and the other Secured Parties as it would have been under if it was an Original Lender; and
 - (b) the performance by the Agent of all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.
- 25.2.5 A transfer will only be effective if the procedure set out in Clause 25.6 (*Procedure for transfer*) is complied with.
- 25.2.6 If:
- (a) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
 - (b) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 14 (*Tax gross-up and indemnities*) or Clause 15.1 (*Increased costs*),

then (unless the assignment, transfer or charge has been made in mitigation in accordance with Clause 17 (*Mitigation by the Lenders*)) the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred.

25.2.7 Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

25.3 **Assignment to Federal Reserve Bank**

In addition to any other assignments or participation rights provided in this Clause 25, each Lender may assign and pledge all or any portion of its Loans and the other obligations owed to such Lender, without notice to or consent of any Party, to any Federal Reserve Bank pursuant to Regulation A of the Board of Governors of the Federal Reserve Bank and any operating circular issued by such Federal Reserve Bank; *provided, however, that* , (i) no Lender shall be relieved of any of its obligations under this Agreement as a result of any such assignment and pledge and (ii) in no event shall such Federal Reserve Bank be considered to be a **Lender** or be entitled to require the assigning Lender to take or omit to take any action under this Agreement.

25.4 **Assignment or transfer fee**

Unless the Agent otherwise agrees and excluding an assignment or transfer:

- (a) to an Affiliate of a Lender;
- (b) to a Related Fund; or
- (c) made in connection with primary syndication of the Facility,

the New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of £1,000.

25.5 **Limitation of responsibility of Existing Lenders**

25.5.1 Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:

- (a) the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents, the Transaction Security or any other documents;
- (b) the financial condition of any Obligor;
- (c) the performance and observance by any Obligor or any other member of the Group of its obligations under the Transaction Documents or any other documents; or
- (d) the accuracy of any statements (whether written or oral) made in or in connection with any Transaction Document or any other document,

and any representations or warranties implied by law are excluded.

- 25.5.2 Each New Lender confirms to the Existing Lender, the other Finance Parties and the Secured Parties that it:
- (a) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Transaction Document or the Transaction Security; and
 - (b) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- 25.5.3 Nothing in any Finance Document obliges an Existing Lender to:
- (a) accept a re-transfer or reassignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 25; or
 - (b) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Transaction Documents or otherwise.
- 25.6 **Procedure for transfer**
- 25.6.1 Subject to the conditions set out in Clause 25.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with Clause 25.6.3 below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to Clause 25.6.2 below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.
- 25.6.2 The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender upon its completion of all “know your customer” or other checks relating to any person that it is required to carry out in relation to the transfer to such New Lender.
- 25.6.3 On the Transfer Date:
- (a) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights, benefits and obligations under the Finance Documents and in respect of the Transaction Security each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the **Discharged Rights and Obligations**);
 - (b) each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights and benefits against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor or other member of the Group and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;

- (c) the Agent, the Arrangers, the Security Agent, the New Lender and the other Lenders shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Lender been an Original Lender with the rights, and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Agent, the Arranger, the Security Agent and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
- (d) the New Lender shall become a Party as a **Lender** .

25.7 **Procedure for assignment**

25.7.1 Subject to the conditions set out in Clause 25.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with Clause 25.7.3 below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to Clause 25.7.2 below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.

25.7.2 The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender upon its completion of all “know your customer” or other checks relating to any person that it is required to carry out in relation to the assignment to such New Lender.

25.7.3 **On the Transfer Date:**

- (a) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;
- (b) the Existing Lender will be released from the obligations (**Relevant Obligations**) expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and
- (c) the New Lender shall become a Party as a Lender and will be bound by obligations equivalent to the Relevant Obligations.

25.7.4 Lenders may utilise procedures other than those set out in this Clause 25 to assign their rights under the Finance Documents provided that they comply with the conditions set out in Clause 25.2 (*Conditions of assignment or transfer*).

25.8 **Copy of Transfer Certificate or Assignment Agreement to Borrower**

The Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate or an Assignment Agreement, send to the Borrower a copy of that Transfer Certificate or Assignment Agreement.

25.9 **Security Interests over Lenders’ rights**

In addition to the other rights provided to Lenders under this Clause 25, each Lender may without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and

- (b) in the case of any Lender which is a fund, any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or Security shall:

- (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or
- (ii) require any payments to be made by an Obligor or grant to any person any more extensive rights than those required to be made or granted to the relevant Lender under the Finance Documents.

25.10

Pro Rata Interest Settlement

If the Agent has notified the Lenders that it is able to distribute interest payments on a “pro rata basis” to Existing Lenders and New Lenders then (in respect of any transfer pursuant to Clause 25.6 (*Procedure for transfer*) or any assignment pursuant to Clause 25.7 (*Procedure for assignment*) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):

- (a) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but including the Transfer Date (**Accrued Amounts**) and shall become due and payable to the Existing Lender (without further interest accruing on them) until the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and
- (b) the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts so that, for the avoidance of doubt:
 - (i) when the Accrued Amounts become payable, those Accrued Amounts will be payable for the account of the Existing Lender, and
 - (ii) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 25.10, have been payable to it on that date, but after deduction of the Accrued Amounts.

25.11

Prohibition on Debt Purchase Transactions

The Borrower shall not, and shall procure that each other member of the Group shall not, enter into any Debt Purchase Transaction or beneficially own all or any part of the share capital of a company that is a Lender or a party to a Debt Purchase Transaction of the type referred to in paragraphs (b) or (c) of the definition of Debt Purchase Transaction.

- 26 **Changes to the Obligors**
- 26.1 **Assignment and transfers by Obligors**
No Obligor or any other member of the Group may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.
- 26.2 **Additional Guarantors**
- 26.2.1 Subject to compliance with the provisions of Clause 21.9 ("*Know your customer*" checks), the Borrower may request that any of its wholly owned Subsidiaries become a Guarantor.
- 26.2.2 A member of the Group shall become an Additional Guarantor if:
- (a) the Borrower and the proposed Additional Guarantor deliver to the Agent a duly completed and executed Accession Letter; and
 - (b) the Agent has received all of the documents and other evidence listed in Part 2 of Schedule 2 (*Conditions precedent*) in relation to that Additional Guarantor, each in form and substance satisfactory to the Agent.
- 26.2.3 The Agent shall notify the Borrower and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part 2 of Schedule 2 (Conditions precedent).
- 26.3 **Repetition of Representations**
Delivery of an Accession Letter constitutes confirmation by the relevant Subsidiary that the representations and warranties referred to in Clause 20.36 (*Times when representations made*) are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.
- 26.4 **Resignation and release of security on disposal**
- 26.4.1 In this clause, **Third Party Disposal** means the disposal of an Obligor to a person which is not a member of the Group where that disposal is permitted under Clause 23.13 (*Disposals*) or made with the approval of the Majority Lenders (and the Borrower has confirmed this is the case).
- 26.4.2 If the Borrower or an Obligor is or is proposed to be the subject of a Third Party Disposal then:
- (a) the Borrower shall confirm that no Default is continuing or would result from the Third Party Disposal;
 - (b) the Borrower shall confirm that if that Obligor is a Guarantor, no payment is due from that Guarantor under Clause 19.1 (*Guarantee and indemnity*);
 - (c) where the Borrower or that Obligor created Transaction Security over any of its assets or business in favour of the Security Agent, or Transaction Security in favour of the Security Agent was created over the shares (or equivalent) of the Borrower or that Obligor, the Security Agent may, at the cost and request of the Borrower, release those assets, business or shares (or equivalent) and issue certificates of non-crystallisation;
 - (d) the resignation of the Borrower or that Obligor and related release of Transaction Security referred to in Clause 26.4.2(a) above shall not become effective until all Disposal Proceeds resulting from that Third Party Disposal have been irrevocably paid to the Agent in accordance with Clause 7.5 (*Mandatory Prepayment*); and

- (e) if the disposal of the Borrower or that Obligor is not made, the release of Transaction Security referred to in Clause 26.4.2(a) above shall have no effect and the obligations of the Borrower or Obligor and the Transaction Security created or intended to be created by or over the Borrower or that Obligor shall continue in full force and effect.
- 26.4.3 The resignation of that Obligor shall not be effective until the date of the relevant Third Party Disposal at which time that company shall cease to be an Obligor and shall have no further rights or obligations under the Finance Documents as a Borrower or Guarantor (as applicable).
- 26.5 **Changes to the Obligors – FATCA**
- 26.5.1 No Subsidiary may become an Additional Guarantor, or cease to be a Guarantor, before the date falling ten Business Days after the Borrower’s request thereto has been notified by the Agent to the Lenders, unless, at least six months prior to the earliest FATCA Application Date for any payment by a party to a Lender (or to the Agent for the account of that Lender) the Borrower (by notice to the Agent and each Lender) irrevocably designates each Lender as a “FATCA Protected Lender”. The Agent shall notify the Lenders reasonably promptly of any such requests from the Borrower.
- 26.5.2 If the Agent or a Lender reasonably believes that a Subsidiary becoming an Additional Guarantor, or ceasing to be a Guarantor, may constitute a “material modification” for the purposes of FATCA that may result (directly or indirectly) in a party being required to make a FATCA Deduction and the Agent or such Lender (as the case may be) notifies the Borrower and the Agent accordingly, that Subsidiary may not, subject to Clause 26.5.3 below, become an Additional Guarantor, or cease to be a Guarantor (as the case may be) without the consent of the Agent or that Lender (as the case may be).
- 26.5.3 The consent of a Lender shall not be required pursuant to Clause 26.5.2 above if that Lender is a FATCA Protected Lender.
- 27 **Role Of The Agent, The Arranger, The Security Agent And Others**
- 27.1 **Appointment of the Agent**
- 27.1.1 Each Arranger and each of the Lenders appoints the Agent to act as its agent under and in connection with the Finance Documents.
- 27.1.2 Each Arranger and each of the Lenders authorises the Agent to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.
- 27.2 **Duties of the Agent**
- 27.2.1 The Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party excluding, for the avoidance of doubt, any Fee Letter.
- 27.2.2 Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.

- 27.2.3 If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties. The Agent is not obliged to monitor or enquire whether a Default has occurred.
- 27.2.4 If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent, the Arranger or the Security Agent) under this Agreement it shall promptly notify the other Finance Parties.
- 27.2.5 The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- 27.3 **Role of the Arrangers**
Except as specifically provided in the Finance Documents, the Arrangers have no obligations of any kind to any other Party under or in connection with any Finance Document.
- 27.4 **No fiduciary duties**
- 27.4.1 Nothing in this Agreement constitutes the Agent and/or the Arrangers as a trustee or fiduciary of any other person.
- 27.4.2 None of the Agent, the Security Agent or the Arrangers shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.
- 27.5 **Business with the Group**
The Agent, the Security Agent and the Arrangers may accept deposits from, lend money to and generally engage in any kind of banking or other business with any Obligor or any member of the Group.
- 27.6 **Rights and discretions**
- 27.6.1 The Agent may rely on:
- (a) any representation, notice or document believed by it to be genuine, correct and appropriately authorised; and
 - (b) any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.
- 27.6.2 The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
- (a) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 24.1 (*Non-payment*));
 - (b) any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised; and
 - (c) any notice or request made by the Borrower (other than a Utilisation Request or Selection Notice) is made on behalf of and with the consent and knowledge of all the Obligors.
- 27.6.3 The Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, actuaries or other experts.

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- 27.6.4 The Agent may act in relation to the Finance Documents through its personnel and agents.
- 27.6.5 The Agent may disclose to any other Party any information it reasonably believes it has received as agent under the Finance Documents.
- 27.6.6 The Agent may execute on behalf of the Finance Parties any document expressed by any Finance Document to be executed by the Agent on their behalf.
- 27.6.7 Notwithstanding any other provision of any Finance Document to the contrary, none of the Agent or the Arranger is obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- 27.7 **Majority Lenders' instructions**
- 27.7.1 Unless a contrary indication appears in a Finance Document, the Agent shall (i) exercise any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by the Majority Lenders (or, if so instructed by the Majority Lenders, refrain from exercising any right, power, authority or discretion vested in it as Agent) and (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Majority Lenders.
- 27.7.2 Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders will be binding on all the Finance Parties other than the Security Agent.
- 27.7.3 Any Lender may by notice to the Agent divide its Loans or Commitments into separate amounts to reflect sub-participation or similar transactions and may require the Agent to count such separate amounts individually in calculating the composition of the Majority Lenders.
- 27.7.4 The Agent may refrain from acting in accordance with the instructions of the Majority Lenders (or, if appropriate, the Lenders) until it has received such security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.
- 27.7.5 In the absence of instructions from the Majority Lenders, (or, if appropriate, the Lenders), the Agent may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.
- 27.7.6 The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document. This Clause 27.7 shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Transaction Security Documents or enforcement of the Transaction Security or Transaction Security Documents.
- 27.8 **Responsibility for documentation**
- Neither the Agent nor the Arrangers:
- (a) are responsible for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agent, an Arranger, an Obligor or any other person given in or in connection with any Finance Document, the Information Memorandum or the Report or the transactions contemplated in the Finance Documents; or

- (b) are responsible for the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document or the Transaction Security.

27.9 **Exclusion of liability**

27.9.1 Without limiting Clause 27.9.2 below and without prejudice to the provisions of Clause 30.14 (*Disruption to the Payment Systems etc.*), the Agent will not be liable for any action taken by it under or in connection with any Finance Document or the Transaction Security, unless directly caused by its gross negligence or wilful misconduct.

27.9.2 No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent, or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Transaction Document and any officer, employee or agent of the Agent, may rely on this Clause 27.9 subject to Clause 1.8 (*Third party rights*) and the provisions of the Third Parties Act.

27.9.3 The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.

27.9.4 Nothing in this Agreement shall oblige the Agent or the Arrangers to carry out any “know your customer” or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Agent and the Arrangers that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or the Arrangers.

27.10 **Lenders’ indemnity to the Agent**

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within three Business Days of demand, against any cost, loss or liability (including for negligence or any other category of liability whatsoever) incurred by the Agent (otherwise than by reason of the Agent’s gross negligence or wilful misconduct) (or in the case of any costs, loss or liability pursuant to Clause 30.14 (*Disruption to Payment Systems etc.*) notwithstanding the Agent’s negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by an Obligor pursuant to a Finance Document).

27.11 **Resignation of the Agent**

27.11.1 The Agent may resign and appoint one of its Affiliates acting through an office in the United Kingdom as successor by giving notice to the Lenders and the Borrower.

27.11.2 Alternatively the Agent may resign by giving notice to the Lenders and the Borrower, in which case the Majority Lenders (after consultation with the Borrower) may appoint a successor Agent.

- 27.11.3 If the Majority Lenders have not appointed a successor Agent in accordance with Clause 27.11.2 above within 30 days after notice of resignation was given, the Agent (after consultation with the Borrower) may appoint a successor Agent (acting through an office in the United Kingdom).
- 27.11.4 The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- 27.11.5 The Agent's resignation notice shall only take effect upon the appointment of a successor.
- 27.11.6 Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 27. Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- 27.11.7 After consultation with the Borrower, the Majority Lenders may, by notice to the Agent, require it to resign in accordance with Clause 27.11.2 above. In this event, the Agent shall resign in accordance with Clause 27.11.2 above.
- 27.11.8 The Agent shall resign in accordance with Clause 27.11.2 above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to Clause 27.11.3 above) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:
- (a) the Agent fails to respond to a request under Clause 14.7 (*FATCA Information*) and a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
 - (b) the information supplied by the Agent pursuant to Clause 14.7 (*FATCA Information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
 - (c) the Agent notifies the Borrower and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date,
- and (in each case) a Lender believes that a Party may be required to make a FATCA Deduction that would not be required if the Agent were a FATCA Exempt Party, and that Lender, by notice to the Agent, requires it to resign.
- 27.12 **Confidentiality**
- 27.12.1 In acting as agent for the Finance Parties, the Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- 27.12.2 If information is received by another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.
- 27.12.3 Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor the Arranger are obliged to disclose to any other person (i) any confidential information, or (ii) any other information if the disclosure would or might in its reasonable opinion constitute a breach of any law or a breach of a fiduciary duty.

27.13 **Relationship with the Lenders**

27.13.1 The Agent may treat each Lender as a Lender, entitled to payments under this Agreement and acting through its Facility Office unless it has received not less than five Business Days prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

27.13.2 Each Lender shall supply the Agent with any information required by the Agent in order to calculate the Mandatory Cost in accordance with Schedule 4 (*Mandatory Cost Formula*).

27.13.3 Each Lender shall supply the Agent with any information that the Security Agent may reasonably specify (through the Agent) as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent. Each Lender shall deal with the Security Agent exclusively through the Agent and shall not deal directly with the Security Agent.

27.14 **Credit appraisal by the Lenders**

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent and the Arrangers that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of each Obligor and each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;
- (c) whether that Secured Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Transaction Security, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (d) the adequacy, accuracy and/or completeness of the Information Memorandum, the Report or any other information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

27.15 **Reference Banks**

27.15.1 If a Lender is a Reference Bank (or an Affiliate of a Reference Bank) but later ceases to be a Lender, the Agent shall (in consultation with the Borrower) appoint another Lender or another Affiliate of a Lender to replace that Reference Bank.

27.15.2 If a Reference Bank which was not a Lender subsequently becomes a Lender, the Agent may (in consultation with the Borrower) appoint that Lender to replace any Reference Bank which is not then either a Lender or an Affiliate of a Lender.

27.16 **Deduction from amounts payable by the Agent**

If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

27.17 **Reliance and engagement letters**

Each Finance Party and Secured Party confirms that each Arranger and the Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by an Arranger or Agent) the terms of any reliance letter or engagement letters relating to the Report or letters provided by accountants or actuaries in connection with the Finance Documents or the transactions contemplated in the Finance Documents (including any net asset letter in connection with the financial assistance procedures) and to bind it in respect of those reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

27.18 **Appointment of Security Agent**

27.18.1 Each other Finance Party irrevocably appoints the Security Agent as its agent and trustee on the terms set out in Schedule 11 (*Security Agent*).

27.18.2 Each Obligor and each other Finance Party agrees to the terms set out in Schedule 11 (*Security Agent*). In the event of any conflict between the terms of Schedule 11 (*Security Agent*) and any other Finance Document, the terms of Schedule 11 (*Security Agent*) shall prevail.

27.19 **Release of Security**

27.19.1 The Security Agent may at its sole discretion and without reference to any other Finance Party take such action as it deems necessary or advisable to release any assets from the Security constituted by the Transaction Security Documents to the extent that their disposal or release is:

- (a) permitted or required by the terms of this Agreement including pursuant to any instructions given to it in accordance with Clause 27.20 (*Instructions*); or
- (b) permitted or required by the original form of any other Finance Document and will not result or could not reasonably be expected to result in any breach of the terms of this Agreement.

27.19.2 If:

- (a) all of the shares in the capital of any member of the Group are to be disposed of, which would result in any Obligor ceasing to be a member of the Group; or

(b) any asset which is the subject of a Transaction Security Document is to be disposed of to a person outside (and which will remain outside) the Group,

and in any such case:

- (i) the Majority Lenders agree to such disposal; or
- (ii) the Security Agent has received instructions from the relevant Finance Parties that comply with Clause 27.20 (*Instructions*) instructing it to release the relevant Security and/or Guarantees over such asset; or
- (iii) the disposal is permitted by the terms of the relevant Finance Document and will not result or could not reasonably be expected to result in any breach of any of the terms of this Agreement; or
- (iv) the disposal is being made at the request of the Security Agent in circumstances where any Security created by the Transaction Security Documents has become enforceable; or
- (v) the disposal is being effected by enforcement of a Transaction Security Document,

then, in the case of a disposal contemplated by paragraph (a) above, the Security provided by that Obligor over its assets under the Transaction Security Documents and any related guarantees given by, or in respect of, such Obligor will be released and in the case of a disposal contemplated by paragraph (b) above those assets will be released from such Security, in each case at the expense of the relevant Obligor.

27.19.3 The Security Agent is authorised by each other Finance Party to execute (on behalf of itself and each such Finance Party) all releases of any Security or any guarantee resulting from any disposal contemplated in Clauses 27.19.1 and 27.19.2 above, without the need for any further referral to, or authority from, any other Party, including any formal release of any asset which the Security Agent in its absolute discretion considers necessary or desirable in connection with that disposal.

27.20 **Instructions:**

27.20.1 The Security Agent shall act in accordance with:

- (a) the terms of this Agreement; or
- (b) joint instructions received from, or on behalf of, the Majority Lenders.

27.20.2 Any release of any Security constituted by the Transaction Security Documents or any release of any claim arising by virtue of any guarantee given under the Finance Documents, shall (other than as provided in Clause 27.19 (*Release of Security*)) require the prior written consent of, or on behalf of, the Majority Lenders).

27.20.3 The Security Agent will not be liable to any other Finance Party for any act (or omission) if it acts (or refrains from taking any action) in accordance with the terms of this Agreement even if such action would otherwise cause a breach of any Finance Document. If there is any conflict between the provisions of this Agreement and any other Finance Document with regard to instructions or other matters affecting the Security Agent, this Agreement will prevail.

- 27.20.4 Any instructions given to the Security Agent in accordance with the terms of this Agreement will be binding on all other Finance Parties who shall not be entitled to object to anything done or omitted to be done as a result of such instructions.
- 27.20.5 In the absence of instructions, the Security Agent may act (or refrain from taking action) in such manner as it considers to be in the best interests of the Finance Parties but is not authorised to act on behalf of another Finance Party (without first obtaining their consent) in any legal or arbitration proceedings relating to any Finance Document.
- 27.20.6 The Security Agent may refrain from acting in accordance with any instructions until it has received such Security as it may require for any cost, loss or liability (together with any associated Tax) which it may incur in complying with the instructions.

28 **Conduct Of Business By The Finance Parties**

No provision of any Finance Document will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

29 **Sharing Among The Finance Parties**

29.1 **Payments to Finance Parties**

If a Finance Party (**Recovering Finance Party**) receives or recovers any amount from an Obligor other than in accordance with Clause 30 (*Payment mechanics*) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Agent;
- (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 30 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three Business Days of demand by the Agent, pay to the Agent an amount (**Sharing Payment**) equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 30.9 (*Partial payments*).

29.2 **Redistribution of payments**

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) in accordance with Clause 30.9 (*Partial payments*).

29.3 **Recovering Finance Party's rights**

29.3.1 On a distribution by the Agent under Clause 29.2 (*Redistribution of payments*), the Recovering Finance Party will be subrogated to the rights of the Finance Parties which have shared in the redistribution.

29.3.2 If and to the extent that the Recovering Finance Party is not able to rely on its rights under Clause 29.3.1 above, the relevant Obligor shall be liable to the Recovering Finance Party for a debt equal to the Sharing Payment which is immediately due and payable.

29.4 **Reversal of redistribution**

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Finance Party which has received a share of the relevant Sharing Payment pursuant to Clause 29.2 (*Redistribution of payments*) shall, upon request of the Agent, pay to the Agent for account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay); and
- (b) that Recovering Finance Party's rights of subrogation in respect of any reimbursement shall be cancelled and the relevant Obligor will be liable to the reimbursing Finance Party for the amount so reimbursed.

29.5 **Exceptions**

29.5.1 This Clause 29 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause 29, have a valid and enforceable claim against the relevant Obligor except where that would be inconsistent with the terms of the Subordination Deed.

29.5.2 A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:

- (a) it notified the other Finance Party of the legal or arbitration proceedings; and
- (b) the other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

30 **Payment Mechanics**

30.1 **Payments to the Agent**

30.1.1 On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall (and the Borrower shall ensure that such Obligor will) make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.

30.1.2 Payment shall be made to such account with such bank as the Agent specifies.

30.2 **Distributions by the Agent**

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 30.3 (*Distributions to an Obligor*) and Clause 30.4 (*Clawback*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five Business Days' notice.

30.3 **Distributions to an Obligor**

The Agent may (with the consent of the Obligor or in accordance with Clause 31 (*Set-off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

30.4 **Clawback**

30.4.1 Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.

30.4.2 If the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

30.5 **Proceeds of enforcement**

Subject to the payment of any claim ranking in priority as a matter of law, the proceeds of enforcement of the Security constituted by the Transaction Security Documents shall be paid to the Security Agent and those proceeds (together with all other amounts paid to the Security Agent in accordance with the terms of this Agreement or any other Finance Document) shall be applied in the following order:

- (a) First, in satisfaction of all costs, charges, expenses (including legal expenses) and liabilities properly incurred by the Security Agent (in its capacity as Security Agent) or any Insolvency Representative appointed under the Transaction Security Documents or their attorneys or agents and of the remuneration of such Insolvency Representative (and all interest on such sums as provided in the Finance Documents);
- (b) Second, in payment of all reasonable costs and expenses (including legal expenses) properly incurred by or on behalf of any other Finance Party in connection with such enforcement;
- (c) Third, in payment to the Agent for application in or towards the discharge of the Loans, interest and other amounts outstanding under the Finance Documents in accordance with the order set out in paragraphs (a) to (d) of Clause 30.9.1 (*Partial payments*); and
- (d) Fourth, any surplus to such persons who may be entitled to them.

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- 30.6 **Waterfall**
No such proceeds or amounts shall be applied in payment of any amounts specified in any of the paragraphs in Clause 30.5 (*Proceeds of Enforcement*) until all amounts specified in any earlier paragraph have been paid in full.
- 30.7 **Good discharge**
An acknowledgement of receipt signed by the relevant person to whom payments are to be made under Clause 30.5 (*Proceeds of Enforcement*) shall be a good discharge of the Security Agent.
- 30.8 **Sums received by Obligors**
If an Obligor receives any sum which, pursuant to any of the Finance Documents, should have been paid to the Security Agent, that sum shall promptly be paid to the Security Agent for application in accordance with this Clause 30.
- 30.9 **Partial payments**
- 30.9.1 If the Agent receives a payment for application against amounts due in respect of any Finance Documents that is insufficient to discharge all the amounts then due and payable by an Obligor under those Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under those Finance Documents in the following order:
- (a) **first** , in or towards payment pro rata of any unpaid fees, costs and expenses of the Agent or the Security Agent under the Finance Documents;
 - (b) **secondly** , in or towards payment of any accrued interest, fee or commission due but unpaid under this Agreement;
 - (c) **thirdly** , in or towards payment of any principal amount due but unpaid under this Agreement; and
 - (d) **fourthly** , in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.
- 30.9.2 The Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a) to (d) above.
- 30.9.3 Clauses 30.9.1 and 30.9.2 above will override any appropriation made by an Obligor.
- 30.10 **No set-off by Obligors**
All payments to be made by an Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.
- 30.11 **Business Days**
- 30.11.1 Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- 30.11.2 During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

- 30.12 **Currency of account**
- 30.12.1 Subject to Clauses 30.12.2 to 30.12.5 below, the Base Currency is the currency of account and payment for any sum due from an Obligor under any Finance Document.
- 30.12.2 A repayment of a Loan or Unpaid Sum or a part of a Loan or Unpaid Sum shall be made in the currency in which that Loan or Unpaid Sum is denominated on its due date.
- 30.12.3 Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated when that interest accrued.
- 30.12.4 Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- 30.12.5 Any amount expressed to be payable in a currency other than the Base Currency shall be paid in that other currency.
- 30.13 **Change of currency**
- 30.13.1 Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
- (a) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Borrower); and
 - (b) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).
- 30.13.2 If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the London interbank market and otherwise to reflect the change in currency.
- 30.14 **Disruption to Payment Systems etc.**
- If either the Agent determines (in its discretion) that a Disruption Event has occurred or the Agent is notified by the Borrower that a Disruption Event has occurred:
- (a) the Agent may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facility as the Agent may deem necessary in the circumstances;
 - (b) the Agent shall not be obliged to consult with the Borrower in relation to any changes mentioned in paragraph (a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;

- (c) the Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Agent and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 36 (*Amendments and Waivers*);
- (e) the Agent shall not be liable for any damages, costs or losses whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 30.14; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

31

Set-Off

A Finance Party may set off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off. No security interest is created by this Clause 31.

32

Notices

32.1

Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

32.2

Addresses

32.2.1

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) in the case of the Borrower, that identified with its name below;
- (b) in the case of each Lender or any other Obligor, that notified in writing to the Agent on or prior to the date on which it becomes a Party; and
- (c) in the case of the Agent or the Security Agent, that identified with its name below,

or any substitute address, fax number or department or officer as the Party may notify to the Agent (or the Agent may notify to the other Parties, if a change is made by the Agent) by not less than five Business Days' notice.

32.3 **Delivery**

32.3.1 Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:

- (a) if by way of fax, when received in legible form; or
- (b) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 32.2 (*Addresses*), if addressed to that department or officer.

32.3.2 Any communication or document to be made or delivered to the Agent or the Security Agent will be effective only when actually received by the Agent or Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's or Security Agent's signature below (or any substitute department or officer as the Agent or Security Agent shall specify for this purpose).

32.3.3 All notices from or to an Obligor shall be sent through the Agent.

32.3.4 Any communication or document made or delivered to the Borrower in accordance with this Clause 32 will be deemed to have been made or delivered to each of the Obligors or any other member of the Group party to a Finance Document.

32.4 **Notification of address and fax number**

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 32.2 (*Addresses*) or changing its own address or fax number, the Agent shall notify the other Parties.

32.5 **Electronic communication**

32.5.1 Any communication to be made between the Agent or the Security Agent and another Finance Party under or in connection with the Finance Documents may be made by electronic mail or other electronic means, if the Agent, the Security Agent and the relevant Finance Party:

- (a) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
- (b) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
- (c) notify each other of any change to their address or any other such information supplied by them.

32.5.2 Any electronic communication made between the Agent or the Security Agent and a Finance Party will be effective only when actually received in readable form and in the case of any electronic communication made by a Finance Party to the Agent or the Security Agent only if it is addressed in such a manner as the Agent or Security Agent shall specify for this purpose.

32.6 **Use of websites**

32.6.1 The Borrower may satisfy its obligation under this Agreement to deliver any information in relation to those Lenders (**Website Lenders**) who accept this method of communication by posting this information onto an electronic website designated by the Borrower and the Agent (**Designated Website**) if:

- (a) the Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
- (b) both the Borrower and the Agent are aware of the address of and any relevant password specifications for the Designated Website; and
- (c) the information is in a printable format or otherwise capable of being downloaded by the relevant Website Lender and is in a format previously agreed between the Borrower and the Agent.

If any Lender (**Paper Form Lender**) does not agree to the delivery of information electronically then the Agent shall notify the Borrower accordingly and the Borrower shall at its own cost supply the information to the Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event the Borrower shall at its own cost supply the Agent with at least one copy in paper form of any information required to be provided by it.

32.6.2 The Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Borrower and the Agent.

32.6.3 The Borrower shall promptly upon becoming aware of its occurrence notify the Agent if:

- (a) the Designated Website cannot be accessed due to technical failure;
- (b) the password specifications for the Designated Website change;
- (c) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
- (d) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
- (e) the Borrower becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

If the Borrower notifies the Agent under paragraphs (a) to (e) above, all information to be provided by the Borrower under this Agreement after the date of that notice shall be supplied in paper form unless and until the Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

32.6.4 Any Website Lender may request, through the Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Borrower shall at its own cost comply with any such request within ten Business Days.

32.7 **English language**

32.7.1 Any notice given under or in connection with any Finance Document must be in English.

32.7.2 All other documents provided under or in connection with any Finance Document must be:

- (a) in English; or
- (b) if not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

33 **Calculations And Certificates**

33.1 **Accounts**

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are prima facie evidence of the matters to which they relate.

33.2 **Certificates and determinations**

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

33.3 **Day count convention**

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the London interbank market differs, in accordance with that market practice.

34 **Partial Invalidity**

If, at any time, any provision of any Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

35 **Remedies And Waivers**

No failure to exercise, nor any delay in exercising, on the part of any Finance Party or Secured Party, any right or remedy under the Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

36 **Amendments And Waivers**

36.1 **Required consents**

36.1.1 Subject to Clause 36.2 (*Exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Obligors' Agent and any such amendment or waiver will be binding on all Parties.

36.1.2 The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 36.

36.1.3 No amendment or waiver may be made before the date falling ten Business Days after the terms of that amendment or waiver have been notified by the Agent to the Lenders, unless each Lender is a "FATCA Protected Lender". The Agent shall notify the Lenders reasonably promptly of any amendments or waivers proposed by the Borrower.

- 36.1.4 Each Obligor agrees to any such amendment or waiver permitted by this Clause 36 which is agreed to by the Obligors' Agent.
- 36.2 **Exceptions**
- 36.2.1 An amendment or waiver that has the effect of changing or which relates to:
- (a) the definition of **Majority Lenders** in Clause 1 (*Definitions*);
 - (b) an extension to the date of payment of any amount under the Finance Documents;
 - (c) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
 - (d) a change in currency of payment of any amount under the Finance Documents;
 - (e) an increase in or an extension of any Commitment or the Total Commitments;
 - (f) a change to the Borrower or Obligors other than in accordance with Clause 25.10 (*Changes to the Obligors*);
 - (g) any provision which expressly requires the consent of all the Lenders;
 - (h) Clause 2.2 (*Finance Parties' rights and obligations*), Clause 7.5 (*Mandatory prepayment*), Clause 25 (*Changes to the Lenders*) or this Clause 36;
 - (i) the nature or scope of the Charged Property or the manner in which the proceeds of enforcement of the Transaction Security are distributed (except to the extent that it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document);
 - (j) the release of any Transaction Security unless permitted under this Agreement or any other Finance Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document;
 - (k) any amendment to Clause 30.5 (*Proceeds of Enforcement*) or to the order of priority or subordination under the Subordination Deed; or
 - (l) any extension of an Availability Period,
- shall not be made without the prior consent of all the Lenders,
- 36.2.2 An amendment or waiver which relates to the rights or obligations of the Agent, the Arrangers or the Security Agent may not be effected without the consent of the Agent, the Arrangers or the Security Agent.
- 36.2.3
- (a) If the Agent or a Lender reasonably believes that an amendment or waiver may constitute a "material modification" for the purposes of FATCA that may result (directly or indirectly) in a Party being required to make a FATCA Deduction and the Agent or that Lender (as the case may be) notifies the Borrower and the Agent accordingly, that amendment or waiver may, subject to paragraph (b) below, not be effected without the consent of the Agent or that Lender (as the case may be).

(b) The consent of a Lender shall not be required pursuant to paragraph (a) above if that Lender is a FATCA Protected Lender.

37 **Counterparts**

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

38 **Confidentiality**

38.1 **Confidential Information**

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 38.2 (*Disclosure of Confidential Information*) and Clause 38.3 (*Disclosure to numbering service providers*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

38.2 **Disclosure of Confidential Information**

Any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
 - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (iii) appointed by any Finance Party or by a person to whom paragraph (b) (i)) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;

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- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
 - (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction, any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
 - (vi) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 25.9 (*Security Interests over Lender's rights*)
 - (vii) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
 - (viii) who is a Party; or
 - (ix) with the consent of the Borrower;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

- (1) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
 - (2) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
 - (3) in relation to paragraphs (b)(v), (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;
- (c) to any person appointed by that Finance Party or by a person to whom sub paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the

services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrower and the relevant Finance Party;

- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

38.3

Disclosure to numbering service providers

- (a) The Agent may disclose to any national or international numbering service provider appointed by the Agent to provide identification numbering services in respect of this Agreement, the Facility and/or one or more Obligors the following information:
- (i) names of Obligors;
 - (ii) country of domicile of Obligors;
 - (iii) place of incorporation of Obligors;
 - (iv) date of this Agreement;
 - (v) the names of the Agent;
 - (vi) date of each amendment and restatement of this Agreement;
 - (vii) amount of Total Commitments;
 - (viii) currencies of the Facility;
 - (ix) type of the Facility;
 - (x) ranking of Facility;
 - (xi) Termination Date;
 - (xii) changes to any of the information previously supplied pursuant to sub paragraphs (i) to (xi) above; and
 - (xiii) such other information agreed between the Agent and the Borrower,
- to enable such numbering service provider to provide its usual syndicated loan numbering identification services.
- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or one or more Obligors by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.

- (c) The Borrower represents that none of the information set out in sub-paragraphs (a)(i) to (a)(xiii) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.
- (d) The Agent shall notify the Borrower and the other Finance Parties of:
 - (i) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facility and/or one or more Obligors; and
 - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or one or more Obligors by such numbering service provider.

38.4 **US Tax Disclosure**

Notwithstanding any of the provisions of this Agreement, the Obligors and the Finance Parties hereby agree that each Party and each employee, representative or other agent of each Party may disclose to any and all persons, without limitation of any kind, the tax structure and tax treatment (in each case within the meaning of the US Treasury Regulation Section 1.6011-4) of the Facility and any materials of any kind (including opinions or other tax analyses) that are provided to any of the foregoing relating to such tax structure and tax treatment.

38.5 **Entire agreement**

This Clause 38 constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

38.6 **Inside information**

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

38.7 **Notification of disclosure**

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Borrower of the circumstances of any disclosure by it of Confidential Information made pursuant to sub-paragraph (b)(v) of Clause 38.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function.

38.8 **Continuing obligations**

The obligations in this Clause 38 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve months from the earlier of:

- (a) the date on which all amounts payable by the Obligors under or in connection with the Finance Documents have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and

(b) the date on which such Finance Party otherwise ceases to be a Finance Party.

39 **Governing Law**

This Agreement and all non-contractual obligations arising in any way whatsoever out of or in connection with this Agreement, shall be governed by, construed and take effect in accordance with English law.

40 **Enforcement**

40.1 **Jurisdiction of English courts**

40.1.1 The courts of England shall have exclusive jurisdiction to settle any dispute arising out of or in connection with the Finance Documents expressed to be governed by English law (including a dispute regarding the existence, validity or termination of any Finance Document) (**Dispute**), only where such Dispute is the subject of proceedings commenced by the Obligor.

40.1.2 Where a Dispute is the subject of proceedings commenced by one or more Finance Parties, the Finance Parties are entitled to bring such proceedings in any court or courts of competent jurisdiction (including but not limited to the courts of England). If any Obligor raises a counter-claim in the context of proceedings commenced by one or more Finance Parties, that Obligor shall bring such counter-claim before the court seized of the Finance Party's claim and no other court.

40.1.3 The commencement of legal proceedings in one or more jurisdictions shall not, to the extent allowed by law, preclude the Finance Parties from commencing legal actions or proceedings in any other jurisdiction, whether concurrently or not.

40.1.4 To the extent allowed by law, each Obligor irrevocably waives any objection it may now or hereafter have on any grounds whatsoever to the laying of venue of any legal proceeding, and any claim it may now or hereafter have that any such legal proceeding has been brought in an inappropriate or inconvenient forum.

40.2 **Service of process**

40.2.1 Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):

- (a) irrevocably appoints Enstar (EU) Limited (Attention: Derek Reid, Avaya House, 2 Cathedral Hill, Guildford, Surrey GU2 7YL) as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
- (b) agrees that failure by an agent for service of process to notify the relevant Obligor of the process will not invalidate the proceedings concerned; and
- (c) if any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrower (on behalf of all the Obligors) must immediately (and in any event within five days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.

40.2.2 The Borrower confirms that Enstar (EU) Limited has expressly agreed and consented to the provisions of Clause 39 (*Governing law*) and of this Clause 40.

40.3

Waiver of Immunity

Each Obligor (to the fullest extent permitted by law) irrevocably and unconditionally:

- (a) agrees not to claim any immunity from proceedings brought against it by any Finance Party in relation to any Finance Document, and to ensure that no such claim is made on its behalf;
- (b) waives all rights of immunity in respect of it or its assets; and
- (c) consents generally in respect of such proceedings to the giving of relief or the issue of any process in connection with such proceedings.

40.4

Waiver of Jury Trial

Each of the Obligors irrevocably waives all rights to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or in relation to this Agreement or any of the Finance Documents or the actions of any Finance Party in the negotiation, administration, performance or enforcement thereof.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

Schedule 1 The Original Parties

Part 1

The Original Obligors

<u>Name of Original Borrower</u> AML Acquisition, Corp.	<u>Jurisdiction of Incorporation, Tax ID Number</u> State of Delaware, 5196545
<u>Name of Original Guarantor</u> AML Acquisition, Corp.	<u>Jurisdiction of Incorporation, Tax ID Number</u> State of Delaware, 5196545

Part 2

The Original Lenders

<u>Name of Original Lender</u>	<u>Commitment</u> <u>US\$</u>
National Australia Bank Limited	55,500,000
Barclays Bank PLC	55,500,000

Schedule 2 Conditions Precedent

Part 1A

Conditions precedent to First Utilisation Date

1 Obligors

- 1.1 A copy of the Constitutional Documents of the Shareholder and the Borrower.
- 1.2 A copy of a good standing certificate (including verification of tax status) with respect to the Shareholder and each member of the Group, issued as of a recent date by the Secretary of State or other appropriate official of each member of the Group's jurisdiction of incorporation or organisation.
- 1.3 A copy of a resolution of the board of directors of the Shareholder and the Borrower:
 - (a) approving the terms of, and the transactions contemplated by, the Transaction Documents to which it is a party and resolving that it execute, deliver and perform the Transaction Documents to which it is a party;
 - (b) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
 - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request and Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- 1.4 A specimen of the signature of each person authorised by the resolution referred to in paragraph 1.3 above in relation to the Finance Documents and related documents.
- 1.5 A certificate of the Borrower (signed by a duly authorised officer) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on any member of the Group to be exceeded.
- 1.6 A certificate of an authorised signatory of the Shareholder and the Borrower certifying that each copy document relating to it specified in this Part 1A of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of this Agreement or, to the extent such document has previously been delivered to the Agent that such document has not been amended or superseded since the date of such delivery.

2 Finance Documents

- 2.1 This Agreement executed by the Original Obligors.
- 2.2 The Subordination Deed executed and delivered by the parties thereto.
- 2.3 The Fee Letters executed by the Borrower.
- 2.4 The following Transaction Security Documents executed and delivered by the parties thereto.

<u>Name of Obligor</u>	<u>Transaction Security Document</u>	<u>Governing law of document</u>
Enstar Investments Inc.	Stock Pledge Agreement pledging all capital stock in AML Acquisition, Corp.	New York law or such other law as may be agreed between the Borrower and the Agent
AML Acquisition, Corp.	Security Agreement over all of its assets present and future To the extent legally possible, Stock Pledge Agreement pledging all capital stock in stock holding in SeaBright Holdings, Inc.	New York law or such other law as may be agreed between the Borrower and the Agent

2.5 Any document or information required to be delivered to the Agent or the Security Agent on or prior to the First Utilisation Date in order to perfect and protect the first priority liens and security interests created under the Transaction Security Documents.

3 **Acquisition**

3.1 A Certificate of the Borrower (signed by a duly authorised officer) certifying that:

- (a) each of the matters specified in Article II (or the appropriate provision setting out conditions) of the Acquisition Agreement has been satisfied or will be satisfied on the First Utilisation Date or, with the consent of the Agent, waived and the Acquisition Agreement has become wholly unconditional in all respects
- (b) no Acquisition Document has been amended, varied, novated, supplemented, superseded, waived or terminated except with the consent of the Agent;
- (c) the Borrower is not aware of any breach of any warranty or any claim under the Acquisition Agreement save to the extent disclosed against in the Disclosure Letter;
- (d) all Authorisations from any Governmental Authority or other regulatory body required to be obtained in relation to the Acquisition pursuant to the terms of the Acquisition Agreement and in connection with the entry into and performance of the transactions contemplated by any Finance Document (or for the validity or enforceability of any of those documents) have been obtained and are in full force and effect together with certified copies of those obtained; and
- (e) the total amount of Loans equates to an amount equal to not more than 50% of the purchase price of the Target Shares (excluding fees and other expenses).

3.2 A copy of each of the Acquisition Documents and the other Transaction Documents (other than the Finance Documents) executed by the parties to those documents.

Legal Opinions

The following legal opinions, each addressed to the Agent, the Security Agent and the Original Lenders, to be in agreed form:

- (a) A legal opinion of Clyde & Co LLP, legal advisers to the Agent and the Arrangers, as to English law.
- (b) A legal opinion of Drinker Biddle & Reath LLP as to the laws of each jurisdiction of incorporation of the Borrower and the Shareholder and the governing law of the Transaction Security Documents.

Other Documents And Evidence

- 5.1 Evidence that Enstar (EU) Limited has accepted its appointment as process agent for the Borrower as referred to in Clause 40.2 (*Service of process*) and for the Shareholder under the Subordination Deed, and confirmed it agrees and consents to the provisions of Clause 39 (*Governing law*) and of Clause 40 (*Enforcement*).
- 5.2 The Group Structure Chart
- 5.3 A copy, certified by an authorised signatory of the Borrower to be a true copy, of the Original Financial Statements of the Borrower, the Target and each other member of the Target Group.
- 5.4 A copy of any other Authorisation or other document, opinion or assurance which the Agent notifies the Borrower is necessary in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
- 5.5 Any information and evidence in respect of any Obligor or the Shareholder required by any Finance Party to enable it to be satisfied with the results of all “know your customer” or other checks which it is required to carry out in relation to such person.
- 5.6 Evidence that the upfront fee and the agency fee have or will on the First Utilisation Date be paid in full.
- 5.7 A copy of the Forecast Cash Flows.
- 5.8 A copy of the Report and appropriate reliance letters signed by the relevant report provider.
- 5.9 A certificate of the Chief Financial Officer of the Borrower stating that it is Solvent after giving effect to the Loans, the application of the proceeds of the Loans in accordance with Clause 3 (*Purpose*) and the payment of all estimated legal, accounting and other fees related to this Agreement and the consummation of the other transactions contemplated by this Agreement. For purposes of this certificate, **Solvent** means with respect to the Borrower on any date of determination that (a) the fair value of the property of such person is greater than the total amount of liabilities (including contingent and unliquidated liabilities) of such person; (b) the present fair saleable value of the assets of such person is not less than the amount which will be required to pay the probable liability of such person on its debts as they become absolute and mature; (c) such person does not intend to, and does not believe that it will, incur debts or liabilities beyond such person’s ability to pay as such debts and liabilities mature; and (d) such person is not engaged in a business or

transaction, and is not about to engage in a business or transaction, for which such person's property would constitute unreasonably small capital. In computing the amount of contingent or unliquidated liabilities at any time, such liabilities will be computed at the amount which, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual and matured liability.

- 5.10 A certificate of an authorised signatory of the Borrower certifying that no member of the Target Group has any outstanding loans (other than the US Surplus Notes) as at the First Utilisation Date.
- 5.11 A certificate of the Borrower (signed by a duly authorised officer) confirming that on the First Utilisation Date it is in compliance with each of the financial covenants set out in Clause 22.2.1 (*Financial condition*).
- 5.12 Originals of all share certificates and stock transfer forms or equivalent, duly executed by the relevant shareholders and other documents of title to be provided under the Transaction Security Documents.

Part 1B**Conditions subsequent required to be delivered by the Target Group**

- 6 An Accession Letter executed by PointSure Insurance Services, Inc. and the Borrower pursuant to which PointSure Insurance Services, Inc. shall accede as an Additional Guarantor.
- 7 An Accession Letter executed by Paladin Managed Care Services, Inc. and the Borrower pursuant to which Paladin Managed Care Services, Inc. shall accede as an Additional Guarantor.
- 8 A copy of the constitutional documents of each member of the Target Group.
- 9 A copy of a good standing certificate (including verification of tax status) with respect to each member of the Target Group, issued as of a recent date by the Secretary of State or other appropriate official of that member of the Target Group's jurisdiction of incorporation or organisation.
- 10 A copy of a resolution of the board of directors of each member of the Target Group (excluding SeaBright Insurance Company):
 - 10.1 approving the terms of, and the transactions contemplated by, the Accession Letter and the Finance Documents and resolving that it execute, deliver and perform the Accession Letter and any other Finance Document to which it is party;
 - 10.2 authorising a specified person or persons to execute the Accession Letter and other Finance Documents on its behalf;
 - 10.3 authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
 - 10.4 authorising the Borrower to act as its agent in connection with the Finance Documents.
- 11 A specimen of the signature of each person authorised by the resolution referred to in paragraph 7 above.
- 12 A certificate of an authorised signatory of each member of the Target Group (excluding SeaBright Insurance Company) certifying that each copy document listed in this Part 1B of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of the Accession Letter.
- 13 The following Transaction Security Documents executed and delivered by the parties thereto.

<u>Name of Obligor</u>	<u>Transaction Security Document</u>	<u>Governing law of document</u>
SeaBright Holdings, Inc.	Security Agreement over all of its assets present and future	New York law or such other law as may be agreed between the Borrower and the Agent
	Stock Pledge Agreement pledging all capital stock in Paladin Managed Care Services, Inc.	
	Stock Pledge Agreement pledging all capital stock in PointSure Insurance Services, Inc.	
	Stock Pledge Agreement pledging all capital stock in SeaBright Insurance Company	
PointSure Insurance Services, Inc.	Security Agreement over all of its assets present and future	New York law or such other law as may be agreed between the Borrower and the Agent
Paladin Managed Care Services, Inc.	Security Agreement over all of its assets present and future	New York law or such other law as may be agreed between the Borrower and the Agent
14	Originals of all share certificates and stock transfer forms or equivalent, duly executed by the relevant shareholders and other documents of title to be provided under the Transaction Security Documents.	
15	The following legal opinions, each addressed to the Agent, the Security Agent and the Lenders:	
15.1	A legal opinion of Clyde & Co LLP as advisers to the Agent in England, as to English law in the form agreed with the Lenders prior to signing the Accession Letters.	
15.2	A legal opinion of Drinker Biddle & Reath LLP as to the law of the jurisdiction of incorporation of each member of the Target Group (excluding SeaBright Insurance Company) and the governing law of the Transaction Security Documents and in the form agreed with the Lenders prior to signing this Agreement.	
16	Evidence that Enstar (EU) Limited as any process agent referred to in Clause 40.2 (<i>Service of process</i>) has accepted its appointment and confirmed it agrees and consents to the provisions of Clause 39 (<i>Governing law</i>) and of Clause 40 (<i>Enforcement</i>).	
17	Evidence that all necessary Authorisations from any Governmental Authority or other regulatory body in connection with the entry into and performance of the transactions contemplated by the Accession Letter and any Finance Document to which any member of the Target Group is party or for their validity or enforceability have been obtained and are in full force and effect, together with certified copies of those obtained.	

-
- 18 A certificate of the Borrower confirming that no Default is continuing or would occur as a result of the relevant member of the Target Group executing the Accession Letter or the Finance Documents to which it is party.
- 19 A certificate of the Chief Financial Officer of the Group stating that each member of the Target Group executing an Accession Letter is Solvent after entering into the Accession Letter and the payment of all related estimated legal, accounting and other fees. For purposes of this certificate, **Solvent** means with respect to that member of the Target Group on any date of determination that (a) the fair value of the property of such person is greater than the total amount of liabilities (including contingent and unliquidated liabilities) of such person; (b) the present fair saleable value of the assets of such person is not less than the amount which will be required to pay the probable liability of such person on its debts as they become absolute and mature; (c) such person does not intend to, and does not believe that it will, incur debts or liabilities beyond such person's ability to pay as such debts and liabilities mature; and (d) such person is not engaged in a business or transaction, and is not about to engage in a business or transaction, for which such person's property would constitute unreasonably small capital. In computing the amount of contingent or unliquidated liabilities at any time, such liabilities will be computed at the amount which, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual and matured liability.

Part 2

Conditions precedent required to be delivered by an Additional Guarantor

- 1 An Accession Letter (if relevant) executed by the Additional Guarantor and the Borrower.
- 2 A copy of the constitutional documents of the Additional Guarantor, with such amendments as the Agent may reasonably require.
- 3 A copy of a good standing certificate (including verification of tax status) with respect to the Additional Guarantor, issued as of a recent date by the Secretary of State or other appropriate official of the Additional Guarantor's jurisdiction of incorporation or organisation
- 4 A copy of a resolution of the board of directors of the Additional Guarantor:
 - 4.1 approving the terms of, and the transactions contemplated by, the Accession Letter and the Finance Documents and resolving that it execute, deliver and perform the Accession Letter and any other Finance Document to which it is party;
 - 4.2 authorising a specified person or persons to execute the Accession Letter and other Finance Documents on its behalf;
 - 4.3 authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
 - 4.4 authorising the Borrower to act as its agent in connection with the Finance Documents.
- 5 A specimen of the signature of each person authorised by the resolution referred to in paragraph 3 above.
- 6 A certificate of an authorised signatory of the Additional Guarantor certifying that each copy document listed in this Part 2 of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of the Accession Letter.
- 7 If available, the latest audited financial statements of the Additional Guarantor.
- 8 The following legal opinions, each addressed to the Agent, the Security Agent and the Lenders:
 - 8.1 A legal opinion of Clyde & Co LLP as advisers to the Agent in England, as to English law in the form distributed to the Lenders prior to signing the Accession Letter.
 - 8.2 If the Additional Guarantor is incorporated in or has its **centre of main interest** or **establishment** in a jurisdiction other than England and Wales or is executing a Finance Document which is governed by a law other than English law, a legal opinion of the legal advisers to the Agent in the jurisdiction of its incorporation, **centre of main interest** or **establishment** (as applicable) or, as the case may be, the jurisdiction of the governing law of that Finance Document (**Applicable Jurisdiction**) as to the law of the Applicable Jurisdiction and in the form distributed to the Lenders prior to signing the Accession Letter.

- 9 If the proposed Additional Guarantor is incorporated in a jurisdiction other than England and Wales, evidence that Enstar (EU) Limited as any process agent referred to in Clause 40.2 (*Service of process*) has accepted its appointment and confirmed it agrees and consents to the provisions of Clause 38 (*Governing law*) and of Clause 40 (*Enforcement*).
- 10 Evidence that all necessary or desirable Authorisations from any Governmental Authority or other regulatory body in connection with the entry into and performance of the transactions contemplated by the Accession Letter, any Finance Document or Transaction Document to which the Additional Guarantor is party or for the validity or enforceability of any of those documents have been obtained and are in full force and effect, together with certified copies of those obtained.
- 11 A certificate of the Borrower confirming that no Default is continuing or would occur as a result of the Additional Guarantor executing the Accession Letter or the Finance Documents or the Transaction Documents to which it is party.
- 12 A certificate of the Chief Financial Officer of the Additional Guarantor stating that the respective company is Solvent after entering into the Accession Letter and the payment of all related estimated legal, accounting and other fees. For purposes of this certificate, **Solvent** means with respect to the Additional Guarantor on any date of determination that (a) the fair value of the property of such person is greater than the total amount of liabilities (including contingent and unliquidated liabilities) of such person; (b) the present fair saleable value of the assets of such person is not less than the amount which will be required to pay the probable liability of such person on its debts as they become absolute and mature; (c) such person does not intend to, and does not believe that it will, incur debts or liabilities beyond such person's ability to pay as such debts and liabilities mature; and (d) such person is not engaged in a business or transaction, and is not about to engage in a business or transaction, for which such person's property would constitute unreasonably small capital. In computing the amount of contingent or unliquidated liabilities at any time, such liabilities will be computed at the amount which, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual and matured liability.

Schedule 3 Requests

Part 1 Utilisation Request

Loans

From: AML Acquisition, Corp.

To: National Australia Bank Limited (as Agent)

Dated:

Dear Sirs

AML Acquisition, Corp – Facility Agreement dated [] (Facility Agreement)

1 We refer to the Facility Agreement. This is a Utilisation Request. Terms defined in the Facility Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.

2 We wish to borrow a Loan on the following terms:

2.1 Proposed Utilisation Date: [] (or, if that is not a Business Day, the next Business Day)

2.2 Amount: US\$[] or, if less, the Available Facility, to be credited to [account]

2.3 Interest Period: []

3 We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.

4 Please arrange for the Arrangers' upfront fee totalling US\$[] to be deducted from the net proceeds and the balance, being: US\$[], to be credited to: [account]

5 Please arrange for the Agent's agency fee and the Security Agent's agency fee totalling US\$[] to be deducted from the net proceeds and the balance, being:

US\$[], to be credited to: [account]

6 This Utilisation Request is irrevocable.

Yours faithfully

authorised signatory for
AML Acquisition, Corp.

Part 2 Selection Notice

From: AML Acquisition, Corp.

To: National Australia Bank Limited (as Agent)

Dated:

Dear Sirs

AML Acquisition, Corp.—Facility Agreement dated [] (Facility Agreement)

7 We refer to the Facility Agreement. This is a Selection Notice. Terms defined in the Facility Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.

8 We refer to the Loan with an Interest Period ending on [].

9 We request that the next Interest Period for the above Loan[s] is []].

10 This Selection Notice is irrevocable.

Yours faithfully,

authorised signatory for
AML Acquisition, Corp.

Schedule 4 Mandatory Cost Formula

- 1 The Mandatory Cost is an addition to the interest rate to compensate the Lenders for the cost of compliance with:
- 1.1 the requirements of the Bank of England and/or the Financial Services Authority (or, in either case, any other authority which replaces all or any of its functions); or
 - 1.2 the requirements of the European Central Bank.
- 2 On the first day of each Interest Period (or as soon as possible thereafter) the Agent shall calculate, as a percentage rate, a rate (**Additional Cost Rate**) for each Lender in accordance with the paragraphs set out below. The Mandatory Cost will be calculated by the Agent as a weighted average of the Lenders' Additional Cost Rates (weighted in proportion to the percentage participation of each Lender in the relevant Loans) and will be expressed as a percentage rate per annum.
- 3 The Additional Cost Rate for any Lender lending from a Facility Office in a Participating Member State will be the percentage notified by that Lender to the Agent. This percentage will be certified by that Lender in its notice to the Agent to be its reasonable determination of the cost (expressed as a percentage of that Lender's participation in all Loans made from that Facility Office) of complying with the minimum reserve requirements of the European Central Bank in respect of loans made from that Facility Office.
- 4 The Additional Cost Rate for any Lender lending from a Facility Office in the United Kingdom will be calculated by the Agent as follows:
- 4.1 in relation to a US Dollar Loan:
$$\frac{AB+C(B-D)+Ex0.01}{100-(A+C)}$$
per cent per annum
 - 4.2 in relation to a Loan in any currency other than sterling:
$$\frac{Ex0.01}{300}$$
per cent per annum
- where:
- (A) is the percentage of Eligible Liabilities (assuming these to be in excess of any stated minimum) which that Lender is from time to time required to maintain as an interest free cash ratio deposit with the Bank of England to comply with cash ratio requirements.
 - (B) is the percentage rate of interest (excluding the Margin and the Mandatory Cost and, if the Loan is an Unpaid Sum, the additional rate of interest specified in paragraph (a) of Clause 10.3 (*Default interest*)) payable for the relevant Interest Period on the Loan.
 - (C) is the percentage (if any) of Eligible Liabilities which that Lender is required from time to time to maintain as interest bearing Special Deposits with the Bank of England.

- (D) is the percentage rate per annum payable by the Bank of England to the Agent on interest bearing Special Deposits.
- (E) is designed to compensate Lenders for amounts payable under the Fees Rules and is calculated by the Agent as being the average of the most recent rates of charge supplied by the Reference Banks to the Agent pursuant to paragraph 7 below and expressed in pounds per £1,000,000.

5 For the purposes of this Schedule:

5.1 **Eligible Liabilities** : and **Special Deposits** have the meanings given to them from time to time under or pursuant to the Bank of England Act 1998 or (as may be appropriate) by the Bank of England;

5.2 **Fees Rules** : means the rules on periodic fees contained in the FSA Supervision Manual or such other law or regulation as may be in force from time to time in respect of the payment of fees for the acceptance of deposits;

5.3 **Fee Tariffs** : means the fee tariffs specified in the Fees Rules under the activity group A.1 Deposit acceptors (ignoring any minimum fee or zero rated fee required pursuant to the Fees Rules but taking into account any applicable discount rate); and

5.4 **Tariff Base** : has the meaning given to it in, and will be calculated in accordance with, the Fees Rules.

6 In application of the above formulae, A, B, C and D will be included in the formulae as percentages (i.e. 5 per cent. will be included in the formula as 5 and not as 0.05). A negative result obtained by subtracting D from B shall be taken as zero. The resulting figures shall be rounded to four decimal places.

7 If requested by the Agent, each Reference Bank shall, as soon as practicable after publication by the Financial Services Authority, supply to the Agent, the rate of charge payable by that Reference Bank to the Financial Services Authority pursuant to the Fees Rules in respect of the relevant financial year of the Financial Services Authority (calculated for this purpose by that Reference Bank as being the average of the Fee Tariffs applicable to that Reference Bank for that financial year) and expressed in pounds per £1,000,000 of the Tariff Base of that Reference Bank.

8 Each Lender shall supply any information required by the Agent for the purpose of calculating its Additional Cost Rate. In particular, but without limitation, each Lender shall supply the following information on or prior to the date on which it becomes a Lender:

8.1 the jurisdiction of its Facility Office; and

8.2 any other information that the Agent may reasonably require for such purpose.

Each Lender shall promptly notify the Agent of any change to the information provided by it pursuant to this paragraph.

9 The percentages of each Lender for the purpose of A and C above and the rates of charge of each Reference Bank for the purpose of E above shall be determined by the Agent based upon the information supplied to it pursuant to paragraphs 7 and 8 above and on the assumption that, unless a Lender notifies the Agent to the contrary, each Lender's obligations in relation to cash ratio deposits and Special Deposits are the same as those of a typical bank from its jurisdiction of incorporation with a Facility Office in the same jurisdiction as its Facility Office.

-
- 10 The Agent shall have no liability to any person if such determination results in an Additional Cost Rate which over or under compensates any Lender and shall be entitled to assume that the information provided by any Lender or Reference Bank pursuant to paragraphs 3, 7 and 8 above is true and correct in all respects.
- 11 The Agent shall distribute the additional amounts received as a result of the Mandatory Cost to the Lenders on the basis of the Additional Cost Rate for each Lender based on the information provided by each Lender and each Reference Bank pursuant to paragraphs 3, 7 and 8 above.
- 12 Any determination by the Agent pursuant to this Schedule in relation to a formula, the Mandatory Cost, an Additional Cost Rate or any amount payable to a Lender shall, in the absence of manifest error, be conclusive and binding on all Parties.
- 13 The Agent may from time to time, after consultation with the Borrower and the Lenders, determine and notify to all Parties any amendments which are required to be made to this Schedule in order to comply with any change in law, regulation or any requirements from time to time imposed by the Bank of England, the Financial Services Authority or the European Central Bank (or, in any case, any other authority which replaces all or any of its functions) and any such determination shall, in the absence of manifest error, be conclusive and binding on all Parties.

Schedule 5 Form of Transfer Certificate

To: National Australia Bank Limited as Agent

From: [The Existing Lender] (**Existing Lender**) and [The New Lender] (**New Lender**)

Dated:

AML Acquisition, Corp. – Facility Agreement dated [] (Facility Agreement)

- 1 We refer to the Facility Agreement. This is a Transfer Certificate. Terms defined in the Facility Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
- 2 We refer to Clause 25.6 (*Procedure for transfer*):
- 2.1 The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation all or part of the Existing Lender's Commitment, rights and obligations referred to in the Schedule in accordance with Clause 25.6 (*Procedure for transfer*) [OR] [*** Each Existing Lender listed in Part 1 of the Schedule transfers by novation to each New Lender listed in Part 2 of the Schedule that portion of the outstanding Loans and Commitments in accordance with Clause 25.6 (*Procedure for transfer*), such that:
 - (a) each New Lender will become a Lender under the Agreement with the respective Commitment and portion of outstanding Loans set out opposite its name in Part 3 of the Schedule; and
 - (b) each Existing Lender's Commitment and portion of outstanding Loans will be reduced to the amounts set out opposite its name in Part 3 of the Schedule. ***]
- 2.2 The proposed Transfer Date is [***].
- 2.3 The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 32.2 (*Addresses*) are set out in the Schedule.
- 3 [*** The/Each ***] New Lender expressly acknowledges the limitations on the Existing Lender['s][s'] obligations set out in paragraph (c) of Clause 25.5 (*Limitation of responsibility of Existing Lenders*).
- 4 This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
- 5 For the purpose of Clause 32.6 (*Use of websites*) the New Lender is a [*** Website Lender ***] [*** Paper Form Lender ***]. ***] OR [*** each New Lender specifies in Part 4 of the Schedule opposite its name whether it is a Website Lender or a Paper Form Lender. ***]
- 6 This Transfer Certificate is governed by English law.
- 7 The parties to this Transfer Certificate intend it to take effect as a deed and this Transfer Certificate shall be treated as having been duly executed and delivered as a deed only upon being dated.

IN WITNESS WHEREOF the authorised signatories of the parties have executed this deed on the day and year first above written.

The Schedule

Commitment/rights and obligations to be transferred

[insert relevant details]

[Facility Office address, fax number and attention details for notices and account details for payments,]

[Existing Lender]

[New Lender]

By:

By:

This Transfer Certificate is accepted by the Agent and the Transfer Date is confirmed as [•].

[Agent]

By:

[*** OR FOR GLOBAL TRANSFER CERTIFICATES ***]

Part 1

The Existing Lenders

[***]

[***]

[***]

Part 2

The New Lenders

[***]

[***]

[***]

Part 3

Details of portion of outstanding Loans and Commitment

Lender

[*list here existing and new lenders*] [***]
[***] [***] [***]

Commitment

[**]

Loans

[**]

Part 4

New Lenders' Administrative Details

<u>New Lender</u>	<u>Facility office Address/Fax no.Attention of</u>	<u>Address for service of notices (if different)</u>	<u>Account for Payment</u>	<u>Website or Paper Form Lender</u>
[***]	[***]	[***]	[***]	[***]

EXECUTED as a Deed by)

[*** Each Existing Lender ***])
Signatory

Authorised

Dated:

Executed as a Deed by)

[*** Each New Lender ***])

Authorised Signatory

Dated:

The Transfer Certificate is)

accepted by the Agent and the)

Transfer Date is confirmed by the)

Agent as [***])

Signed by [National Australia Bank Limited (ABN 12004044937) (as Agent)]

Dated:

Signed by [National Australia Bank Limited (ABN 12004044937) (as Security Agent)]

Dated:

Schedule 6 Form of Assignment Agreement

To: National Australia Bank Limited as Agent

From: [the Existing Lender] (**Existing Lender**) and [the New Lender] (**New Lender**)

Dated: [***]

AML Acquisition, Corp.—Facility Agreement dated [] (Facility Agreement)

- 1 We refer to the Facility Agreement. This is an Assignment Agreement.
- 2 (a) We refer to Clause 25.7 (*Procedure for assignment*).
- (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Facility Agreement, the other Finance Documents and in respect of the Transaction Security which correspond to that portion of the Existing Lender’s Commitments and participations in Loans under the Facility Agreement as specified in the Schedule;
- (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender’s Commitments and participations in Loans under the Facility Agreement specified in the Schedule.
- (c) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (c) above.
- 3 The proposed Transfer Date is [***].
- 4 On the Transfer Date the New Lender becomes:
- (a) Party to the Finance Documents as a Lender; and
- (b) Party to [*** other relevant agreements in other relevant capacity such as Subordination Deed ***].
- 5 The New Lender expressly acknowledges the limitations on the Existing Lender’s obligations set out in paragraph (c) of Clause 25.5 (*Limitation of responsibility of Existing Lenders*).
- 6 The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 32.2 (*Addresses*) are set out in the Schedule to this Assignment Agreement.
- 7 This Assignment Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment Agreement.
- 8 For the purpose of Clause 32.6 (*Use of Websites*) the New Lender is a [*** Website Lender ***] [*** Paper Form Lender ***]
- 9 This Assignment Agreement is governed by English law.
- 10 This Assignment Agreement has been [*** executed and delivered as a deed ***] [*** entered into ***] on the date stated at the beginning of this Assignment Agreement.

THE SCHEDULE

**Commitment/rights and obligations to be transferred by
assignment, release and accession**

[*** insert relevant details ***]

[*** Facility office address, fax number and attention details for notices and account details for payments ***]

[*** Existing Lender ***]

[*** New Lender ***]

By:

By:

This Assignment Agreement is accepted by the Agent and the Transfer Date is confirmed as [***].

[*** Signature of this Assignment Agreement by the Agent constitutes confirmation by the Agent of receipt of notice of the assignment referred to herein, which notice the Agent receives on behalf of each Finance Party. ***]

[*** Agent ***]

By:

Schedule 7 Form of Accession Letter

To: National Australia Bank Limited as Agent

From: [Subsidiary] and AML Acquisition, Corp.

Dated:

Dear Sirs

AML Acquisition, Corp. – Facility Agreement dated [] (Facility Agreement)

- 1 We refer to the Facility Agreement. This is an Accession Letter. Terms defined in the Facility Agreement have the same meaning in this Accession Letter unless given a different meaning in this Accession Letter.
- 2 [Subsidiary] agrees to become an Additional Guarantor and to be bound by the terms of the Facility Agreement, the Subordination Deed and the other Finance Documents as an Additional Guarantor pursuant to Clause 26.2 (*Additional Guarantors*) of the Facility Agreement and as an Obligor pursuant to Clause [] of the Subordination Deed. [Subsidiary] is a company duly incorporated under the laws of [name of relevant jurisdiction] and is a limited liability company and registered number [].
- 3 The Borrower confirms that no Default is continuing or would occur as a result of [Subsidiary] becoming an Additional Guarantor.
- 4 [Subsidiary’s] administrative details are as follows:
 Address:
 Fax No.:
 Attention:
- 5 This Accession Letter is governed by English Law

This Accession Letter is entered into by deed and delivered on the date stated above.

EXECUTED as a DEED)
 By: [*Subsidiary*])
 _____ Director
 _____ Director/Secretary

EXECUTED as a DEED)
 By: **AML Acquisition, Corp .**)
 _____ Director
 _____ Director/Secretary

Schedule 8 Form of Compliance Certificate

To: National Australia Bank Limited as Agent

From: AML Acquisition, Corp.

Dated:

Dear Sirs

AML Acquisition, Corp.—Facility Agreement dated [] (Facility Agreement)

- 1 We refer to the Facility Agreement. This is a Compliance Certificate. Terms defined in the Facility Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
- 2 We confirm that as at [*** insert the relevant testing date/ the Testing Date ***]:
- 2.1 **Regulatory Cover (which must exceed 1.1:1):** the Actual Statutory Surplus of each Regulated Insurance Entity was [***] and the Authorised Control Level Risk Based Capital (as defined by the NAIC) of each such Regulated Insurance Entities was [***], therefore Regulatory Cover was [***] and that the requirements of Clause 22.2.1(a) (*Regulatory cover*) have been met.
- 2.2 **Net Surplus Cover (which must be a minimum of 2:1) :** Consolidated Net Surplus was [***] and Facility Debt was [***], therefore Net Surplus Cover was [***] and that the requirements of Clause 22.2.1(b) (*Minimum Net Surplus Cover*) have been met.
- 2.3 **Requisite Rating :**
- (i) the average rating of the aggregate investment portfolio (determined by reference to the individual rating given by the Rating Agency to each investment) of the Target Group is [***];
 - (ii) the short term rating and/or long term rating of investments as determined by the Rating Agency for at least 80% of the total value of the investments held by the Target Group have a rating of not less than BBB or are held in Cash or Cash Equivalent Investments;
 - (iii) no more than 1% of the total value of investments of the Target Group that have a rating of less than BBB are held in investments advised by or held with one issuer or its associated parties; and
 - (iv) no more than 5% of the total value of investments of the Target Group are held in private equity investments,
- in each case as demonstrated below. [attach details of calculations] and therefore the requirements of Clause 22.2.1(c) (*Requisite Rating*) have been met.
3. We confirm that no Default is continuing. ¹

¹ If this statement cannot be made, the certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.

4. [*insert applicable certification language*]

for and on behalf of
[name of Auditors of AML Acquisition, Corp.]

Schedule 9 Timetables

Loans

Delivery of a duly completed Utilisation Request (Clause 5.1 (*Delivery of a Utilisation Request*)) or a Selection Notice (Clause 11.1 (*Selection of Interest Periods and Terms*))

Agent notifies the Lenders of the Loan in accordance with Clauses 5.4 (*Lenders' participation*)

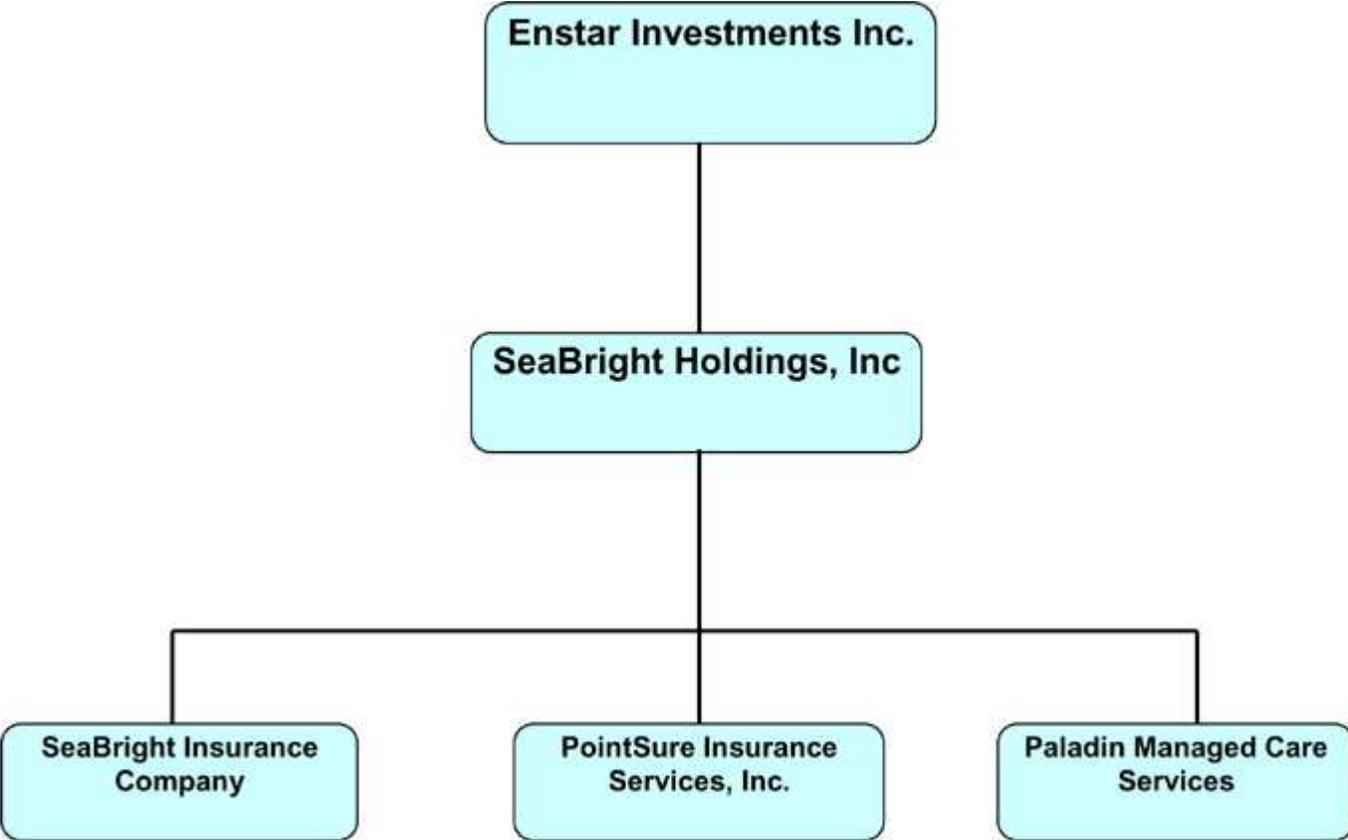
LIBOR is fixed

Loans in US Dollars

3 Business Days prior to the date of the Loan
9.30 a.m.

3 Business Days prior to the date of the Loan
3.00 p.m.

Quotation Day as of 11.00 a.m.



Schedule 11 Security Agent

1 Appointment

- 1.1 Each other Finance Party appoints the Security Agent to act as its agent and trustee under and in connection with the Finance Documents.
- 1.2 Each other Finance Party:
 - 1.2.1 authorises the Security Agent to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions;
 - 1.2.2 confirms its approval of each Transaction Security Document; and
 - 1.2.3 authorises and directs the Security Agent (by itself or by any Delegate) to execute and enforce the Transaction Security Documents as trustee, agent or in any other role (and whether or not expressly in that Finance Party's name) on its behalf, subject always to the terms of the Finance Documents.

2 Duties

- 2.1 Except where a Finance Document specifically provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- 2.2 The Security Agent has only those duties which are expressly specified in the Finance Documents.
- 2.3 The Security Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- 2.4 Any requirement that the Security Agent is to "act reasonably" is to be construed as an obligation on the Finance Parties which are approached by it for instructions in accordance with this Agreement in relation to the relevant matter and not as an individual obligation on the Security Agent in that capacity.

3 Relationship

- 3.1 The relationship between the Security Agent and each other Finance Party is that of principal and agent save only that the benefits of the Transaction Security Documents are held by the Security Agent as trustee for them (to the extent that any amount is or is capable of being secured thereby).
- 3.2 In relation to any jurisdiction the courts of which would not recognise or give effect to the trusts expressed to be created by any Finance Document, the relationship of each other Finance Party to the Security Agent shall be construed solely as one of principal and agent but, to the fullest extent permissible under the laws of such jurisdiction, all the other provisions of the Finance Document shall have full force and effect between the Parties.
- 3.3 The Security Agent shall not be liable to any Party for any breach by any other Party of any Finance Document.
- 3.4 The Security Agent shall not be bound to account to any Party or any other person for any sum or the profit element of any sum received by it for its own account.

4 **No Fiduciary Duties**

4.1 Nothing in the Finance Documents makes the Security Agent a fiduciary for any other Party or any other person.

5 **Business with the Group**

5.1 The Security Agent may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Group.

5.2 If it is also a Lender, the Security Agent has the same rights and powers under the Finance Documents as any other Lender and may exercise those rights and powers as though it were not the Security Agent.

6 **Rights and Discretions**

6.1 The Security Agent may rely on:

6.1.1 any representation, notice or document believed by it to be genuine, correct and appropriately authorised; and

6.1.2 any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.

6.2 The Security Agent may assume (unless it has received notice to the contrary in its capacity as agent for the other Finance Parties) that:

6.2.1 no Event of Default has occurred (unless it has actual knowledge of an Event of Default arising under Clause 24.1 (*Non-payment*) of this Agreement);

6.2.2 any right, power, authority or discretion vested in the Majority Lenders or any other person has not been exercised; and

6.2.3 any notice or request made by the Borrower is made on behalf of and with the consent and knowledge of all the Obligors.

6.3 The Security Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.

6.4 The Security Agent may act in relation to the Finance Documents through its personnel and Delegates.

6.5 The Security Agent may disclose to any other Party any information it reasonably believes it has received as agent under the Finance Documents.

6.6 Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or a breach of a fiduciary duty or duty of confidentiality.

7 **Responsibility**

The Security Agent is not responsible for:

7.1 the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by any person given in or in connection with any Finance Document or the transactions contemplated in the Finance Documents.

- 7.2 the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document or the Transaction Security; or
- 7.3 for any failure in perfecting or protecting the Security created by any Transaction Security Document including any failure to:
- 7.3.1 take any necessary registration or recordings or filings of or otherwise protect the relevant Security under any laws in any jurisdiction;
- 7.3.2 give notice to any person of the execution of any Transaction Security Document; or
- 7.3.3 to obtain any authorisation for the creation of any Security, unless directly caused by its gross negligence or wilful misconduct.

8 **Exclusion of Liability**

- 8.1 Without limiting paragraph 8.2 below, the Security Agent will not be liable for any action taken by it under or in connection with any Finance Document, unless directly caused by its gross negligence or wilful misconduct.
- 8.2 No Party (other than the Security Agent) may take any proceedings against any officer, employee or Delegate of the Security Agent in respect of any claim it might have against the Security Agent or in respect of any act or omission of any kind by that officer, employee or Delegate in relation to any Finance Document and any officer, employee or Delegate of the Security Agent may rely on this provision.
- 8.3 The Security Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Security Agent if the Security Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Security Agent for that purpose.
- 8.4 The Parties agree that the Security Agent shall not be subject to the duty of care imposed on trustees by the Trustee Act 2000.
- 8.5 Nothing in this Agreement shall oblige the Security Agent to carry out any “know your customer” or other checks in relation to any person on behalf of any other Finance Party and every other Finance Party confirms to the Security Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Security Agent.

9 **Indemnity**

- 9.1 Each other Finance Party shall indemnify the Security Agent, within three Business Days of demand, against any cost, loss or liability incurred by the Security Agent (otherwise than by reason of the Security Agent’s gross negligence or wilful misconduct) in acting as Security Agent under the Finance Documents (unless the Security Agent has been reimbursed by an Obligor pursuant to a Finance Document).
- 9.2 The liability shall be divided between such Finance Parties pro rata to their respective aggregate Commitments from time to time or if all Commitments have been reduced to zero, their respective aggregate Commitments immediately prior to that reduction.

- 9.3 The Security Agent may, in priority to any payment to the Finance Parties, indemnify itself out of the Obligors' assets charged by the Transaction Security Documents in respect of, and pay and retain, all sums necessary to give effect to this indemnity and to all other indemnities given to it in the other Finance Documents in its capacity as Security Agent. The Security Agent shall have a lien on the Transaction Security Documents and the proceeds of enforcement of the Transaction Security Documents for all such sums.
- 10 **Resignation and Additional Security Agents**
- 10.1 The Security Agent may resign and appoint one of its Affiliates acting through an office in the United Kingdom as successor by giving notice to the other Finance Parties and the Borrower.
- 10.2 Alternatively the Security Agent may resign by giving notice to the other Finance Parties and the Borrower, in which case the Majority Lenders (after consultation with the Borrower) may appoint a successor Security Agent.
- 10.3 If the Majority Lenders have not appointed a successor Security Agent in accordance with paragraph 10.2 above within 30 days after notice of resignation was given, the Security Agent (after consultation with the Borrower) may appoint a successor Security Agent (acting through an office in the United Kingdom).
- 10.4 The retiring Security Agent shall, at its own cost, make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Finance Documents.
- 10.5 The Security Agent's resignation notice shall only take effect upon the appointment of a successor.
- 10.6 Upon the appointment of a successor, the retiring Security Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Schedule. Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- 10.7 After consultation with the Borrower, the Majority Lenders may, by notice to the Security Agent, require it to resign in accordance with paragraph 10.2 above. In this event, the Security Agent shall resign in accordance with paragraph 10.2 above.
- 10.8 The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate security agent or trustee or as a co-agent or co-trustee jointly with it (any such person, an **Additional Security Agent**):
- 10.8.1 if it is necessary in performing its duties and if the Security Agent considers that appointment to be in the interest of the Finance Parties; or
- 10.8.2 for the purposes of complying with or conforming to any legal requirements restrictions or conditions which the Security Agent deems to be relevant; or
- 10.8.3 for the purposes of obtaining or enforcing any judgement or decree in any jurisdiction, and the Security Agent will give notice to the other Parties of any such appointment.
- 10.9 Any Additional Security Agent appointed in accordance with paragraph 10.8 above shall (subject to the terms of this Agreement) have the rights, powers and

discretions (not exceeding those conferred on the Security Agent by this Agreement) and the duties and obligations as are conferred or imposed on the Additional Security Agent by the instrument of its appointment.

- 10.10 The remuneration that the Security Agent may pay to any Additional Security Agent and any reasonable costs and expenses (properly incurred) incurred by any Additional Security Agent in performing its functions pursuant to its appointment will, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

11 **Confidentiality**

- 11.1 In acting as agent for the Finance Parties, the Security Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- 11.2 If information is received by another division or department of the Security Agent, it may be treated as confidential to that division or department and the Security Agent shall not be deemed to have notice of it.
- 11.3 Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent shall not be obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would or might in its reasonable opinion constitute a breach of a fiduciary duty.

12 **Relationship with the Lenders**

- 12.1 The Security Agent may treat each Lender as a Lender, entitled to payments under this Agreement and acting through its Facility Office unless it has received not less than five Business Days prior notice from that Party or the Agent to the contrary.

13 **Credit Appraisal**

- 13.1 Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each other Finance Party confirms to the Security Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:
- 13.1.1 the financial condition, status and nature of each member of the Group;
- 13.1.2 the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;
- 13.1.3 whether that Finance Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Transaction Security, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- 13.1.4 the adequacy, accuracy and/or completeness of any information provided by the Security Agent, any other Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and

13.1.5 the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

14 **Deduction from Amounts Payable by the Security Agent**

If any Party owes an amount to the Security Agent under the Finance Documents the Security Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Security Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

15 **Title**

The Security Agent may accept without enquiry the title (if any) which an Obligor may have to any asset over which Security is intended to be created by any Transaction Security Document.

16 **Holding**

The Security Agent is not obliged to hold any share certificates or title deed, any Transaction Security Document or other document in connection with any asset over which Security is intended to be created by any Transaction Security Documents in its own possession. The Security Agent may permit the relevant Obligor or any professional adviser of the Security Agent to retain all such title deeds and other documents in its possession.

17 **Investments**

Except as otherwise provided in any Transaction Security Document, all moneys which are received by the Security Agent under that Transaction Security Document may be invested in the name of or under the control of the Security Agent in any investments which may be selected by the Security Agent. Additionally, those moneys may be placed on deposit in the name of or under the control of the Security Agent at such bank or institution (including itself) and upon such terms as it may think fit.

18 **Enforcement**

The Security Agent shall to the extent practicable use all reasonable endeavours to enforce the Security constituted by the Transaction Security Documents if it receives instructions to do so from the relevant Finance Parties that comply with Clause 27.20 (*Instructions*).

19 **Recoveries to be held on Trust**

19.1 The Security Agent shall hold the Recoveries on trust for the Finance Parties.

19.2 The Recoveries shall be distributed between the Finance Parties in accordance with Clause 30.5 (*Proceeds of enforcement*). Once so applied, the Security Agent shall be under no obligation to monitor how the relevant person receiving any such amount has applied such amounts.

- 19.3 Only amounts actually received by the Security Agent shall be capable of being applied by the Security Agent in accordance with this paragraph 19.
- 19.4 If the Security Agent receives any distribution under this Agreement or any other document otherwise than in cash from any person, the Security Agent may realise such distribution as it sees fit and then shall apply the proceeds of such realisation in accordance with the provisions of this Agreement.
- 19.5 If the Security Agent receives any amount under this Agreement or under any other Finance Document in a currency other than the currency of the relevant Debt the Security Agent may convert such amount into the currency of the relevant Debt at the Security Agent's spot rate of exchange for the purchase of the relevant currency with the currency of the amount received in the London foreign exchange market.
- 20 **Payment of Taxes**
- The Security Agent shall be entitled to make such deductions and withholdings (on account of Taxes or otherwise) from payments to any other Finance Party as it is required by any applicable law to make and to pay out of amounts due to any other Finance Party all Taxes assessed against it in respect of any property charged or assigned pursuant to the Transaction Security Documents or by virtue of its role as agent or trustee under the Finance Documents.
- 21 **Conflict with Transaction Security Documents**
- If there is any conflict between the provisions of this Schedule and any Transaction Security Documents with regard to instructions to or other matters affecting the Security Agent, this Schedule will prevail.
- 22 **Discharge Date**
- Forthwith upon the date on which all present and future sums, obligations or liabilities from time to time due, owing or incurred (actually or contingently) by any Obligor to a Finance Party under or in connection with the Finance Documents shall have been irrevocably discharged in full and all Commitments have been cancelled, the trusts set out in Clause 27.18 (*Appointment of Security Agent*) and in this Schedule 11 shall be wound up and all the rights, duties and obligations of the Security Agent to the other Finance Parties (but not liabilities already incurred for negligence or breach of duty) shall cease.

Execution pages

The Borrower

**Executed as a Deed by
AML Acquisition, Corp.**
acting by:

) /s/ Robert Redpath

)

)

Name: Robert Redpath
Title: Vice President

In the presence of:

Witness signature:

Witness sign here: /s/ Edward G. Simeon Jr.

Witness name:

print name: Edward G. Simeon Jr.

Witness address:

411 5th Avenue, 5th Floor

New York, NY 10016

Witness occupation:

Paralegal

The Original Guarantor

**Executed as a Deed by
AML Acquisition, Corp.**
acting by:

)

)

)

/s/ Robert Redpath

Name: Robert Redpath
Title: Vice President

In the presence of:

Witness signature:

Witness sign here: /s/ Edward G. Simeon Jr.

Witness name:

print name: Edward G. Simeon Jr.

Witness address:

411 5th Avenue, 5th Floor

New York, NY 10016

Witness occupation:

Paralegal

The Original Lenders

**Executed as a Deed by
National Australia Bank Limited
ABN 12004044937
acting by:**

)
)
)

/s/ Fiona MacLennan
Director

/s/ Carole Palmer
Associate Director

**Executed as a Deed by
Barclays Bank PLC acting by:**

)
)
)

/s/ Mark Timms
Authorized Signatory

/s/ Isanna R. Devine
Director

The Arrangers

Executed as a Deed by
National Australia Bank Limited
ABN 12004044937
acting by:

)
)
)

/s/ Fiona MacLennan
Director

/s/ Carole Palmer
Director

Executed as a Deed by
Barclays Bank PLC
acting by:

)
)
)

/s/ Mark Timms
Authorized Signatory

/s/ Isanna R. Devine
Authorized Signatory

The Agent

Executed as a Deed by
National Australia Bank Limited
ABN 12004044937
acting by:

)
)
)

/s/ Fiona MacLennan
Director

/s/ Carole Palmer
Associate Director

The Security Agent

Executed as a Deed by
National Australia Bank Limited
ABN 12004044937
acting by:

)
)
)

/s/ Fiona MacLennan
Director

/s/ Carole Palmer
Associate Director

**ENSTAR GROUP LIMITED
LISTING OF SUBSIDIARIES**

Name	% of Voting Securities	Jurisdiction
Enstar Group Limited	N/A	Bermuda
A. Cumberland Holdings Limited	100%	Bermuda
1) Enstar Australia Holdings Pty Limited	100%	Australia
a) Enstar Australia Ltd.	100%	Australia
i) Cranmore Adjusters (Australia) Pty Ltd.	100%	Australia
b) AG Australia Holdings Ltd	100%	Australia
i) Gordian Run-off Limited	100%	Australia
c) Shelly Bay Holdings Ltd.	100%	Australia
i) Church Bay Limited	100%	Australia
ii) Harrington Sound Limited	100%	Australia
I) TGI Australia Limited	100%	Australia
B. Enstar Limited	100%	Bermuda
1) Enstar (EU) Holdings Ltd.	100%	England
a) Enstar (EU) Ltd.	100%	England
b) Cranmore (UK) Limited	100%	England
c) Enstar (EU) Finance Ltd	100%	England
2) Cranmore (Bermuda) Limited	100%	Bermuda
a) Cranmore (Asia) Ltd	100%	Bermuda
i) Cranmore (Asia) Pte Limited	100%	Singapore
3) Enstar Brokers Limited	100%	Bermuda
4) Castlewood (Bermuda) Ltd.	100%	Bermuda
5) Bantry Holdings Ltd.	50%	Bermuda
a) Blackrock Holdings Ltd.	30%	Bermuda
i) Kinsale Brokers Limited	100%	England
6) Enstar Insurance Management Services Ireland Limited	100%	Ireland
7) Enstar Investment Management Limited	100%	Bermuda
C. Kenmare Holdings Limited	100%	Bermuda
1) Fitzwilliam Insurance Limited	100%	Bermuda
2) Revir Limited	100%	Bermuda
a) River Thames Insurance Company	100%	England
b) Overseas Reinsurance Corporation Limited	100%	Bermuda
c) Regis Agencies Limited	100%	England
3) Hudson Reinsurance Company Limited	100%	Bermuda
a) Chatsworth Limited	100%	Bermuda
i) Global Legacy Acquisition LP	98%	Bermuda
4) Harper Holding Sarl	100%	Luxembourg
a) Harper Insurance Limited	100%	Switzerland
b) Enstar Holdings (US) Inc.	100%	Delaware
i) Enstar (US) Inc.	100%	Delaware
A) Enstar New York, Inc	100%	New York
I) Financial Guaranty Advisers, LLC	33%	Delaware
ii) Cranmore (US) Inc.	100%	Delaware
iii) Enstar Investments, Inc.	100%	Delaware
A) Sun Gulf Holdings, Inc.	100%	Delaware
I) Capital Assurance Company	100%	Florida
II) Capital Assurance Services, Inc.	100%	Florida
III) Constellation Reinsurance Company	100%	New York
B) CLIC Holdings, Inc.	100%	Delaware
I) Claremont Liability Insurance Company	100%	California
C) PWAC Holdings, Inc.	100%	Delaware
I) Providence Washington Insurance Solutions, LLC	100%	Rhode Island
II) PW Acquisition Co.	100%	Rhode Island
x) Providence Washington Holdings, Inc	100%	Rhode Island
xi) PW Holdings, Inc	100%	Rhode Island
xii) Providence Washington Insurance Company	100%	Rhode Island
xiiia) York Insurance Company	100%	Rhode Island
D) Clarendon Holdings, Inc.	100%	Delaware
I) Clarendon National Insurance Company	100%	New Jersey
x) Clarendon America Insurance Company	100%	New Jersey
xi) Harbor Specialty Insurance Company	100%	New Jersey
E) SeaBright Holdings, Inc.	100%	Delaware

I) SeaBright Insurance Company	100%	Illinois
I) Paladin Managed Care Services, Inc.	100%	California
I) PointSure Services, Inc.	100%	Washington
F) Pavonia Holdings (US) Inc.	100%	Delaware
5) Mercantile Indemnity Company Ltd.	100%	England
6) Longmynd Insurance Company Ltd.	100%	England
7) Fieldmill Insurance Company Ltd.	100%	England
8) Virginia Holdings Ltd.	100%	Bermuda
a) Unione Italiana (UK) Reinsurance Company	100%	England
b) Seaton Insurance Company	100%	Rhode Island

Name	% of Voting	
	Securities	Jurisdiction
c) Cavell Holdings Limited (U.K.)	100%	England
i) Cavell Insurance Company Limited	100%	England
9) Courtenay Holdings Ltd	100%	Bermuda
a) Enstar Acquisitions Limited	100%	England
i) Goshawk Insurance Holdings Limited	99.45% ⁽¹⁾	England
A) Goshawk Holdings (Bermuda) Limited	100%	Bermuda
I) Rosemont Reinsurance Limited	100%	Bermuda
B) Goshawk Dedicated Limited	100%	England
b) Simcoe Holdings Limited	100%	Bermuda
i) Electricity Producers Insurance Company (Bermuda) Ltd.	100%	Bermuda
c) Royston Holdings Limited	100%	Bermuda
i) Royston Run-off Ltd	100%	England
A) Unionamerica Holdings Limited	100%	England
I) Unionamerica Acquisition Company Limited	100%	England
x) Unionamerica Insurance Company Limited	100%	England
d) Rombalds Limited	100%	England
i) Guildhall Insurance Company Ltd.	100%	England
10) Comox Holdings Ltd	50.1%	Bermuda
a) Bosworth Run-Off Limited	100%	England
11) Sundown Holdings Limited	100%	Bermuda
12) Oceania Holdings Ltd.	100%	Bermuda
a) Inter-Ocean Holdings Limited	100%	Bermuda
i) Inter-Ocean Reinsurance Company Ltd.	100%	Bermuda
A) Inter-Ocean Reinsurance (Ireland) Ltd.	95.0% ⁽²⁾	Ireland
13) Flatts Limited	100%	England
a) Marlon Insurance Company Limited	100%	England
i) The Copenhagen Company Limited	100%	Denmark
A) The Copenhagen Reinsurance Company (UK) Limited	100%	England
I) Copenhagen Reinsurance Services Limited	100%	England
14) Shelbourne Group Limited	100%	England
a) SGL No 1 Ltd.	100%	England
b) SGL No 2 Ltd.	100%	England
c) SGL No 3 Ltd.	100%	England
d) Shelbourne Syndicate Services Ltd	100%	England
15) Hillcot Re Limited	100%	England
a) Hillcot Underwriting Management Limited	100%	England
16) Northshore Holdings Limited	100%	Bermuda
17) Hove Holdings Limited	100%	Bermuda
18) Nordic Run-off Limited	100%	England
a) Forsakringsaktieboleget Assuransinvest Limited	100%	Sweden
19) Knapton Holdings Limited	100%	England
a) Knapton Insurance Limited	100%	England
20) New Castle Reinsurance Company Limited	100%	Bermuda
21) Laguna Life Limited	100%	Ireland
22) Enstar Financing Ltd.	100%	Bermuda
D. Hillcot Holdings Limited	100%	Bermuda
1) Brampton Insurance Company Limited	100%	England
E. Enstar USA, Inc.	100%	Georgia
1) Enstar Financial Services, Inc.	100%	Florida
2) Enstar Group Operations, Inc.	100%	Georgia
F. Laguna Life Holdings Ltd.	100%	Bermuda
1) Laguna Life Holdings SARL	100%	Luxembourg
B.H. Acquisition Ltd.	100% ⁽³⁾	Bermuda
1) Brittany Insurance Company Ltd.	100%	Bermuda
2) Paget Holdings GmbH Ltd.	100%	Austria
a) Compagnie Europeenne d'Assurances Industrielles SA	100%	Belgium

(1) Goshawk Insurance Holdings plc is 89.44% owned by Enstar Acquisition Ltd. and 10.01% owned by Kenmare Holdings Limited.

(2) The remaining 5.0% of the company's voting securities is owned directly by Inter-Ocean Holdings Limited

(3) B.H. Acquisition Ltd. is 33% owned by Enstar USA, Inc. and 67% owned by Enstar Limited

Consent of Independent Registered Public Accounting Firm

The Board of Directors and Shareholders of
Enstar Group Limited:

We consent to the incorporation by reference in the registration statements No. 333-149551, 333-148863, 333-148862 and 333-141793 on Form S-8 of Enstar Group Limited of our reports dated February 28, 2013, with respect to the consolidated balance sheet of Enstar Group Limited as of December 31, 2012, and the related consolidated statements of earnings, comprehensive income, changes in shareholders' equity and cash flows for the year ended December 31, 2012, and all related financial statement schedules, and the effectiveness of internal control over financial reporting as of December 31, 2012, which reports appear in the December 31, 2012 annual report on Form 10-K of Enstar Group Limited.

/s/ KPMG Audit Limited

KPMG Audit Limited

Hamilton, Bermuda

February 28, 2013

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statements No. 333-149551, 333-148863, 333-148862 and 333-141793 on Form S-8 of our report dated February 24, 2012, relating to the December 31, 2011 consolidated financial statements and financial statement schedule of Enstar Group Limited and subsidiaries (the "Company"), appearing in this Annual Report on Form 10-K of Enstar Group Limited and subsidiaries for the year ended December 31, 2012.

/s/ Deloitte & Touche Ltd.

Hamilton, Bermuda

February 28, 2013

**CERTIFICATION PURSUANT TO
RULE 13a-14(a)/15d-14(a),
AS ADOPTED PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002**

I, Dominic F. Silvester, certify that:

1. I have reviewed this Annual Report on Form 10-K of Enstar Group Limited;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: February 28, 2013

/s/ DOMINIC F. SILVESTER

Dominic F. Silvester
Chief Executive Officer

**CERTIFICATION PURSUANT TO
RULE 13a-14(a)/15d-14(a),
AS ADOPTED PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002**

I, Richard J. Harris, certify that:

1. I have reviewed this Annual Report on Form 10-K of Enstar Group Limited;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: February 28, 2013

/s/ R ICHARD J. H ARRIS

Richard J. Harris
Chief Financial Officer

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Enstar Group Limited (the “Company”) on Form 10-K for the fiscal year ended December 31, 2012, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Dominic F. Silvester, certify, pursuant to 18 U.S.C. section 1350, as adopted pursuant to section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: February 28, 2013

/s/ DOMINIC F. SILVESTER

Dominic F. Silvester
Chief Executive Officer

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Enstar Group Limited (the “Company”) on Form 10-K for the fiscal year ended December 31, 2012, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Richard J. Harris, certify, pursuant to 18 U.S.C. section 1350, as adopted pursuant to section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: February 28, 2013

/s/ R ICHARD J. H ARRIS

Richard J. Harris
Chief Financial Officer