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## PRACTICE DIRECTION LETTER

From: Markel CATCo Reinsurance Fund Ltd (provisional liquidators appointed for restructuring purposes) (the “**Private Fund**”) and CATCo Reinsurance Opportunities Fund Ltd. (provisional liquidators appointed for restructuring purposes) (the “**Public Fund**”) (together, the “**Scheme Companies**”)

To: The investors in the Private Fund and the Public Fund as the Scheme Creditors (as defined below)

Date: 28 October 2021

Dear investors,

**Proposed schemes of arrangement under Section 99 of the Companies Act (as defined below) between the Scheme Companies and investors in the Private Fund and the Public Fund in their capacity as potential creditors.**

**THIS LETTER CONCERNS MATTERS WHICH MAY AFFECT YOUR LEGAL RIGHTS AND ENTITLEMENTS AND YOU MAY THEREFORE WISH TO TAKE APPROPRIATE LEGAL ADVICE ON ITS CONTENTS.**

### 1. INTRODUCTION

#### 1.1 Background

The Scheme Companies are sending you this letter in accordance with Practice Direction No. 18 of 2007 ‘Guidelines applicable to Schemes of Arrangement under Section 99 of the Companies Act 1981’ (the “**Practice Direction**”), in relation to two schemes of arrangement (the “**Schemes**”) proposed under Section 99 of the Companies Act 1981 of Bermuda (the “**Companies Act**”), namely:

- (a) the “**Private Fund Scheme**” between the Private Fund and all persons that are beneficially interested in shares issued by the Private Fund in respect of the following segregated accounts of the Private Fund as at the Scheme Record Time, in their capacities as potential creditors of the Private Fund (the “**Private Fund Scheme Creditors**”):
  - (i) Diversified Fund (the “**Master Fund**”),
  - (ii) Diversified Fund II,
  - (iii) Limited Diversified Arbitrage Fund,
  - (iv) Diversified Arbitrage Fund,
  - (v) GTL Diversified Fund,
  - (vi) Markel Diversified Fund,
  - (vii) QIC Diversified Fund (all of the preceding funds, the “**Retro Funds**”), and
  - (viii) Aquilo Fund (the “**Aquilo Fund**” and together with each of the Retro Funds, each a “**Segregated Account**”); and

- (b) the “**Public Fund Scheme**” between the Public Fund and all persons that are beneficially interested in the ordinary shares or the C shares issued by the Public Fund (the “**Public Fund Shares**”, and together with the Private Fund Shares, the “**Shares**”) as at the Scheme Record Time in their capacity as potential creditors of the Public Fund (the “**Public Fund Scheme Creditors**” and together with the Private Fund Scheme Creditors, the “**Scheme Creditors**”).

You are being contacted because the Scheme Companies believe that you are: (i) a Scheme Creditor entitled to vote on a Scheme, and/or (ii) a nominee or custodian for a Scheme Creditor or otherwise hold an interest in Shares on behalf of Scheme Creditors. If you are a nominee or custodian for a Scheme Creditor or otherwise hold an interest in Shares on behalf of a Scheme Creditor, then you should pass this letter to the Investor and take instructions from them.

If you have sold or otherwise transferred your interest in any Private Fund Shares and/or Public Fund Shares, you should send this document at once to the purchaser or transferee, or to the stockbroker, bank or other agent through whom the sale or transfer was effected, for delivery to the purchaser or transferee. However, this document must not be forwarded, distributed or transmitted in, into or from any jurisdiction in which such act would constitute a violation of the relevant laws or regulations of such jurisdiction.

The distribution of this document in certain jurisdictions may be restricted by law and therefore persons into whose possession this document comes should inform themselves about and observe such restrictions. Any failure to comply with these restrictions may constitute a violation of the securities laws of any such jurisdiction.

## 1.2 Overview of the Buy-Out Transaction

The Schemes are an essential element of a buy-out transaction (the “**Buy-Out Transaction**” and the implementation of such Buy-Out Transaction, the “**Restructuring**”) which the Scheme Companies wish to implement in the interests of the Scheme Creditors. The Buy-Out Transaction, as described in further detail below at Section 6 (*The Schemes and The Buy-Out Transaction*), provides for:

- (a) an accelerated cash distribution to Private Fund Scheme Creditors in the Retro Funds on a *pro rata* basis, as follows:
  - (i) 2016 Side Pocket: an estimated \$36.3 million (104% of current net asset value (“NAV”) calculated as at 31 August 2021 (“**31 August NAV**”) for illustrative purposes;
  - (ii) 2017 Side Pocket: an estimated \$186.1 million (107% of current NAV) using 31 August NAV for illustrative purposes;
  - (iii) 2018 Side Pocket: an estimated \$177.5 million (106% of current NAV) using 31 August NAV for illustrative purposes; and
  - (iv) 2019 Side Pocket: an estimated \$166.9 million (101% of current NAV) using 31 August NAV for illustrative purposes;

- (b) an accelerated cash distribution to Public Fund Scheme Creditors on a *pro rata* basis, (following distribution of the cash distribution from the Master Fund), as follows:
  - (i) Ordinary Shares: an estimated \$47.4 million, or approximately \$0.32 per Share, (using 31 August NAV for illustrative purposes); and
  - (ii) C Shares: an estimated \$41.4 million, or approximately \$0.50 per Share, (using 31 August NAV for illustrative purposes);
- (c) an accelerated cash distribution to Private Fund Scheme Creditors in the Aquilo Fund on a *pro rata* basis, of an estimated \$206.7 million (106% of current NAV) using 31 August NAV for illustrative purposes;
- (d) a retained right to any Investor Upside (as defined below); and
- (e) additionally, Scheme Creditors who provided Investor Undertakings for the Buy-Out Transaction by the Early Consent Deadline (as defined below) are also eligible to receive an Early Consent Fee (as defined below).

In connection with distributions described above and pursuant to the Schemes, the Scheme Creditors, Markel CATCo Investment Management Ltd. (the “**Manager**”), the Private Fund, the Public Fund, Markel CATCo Re Ltd. (the “**Reinsurer**” and together with the Scheme Companies and the Manager, the “**CATCo Group**”), Markel Corporation, the Purchaser (as defined below) and other related parties and advisors will grant mutual releases of any and all claims against each other. A description of the types of claims which will be released is provided in Section 6.9 (*The Releases*) below.

The Buy-Out Transaction will be facilitated by funding from Markel Corporation and/or its affiliates, which funding will be used to make or allow for accelerated distributions and to defray Administrative Expenses.

### 1.3 Purpose of this Letter

In accordance with the Practice Direction, the purpose of this letter is to inform you:

- (a) of the Scheme Companies’ decisions to promote the Schemes in order to implement the Buy-Out Transaction;
- (b) of the background to the Schemes, the purpose which the Schemes are designed to achieve and their effect;
- (c) that the Scheme Companies intend to apply at a court hearing (the “**Convening Hearing**”) currently anticipated to be held at a date and time to be notified to Scheme Creditors, but no earlier than 10 November 2021 in the Supreme Court of Bermuda (the “**Court**”) (which is likely to take place remotely, using Zoom or a similar format), for orders granting the Scheme Companies certain directions in relation to:
  - (i) the Private Fund Scheme, including permission to convene five separate meetings of the Private Fund Scheme Creditors (the “**Private Fund Scheme Meetings**”) for

- the purpose of considering and, if thought fit, approving the Private Fund Scheme; and
- (ii) the Public Fund Scheme, including permission to convene two separate meetings of the Public Fund Scheme Creditors (the “**Public Fund Scheme Meeting**” and, together with the Private Fund Scheme Meeting, the “**Scheme Meetings**”) for the purpose of considering and, if thought fit, approving the Public Fund Scheme;
- (d) of other matters that are to be addressed at the Convening Hearing, including how to raise any Investor Issues (defined below);
- (e) of the reason why the Scheme Companies consider that the Court has jurisdiction to sanction the Schemes; and
- (f) how to make further enquiries about the Schemes (see Section 15 (*Enquiries and Further Information*)).

The Scheme Companies will ask the Court to convene Scheme Meetings in late November or early December 2021, which meetings will likely be attended virtually. The date and details of how to virtually attend the Scheme Meetings will be confirmed in an explanatory statement with respect of the Schemes (the “**Explanatory Statement**”) which, provided the Court gives its permission to convene the Scheme Meetings, will be circulated to Scheme Creditors shortly after the Court has ordered the Scheme Meetings to be convened.

## 2. WHAT IS A SCHEME OF ARRANGEMENT?

A scheme of arrangement is a formal procedure under Section 99 of the Companies Act which enables a company to agree a compromise or arrangement with its creditors (or members) or any class of its creditors (or members). The Schemes to which this letter relates are creditors’ schemes. Under Bermuda law, a creditors’ scheme of arrangement requires the following to occur in order to become legally binding:

- (a) the approval of a majority in number representing at least 75% in value of the relevant creditors or classes of creditors present in person or by proxy and voting at each of the relevant meetings convened to approve the scheme of arrangement;
- (b) the approval of the relevant court by the making of an order sanctioning the scheme of arrangement; and
- (c) the delivery of the order sanctioning the scheme of arrangement to the Bermuda Registrar of Companies.

## 3. WHO IS ENTITLED TO VOTE AND WHOSE RIGHTS ARE AFFECTED BY THE SCHEMES?

The Schemes are being proposed by the Scheme Companies in respect of Investor Claims (as defined in Section 5.2 (*Investor Litigation*) below). Investor Claims will be released, in exchange for which Scheme Creditors will receive (i) the benefit of an accelerated cash distribution of the remaining fund assets; and (ii) their share of the Additional Consideration.

All Private Fund Scheme Creditors (including the Public Fund, but excluding the Private Fund itself to the extent that any Segregated Account holds Shares in another Segregated Account) as at

the Scheme Record Time (as defined below) will be party to the Private Fund Scheme in their capacity as potential creditors of the Private Fund, and entitled to vote thereon.

All Public Fund Scheme Creditors as at the Scheme Record Time (as defined below) will be party to the Public Fund Scheme in their capacity as potential creditors of the Public Fund, and entitled to vote thereon.

The “**Scheme Record Time**” will be two days before the Scheme Meetings, which are expected to be held in late November or early December 2021. The date and time of the Scheme Record Time will be confirmed in the Explanatory Statement.

Private Fund Scheme Creditors and Public Fund Scheme Creditors will be party to the respective Schemes in their capacity as potential creditors of the relevant Scheme Company notwithstanding that the Private Fund and the Public Fund do not accept that any Investor Claim (as defined below) has any merit. The purpose of the Schemes is to grant the Releases, which will release all Investor Claims that the Private Fund Scheme Creditors or Public Fund Scheme Creditors might hold against the Private Fund or the Public Fund (as applicable) and certain third parties (in exchange for an accelerated cash distribution and their share of the Additional Consideration). See Section 6.9 (*The Releases*) below for a more detailed explanation of the Releases.

The Manager, as holder of the voting shares in the Private Fund but not Shares in any Segregated Account, is not a Scheme Creditor for the purpose of the Schemes. The Manager will nonetheless undertake to be bound by and comply with the Schemes, will grant the releases of Scheme Creditors contemplated pursuant to the Buy-Out Transaction, and will receive the benefit of the Releases (as defined below).

If the Schemes are approved by the requisite majorities at each class meeting and sanctioned by the Court and the Court order is delivered to the Bermuda Registrar of Companies, the Schemes will become effective in accordance with their terms and bind all of the Scheme Creditors, including those who voted against the Schemes or did not vote at all and in each case their successors and assigns. The terms of the Schemes will provide their effectiveness is subject to certain conditions precedent including the entry of an order by the U.S. Bankruptcy Court pursuant to Chapter 15 of the U.S. Bankruptcy Code that recognises and enforces the Schemes in the U.S.

#### **4. THE SCHEME COMPANIES, THE REINSURER AND THE MANAGER**

##### **4.1 The Private Fund**

Each Segregated Account is a separate individually managed pool of assets with its own investment objective and policies. Each Segregated Account and investments operated by the Private Fund can be broadly divided into two categories: (i) the investments in, and investments made by, the Aquilo Fund; and (ii) the investments in, and investments made by, the Retro Funds, further details of which are set out in the following paragraphs.

##### **4.1.1 *The Aquilo Fund***

The Aquilo Fund offered its investors exposure to traditional (non-retro) reinsurance products issued by the Reinsurer. Such policies were issued by the Reinsurer through rated fronting reinsurance carriers. Private Fund Scheme Creditors in the Aquilo Fund have no direct or indirect

interest in the assets of the Retro Funds (unless they have separate interests in Shares issued by the Retro Funds).

#### 4.1.2 *The Retro Funds*

The Retro Funds invested in the Reinsurer *via* the Master Fund, which invested its assets predominantly in retro reinsurance products issued by the Reinsurer, as described more fully below.

The Master Fund raised capital by issuing participating shares directly to investors, or by issuing participating shares to the Public Fund or any of the other six Retro Funds (the “**Sub-Funds**”). The Public Fund and Sub-Funds in turn issued participating shares to investors. By choosing whether to invest in the Master Fund directly, or in one of the Sub-Funds, its investors could achieve exposure to the same pool of investments, but with different hedging strategies.

#### 4.1.3 *Share Rights in the Private Fund*

The Private Fund issued a separate class of participating shares in respect of each of the Sub-Funds and the Master Fund, holders of which are only entitled to the proceeds of the Segregated Account to which their Shares relate. The assets of each Segregated Account are intended to be available to meet the liabilities only of creditors of the Private Fund in respect of that Segregated Account. As all shares in respect of each Segregated Account have already been redeemed or converted into SPs (as described below), there are now no longer any relevant differences between the rights of investors that originally invested in different share classes.

#### 4.1.4 *The Side Pockets*

The bye-laws of the Private Fund enable its directors to create ‘side-pockets’ (“**SPs**”, or, in the case of a single side-pocket, an “**SP**”) where desirable to do so to manage the liquidity of the Segregated Accounts. A SP constitutes a distinct class of shares issued in respect of any particular Segregated Account, holders of which are entitled to share in a defined pool of illiquid assets subject to run-off periods. The Master Fund and the Aquilo Fund utilised SPs at the end of each calendar year to fix the interests of their investors in the capital trapped in insurance policies for such year:

- (a) In the Master Fund, SPs were created at the end of each of 2016, 2017, 2018 and 2019.
- (b) In the Aquilo Fund, SPs were created at the end of each of 2014 through 2020.

During 2019, the Private Fund decided to run-off the Retro Funds and return capital to its investors. At the end of 2019 all of the assets of the Retro Funds that were not capable of being distributed to its investors were attributed to SP 2019. The entire issued share capital of both the Aquilo Fund and the Master Fund now comprise SP shares.

#### 4.2 **The Public Fund**

The Public Fund operates as a “feeder fund” through which public and institutional investors indirectly invested in the Master Fund. The Public Fund used the funds raised from its share issuances, the majority of shares having been sold *via* private placement direct to institutional investors, to invest in shares issued by the Master Fund.



As a consequence of the entire share capital in the Master Fund now comprising SPs, as explained above, the Public Fund's shares in the Master Fund have been converted to SPs for the relevant years. Therefore, each of the Public Fund Scheme Creditors is entitled to their share of the relevant SP.

#### 4.2.1 *Share Rights in the Public Fund*

The Public Fund has issued two classes of shares: ordinary shares ("**Ordinary Shares**") and C shares ("**C Shares**"), the proceeds of which were used to subscribe for shares in the Master Fund. The Ordinary Shares and the C Shares carry the same right to receive notice of, and to attend or vote at, any general meeting of the Public Fund (notwithstanding any difference in the respective net asset value of the Ordinary Shares and the C Shares). The differences between the Ordinary Shares and C Shares relate to the policy years in the retro-reinsurance business in which they are invested. The Ordinary Shares are invested in policy years 2016 through to 2019, and the C Shares are invested in policy years 2018 and 2019.

Given that all of the shares issued by the Private Fund have been converted into SPs, holders of Ordinary Shares ("**Ordinary Members**") and holders of C Shares ("**C Members**") are therefore indirect holders of investments in the SPs relating to the policy years in which Ordinary Shares and the C Shares are respectively invested. The effect of this is that:

- (a) Ordinary Members are indirect holders of investments in: (i) 2016 Master Fund SP; (ii) 2017 Master Fund SP; (iii) 2018 Master Fund SP; and (iv) 2019 Master Fund SP; and
- (b) C Members are indirect holders of investments in: (i) 2018 Master Fund SP; and (ii) 2019 Master Fund SP.

The Ordinary Shares and C Shares in the Public Fund are listed and admitted to trading on the Specialist Fund Segment of the London Stock Exchange. The Public Fund's Shares are also listed on the Bermuda Stock Exchange.

A substantial majority of the Shares in the Public Fund are held by Link Market Services Trustees (Nominees) Limited (formerly known as Capita IRG Trustees Ltd) (the "**Depository**") as depository pursuant to a Deed Poll entered into by the Depository dated 10 December 2010, for the purpose of the listing of the Public Fund Shares on the London Stock Exchange. The Depository has issued depository interests ("**Depository Interests**") in respect of the Public Fund Shares it holds legal title to, that are in turn held by "**DI Holders**" through CREST (the system for the paperless settlement of trades in securities operated by Euroclear UK & Ireland). The remainder of Ordinary Shares and C Shares ("**Public Fund Certificated Shares**") are held in certificated form by "**Public Fund Certificated Holders**". Public Fund Scheme Creditors that have interests in Shares through Depository Interests and Public Fund Scheme Creditors that have interests in Shares issued in certificated form have the same economic rights as between each other in respect to their interests in the Ordinary Shares and the C Shares.

#### 4.3 **The Reinsurer**

The Reinsurer is registered with the Bermuda Monetary Authority as a Class 3 Insurer under the Insurance Act 1978. The Reinsurer wrote two types of insurance business: retro coverage for

reinsurers (“cedants”) in respect of the Retro Funds, and ordinary reinsurance for insurers in respect of the Aquilo Fund.

Each retro policy written by the Reinsurer is held within a separate segregated account, 100% of the share capital of which is owned by the Master Fund. Each reinsurance policy line signed by the Reinsurer is held within the Aquilo segregated account of the Reinsurer, 100% of the share capital of which is owned by the Aquilo Fund.

#### 4.3.1 *Retro Policies*

The retro policies written by the Reinsurer in respect of the Master Fund typically comprised fully collateralised one-year policies. Capital is held as cash and cash equivalent assets in a trust account held in New York, United States of America, for the benefit of the relevant cedant (each a “**Trust Account**” or “**Trust Accounts**”). When loss events occur during the policy year, the Manager uses its judgment to set loss reserves that it believes will be sufficient to cover claims under the relevant policies. The total liability in respect of any policy is not typically known at the end of the policy year, as additional claims are made to the underlying insurer, and reinsurer, in periods after the policy year. Accordingly, following the expiry of the policy year, cedants can ‘trap’ assets in the Trust Accounts to cover their ultimate exposure. As the total claims becomes more certain, and as claims are settled, the amount reserved may be reduced or increased. The value to the Reinsurer, from time to time, of any policy is the amount by which the amount trapped exceeds the loss reserves under the policy.

An amount of capital equal to estimated costs plus a buffer is typically trapped in the Trust Accounts for up to three years after the policy year, after which point the Reinsurer may require commutation (settlement) of any remaining claims, with the result that all surplus funds are then released. The rationale for these three-year periods is that insurance losses (especially retro-reinsurance losses) take time to develop and crystallise. Where the Reinsurer and cedant cannot reach mutual agreement to commute a policy within the initial three years, or where the Reinsurer chooses not to require commutation after three years, then the contracts can remain open and capital remains trapped. However, partial releases of capital are possible as loss levels become more certain, where the contractual buffer tables within the reinsurance contracts allow.

#### 4.3.2 *Aquilo Reinsurance Policies*

The reinsurance policies written by the Reinsurer in respect of the Aquilo Fund were fronted by certain independent, rated reinsurance carriers. As with the retro policies written by the Reinsurer, capital is contributed via the Aquilo Fund and the Aquilo segregated account of the Reinsurer to a Trust Account to collateralise the fronting agreement with each rated carrier, and released following the applicable year as claims are determined or commuted.

Unlike the retro-reinsurance policies, the reinsurance issued in respect of the Aquilo Fund typically did not provide for mandatory commutation at the expiry of a three-year window, meaning that capital can potentially remain trapped for an extended period if claims remain to be determined.

#### 4.4 **The Manager**

The Manager is a Bermuda-based insurance and investment manager and an indirect wholly-owned subsidiary of Markel Corporation, an entity incorporated in the Commonwealth of Virginia, United States of America (“**Markel Corporation**”) and owns 100% of the voting shares of each of the Private Fund and the Reinsurer.

The Manager is responsible for the day-to-day management of the Private Fund and Reinsurer, and for providing certain management services to the Public Fund. The Manager has entered into agreements to provide management services to each of the Private Fund, Public Fund and the Reinsurer (collectively, the “**Management Agreements**”).

Under their respective Management Agreements, each of the Private Fund, Public Fund and Reinsurer have provided broad indemnities to the Manager, its affiliates and others in respect of, in summary, claims arising out of the performance by the Manager, and its officers, directors, employees and affiliates, of their respective duties under the Management Agreements, other than claims for negligence, gross and/or wilful negligence, wilful default, fraud and dishonesty (depending on the particular wording used in each Management Agreement).

### 5. **REASON FOR THE SCHEMES**

#### 5.1 **2017 and 2018 Losses and the Decision to Run-Off**

While the Private Fund operated profitably in other years, in 2017 and 2018, the Master Fund (and as a consequence, all Private Fund Scheme Creditors and Public Fund Scheme Creditors) suffered severe losses as a result of the occurrence of a number of unprecedented catastrophic events. 2017 ranks as the record year for catastrophic-risk insured losses since records commenced, and 2018 ranks as the fourth-highest year of catastrophic-risk insured losses. Consequently, investors in the Scheme Companies suffered material losses on their investments.

Following a second year of losses in 2018, the Manager extended a special redemption option to investors in the Scheme Companies and, in view of the majority uptake, decided to cease offering new investment in the Segregated Accounts. Accordingly, at the end of the 2019 policy year, all remaining capital in each Segregated Account, other than that trapped as collateral for insurance policies, was returned to investors.

On 26 March 2019, investors in the Public Fund voted to approve the orderly run-off of its investments in the Master Fund. The Public Fund’s investment policy is now limited to realising the Public Fund’s assets and distributing any net proceeds to the relevant shareholders.

On 25 July 2019, the Manager announced that it would cease accepting new investments and would not write any new business going forward through the Reinsurer. Thereafter the Manager commenced the orderly run-off of the Reinsurer’s existing portfolio, which is expected to take at least three years from January 2020.

The Manager thereafter managed the retro and reinsurance portfolios, in order to run-off the policies in an orderly manner and (subject to approval from the BMA) return capital to Private Fund Scheme Creditors and Public Fund Scheme Creditors once released from the Trust Accounts to the Reinsurer, until October 2020, when certain litigation claims were asserted as detailed below.

## 5.2 Investor Litigation

In October 2020, an investor in the Private Fund through the Limited Diversified Arbitrage Fund, Eugenia II Investment Holdings Limited (“**Eugenia**”), filed suit against the former chief executive officer of the Manager, Anthony Belisle (“**Belisle**”), in the U.S. District Court for the Middle District of Florida (the “**Florida Court**”) alleging fraudulent misrepresentation and negligent misrepresentation for statements made in 2017 related to Eugenia’s investment for policy year 2018 (the “**Eugenia Litigation**”).

In reliance on an indemnity provided pursuant to the terms of his former employment contract, Belisle demanded that the Manager meet his costs of defending the Eugenia Litigation, and the amount of any judgment, and took steps to have the Manager joined as a defendant to the Eugenia Litigation although the Manager was not formally joined.

The Eugenia Litigation was settled on a confidential basis without admission of liability by Belisle or the Manager. Eugenia was paid an amount in settlement of its claims which took into account the Manager’s assessment of the likelihood of the claim succeeding and the comparatively large legal costs it was likely to incur in defending the proceeding regardless of the outcome. The Manager claimed the amount of the settlement from its D&O insurance tower, meaning that there was no material depletion of Private Fund assets.

During the Eugenia Litigation, a second potential Investor Claim (as defined below) was raised, with a threat to commence litigation against Belisle and/or the Manager based on similar allegations to those advanced in the Eugenia Litigation. Subsequent to the public announcement of the Buy-Out Transaction, correspondence raising the possibility of Investor Claims has been received from Pension Insurance Corporation plc and Partners Capital. No litigation has been commenced by any of these parties.

The CATCo Group entities are now concerned that other Scheme Creditors may seek to commence similar claims (i.e. claims in misrepresentation or similar, whether in tort, contract or pursuant to statute, which would, if successful, give rise to judgments requiring damages to be paid to the Scheme Creditor, thereby constituting the Scheme Creditor as an actual, as opposed to potential, creditor of the defendant) against the Scheme Companies directly, or against the Manager or Reinsurer, other persons entitled to claim on indemnities from such entities or against the Scheme Companies (“**Investor Claims**”).

The Scheme Companies do not believe any such Investor Claims would have merit or would, if they went to trial, ultimately succeed. Nevertheless, if any Scheme Creditor was able to bring an Investor Claim in relation to their investment, the Scheme Companies believe it would be likely that all other Scheme Creditors would have an equivalent claim. This is because the Scheme Companies had common obligations to all Scheme Creditors in respect of disclosures, representations, the conduct of the CATCo Group’s business and their professional obligations. All Private Fund Scheme Creditors and Public Fund Scheme Creditors were provided with access to substantially the same information in relation to the CATCo Group at all material times, meaning that any alleged misrepresentation or non-disclosure would be likely to have impacted all Public Fund Scheme Creditors or Private Fund Scheme Creditors (as appropriate). Further all Private Fund Scheme Creditors invested on the basis of standard form subscription agreements by which they agreed that they relied only on information publicly available at the time of their subscription.

Further, the Scheme Companies believe that in the event that either Public Fund Scheme Creditors or Private Fund Scheme Creditors (as appropriate) did have claims against either Scheme Company, absent evidence of any consequential loss (and the Scheme Companies are not aware of any factual basis for a claim for consequential loss by any Public Fund Scheme Creditor or Private Fund Scheme Creditor), the best estimate of the likely damages that a Scheme Creditor could recover would be the loss they made on their investment. Given that losses in any particular year were shared rateably by the investors interested in that year, and subsequent redemptions have since been made rateably to all investors, the damages that could be awarded in respect of any claims for loss of investment would be likely to be proportionate to the current value of each Scheme Creditor's investment (i.e. the NAV of the Shares in which they are beneficially interested).

### 5.3 Consequences of Investor Claims

The CATCo Group companies do not consider that any potential Investor Claims would succeed, for a number of reasons. For example, the CATCo Group's offering materials included disclosures around the risk factors that could impact an investment. Furthermore, marketing materials, including presentations, contained similar disclosures regarding the information provided therein, including the hypothetical nature of the information in those materials. The disclosures make clear that the model simulations or hypotheticals contained in the presentations should not be relied on as an indication of the characteristics of the actual portfolio.

Further, in 2018, in response to requests from certain U.S. governmental authorities, Markel Corporation engaged Skadden, Arps, Slate, Meagher & Flom LLP ("**Skadden**") to undertake a thorough review of the loss reserving process for catastrophic events that occurred in 2017 and reserve-related disclosures that the CATCo Group made. Without waiving any privilege attaching to the internal review, it was completed in April 2019 and Skadden found no evidence that CATCo Group personnel acted in bad faith in exercising their business judgment in the setting of reserves and making related disclosures during late 2017 and early 2018. In September 2021, the U.S. Securities and Exchange Commission and Department of Justice gave notice that they had concluded their investigations and did not intend to take any enforcement action against the Manager.

The offering memoranda for each of the share offers (in all years) stated that no person was authorised to make any representations or provide any information with respect to the shares except such information contained in the respective offering memorandum. By subscribing for shares, each investor also acknowledged sole reliance upon the relevant offering memorandum, other public company documents and the investor's own independent investigations.

Nevertheless, if such further Investor Claims were brought against the Manager or its current or former directors or employees then, as in the Eugenia Litigation, the Private Fund, Public Fund and Reinsurer would likely be required, pursuant to the indemnities contained in the Management Agreements, to satisfy the likely significant costs of defending such claims and any judgment that was awarded other than those for fraud, wilful misconduct, negligence, gross or wilful negligence, or other carve-outs from such indemnities under the Management Agreements. Even where claims include allegations which, if proved, would mean that the indemnity was not triggered (for example, a claim in fraud or negligence), the CATCo Group may still have to meet some or all of the defence costs even where the claims fail.

The costs of defending such Investor Claims could be significant. The indemnification costs associated with the Eugenia Litigation would have been several million U.S. Dollars. There would have been several million U.S. Dollars in additional costs borne by the Manager, and through indemnification, by the Private Fund and Public Fund, as the Manager responded to various discovery requests in that litigation. Additionally, costs would multiply if litigation was pursued against more than one defendant (e.g., if a lawsuit were filed against multiple current or former employees and the Manager).

The Manager's D&O / E&O insurance cover potentially applicable to Investor Claims is now impaired by approximately 35%, and there is no other pool of assets available to satisfy further Investor Claims. Consequently, whilst the settlement of the Eugenia Litigation was funded from insurance proceeds, if further Investor Claims are brought, it will be necessary to satisfy the costs of defending such claims, and any judgment, from the assets of the Private Fund (and indirectly, the Public Fund).

Further, notwithstanding the Scheme Companies' view of the likelihood of success of any potential Investor Claims, there is inherently an element of risk in any litigation, particularly in jurisdictions where liability and quantum of complex commercial arrangements may need to be determined by a jury.

The liability of the Private Fund, Public Fund or Reinsurer for such amounts pursuant to the indemnities would be an unsecured claim, and would be required to be paid prior to any return of capital to Scheme Creditors. Accordingly, any such liabilities would deplete the assets available to be returned to Scheme Creditors.

The net asset value of each Scheme Creditor's interest in each SP is proportionate to the size of their original investment, and accordingly to the amount of any loss suffered in respect of such year. If a court were to uphold any Investor Claims and award damages by reference to the loss made on the investment, they would likely be for damages in proportion to their current holdings in each SP. If, however, some but not all Scheme Creditors were to commence Investor Claims, the pool of available assets could be reduced for the benefit of some but not all Scheme Creditors and Scheme Creditors that brought Investor Claims could attempt to place themselves in a position to receive recoveries ahead of, and/or at the expense of, other Scheme Creditors in the Scheme Companies whose rights should otherwise rank *pari passu*. This scenario would likely lead to a liquidation of the CATCo Group companies in order to avoid that inequitable result. Given that all Scheme Creditors in either the Private Fund or Public Fund are invested directly or indirectly in the same business, the Scheme Companies consider there to be no justification for any Scheme Creditors to be able to 'jump the queue' and obtain an advantage over other Scheme Creditors by way of litigation.

Finally, given the scale of the losses suffered by Scheme Creditors in the Private Fund in 2017 and 2018 (in excess of \$3 billion), if any substantial portion of investors were to assert Investor Claims, the potential liability of the Private Fund, Public Fund or Reinsurer could (at least in theory) easily exceed the remaining net asset value of the Segregated Accounts, rendering the relevant Segregated Accounts insolvent.

#### 5.4 **Future Distributions**

Whilst the CATCo Group companies do not consider that any Investor Claims would succeed, making any further distributions of Private Fund (and indirectly, Public Fund) assets to Scheme Creditors would require careful consideration of the solvency (a statutory precondition to distributions to investors) of the Private Fund or Reinsurer in light of the potential for Investor Claims given the consequences outlined immediately above. If the Schemes are not approved by Scheme Creditors then the directors may infer that some Scheme Creditors intend to assert Investor Claims, thereby making future distributions impossible.

### 6. **THE SCHEMES AND THE BUY-OUT TRANSACTION**

In order to avoid the possibility of Investor Claims litigation and to ensure that all Scheme Creditors are treated equitably, and that none gain an unfair advantage through litigation, and to facilitate the expeditious return of funds to Scheme Creditors, Markel Corporation and the Scheme Companies have decided to make the Buy-Out Transaction available to Scheme Creditors in the Private Fund and the Public Fund subject to the Schemes being approved by the Scheme Creditors and sanctioned by the Court.

#### 6.1 **Purpose and Effect**

The purpose of the Schemes is to facilitate the implementation of the Buy-Out Transaction, by obtaining and/or making available the Releases.

Following the implementation of the Buy-Out Transaction, Scheme Creditors will receive an accelerated return of 100% of their proportion of Closing NAV and their share of the Additional Consideration. The CATCo Group will continue to run-off the remaining insurance contracts with the cedants and Scheme Creditors will remain entitled to any Investor Upside, which is described more fully at 6.12 (*Upside Distributions*) below.

#### 6.2 **The Buy-Out Transaction**

Pursuant to the Buy-Out Transaction, affiliates of Markel Corporation will provide capital to the Private Fund or adverse development cover to fronting insurers to facilitate the release of trapped cash, which, together with funds otherwise becoming available for distribution to Scheme Creditors through the commutation of contracts with cedants or reduction of posted reserves, will facilitate an early return of all fund capital to Scheme Creditors, together with their share of the Additional Consideration. The implementation of the Buy-Out Transaction is conditional on the approval of the Schemes, through which the Releases will be obtained from the Scheme Creditors.

#### 6.3 **The Retro Funds Buy-Out**

On the date of completion of the Restructuring (the "**Closing Date**"), the Private Fund will initiate distributions to all Private Fund Scheme Creditors with interests in Shares issued by the Retro Funds. These Scheme Creditors will receive an accelerated cash distribution of 100% of the Closing NAV (as defined below) of their investments in each SP (the "**Retro Funds Accelerated Distribution**") plus their proportion of the Additional Consideration (together, the "**Retro Funds Scheme Distribution**").

The Retro Funds Accelerated Distribution will be funded from a combination of: (i) the amount of assets available for distribution to Scheme Creditors attributable to a particular SP on the Closing Date as determined by the Manager in accordance with past practice, relevant bye-laws and the supplemental offering memorandum (the “**Available Distribution Amount**”), (ii) cash on hand at the relevant Segregated Account of the Retro Funds (the “**Retro Funds Cash**”), (iii) the “**Retro Funds Buy-Out Amount**” to be provided by the “**Funding Cos**” (wholly owned subsidiaries of Markel Corporation), and (iv) the Administrative Expenses Contribution (as defined below) to be contributed by Markel Corporation.

The Retro Funds Buy-Out Amount will be advanced by the Funding Cos to a wholly owned subsidiary of Markel Corporation (the “**Purchaser**”) pursuant to a Purchase Price Loan Agreement. Pursuant to a Relationship and Economic Rights Agreement, the Purchaser shall acquire Shares in the Reinsurer from the Master Fund for a cash purchase price equal to the amount of the Retro Funds Buy-Out Amount and the Master Fund will then use the sale proceeds, together with the Available Distribution Amount and the Retro Funds Cash, to make the Retro Funds Accelerated Distribution.

After receiving the Retro Funds Accelerated Distribution, the terms of the Schemes will provide for a mechanism whereby each Scheme Creditor will remain entitled to receive any other Investor Upside (as defined below) should NAV increase, after the return of the Retro Funds Buy-Out Amount to the Funding Cos.

#### 6.4 **Aquilo Distributions**

On the Closing Date, the Private Fund will initiate a distribution to all Private Fund Scheme Creditors with interests in Shares issued by the Aquilo Fund. These Scheme Creditors will receive an accelerated cash distribution of 100% of the Closing NAV (as defined below) of their investments in each SP (the “**Aquilo Accelerated Distribution**”) plus their proportion of the Additional Consideration (together, the “**Aquilo Scheme Distribution**”).

The Aquilo Accelerated Distribution amount will be funded as follows: (i) an affiliate of Markel Corporation (the “**Adverse Development Cover Provider**”) will provide adverse development cover to one or more fronting reinsurers (the “**Adverse Development Cover**”) that will enable the release of trapped cash to the Private Fund, and (ii) the Purchaser will purchase Shares in the Reinsurer from the Private Fund for a cash purchase price (the “**Aquilo Buy-Out Amount**”) which is equal to the Aquilo Accelerated Distribution Amount less the amount of trapped cash released in connection with provision of the Adverse Development Cover.

If required, the Aquilo Buy-Out Amount will be advanced by the Funding Cos to the Purchaser pursuant to a Purchase Price Loan Agreement. Pursuant to a Relationship and Economic Rights Agreement, the Purchaser shall acquire Shares in the Reinsurer from the Master Fund for a cash purchase price equal to the Aquilo Buy-Out Amount and the Master Fund will then use the sale proceeds, together with the trapped cash released in connection with provision of the Adverse Development Cover, to make the Aquilo Accelerated Distribution.

After receiving the Aquilo Accelerated Distribution, the terms of the Schemes will provide for a mechanism whereby each Scheme Creditor will remain entitled to receive any other Investor



Upside (as defined below) should NAV increase, after the return of the Aquilo Buy-Out Amount to the Funding Cos.

#### 6.5 **Additional Consideration**

In addition to receiving their proportional entitlement to the Retro Funds Accelerated Distribution and/or the Aquilo Accelerated Distribution (as applicable), all Scheme Creditors will also receive their share of the Additional Consideration which will be a distribution in cash equal to their *pro rata* entitlement based on Closing NAV to \$34 million. The Additional Consideration will be funded by Markel Corporation or one of its affiliates.

#### 6.6 **Public Fund Scheme Distribution**

Upon receipt of its entitlement to the Retro Funds Scheme Distribution, the Public Fund will distribute such amounts (the “**Public Fund Scheme Distribution**”) in accordance with the Public Fund Scheme. The amounts received by the Public Fund will be distributed to Public Fund Scheme Creditors in accordance with Public Fund Scheme Creditors’ proportionate entitlements in accordance with the Public Fund Bye-Laws.

#### 6.7 **Closing NAV**

The amounts of the Retro Funds Accelerated Distribution and the Aquilo Accelerated Distribution will be determined by reference to the “**Closing NAV**”.

Closing NAV equals Current NAV:

- (i) *plus* \$15 million of the current Litigation Reserve, which will be primarily applied to fund the payment of Transaction Costs,
  - (ii) *plus* the Administrative Expenses Contribution,
  - (iii) *less* an allocation of the remaining Transaction Costs, the Ordinary Course Fees and the Reserve (each defined below),
- and together, the “**Administrative Expenses**”.

“**Current NAV**” means the current NAV available as at the most recent month end prior to the Closing Date, provided that this amount may never be less than NAV as of 31 August 2021.

The table following sets out an illustrative calculation of Closing NAV, as at 31 August 2021.

	Retro Funds				Aquilo
	2016 SP	2017 SP	2018 SP	2019 SP	Aggregate
<b>NAV as at 31 August 2021 (million \$)</b>	34.7	173.6	166.8	165.2	195.5
<i>plus</i> <b>Litigation Reserve Released (million \$)</b>	-	7.5	7.5	-	-
<i>less</i> <b>Transaction Costs (million \$)</b>	(0.9)	(4.3)	(4.2)	(4.1)	(1.5)
<i>less</i> <b>Ordinary Course Fees (million \$)</b>	-	(2.2)	(3.3)	(4.6)	(1.1)
<i>less</i> <b>Reserve (million \$)</b>	(0.2)	(1.3)	(1.5)	(1.7)	(0.5)
<i>plus</i> <b>Administrative Expenses Contribution (million \$)</b>	0.9	4.7	4.5	4.5	5.3
<i>equals</i> <b>Closing NAV (million \$)</b>	34.7	178.0	169.8	159.2	197.6

#### 6.7.1 *Litigation Reserve*

The Private Fund has reserved \$20 million from certain of the Segregated Accounts on account of potential litigation costs related to Investor Claims (the “**Litigation Reserve**”). The Board has determined that \$15 million will be released at closing of the Schemes.

#### 6.7.2 *Transaction Costs*

Transaction Costs for implementing the Schemes (including the fees of legal advisors, the JPLs (as defined below) and other advisers to the Scheme Companies) (the “**Transaction Costs**”) are estimated to be approximately \$15 million. 10% of the Transaction Costs will be allocated to the Aquilo Fund and the remaining Transaction Costs be allocated to the Master Fund (proportionately, on a SP by SP basis).

#### 6.7.3 *Ordinary Course Fees*

\$11.1 million will be reserved to pay the fees of the Manager and any other operational expenses for the duration of the run-off of the Private Fund and Reinsurer (the “**Ordinary Course Fees**”). This amount has been estimated, and allocated, on a SP by SP basis, on a weighted basis taking into account the projected remaining duration of the run-off of each SP (assuming no Investor Claims litigation or liquidation).

#### 6.7.4 *Reserve*

The Private Fund will, in addition, reserve \$5.2 million, which is an amount equal to 20% of the total Transaction Costs and Ordinary Course Fees (the “**Reserve**”). The Reserve will be allocated proportionately on a SP by SP basis.

The Reserve is being created to ensure that there are sufficient funds to run-off the remainder of the investments.

#### 6.7.5 *Administrative Expenses Contribution*

Markel Corporation or one of its affiliates will make the Administrative Expenses Contribution to the Private Fund, being an additional \$20 million of cash to offset Administrative Expenses and increase Closing NAV available for distribution to Scheme Creditors.

#### 6.7.6 *Return to Scheme Creditors*

Should any of the amount reserved for Ordinary Course Fees or the Reserve remain unspent after wind down of the CATCo Group entities is complete, such funds will comprise assets of the Segregated Accounts available for return to Scheme Creditors.

### 6.8 **Buy-Out Transaction Value to Investors**

#### 6.8.1 *Aggregate Value to Investors*

The Manager has engaged AlixPartners UK LLP (“**AlixPartners**”) to prepare a report (the “**AlixPartners Report**”) which sets out AlixPartners’ estimate based on information provided by the Scheme Companies of the total return for Scheme Creditors under the Buy-Out Transaction, and the potential return to Scheme Creditors in certain alternative scenarios (which are described at Section 8 (*Comparator*)). AlixPartners are a leading consulting firm and independent of both the CATCo Group and Markel Corporation. Scheme Creditors are invited to review the AlixPartners Report which is available on the Schemes website (<https://catcobuyout.alixpartners.com>).

AlixPartners estimates that the value of the Buy-Out Transaction to Scheme Creditors (using 31 August NAV for illustrative purposes), including the Additional Consideration, is between approximately 101% and 107% of current NAV and 105% on average. As described below, Scheme Creditors that executed an Investor Undertaking will be entitled to a further Early Consent Fee payable on the Closing Date, taking their total return (using 31 August NAV for illustrative purposes) to between approximately 103% and 109% of current NAV of the Shares in which they are interested and 107% on average.

#### 6.8.2 *Retro Funds*

Private Fund Scheme Creditors with interests in the Retro Funds are expected to receive an estimated cash return based, for illustrative purposes, on 31 August NAV, as follows:

	2016 SP	2017 SP	2018 SP	2019 SP	Aggregate
<b>Percentage of Closing NAV Distributed</b>	100%	100%	100%	100%	100%
<b>Retro Funds Accelerated Distribution (million \$)</b>	34.7	178.0	169.8	159.2	541.8
<b>Plus: Additional Consideration (million \$)</b>	36.3	186.1	177.5	166.9	566.7

### 6.8.3 *Aquilo Fund*

Private Fund Scheme Creditors with interests in the Aquilo Fund are expected to receive an estimated cash return based, for illustrative purposes, on 31 August NAV of \$197.6 million and \$206.7 million including the Additional Consideration allocable to Private Fund Scheme Creditors with interests in the Aquilo Fund.

### 6.8.4 *Public Fund*

Public Fund Scheme Creditors are expected to receive the following based, for illustrative purposes, on 31 August NAV:

	<b>Public Fund Scheme Distribution (million \$)</b>	<b>\$/share</b>
<b>Ordinary Shares</b>	\$47.4 million	\$0.32 per Share
<b>C Shares</b>	\$41.4 million	\$0.50 per Share

## 6.9 **The Releases**

To enable the early returns and Additional Consideration to be paid to the Scheme Creditors, and as a condition to and in consideration of the Buy-Out Transaction, each Scheme Creditor, the Purchaser, the Funding Cos, Markel Corporation, the Manager, the Private Fund (in respect of itself and all of its segregated accounts), the Public Fund and the Reinsurer (in respect of itself and all of its segregated accounts) shall provide an irrevocable and unconditional release of each and every claim of any nature it may have against each of the Released Parties related to the business of the Reinsurer, the Private Fund, the Public Fund and the Manager and the Scheme Creditors' Shares.

Under the Schemes “**Released Parties**” means each Scheme Creditor, the Purchaser, the Funding Cos, the Private Fund (in respect of itself and all of its segregated accounts), the Public Fund, the Reinsurer (in respect of itself and all of its segregated accounts), the Manager, the JPLs and each of their former and existing affiliates, JPLs' attorneys, directors, managers, shareholders, officers, controlling persons, beneficial owners or interest holders, advisory board members, employees, consultants, agents, subsidiaries, members, managers, predecessors and successors in interest, heirs, executors and assignors or assignees, nominees, participants, partners, limited partners, general partners, principals, fund advisors, attorneys, financial advisors, investment bankers, accountants, other professionals or representatives, sub-advisors (and their respective affiliates directors, managers, shareholders, partners, principals, members, officers, controlling persons, employees and agents), and agents (including any individual who serves at the Manager's request

as a director, officer, partner, trustee, or the like of another entity) and/or the legal representatives and controlling person of any of them (including, for the avoidance of doubt, Markel Corporation).

The Released Parties will be entitled to rely on and enforce the Releases against all Scheme Creditors.

The Releases are an essential component of the Buy-Out Transaction.

#### **6.10 Group Settlement Deed**

As a further essential element of the transaction enabling the Funding Cos to provide the Retro Funds Buy-Out Amount and the Aquilo Buy-Out Amount and the Adverse Development Cover Provider to provide the Adverse Development Cover, the Manager, the Public Fund, the Private Fund and the Reinsurer will enter into a Group Settlement Deed, pursuant to which the Management Agreements will be terminated and all rights or claims arising therefrom including pursuant to the indemnities contained therein will be released. The termination of the Management Agreements and the release of any claims arising therefrom is intended to ensure that the assets of the Reinsurer, Private Fund or Public Fund cannot be depleted by future Investor Claims.

#### **6.11 On-Going Management of the Private Fund, Public Fund and Reinsurer**

Following the Closing Date, each of the Private Fund, the Public Fund and the Reinsurer will enter into new management agreements with the Manager, pursuant to which the Manager will manage the run-off of the remaining assets of the Private Fund.

The new management agreements will be on the same terms as the existing Management Agreements, save that the indemnities given thereby will apply only in respect of claims arising after the Closing Date.

#### **6.12 Upside Distributions**

After the Closing Date, if and when any capital is released (i) in excess of the Retro Funds Buy-Out Amount allocable to a particular SP of the Reinsurer, or (ii) in excess of the Aquilo Buy-Out Amount allocable to the Aquilo Fund, and in each case approved for distribution by the Bermuda Monetary Authority, each relevant Scheme Creditor shall be entitled to receive the amounts distributed. Scheme Creditors will accordingly remain entitled to benefit from any upside to Private Fund NAV, should the amounts reserved by the Reinsurer prove to be greater than required to fund claims by cedants against the underlying insurance policies (“**Investor Upside**”).

Distributions, if any, will occur one time *per annum* (or more at the discretion of the Manager).

Upon receiving a return from the Private Fund as contemplated in this provision, the Public Fund will distribute the proceeds to the Public Fund Scheme Creditors in accordance with its ordinary practices.

## 7. PROVISIONAL LIQUIDATORS

In connection with the Buy-Out Transaction, the boards of each of the Scheme Companies, the Reinsurer and the Manager approved (between 9 September to 17 September 2021) resolutions to seek the appointment of joint provisional liquidators (the “JPLs”).

On 1 October 2021, the Court made an order (the “**JPL Appointment Order**”) appointing Simon Appell of AlixPartners and John McKenna of Finance & Risk Services Ltd. as JPLs of the Scheme Companies, the Manager and the Reinsurer, with limited powers for restructuring purposes.

The appointment of the JPLs provides protection for each Scheme Company and its assets from the claims of unsecured creditors, including any potential Investor Claims brought by Scheme Creditors, by imposing an automatic stay on all actions in Bermuda during the pendency of the provisional liquidation in order to facilitate the implementation of the Buy-Out Transaction.

On 5 October 2021, an application was made pursuant to Chapter 15 of the U.S. Bankruptcy Code for the recognition of both the appointment of the JPLs and the compromises to be implemented pursuant to the Schemes.

## 8. COMPARATOR

### **Likely Alternative if Buy-Out Transaction Not Implemented**

If there is not sufficient support for the proposed Schemes, the possibility of additional Investor Claims being asserted will likely lead the directors of the Scheme Companies, the Manager and the Reinsurer to take the view that it is appropriate that the future run-off of the Reinsurer and Master Fund be conducted by a liquidator appointed for that purpose. The directors of the Scheme Companies, the Reinsurer and the Manager would, accordingly, be likely to apply to convert the provisional liquidations of the CATCo Group companies into ordinary full liquidations, because of the potential for claims being made against any or all of the Scheme Companies, the Reinsurer and the Manager by third parties or under the indemnity provisions in the Management Agreements.

The timing and eventual return to Investors through a liquidation will depend in large part on the number and quantum of any Investor Claims filed, the costs to adjudicate such claims (including any challenge to any rejection of such claims) and whether such Investor Claims are ultimately admitted to proof in the liquidation. The directors cannot predict the number of Investor Claims that may be filed if the Scheme Companies enter an ordinary full liquidation, if any, nor the timing on when investors could expect to receive a dividend from a liquidation.

In order to illustrate the range of possible outcomes for Scheme Creditors, AlixPartners have estimated the return to Scheme Creditors in two scenarios on the basis that Scheme Creditors will all be able to make their unsecured claims in the liquidations, and receive dividends *pari passu*. In both scenarios, the return to all Scheme Creditors would be considerably less than if the Schemes are approved and the Buy-Out Transaction proceeds. Please refer to the AlixPartners Report (which is available on the Schemes website (<https://catcobuyout.alixpartners.com>)) for a more thorough analysis by fund and the underlying assumptions used.

## 9. INVESTOR SUPPORT AND EARLY CONSENT FEE

On 27 September 2021 the Scheme Companies announced their proposal for the Buy-Out Transaction on terms that were similar to that described herein. A schedule setting out the key terms for the Buy-Out Transaction announced on 27 September 2021 and the key terms as they are now proposed (which are more advantageous to the Scheme Creditors) is attached to this letter at Schedule 1.

All Scheme Creditors were offered the opportunity to enter into an undertaking to vote in favour of the proposed transaction (an "**Investor Undertaking**"). Those that did so were to be entitled to a consent fee for providing an undertaking to support the Schemes (the "**Early Consent Fee**").

All Scheme Creditors were notified of the availability of the Early Consent Fee on 27 September 2021. Notice was made to Public Fund Scheme Creditors via an announcement sent through the Regulatory News Service ("**RNS**"), with further information and instructions on the Schemes website. Private Fund Scheme Creditors were contacted directly and provided with pre-filled Investor Undertakings that they could return.

On 26 October 2021 the Scheme Companies announced that the proposed transaction terms had been improved, as set out in this Practice Statement Letter, that the Early Consent Fee had been increased from 1% to 2% of the Current NAV of the Shares in which Scheme Creditors are beneficially interested and that the deadline for entry into the Investor Undertaking had been extended to 11.59 p.m. (Bermuda Time) on 9 November 2021.

Investor Undertakings that have been submitted prior to the initial deadline remain valid and Scheme Creditors that entered into Investor Undertakings on or before 22 October 2021 (and who comply with such undertakings) will be entitled to receive the increased Early Consent Fee. All remaining Scheme Creditors now have the opportunity to enter into an Investor Undertaking on or before 11.59 p.m. (Bermuda time) on 9 November 2021 (the "**Early Consent Deadline**").

Scheme Creditors who enter into an Investor Undertaking prior to the Early Consent Deadline, who proceed to vote in favour of the Scheme(s) that they are entitled to vote on, and who otherwise remain in compliance with the terms of their Investor Undertakings, shall be entitled to the Early Consent Fee, which is equal to 2% of the Current NAV of the Shares in which they are beneficially interested on the Closing Date.

The Early Consent Fee will be funded by an affiliate of the Markel Corporation and will only be payable if the Schemes are sanctioned by the Court and the Buy-Out Transaction is implemented. The Early Consent Fee is considered by the Scheme Companies to be appropriate in order to secure early support for the Buy-Out Transaction from the Scheme Companies' diverse and numerous Scheme Creditors, and in order to provide the Scheme Companies with stability and visibility over the implementation of the Buy-Out Transaction.

Scheme Creditors can find instructions on how to enter into an Investor Undertaking, in order to become entitled to the Early Consent Fee, on the Schemes website (<https://catcobuyout.alixpartners.com>).

As of the date of this letter, Scheme Creditors representing over 90% of the Private Fund Scheme Creditors and over 95% of the Public Fund Scheme Creditors have entered into Investor Undertakings or have otherwise indicated their intention to support the Buy-Out Transaction.

## **10. CLASS CONSTITUTION**

### **10.1 Principles of Class Constitution**

In accordance with the Practice Direction, it is the responsibility of the Scheme Companies to determine whether more than one meeting of creditors is required by each Scheme and if so to ensure that those meetings are properly constituted.

A summary of the tests applied by the Court for class constitution for schemes of arrangement under Section 99 of the Companies Act is set out below:

- (a) Where creditors affected by a scheme have rights which are so dissimilar, or would be affected so differently by the scheme, as to make it impossible for them to consult together with a view to their common interest, they must be divided into separate classes, and a separate meeting must be held for each class of creditor.
- (b) It is the legal rights of creditors, and not their separate commercial or other interests, which determine whether they form a single class or separate classes. Conflicting, adverse or collateral interests are matters that may properly be taken into account at the sanction stage, but do not go to class composition.
- (c) The essential requirement is that the class should be comprised only of persons whose rights in terms of their existing rights against the scheme company and the rights offered under the scheme, are sufficiently similar to enable them to properly consult together with a view to their common interest.
- (d) Determining whether creditors' rights against the scheme company are sufficiently similar therefore depends upon an analysis of:
  - (i) the rights against the scheme company which are to be released or varied under the scheme; and
  - (ii) the new rights which the scheme gives by way of compromise or arrangement to those whose rights are to be released or varied.
- (e) Where rights are "sufficiently similar" to the rights of others that they can properly consult together, then they should be required to do so.
- (f) In order to determine whether Investors' existing rights against a scheme company are similar or dissimilar for the purposes of class composition of a proposed scheme, it is necessary to consider the likely consequence for creditors in the event that the Scheme is not implemented (the "comparator").

### **10.2 The Proposed Classes for the Private Fund Scheme**

#### **10.2.1 Existing Rights**

All of the Private Fund Scheme Creditors (and all of the Private Fund Scheme Creditors in each Segregated Account) have the same existing rights in their capacity as unsecured potential creditors



of the Private Fund. If the Schemes are not implemented and the Private Fund enters liquidation, the Private Fund Scheme Creditors will have the same rights to claim in the liquidation and, if their claims are admitted, to receive distributions *pari passu* with the other unsecured creditors making Investor Claims.

#### 10.2.2 *Rights Under the Private Fund Scheme*

Under the Scheme, all of the Investor Claims will be released and all of the Private Fund Scheme Creditors will receive their *pro rata* entitlement to the Retro Funds Scheme Distribution and/or the Aquilo Scheme Distribution (as applicable)..

The Private Fund considers that the release of Investor Claims will affect all Private Fund Scheme Creditors in the same way, because it considers that all potential Investor Claims are without merit. It further considers that the rights they will receive if the Scheme becomes effective are the same or substantially the same (namely, their *pro rata* entitlement to the Retro Funds Scheme Distribution and/or the Aquilo Scheme Distribution (as applicable)..

Nevertheless, for what the Private Fund considers are essentially pragmatic and commercial reasons, it will invite the Court to allow it to convene meetings of five separate classes of the Private Fund Scheme Creditors. The five classes will consist of the Private Fund Scheme Creditors who are beneficially interested in: (i) the 2016 Master Fund SP, (ii) the 2017 Master Fund SP, (iii) the 2018 Master Fund SP, (iv) the 2019 Master Fund SP and (v) the Aquilo Fund. This will ensure that: (i) Private Fund Scheme Creditors will vote in a class that only contains other Private Fund Scheme Creditors who invested based on the same offering memorandum as they did, (ii) Private Fund Scheme Creditors will vote in a class that only contains Private Fund Scheme Creditors with interests in the same SP and who therefore suffered equivalent losses, and (iii) Private Fund Scheme Creditors will vote in a class which only contains Private Fund Scheme Creditors who will receive the same level of distributions under the Private Fund Scheme. The Private Fund considers that this will ensure that, if and to the extent that any Private Fund Scheme Creditors did have a valid Investor Claim, the other members of their class would be even more likely to have a substantially similar Investor Claim.

The Private Fund is accordingly prepared to proceed on the basis that these five different groups of Private Fund Scheme Creditors should vote in different classes.

#### 10.2.3 *Conclusion on Classes for the Private Fund*

As set out above, the Private Fund has considered the existing rights of the Private Fund Scheme Creditors against the Private Fund in the absence of the Private Fund Scheme and the treatment of those rights under the proposed Private Fund Scheme including the rights the Private Fund Scheme Creditors will receive under the Buy-Out Transaction.

The Private Fund has concluded that it would be expedient to invite the Court to direct that the Private Fund Scheme Creditors vote in meetings of the following five separate classes:

- (a) one meeting for all Private Fund Scheme Creditors beneficially interested in the 2016 Master Fund SP (the “**Retro Funds 2016 Class**”);

- (b) one meeting for all Private Fund Scheme Creditors beneficially interested in the 2017 Master Fund SP (the “**Retro Funds 2017 Class**”);
- (c) one meeting for all Private Fund Scheme Creditors beneficially interested in the 2018 Master Fund SP (the “**Retro Funds 2018 Class**”);
- (d) one meeting for all Private Fund Scheme Creditors beneficially interested in the 2019 Master Fund SP (the “**Retro Funds 2019 Class**”); and
- (e) one meeting for all Private Fund Scheme Creditors beneficially interested in the Aquilo Fund (the “**Aquilo Class**”).

Private Fund Scheme Creditors that are beneficially interested in more than one SP of the Master Fund are members of more than one class of Private Fund Scheme Creditors and will be entitled to vote in each class of which they are a member.

### 10.3 The Proposed Classes for the Public Fund Scheme

#### 10.3.1 Existing Rights

All of the Public Fund Scheme Creditors (whether they hold beneficial interests in Depository Interests or Public Fund Certificated Shares) have the same existing rights in their capacity as unsecured potential creditors of the Public Fund. If the Schemes are not implemented and the Public Fund enters liquidation, the Public Fund Scheme Creditors will have the same right to claim in the liquidation and, if their claims are admitted, to receive distributions *pari passu* with the other unsecured creditors making Investor Claims.

#### 10.3.2 Rights Under the Scheme

Under the Scheme, all of the Investor Claims will be released and all of the Public Fund Scheme Creditors will receive their *pro rata* entitlement to the Public Fund Scheme Distribution. The Public Fund considers that the release of Investor Claims will affect all Public Fund Scheme Creditors in the same way, because it considers that all potential Investor Claims are without merit.

Nevertheless, for what the Public Fund considers are essentially pragmatic and commercial reasons, it will invite the Court to allow it to convene meetings of two separate classes of the Public Fund Scheme Creditors, one for the Public Fund Scheme Creditors beneficially interested in the Ordinary Shares and one for the Public Fund Scheme Creditors beneficially interested in the C Shares. This will ensure that: (i) Public Fund Scheme Creditors will vote in a class that only contains other Public Fund Scheme Creditors who invested based on the same publicly disclosed information as they did, (ii) Public Fund Scheme Creditors will vote in a class that only contains Public Fund Scheme Creditors who are beneficially interested (indirectly) in SPs which suffered equivalent losses, and (iii) Public Fund Scheme Creditors will vote in a class which only contains Public Fund Scheme Creditors who will receive the same level of distributions as them. The Public Fund considers this will ensure that, if and to the extent that any Public Fund Scheme Creditor did have a valid Investor Claim, the other members of their class would be even more likely to have a substantially similar Investor Claim.

The Public Fund is therefore prepared to proceed on the basis that the Public Fund Scheme Creditors with interests in the Ordinary Shares and the Public Fund Scheme Creditors with interests in the C Shares should vote in separate classes.

#### 10.3.3 *Conclusion on Classes for the Public Fund*

As set out above, the Public Fund has considered the existing rights of the Public Fund Scheme Creditors against the Public Fund in the absence of the Public Fund Scheme and the treatment of those rights under the proposed Public Fund Scheme including the rights the Public Fund Scheme Creditors will receive under the Buy-Out Transaction.

The Public Fund has concluded that it would be expedient for the Court to direct that the Public Fund Scheme Creditors vote at the following two meetings:

- (a) one meeting for all Public Fund Scheme Creditors beneficially interested in the Ordinary Shares (the “**Public Fund Ordinary Class**”); and
- (b) one meeting for all Public Fund Scheme Creditors beneficially interested in the C Shares (the “**Public Fund C Class**”).

Public Fund Scheme Creditors that are beneficially interested in both Ordinary Shares and C Shares will be entitled to vote at both of those meetings.

#### 10.4 **Investor Undertaking and Early Consent Fee**

The Private Fund and the Public Fund have also considered whether the terms of, or transactions contemplated by, the Investor Undertakings have an impact on the classification of members for the purposes of the Schemes. Not all Scheme Creditors have executed an Investor Undertaking. However, the fact that some Scheme Creditors have executed an Investor Undertaking and have undertaken to support the Schemes will not itself give rise to a need for separate classes, because each Scheme will affect the rights of the relevant class members in the same way, regardless of whether a Scheme Creditor has executed an Investor Undertaking.

With respect to the Early Consent Fee, while only those Scheme Creditors who have executed and returned an Investor Undertaking prior to the Early Consent Deadline are entitled to receive the Early Consent Fee, the Private Fund and the Public Fund consider that the rights of Scheme Creditors entitled to receive the Early Consent Fee are not so dissimilar to those who are not so entitled, as to make it impossible for them to vote together in a single class. This is on the basis that:

- (a) all Scheme Creditors are being given an opportunity to enter into an Investor Undertaking prior to the Early Consent Deadline in order to receive the Early Consent Fee; and
- (b) as described at Section 0 (*Comparator*) above, the AlixPartners Report indicates that, on any view, the returns to Scheme Creditors in a liquidation are likely to be considerably less than if the Schemes are approved and the Buy-Out Transaction is implemented. Accordingly, the Scheme Companies consider that the Early Consent Fee (calculated as 2% of each Scheme Creditor’s Closing NAV) would not have a material effect on whether a Scheme Creditor would support the relevant Scheme.

#### 10.5 **Work Fee**

The Scheme Companies note that certain Scheme Creditors (funds managed by PKA A/S and funds managed by Almitas Capital) will be entitled to a cash fee in an amount equal to 2% of the NAV as at 31 August 2021 or the Closing Date, whichever is higher ("**Work Fee**"). The Work Fee will be funded by Markel Corporation or one of its affiliates, and will be conditional upon the Schemes being sanctioned and the Closing Date occurring.

The Scheme Companies do not consider that the Scheme Creditors who are entitled to receive the Work Fee need to be put into separate classes for the purpose of voting on the Schemes. The aggregate amount of the Work Fee, calculated for illustrative purposes using 31 August NAV, is \$6.5 million, which is being paid in return for work done negotiating with the CATCo Group companies which has secured significant improvements to the Buy-Out Transaction for the benefit of all Scheme Creditors. The Scheme Companies also consider that the quantum of the Work Fee is not material in the sense that it is unlikely that a Scheme Creditor who considered the substantive aspects of the Schemes to be against their interests would be persuaded by the payment of the Work Fee to vote in favour of the Schemes.

### 11. **JURISDICTION**

The Scheme Companies consider that the Court has jurisdiction to sanction the Schemes for the following reasons.

#### 11.1 **Private Fund Scheme – Company under the Companies Act**

The fact that the Private Fund is incorporated under the laws of Bermuda means that it is a “company” for the purposes of Section 4(1) of the Companies Act.

#### 11.2 **Public Fund Scheme – Company under the Companies Act**

The fact that the Public Fund is incorporated under the laws of Bermuda means that it is a “company” for the purposes of Section 4(1) of the Companies Act.

#### 11.3 **Private Fund Scheme - Investors as creditors under section 99 of the Companies Act**

The Private Fund is a segregated accounts company under the Segregated Accounts Companies Act 2000 (the “SACA”). The SACA regards the liabilities of each segregated account as enforceable only against that segregated account, such that a creditor of one segregated account cannot recover their claim from a different segregated account or from the company’s general account. Notwithstanding this, a segregated account is not regarded as a separate legal person from the company, and a creditor of a particular segregated account may sue the company in order to recover its claim. Accordingly, the Private Fund Scheme Creditors are creditors under section 99 of the Companies Act (albeit that their claims are disputed, as detailed above) and therefore can be bound by the Private Fund Scheme.

#### 11.4 **Public Fund Scheme - Investors as creditors under section 99 of the Companies Act**

The Public Fund is not a segregated accounts company and so the issue discussed above does not fall to be considered.

The Public Fund Scheme Creditors are therefore also creditors under section 99 of the Companies Act (albeit that their claims are disputed, as detailed above) and can therefore be bound by the Public Fund Scheme.

### 11.5 **Compromise or Arrangement**

It is necessary for the proposals under the Schemes to be a “compromise” or “arrangement” between the relevant Scheme Company and its creditors or any class of them. Scheme Creditors will give the Releases and will receive the benefit of their *pro rata* entitlement to the Retro Funds Scheme Distribution, the Aquilo Scheme Distribution and/or the Public Fund Scheme Distribution (as applicable). Accordingly, the Schemes contain the requisite elements of “give and take” in order to constitute an “arrangement” for these purposes.

## 12. **VOTING AT THE SCHEME MEETINGS**

As described above, the Scheme Companies dispute any liability for any potential Investor Claims that will be released by the Private Fund Scheme Creditors and the Public Fund Scheme Creditors pursuant to the Schemes. Notwithstanding this, the Scheme Companies consider that, if any Scheme Creditors did have a valid Investor Claim, it would likely be: (i) proportionate to the loss that they have suffered through their investment in the Scheme Companies, and (ii) such loss would proportionally be no greater than the loss suffered by all Scheme Creditors with valid Investor Claims, and therefore the best approximation for this loss as a proportion of all potential Investor Claims is the current NAV of the Shares to which that Scheme Creditors is beneficially interested.

The current NAV of the Shares to which each Scheme Creditors is beneficially interested is also the best proportional representation of the likely economic outcome for each Scheme Creditor both under the Buy-Out Transaction and in any liquidation scenario.

The Scheme Companies therefore consider that the most appropriate way to value for voting purposes the claim of each Scheme Creditor is to ascribe each Scheme Creditor a voting value equal to the NAV of the Shares in which they are beneficially interested. Scheme Creditors will however be given the opportunity to provide details of any claim which they believe they are entitled to prior to the Scheme Meetings and, if accepted, this may result in their vote being valued at a different amount. The acceptance of any claim in addition to the NAV of the Shares in respect of a creditor by the Chairman of the Scheme Meetings shall be for voting purposes only and shall be without prejudice to any defences the Scheme Companies may have.

It is accordingly proposed that, absent any Investor seeking to establish an entitlement to vote for a specific claim amount, all Investors will be admitted to vote for a claim value equal to the NAV of the Shares in which they are beneficially interested. For the Private Fund Scheme Creditors this will be calculated by reference to their interest in each SP, and for the Public Fund Scheme Creditors this will be calculated by reference to the Shares that they hold in the Public Fund.

If multiple Scheme Creditors are beneficially interested in the same parcel of Shares, the NAV of such Shares will be divided between each Scheme Creditor for voting purposes in the proportions they indicate, or otherwise equally.

### 13. INVESTOR ISSUES

This letter is intended to provide Scheme Creditors with sufficient information regarding the Schemes and the proposals for convening the Scheme Meetings so that, should they wish to raise:

- (a) any issues which may arise as to the constitution of Scheme Meetings or which otherwise affect the conduct of those Scheme Meetings;
- (b) any issues as to the existence of the Court's jurisdiction to sanction the Schemes; and
- (c) any other issue not going to the merits or fairness of the Schemes, but which might lead the Court to refuse to sanction the Schemes

(together, "**Investor Issues**"), they may attend and be represented before the Court at the Convening Hearing. Details of the Convening Hearing are set out in Section 14.1 (*Convening Hearing*) of this letter.

Investors are also able to raise other issues at the Convening Hearing but, consistent with the Court's usual approach, certain issues are likely only to be considered by the Court at the Sanction Hearing in due course if the Schemes are approved by the requisite majorities at the Scheme Meetings. Please refer to Sections 14.1(c) (*Matters to be addressed*) and 14.4 (*Sanction Hearing*) for detail on the division on content between the Convening Hearing and the Sanction Hearing.

Scheme Creditors should consider taking advice from their professional advisers if they have any concerns in relation to the matters set out in this letter.

Scheme Creditors should be aware that the Court has indicated that Investor Issues should be raised at the Convening Hearing. If Investors fail to raise these matters at the Convening Hearing, whilst they will still be able to appear and raise objections at the Sanction Hearing, the Court at the Sanction Hearing will expect those Investors to provide good reason why they did not raise any Investor Issues at an earlier stage.

Scheme Creditors are therefore requested to raise any Investor Issues they have at the Convening Hearing.

### 14. NEXT STEPS

#### 14.1 Convening Hearing

The Scheme Companies intend to apply to the Court for orders granting the Scheme Companies certain directions in relation to the Schemes, including permission to convene the Scheme Meetings and to circulate the Explanatory Statement (the "**Convening Orders**").

- (a) *Time and place*

The Scheme Companies will notify Scheme Creditors of the precise time of the Convening Hearing, which is currently anticipated to be at a date and time to be notified to Scheme Creditors, but no earlier than 10 November 2021, via direct contact by the Private Fund (in respect to Private Fund Scheme Creditors) and an announcement through RNS (in respect to Public Fund Scheme Creditors), with further information and instructions on the

Schemes website (<https://catcobuyout.alixpartners.com>), and will communicate any change to the date of the Convening Hearing in the same manner. The Scheme Companies' applications at the Convening Hearing will be heard by the Court remotely, via video link.

(b) *Attendance*

Scheme Creditors are entitled to attend the Convening Hearing in person or through counsel and to make representations at the Convening Hearing, although they are not obliged to do so.

Scheme Creditors wishing to attend the Convening Hearing in person or through counsel (which in either case, will likely be virtually by video link) are invited to contact the Scheme Companies using the contact details in Section 15.1 (*Contact Details*) below as soon as possible, and in any event at least two business days in advance. This will ensure that the access details of the hearing are provided to you and your advisers as soon as they are available. Access details of the hearing will be available on the Schemes website (the details of which are set out below). Alternatively, Scheme Creditors can contact the Court directly.

(c) *Matters to be addressed*

At the Convening Hearing the Court will consider whether or not to make orders convening the Scheme Meetings. In so doing, the Court will consider:

- (i) the purpose and effects of the Schemes and the Transaction (as to which, see Section 6 (*The Schemes and the Buy-Out Transaction*));
- (ii) whether it has jurisdiction to convene the Scheme Meetings (see Section 11 (*Jurisdiction*));
- (iii) class composition (see Section 10 (*Proposed Class Constitution*)) (the Court will consider whether, in respect of each Scheme, more than one Scheme Meeting is required, and if so, what is the appropriate composition of those Scheme Meetings); and
- (iv) any considerations that might preclude the Court from exercising its sanction discretion at the Sanction Hearing.

The Scheme Companies will also draw the Court's attention to any Investor Issues (see Section 12 (*Investor Issues*)) and any (other) issues raised by any Scheme Creditors in response to this letter.

(d) *Comments or objections*

If you disagree with the Scheme Companies' proposals regarding the convening of the Scheme Meetings outlined above (including the proposed composition of the voting classes in respect of the Schemes), wish to raise any other issue in relation to the jurisdiction of the Court, the constitution of the Scheme Meetings or any other matters that otherwise affect the conduct of the Scheme Meetings, or disagree with the Scheme Companies' conclusion that the Court has jurisdiction to sanction the Schemes, you should write to Skadden, Arps, Slate, Meagher & Flom (UK) LLP as soon as practicable using the contact

details listed in Section 15.1 (*Contact details*) below setting out your concern and may (but are not obliged to) attend and be represented before the Court at the Convening Hearing.

If the Schemes are approved at the Scheme Meetings, it will still be possible for Scheme Creditors to raise objections on the question of class and jurisdiction (as well as other matters) at the subsequent Sanction Hearing, which is anticipated to be held in late November or early December 2021. However, in that event, the Court is likely to expect Scheme Creditors to show good reason why they did not object to the constitution of the classes of Scheme Creditors at an earlier stage.

#### 14.2 **Publication of Scheme Documentation**

Following the Convening Hearing, provided that the Court grants the Convening Orders, the Scheme Companies will:

- (a) convene the Scheme Meetings by notifying their respective Scheme Creditors in accordance with the directions of the Court of the time and date of and means of attending the Scheme Meetings; and
- (b) make available to Investors the following important documents in relation to the Schemes:
  - (i) the Explanatory Statement;
  - (ii) the documents containing the terms of the Schemes;
  - (iii) the notices convening the Schemes;
  - (iv) voting and proxy forms that Scheme Creditors will need to complete in order to vote at or appoint a proxy to attend and vote on their behalf at the relevant Scheme Meeting(s); and
  - (v) the principal agreements and other related documents that will document the terms of the Buy-Out Transaction,(together the “**Scheme Documentation**”).

Scheme Creditors will be able to view and download the Scheme Documentation in electronic format via the Schemes website (<https://catcobuyout.alixpartners.com>) and a notice in this regard will be circulated to Scheme Creditors in November 2021. In addition, a notice directing Scheme Creditors to the copies of the Scheme Documentation will be available at the Schemes website.

Any of the Scheme Documentation provided to Scheme Creditors on the Schemes website can also be provided in hard copy free of charge if so requested by a Scheme Creditor. Any such request should be made to either the Private Fund (for Private Fund Scheme Creditors) or Numis Securities Limited (“**Numis**”) (for Public Fund Scheme Creditors), whose contact details can be found at Section 14.1 (*Contact Details*) below.

#### 14.3 **Scheme Meetings**

The Scheme Companies currently expect that the Scheme Meetings will be held in late November or early December 2021. The date and time at which voting entitlements and resulting entitlement to receive their *pro rata* entitlement to the Retro Funds Scheme Distribution, the Aquilo Scheme



Distribution and/or Public Fund Scheme Distribution (as applicable) shall be determined by the relevant Scheme Company (the “**Scheme Record Time**”) on the date which is two business days before the Scheme Meetings. Further details with respect to the Scheme Meetings will be provided in the Scheme Documentation.

#### 14.4 **Sanction Hearing**

Following the Scheme Meetings, provided that the requisite majorities of Scheme Creditors vote in favour of the Schemes, the Scheme Companies intend to apply at the Sanction Hearing for orders sanctioning the Schemes. The Sanction Hearing is currently anticipated to be held in late November or early December 2021. The Scheme Companies will notify Scheme Creditors of the precise time of the Sanction Hearing via direct contact by the Private Fund (in respect to Private Fund Scheme Creditors) and an announcement through RNS (in respect to Public Fund Scheme Creditors), with further information and instructions on the Schemes website (<https://catcobuyout.alixpartners.com>), and will communicate any change to the date of the Sanction Hearing in the same manner. Scheme Creditors will also be notified about how they may attend the Sanction Hearing, the matters to be discussed at the Sanction Hearing or how they may comment or object on matters to be dealt with at the Sanction Hearing.

### 15. **ENQUIRIES AND FURTHER INFORMATION**

#### 15.1 **Contact Details**

If you have any questions in relation to this letter, the Schemes or the Buy-Out Transaction, please contact either the Private Fund (for Private Fund Scheme Creditors) or Numis (for Public Fund Scheme Creditors), or Skadden, Arps, Slate, Meagher & Flom (UK) LLP using the contact details below:

*Private Fund Scheme Creditor enquiries:*

**Markel CATCo Reinsurance Fund Ltd**

8th Floor East, 141 Front Street, Hamilton HM 19, Bermuda

Contact: Mark Way

Telephone: +1 441-493-10001

*Public Fund Scheme Creditor enquiries:*

**Numis Securities Limited**

45 Gresham Street, London EC2V 7BF, UK

Contact: David Benda, Hugh Jonathan

Telephone: +44 (0) 20 7260 1000

*Legal advisers to the Scheme Companies:*

**Skadden, Arps, Slate, Meagher & Flom (UK) LLP**

40 Bank Street, Canary Wharf, London E14 5DS, UK

Contact: Peter Newman, Nicole Stephansen, James Falconer, Kathlene Burke

Telephone: +44 20 7519 7000

**ASW Law Limited**

Crawford House, 50 Cedar Avenue, Hamilton HM11, Bermuda

Contact: Kehinde George, Neil Horner

Telephone: +1 441 295 6500

**15.2 Schemes Website**

The Scheme Companies have set up the Schemes website (<https://catcobuyout.alixpartners.com>) to disseminate information and communications about the Schemes and to facilitate the implementation of the Schemes. The Schemes website will contain publicly-available information in respect of the Schemes including general notices. Scheme Creditors may also download documents relating to the Schemes from the Schemes website.

**15.3 Physical Copies Available for Inspection**

For physical copies of the Scheme Documentation, Scheme Creditors should contact either the Private Fund (for Private Fund Scheme Creditors) or Numis (for Public Fund Scheme Creditors) using the details set out at Section 15.1 (*Contact Details*) above.

*[Remainder of page intentionally left blank; signature page follows]*

Yours faithfully,

**Markel CATCo Reinsurance Fund Ltd (provisional liquidators appointed for restructuring purposes)**

**CATCo Reinsurance Opportunities Fund Ltd. (provisional liquidators appointed for restructuring purposes)**

**SCHEDULE 1 – REVISED TERMS OF THE BUY-OUT TRANSACTION**

## SUBJECT TO CONTRACT

### INVESTOR BUY-OUT TERM SHEET

This Term Sheet sets out the proposed terms for the early return of Net Asset Value (“NAV”) in the side pocket investments (the “**Side Pockets**”) held at Markel CATCo Re Ltd. (the “**Reinsurer**”), together with a premium, for the benefit of investors (the “**Investors**”) who hold shares in:

- a) funds of Markel CATCo Reinsurance Fund Ltd. (the “**Private Fund**”), which include direct investments made in each segregated account of the Private Fund other than the Aquilo Fund, including the Markel CATCo Diversified Fund (the “**Master Fund**”), Diversified Fund II, Limited Diversified Arbitrage Fund, Diversified Arbitrage Fund, GTL Diversified Fund, Markel Diversified Fund and QIC Diversified Fund (collectively, the “**Retro Funds**”, and such investors in the Retro Funds, the “**Retro Fund Investors**”),
- b) CATCo Reinsurance Opportunities Fund Ltd. (the “**Public Fund**,” and such investors, the “**Public Fund Investors**”), which invests directly in the Master Fund, and
- c) the Aquilo Fund, a segregated account of the Private Fund (such investors in the Aquilo Fund, the “**Aquilo Investors**”).

As set out in detail below, the early return of NAV to the ~~Private~~Retro Fund Investors and Public Fund Investors on the Closing Date (as defined below) will be funded by (i) the Available Distribution Amount (as defined below), (ii) the Retro Fund Cash (as defined below) and (iii) the Buy-Out Amount (as defined below) provided by an affiliate of Markel Corporation (the “**Purchaser**”, and the Markel Affiliates funding the Purchaser, the “**FundingCos**”). The early return of NAV to the Aquilo Investors will be funded through a combination of funding from the Purchaser (through the FundingCos) and the release of contractually trapped cash currently held by ~~a~~-fronting ~~reinsurer~~reinsurers of the Aquilo Fund, which shall be made possible by Markel Corporation, through a wholly-owned designee, providing adverse development cover to the fronting reinsurer. The premium paid to all Investors will be the Additional Consideration described below and funded by Markel Corporation or one of its affiliates.

<b>Buy-Out of Retro Fund Investors</b>	<p>The Investors in the Retro Funds will be entitled to a total return of <del>101</del><u>102</u>% of Closing NAV (defined below) <del>plus</del><u>including an Early Consent Fee plus (i) a distribution in cash equal to their proportional entitlement to \$34 million (the "Additional Consideration") and (ii) any Upside.</u></p> <p>At the date of completion (the “<b>Closing Date</b>”), Retro Fund Investors (including the Public Fund) will receive an aggregate accelerated return of the following proportion of Closing NAV for each Side Pocket:</p> <ul style="list-style-type: none"><li>• 100% for 2016 Side Pocket,</li><li>• 100% for 2017 Side Pocket,</li><li>• <del>90</del><u>100</u>% for 2018 Side Pocket, and</li><li>• <del>80</del><u>100</u>% for 2019 Side Pocket,</li></ul> <p>(the “<b>Accelerated Distribution Amount</b>”), plus their proportionate amount of the <u>Additional Consideration and the</u> Early Consent Fee, if applicable.</p> <p>As a result of the payment of the Accelerated Distribution Amount, on the Closing Date:</p> <ul style="list-style-type: none"><li>• <u>Public Fund Investors holding Ordinary Shares will receive an estimated accelerated return of approximately \$0.290.32 per Ordinary Share (totaling approximately \$43.448.3 million out of \$44.1 million of</u></li></ul>
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	<p>Closing NAV (as of 31 August 2021) <u>including an Early Consent Fee and Additional Consideration</u>:-</p> <ul style="list-style-type: none"> <li>Public Fund Investors holding C Shares will receive an <u>estimated</u> accelerated return of <u>approximately \$0.400.51</u> per C Share (totaling approximately <u>\$33.542.2 million</u> <del>out of \$38.4 million</del> of Closing NAV (as of 31 August 2021) <u>including an Early Consent Fee and Additional Consideration</u>):-</li> </ul> <p><del>After the Closing Date, if held reserves are sufficient, Investors in 2018 Side Pocket and 2019 Side Pocket will receive an additional return of 10% and 20% of Closing NAV, respectively, when such amounts are released and approved for distribution by the Bermuda Monetary Authority (if required).</del></p>
<b>Closing NAV</b>	<p>Closing NAV will be <del>current</del><u>Current</u> NAV <del>as at the most recent month-end prior to the Closing Date,</del></p> <p>plus \$15 million released from a current contingent reserve held by the Private Fund, which will be primarily applied to fund the payment of Transaction Costs (as defined below),</p> <p><u>plus \$20 million cash contribution from Markel Corporation or one of its affiliates,</u></p> <p><u>less</u> the remaining Administrative Expenses (as defined below), which will be reserved on the Closing Date.</p> <p>Additionally, for the Closing NAV with respect to the Public Fund, cash on hand will also be deducted.</p> <p><u>"Current NAV" means the current NAV available as at the most recent month end prior to the Closing Date, provided that this amount may never be less than NAV as of 31 August 2021.</u></p>
<b>Buy-Out Amount of Retro Fund Investors</b>	<p>In order to fund the buy-out of Retro Fund Investors, the Purchaser will purchase shares in the Reinsurer from the Private Fund for a cash purchase price (the "<b>Buy-Out Amount</b>") equal to the Accelerated Distribution Amount:</p> <ul style="list-style-type: none"> <li>less the amount of funds, if any, that are available for distribution to Retro Fund Investors that have been released from each Side Pocket of the Reinsurer and approved for distribution by the Bermuda Monetary Authority but not yet returned to the Retro Fund Investors in that Side Pocket, as at the last day of the month prior to the Closing Date (the total of all such amounts across all Side Pockets of the Reinsurer in the aggregate, the "<b>Available Distribution Amount</b>"),</li> <li>less the aggregate amount of cash, if any, that is held at each Retro Fund (other than the Administrative Expenses) to cover operating and other costs of that Retro Fund (the total of amount of consolidated cash at the Retro Funds being the "<b>Retro Fund Cash</b>").</li> </ul> <p><u>The Additional Consideration will be funded by Markel Corporation or one of its affiliates on the Closing Date.</u></p>
<b>Return to Aquilo Investors</b>	<p>Aquilo Investors will be entitled to a total return of <del>101</del><u>102</u>% of Closing NAV plus <u>(i) the Additional Consideration and (ii) any Upside.</u></p> <p>On the Closing Date, Aquilo Investors will receive a distribution in cash equal to their proportional entitlement to <del>\$100-million%</del> <u>of Closing NAV of the Aquilo Fund</u> (the "<b>Aquilo Accelerated Distribution Amount</b>") plus their</p>

	<p>proportionate amount of the <u>Additional Consideration and the</u> Early Consent Fee, if applicable.</p> <p><del>After the Closing Date, if held reserves are sufficient, Aquilo Investors will receive an additional return of 48% of Closing NAV when such amounts are released and approved for distribution by the Bermuda Monetary Authority.</del></p>
<p><del>Adverse Development Cover</del>  <u>Aquilo Buy-Out Amount of Aquilo Fund Investors</u></p>	<p><u>In order to fund the buy-out of Aquilo Fund Investors, the Purchaser will purchase shares in the Reinsurer from the Private Fund for a cash purchase price (the “<b>Aquilo Buy-Out Amount</b>”) equal to the Aquilo Accelerated Distribution Amount less the amount of trapped cash released in connection with any adverse development cover provided by Markel Corporation, through a wholly-owned designee, to a fronting reinsurer in respect of the assets of the Aquilo Fund.</u></p> <p><del>To facilitate the release of the Aquilo Accelerated Distribution Amount, Markel Corporation, through a wholly-owned designee, will enter into an agreement, on or prior to the Closing Date, to provide adverse development cover to a fronting reinsurer in respect of the assets of the Aquilo Fund. The</del>  <u>Additional Consideration will be funded by Markel Corporation or one of its affiliates on the Closing Date.</u></p>
<p><b>Administrative Expenses</b></p>	<p>Administrative Expenses will be funded from cash reserves deducted from <del>current</del><u>Current</u> NAV on or before the Closing Date and allocated as set out below, including:</p> <ol style="list-style-type: none"> <li>1. Transaction Costs: costs for implementation of the deal, which are currently estimated to be approximately \$15 million. 10% of these costs will be allocated pro rata to the Aquilo Fund with the remaining Transaction Costs allocated pro rata to each Side Pocket. Transaction Costs are estimates only and the actual amount of fees incurred will be paid.</li> <li>2. Ordinary Course Fees: estimated operating and other fees for the remaining run-off of the Markel CATCo business, which are currently estimated to be approximately \$14 million. These costs will be allocated among the Aquilo Fund and each Side Pocket based on a weighted pro rata distribution determined by “time to run-off.” <ul style="list-style-type: none"> <li>• For example, Side Pocket 2019 is estimated to have the most time for final run-off, so will have a larger proportion of fees allocated to it.</li> <li>• Ordinary Course Fees related to the operation of the Public Fund are allocated among the Public Fund Investors only.</li> </ul> </li> <li>3. Reserve: an additional reserve of approximately \$5.8 million, which will be an amount equal to 20% of the total Transaction Costs and Ordinary Course Fees allocated to the Aquilo Fund and each Side Pocket.</li> </ol> <p>After closing, no additional fees or expenses will be deducted from distributions of Closing NAV and there will be no continuing management fees charged by the Manager (any such fees will have been accelerated and included in the Ordinary Course Fees for the run-off of the Funds).</p> <p>After closing, additional fees or expenses arising in respect of the Aquilo Fund that are not covered by the reserve will be deducted from distributions to</p>

	<p>Aquilo Fund Investors.</p> <p>Any amounts reserved for Administrative Expenses remaining after wind down of the Public Fund, the Private Fund, the Manager and the Reinsurer will be returned to relevant Investors.</p>
<b>Upside Distributions</b>	<p>After the Closing Date, if and when any capital is released <u>(i) in excess of the Buy-Out Amount allocable to a particular Side Pocket of the Reinsurer;</u> or <del>any capital is released in respect of</del> <u>(ii) in excess of the Aquilo Buy-Out Amount allocable to</u> the Aquilo Fund, and in each case approved for distribution by the Bermuda Monetary Authority, each relevant Public Fund and Private Fund Investor shall be entitled to receive the amounts distributed. Distributions, if any, will occur one time per annum or more at the discretion of the Manager.</p> <p>Upon receiving a return from the Private Fund as contemplated in this provision, the Public Fund will distribute the proceeds to the Public Fund Investors in accordance with its ordinary practices.</p>
<b>Information Rights</b>	<p>Investors will receive monthly Manager's Reports setting out remaining NAV for each Side Pocket at the relevant month end and the amount of capital released, including the amount that will be used to repay the Buy-Out Amount and the amount that will be returned to Investors.</p>
<b>Early Consent Fee</b>	<p>Investors that support the proposal set out in this Term Sheet by agreeing to the terms of the Investor Deed of Undertaking, in accordance with the instructions accompanying the Undertaking, shall receive on the Closing Date a cash fee in an amount equal to <del>12</del><u>2</u>% of their proportional amount of <del>current</del><u>Current</u> NAV at the Closing Date (provided that they comply with the terms of their undertaking) (the "<b>Early Consent Fee</b>").</p>
<b><u>Work Fee</u></b>	<p><u>(i) Funds managed by PKA A/S and (ii) Almitas Capital will be entitled to a cash fee in an amount equal to 2% of their proportional amount of Current NAV at the Closing Date. The work fee will be paid by the Private Fund and/or the Public Fund and funded by Markel Corporation or one of its affiliates.</u></p>
<b>Release</b>	<p>To enable the early return of NAV to the Investors, and as a condition to and in consideration of the foregoing, each Investor, the Purchaser, Markel Corporation, the FundingCos, the Manager, the Private Fund (in respect of itself and all of its segregated accounts), the Public Fund and the Reinsurer (in respect of itself and all of its segregated accounts) shall provide an irrevocable and unconditional mutual release of each and every claim of any nature it may have against each of the Released Parties related to the business of the Reinsurer, the Private Fund, the Public Fund and the Manager and the Investors' shares.</p> <p><b>"Released Parties"</b> means each Investor, the Purchaser, the FundingCos, Markel Corporation, the Private Fund (in respect of itself and all of its segregated accounts), the Public Fund, the Reinsurer (in respect of itself and all of its segregated accounts), the Manager and each of their former and existing affiliates, directors, managers, shareholders, officers, controlling persons, beneficial owners or interest holders, advisory board members, employees, consultants, agents, subsidiaries, members, managers, predecessors and successors in interest, heirs, executors and assignors or assignees, nominees, participants, partners, limited partners, general partners, principals, fund advisors, attorneys, financial advisors, investment bankers, accountants, other professionals or representatives, sub-advisors (and their respective affiliates</p>



	directors, managers, shareholders, partners, principals, members, officers, controlling persons, employees and agents), and agents (including any individual who serves at the Manager's request as a director, officer, partner, trustee, or the like of another entity) and/or the legal representatives and controlling person of any of them.
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