

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

*In re*

MARKEL CATCO REINSURANCE FUND  
LTD., et al.,

Debtors in Foreign Proceedings.<sup>1</sup>

Chapter 15

Case No. 21-11733 (LGB)

(Jointly Administered)

**SECOND DECLARATION OF PETER NEWMAN  
IN SUPPORT OF MOTION FOR ENTRY OF AN ORDER GIVING  
FULL FORCE AND EFFECT TO BERMUDA SCHEMES OF ARRANGEMENT**

I, Peter Newman, declare under penalty of perjury that the following is true and correct:

1. I am an individual over 18 years of age and am competent to testify and to provide this declaration in support of the *Motion for Entry of an Order Giving Full Force and Effect to Bermuda Schemes of Arrangement* [Docket No. 30] (the “**Motion**”).<sup>2</sup>

2. I am a Partner in the Corporate Restructuring group in the London office of Skadden, Arps, Slate, Meagher & Flom (UK) LLP (“**Skadden**”).

3. Skadden is counsel to the Foreign Representatives in the Chapter 15 Cases and counsel to the Debtors in the Bermuda Proceedings. Through these roles, I am fully aware of and closely involved with the Provisional Liquidation Proceedings and the proposed Schemes, as well as the Debtors’ restructuring generally.

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<sup>1</sup> The Debtors are Bermuda companies registered with the Registrar of Companies in Bermuda. The Debtors’ respective registration numbers are as follows: Markel CATCo Reinsurance Fund Ltd. (50599); CATCo Reinsurance Opportunities Fund Ltd. (44855); Markel CATCo Investment Management Ltd. (50576); and Markel CATCo Re Ltd. (50602). Each of the Debtors has its registered office located at Crawford House, 50 Cedar Avenue, Hamilton HM11, Bermuda.

<sup>2</sup> Except as otherwise indicated, capitalized terms used herein carry the meanings ascribed to them in the Motion.

*Scheme Convening Hearings*

4. On December 7 and 8, 2021, the Honorable Mr. Justice Larry Mussenden of the Supreme Court of Bermuda (the “**Bermuda Court**”) held a hearing on the applications by the Scheme Companies for orders convening meetings of their respective investors to vote on the Schemes (the “**Convening Hearing**”).

5. The Bermuda Court’s orders authorizing the Scheme Companies to convene the Scheme Meetings (the “**Convening Orders**”) are attached hereto as **Exhibits A-1** and **A-2**.

6. On February 25, 2022, the Bermuda Court issued a judgment in support of the Convening Orders (the “**Judgment**”), which is attached hereto as **Exhibit B**.

7. In the Judgment, the Bermuda Court, among other things, made the following findings:

I am satisfied that: (a) the Releases are necessary in order to give effect to the proposed arrangement between the Scheme Companies and the Scheme Creditors; (b) the Releases are necessary for the Schemes to achieve their purposes; and (c) there is a sufficient nexus between the relationship between the Scheme Creditor and the Scheme Company on the one hand, and the release of Investor Claims against all of the Released Parties on the other hand. Thus, I am satisfied that the Releases fall within the jurisdiction of Part VII of the [the Bermuda Companies Act].<sup>3</sup>

*Notice of Scheme Meetings and Sanction Hearing*

8. As described in the Motion, the Scheme Companies provided notice of the Scheme Meetings and the Sanction Hearing on February 18, 2022, in accordance with the Convening Orders.

9. On February 28, 2022, the Public Fund issued a further notification by London Stock Exchange Regulatory News Service (“**RNS**”) announcement of the Sanction Hearing and

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<sup>3</sup> See Judgment ¶ 87.

the deadline for submission of voting instructions in respect of the Scheme Meetings. A copy of that announcement is attached hereto as **Exhibit C**. A further RNS notice was issued on March 7, 2022, announcing the results of the Scheme Meetings. A copy of that announcement is attached hereto as **Exhibit D**.

10. On March 1, 2022, Centaur Fund Services (Bermuda) Limited, the registrar of the Private Fund (“**Centaur**”), notified Private Fund Scheme Creditors of the Sanction Hearing by email in the form attached hereto as **Exhibit E**, along with the subsequent email confirming that it was sent to all Private Fund Scheme Creditors.

*Scheme Meetings*

11. The Scheme Meetings were held on March 4, 2022. At the Scheme Meetings, the Schemes were approved by overwhelming votes in each class. The Chairperson’s Report on the results for each of the Scheme Meetings is attached hereto as **Exhibit F**.

*Sanction Hearing*

12. On March 11, 2022, the Bermuda Court held the Sanction Hearing and approved the Schemes. The orders sanctioning the Schemes are attached hereto as **Exhibits G-1** and **G-2**.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 11, 2022  
London, United Kingdom

/s/ Peter Newman  
Peter Newman

**EXHIBIT A-1**

**Private Fund Convening Order**



**IN THE SUPREME COURT OF BERMUDA  
COMMERCIAL COURT  
COMPANIES (WINDING UP)  
2021: No. 307**

**IN THE MATTER OF MARKEL CATCO REINSURANCE FUND LIMITED  
(PROVISIONAL LIQUIDATORS APPOINTED FOR RESTRUCTURING PURPOSES)  
AND IN THE MATTER OF THE COMPANIES ACT 1981  
AND IN THE MATTER OF THE SEGREGATED ACCOUNTS COMPANIES ACT 2000**

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**ORDER**

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**UPON READING** the Summons in these proceedings

**AND UPON HEARING** Leading Counsel for Markel CATCo Reinsurance Fund Limited (the “**Company**” or the “**Private Fund**”) and Leading Counsel for HWH Realty Holdings, LLC and Partners Capital (together, the “**Opposing Scheme Creditors**”)

**AND UPON READING** the Third Affidavit of Federico Alejandro Candiolo, made on 17 November 2021, the First Affidavit of Eric Bertrand, made on 15 November 2021, the First Affidavit of Joe Cotterell, made on 16 November 2021, the First Affidavit of Andrew Good, made on 16 November 2021, the (unsworn) First Affidavit of Paul E. Summit dated 26 November 2021, the (unsworn) First Affidavit of Paul McCauley dated 26 November 2021, the (unsworn) First Affidavit of Renita N. Sharma dated 26 November 2021, the Second Affidavit of Andrew Good, made on 1 December 2021, the Second Affidavit of Peter Newman made on 7 December 2021 and the Third Affidavit of Peter Newman made on 15 February 2022

**AND UPON** the Court having adopted in this Order, save where otherwise expressly defined, the definitions contained in the proposed scheme of arrangement (the “**Scheme**”) promulgated by the Company pursuant to section 99 of the Companies Act 1981 and the draft explanatory statement to the Scheme to be made available to Scheme Creditors pursuant to section 100 of the Companies Act 1981 (the “**Explanatory Statement**”)

**IT IS HEREBY ORDERED AND DIRECTED THAT:**

1. The Company be at liberty to summon the scheme meetings (the “**Scheme Meetings**”) of the persons beneficially interested in the Company’s shares in their capacity as potential creditors of the Company (the “**Private Fund Scheme Creditors**”), for the purpose of considering and if thought fit approving, with or without modification, a scheme of arrangement between the Company and the Private Fund Scheme Creditors (the “**Private Fund Scheme**”).
2. The Scheme Meetings shall be summoned for each of the following classes of the Private Fund Scheme Creditors:
  - (a) all Private Fund Scheme Creditors (as defined in the Scheme Document) beneficially interested in the 2016 Master Fund SP (as defined in the Scheme Document) (the “**Retro Funds 2016 Class**”);
  - (b) all Private Fund Scheme Creditors (as defined in the Scheme Document) beneficially interested in the 2017 Master Fund SP (as defined in the Scheme Document) (the “**Retro Funds 2017 Class**”);
  - (c) all Private Fund Scheme Creditors (as defined in the Scheme Document) beneficially interested in the 2018 Master Fund SP (as defined in the Scheme Document) (the “**Retro Funds 2018 Class**”);
  - (d) all Private Fund Scheme Creditors (as defined in the Scheme Document) beneficially interested in the 2019 Master Fund SP (as defined in the Scheme Document) (the “**Retro Funds 2019 Class**”); and
  - (e) all Private Fund Scheme Creditors (as defined in the Scheme Document) beneficially interested in the Aquilo Fund (as defined in the Scheme Document) (the “**Aquilo Class**”).
3. The Scheme Meetings shall be held virtually on no earlier than 4 March 2022 (or at such later time and date as may be determined by the Scheme Company and approved by its Joint Provisional Liquidators) with the Private Fund Scheme Creditors which wish to attend attending by video-conference.

4. The Scheme Meetings may begin with an introductory address to all Scheme Creditors, following which the Scheme Meetings shall be convened individually for the purpose of enabling each of the Retro Funds 2016 Class Scheme Creditors, Retro Funds 2017 Class Scheme Creditors, Retro Funds 2018 Class Scheme Creditors, Retro Funds 2019 Class Scheme Creditors, and the Aquilo Class Scheme Creditors, to consult with other members of their class and vote on the resolution to approve the Private Fund Scheme.
5. As soon as reasonably practicable after this Order is made, a copy of the “**Scheme Documentation**” (which shall comprise (among other things) the Explanatory Statement, the Private Fund Scheme, the voting and proxy forms and the Notice of the Scheme Meetings) shall be made available to the Private Fund Scheme Creditors to download on the Scheme Website. All Private Fund Scheme Creditors known to the Company as at the date of this Order shall be notified of the same by email to the addresses customarily used by the Private Fund to communicate with each Investor.
6. Notice of the Scheme Documentation does not need to be sent to any Scheme Creditor with a registered address (as appearing in the Company’s register of members) in a jurisdiction where the dispatch of the Scheme Documentation would or may infringe the laws of such jurisdiction or would or may require the Company to observe any governmental or other consent or any registration, filing or other formality in that jurisdiction with which the Company is unable to comply or which the Company regards as unduly onerous to comply with.
7. The Scheme Documentation shall be in the form, or substantially in the form, of the drafts exhibited to the Third Affidavit of Federico Alejandro Candiolo, sworn on 17 November 2021, as amended in the manner set out in the Third Affidavit of Peter Newman sworn on 15 February 2022, and subject to such further or other amendments as are required to update the information provided therein by reference to the latest available data regarding the Scheme Companies, and to reflect the timing, the conduct of, and the process for voting at the Scheme Meetings, in each case as advised by the Scheme Company’s legal advisers.
8. Unless the Court orders otherwise, the accidental omission to serve any Private Fund Scheme Creditor with notice of the Scheme Meetings or notice of the Scheme

Documentation, or the non-receipt of notice of the Scheme Meetings or notice of the Scheme Documentation by a Scheme Creditor, shall not invalidate the proceedings at the Scheme Meetings. [SEP]

9. A Private Fund Scheme Creditor wishing to submit an Optional Claim Amount Form must do so together with the Private Fund Investor Letter as soon as possible and in any event by no later than 28 February 2022 (or, in the event that the Scheme Meetings are scheduled on a date later than 4 March 2022 pursuant to paragraph 3 above, such later date as maintains an equivalent number of days (excluding Saturdays, Sundays or bank holidays in Bermuda) between the date for submission of the Optional Claim Amount Form and the Scheme Meetings).
10. In order to vote at the Scheme Meetings, Private Fund Scheme Creditors, in accordance with the instructions for submission set out in the Explanatory Statement, and as soon as possible, may submit a Private Fund Investor Letter by email to Centaur Fund Services (Bermuda) Limited by no later than 1 March 2022 (or, in the event that the Scheme Meetings are scheduled on a date later than 4 March 2022 pursuant to paragraph 3 above, such later date as maintains an equivalent number of days (excluding Saturdays, Sundays or bank holidays in Bermuda) between the date for submission of a Private Fund Investor Letter and the Scheme Meeting).
11. A Scheme Creditor may appoint no more than one person as their proxy, and, if the appointee is not the Chairperson, they may provide in the appointment that the appointee may vote in the appointee's absolute discretion.
12. The Chairperson of each of the Scheme Meetings shall be Mr Simon Appell, Provisional Liquidator, or failing him Mr John McKenna, Provisional Liquidator, or failing either of them being available, such person as either one of them nominates.
13. The Chairperson shall:
  - (a) oversee voting;

- (b) be at liberty, but shall be under no obligation, to accept otherwise incomplete or late Private Fund Investor Letters at their discretion after the date specified in paragraph 10 above (but for the avoidance of doubt provided that such Private Fund Investor Letter is received before they close the relevant Scheme Meeting);
- (c) be at liberty, but shall be under no obligation, to consider otherwise incomplete or late Optional Claim Amount Forms at their discretion after the date specified in paragraph 9 above (but for the avoidance of doubt provided that such Optional Claim Amount Form is received before they close the relevant Scheme Meeting);
- (d) be at liberty to rely on the signatures on the confirmations or signatures on the Private Fund Investor Letters or Optional Claim Amount Forms as a warranty that the signatory (or person submitting such confirmation) has been duly authorised by the relevant Private Fund Scheme Creditor without further investigation;
- (e) be at liberty, but shall be under no obligation to permit the attendance of persons who are not entitled to attend and vote at any particular Scheme Meeting (including the Private Fund Scheme Creditors of a different class) unless an objection is taken by (or by a person appointed to vote by proxy for) a Private Fund Scheme Creditor entitled to attend and vote at the relevant Scheme Meeting, but such a person shall not be entitled to speak or vote at the Scheme Meeting;
- (f) be at liberty to adjourn the Scheme Meetings, or any adjourned Scheme Meetings, for such period as they shall deem appropriate, to the same or another online platform, provided that, if adjourned, the Scheme Meeting in question shall recommence as soon as reasonably practicable thereafter;
- (g) retain discretion to value the votes of each Scheme Creditor in order to determine whether the statutory majorities have been achieved, including determining whether, in their sole discretion, to accept, in whole or in part, any claims in duly submitted Optional Claim Amount Forms and if so to determine the value for voting purposes of the claim of that Scheme Creditor. The valuation will be for voting purposes only and will not constitute an admission of the existence or amount of a

claim and will not bind the Company or the Scheme Creditor concerned for any other purpose; and

(h) no later than 2 days prior to the date set for the hearing of the petition seeking this Honourable Court's sanction of the Private Fund Scheme the ("**Sanction Petition**"), report the result of the Scheme Meetings to the Court.

14. The voting at the Scheme Meetings shall be conducted by way of a poll and not by way of a show of hands.
15. A person validly appointed as proxy for a Scheme Creditor may attend and speak at the relevant Scheme Meeting provided that they have followed the steps set out in the relevant section of the Explanatory Statement.
16. The Chairperson, the Joint Provisional Liquidators and the Company shall have permission to apply for such further directions in this matter as any of them may consider necessary or appropriate.
17. If the Scheme is approved at the Scheme Meetings by the required statutory majorities, the Sanction Petition shall be listed for half to one day as soon as possible after 8 March 2022 or such other date and time as the Court may be able to accommodate.
18. In support of the Sanction Petition, the Company has permission to adduce the U.S. law expert evidence of Daniel M. Glosband on the question of whether the Bermuda Proceedings are likely to be recognised, and the terms of the Schemes enforced, in the United States.
19. That there be liberty to apply.

**DATED** the 17<sup>th</sup> day of February 2022.



JUSTICE MUSSENDEN

**IN THE SUPREME COURT OF BERMUDA  
COMMERCIAL COURT  
COMPANIES (WINDING UP)**

**2021: No. 307**

**IN THE MATTER OF MARKEL CATCO REINSURANCE  
FUND LIMITED (PROVISIONAL LIQUIDATORS  
APPOINTED FOR RESTRUCTURING PURPOSES)  
AND IN THE MATTER OF THE COMPANIES ACT 1981  
AND IN THE MATTER OF THE SEGREGATED  
ACCOUNTS COMPANIES ACT 2000**

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**ORDER**

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50 Cedar Avenue | Hamilton, HM11  
BERMUDA

**Attorneys to the Company**

**KALG/7363-005**

2022 FEB 17 AM 11:19  
SUPREME COURT BERMUDA

**EXHIBIT A-2**

**Public Fund Convening Order**



**IN THE SUPREME COURT OF BERMUDA  
COMMERCIAL COURT  
COMPANIES (WINDING UP)  
2021: No. 309**

**IN THE MATTER OF CATCO REINSURANCE OPPORTUNITIES FUND LIMITED  
(PROVISIONAL LIQUIDATORS APPOINTED FOR RESTRUCTURING PURPOSES)  
AND IN THE MATTER OF THE COMPANIES ACT 1981**

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**ORDER**

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**UPON READING** the Summons in these proceedings

**AND UPON HEARING** Leading Counsel for CATCo Reinsurance Opportunities Fund Limited (the “**Company**” or the “**Public Fund**”) and Leading Counsel for, HWH Realty Holdings, LLC and Partners Capital (together, the “**Opposing Scheme Creditors**”)

**AND UPON READING** the Third Affidavit of Federico Alejandro Candiolo, made on 17 November 2021, the First Affidavit of Eric Bertrand, made on 15 November 2021, the First Affidavit of Joe Cotterell, made on 16 November 2021, the First Affidavit of Andrew Good, made on 16 November 2021, the (unsworn) First Affidavit of Paul E. Summit dated 26 November 2021, the (unsworn) First Affidavit of Paul McCauley dated 26 November 2021, the (unsworn) First Affidavit of Renita N. Sharma dated 26 November 2021, the Second Affidavit of Andrew Good, made on 1 December 2021, the Second Affidavit of Peter Newman made on 7 December 2021 and the Third Affidavit of Peter Newman made on 15 February 2022

**AND UPON** the Court having adopted in this Order, save where otherwise expressly defined, the definitions contained in the proposed scheme of arrangement (the “**Scheme**”) promulgated by the Company pursuant to section 99 of the Companies Act 1981 and the draft explanatory statement to the Scheme to be made available to Scheme Creditors pursuant to section 100 of the Companies Act 1981 (the “**Explanatory Statement**”)

**IT IS HEREBY ORDERED AND DIRECTED THAT:**

1. The Company be at liberty to summon two scheme meetings (the “**Scheme Meetings**”) of the persons beneficially interested in the Company’s shares in their capacity as potential

creditors of the Company (the “**Public Fund Scheme Creditors**”), for the purpose of considering and if thought fit approving, with or without modification, a scheme of arrangement between the Company and the Public Fund Scheme Creditors (the “**Public Fund Scheme**”).

2. The Scheme Meetings shall be summoned for each of the following two classes of the Public Fund Scheme Creditors:
  - (a) Public Fund Scheme Creditors who hold interests in the Company’s Ordinary Shares (the “**Public Fund Ordinary Class**”); and
  - (b) Public Fund Scheme Creditors who hold interests in the Company’s “C” Shares (the “**Public Fund C Class**”).
3. The Scheme Meetings shall be held virtually on no earlier than 4 March 2022 (or at such later time and date as may be determined by the Scheme Company and approved by its Joint Provisional Liquidators) with the Public Fund Scheme Creditors which wish to attend attending by video-conference.
4. The Scheme Meetings may begin with an introductory address to all Scheme Creditors, following which the Scheme Meetings shall be convened individually for the purpose of enabling each of the Public Fund C Class Scheme Creditors, and the Public Fund Ordinary Class Scheme Creditors, to consult with other members of their class and vote on the resolution to approve the Public Fund Scheme.
5. As soon as reasonably practicable after this Order is made, a copy of the “**Scheme Documentation**” (which shall comprise (among other things) the Explanatory Statement, the Public Fund Scheme, the voting and proxy forms and the Notice of the Scheme Meetings) shall be made available to the Public Fund Scheme Creditors to download on the Scheme Website. All Public Fund Scheme Creditors known to the Company as at the date of this Order shall be notified of the same (1) by announcement through the Regulatory News Service of the London Stock Exchange, and (2) by notice in writing issued to the registered holder of the shares, or depository interests representing such shares, in which such Pubic Fund Scheme Creditors are beneficially interested.

6. Notice of the Scheme Documentation does not need to be sent to any Scheme Creditor with a registered address (as appearing in the Company's register of members) in a jurisdiction where the dispatch of the Scheme Documentation would or may infringe the laws of such jurisdiction or would or may require the Company to observe any governmental or other consent or any registration, filing or other formality in that jurisdiction with which the Company is unable to comply or which the Company regards as unduly onerous to comply with.
7. The Scheme Documentation shall be in the form, or substantially in the form, of the drafts exhibited to the Third Affidavit of Federico Alejandro Candiolo, sworn on 17 November 2021, as amended in the manner set out in the Third Affidavit of Peter Newman sworn on 15 February 2022, and subject to such further or other amendments as are required to update the information provided therein by reference to the latest available data regarding the Scheme Companies, and to reflect the timing, the conduct of, and the process for voting at the Scheme Meetings, in each case as advised by the Scheme Company's legal advisers.
8. Unless the Court orders otherwise, the accidental omission to serve any Public Fund Scheme Creditor with notice of the Scheme Meetings or notice of the Scheme Documentation, or the non-receipt of notice of the Scheme Meetings or notice of the Scheme Documentation by a Scheme Creditor, shall not invalidate the proceedings at the Scheme Meetings.
9. A Public Fund Scheme Creditor wishing to submit an Optional Claim Amount Form must do so together with the Public Fund Investor Letter as soon as possible and in any event by no later than 28 February 2022 (or, in the event that the Scheme Meetings are scheduled on a date later than 4 March 2022 pursuant to paragraph 3 above, such later date as maintains an equivalent number of days (excluding Saturdays, Sundays or bank holidays in Bermuda) between the date for submission of the Optional Claim Amount Form and the Scheme Meeting).
10. In order to vote at the Scheme Meetings, Public Fund Scheme Creditors, in accordance with the instructions for submission set out in the Explanatory Statement, and as soon as

possible, may submit their vote by one of the following methods (together, the “**Voting Forms**”):

- (a) submit voting instructions electronically through CREST by no later than 1 March 2022 (or, in the event that the Scheme Meetings are scheduled on a date later than 4 March 2022 pursuant to paragraph 3 above, such later date as maintains an equivalent number of days (excluding Saturdays, Sundays or bank holidays in Bermuda) between the date for submitting voting instructions electronically through CREST and the Scheme Meeting);
  - (b) return a validly completed and executed CREST Account Holder Form of Direction by no later than 1 March 2022 (or, in the event that the Scheme Meetings are scheduled on a date later than 4 March 2022 pursuant to paragraph 3 above, such later date as maintains an equivalent number of days (excluding Saturdays, Sundays or bank holidays in Bermuda) between the date for returning a validly completed and executed CREST Account Holder Form of Direction and the Scheme Meeting);  
or
  - (c) return a validly completed and executed Certificated Shares Form of Proxy by no later than 1 March 2022 (or, in the event that the Scheme Meetings are scheduled on a date later than 4 March 2022 pursuant to paragraph 3 above, such later date as maintains an equivalent number of days (excluding Saturdays, Sundays or bank holidays in Bermuda) between the date for returning a validly completed and executed Certificated Shares Form of Proxy and the Scheme Meeting).
11. A Scheme Creditor may appoint no more than one person as their proxy, and, if the appointee is not the Chairperson, they may provide in the appointment that the appointee may vote in the appointee’s absolute discretion.
12. The Chairperson of each of the Scheme Meetings shall be Mr Simon Appell, Provisional Liquidator, or failing him Mr John McKenna, Provisional Liquidator, or failing either of them being available, such person as either one of them nominates.
13. The Chairperson shall:

- (a) oversee voting;
- (b) be at liberty, but shall be under no obligation, to accept otherwise incomplete or late Voting Forms at their discretion after the date specified in paragraph 10 above (but for the avoidance of doubt provided that such Voting Form is received before they close the relevant Scheme Meeting);
- (c) be at liberty, but shall be under no obligation, to consider otherwise incomplete or late Optional Claim Amount Forms at their discretion after the date specified in paragraph 9 above (but for the avoidance of doubt provided that such Optional Claim Amount Form is received before they close the relevant Scheme Meeting);
- (d) be at liberty to rely on the signatures on the confirmations or signatures on the Voting Forms or Optional Claim Amount Forms as a warranty that the signatory (or person submitting such confirmation) has been duly authorised by the relevant Public Fund Scheme Creditor without further investigation;
- (e) be at liberty, but shall be under no obligation to permit the attendance of persons who are not entitled to attend and vote at any particular Scheme Meeting (including the Public Fund Scheme Creditors of a different class) unless an objection is taken by (or by a person appointed to vote by proxy for) a Public Fund Scheme Creditor entitled to attend and vote at the relevant Scheme Meeting, but such a person shall not be entitled to speak or vote at the Scheme Meeting;
- (f) be at liberty to adjourn the Scheme Meetings, or any adjourned Scheme Meetings, for such period as they shall deem appropriate, to the same or another online platform, provided that, if adjourned, the Scheme Meeting in question shall recommence as soon as reasonably practicable thereafter;
- (g) retain discretion to value the votes of each Scheme Creditor in order to determine whether the statutory majorities have been achieved, including determining whether, in their sole discretion, to accept, in whole or in part, any claims in duly submitted Optional Claim Amount Forms and if so to determine the value for voting purposes of the claim of that Scheme Creditor. The valuation will be for voting

purposes only and will not constitute an admission of the existence or amount of a claim and will not bind the Company or the Scheme Creditor concerned for any other purpose; and

(h) no later than 2 days prior to the date set for the hearing of the petition seeking this Honourable Court's sanction of the Private Fund Scheme (the "**Sanction Petition**"), report the result of the Scheme Meetings to the Court.

14. The voting at the Scheme Meetings shall be conducted by way of a poll and not by way of a show of hands.
15. A person validly appointed as proxy for a Scheme Creditor may attend and speak at the relevant Scheme Meeting provided that they have followed the steps set out in the relevant section of the Explanatory Statement.
16. The Chairperson, the Joint Provisional Liquidators and the Company shall have permission to apply for such further directions in this matter as any of them may consider necessary or appropriate.
17. If the Scheme is approved at the Scheme Meetings by the required statutory majorities, the Sanction Petition shall be listed for half to one day as soon as possible after 8 March 2022 or such other date and time as the Court may be able to accommodate.
18. In support of the Sanction Petition, the Company has permission to adduce the U.S. law expert evidence of Daniel M. Glosband on the question of whether the Bermuda Proceedings are likely to be recognised, and the terms of the Schemes enforced, in the United States.
19. That there be liberty to apply.

**DATED** the 16<sup>th</sup> day of February 2022.



JUSTICE MUSSENDEN

**IN THE SUPREME COURT OF BERMUDA  
COMMERCIAL COURT  
COMPANIES (WINDING UP)  
2021: No. 309**

**IN THE MATTER OF CATCO REINSURANCE  
OPPORTUNITIES FUND LIMITED (PROVISIONAL  
LIQUIDATORS APPOINTED FOR RESTRUCTURING  
PURPOSES)  
AND IN THE MATTER OF THE COMPANIES ACT 1981**

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**ORDER**

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**asw|law**

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BERMUDA

**Attorneys to the Company**

**KALG/7363-005**

2022 FEB 17 AM 11:19  
SUPREME COURT BERMUDA

**EXHIBIT B**

**Judgment**





# **In The Supreme Court of Bermuda**

**COMMERCIAL COURT**

**COMPANIES (WINDING UP)**

**Case 2021: Nos. 307 and 309**

**IN THE MATTER OF MARKEL CATCO REINSURANCE FUND LIMITED**

**AND IN THE MATTER OF CATCO REINSURANCE OPPORTUNITIES FUND  
LIMITED**

**AND IN THE MATTER OF THE COMPANIES ACT 1981**

**AND IN THE MATTER OF THE SEGREGATED ACCOUNTS COMPANIES ACT 2000**

## **JUDGMENT**

**Date of Hearing: 7, 8 December 2021**

**Date of Update Hearing: 16 February 2022**

**Date of Judgment: 25 February 2022**

**Appearances: Daniel Bayfield QC, South Square, Gray's Inn, London and Kehinde George, ASW Law Limited, for the Companies**

**Christian Luthi and Rhys Williams, Conyers, for the Joint Provisional Liquidators**

**Felicity Toubé QC, South Square, Gray's Inn, London and David  
Kessaram, Cox Hallett Wilkinson, for Opposing Scheme Creditors,  
HWH Realty Holdings LLC and Partners Capital LLC**

**JUDGMENT of Mussenden J**

**Introduction**

1. This matter came before me by a Summons dated 29 October 2021 in respect of each of the companies Markel CATCo Reinsurance Fund Limited (the **"Private Fund"**) and CATCo Reinsurance Opportunities Fund Limited (the **"Public Fund"**), together the **"Scheme Companies"**). The Scheme Companies are part of the CATCo Group (the **"Group"**) which operates an Insurance Linked Securities fund business (**"Markel CATCo"**) which was founded in 2011 and acquired by Markel Corporation (**"Markel Corporation"**) in late 2015. The Group provided investment opportunities in retro and non-retro reinsurance products to its investors (the **"Investors"**)<sup>1</sup>
2. The Scheme Companies each seek an order pursuant to section 99 of the Companies Act 1981 (the **"CA 1981"**) convening meetings (the **"Scheme Meetings"**) of the beneficial owners of their shares, in their capacity as creditors of the Scheme Companies (the **"Scheme Creditors"**), for the purpose of considering and, if thought fit, approving schemes of arrangement between each of the Scheme Companies and its Scheme Creditors (the **"Schemes"**). The applications were originally supported by the evidence filed by the Scheme Companies including:
  - a. The third affidavit of Federico Alejandro Candiolo filed on behalf of the Scheme Companies dated 17 November 2021 (**"Candiolo 3"**);

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<sup>1</sup> The Investors are the beneficial owners of the shares in the Private Fund or the Public Fund (as applicable) in their capacity as creditors of the Private Fund or the Public Fund (as applicable). The Scheme Creditors will be the Investors (other than HWH, Partners and certain funds managed by Partners, as explained (and as those defined terms are set out) in paragraph 7 below) as at the date designated as the **"Scheme Record Time"**, which will occur shortly before the date of the Scheme Meetings.

- b. The first and second affidavits of Andrew Good of Skadden, Arps, Slate, Meagher & Flom (“**Skadden**”) dated 16 November 2021 (“**Good 1**”) and 1 December 2021 (“**Good 2**”);
  - c. The first affidavit of Joe Cotterell of Sterling Financial Print dated 16 November 2021; and
  - d. The first affidavit of Eric Bertrand of Centaur Fund Services (Bermuda) Limited dated 15 November 2021.
3. Shortly before the original return date for this hearing on 10 November 2021, certain parties informed the Scheme Companies that they intended to oppose the Schemes. Those parties are Pension Insurance Corporation plc (“**PIC**”) and HWH Realty Holdings LLC (“**HWH**”), both of which are Investors in the Private Fund, and Partners Capital LLC and certain of its clients (“**Partners**”, and together with PIC and HWH, the “**Opposing Scheme Creditors**”), which is an investment manager and adviser to various Investors in the Private Fund. The Opposing Scheme Creditors had filed evidence from several people.
4. Shortly before the Convening Hearing on 7 December 2021, PIC withdrew its opposition to the Scheme proposed by the Private Fund, and signed a support undertaking. PIC were no longer part of the Opposing Scheme Creditors which consequently consisted of HWH and Partners.
5. On 7 and 8 December 2021, there was a full hearing when I heard submissions from counsel for the Scheme Companies and the Opposing Scheme Creditors. Counsel for the Scheme Companies provided full details of the proposed Schemes and counsel for the Opposing Scheme Creditors provided full details of their objections to the Schemes. At the end of the hearing, I reserved judgment.
6. On 28 January 2022, counsel for the Scheme Companies informed the Court by letter that the Scheme Companies and the remaining Opposing Scheme Creditors had agreed to an in principle settlement that would, if successfully concluded, result in the withdrawal of the objections to the proposed Schemes raised by those creditors. On that basis, modifications would be required to the proposed Schemes. In order for the proposed Schemes (as amended) to proceed, the Scheme Companies would still require Orders from the Court

summoning meetings of the Scheme Creditors, and the Court would still need to be satisfied that it had the necessary jurisdiction to make the Orders sought.

7. On 3 February 2022, counsel for the Scheme Companies informed the Court by letter that the Scheme Companies and the remaining Opposing Scheme Creditors (HWH and Partners) had entered into a settlement agreement (the “**Settlement Agreement**”). As a result of the Settlement Agreement, HWH, and Partners would no longer be Scheme Creditors and they no longer opposed the Private Fund Scheme. Thus, there would no longer be Opposing Scheme Creditors.
8. On 16 February 2022, there was a hearing in Court when counsel for the Scheme Companies provided an update on the proposed Schemes (the “**Update Hearing**”). They relied on the Third Affidavit of Peter Newman sworn on 15 February 2022 (“**Newman 3**”) which provided an overview of the developments since the Convening Hearing. At the end of the hearing I made the Orders with reasons to follow, which I now provide.
9. As the Opposing Scheme Creditors withdrew their objections, I have for the majority of this Judgment referred only to the submissions of the Scheme Companies referring to the same as the “Scheme Companies” or “counsel for the Scheme Companies” or “counsel”.

#### **Background to the Scheme Applications – Prior to the Settlement Agreement**

10. Counsel for the Scheme Companies submitted that in light of litigation brought and threatened against them, the directors of each Scheme Company consider that the risk of Scheme Creditors bringing claims against the Scheme Companies or persons who are indemnified by the Scheme Companies in relation to certain claims which might be made against them (referred to as “**Investor Claims**”) is such that they cannot make further distributions to Scheme Creditors at present. This is because the Scheme Companies are likely to incur costs and expenses (including costs of defending such claims) if Investor Claims are brought and other liabilities if Investor Claims succeed or are settled.
11. The Schemes form part of a wider proposal (the “**Buy-Out Transaction**”) pursuant to which the Scheme Creditors will receive 100% of the adjusted net asset value of the shares in which they are beneficially interested (the “**Closing NAV**”) which includes the value of

a US\$20 million contribution by Markel Corporation or its affiliates towards the expenses of the transaction and future run-off of the group (the "**Administrative Expenses Contribution**"),<sup>2</sup> plus their pro rata share of a further US\$34 million which will be contributed by Markel Corporation or its affiliates (the "**Additional Consideration**"), while retaining the right to any future upside should the value of fund assets increase.

12. In exchange, the Scheme Creditors will provide releases (the "**Releases**") of any Investor Claims that they might hold against the Scheme Companies and certain third parties, including all those who are, directly or indirectly, entitled to an indemnity from the Scheme Companies, such as Markel Corporation (the "**Indemnified Parties**").
13. The Releases, which the Scheme Companies accept are broad, are a key feature of the Schemes. Markel Corporation is not willing to fund the Buy-Out Transaction if there remains any risk of litigation being brought by Scheme Creditors in relation to the Investor Claims. The funding is only available if Markel Corporation is confident that the Schemes will bring an end to the litigation threatened by a number of the Scheme Creditors, and which might be brought by other Scheme Creditors. The Schemes are designed to bring about finality and certainty and the breadth of the Releases reflects that and is necessary to achieve it.
14. On 1 October 2021, the Bermuda Court appointed joint provisional liquidators ("**JPLs**") in respect of the Scheme Companies and other entities in the Group for the purpose of overseeing the implementation of the Schemes and the Buy-Out Transaction (together, the "**Restructuring**"). The appointment of the JPLs brought into effect a moratorium on claims against the Scheme Companies which has subsequently been recognised in the U.S. under Chapter 15 of the U.S. Bankruptcy Code.
15. Absent the Schemes, the boards of directors of the Scheme Companies had determined that they would have no choice but to take steps to place the Scheme Companies into full liquidation proceedings. A report had been prepared by AlixPartners UK LLP (the

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<sup>2</sup> Closing NAV is calculated as the higher of (i) the net asset value ("**NAV**") of the shares on the date on which the Restructuring completes or (ii) the NAV of the shares on 31 August 2021, in either case adjusted to allow for transaction costs, the Administrative Expenses Contribution, projected on-going management costs, and the release of certain litigation reserves.

**“AlixPartners Report”**) which indicated that returns to Scheme Creditors in that scenario would be substantially lower than if the Schemes are implemented.

16. Thus, the Scheme Companies submit that in the interests of the Scheme Creditors that they be permitted to convene meetings of the Scheme Creditors, and, if the Schemes be approved at those meetings, for the Schemes to be sanctioned, allowing the Buy-Out Transaction to proceed.
17. All Private Fund Scheme Creditors will receive the same treatment under the Schemes, in that they will receive 100% of the Closing NAV of the shares in which they are beneficially interested, plus their pro rata share of the Additional Consideration.
18. Public Fund Scheme Creditors will effectively receive the same treatment, save that their share of the distributions will be made via the Public Fund through its receipts from the Private Fund.
19. The Scheme Companies propose that their Scheme Creditors should be divided into a number of classes for the purpose of voting on the Schemes:
  - a. For the Private Fund Scheme, it is proposed that the Scheme Creditors who are beneficially interested in shares in the main fund of the Private Fund (the **“Master Fund”**) will be divided into four classes depending on which policy year they invested in (each a **“Master SP Class”** for 2016, 2017, 2018 and 2019 respectively). The Scheme Creditors who are beneficially interested in a separate sub-fund of the Private Fund (the **“Aquila Fund”**) will vote in a further separate class (the **“Aquila Class”**).
  - b. The Public Fund issued two series of shares, ordinary shares (**“Ordinary Shares”**) and C shares (**“C Shares”**). Ordinary Shares correspond to investments in the Master Fund of the Private Fund made in policy years 2016, 2017, 2018 and 2019, whereas the C Shares correspond to investments made in policy years 2018 and 2019. It is therefore proposed for the Public Fund Scheme that the Scheme Creditors who are beneficially interested in the Ordinary Shares will vote in a separate class from those beneficially interested in the C Shares.

20. At the Convening Hearing in December 2021, the Court was informed that the Schemes had the support of over 82% of each class of Private Fund Scheme Creditors and over 95% of each class of Public Fund Scheme Creditors (in each case by value, as described below). As at 11.59pm on 9 November 2021<sup>3</sup>:

- a. 98.2% of the Public Fund Scheme Creditors interested in C Shares and 95.4% of Public Fund Scheme Creditors interested in Ordinary Shares had undertaken to support the Public Fund Scheme, in each case by value with value being calculated by reference to the NAV of the shares held by each Scheme Creditor.
- b. Private Fund Scheme Creditors had undertaken to support the Private Fund Scheme in the following percentages by value, with value again calculated by reference to the NAV of the shares held by each Scheme Creditor:
  - i. 88.81% of the 2016 Master Fund SP Class;
  - ii. 88.28% of the 2017 Master SP Class;
  - iii. 82.24% of the 2018 Master SP Class;
  - iv. 94.57% of the 2019 Master SP Class; and
  - v. 100% of the Aquilo Class.

### **Background to the Group and Circumstances**

21. The factual background to the applications was set out in Candiolo 3. Mr. Candiolo is the Assistant Secretary of the Manager.

### **Background to the Group**

22. Mr. Candiolo provided a background to the Group. The Markel CATCo business was acquired by Markel Corporation in 2015. Since then it has been managed by Markel CATCo Investment Management Ltd (the “**Manager**”). Until 2019, the Group offered Investors the opportunity to acquire shares that would allow the Investors to participate in

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<sup>3</sup> This was the original deadline for providing an undertaking to support the Schemes and be eligible to receive the Early Consent Fee per Candiolo 3 at [18].

the performance – either positive or negative – of portfolios of property and casualty reinsurance and retrocessional reinsurance contracts. Investors would invest for a set period, usually a year or three years, and the money they invested would be exposed to losses on any insured events occurring during the term of their investment. Investors would earn positive returns if the premium on the retrocessional reinsurance and/or reinsurance contracts in which they invested exceeded the sum of the losses on those contracts plus any fees paid to the Manager.

23. In 2017 and 2018, following six years of gains (by the Group and its predecessor prior to the acquisition by Markel Corporation), the catastrophic risk reinsurance market suffered its worst and fourth-worst years of losses, respectively. Following these events, the Group ceased offering new investment and has been in run-off since 2019. Since that time, the Group has returned approximately US\$2.3 billion to Investors, but its ability to continue returning capital to Investors has now been impaired by certain claims asserted against the Group and related parties.

24. Mr. Candiolo explained how the investment schemes operated. Investors could invest in the Private Fund directly by purchasing shares in one of its segregated accounts (each a “**Fund**” or indirectly by purchasing shares in the Public Fund (which is itself an Investor in the Private Fund). He explained that the Private Fund is a mutual fund company under the CA 1981 and a segregated company under the Segregated Accounts Companies Act 2000 (the “**SAC Act**”). The Private Fund offered two separate investment strategies, through the Aquilo Fund and through the “**Retro Funds**”. The interests of the Retro Funds are linked, because six of the Retro Funds<sup>4</sup> (each a “**Sub-Fund**”) purchased shares in the Master Fund, which is the seventh Retro Fund. The Private Fund, the Public Fund and the Reinsurer were each managed by the Manager, pursuant to certain management agreements (the “**Management Agreements**”). The Manager also holds all the voting shares in the Private Fund and the Reinsurer. As set out below, the Management Agreements contain broad indemnities in favour of the Manager and certain of its related parties.

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<sup>4</sup> Namely the Diversified Fund II, Limited Diversified Arbitrage Fund (“**LDAF**”), the Diversified Arbitrage Fund, the GTL Diversified Fund, the Markel Diversified Fund and the QIC Diversified Fund: Explanatory Statement, Part II, paragraph 29.



Investments in the Private Fund

25. Mr. Candiolo explained in detail about the structure of the investments in the Private Fund which were primarily raised on an annual basis and funded at the beginning of the calendar year after which they were invested in the Reinsurer. He explained about the disposition of the capital at the end of the year and about the creation of “side-pockets” which are distinct classes of shares issued by the Master Fund which give their holders an entitlement to share in a defined pool of assets. Thus the assets of the Master Fund are divided into four SPs, one for each policy year in 2016, 2017, 2018 and 2019 ((the “**Retro Fund SPs**”) (referred to as the “**2016 Master Fund SP**”, “**2017 Master Fund SP**”, “**2018 Master Fund SP**” and “**2019 Master Fund SP**” respectively).
26. The effect of this structure is that while Investors who invested in any of the Retro Funds for a particular year remain holders of SP shares issued by that particular Retro Fund for that year, all Investors who invested in the Retro Funds within any policy year have identical (although proportional) economic interests in the Master Fund SP for that year. Investors that invested through a Sub-Fund hold that interest indirectly, while Investors that invested directly in the Master Fund hold their interest directly.
27. Accordingly, counsel for the Scheme Companies submitted that it is appropriate to divide investors in the Retro Funds according to which policy year they invested, rather than drawing a distinction between the Investors in the different Retro Funds.
28. The Aquilo Fund also has SPs, one for each calendar year from 2014 to 2020. Markel Corporation is the sole holder of shares in the 2020 Aquilo SP, because it bought out the interests of Investors in the remaining on-risk policies in the Aquilo Fund at the end of 2019. 100% of investors in the Aquilo Fund have undertaken to support the Schemes.

Share rights in the Public Fund

29. The Public Fund has two classes of shares, the Ordinary Shares and the C Shares, the proceeds of which were used to subscribe for shares in the Master Fund. The Ordinary

Shares are entitled to share in particular investments in policy years 2016, 2017, 2018 and 2019, whereas the C Shares are entitled to share in particular investments in policy years 2018 and 2019 per Candiolo 3, [54].

The Reinsurer and the Manager

30. Mr. Candiolo explained that Investors in the Group invested capital which was used by the Private Fund to subscribe for shares in Markel CATCo Re Ltd (the “**Reinsurer**”), which in turn used the capital to write fully collateralised catastrophic risk reinsurance contracts (as well as other insurance products) with cedants who paid the Reinsurer premiums under those contracts. He further explained that Investors’ capital was held in cash and cash equivalent assets in trust accounts. (the “**Trust Accounts**”) held in New York for the benefit of the relevant cedant.

31. Mr. Candiolo explained that 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, U.S.A.). As mentioned above, the Manager had entered into Management Agreements with the Private Fund, the Public Fund and the Reinsurer, and receives management fees for its services.

32. Under the Management Agreements (and certain other agreements, including the Bye-Laws) each of the Private Fund, Public Fund and Reinsurer have provided broad indemnities to the Manager, its affiliates and certain others in respect of (in summary) claims arising out of the performance by the Manager, and its officers, directors, employees and affiliates (together, the “**Indemnified Parties**”) of their respective duties under the Management Agreements. The precise scope of each indemnity depends on the wording in each Management Agreement. Each Management Agreement contains certain carve-outs which make the indemnities unresponsive to certain types of claim such as claims based on negligence and/or wilful default and fraud or dishonesty. The scope of the indemnity varies between the agreements.

### Consequences of Losses in 2017 and 2018

33. As a result of a large number of catastrophic events in 2017 and 2018, the Investors suffered material losses on their investments for those years. In 2019, the Manager ceased offering new investment in the Master Fund or the Aquilo Fund and at the end of the 2019 policy year, all remaining capital in the segregated accounts other than that trapped as collateral was returned to Investors. On 26 March 2019, the Public Fund voted to approve the run-off of its investments in the Master Fund. As of 31 August 2021, funds totalling US\$2.3 billion had been released and returned to Investors, leaving the Private Fund with assets of US\$735.8 million yet to be distributed. The run-off is expected to take until at least January 2023.

### Investor Litigation

34. The claims asserted and brought by certain Investors prior to the Schemes being launched were explained in Good 1.

#### Partners' Correspondence in 2019

- a) On 26 March 2019, Partners wrote to Markel Corporation setting out its concerns regarding certain representations made by the Manager or its employees that it claimed were misleading in various ways.

#### Eugenia Litigation

- b) In October 2020, one of the Private Fund Scheme Creditors, Eugenia II Investment Holdings Ltd ("**Eugenia**"), brought proceedings against the former CEO of the Manager, Anthony Belisle, in the U.S. District Court for the Middle District of Florida. Eugenia alleged fraudulent and negligent misrepresentation for statements made in 2017 relating to Eugenia's investment for the 2018 policy year, and claimed US\$7.5 million plus costs and punitive damages. Eugenia was represented by Sullivan (the law firm which represented HWH when it filed a claim against the Manager and Mr Belisle, and which now represents Partners, both of which were at the time of the Convening Hearing in December 2021 still Opposing Scheme

Creditors). In accordance with an indemnity applicable due to his previous employment, Mr. Belisle demanded that the Manager meet his costs of defending this claim and the amount of any judgment awarded. Eugenia's claim was settled with proceeds of the Group's D&O insurance policy without admission of liability

#### HWH Claim

- c) Whilst the Eugenia litigation was ongoing, HWH raised a claim against Mr. Belisle, the Manager and the Private Fund and requested a payment of US\$16 million. HWH was at that time represented by Sullivan, but is now represented by Quinn Emanuel. HWH indicated that its claim was based on a slide in an investor presentation and raised complaints similar to Partners and Eugenia. HWH also suggested that the Manager, the Reinsurer and the Private Fund operated as a scheme to defraud Investors by misleading them about the risk involved in an investment. On 3 December 2021, HWH filed a claim against Mr Belisle in the US District Court for the Middle District of Florida.

#### Partners' Litigation

- d) On 2 December 2021 Partners filed a claim against Mr. Belisle in the Circuit Court of the Twentieth Judicial Circuit in and for Collier County, Florida (the "**Partners Litigation**") seeking US\$69 million against Mr. Belisle for fraudulent or negligent misrepresentation. The Scheme Companies were informed of this development on 3 December 2021. It is alleged that Mr. Belisle and persons under his direction made false representations to induce the funds managed by Partners to invest in the Private Fund in late 2017.

#### Future Investor Claims

- e) In light of the matters set out above, the directors of the Scheme Companies are concerned that Scheme Creditors will seek to commence claims against the Manager, the Scheme Companies or the Reinsurer, or any of the other Indemnified Parties. The Scheme Companies say that they will defend any such legal proceedings (although if the Schemes are not implemented this would be a matter for liquidators in due course). However, at the material time, it was apparent that

the then Opposing Scheme Creditors considered (as other Scheme Creditors may do) that they did have valid Investor Claims which, if pursued, could result in adverse judgments being given against the Scheme Companies.

35. The Scheme Companies have extensive indemnification obligations under the Management Agreements. In addition, the bye-laws of the Manager, the Reinsurer and each Scheme Company (the “**Bye-Laws**”) all contain similar indemnification provisions. If Investor Claims were to be brought against the Scheme Companies or any of the Indemnified Parties, the Scheme Companies and/or the Reinsurer would be required to pay the costs of defending the claims as well as satisfying any adverse judgments awarded. In the Eugenia Litigation, Mr. Belisle sought an indemnity from the Manager, and it seemed likely that he would also have done so for both the Partners Litigation and HWH claim in Florida.

#### The Alternative to the Schemes

##### The Liquidation Scenario

36. Counsel for the Scheme Companies submitted that the directors of the Private Fund consider that the prudent course is to make no further distributions until the possibility of future Investor Claims being asserted is resolved. If the Schemes are not approved, it is unlikely that any alternative transaction will be proposed by Markel Corporation or another third party, and the directors consider it likely that Scheme Creditors will pursue Investor Claims, which could deplete or exhaust the assets of the Scheme Companies. Moreover, section 15(2) of the SAC Act provides that distributions to holders of shares in segregated accounts, by redemption or dividend, may not be made if “*there are reasonable grounds for believing that the segregated account is not, or would after the payment not be, solvent.*”.

37. Counsel submitted that the directors also consider that, given the Public Fund’s close relationship with the Private Fund, it would be appropriate to place both companies into

liquidation notwithstanding that no claims have yet been asserted against the Public Fund directly.

38. Counsel also submitted that in the absence of the Buy-Out Transaction, the directors of the Scheme Companies, the Reinsurer and the Manager are likely to apply to convert the provisional liquidations into ordinary full liquidations. This is therefore the most likely alternative to the Schemes (the “**Liquidation Scenario**”).

The AlixPartners Report

39. The Scheme Companies made reference to the AlixPartners Report which set out the likely returns to Scheme Creditors under the Liquidation Scenario in their capacity as members of the Scheme Companies. Simon Appell of AlixPartners was appointed by this Court as a joint provisional liquidator of the Scheme Companies. AlixPartners modelled two scenarios making various assumptions. In summary, the report indicated that the Schemes offer a better result for Scheme Creditors than the Liquidation Scenario assuming that individual Investors do not have unique Investor Claims which would entitle them to any proportionately different recovery from fund assets in a liquidation than any other Scheme Creditors. This information was provided in the draft Explanatory Statement exhibited to Candiolo 3.

**Terms of the Restructuring – Prior to the Settlement Agreement**

40. Counsel for the Scheme Companies submitted that the Buy-Out Transaction would result in the early return of all fund capital to the Scheme Creditors, together with their pro rata share of the Additional Consideration, conditional upon the Releases being granted.
41. The Scheme Companies set out the mechanics for implementing the Scheme. They also made detailed submissions about various circumstances including the Releases, the buy-distributions to the Scheme Creditors, the Closing NAV, the distribution of the Additional Consideration including of that to the Public Fund for further distribution to its creditors,

the management of the Group after the restructuring and distribution of any further capital released after the closing date of the Schemes (“**Closing Date**”).

42. In respect of fees, they submitted the Schemes include two fees payable to Scheme Creditors, the payment of which is conditional upon the Schemes being sanctioned as follows:

- a. The “**Early Consent Fee**” will be paid to all Scheme Creditors who executed Undertakings prior to 9 November 2021 and who, consistent with their Undertakings, vote to approve the Schemes at the relevant Scheme Meetings. It will be calculated as 2% of the Current NAV of the shares in which those of each Scheme Creditors are beneficially interested and will be funded by an affiliate of Markel Corporation.
- b. The “**Work Fee**” will be paid to two Scheme Creditors, PKA A/S (“**PKA**”) and Almitas Capital (“**Almitas**”) in respect of the work that they have done in negotiating the terms of the Buy-Out Transaction. It will be calculated as 2% of the Current NAV of the shares in which those Scheme Creditors are beneficially interested and will be funded by Markel Corporation or one of its affiliates.

#### **The Settlement Agreement**

43. At the hearing on 16 February 2022 the Court was informed that in respect of the Settlement Agreement, some of the terms are as follows:

- a. HWH and Partners and their related parties will be excluded from the Private Fund Scheme. As they are no longer Private Fund Scheme Creditors, they will not be entitled to vote at any of the Private Fund Scheme Meetings.
- b. HWH and Partners will stay the proceedings commenced by each of them in Florida, USA (the “**Florida Litigation**”) and, if the Restructuring is completed, will ensure that the Florida Litigation is dismissed.

- c. On the date of the completion of the Restructuring, HWH and Partners will receive \$20 million to be divided between them as they see fit plus a cash amount equal to the current Net Asset Value of the shares in which they are beneficially interested.
- d. With effect from the Closing Date, HWH and Partners will grant releases, which mirror the releases Scheme Creditors will be required to provide under the Schemes.

Improved terms for remaining Scheme Creditors

44. The Court was also informed that as a result of the further negotiations, the Scheme Companies have agreed certain improvements to the Schemes for all Scheme Creditors including that: (a) the Additional Consideration to be provided by Markel Corporation has been increased from US\$34 million to US\$44 million; and (b) Markel Corporation has increased the Administrative Expense Contribution to an amount equal to all of the transaction costs in respect of the Schemes. This is estimated to comprise an increase of US\$5 - US\$10 million above the amounts previously described in the draft Explanatory Statement.
45. I accept that the terms of the Settlement Agreement will not in any way diminish the returns for Scheme Creditors under the Schemes as, on the contrary, the outcome for all Scheme Creditors has improved as a result of the further negotiations and agreements.

Undertakings

46. The Newman 3 evidence shows that it is clear that the Schemes are supported by an overwhelming majority of Scheme Creditors and well in excess of the statutory requirements as follows:
- a. 98.2% of Public Fund Scheme Creditors beneficially interested in the C Shares and 95.4% of Public Fund Scheme Creditors beneficially interested in the Ordinary Shares.
  - b. Private Fund Scheme Creditors in the following percentages, in each case by value:
    - vi. 99.47% of the Retro Fund 2016 Class



- vii. 99.11% of the Retro Fund 2017 Class
- viii. 99.87% of the Retro Fund 2018 Class
- ix. 99.60% of the Retro Fund 2019 Class and
- x. 100% of the Aquilo Class

#### Impact of the Developments on the Scheme

47. Counsel for the Scheme Companies submitted that the exclusion of HWH and Partners from the Private Scheme does not present any obstacles to convening the Scheme Meetings or sanctioning the Schemes. I accept that their exclusion is a commercial decision taken by the Private Fund in order to facilitate the implementation of the Schemes.

#### The Convening Hearing

48. Counsel for the Scheme Companies made detailed submissions about the Convening Hearing as set out below.

49. Section 99(1) CA 1981 provides that:

*“Where a compromise or arrangement is proposed between a company and its creditors or any class of them or between a company and its members or any class of them, the Court may, on the application of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the Court directs”.*

50. Section 99(1) CA 1981 provides that:

*“Where a meeting of creditors or any class of creditors or of members or any class of members is summoned under section 99 there shall—*

- (a) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors of the company whether as directors or as members or as creditors of the company or*

*otherwise, and the effect thereon of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons; and*

*(b) in every notice summoning the meeting which is given by advertisement, be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid.”*

51. Counsel submitted that these provisions mirror the corresponding provisions in the UK Companies Act 1948 and are substantially similar to the scheme provisions in the UK Companies Act 2006. Accordingly, when considering these provisions, the Bermuda Court mirrors the approach taken in England and other common law jurisdictions. The rationale for this approach was explained by Kawaley CJ in *Re Titan Petrochemicals Group Limited* [2014] Bda LR 90 at [12]:

*“As Bell JA (Acting) more recently himself observed in Kader Holdings Company Limited-v-Desarrollo Inmobiliario Negocios Industriales de Alta Tecnologia de Hermosilio, S.A. de CV [2014] CA (BDA) 13 Civ (10 March 2014): “It seems to me sensible that the position in Bermuda should mirror that in England, as well as that in other common law jurisdictions...” (at paragraph 24). It is true that this observation was made in the context of determining the content of common law rules of private international law. However, the general desirability of a common approach is no less compelling when it comes to construing statutory provisions derived from the same legal roots and which often apply to companies whose operations and restructurings traverse multiple jurisdictional shores.”*

52. Counsel submitted that the procedural aspects of the Convening Hearing are governed by Practice Direction No. 18 of 2007, Guidelines applicable to Schemes of Arrangement under Section 99 of the Companies Act 1981. Paragraphs 2 and 3 of the Practice Direction provide that:

- a. It is the responsibility of the applicant to determine the appropriate class composition for the scheme meetings, and to draw to the Court’s attention any issue that may arise regarding the composition or conduct of the meetings.
- b. Unless there are good reasons for not doing so, the applicant should take all steps reasonably open to it to notify any person affected by the scheme that the scheme is being promoted, the purpose it is designed to achieve and the proposed class composition.

53. The function of the court at the convening hearing is “*emphatically not*” to consider the merits or fairness of the proposed scheme or plan, which will arise for consideration at the future sanction hearing if the scheme is approved by the statutory majority of creditors: see *Re Telewest Communications plc* [2004] BCC 342 at [14] per David Richards J.

### **Jurisdiction**

#### **Each Scheme Company is a “company”**

54. Counsel for the Scheme Companies submitted that they are incorporated in Bermuda and are therefore clearly liable to be wound up in Bermuda and that they are already in provisional liquidation. Therefore, each Scheme Company is a “company” within section 99 CA 1981. I accept this submission.

#### **The Scheme Creditors are creditors of the Scheme Companies**

55. Counsel submitted that the starting point is that it is common for schemes of arrangement to be proposed with a large group of potential or contingent creditors, many of whom may not ultimately have a valid claim against the company. They argued that the present Schemes squarely fell into this category, as it was noted by Williams Trower QC (as he then was):

*“In these types of case, the need for certainty is often the impetus behind the proposed scheme. In particular a company may be faced with a situation in which it knows or suspects that there are claims out there, but the extent of those claims is highly uncertain and the very fact of that uncertainty is acting as a break on the company’s ability to plan for the future.”*<sup>5</sup>

#### **The meaning of “creditor” in section 99 CA 1981**

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<sup>5</sup> *Consumer Redress and the Scheme Jurisdiction*, Williams Trower QC, South Square Digest, August 2015, p7.

56. Counsel for the Scheme Companies made detailed submissions about the meaning of “creditor”. They submitted that the meaning of “creditor” in section 99 of the CA 1981 was considered in detail by Kawaley CJ in *Re Titan Petrochemicals Group Limited*. In that case at [12] Kawaley CJ emphasised the “*general desirability of a common approach... when it comes to construing statutory provisions derived from the same legal roots and which often apply to companies whose operations and restructurings traverse multiple jurisdictional shores*”. Following the approaches taken in England, Hong Kong and Singapore, he held that the beneficial owners of notes held via a trust structure can vote in schemes of arrangement as contingent creditors, provided that they are entitled to call for the issuance of definitive notes in certain circumstances under the term of the notes indenture.

57. The question of whether a contingent creditor can vote in a scheme of arrangement was considered in *Re Lehman Brothers International (Europe) (in administration)* [2009] EWCA Civ 1161 where Patten LJ stated at [29] that:

*“There is no statutory definition of “creditor” or “arrangement” for the purposes of Part 26 and, in relation to “arrangement”, the courts have been careful not to attempt to provide one beyond the limited criteria described in Re NFU Development Trust Ltd. But Mr Snowden contends that, in order to be a creditor of the company, it is necessary to be owed money either immediately or in the future pursuant to a present obligation or to have a contingent claim for a sum against the company which depends upon the happening of a future event such as the successful outcome of some litigation. Although a creditor for the purposes of Part 26 is not therefore limited to someone with an immediately provable debt in a liquidation, it does require that person to have a pecuniary claim against the company which (once payable) would be satisfied out of the assets as a debt due from the company.” (Emphasis added.)*

58. In support of this conclusion, the Court of Appeal considered the decision of Lindley J in *Re Midland Coal, Coke & Iron Company* [1895] 1 Ch 267 and the comparatively recent decision of David Richards J in *Re T&N Ltd* [2005] EWHC 2870. In the former case, Lindley LJ held that a person with a contingent claim qualified as a creditor for the purpose of a scheme of arrangement under the Joint Stock Companies Arrangement Act 1870, stating at [277] that “*the word “creditor” is used in the Act of 1870 in the widest sense, and that it includes all persons having any pecuniary claims against the company. Any other construction would render the Act practically useless.*”

59. In *Re T&N Ltd* [2005] EWHC 2870, having considered *Re Midland*, David Richards J concluded at [40] that persons with contingent claims for damages were also creditors for the purpose of a scheme of arrangement proposed under the English Companies Act 1985:

*“In my judgment, ‘creditors’ in s 425 is not limited to those persons who would have a provable claim in the winding up of the company, although it clearly includes all those who would have such a claim. As was submitted by Mr Snowden and other counsel, one of the recognised purposes of s 425 is to encourage arrangements with creditors which avoid liquidation and facilitate the financial rehabilitation of the company: see, for example, Sea Assets Ltd v PT Garuda Indonesia [2001] EWCA Civ 1696 at para 2. This suggests that as wide a meaning as possible should be given to “creditors” in the section. Having said that, it is important to bear in mind that s 425 is designed as a mechanism whereby an arrangement may be imposed on dissenting or nonparticipating members of the class and such a power is not to be construed as extending so as to bind persons who cannot properly be described as ‘creditors’.”* (Emphasis added.)

The threshold for having a contingent claim

60. Counsel made various submissions about the threshold for having a contingent claim. They submitted that there was no suggestion in the authorities that the relevant contingency must have a real prospect of occurring, relying on *Re Noble Group Ltd* [2019] BCC 349 (where the scheme company was incorporated in Bermuda, and an inter-conditional Bermudian scheme of arrangement was promulgated on identical terms) where Snowden J noted in the convening judgment [at [162] that where relevant instruments provide that beneficial noteholders can acquire direct rights against an issuer in some (even remote) circumstance, underlying beneficial noteholders can properly be classified as “contingent creditors” of the company. It was submitted that this approach had been followed in numerous English cases, for example *Re Lecta Paper UK Limited* [2020] EWHC 382 (ChD) per Trower J at [18].

61. Counsel further relied on *Re Titan Petrochemicals Group Limited* where Kawaley CJ stated at [22] *“This analysis appears to me to follow a traditional approach to determining who qualifies as a contingent creditor, not discernibly different from the test applicable in the winding-up petition or proof of debt contexts. I found that it supported the submission that*

*the Note Creditors ought properly to be accepted as entitled to vote on the proposed Scheme as contingent creditors.”*

62. In light of the above reasoning, Counsel submitted that the following principles should be followed:

- a. For the purpose of voting on a scheme of arrangement, a contingent creditor can include anybody who may in “*some (even remote) circumstance*” have a claim against the company proposing the scheme; and
- b. The Court should take a particularly broad approach when the proposed contingent creditors have a real economic interest in the scheme company.

Potential and/or contingent creditors in a scheme of arrangement

63. Counsel for the Scheme Companies submitted that it was well established that schemes of arrangement can be proposed with contingent or potential creditors, particularly in circumstances where the company “*knows or suspects that there are claims out there, but the extent of those claims is highly uncertain*” (see the quotation by William Trower QC cited above). One reason why schemes are particularly appropriate in this situation is because they can bind a wide group of persons, including parties who are subsequently held not to have a valid claim against the scheme company.

64. Counsel cited the case of *Re Card Protection Plan Limited* [2013] EWHC 3288 (Ch), where a scheme of arrangement was proposed with approximately 6.9 million policyholders who might have been mis-sold policies providing protection against the loss, theft or misuse of credit cards, or against misuse of the policyholders’ identities. There, David Richards J held that the court did have jurisdiction to make a convening order stating at [6]-[7] “*It is, I think, clear that it is not necessary that only persons with established claims can be made the subject of a scheme of arrangement. The statutory provisions would to a considerable extent be unworkable if it were otherwise. It is, in my judgment, enough that they are persons who consider that they do or may have claims to be creditors...*”

65. Counsel also cited the case of *Re AI Scheme Ltd* [2015] EWHC 1233 (Ch), which concerned a similar scheme to that proposed in *Re Card Protection Plan*. The scheme creditors comprised approximately 1.991 million potential creditors in respect of the mis-selling of fraud insurance cover. The scheme was proposed as a mechanism for dealing with these claims, and scheme creditors were invited to submit their claims in a redress procedure set up by the Financial Conduct Authority. There is no suggestion in the convening or sanction judgments that all of the scheme creditors necessarily had claims against the scheme company. Norris J highlighted that there was potential for a mis-selling claim where purchasers may be able to seek redress. Thus there were 1.991 million potential claimants who might each have a claim. Norris J had accepted that the potential claimants were contingent creditors for the purpose of the scheme.
66. Counsel submitted that it is clear from *Lehman Brothers* at [29] that Patten LJ contemplated that a claim which “*depends upon the happening of a future event such as the successful outcome of some litigation*” falls within his definition of a contingent claim. Norris J was correct to characterise the claims in *Re AI Scheme* in this way, indeed, any creditors whose claims would need to be established through future litigation are properly characterised as contingent creditors. Further or alternatively, it appears that there is no relevant distinction between “potential creditors” and “contingent creditors” in this context. In both *Re Card Protection Plan* and *Re AI Scheme*, the scheme creditors consisted of a large number of parties, some of whom might have valid claims against the scheme company and others of whom might not.
67. Counsel submitted that in *Re Noble* the scheme included an adjudication mechanism that enabled creditors whose claims were disputed by the company to be determined within the scheme. It was apparent from the convening judgment that the company considered it “unlikely” or “highly unlikely” that the claims of the other scheme creditors other than one would succeed. Also, there was no suggestion in *Re Noble* that a scheme creditor who ultimately failed to establish a claim in the adjudication procedure would not be regarded as a scheme creditor, and therefore would not be bound by the wide third-party releases in that case. The same is true in *Re Card* and *Re AI Scheme*. The reason for this is obvious: it would be entirely pointless, and deprive the scheme jurisdiction of practical efficacy, if a

scheme designed to adjudicate on potential claims failed to bind any parties who tried, but failed, to establish a claim within the scheme.

Present case

68. Counsel submitted that a number of sophisticated Scheme Creditors had asserted claims in respect of the losses that they suffered through their investments in the Private Fund. As set out in the draft Explanatory Statement, the claims included assertions about defrauding investors and assertions that the Manager and/or its officers induced Scheme Creditors to invest in the Scheme Companies as a result of misrepresentations made to most if not all Scheme Creditors. In both cases, counsel submitted how Scheme Creditors could establish a claim against the Scheme Companies and as the claims are subject to the successful outcome of future litigation, they are properly characterized as contingent claims, in accordance with *Re AI Scheme* and *Re Lehman Brothers*. They stressed that regardless of whether the claims are described as contingent claims or potential claims, the Court can be satisfied that the Scheme Creditors are properly to be regarded as creditors of the Scheme Companies for the purposed of the scheme of arrangement jurisdiction.

69. Counsel submitted that the following principles apply:

- a. It is well established that the fact that a creditor's claim is contingent, disputed and/or has not yet been asserted does not prevent a creditor from being bound by a scheme of arrangement.
- b. The fact that the Scheme Companies do not consider that any Investor Claims would be likely to succeed does not prevent them from being "contingent claims" in accordance with *Re Lehman Brothers* and *Re Noble*.
  - i. The scheme jurisdiction would be engaged based on some circumstance, no matter how remote, in which the Scheme Creditors could become creditors of the Scheme Companies (*Re Noble*);
  - ii. Since the Scheme Creditors are all Investors in the Scheme Companies and in light of the potential ways in which Investors may bring claims against the Scheme Companies, the test is clearly satisfied.



- iii. By voting on the Schemes, the Scheme creditors will confirm that they consider themselves to have a claim against the relevant Scheme Company.
- c. It is important to adopt a broad approach towards contingent claims where proposed Scheme Creditors have a real economic interest in the Scheme Companies.
- d. Any creditors voting on the Schemes will be required to confirm on their voting/proxy forms that they consider themselves to be a creditor of the relevant Scheme Company. Based on Undertakings<sup>6</sup>, the Court can be satisfied that the overwhelming majority of Scheme Creditors will confirm that they consider themselves to be creditors of the Scheme Companies.

70. Counsel therefore submitted that the Scheme Creditors are clearly “creditors” for the purpose of section 99 CA 1981, such that the Court has jurisdiction to cover and sanction the proposed Schemes.

71. In light of the above submissions, I am satisfied that the Scheme Creditors are “creditors” for the purposes of section 99 CA1981.

#### The impact of the SAC Act

72. Counsel for the Scheme Companies submitted that no difficulty was caused by the fact that the Private Fund is a segregated accounts company under the SAC Act, where assets or liabilities are linked to particular segregated accounts or the company’s general account. They relied on the case of *BNY AIS Nominees Limited and ors v New Stream Capital Fund Ltd* [2012] SC (Bda) 66 Civ where Kawaley J stated that the segregated account is wholly or substantially an extension of the company’s own legal personality. As a result, a creditor of a segregated fund of the Private Fund is characterized as a creditor of the Private Fund and would have to start proceedings against the Private Fund, thus they are creditors of the Private Fund.

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<sup>6</sup> As at the Convening Hearing, between 82.24% and 100% of each class of Private Fund Investors (including 100% of the Aquilo Fund) and between 95.4% and 98.2% of each class of Public Fund Investors have provided Undertakings.

73. In light of the above submissions I am satisfied that creditors of a segregated fund of the Private Fund are creditors of the Private Fund.

**The Schemes are each a compromise or arrangement with the Scheme Creditors**

74. Counsel for the Scheme Companies submitted that there can be no doubt that the proposed Schemes constitute a “*compromise or arrangement*” with the Scheme Creditors for various reasons. They relied on the case of *Re N.F.U. Development Trust Ltd* [1972] 1 W.L.R. 1548 at p1555 where Brightman J noted that in order to be a compromise or arrangement, a scheme must involve a degree of “*give and take*”, when it was necessary to look at the restructuring as a whole, and not just to the terms of the scheme in isolation. They cited the case of *Re Uniq plc* [2012] BCLC 783 where David Richards J stated that it would be artificial to confine the analysis to only the scheme when it actually formed a part of a restructuring which conferred substantial benefit on the members bound by the scheme.

75. Counsel submitted that in the present case there was: (a) “give” as Scheme Creditors will benefit from the Buy-Out Transaction as their shares in the Private Fund or Public Fund will be bought out in exchange for 100% of Closing NAV of relevant shares and they will also receive their pro rata share of the Additional Consideration; and (b) the “take” is that the Scheme Creditors will grant the Releases; that is, they will release any unsecured contingent claims they hold against the Scheme Companies and the other Released Parties.

76. In light of the above submissions, I am satisfied that the proposed Schemes constitute a compromise or arrangement with Scheme Creditors.

**The Releases**

77. Counsel for the Scheme Companies addressed the question of whether third-party releases can be included within a scheme of arrangement by citing several key cases from common law jurisdictions. They submitted that it was well established, both in England and elsewhere, that third-party releases that are necessary to avoid “ricochet” claims against

the scheme company, the existence of which could undermine the compromises affected by the scheme, are within the scheme jurisdiction. They relied on *Re Lehman Brothers (Europe) (No.2)* [2009] EWCA Civ 1161 per Patten LJ at 65 and several other cases and cited *Re APP China Group Ltd* [2003] Bda L.R. 50, pages 12-13 in which the approach had been adopted in Bermuda.

78. Counsel submitted that the authorities, for example, in *Re Far East Capital Ltd SA* [2017] EWHC 2878 (Ch) at [13]-[14] and *Re Noble Group Ltd* (sanction judgment), supported the release of creditor claims against those involved in the negotiation of the scheme. The justification is that a claim by a dissentient creditor against a person involved in the negotiation of the scheme would undermine the scheme. Further, following *Re Noble* and *Re Far East Capital*, the release of professional advisors is now a regular feature of English Schemes.

79. It was submitted that where the releases are an essential part of the deal and a third party whose funding or support is essential to the deal being consummated, the third party releases will be necessary in order to give effect to the arrangement proposed between the scheme, the company and its scheme creditors. They cited *Re Lehman Brothers (Europe) (No.2)* where Patten LJ expressed that an arrangement between a company and its creditors does not prevent the inclusion in the scheme of releases of contractual rights against related third parties necessary in order to give effect to the arrangement.

80. Counsel cited a line of cases underscoring a “sufficient nexus” approach. The Australian case of *Re Opes Prime Stockbroking Ltd* [2009] FCA 813 at [55], provided that third party releases can be included in a scheme where there was a “sufficient nexus” between the relationship between the scheme creditor and the scheme company on one hand and the release on the other hand. The test in *Re Opes* was considered by the Singaporean Court of Appeal in *Pathfinder Strategic Credit LP v Empire Capital Resources Pte Ltd* [2019] SGCA 29 where Sundaresh Memon CJ stated that liabilities of a primary obligor can be properly released in a scheme even in the absence of a ricochet claim adding that there was a practical attraction in the “sufficient nexus” test in *Re Opes*. The *Pathfinder* approach

was approved by the Irish Court in *Re Nordic Aviation DAC* (Barnville J, 11 September 2020) at [88]-[103].

81. Counsel submitted that there is little practical difference between the “*necessity*” test adopted in England in Singapore and the “*sufficient nexus*” test adopted in Australia as the purpose of the jurisdiction to release third party claims is to ensure that the scheme works. They also submitted that the Singapore approach is relevant in light of the case *Re Contel Corporation Limited* [2011] Bda LR 12 of where Kawaley J held “*Singapore law provisions relating to schemes of arrangement are substantially similar to those under Bermuda law*”.

Present case

82. Counsel for the Scheme Companies submitted that in the present case, the then Opposing Scheme Creditors’ argument at the December 2021 hearing that the Releases go beyond what can be done pursuant to Part VII of the CA 1981 should be rejected. This was on the basis that the release of claims against third parties which would give rise to ricochet claims is entirely standard in the context of schemes of arrangements. All of the Releases fell into this category except two categories.
83. The first category was the release of professional advisors to the Scheme Companies, which, as set out above, have become a regular feature of schemes of arrangement.
84. The second category was the Releases in respect of claims which were excluded from the relevant indemnities (such as claims for fraud, dishonestly, wilful default and/or negligence) (the “**Carve-Out Claims**”) and Releases of certain additional related parties of the Released Parties. The Scheme Companies submitted that the Releases are an integral part of the Buy-Out Transaction since Markel Corporation is not willing to provide funding for the Buy-Out Transaction unless the Releases are granted in the form proposed. This was because Markel was not willing to provide funding if there remains scope for litigation to be brought regarding whether an Investor Claim falls within a particular carve-out or not, or whether a particular connected party falls within the broad list of indemnified persons, particularly in the Private Fund Management Agreement. Additionally, without

the Release of the Carve-Out Claims, the compromise effected by the Schemes would be undermined in that Scheme Creditors would receive their distributions under the Scheme and then could seek to recover further monies from the Indemnified Parties via Investor Claims.

85. The Scheme Companies submitted that in light of these reasons:

- a. The Releases are necessary to give effect to the arrangement proposed between the Scheme Companies and the Scheme Creditors because the Buy-Out Transaction is not available in the absence of the Releases and the assertion of Carve-Out Claims could undermine the Buy-Out Transaction;
- b. Further or alternatively, the Releases are plainly necessary for the Schemes to achieve their purposes in accordance with the *Pathfinder* approach. This Court was urged to adopt this approach, particularly in light of Kawaley J's comments in *Re Contel Corporation* regarding similarities between Bermuda and Singapore schemes.
- c. Further or in the further alternative, the Releases fall within the "sufficient nexus" test set out in *Re Opes* and supported by the Singaporean Court of Appeal in *Re Pathfinder*. That "sufficient nexus" being because all of the Investor Claims arise out of the investments made by the Scheme Creditors in the Scheme Companies. Such claims are likely to arise out of the same or similar facts in that they are likely to relate to statements made prior to the relevant Scheme Creditor making an investment in the Group. This Court was urged to adopt this test given that there was little difference between "necessity" tests adopted in England and Singapore and the "sufficient nexus" test adopted in Australia.

86. In light of the above, the Scheme Companies submitted that on any view, the Releases fall within the jurisdiction of Part VII of the CA 1981.

87. In light of the above submissions, I am satisfied that: (a) the Releases are necessary in order to give effect to the proposed arrangement between the Scheme Companies and the Scheme Creditors; (b) the Releases are necessary for the Schemes to achieve their purposes; and

(c) there is a sufficient nexus between the relationship between the Scheme Creditor and the Scheme Company on the one hand, and the release of Investor Claims against all of the Released Parties on the other hand. Thus, I am satisfied that the Releases fall within the jurisdiction of Part VII of the CA 1981.

### **Class Composition**

88. Counsel for the Scheme Companies submitted that the current position is that the Schemes have the support of overwhelming majorities of the Scheme Creditors, none of whom have raised any objection to the proposed class composition.

89. Counsel set out the basic principles of class composition stating that a class “*must be confined to those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest*”: see *Sovereign Life Assurance v Dodd* [1892] 2 QB 573 at 583 (Bowen LJ) and *Re UDL Holdings Ltd* [2002] 1 HKC 172 at [27] (Lord Millett NPJ).

90. Counsel also relied on the case of *Re APCOA Parking Holdings GmbH* [2015] Bus LR 374 at [52], where Hildyard J held that the test for class composition should be divided into two stages:

*“The modern approach ... is to break the question into two parts, and ask first whether there is any difference between the creditors in point of strict legal right ... and if there is, to postulate, by reference to the alternative if the scheme were to fail, whether objectively there would be more to unite than divide the creditors in the proposed class, ignoring for that purpose any personal or extraneous motivation operating in the case of any particular creditor(s).”*

91. Counsel submitted that it is the legal rights of creditors or members, not their separate commercial or other interests, which determine whether they form a single class or separate class. Conflicting interests can be taken into account when considering whether, as a matter of discretion, to sanction the scheme or plan. They cited Lord Millett NPJ’s judgment in *Re UDL* at 184-5:

*“The test is based on similarity or dissimilarity of legal rights against the company, not on similarity or dissimilarity of interests not derived from such legal rights. The fact that individuals may hold divergent views based on their own private interests not derived from their legal rights against the company is not a ground for calling separate meetings ... The question is whether the rights which are to be released or varied under the scheme or the new rights which the scheme gives in their place are so different that the scheme must be treated as a compromise or arrangement with more than one class.”*

92. Counsel submitted that Hildyard J provided the following summary of the law in *Re Primacom Holding GmbH* [2013] BCC 201 at [44]-[45]:

*“... The golden thread of these authorities, as I see it, is to emphasise time and again ... [that] in determining whether the constituent creditors’ rights in relation to the company are so dissimilar as to make it impossible for them to consult together with a view to their common interest the court must focus, and focus exclusively, on rights as distinct from interests. The essential requirement is that the class should be comprised only of persons whose rights in terms of their existing and the rights offered in the replacement, in each case against the company, are sufficiently similar to enable them to properly consult and identify their true interests together.*

*“I emphasise this point because it ... enables the court to take a far more robust view as to what the classes should be and to determine a far less fragmented structure than if interests were taken into account.”*

### The Private Fund

#### Rights absent the Scheme

93. Counsel submitted that if the Private Fund Scheme is not implemented, the Private Fund Scheme Creditors will all have the right to prove in the liquidation of the Private Fund as unsecured creditors and, if their claims are accepted, to receive distributions on a *pari passu* basis. They submitted that there would be no material difference in Private Fund Scheme Creditors’ rights absent the Private Fund Scheme.

#### Rights under the Scheme

94. Counsel submitted that all Private Fund Scheme Creditors will release their Investor Claims, where if any had any merit, the claims would likely be common to all or most of the Private Fund Scheme Creditors. In return, the Private Fund Scheme Creditors will each

receive a distribution equal to 100% of the Closing NAV of the shares in which they are beneficially interested, as well as their pro rata share of the Additional Consideration. They also submitted that there would be no material difference in the Private Fund Scheme Creditors' rights under the Private Fund Scheme.

95. Counsel submitted that Mr. Candiolo had explained that the Private Fund has decided to propose that its Scheme Creditors vote in five separate classes for pragmatic and commercial reasons to ensure that as far as practicable:

- a. Scheme Creditors will vote in a class that only contains other Scheme Creditors who invested based on the same publicly disclosed information as they did;
- b. Scheme Creditors will vote in a class that only contains Scheme Creditors who are beneficially interested (directly or indirectly) in the same SP and therefore suffered substantially equivalent losses; and
- c. Scheme Creditors will vote in a class which only contains Scheme Creditors who will receive precisely the same level of distributions as them.

96. Counsel submitted that the Private Fund considers that if 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.

97. Therefore, the Private Fund considered that its Scheme Creditors should vote in five separate classes:

- a. Scheme Creditors beneficially interested in the 2016 Master Fund SP;
- b. Scheme Creditors beneficially interested in the 2017 Master Fund SP;
- c. Scheme Creditors beneficially interested in the 2018 Master Fund SP;
- d. Scheme Creditors beneficially interested in the 2019 Master Fund SP; and
- e. Scheme Creditors beneficially interested in the Aquilo Fund. These Scheme Creditors have all provided Undertakings to support the Private Fund Scheme.



98. I note that Counsel informed the Court in the Update Hearing that as a result of the Settlement Agreement, HWH and Partners will no longer be voting at the Scheme Meetings and no other Scheme Creditors have raised any objection to the proposed class composition or suggested they have claims of a sufficiently different quality to the other Private Fund Scheme Creditors to fracture the classes further.

99. In light of the above submissions, I am satisfied that the Scheme Creditors of the Private Fund should vote in the five separate classes as set out above.

#### The Public Fund

##### *Rights absent the Scheme*

100. Counsel submitted that if the Public Scheme is not implemented, the Public Fund Scheme Creditors will all have the right to prove in the liquidation of the Public Fund as unsecured creditors and if their claims are accepted, to receive distributions on a *pari passu* basis. They submitted that there would be no material difference in Public Fund Scheme Creditors' rights absent the Public Fund Scheme.

##### *Rights under the Scheme*

101. Counsel submitted that all Public Fund Scheme Creditors will release their Investor Claims in return for their proportionate share of the distribution received by the Public Fund (in its capacity as a Scheme Creditor of the Private Fund), as well as their pro rata share of the Additional Consideration, now increased from US\$34 million to US\$44 million. They also submitted that there would be no material difference in the Public Fund Scheme Creditors' rights under the Public Fund Scheme.

102. Counsel submitted that Mr. Candiolo had explained that the Public Fund has decided to propose that its Scheme Creditors vote in two separate classes to ensure that as far as practicable:

- a. Scheme Creditors will vote in a class that only contains other Scheme Creditors who invested based on the same publicly disclosed information as they did;

- b. Scheme Creditors will vote in a class that only contains Scheme Creditors who share an equivalent proportional beneficial interest in the underlying Master Fund SPs (and hence in any losses suffered in respect of such SPs); and
- c. Scheme Creditors will vote in a class which only contains Scheme Creditors who will receive the same level of distributions as them. Scheme Creditors beneficially interested in Ordinary Shares will receive approximately US\$0.32 per share and those beneficially interested in C Shares will receive approximately US\$0.50 per share (in each case using the NAV as at 31 August 2021).

103. Counsel submitted that the Private Fund considers that if any Public 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.

104. Therefore, the Public Fund considered that its Scheme Creditors should vote in two separate classes, reflecting the fact that the Ordinary Shares and C Shares are invested in different SPs:

- a. Scheme Creditors beneficially interested in the Ordinary Shares; and
- b. Scheme Creditors beneficially interested in the C Shares.

105. In light of the above submissions, I am satisfied that the Scheme Creditors of the Public Fund should vote in the two separate classes as set out above.

#### Impact of the Fees

106. Counsel submitted that the payment of the Early Consent Fee and the Work Fee to some but not all of the Scheme Creditors does not fracture the classes further.

#### Early Consent Fee

107. The Early Consent Fee will be paid in cash on the Closing Date. Counsel submitted that:

- a. Where a consent fee is available to all creditors, it does not fracture the class. If each creditor had a right to obtain the fee, then there is no difference in rights that is capable of fracturing the class. They cited the case of *Re Avangardco Investments Public Ltd* (convening hearing, 24 September 2015), Morgan J stated at [7]:

*"I turn then to the question as to the appropriate class or classes of scheme creditors. I consider that there need only be one class. All scheme creditors enjoy the same rights under the present arrangements. All scheme creditors are offered the same rights under the intended scheme. All scheme creditors are being offered a fee if they commit to voting for the scheme in advance of the court meeting. I consider that that fact does not compel the conclusion that there needs to be more than one class of creditors, for example dividing creditors into those who have become entitled to the fee and those who have not become entitled to the fee. I say that principally because it seems to me that all scheme creditors are being treated in the same way so far as the offer made to them is concerned. Further, I have been shown a number of cases where further reasons have been given for the conclusion that the availability of a fee for early commitment does not compel or justify the court in creating different classes of creditors. Some of the cases go into the question of whether the amount of the fee is such that it is a sufficiently material difference, or creates a sufficiently material difference, between the various individual creditors. For myself, I prefer the analysis which concentrates on all creditors being offered the same terms, it being a matter for the creditor whether to take up the offer in question in relation to the fee."*

- b. Where a consent fee would be unlikely to exert a material influence on the relevant creditors' voting decisions (having regard to the amount that creditors would receive in the comparator and the value of the rights conferred by the Scheme), this provides a further or alternative reason for concluding that the fee does not fracture the class per Snowden J in *Re Noble Group Ltd* (convening judgment) at [150]-[151].

108. Counsel submitted that in the present case, the Early Consent Fee was available to all Scheme Creditors, the Court should be satisfied that all Scheme Creditors have had a realistic opportunity to qualify for the Early Consent Fee, the Early Consent Fee is not material when assessed in light of the predicted returns to all creditors under the Schemes and in the Liquidation Scenario, thus the Early Consent Fee is not likely to induce a Scheme Creditor to commit to vote in favour of the Schemes in circumstances where they might

otherwise reject it and it is being funded by an affiliate of Markel Corporation and therefore will not deplete funds available for Scheme Creditors not eligible to receive it.

109. In light of the above submissions, I am satisfied that the Early Consent Fee does not fracture the proposed class composition.

The Work Fee

110. A Work Fee will be paid in cash to PKA and Almitas on the Closing Date. Counsel submitted that the relevance of work fees to class composition has been considered in a number of English cases, including *Re Noble Group Ltd* and in no case has the existence of a work fee been considered to fracture a class. Thus, payment of a work fee will not fracture a class where it is a commercial reward for the time and effort expended in assisting to formulate the restructuring. Counsel also cited *Re NN2 Newco Limited* [2019] EWHC 1917 (Ch).

111. Counsel submitted that in the present case, the Work Fee is being paid to those Scheme Creditors who have been actively involved in negotiating the Buy-Out Transaction, each of which have undertaken significant work for the benefit of all Scheme Creditors. PKA has been involved since 20 July 2021 and engaged counsel to assist it with reviewing and negotiating the proposed transaction. Almitas has been involved since around 20 September 2021. Mr Candiolo considers that the input from PKA and Almitas was critical to the Buy-Out Transaction being proposed in its current form. Further, it is being funded by an affiliate of Markel Corporation and therefore will not deplete funds available for Scheme Creditors not eligible to receive it.

112. I note that Counsel informed the Court in the Update Hearing that as a result of the Settlement Agreement, HWH and Partners will no longer be voting at the Scheme Meetings and no other Scheme Creditors have raised any objection to the Work Fee. They submitted to the Court that it was relevant to note that the improvements to the Schemes negotiated by PKA in light of the Settlement Agreement further evidence the ongoing work that it has done for the benefit of all Scheme Creditors.

113. In light of the above submissions, I am satisfied that the Work Fee does not fracture the proposed class composition.

**Notice, Timing and Conduct of the Scheme Meetings**

114. Counsel for the Scheme Companies made detailed submissions about the notice, timing and conduct of the Scheme Meetings.

115. In light of those submissions I am satisfied that such matters are in accordance with the requirements.

**Conclusion**

116. In summary, I am satisfied of the following:
- a. Each Scheme Company is a “company” within section 99 CA 1981.
  - b. The Scheme Creditors are “creditors” for the purposes of section 99 CA1981.
  - c. The creditors of a segregated fund of the Private Fund are creditors of the Private Fund.
  - d. The proposed Schemes constitute a compromise or arrangement with Scheme Creditors.
  - e. The Releases fall within the jurisdiction of Part VII of the CA 1981 on the bases that:
    - i. the Releases are necessary in order to give effect to the proposed arrangement between the Scheme Companies and the Scheme Creditors;
    - ii. the Releases are necessary for the Schemes to achieve their purposes; and
    - iii. there is a sufficient nexus between the relationship between the Scheme Creditor and the Scheme Company on the one hand, and the release of Investor Claims against all of the Released Parties on the other hand.
  - f. The Scheme Creditors of the Private Fund should vote in the five separate classes as set out above.

- g. The Scheme Creditors of the Public Fund should vote in the two separate classes as set out above.
- h. The Early Consent Fee does not fracture the proposed class composition.
- i. The Work Fee does not fracture the proposed class composition.

117. In light of the above reasons, I was satisfied that I should make the convening orders sought by the Scheme Companies.

Dated 25 February 2022



**HON. MR. JUSTICE LARRY MUSSENDEN**  
**PUISNE JUDGE OF THE SUPREME COURT**

**EXHIBIT C**

**February 28, 2022 RNS Announcement**



**London**  
Stock Exchange

RNS Scheme of arrangement

## Scheme of arrangement - Voting deadline 1 March

### CATCO REINSURANCE OPPORTUNITIES FUND LIMITED

Released 07:00:07 28 February 2022

RNS Number : 9422C  
CATCo Reinsurance Opps Fund Ltd  
28 February 2022

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### Markel CATCo

### Voting Deadline on 1 March 2022 for 2% Early Consent Fee

### Notice of Sanction Hearing on 11 March 2022

London, 28 February 2022 - As previously announced, on 18 February 2022, 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) (together with the Private Fund, the Funds), published Notices of Scheme Meetings to be held on 4 March 2022 in respect of the Schemes of Arrangement (Schemes) to implement the previously announced Buy-Out Transaction.

### Voting Deadline in order to receive Early Consent Fee

Investors are reminded that the deadline for Scheme Creditors to submit voting instructions in respect of the Scheme Meetings is **2 p.m. (Bermuda) on 1 March 2022**. Investors that have given Investor Undertakings to support the Buy-Out Transaction are reminded that they are required to vote to approve the Schemes in order to receive the Early Consent Fee.

All investors are encouraged to review the Notices of Meetings and Explanatory Statement, which are available on the Buy-Out Transaction website (<https://catcobuyout.alixpartners.com>), and to submit voting instructions in respect of the Schemes.

Any questions relating to the voting and/or attendance at the Scheme Meetings should be sent via email to: [catcobuyout@alixpartners.com](mailto:catcobuyout@alixpartners.com).

### Notice of Sanction Hearing

As set out in the Explanatory Statement, following the Scheme Meetings the Funds will apply to the Bermuda Court to sanction the Schemes. Notice is hereby given that the Bermuda Court has scheduled the hearing to consider the Funds' application to sanction the Schemes (the Sanction Hearing) on 11 March 2022 at 12.30 PM (Bermuda). It is expected that the hearing will be held as a remote hearing by videoconference.

Any Scheme Creditor is entitled to attend the Sanction Hearing, or to instruct counsel to attend the Sanction Hearing and to make representations to the Court on his or her behalf. Scheme Creditors who wish to do so

should confirm their intention by email [catcobuyout@alixpartners.com](mailto:catcobuyout@alixpartners.com) specifying their name and email address and, if applicable, the name and email address of their counsel. A videoconferencing link will be provided to such parties.

### **Disclaimers and important notices**

This announcement is for information purposes only and is not intended to, and does not, constitute or form part of any offer or invitation to purchase, otherwise acquire, subscribe for, sell or otherwise dispose of, any securities or the solicitation of any vote or approval in any jurisdiction pursuant to the Buy-Out Transaction or otherwise. The Schemes will be made solely pursuant to the terms of the scheme documents available on the Scheme website. The scheme documents contain the full terms and conditions of the Schemes, including details of how to vote in respect of them. Any decision in respect of, or other response to, the Schemes should be made only on the basis of the information in those documents. The information contained in this announcement is for background purposes only and no reliance may or should be placed by any person for any purpose whatsoever on the information contained in this announcement or on its completeness, accuracy or fairness. Recipients of



on the information contained in this announcement. The arrangement is subject to change. The information in this announcement should be read in conjunction with the information in the Scheme Document. Recipients of this announcement should conduct their own investigation, evaluation and analysis of the business, data and property described in this announcement. This announcement does not constitute a recommendation concerning any investor's decision or options with respect to the Buy-Out Transaction. The information in this announcement is subject to change.

The distribution of this announcement and the terms of the Buy-Out Transaction are subject to restrictions and may not be made except pursuant to registration with or authorisation by the relevant securities regulatory authorities or an exemption therefrom. Therefore, persons who may come into possession of this announcement are advised to consult with their own legal advisors as to what restrictions may be applicable to them and to observe such restrictions. This announcement may not be used for the purpose of an offer or invitation in any circumstances in which such offer or invitation is not authorised.

No action has been or will be taken in any jurisdiction by the Funds that would or is intended to permit a public offering, or any other offering under circumstances not permitted by applicable law, of any securities.

Further to the above, the release, publication or distribution of this announcement in other jurisdictions may be restricted by law and therefore any persons who are subject to the laws of any applicable jurisdiction (including any jurisdiction where local laws or regulations may result in a significant risk of civil, regulatory or criminal exposure if information concerning the Buy-Out Transaction is sent or made available to investors in that jurisdiction (Restricted Jurisdictions)) should inform themselves about, and observe, any applicable legal or regulatory requirements. In particular, the ability of persons who are resident in such other jurisdictions or who are subject to the laws of another jurisdiction to participate in the Buy-Out Transaction may be affected by the laws of the relevant jurisdictions in which they are located or to which they are subject. Any failure to comply with applicable legal or regulatory requirements of any jurisdiction may constitute a violation of securities laws in that jurisdiction.

Copies of this announcement and the scheme documentation relating to the Buy-Out Transaction are not being, and must not be, directly or indirectly, mailed or otherwise forwarded, distributed or sent in or into or from any Restricted Jurisdiction or any jurisdiction where to do so would constitute a violation of the laws of such jurisdiction and persons receiving such documents (including custodians, nominees and trustees) must not mail or otherwise forward, distribute or send them in or into or from any Restricted Jurisdiction. Doing so may render invalid any related purported vote in respect of the Buy-Out Transaction (or the related Schemes).

Certain of the statements in this announcement or (and any related oral statements) may be considered forward-looking statements.

This announcement (including information incorporated by reference in this announcement), oral statements made regarding the Buy-Out Transaction, information accessed through <https://catcobuyout.alixpartners.com> and other information published by MCIM and the Funds contain statements which are, or may be deemed to be, "forward-looking statements" as defined in the Private Securities Litigation Reform Act of 1995.

Forward-looking statements are prospective in nature and are not based on historical facts, but rather on current expectations and projections of the management of MCIM and the Funds about future events, and are therefore subject to risks and uncertainties which could cause actual results to differ materially from the future results expressed or implied by the forward-looking statements. The forward-looking statements contained in this announcement include statements relating to the expected effects of the Buy-Out Transaction, the expected timing and scope of the Buy-Out Transaction and other statements other than historical facts. Often, but not always, forward-looking statements can be identified by the use of forward-looking words such as "plans", "expects" or "does not expect", "is expected", "is subject to", "budget", "projects", "strategy", "scheduled", "estimates", "forecasts", "intends", "anticipates" or "does not anticipate", or "believes", or variations of such words and phrases or statements that certain actions, events or results "may", "could", "should", "would", "might" or "will" be taken, occur or be achieved. Although MCIM and the Funds believe that the expectations reflected in such forward-looking statements are reasonable, they can give no assurance that such expectations will prove to be correct. By their nature, forward-looking statements involve risk and uncertainty because they relate to events and depend on circumstances that will occur in the future.

There are a number of factors that could cause actual results and developments to differ materially from those expressed or implied by such forward-looking statements. These factors include, but are not limited to: the ability to complete the Buy-Out Transaction; the ability to obtain requisite regulatory and other required approvals and the satisfaction of other conditions on the proposed terms and schedule; as future market conditions, changes in general economic and business conditions, the behaviour of other market participants, the anticipated benefits from the proposed transaction not being realised as a result of changes in general economic and market conditions in the countries in which the Funds operate, weak, volatile or illiquid capital and/or credit markets, changes in tax rates, interest rate and currency value fluctuations, the degree of competition in the geographic and business areas in which the Funds operate and changes in laws or in supervisory expectations or requirements.

Other unknown or unpredictable factors could cause actual results to differ materially from those in the forward-looking statements. Such forward-looking statements should therefore be construed in the light of such factors. Neither MCIM nor the Funds, nor any of their respective associates or directors, officers or advisers, provides any representation, assurance or guarantee that the occurrence of the events expressed or implied in any forward-looking statements in this announcement will actually occur. You are cautioned not to place any reliance on these forward-looking statements. Other than in accordance with their legal or regulatory obligations, neither MCIM nor the Funds is under any obligation, and they expressly disclaim any intention or obligation, to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. This announcement speaks only as of the date issued.

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END

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**EXHIBIT D**

**March 7, 2022 RNS Announcement**

RNS Scheme of arrangement

## Scheme of arrangement -Sanction Hearing & Timeline

### CATCO REINSURANCE OPPORTUNITIES FUND LIMITED

Released 07:00:09 07 March 2022

RNS Number : 7770D  
CATCo Reinsurance Opps Fund Ltd  
07 March 2022

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### Markel CATCo

#### Update on Scheme Meetings, Time of Sanction Hearing, and Timeline to Completion

London, 7 March 2022 - Further to previous announcements regarding the Buy-Out Transaction to be implemented pursuant to schemes of arrangement (the Schemes) proposed by 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) (together with the Private Fund, the Funds), Markel CATCo Investment Management Ltd (provisional liquidators appointed for restructuring purposes) is providing an update on the Schemes and the Buy-Out Transaction.

#### Scheme Meetings

At the Scheme Meetings to consider the Schemes held on 4 March 2022, investors in all classes voted overwhelmingly in favour of the Buy-Out Transaction. At the conclusion of each meeting the Chairman announced that the preliminary count of the votes at each meeting indicated that the resolutions to approve the Schemes had passed. The final results will be confirmed in the Chairman's Report which will be published on the Scheme Website in due course.

#### Escrow Arrangements

Following the completion of the Scheme Meetings, all Public Fund shares are now being released from Escrow.

Investors should note that the 2% Early Consent Fee will upon completion of the Buy-Out Transaction be paid to accounts that submitted valid Transfer to Escrow instructions in connection with entry into the Support Undertaking on or prior to 22 October 2021, irrespective of whether that account holder continues to hold shares in the Public Fund.

The 2% Early Consent Fee will not be paid to any person who subsequently purchases shares released from escrow.

#### Sanction Hearing on **11 March 2022 at 12.00pm**

The Bermuda Court has scheduled a hearing to consider the Funds' application to sanction the Schemes (the Sanction Hearing) on 11 March 2022 at **12.00pm (Bermuda)**. This hearing will be held by videoconference.

Investors that wish to attend the Sanction Hearing may obtain videoconference details by contacting the Funds by email at [catcobuyout@alixpartners.com](mailto:catcobuyout@alixpartners.com).

#### Expected Completion and Distribution Dates

Completion of the Buy-Out Transaction remains subject to the grant of orders by the Bermuda Court sanctioning the Schemes, and the U.S. Bankruptcy Court recognising and enforcing the Schemes.

Subject to those orders being granted, the Funds are aiming for the completion date of the Schemes to occur in late March 2022.

As described in the Explanatory Statement, distributions to Public Fund investors will occur as soon as possible after the completion date of the Schemes. Distributions will be made to holders of Public Fund Shares on the Public Fund Distribution Record Date, which will occur after the completion date and which will be announced by the Funds in due course.

Notices and other information regarding the Scheme Meetings and the Buy-Out Transaction are available on the Scheme Website at <https://catcobuyout.alixpartners.com>.

***Disclaimers and important notices***

This announcement is for information purposes only and is not intended to, and does not, constitute or form part of any offer or invitation to purchase, otherwise acquire, subscribe for, sell or otherwise dispose of, any securities or the solicitation of any vote or approval in any jurisdiction pursuant to the Buy-Out Transaction or otherwise. The Schemes will be made solely pursuant to the terms of the scheme documents to be sent to investors in the Funds in due course. The scheme documents will contain the full terms and conditions of the Schemes, including details of how to vote in respect of them. Any decision in respect of, or other response to, the Schemes should be made only on the basis of the information in those documents. The information contained in this announcement is for background purposes only and no reliance may or should be placed by any person for any purpose whatsoever on the information contained in this announcement or on its completeness, accuracy or fairness. Recipients of this announcement should conduct their own investigation, evaluation and analysis of the business, data and property described in this announcement. This announcement does not constitute a recommendation concerning any investor's decision or options with respect to the Buy-Out Transaction. The information in this announcement is subject to change.

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Further to the above, the release, publication or distribution of this announcement in other jurisdictions may be restricted by law and therefore any persons who are subject to the laws of any applicable jurisdiction (including any jurisdiction where local laws or regulations may result in a significant risk of civil, regulatory or criminal exposure if information concerning the Buy-Out Transaction is sent or made available to investors in that jurisdiction (Restricted Jurisdictions)) should inform themselves about, and observe, any applicable legal or regulatory requirements. In particular, the ability of persons who are resident in such other jurisdictions or who are subject to the laws of another jurisdiction to participate in the Buy-Out Transaction may be affected by the laws of the relevant jurisdictions in which they are located or to which they are subject. Any failure to comply with applicable legal or regulatory requirements of any jurisdiction may constitute a violation of securities laws in that jurisdiction.

Copies of this announcement and any formal documentation relating to the Buy-Out Transaction are not being, and must not be, directly or indirectly, mailed or otherwise forwarded, distributed or sent in or into or from any Restricted Jurisdiction or any jurisdiction where to do so would constitute a violation of the laws of such jurisdiction and persons receiving such documents (including custodians, nominees and trustees) must not mail or otherwise forward, distribute or send them in or into or from any Restricted Jurisdiction. Doing so may render invalid any related purported vote in respect of the Buy-Out Transaction (or the related Schemes).

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Forward-looking statements are prospective in nature and are not based on historical facts, but rather on current expectations and projections of the management of MCIM and the Funds about future events, and are therefore subject to risks and uncertainties which could cause actual results to differ materially from the future results expressed or implied by the forward-looking statements. The forward-looking statements contained in this announcement include statements relating to the expected effects of the Buy-Out Transaction, the expected timing and scope of the Buy-Out Transaction and other statements other than historical facts. Often, but not always, forward-looking statements can be identified by the use of forward-looking words such as "plans", "expects" or "does not expect", "is expected", "is subject to", "budget", "projects", "strategy", "scheduled", "estimates", "forecasts", "intends", "anticipates" or "does not anticipate", or "believes", or variations of such words and phrases or statements that certain actions, events or results "may", "could", "should", "would", "might" or "will" be taken, occur or be achieved. Although MCIM and the Funds believe that the expectations reflected in such forward-looking statements are reasonable, they can give no assurance that such expectations will prove to be correct. By their nature, forward-looking statements involve risk and uncertainty because they relate to events and depend on circumstances that will occur in the future.

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competition in the geographic and business areas in which the Funds operate and changes in laws or in supervisory expectations or requirements.

Other unknown or unpredictable factors could cause actual results to differ materially from those in the forward-looking statements. Such forward-looking statements should therefore be construed in the light of such factors. Neither MCIM nor the Funds, nor any of their respective associates or directors, officers or advisers, provides any representation, assurance or guarantee that the occurrence of the events expressed or implied in any forward-looking statements in this announcement will actually occur. You are cautioned not to place any reliance on these forward-looking statements. Other than in accordance with their legal or regulatory obligations, neither MCIM nor the Funds is under any obligation, and they expressly disclaim any intention or obligation, to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. This announcement speaks only as of the date issued.

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**EXHIBIT E**

**Centaur Email**

**From:** Neil MacGuinness <neil.macguinness@centaurfs.com>  
**Sent:** 01 March 2022 16:01  
**To:** Burke, Kathlene M (LON); Falconer, James D (LON)  
**Cc:** Irineo Condat III; Eric Bertrand; Ailene Enolpe; Marc Weaver; 'Michael Toyer'; 'John Whiley'; 'Judith Wynne'; 'Mark Way'; 'Federico Candiolo'; Fiona DeVega; Alison Buss; Markel Skadden CR DL; Michelle Dunstan  
**Subject:** [Ext] RE: Proj Eagle - Emails to be released to investors

Hi Kat,

These emails have been released.

With Kind Regards,  
**Neil MacGuinness**

**DD** +441 405 2410 | **F** +441 405 2402 | **W** [www.centaurfs.com](http://www.centaurfs.com) | [Centaur Featured in the News](#)

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**From:** Burke, Kathlene M <Kathlene.Burke@skadden.com>  
**Sent:** Tuesday, March 1, 2022 9:47 AM  
**To:** Neil MacGuinness <neil.macguinness@centaurfs.com>; Falconer, James D <James.Falconer@skadden.com>  
**Cc:** Irineo Condat III <ic.condat@centaurfs.com>; Eric Bertrand <Eric.Bertrand@centaurfs.com>; Ailene Enolpe <ailene.enolpe@centaurfs.com>; Marc Weaver <Marc.Weaver@centaurfs.com>; 'Michael Toyer' <Michael.toyer@markelcatco.com>; 'John Whiley' <john.whiley@markelcatco.com>; 'Judith Wynne' <judith.wynne@markelcatco.com>; 'Mark Way' <mark.way@markelcatco.com>; 'Federico Candiolo' <Federico.Candiolo@markelcatco.com>; Fiona DeVega <Fiona.DeVega@centaurfs.com>; Alison Buss <alison.buss@centaurfs.com>; DLMRKELCAT@skadden.com; Michelle Dunstan <michelle.dunstan@centaurfs.com>  
**Subject:** Proj Eagle - Emails to be released to investors

Centaur team,

Please can you send out emails giving notice of the Scheme Hearing. We will need two emails, the first will go to all those who have already voted to approve the scheme and the second will go to those that have not (excluding the HWH / Partners investors who are not part of the Scheme). The CATCo team has reviewed these communications and has authorised the release. Please confirm once these have been sent.

**\*\*\*DRAFT EMAIL – VOTED TO APPROVE\*\*\***

**From:** Centaur Fund Services (Bermuda) Limited  
**To:** Registered member of Markel CATCo Reinsurance Fund  
**Subject:** Markel CATCo Reinsurance Fund Ltd.

Dear Investor,

Please see below an update on the Buy-Out Transaction and Notice of the Sanction hearing date and time in connection with the implementation of the Buy-Out Transaction.

**Notice of Sanction Hearing**



As set out in the Explanatory Statement, following the Scheme Meetings the Funds will apply to the Bermuda Court to sanction the Schemes. Notice is hereby given that the Bermuda Court has scheduled the hearing to consider the Funds' application to sanction the Schemes (the Sanction Hearing) on 11 March 2022 at 12.00 PM (Bermuda). It is expected that the hearing will be held as a remote hearing by videoconference.

Any Scheme Creditor is entitled to attend the Sanction Hearing, or to instruct counsel to attend the Sanction Hearing and to make representations to the Court on his or her behalf. Scheme Creditors who wish to do so should confirm their intention by email [catcobuyout@alixpartners.com](mailto:catcobuyout@alixpartners.com) specifying their name and email address and, if applicable, the name and email address of their counsel. A videoconferencing link will be provided to such parties.

\*\*\*END\*\*\*

\*\*\*DRAFT EMAIL – NO VOTE (Excluding HWH/Partners)\*\*\*

**From: Centaur Fund Services (Bermuda) Limited**  
**To: Registered member of Markel CATCo Reinsurance Fund**  
**Subject: Markel CATCo Reinsurance Fund Ltd. – INVESTOR ACTION REQUIRED**

Dear Investor,

We write to direct your attention to the investor action below and to provide an update on the Buy-Out Transaction and a Notice of the Sanction hearing date and time in connection with the implementation of the Buy-Out Transaction.

**INVESTOR ACTION REQUIRED:** The deadline to submit voting instructions in respect of the Scheme Meetings is 2 p.m. (Bermuda) on 1 March 2022. Investors may submit voting instructions by completing the pre-filled voting forms attached to our email of 18 February 2022.

All investors are encouraged to review the Notices of Meetings and Explanatory Statement, which are available on the Buy-Out Transaction website (<https://catcobuyout.alixpartners.com>).

Investors that have given Investor Undertakings to support the Buy-Out Transaction are reminded that they are required to vote to approve the Schemes in order to receive the Early Consent Fee.

#### **Notice of Sanction Hearing**

As set out in the Explanatory Statement, following the Scheme Meetings the Funds will apply to the Bermuda Court to sanction the Schemes. Notice is hereby given that the Bermuda Court has scheduled the hearing to consider the Funds' application to sanction the Schemes (the Sanction Hearing) on 11 March 2022 at 12.00 PM (Bermuda). It is expected that the hearing will be held as a remote hearing by videoconference.

Any Scheme Creditor is entitled to attend the Sanction Hearing, or to instruct counsel to attend the Sanction Hearing and to make representations to the Court on his or her behalf. Scheme Creditors who wish to do so should confirm their intention by email [catcobuyout@alixpartners.com](mailto:catcobuyout@alixpartners.com) specifying their name and email address and, if applicable, the name and email address of their counsel. A videoconferencing link will be provided to such parties.

\*\*\*END\*\*\*

Best,  
Kat

**Kathlene M. Burke**

Associate

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

40 Bank Street | Canary Wharf | London | E14 5DS

**T: +44.20.7519.7208 | F: +44.20.7072.7208 | M: +44.78.5053.6069**

**[kathlene.burke@skadden.com](mailto:kathlene.burke@skadden.com)**

*pronouns: She/Her/Hers*

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\*\*\*\*\*

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**EXHIBIT F**

**Chairperson's Report**

**IN THE SUPREME COURT OF BERMUDA  
COMMERCIAL COURT  
COMPANIES (WINDING UP)  
Nos. 307 & 309 of 2021**

**IN THE MATTER OF MARKEL CATCO REINSURANCE FUND LTD (PROVISIONAL LIQUIDATORS  
APPOINTED FOR RESTRUCTURING PURPOSES)**

**AND IN THE MATTER OF CATCO REINSURANCE OPPORTUNITIES FUND LTD (PROVISIONAL  
LIQUIDATORS APPOINTED FOR RESTRUCTURING PURPOSES)**

**AND IN THE MATTER OF THE COMPANIES ACT 1981**

**AND IN THE MATTER OF THE SEGREGATED ACCOUNTS COMPANIES ACT 2000**

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**CHAIRPERSON'S REPORT  
ON MEETINGS IN RESPECT  
OF SCHEMES OF ARRANGEMENT**  
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**Introduction and compliance with convening orders**

1. I, John C. McKenna, of Finance & Risk Services Ltd., Suite 502, The International Centre, 26 Bermudiana Road, Hamilton HM 11, am one of the joint provisional liquidators (together with Simon J. Appell of AlixPartners UK LLP) ("**JPLs**") of Markel CATCo Reinsurance Fund Ltd (the "**Private Fund**") and CATCo Reinsurance Opportunities Fund Ltd (the "**Public Fund**") (together the "**Scheme Companies**").
2. By two orders of the Supreme Court of Bermuda (the "**Court**") made following a hearing on 16 February 2022 for the Private Fund and the Public Fund respectively (the "**Convening Orders**"), I (or alternatively Mr. Appell) was appointed to act as Chairperson of the meetings (the "**Scheme Meetings**") to be held by the Scheme Companies in respect of proposed schemes of arrangement pursuant to Section 99 of the Companies Act (the "**Schemes**") between the Scheme Companies and certain of their creditors (the "**Scheme Creditors**"). The Explanatory Statement was posted on the Scheme Website on 18 February 2022 in

respect of the Schemes, which I understand will be exhibited to the fourth affidavit of Peter Newman, which I have reviewed in final draft form. A capitalized term used but not otherwise defined herein shall have the meaning given to it in the Explanatory Statement.

3. The Scheme Meetings were summoned by notice in the form contained in the Explanatory Statement and in accordance with paragraph 5 of the Convening Orders.
4. In accordance with the Convening Orders, two Scheme Meetings for the Public Fund and five Scheme Meetings for the Private Fund's Scheme Creditors were held on 4 March 2022 by way of video conference, commencing at the times set out below, in the following sequential order:

Public Fund Scheme Meetings (commencing at 8 am Bermuda time / noon London time)

- (a) the Chairperson's opening remarks to Public Fund Scheme Creditors;
- (b) the Ordinary Class Scheme Meeting;
- (c) the C Class Scheme Meeting;

Private Fund Scheme Meetings (commencing at 10.15 am Bermuda time / 2.15 pm London time)

- (a) the Chairperson's opening remarks Private Fund Scheme Creditors;
- (b) the Aquilo Class Scheme Meeting;
- (c) the Retro Funds 2016 Class Scheme Meeting;
- (d) the Retro Funds 2019 Class Scheme Meeting;
- (e) the Retro Funds 2017 Class Scheme Meeting; and
- (f) the Retro Funds 2018 Class Scheme Meeting.

5. I hereby report to the Court on the conduct and outcome of the Scheme Meetings.

**Voting tabulation**

6. I was advised by AlixPartners UK LLP ("**AlixPartners**") on the following voting tabulation process leading up to the Scheme Meetings:

(a) Link, the Registrar for the Public Fund, collected and verified, the Public Fund Proxy Forms for the Public Fund Scheme Meetings against the company share register.

(b) AlixPartners collated any Public Fund Proxy forms for the Public Fund Scheme Meetings and forwarded them to Link to be verified against the company share register.

(c) Centaur, the Registrar for the Private Fund, collected and verified the Private Fund Proxy Forms for the Private Fund Scheme Meetings against the company share register.

### **Virtual Meeting Platform**

7. The Scheme Meetings took place virtually given the continued COVID-19 pandemic and to accommodate Scheme Creditors in different jurisdictions. Details of the online Scheme Meetings, which were hosted using a Microsoft Teams service by representatives from AlixPartners (the “**Host**”), were provided by the Host to Scheme Creditors that had registered to attend the Scheme Meetings and other relevant participants (the advisors to the JPLs and the Scheme Companies’ advisors) on request.
8. Scheme Creditors were encouraged to use the web address link provided to access the Scheme Meetings by computer or by smartphone, although it was possible for Scheme Creditors to attend solely via telephone if that was more convenient for them. Participants accessing the Scheme Meetings via computer or smartphone would have been capable of receiving both a video link and audio link to the proceedings whilst other participants joining by telephone would simply have had audio access. Only one person on behalf of Scheme Creditors registered to attend each of the Scheme Meetings in person.
9. Following a registration process conducted by the Host, participants were moved by the Host from a virtual waiting room to the Scheme Meetings automatically and the proceedings commenced.
10. As explained below, the Scheme Creditors (or their proxyholders) of the Public Fund or the Private Fund were first admitted to an “opening remarks” section that was pertinent to all classes of Scheme Creditors of the relevant company. Thereafter, Scheme Creditors were invited to join each relevant Scheme Meeting for which they are a Scheme Creditor.

**Chairperson's opening remarks for each set of Scheme Meetings**

11. As a result of the registration process, and through a tabulation that had been conducted in advance of the Scheme Meetings, the Host confirmed the Scheme Creditors in attendance by proxy. The proxyholder was also identified for each meeting.
12. Before commencing the Scheme Meetings proper, I reminded those in attendance that the online video link had the ability to test their audio and video settings. I noted that to the extent anyone was experiencing technical difficulties, they could contact the Host at [catcobuyout@alixpartners.com](mailto:catcobuyout@alixpartners.com).
13. The format of my opening remarks was as follows:
  - (a) I started by introducing myself and explaining that the Scheme Meetings had been convened pursuant to the relevant Convening Order and in connection with the Schemes. I then introduced the attendees to the advisors of the JPLs and the Scheme Companies, namely, Christian Luthi, Rhys Williams and Edward Rance of Conyers Dill & Pearman Limited for the JPLs and Peter Newman, James Falconer and Kathlene Burke of Skadden, Arps, Slate, Meagher & Flom (UK) LLP and Kehinde George and her team of ASW Law the Scheme Companies. I explained that these advisors would be present at each of the Scheme Meetings.
  - (b) I then explained that the purpose of the Scheme Meetings was for the relevant Scheme Creditor in attendance to consider and, if thought fit, approve the relevant Scheme. I made clear that the resolution which would be put at each of the Scheme Meetings would be to approve the relevant Scheme in the form set out in the Explanatory Statement. For identification purposes, I produced a hard copy of the Explanatory Statement and initialed it.
  - (c) I then gave a short overview of the background to and rationale for the Schemes. I referred the Scheme Creditor to the relevant notice convening the Scheme Meetings and the Explanatory Statement and reminded the Scheme Creditors that they had been sent these notices which contained instructions on how to access the Explanatory Statement. I explained that the Schemes are inter-conditional.
14. I then set out the agenda and administrative processes for the Scheme Meetings. I explained that all participants on the Teams platform, other than myself, would be asked to



keep their lines muted to ensure the Scheme Meetings proceeded without interruption. I noted that attendees could, during the course of the Scheme Meetings, raise questions through the “chat” or come off mute and ask a question. The “chat” function allowed all participants on the call to communicate in writing with all other participants. In my address, I also notified Scheme Creditors that if a separate discussion was required a virtual “break-out” area could be arranged for such discussion at that time or thereafter. There were no requests for a virtual “break out” session at any point during the Scheme Meetings

15. Finally, before closing the opening remarks and formally opening the Scheme Meetings, I advised that Scheme Creditors had been invited to raise any questions 72 hours ahead of the Scheme Meetings but that no questions had been received.
16. The Scheme Meetings then proceeded in the order set out in paragraph 4 above.

#### **Protocol at the Scheme Meetings**

17. At each of the Scheme Meetings, I followed the same protocol. I:
  - (a) Informed those attending of the number and value of Scheme Creditor claims that I had been appointed proxy for;
  - (b) acknowledged the presence of another proxy holder;
  - (c) requested that participants indicate, either by unmuting their line and confirming, or by indicating through the chat function, that they could see and hear me and were not experiencing technical difficulties (participants in the Scheme Meetings had been provided with the catcobuyout@alixpartners.com email address through the chat function), in the event of technical difficulties in joining or participating in the Scheme Meetings. I reminded them of the ability to contact the Host, as noted above, if they were experiencing technical difficulties. I note that the Scheme Creditor in attendance by proxy confirmed he was not experiencing any technical difficulties and that I could be heard. Other attendees provided the same confirmation;
  - (d) opened the floor to the Scheme Creditors to ask any further questions via the methods described in my opening remarks (however no questions were asked during any of the Scheme Meetings);

(e) provided an opportunity for attendees to temporarily join a break-out room to allow discussion amongst those entitled to vote at that Scheme Meeting (however no break-out rooms were requested during any of the Scheme Meetings);

(f) submitted a formal resolution "To approve the Public Fund/Private Fund Scheme" (the "**Scheme Resolution**");

(g) noted the requirement that, in order to be approved, the Scheme Resolution would require the support of a majority in number representing over 75% in value of the relevant class of Scheme Creditors present and voting;

(h) in the case of the Public Fund Scheme Meetings, advised the Scheme Creditors that if they had already submitted a vote through Link and / or the CREST platform or to AlixPartners, their vote would be counted and they would not be required to vote again or to take any further action. However, if they wished to change their vote, they could do so by submitting a new poll card electronically at this meeting which would replace any previous voting instructions;

(i) checked that the Scheme Creditor (or their proxy) in attendance had been issued with a virtual poll card for the purpose of voting on the Schemes at that Scheme Meeting;

(j) invited the Scheme Creditor (or their proxy present) to submit their completed poll card in line with the instructions provided on screen, and notified them that they would have a brief period in which to submit their poll cards to the catcobuyout@alixpartners.com email address that was displayed on screen;

(k) after the expiry of a brief period to allow the submission of poll cards, I explained that the voting section of the meeting had subsequently closed;

(l) the votes were counted by the JPLs team at AlixPartners LLP;

(m) I then advised the Scheme Creditors of the preliminary outcome of the respective meeting but noted that the Schemes are dependent on the approval of all classes and the sanction of the Bermuda Court; and

(n) I then provided the Scheme Creditors with a summary of the next steps for the Restructuring, including the planned date and time of the Sanction Hearing.

18. Having concluded the business of each Scheme Meeting, I declared the relevant meeting closed.

### **Results of the Scheme Meetings**

19. Notwithstanding that the Scheme Meetings took place virtually, and not physically, there was only one minor technical difficulty with the Teams platform, which was swiftly resolved and resulted in the first Scheme Meeting being delayed for a period of approximately 5 minutes. After the issue was resolved, the technology worked well and no Scheme Creditor reported any difficulty joining or participating in the Scheme Meetings.
20. At each Scheme Meeting, in addition to votes cast by me as proxyholder and by the other Scheme Creditor present, certain Directors of the Scheme Companies voted in favor of the relevant Scheme on behalf of the number and percentage by value of Scheme Creditors in each respective class as indicated in the tables below, pursuant to powers of attorney ("PoA") granted by Scheme Creditors when they submitted an undertaking to vote in favor of the relevant Scheme. Votes were cast pursuant to these powers of attorney because the relevant Scheme Creditors either did not attend the meeting or did not submit a proxy (despite having undertaken to vote in favor of the Scheme). Such votes pursuant to the powers of attorney are recorded under "PoA Votes" below.
21. At least one Scheme Creditor in each class appointed a proxy other than the Chairman, which person attended each of the Scheme Meetings and he submitted his votes using the poll cards, which were added to the vote tabulations.
22. In addition, in certain instances noted below, I exercised my discretion as Chairperson to accept proxies that had been received after the deadline set in the Explanatory Statement. I also exercised my discretion and rejected a vote in favour of the Public Fund Scheme from Bank of New York Mellon Nominees Limited (representing 0.1% of voted shares in C Shares class) because Link was unable to locate the Scheme Creditor on the register, despite numerous attempts to seek clarification of their identity or account details. Although this Scheme Creditor could not be identified, as noted over 98% of creditors had undertaken to vote in favour of the Schemes, so it is likely that this creditor would be captured by the PoA mentioned above.

23. One Scheme Creditor in each of the Public Fund Scheme Meetings had entered a "withheld" instruction through CREST with the Chairperson appointed as proxy. Under the terms set out in the Explanatory Statement, a "withheld" instruction through CREST is not a valid instruction to Link and accordingly such instruction was not included as an eligible vote. However, in each case, the Scheme Creditor had submitted an undertaking to vote in favour of the relevant Scheme. Their votes were therefore captured by the PoA mentioned above.
24. The results for each of the Scheme Meetings were reported as follows:

Class	Turnout			Votes	
	Number of Scheme Creditors that voted	Value (\$)	% in NAV of Creditors that Voted	Yes' Votes by Number	Yes' Votes by Value
Ordinary Share Class	47	109,348,618	73%	97.87%	100.00%
Ordinary Share Class (including PoA)	93	126,070,137	84.40%	98.99%	100.00%
C Share Class	42	70,861,711	85.10%	100%	100%
C Share Class (including PoA)	92	77,553,175	93.20%	100%	100%
SP2016 Class	55	25,910,286	82.70%	100%	100%
SP2016 Class (including late proxies and PoA)	60	31,173,068	99%	100%	100%
SP2017 Class	65	140,926,298	79.26%	100%	100%
SP2017 Class (including late proxies and PoA)	70	176,215,814	99%	100%	100%
SP2018 Class	85	166,810,824	79.65%	100%	100%
SP2018 Class (including late proxies and PoA)	88	209,148,515	100%	100%	100%
SP2019 Class	68	145,425,358	86.64%	100%	100%
SP2019 Class (including late proxies and PoA)	73	167,193,950	100%	100%	100%
Aquilo Class	59	192,079,630	99.99%	100%	100%
Aquilo Class (including PoA)	60	192,090,195	100%	100%	100%

25. There were seven voting instructions issued on behalf of Public Fund Ordinary Share Scheme Creditors that were not Supporting Scheme Creditors, and four on behalf of Public Fund C Share Scheme Creditors that were not Supporting Scheme Creditors. Of these

votes, 6 Public Fund Ordinary Share Scheme Creditors voted in favour of the Schemes and only one Public Fund Ordinary Share Scheme Creditor voted against the Public Fund Scheme. All of the Public Fund C Share Creditors voted in favour of the relevant Public Fund Schemes.

26. The results of the Scheme Meetings are presented in the Annex to account for a number of scenarios where votes might arguably be excluded. The additional tables set out in the Annex show what the position would be if it were correct to exclude from the voting:

- (a) votes where I exercised my discretion to accept late proxies
- (b) PoA Votes
- (c) votes cast by “connected creditors” defined as any Markel Corporation related entity or any director, current employee or former employee of CATCo related entities
- (d) votes cast by those Scheme Creditors receiving Work Fees

### **Conclusion**

27. It is clear that each class of Scheme Creditors at both the Private Fund and the Public Fund level voted overwhelmingly to approve the Schemes.

28. I consider that the Scheme Meetings were conducted in accordance with the directions of the Court. Further, nothing took place at the Scheme Meetings to suggest that, in relation to each of the Scheme Meetings:

(a) the Scheme Creditors were not fairly represented by those who were present in person or by proxy and who voted at the Scheme Meetings;

(b) the Scheme Creditors who voted at the Scheme Meetings were acting otherwise than in good faith;

(c) there was any form of coercion or irregularity in respect of Scheme Creditors’ right to vote at the Scheme Meetings; or

(d) any Scheme Creditors experienced any technological issues that prevented them from participating in the relevant Scheme Meeting.

29. Copies of the Schemes in the form approved and adopted by the Scheme Meetings are annexed to this report.

30. I believe that the facts and matters recorded in this Chairman's Report are true and that it is a full Report of events that took place at the Scheme Meetings.



**John C. McKenna**  
**Joint Provisional Liquidator of the Scheme Companies**  
**Chairman of the Scheme Meetings**

**9 March 2022**

**Annexure**

**The Public Fund Ordinary Class Scheme Meeting**

**OVERALL**

How present	Present and voting				Voted for the Resolution				Voted against the Resolution			
	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	1	1.01%	37,060	0.0294%	1	1.01%	37,060	0.0294%	-	-	-	-
By proxy held by Chairperson	92	98.99%	126,033,567	99.9706%	91	97.98%	126,033,077	99.9702%	1	1.01%	490	0.0004%
<b>Total</b>	<b>93</b>	<b>100.0%</b>	<b>126,070,627</b>	<b>100.0%</b>	<b>92</b>	<b>98.99%</b>	<b>126,070,137</b>	<b>99.9996%</b>	<b>1</b>	<b>1.01%</b>	<b>490</b>	<b>0.0004%</b>

**POA VOTES REMOVED**

**PoA votes represented 46 votes and 13.3% of value**

How present	Present and voting				Voted for the Resolution				Voted against the Resolution			
	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	1	2.13%	37,060	0.0339%	1	2.13%	37,060	0.0339%	-	-	-	-
By proxy held by Chairperson	46	97.87%	109,312,048	99.9661%	45	95.75%	109,311,558	99.9657%	1	2.13%	490	0.0004%
<b>Total</b>	<b>47</b>	<b>100.00%</b>	<b>109,349,108</b>	<b>100.00%</b>	<b>46</b>	<b>97.87%</b>	<b>109,348,618</b>	<b>99.9996%</b>	<b>1</b>	<b>2.13%</b>	<b>490</b>	<b>0.0004%</b>

**CONNECTED PARTIES REMOVED**

**Connected Parties represented 3 votes and 8.1% of value**

How present	Present and voting				Voted for the Resolution				Voted against the Resolution			
	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	-	-	-	-	-	-	-	-	-	-	-	-
By proxy held by Chairperson	90	100.0%	115,906,705	99.9661%	89	98.89%	115,906,215	99.9996%	1	1.11%	490	0.0004%
<b>Total</b>	<b>90</b>	<b>100.0%</b>	<b>115,906,705</b>	<b>100.00%</b>	<b>89</b>	<b>98.89%</b>	<b>115,906,215</b>	<b>99.9996%</b>	<b>1</b>	<b>1.11%</b>	<b>490</b>	<b>0.0004%</b>



## WORK FEE SCHEME CREDITORS REMOVED

**Work Fee Scheme Creditors represented 3 votes and 25.8% of value**

	Present and voting				Voted for the Resolution				Voted against the Resolution			
How present	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	1	1.11%	37,060	0.0396%	1	1.11%	37,060	0.0396%	-	-	-	-
By proxy held by Chairperson	89	98.89%	95,515,673	99.9604%	88	97.78%	95,515,183	99.9599%	1	1.11%	490	0.0005%
<b>Total</b>	<b>90</b>	<b>100.0%</b>	<b>93,552,733</b>	<b>100.00%</b>	<b>89</b>	<b>98.89%</b>	<b>93,552,243</b>	<b>99.9995%</b>	<b>1</b>	<b>1.11%</b>	<b>490</b>	<b>0.0005%</b>

### The Public Fund C Class Scheme Meeting

## OVERALL

	Present and voting				Voted for the Resolution				Voted against the Resolution			
How present	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	1	1.09%	9,516	0.01%	1	1.09%	9,516	0.01%	-	-	-	-
By proxy held by Chairperson	91	98.91%	77,543,659	99.99%	91	97.83%	77,543,659	99.99%	-	-	-	-
<b>Total</b>	<b>92</b>	<b>100.00%</b>	<b>77,553,175</b>	<b>100.00%</b>	<b>92</b>	<b>98.91%</b>	<b>77,553,175</b>	<b>100.00%</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

## POA VOTES REMOVED

**PoA votes represented 50 votes and 8.6% of value**

	Present and voting				Voted for the Resolution				Voted against the Resolution			
How present	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	1	2.38%	9,516	0.01%	1	2.38%	9,516	0.01%	-	-	-	-
By proxy held by Chairperson	41	97.61%	70,852,195	99.99%	41	97.61%	70,852,195	99.99%	-	-	-	-
<b>Total</b>	<b>42</b>	<b>100.00%</b>	<b>70,861,711</b>	<b>100.00%</b>	<b>42</b>	<b>100.00%</b>	<b>70,861,711</b>	<b>100.00%</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

## CONNECTED PARTIES REMOVED

**Connected Parties represented 2 votes and 0.05% of value**

	Present and voting				Voted for the Resolution				Voted against the Resolution			
How present	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	-	-	-	-	-	-	-	-	-	-	-	-
By proxy held by Chairperson	90	100.0%	77,517,466	100.0%	90	100.0%	77,517,466	100.0%	-	-	-	-
<b>Total</b>	<b>90</b>	<b>100.0%</b>	<b>77,517,466</b>	<b>100.0%</b>	<b>90</b>	<b>100.0%</b>	<b>77,517,466</b>	<b>100.0%</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

## WORK FEE SCHEME CREDITORS REMOVED

**Work Fee Scheme Creditors represented 3 votes and 28.6% of value**

	Present and voting				Voted for the Resolution				Voted against the Resolution			
How present	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	1	1.12%	9,516	0.02%	1	1.12%	9,516	0.02%	-	-	-	-
By proxy held by Chairperson	88	98.88%	55,349,420	99.98%	88	98.88%	55,349,420	99.98%	-	-	-	-
<b>Total</b>	<b>89</b>	<b>100.00%</b>	<b>55,358,936</b>	<b>100.00%</b>	<b>89</b>	<b>100.00%</b>	<b>55,358,936</b>	<b>100.00%</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

## The Private Fund Retro Funds 2016 Class Scheme Meeting

## OVERALL

	Present and voting				Voted for the Resolution				Voted against the Resolution			
How present	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	1	1.67%	9,767	0.03%	1	1.67%	9,767	0.03%	-	-	-	-
By proxy held by Chairperson	59	98.33%	31,163,301	99.97%	59	98.33%	31,163,301	99.97%	-	-	-	-
<b>Total</b>	<b>60</b>	<b>100.00%</b>	<b>31,173,068</b>	<b>100.00%</b>	<b>60</b>	<b>100.00%</b>	<b>31,173,068</b>	<b>100.00%</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

## LATE PROXIES REMOVED

**Late proxies represented 2 votes and 16.8% of value**

	Present and voting				Voted for the Resolution				Voted against the Resolution			
How present	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	1	1.72%	9,767	0.03%	1	1.72%	9,767	0.03%	-	-	-	-
By proxy held by Chairperson	57	98.28%	25,939,809	99.97%	57	98.28%	25,939,809	99.97%	-	-	-	-
<b>Total</b>	<b>58</b>	<b>100.00%</b>	<b>25,949,576</b>	<b>100.00%</b>	<b>58</b>	<b>100.00%</b>	<b>25,949,576</b>	<b>100.00%</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

## POA VOTES AND LATE PROXIES REMOVED

**PoA votes and late proxies represented 5 votes and 16.9% of value**

	Present and voting				Voted for the Resolution				Voted against the Resolution			
How present	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	1	1.82%	9,767	0.03%	1	1.82%	9,767	0.03%	-	-	-	-
By proxy held by Chairperson	54	98.18%	25,900,919	99.97%	54	98.18%	25,900,919	99.97%	-	-	-	-
<b>Total</b>	<b>55</b>	<b>100.00%</b>	<b>25,910,286</b>	<b>100.00%</b>	<b>55</b>	<b>100.00%</b>	<b>25,910,286</b>	<b>100.00%</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

## CONNECTED PARTIES REMOVED

**Connected Parties represented 5 votes and 5.9% of value**

	Present and voting				Voted for the Resolution				Voted against the Resolution			
How present	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	-	-	-	-	-	-	-	-	-	-	-	-
By proxy held by Chairperson	55	100.00%	29,320,524	100.00%	55	100.00%	29,320,524	100.00%	-	-	-	-
<b>Total</b>	<b>55</b>	<b>100.00%</b>	<b>29,320,524</b>	<b>100.00%</b>	<b>55</b>	<b>100.00%</b>	<b>29,320,524</b>	<b>100.00%</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

## WORK FEE SCHEME CREDITORS REMOVED

**Work Fee Scheme Creditors represented 4 votes and 33.8% of value**

	Present and voting				Voted for the Resolution				Voted against the Resolution			
How present	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	1	1.79%	9,767	0.03%	1	1.79%	9,767	0.03%	-	-	-	-
By proxy held by Chairperson	55	98.21%	16,657,020	99.97%	55	98.21%	16,657,020	99.97%	-	-	-	-
<b>Total</b>	<b>56</b>	<b>100.00%</b>	<b>16,667,787</b>	<b>100.00%</b>	<b>56</b>	<b>100.00%</b>	<b>16,667,787</b>	<b>100.00%</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

## The Private Fund Retro Funds 2017 Class Scheme Meeting

## OVERALL

	Present and voting				Voted for the Resolution				Voted against the Resolution			
How present	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	2	2.86%	40,846	0.02%	2	2.86%	40,846	0.02%	-	-	-	-
By proxy held by Chairperson	68	97.14%	176,174,967	99.98%	68	97.14%	176,174,967	99.98%	-	-	-	-
<b>Total</b>	<b>70</b>	<b>100.00%</b>	<b>176,215,814</b>	<b>100.00%</b>	<b>70</b>	<b>100.00%</b>	<b>176,215,814</b>	<b>100.00%</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

## LATE PROXIES REMOVED

**Late proxies represented 2 votes and 20.0% of value**

	Present and voting				Voted for the Resolution				Voted against the Resolution			
How present	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	2	2.94%	40,846	0.02%	2	2.94%	40,846	0.02%	-	-	-	-
By proxy held by Chairperson	66	97.06%	140,991,544	99.98%	66	97.06%	140,991,544	99.98%	-	-	-	-
<b>Total</b>	<b>68</b>	<b>100.00%</b>	<b>141,032,390</b>	<b>100.00%</b>	<b>68</b>	<b>100.00%</b>	<b>141,032,390</b>	<b>100.00%</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

## POA VOTES AND LATE PROXIES REMOVED

**PoA votes and late proxies represented 5 votes and 20.0% of value**

	Present and voting				Voted for the Resolution				Voted against the Resolution			
How present	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	2	3.08%	40,846	0.02%	2	3.08%	40,846	0.02%	-	-	-	-
By proxy held by Chairperson	63	96.92%	140,885,452	99.98%	63	96.92%	140,885,452	99.98%	-	-	-	-
<b>Total</b>	<b>65</b>	<b>100.00%</b>	<b>140,926,298</b>	<b>100.00%</b>	<b>65</b>	<b>100.00%</b>	<b>140,926,298</b>	<b>100.00%</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

## CONNECTED PARTIES REMOVED

**Connected Parties represented 8 votes and 7.0% of value**

	Present and voting				Voted for the Resolution				Voted against the Resolution			
How present	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	-	-	-	-	-	-	-	-	-	-	-	-
By proxy held by Chairperson	62	100.00%	163,863,921	100.00%	62	100.00%	163,863,921	100.00%	-	-	-	-
<b>Total</b>	<b>62</b>	<b>100.00%</b>	<b>163,863,921</b>	<b>100.00%</b>	<b>62</b>	<b>100.00%</b>	<b>163,863,921</b>	<b>100.00%</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

## WORK FEE SCHEME CREDITORS REMOVED

**Work Fee Scheme Creditors represented 4 votes and 36.5% of value**

	Present and voting				Voted for the Resolution				Voted against the Resolution			
How present	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	2	3.03%	40,846	0.02%	2	3.03%	40,846	0.02%	-	-	-	-
By proxy held by Chairperson	64	96.97%	85,210,600	99.98%	64	96.97%	85,210,600	99.98%	-	-	-	-
<b>Total</b>	<b>66</b>	<b>100.00%</b>	<b>85,210,753</b>	<b>100.00%</b>	<b>66</b>	<b>100.00%</b>	<b>85,210,753</b>	<b>100.00%</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

**The Private Fund Retro Funds 2018 Class Scheme Meeting**

**OVERALL**

	Present and voting				Voted for the Resolution				Voted against the Resolution			
How present	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	2	2.27%	31,354	0.01%	2	2.27%	31,354	0.01%	-	-	-	-
By proxy held by Chairperson	86	97.73%	209,117,161	99.99%	86	97.73%	209,117,161	99.99%	-	-	-	-
<b>Total</b>	<b>88</b>	<b>100.00%</b>	<b>209,148,515</b>	<b>100.00%</b>	<b>88</b>	<b>100.00%</b>	<b>209,148,515</b>	<b>100.00%</b>	-	-	-	-

**LATE PROXIES REMOVED**

**Late proxies represented 3 votes and 20.2% of value**

	Present and voting				Voted for the Resolution				Voted against the Resolution			
How present	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	2	2.35%	31,354	0.01%	2	2.35%	31,354	0.01%	-	-	-	-
By proxy held by Chairperson	83	97.65%	166,779,469	99.99%	83	97.65%	166,779,469	99.99%	-	-	-	-
<b>Total</b>	<b>85</b>	<b>100.00%</b>	<b>166,810,824</b>	<b>100.00%</b>	<b>85</b>	<b>100.00%</b>	<b>166,810,824</b>	<b>100.00%</b>	-	-	-	-

**POA VOTES AND LATE PROXIES REMOVED**

**PoA votes and late proxies represented 5 votes and 20.2% of value**

	Present and voting				Voted for the Resolution				Voted against the Resolution			
How present	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	2	2.35%	31,354	0.01%	2	2.35%	31,354	0.01%	-	-	-	-
By proxy held by Chairperson	83	97.65%	166,779,469	99.99%	83	97.65%	166,779,469	99.99%	-	-	-	-
<b>Total</b>	<b>85</b>	<b>100.00%</b>	<b>166,810,824</b>	<b>100.00%</b>	<b>85</b>	<b>100.00%</b>	<b>166,810,824</b>	<b>100.00%</b>	-	-	-	-

## CONNECTED PARTIES REMOVED

**Connected Parties represented 8 votes and 0.7% of value**

	Present and voting				Voted for the Resolution				Voted against the Resolution			
How present	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	-	-	-	-	-	-	-	-	-	-	-	-
By proxy held by Chairperson	80	100.00%	207,744,363	100.00%	80	100.00%	207,744,363	100.00%	-	-	-	-
<b>Total</b>	<b>80</b>	<b>100.00%</b>	<b>207,744,363</b>	<b>100.00%</b>	<b>80</b>	<b>100.00%</b>	<b>207,744,363</b>	<b>100.00%</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

## WORK FEE SCHEME CREDITORS REMOVED

**Work Fee Scheme Creditors represented 6 votes and 34.4% of value**

	Present and voting				Voted for the Resolution				Voted against the Resolution			
How present	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	2	2.44%	31,354	0.01%	2	2.44%	31,354	0.01%	-	-	-	-
By proxy held by Chairperson	80	97.56%	104,908,993	99.99%	80	97.56%	104,908,993	99.99%	-	-	-	-
<b>Total</b>	<b>82</b>	<b>100.00%</b>	<b>104,940,347</b>	<b>100.00%</b>	<b>82</b>	<b>100.00%</b>	<b>104,940,347</b>	<b>100.00%</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

## The Private Fund Retro Funds 2019 Class Scheme Meeting

## OVERALL

	Present and voting				Voted for the Resolution				Voted against the Resolution			
How present	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	2	2.74%	7,121	0.004%	2	2.74%	7,121	0.004%	-	-	-	-
By proxy held by Chairperson	71	97.26%	167,186,829	99.996%	71	97.26%	167,186,829	99.996%	-	-	-	-
<b>Total</b>	<b>73</b>	<b>100.00%</b>	<b>167,193,950</b>	<b>100.000%</b>	<b>73</b>	<b>100.00%</b>	<b>167,193,950</b>	<b>100.000%</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

## LATE PROXIES REMOVED

**Late proxies represented 3 votes and 13.0% of value**

	Present and voting				Voted for the Resolution				Voted against the Resolution			
How present	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	2	2.86%	7,121	0.004%	2	2.86%	7,121	0.004%	-	-	-	-
By proxy held by Chairperson	68	97.14%	145,423,298	99.996%	68	97.14%	145,423,298	99.996%	-	-	-	-
<b>Total</b>	<b>70</b>	<b>100.00%</b>	<b>145,430,419</b>	<b>100.000%</b>	<b>70</b>	<b>100.00%</b>	<b>145,430,419</b>	<b>100.000%</b>	-	-	-	-

## POA VOTES AND LATE PROXIES REMOVED

**PoA and late proxies represented 5 votes and 13.0% of value**

	Present and voting				Voted for the Resolution				Voted against the Resolution			
How present	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	2	2.94%	7,121	0.004%	2	2.94%	7,121	0.004%	-	-	-	-
By proxy held by Chairperson	66	97.06%	145,418,237	99.996%	66	97.06%	145,418,237	99.996%	-	-	-	-
<b>Total</b>	<b>68</b>	<b>100.00%</b>	<b>145,425,358</b>	<b>100.000%</b>	<b>68</b>	<b>100.00%</b>	<b>145,425,358</b>	<b>100.000%</b>	-	-	-	-



## CONNECTED PARTIES REMOVED

**Connected Parties represented 8 votes and 0.8% of value**

	Present and voting				Voted for the Resolution				Voted against the Resolution			
How present	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	-	-	-	-	-	-	-	-	-	-	-	-
By proxy held by Chairperson	65	100.00%	165,934,953	100.00%	65	100.00%	165,934,953	100.00%	-	-	-	-
<b>Total</b>	<b>65</b>	<b>100.00%</b>	<b>165,934,953</b>	<b>100.00%</b>	<b>65</b>	<b>100.00%</b>	<b>165,934,953</b>	<b>100.00%</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

## WORK FEE SCHEME CREDITORS REMOVED

**Work Fee Scheme Creditors represented 6 votes and 48.3% of value**

	Present and voting				Voted for the Resolution				Voted against the Resolution			
How present	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	2	2.99%	7,121	0.004%	2	2.99%	7,121	0.004%	-	-	-	-
By proxy held by Chairperson	65	97.01%	70,256,469	99.996%	65	97.01%	70,256,469	99.996%	-	-	-	-
<b>Total</b>	<b>67</b>	<b>100.00%</b>	<b>70,263,590</b>	<b>100.000%</b>	<b>67</b>	<b>100.00%</b>	<b>70,263,590</b>	<b>100.000%</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

### The Private Fund Aquilo Class Scheme Meeting

## OVERALL

	Present and voting				Voted for the Resolution				Voted against the Resolution			
How present	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	1	1.67%	915	0.0005%	1	1.67%	915	0.0005%	-	-	-	-
By proxy held by Chairperson	59	98.33%	192,089,280	99.9995%	59	98.33%	192,089,280	99.9995%	-	-	-	-
<b>Total</b>	<b>60</b>	<b>100.00%</b>	<b>192,090,195</b>	<b>100.00%</b>	<b>60</b>	<b>100.00%</b>	<b>192,090,195</b>	<b>100.00%</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

## POA VOTES REMOVED

**PoA votes represented 1 vote and 0.01% of value**

	Present and voting				Voted for the Resolution				Voted against the Resolution			
How present	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	1	1.69%	915	0.0005%	1	1.69%	915	0.0005%	-	-	-	-
By proxy held by Chairperson	58	98.31%	192,078,716	99.9995%	58	98.31%	192,078,716	99.9995%	-	-	-	-
<b>Total</b>	<b>59</b>	<b>100.00%</b>	<b>192,079,630</b>	<b>100.00%</b>	<b>59</b>	<b>100.00%</b>	<b>192,079,630</b>	<b>100.00%</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

## CONNECTED PARTIES REMOVED

**Connected Parties represented 10 votes and 21.0% of value**

	Present and voting				Voted for the Resolution				Voted against the Resolution			
How present	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	-	-	-	-	-	-	-	-	-	-	-	-
By proxy held by Chairperson	50	100.00%	151,805,165	100.00%	50	100.00%	151,805,165	100.00%	-	-	-	-
<b>Total</b>	<b>50</b>	<b>100.00%</b>	<b>151,805,165</b>	<b>100.00%</b>	<b>50</b>	<b>100.00%</b>	<b>151,805,165</b>	<b>100.00%</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

## WORK FEE SCHEME CREDITORS REMOVED

**Work Fee Scheme Creditors represented 23 votes and 61.7% of value**

	Present and voting				Voted for the Resolution				Voted against the Resolution			
How present	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %	#	Number %	Value \$	Value %
Representative other than Chairperson	1	2.70%	915	0.001%	1	2.70%	915	0.001%	-	-	-	-
By proxy held by Chairperson	36	97.30%	73,580,241	99.999%	36	97.30%	73,580,241	99.999%	-	-	-	-
<b>Total</b>	<b>37</b>	<b>100.00%</b>	<b>73,581,155</b>	<b>100.000%</b>	<b>37</b>	<b>100.00%</b>	<b>73,581,155</b>	<b>100.000%</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

**IN THE SUPREME COURT OF BERMUDA**

**CIVIL JURISDICTION**

**(COMMERCIAL COURT)**

**Case 2021: No. 309**

**IN THE MATTER OF MARKEL CATCO REINSURANCE FUND LTD.**

**AND IN THE MATTER OF THE COMPANIES ACT 1981**

**SCHEME OF ARRANGEMENT**

**UNDER SECTION 99 OF THE COMPANIES ACT 1981**

**BETWEEN**

**CATCO REINSURANCE OPPORTUNITIES FUND LTD.**

**- AND THE -**

**SCHEME CREDITORS (AS DEFINED HEREIN)**

## 1. Definitions and Interpretation

### 1.1 Definitions

In this Scheme, the following expressions shall, unless the context otherwise requires, have the following meanings:

**“Acquired Shares”** means the shares in the segregated accounts of the Reinsurer, to be acquired by the Purchaser from the Private Fund in exchange for the Buy-Out Amounts in accordance with the terms of the Relationship and Economic Rights Agreement.

**“Additional Consideration”** means an amount to be allocated to all Scheme Creditors equal to each Scheme Creditor’s *pro rata* entitlement (based on the proportion that the Closing NAV of each Scheme Creditor’s shareholding in the Private Fund comprises in relation to the aggregate Closing NAV of all Private Fund shareholders including the Excluded Creditors) to \$44 million.

**“Administrative Expenses”** means the Transaction Costs, the Ordinary Course Fees and the Reserve.

**“Administrative Expenses Contribution”** means an aggregate cash amount equal to the greater of: (i) \$20 million, and (ii) Transaction Costs, less any amount of Transaction Costs which has been paid by the Private Fund and allocated against the NAV of the Settling Shares, which amount will be contributed by Markel Corporation or one of its Affiliates to the Private Fund and attributed to Retro Funds Shares and Aquilo Fund Shares *pro-rata* in proportion to the Current NAV of such shares.

**“Adverse Development Cover”** means adverse development cover (and/or entering into new reinsurance contracts, or amending existing reinsurance contracts) to one or more fronting reinsurers of the Aquilo Fund that will enable the release of trapped cash to the Private Fund.

**“Adverse Development Cover Provider”** means Markel Bermuda Limited, an Affiliate of Markel Corporation, or any other Affiliate of Markel Corporation that will provide the Adverse Development Cover.

**“Advisers”** means:

- (a) AlixPartners UK LLP;
- (b) ASW Law Limited;
- (c) Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates (and Counsel instructed by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates to advise on, and to appear before the Supreme Court of Bermuda in relation to, the Schemes) as legal advisers to the Scheme Companies;
- (d) Conyers Dill & Pearman Limited;
- (e) Finance and Risk Services Limited; and
- (f) Simpson, Thacher & Bartlett LLP; and
- (g) the JPLs in the personal capacities,

together with the respective Related Parties of each of the foregoing.

**“Affiliate”** means, in respect of a company:

- (a) a company that directly or indirectly owns, controls, or holds with power to vote, 50 percent or more of the outstanding voting securities of the company, other than an entity that holds such securities:

- (i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or
  - (ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;
- (b) a company 50 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the company, or by an entity that directly or indirectly owns, controls, or holds with power to vote, 50 percent or more of the outstanding voting securities of the company, other than an entity that holds such securities—
  - (i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or
  - (ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;
- (c) a person whose business is operated under a lease or operating agreement by the company, or person substantially all of whose property is operated under an operating agreement with the company; or
- (d) an entity that operates the business or substantially all of the property of the company under a lease or operating agreement.

**“Ancillary Transaction Documents”** means the Security Documents and all scheduled, instruments, resolutions or other documentation necessary to implement and give effect to the Transaction Documents.

**“Aquila Accelerated Distribution”** means a cash distribution to Private Fund Scheme Creditors with interests in Shares issued by the Aquilo Fund in an amount equal to 100% of the Closing NAV of the Aquilo Fund Shares

**“Aquila Buy-Out Amount”** means the purchase price to be paid by the Purchaser to the Private Fund (pursuant to the terms of the Relationship and Economic Rights Agreement) in exchange for the Acquired Shares in respect of the Aquilo Fund .

**“Aquila Fund”** means the Aquilo Fund of the Private Fund.

**“Aquila Fund Shares”** means the shares issued by the Aquilo Fund to its shareholders.

**“Aquila Scheme Distribution”** means a distribution to Private Fund Scheme Creditors with interests in Shares issued by the Aquilo Fund of:

- a) each shareholders’ proportion of the Aquilo Accelerated Distribution; and
- b) each shareholders’ proportion of the Additional Consideration,

such distributions to be allocated to Private Fund Scheme Creditors with interests in Shares issued by the Aquilo Fund *pro rata* in proportion to their Closing NAV and to be made in accordance with the Private Fund Bye-Laws.

**“Attorney”** has the meaning given in Clause 4.1 of this Scheme.

**“Bermuda Proceedings”** means, collectively, the Provisional Liquidations and the Schemes.

**“Bermuda Registrar of Companies”** means the Registrar of Companies in Bermuda.

**“Business Day”** means a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealings in foreign exchange and foreign currency deposits) in London, New York and Bermuda.

**“Buy-Out Amounts”** means the Aquilo Buy-Out Amount and the Retro Funds Buy-Out Amount.

**“Buy-Out Transaction”** means the transaction to be implemented by the Schemes, including (without limitation) the acquisition of the Acquired Shares by the Private Fund in consideration for the Buy-Out Amounts, the Adverse Development Cover becoming effective, the execution of the Deed of Release, and the distribution of the Scheme Consideration to Scheme Creditors.

**“C Share Distribution”** means the distribution by the Public Fund paid to Distribution Date C Shareholders of the amount of the Retro Funds Scheme Distribution received by the Public Fund attributable to C Shares, less the C Share Expenses Reserve, in accordance with the Bye-Laws of the Public Fund.

**“C Share Expenses Reserve”** means \$1,076,403.

**“C Shares”** means the issued and outstanding series C shares of the Public Fund and includes (save where the context so requires) the Depository Interests issued by the Depository in respect of those shares.

**“Certificated Shares”** means the Public Fund Shares issued in certificated form.

**“Chapter 15”** means Chapter 15 of the U.S. Bankruptcy Code.

**“Chapter 15 Cases”** means the Chapter 15 cases with respect to the Bermuda Proceedings.

**“Chapter 15 Enforcement Order”** means an order issued by the U.S. Bankruptcy Court recognising and enforcing the terms of this Scheme and the Buy-Out Transaction, on terms satisfactory to the Scheme Company and the Undertaking Parties.

**“Claim”** means a claim, potential claim, counterclaim, potential counterclaim, right of set-off, indemnity, cause of action, demand, suit, right to payment (whether or not such right is reduced to judgment), right or interest of any kind or nature whatsoever, whether in law or in equity, civil or criminal, contractual or in tort (including, but not limited to, negligence, fraud or breach of fiduciary duty), and whether direct or derivative in nature, whether known or unknown, suspected or unsuspected, contingent or actual, liquidated or unliquidated, matured or unmatured, direct or indirect, disputed or undisputed, secured or unsecured, fixed or undetermined, present or future, however and whenever arising and in whatever capacity and jurisdiction.

**“Closing Date”** means the date of completion on which each of the steps set out in Clause 3.5(a), (b) and (c) has occurred.

**“Closing NAV”** is an amount equal to Current NAV:

- (i) *plus* the Transaction Costs Reserve Release (where applicable),
- (ii) *plus* the Administrative Expenses Contribution,
- (iii) *less* Administrative Expenses .

**“Conditions Precedent”** means the conditions precedent for the Schemes set out in Clause 3.2 of the Scheme and Clause 3.2 of the Private Fund Scheme.

**“Court”** means the Supreme Court of Bermuda.

**“Current NAV”** means, if the Net Asset Value attributable to the Shares that has been announced for the most recent month end prior to the Closing Date, adjusted to exclude the impact of any Transaction Costs or increased reserve on account of Transaction Costs or litigation liabilities reflected in such amount, is greater than the Net Asset Value of the Shares as of 31 August 2021, then the Net Asset Value attributable to the Shares that has been announced for the most recent month end prior to the Closing Date, or otherwise the Net Asset Value of the Shares as of 31 August 2021.

**“Deed of Release”** means a deed of release to be dated on or about the Closing Date between the Scheme Creditors, the Private Fund Scheme Creditors, the Scheme Company, the Private Fund, the Manager, the Reinsurer, the Funding Cos, the Purchaser, the Adverse Development Cover Provider and Markel Corporation pursuant to which the parties shall grant releases of certain claims and liabilities as contemplated by the Schemes.

**“Depository”** means Link Market Services Trustees (Nominees) Limited, acting in the capacity as Depository for the Public Fund.

**“Depository Interests”** means the dematerialised depository interests issued by the Depository in respect of the issued and outstanding Ordinary Shares and C Shares.

**“Distribution Date C Shareholders”** means holders of C Shares or Depository Interests representing C Shares on the Public Fund Distribution Record Date.

**“Distribution Date Ordinary Shareholders”** means the holders of Ordinary Shares or Depository Interests representing Ordinary Shares on the Public Fund Distribution Record Date.

**“Early Consent Fee Amount”** means a cash fee equal to 2% of the aggregate Current NAV of Scheme Creditors who had executed support undertakings by 9 November 2021 at 11.59 p.m. (Bermuda time).

**“Excluded Creditors”** has the meaning given to it in the Private Fund Scheme.

**“Explanatory Statement”** means the explanatory statement issued by the Scheme Companies in compliance with section 99 and section 100(1)(a) of the Companies Act relating to the Schemes.

**“Funding Cos”** means SOAFC I, Inc., SOAFC II, Inc. and SOAFC III Ltd as lenders pursuant to the Purchase Price Loan Agreement.

**“Group Settlement Deed”** means a deed to be entered in to by the Manager, the Public Fund, the Private Fund and the Reinsurer, pursuant to which, on and from the Closing Date, the Management Agreements will be terminated and all rights or claims arising therefrom including pursuant to the indemnities contained therein will be released.

**“Insurance Management Agreement”** means that certain discretionary insurance management agreement dated 8 December 2015 between the Manager and the Reinsurer.

**“Investor Claims”** means all Claims at any time arising out of, relating to, or in connection with any investment in or exposure to the Scheme Companies (and/or any of their segregated accounts, if applicable) or the Markel CATCo Business, and/or the Scheme Creditors’ Shares, including, without limitation, any such Claims: based on any oral or written statements or omissions by any person; based in tort (including, but not limited to, negligence, fraud or breach of fiduciary duty), contract, or the laws that govern the offer and sale of securities under the law of any jurisdiction; based on breach of fiduciary or other duties or breach of any contracts or deviations from operations; based on any argument or theory of alter ego, vicarious liability, agency, or piercing the corporate veil; for breach of representation, warranty or undertaking; based on an event of default or under any indemnity given under or in connection with any such Claim; based on indemnification, whether statutory or otherwise in any jurisdiction; for damages, restitution, contribution, attorneys’ fees, costs, or other liability; or as a result of any recovery by any person of a payment on the grounds of preference or otherwise, and any Claims which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings.

**“JPLs”** means Simon Appell and John McKenna in their capacities as joint provisional liquidators of the Scheme Company, the Private Fund, the Manager and the Reinsurer.

**“Loan”** has the meaning given to that term under the Purchase Price Loan Agreement.

**“Lodgement Date”** has the meaning given in Clause 2.2 of this Scheme.

**“Management Agreements”** means, collectively, (a) the Private Fund Management Agreement, (b) the Public Fund Management Agreement and (c) the Insurance Management Agreement.

**“Manager”** means Markel CATCo Investment Management Ltd.

**“Markel CATCo Business”** means the retro-reinsurance and reinsurance business carried out by the Manager and the Reinsurer with respect to the assets held by the Scheme Companies and the management and solicitation of investments in respect thereof.

**“Markel Corporation”** means the corporation which indirectly wholly owns Markel CATCo Investment Management Ltd. and is incorporated in the Commonwealth of Virginia (USA).

**“Markel Group”** means Markel Corporation and its Affiliates.

**“Master Fund”** means the Segregated Account known as the Markel CATCo Diversified Fund.

**“Master Fund SP”** means side pocket shares of the Private Fund issued in respect of the Master Fund.

**“Net Asset Value”** or **“NAV”** means assets at fair value less liabilities, including any accrued but unpaid expenses.

**“Ordinary Course Fees”** means the aggregate of the following amounts in respect of each SP of the Retro Funds, and the Aquilo Fund, which amounts are allocated to Retro Funds Shares or Aquilo Fund Shares *pro rata* in proportion to the Current NAV of such Shares:

	<b>Operating expenses estimate</b>	<b>Reserve</b>	<b>Total</b>
2016 Master Fund SP	0	\$141,653	<b>\$141,653</b>
2017 Master Fund SP	\$1,982,885	\$1,202,747	<b>\$3,185,632</b>
2018 Master Fund SP	\$3,982,732	\$1,817,844	<b>\$5,800,575</b>
2019 Master Fund SP	\$4,038,313	\$1,538,543	<b>\$5,576,857</b>
Aquilo	\$1,131,284	\$526,257	<b>\$1,657,540</b>

**“Ordinary Share Distribution”** means the distribution by the Public Fund to Distribution Date Ordinary Shareholders of the amount of the Retro Funds Scheme Distribution received by the Public Fund attributable to Ordinary Shares, less the Ordinary Share Expenses Reserve, in accordance with the Bye-Laws of the Public Fund.

**“Ordinary Share Expenses Reserve”** means \$1,130,252.

**“Ordinary Shares”** means the issued and outstanding ordinary shares of the Public Fund and includes (save where the context so requires) the Certificated Shares and the Depositary Interests issued by the Depositary in respect of those shares.

**“Principal Transaction Documents”** means the Deed of Release, the Purchase Price Loan Agreement, and the Relationship and Economics Rights Agreement, each in substantially the form made available to Scheme Creditors on the Schemes Website, subject to any modification made in accordance with the terms of this Scheme.

**“Private Fund”** means Markel CATCo Reinsurance Fund Ltd.



**“Private Fund Management Agreement”** means that certain discretionary investment management agreement dated 8 December 2015 between the Manager and the Private Fund on behalf of each Segregated Account.

**“Private Fund Sanction Order”** means the office copy of the order of the Court sanctioning the Private Fund Scheme.

**“Private Fund Scheme”** means the scheme of arrangement in respect of the Private Fund.

**“Private Fund Scheme Creditors”** means all persons other than Excluded Creditors that are beneficially interested in the Private Fund Shares as at the Scheme Record Time, in their capacity as creditors of the Private Fund (and/or any of its segregated accounts) in relation to their potential Investor Claims.

**“Private Fund Shares”** means the shares issued by the Private Fund in respect of the Segregated Accounts.

**“Proceeding”** means any process, suit, action, legal or other proceeding, including without limitation any arbitration, mediation, alternative dispute resolution, judicial review, adjudication, demand, execution, distraint, restraint, forfeiture, re-entry, seizure, lien, enforcement of judgment or enforcement of any security.

**“Provisional Liquidations”** means the liquidation proceedings commenced by each of the Manager, the Private Fund, the Public Fund, and the Reinsurer under Part XIII of the Companies Act, in their present form or with or subject to any modifications, additions or conditions approved or imposed by the Court or approved in accordance with the terms of each such liquidation proceeding.

**“Public Fund”** means CATCo Reinsurance Opportunities Fund Ltd.

**“Public Fund Bye-Laws”** means the bye-laws of the Public Fund.

**“Public Fund Distribution Record Date”** means the record date fixed by the Board of Directors of the Public Fund for payment of the Public Fund Scheme Distribution.

**“Public Fund Management Agreement”** means that certain discretionary investment management agreement dated 8 December 2015 between the Manager and the Public Fund.

**“Public Fund Sanction Order”** means the office copy of the order of the Court sanctioning the Scheme.

**“Public Fund Scheme Distribution”** means the C Share Distribution and the Ordinary Share Distribution.

**“Public Fund Shares”** means the Ordinary Shares and/or the C Shares, as applicable.

**“Purchase Price Loan Agreement”** means the loan agreement, to be dated on or about the Closing Date, between *inter alios*, the Funding Cos, the Purchaser and the Reinsurer, pursuant to which the Funding Cos will advance the Loans to the Purchaser for the purchase of the Acquired Shares.

**“Purchaser”** means SPC, Ltd. as purchaser pursuant to the Relationship and Economic Rights Agreement.

**“Reinsurer”** means Markel CATCo Re Ltd.

**“Relationship and Economic Rights Agreement”** means that certain relationship agreement, to be dated on or about the Closing Date, between the Purchaser, the Private Fund, the Manager and the Reinsurer governing the purchase of the Acquired Shares and economic rights of the Reinsurer and the Private Fund on a go forward basis.

**“Released Parties”** has the meaning given to it in the Deed of Release.

**“Reserve”** means a reserve of approximately \$5.2 million to cover Ordinary Course Fees.

**“Retro Funds”** means, collectively, the Master Fund, the Diversified Fund II, the Limited Diversified Arbitrage Fund, the Diversified Arbitrage Fund, the GTL Diversified Fund, the Market Diversified Fund and the QIC Diversified Fund.

**“Retro Funds Accelerated Distribution”** means a cash distribution to Private Fund Scheme Creditors with interests in the Retro Funds in an amount equal to 100% of the Closing NAV of each Private Fund Scheme Creditor’s Retro Funds Shares.

**“Retro Funds Buy-Out Amount”** means the purchase price to be paid by the Purchaser to the Private Fund (pursuant to the terms of the Relationship and Economic Rights Agreement) in exchange for the Acquired Shares in respect of the Retro Funds

**“Retro Funds Scheme Distribution”** means a distribution to Private Fund Scheme Creditors with interests in the Retro Funds of:

a) each shareholders’ proportion of the Retro Funds Accelerated Distribution; and

b) each shareholders’ proportion of the Additional Consideration,

such distributions to be allocated to Private Fund Scheme Creditors with interests in the Retro Funds *pro rata* in proportion to their Closing NAV and to be made in accordance with the Private Fund Bye-Laws.

**“Retro Funds Shares”** means the Shares issued by the Retro Funds to their shareholders, other than any such shares held by another Retro Fund.

**“Sanction Orders”** means the Public Fund Sanction Order and the Private Fund Sanction Order.

**“Scheme”** means the scheme of arrangement in relation to the Public Fund under section 99 of the Companies Act in its present form or with or subject to any modifications, additions or conditions approved or imposed by the Court or approved in accordance with the terms of each such scheme of arrangement.

**“Scheme Company”** means the Public Fund.

**“Scheme Consideration”** means the entitlements of Scheme Creditors and the Private Fund Scheme Creditors pursuant to the Schemes, including without limitation, the Retro Funds Scheme Distribution, Aquilo Scheme Distribution and/or the Public Fund Scheme Distribution, as applicable.

**“Scheme Creditors”** all persons that are beneficially interested in the Public Fund Shares, as at the Scheme Record Time in their capacity as creditors of the Public Fund in relation to their potential Investor Claims.

**“Scheme Record Time”** means 1 March 2022 at 2 p.m. (Bermuda Time).

**“Schemes Website”** means the website providing further information related to the Schemes and the Buy-Out Transaction at <https://catcobuyout.alixpartners.com>.

**“Security”** means the security to be granted in favour of the Funding Cos to secure repayment of the Loans, as set out in the Purchase Price Loan Agreement.

**“Security Documents”** means the documents in a form reasonably satisfactory to the Funding Cos pursuant to which the Security is granted.

**“Segregated Account”** means each of the following funds: (a) Master Fund, (b) Diversified Fund II, (c) Limited Diversified Arbitrage Fund, (d) Diversified Arbitrage Fund, (e) GTL Diversified Fund, (f) Markel Diversified Fund, (g) QIC Diversified Fund, and (h) Aquilo Fund.

**“Shares”** means, with respect to the Private Fund, the Private Fund Shares and, with respect to the Public Fund, the Public Fund Shares.

**“SP”** means a side pocket, 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 assets.

**“Transaction Costs”** means the transaction costs for implementing the Schemes (including the fees and costs incurred by the JPLs, the U.S. Expert and all legal and other advisers to the Scheme Companies, including the Advisers), which shall, to the extent not already allocated, be allocated as follows:

- a) in respect of the Retro Funds, an allocation of 90% of the Transaction Costs to all Retro Fund Shares, *pro rata* in proportion to the Current NAV of such shares; and
- b) in respect of the Aquilo Funds, an allocation of 10% of the Transaction Costs to all Aquilo Fund Shares, *pro rata* in proportion to the Current NAV of such shares.

**“Transaction Costs Reserve Release”** means in respect of each Retro Fund SP, 75% of the amount held by the Private Fund in respect of such SP as a reserve on account of potential litigation costs related to Investor Claims.

**“Transaction Documents”** means the Ancillary Transaction Documents and the Principal Transaction Documents.

**“Undertaking Parties”** means the Manager, the Reinsurer, the Funding Cos and the Purchaser.

**“U.S. Expert”** means Daniel M. Glosband, in respect to a legal opinion prepared on behalf of the Manager in support of the Schemes.

**“Work Fee”** means a cash fee equal to 2% of the Current NAV of funds managed by PKA A/S and Almitas Capital.

## 1.2 Interpretation

In this Scheme, unless the context otherwise requires or otherwise expressly provides for:

- (a) references to “Clauses” are references to the Clauses of this Scheme;
- (b) references to a “person” include references to an individual, firm, partnership, company, corporation, unincorporated body of persons or any state or state agency;
- (c) references to a statute or statutory provision include the same as subsequently modified, amended or re-enacted from time to time;
- (d) references to an agreement, deed or document shall be deemed to also refer to such agreement, deed or document as amended, supplemented, restated, varied, replaced and/or novated (in whole or in part) from time to time and to any agreement, deed or document executed pursuant thereto;
- (e) references to time shall be to prevailing Bermuda time;
- (f) the singular includes the plural and *vice versa* and words importing one gender shall include all genders;
- (g) the term “including” means “including without limitation;” and
- (h) headings are for ease of reference only and shall not affect the interpretation of this Scheme.

## **2. Application and Effectiveness of the Scheme**

- 2.1 The compromise and arrangement effected by the Scheme shall bind:
- (a) all Scheme Creditors
  - (b) the Scheme Company; and
  - (c) each of the Undertaking Parties in accordance with the terms of their undertaking to be so bound.
- 2.2 Unless otherwise stated, the provisions of the Scheme shall take effect on and from the time that both of the following conditions are satisfied:
- (a) the Private Fund Scheme has been sanctioned by the Court; and
  - (b) copies of the Sanction Orders are delivered to the Bermuda Registrar of Companies for registration (the “**Lodgement Date**”).
- 2.3 As soon as reasonably practicable following the Lodgement Date, the Scheme Company shall notify the Scheme Creditors in accordance with Clause 6.9 (*Notice*) (including through the Schemes Website) that the Scheme has become effective

## **3. Implementation of the Buy-Out Transaction**

- 3.1 On and from the Lodgement Date, each Scheme Creditor hereby irrevocably authorises, instructs, empowers and appoints the Scheme Company (acting by any authorised signatory (being any director of the Scheme Company or attorney of the Scheme Company appointed pursuant to a duly executed power of attorney)) as the true and lawful agent and attorney of that Scheme Creditor (the “**Attorney**”), so that the Attorney may:
- (a) sign, execute and deliver the Deed of Release for and on behalf of that Scheme Creditor, such that each Scheme Creditor will become a party to and be bound by the Deed of Release;
  - (b) take any such other action as may be reasonably necessary, or desirable, to give effect to the terms of the Scheme, the Deed of Release or any other Transaction Document;
  - (c) agree on its behalf any amendments to the Scheme, Deed of Release or any other Transaction Document, which the Scheme Company and (if applicable) the other person(s) party to the Scheme, the Deed of Release or such other Transaction Document (acting reasonably and in good faith) consider(s) necessary, or desirable, in order to ensure that, without limitation:
    - (i) the information and categories of information contained, or referred to, in any formula, schedule, annex or similar, signature blocks, parties’ provisions, notice details or blank in any Transaction Document reflect the relevant information and categories of information as of the applicable date;
    - (ii) any Transaction Document may be duly executed and delivered; and/or
    - (iii) the Deed of Release and any other Transaction Document is legal, valid, binding and enforceable upon the parties to them in accordance with the Scheme.
- 3.2 The Closing Date shall occur as soon as reasonably practicable following the occurrence of each of the following (together, the “**Conditions Precedent**”):
- (a) the Manager, the Public Fund, the Private Fund and the Reinsurer have entered into the Group Settlement Deed; and
  - (b) the U.S. Bankruptcy Court has issued the Chapter 15 Enforcement Order; and

- (c) each of the conditions precedent set out in the Purchase Price Loan Agreement have been satisfied.
- 3.3 The Scheme Company shall take all steps and execute all documents as are required to satisfy the Conditions Precedent as soon as possible following the Lodgement Date.
- 3.4 On or before the Closing Date the following shall occur:
  - (a) the Private Fund and the Undertaking Parties (as applicable) shall enter into and implement the Purchase Price Loan Agreement and the Relationship and Economic Rights Agreement;
  - (b) the Reinsurer and the Purchaser shall grant the Security;
  - (c) the Funding Cos shall provide the Loans to the Purchaser pursuant to the terms of the Purchase Price Loan Agreement;
  - (d) the Purchaser shall acquire the Acquired Shares pursuant to the Relationship and Economic Rights Agreement;
  - (e) relevant steps will be taken by the Private Fund so that the Adverse Development Cover becomes effective; and
  - (f) the Purchaser or one of its Affiliates (as applicable) will pay to the Private Fund and/or the Public Fund, as relevant, the Additional Consideration, the Administrative Expenses Contribution, and the Early Consent Fee Amount; and
  - (g) the Work Fee will be paid to those parties entitled to it as agreed between the Scheme Companies and those parties.
- 3.5 On the Closing Date the following shall occur:
  - (a) the Deed of Release will be executed by the Scheme Company on its own behalf and on behalf of the Scheme Creditors and by all other parties thereto and shall become effective in accordance with its terms;
  - (b) the Group Settlement Deed shall become effective;
  - (c) the Private Fund shall initiate the Retro Funds Scheme Distribution and the Aquilo Scheme Distribution in accordance with the Private Fund Bye-Laws; and
  - (d) the Scheme Company shall initiate the payment of the Early Consent Fee to eligible Public Fund Scheme Creditors.
- 3.6 The Scheme Company shall take all steps and execute all documents as are reasonably required to cause the Closing Date to occur as soon as reasonably practicable following satisfaction of the Conditions Precedent.
- 3.7 The Scheme Company shall make the Public Fund Scheme Distribution to Scheme Creditors in accordance with the Public Fund Bye-Laws within 5 Business Days of receipt of its share of the Retro Funds Scheme Distribution.
- 3.8 If the Closing Date does not occur on or before the date which is 15 Business Days after the Lodgement Date (or such other date not later than 45 Business Days after the Lodgement Date as the Scheme Company may determine and of which notice is given to all Scheme Creditors), the terms of and the obligations on the parties under or pursuant to clause 3 of the Scheme shall lapse and all the compromises and arrangements provided by the Scheme (including the execution of the Deed of Release on behalf of any or all of the Scheme Creditors) shall be of no effect.
- 3.9 The authority granted under Clause 3.1 above shall be treated for all purposes whatsoever and without limitation as having been granted by deed under the laws of Bermuda.

**4. Action Contrary to the Scheme**

- 4.1 Prior to the Closing Date (or, if earlier, the date on which the Scheme lapses in accordance with Clause 3.9), the Scheme Creditors shall not take any actions which would be inconsistent with the Schemes, including exercising any rights, remedies, powers or discretions in respect of any Investor Claim (or instructing any other person to do the same).

**5. General**

*Modification*

- 5.1 The Scheme Creditors hereby agree that the Scheme Company may, at any Court hearing to sanction this Scheme, consent on behalf of itself and all Scheme Creditors to any modification of, or addition to, this Scheme, the Deed of Release and/or any of the other Transaction Documents or any terms or conditions which, in each case, the Court may think fit to approve or impose, provided that such modification, addition, term or condition does not have an adverse effect on the rights of the Scheme Creditors, or any of them.

*Assignments or Transfers*

- 5.2 The Scheme Company shall not be under any obligation to recognise any assignment or transfer of Shares that occurs in the period after the Public Fund Distribution Record Date up to the Closing Date, provided that, where the Scheme Company has received from the relevant parties written notice of such assignment or transfer, the Scheme Company may in its absolute discretion and subject to such evidence as it may reasonably require, agree to recognise such assignment or transfer, subject to the assignee or transferee agreeing to be bound by the terms of this Scheme and to be treated as a Scheme Creditor for the purposes of this Scheme.

*Exercise of Discretion*

- 5.3 Where, under or pursuant to any provision of this Scheme, a matter is to be determined by the Scheme Company, it shall be determined by the Board of Directors, in their discretion in such manner as they may consider fair and reasonable. If any difficulty shall arise in determining any such matter either generally or in any particular case or in ensuring the result described above, it shall be resolved by the Board of Directors in such manner as it shall consider to be fair and reasonable and its decision shall, insofar as permitted by law, be final and binding on all concerned.

*Performance of Obligations on Dates Other than a Business Day*

- 5.4 If any obligation is to be performed under the terms of this Scheme on a date other than a Business Day and is not capable of being performed on such date, the relevant obligation shall be performed on the next Business Day.

*Further Assurance*

- 5.5 On and from the Lodgement Date, each Scheme Creditor undertakes to the Scheme Company, and the Scheme Company undertakes to each Scheme Creditor, to provide such further assistance (at the cost of the Scheme Company) as may be reasonably required to implement the Scheme.

*Severability*

- 5.6 If at any time any provision of the Scheme is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of that provision under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision of the Scheme under the law of that jurisdiction shall in any way be affected or impaired thereby.

*Notice*

- 5.7 Any notice or other written communication to be given under or in relation to this Scheme shall be given in the English language in writing and shall be deemed to have been duly given if it is posted to the Scheme Website.

*Governing Law and Jurisdiction*

- 5.8 The operative terms of this Scheme and any non-contractual obligations arising out of or in connection with this Scheme shall be governed by and construed in accordance with the laws of Bermuda. The Scheme Creditors and the Scheme Company hereby agree that the Court shall have exclusive jurisdiction to hear and determine any suit, action or Proceeding and to settle any dispute which arises out of or in connection with the terms of this Scheme or its implementation or out of any action taken or omitted to be taken under this Scheme or in connection with the administration of this Scheme and for such purposes the Scheme Creditors and the Scheme Company irrevocably submit to the jurisdiction of the Court.

Dated this            day of

**IN THE SUPREME COURT OF BERMUDA  
CIVIL JURISDICTION  
(COMMERCIAL COURT)**

**Case 2021: No. 307**

**IN THE MATTER OF MARKEL CATCO REINSURANCE FUND LTD.  
AND IN THE MATTER OF THE COMPANIES ACT 1981**

**SCHEME OF ARRANGEMENT  
UNDER SECTION 99 OF THE COMPANIES ACT 1981  
BETWEEN  
MARKEL CATCO REINSURANCE FUND LTD.  
– AND THE –  
SCHEME CREDITORS (AS DEFINED HEREIN)**



## 1. Definitions and Interpretation

### 1.1 Definitions

In this Scheme, the following expressions shall, unless the context otherwise requires, have the following meanings:

**“Acquired Shares”** means the shares in the segregated accounts of the Reinsurer to be acquired by the Purchaser from the Private Fund in exchange for the Buy-Out Amounts in accordance with the terms of the Relationship and Economic Rights Agreement.

**“Additional Consideration”** means an amount to be allocated to all Scheme Creditors equal to each Scheme Creditor’s *pro rata* entitlement (based on the proportion that the Closing NAV of each Scheme Creditor’s shareholding in the Private Fund comprises in relation to the aggregate Closing NAV of all Private Fund shareholders including the Excluded Creditors) to \$44 million.

**“Administrative Expenses”** means the Transaction Costs, the Ordinary Course Fees and the Reserve.

**“Administrative Expenses Contribution”** means an aggregate cash amount equal to the greater of: (i) \$20 million, and (ii) Transaction Costs, less any amount of Transaction Costs which has been paid by the Private Fund and allocated against the NAV of the Settling Shares, which amount will be contributed by Markel Corporation or one of its Affiliates to the Private Fund and attributed to Retro Funds Shares and Aquilo Fund Shares *pro-rata* in proportion to the Current NAV of such shares.

**“Adverse Development Cover”** means adverse development cover (and/or entering into new reinsurance contracts, or amending existing reinsurance contracts) to one or more fronting reinsurers of the Aquilo Fund that will enable the release of trapped cash to the Private Fund.

**“Adverse Development Cover Provider”** means Markel Bermuda Limited, an Affiliate of Markel Corporation, or any other Affiliate of Markel Corporation that will provide the Adverse Development Cover.

**“Advisers”** means:

- (a) AlixPartners UK LLP;
- (b) ASW Law Limited;
- (c) Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates (and Counsel instructed by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates to advise on, and to appear before the Supreme Court of Bermuda in relation to, the Schemes) as legal advisers to the Scheme Companies;
- (d) Conyers Dill & Pearman Limited;
- (e) Finance and Risk Services Limited;
- (f) Simpson, Thacher & Bartlett LLP; and
- (g) the JPLs in the personal capacities,

together with the respective Related Parties of each of the foregoing.

**“Affiliate”** means, in respect of a company:

- (a) a company that directly or indirectly owns, controls, or holds with power to vote, 50 percent or more of the outstanding voting securities of the company, other than an entity that holds such securities:

- (i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or
  - (ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;
- (b) a company 50 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the company, or by an entity that directly or indirectly owns, controls, or holds with power to vote, 50 percent or more of the outstanding voting securities of the company, other than an entity that holds such securities:
  - (i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or
  - (ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;
- (c) a person whose business is operated under a lease or operating agreement by the company, or person substantially all of whose property is operated under an operating agreement with the company; or
- (d) an entity that operates the business or substantially all of the property of the company under a lease or operating agreement.

**“Ancillary Transaction Documents”** means the Security Documents and all scheduled, instruments, resolutions or other documentation necessary to implement and give effect to the Transaction Documents.

**“Aquila Accelerated Distribution”** means a cash distribution to holders of Aquilo Fund Shares as at the Scheme Record Time in an amount equal to 100% of the Closing NAV of the Aquilo Fund Shares.

**“Aquila Buy-Out Amount”** means the purchase price to be paid by the Purchaser to the Private Fund (pursuant to the terms of the Relationship and Economic Rights Agreement) in exchange for the Acquired Shares in respect of the Aquilo Fund.

**“Aquila Fund”** means the Aquilo Fund of the Private Fund.

**“Aquila Fund Shares”** means the shares issued by the Aquilo Fund to its shareholders.

**“Aquila Scheme Distribution”** means a distribution to Private Fund Scheme Creditors with interests in Shares issued by the Aquilo Fund of:

- a) each shareholders’ proportion of the Aquilo Accelerated Distribution; and
- b) each shareholders’ proportion of the Additional Consideration,

such distributions to be allocated to Private Fund Scheme Creditors with interests in Shares issued by the Aquilo Fund *pro rata* in proportion to their Closing NAV and to be made in accordance with the Private Fund Bye-Laws.

**“Attorney”** has the meaning given in Clause 3.1 of this Scheme.

**“Bermuda Proceedings”** means, collectively, the Provisional Liquidations and the Schemes.

**“Bermuda Registrar of Companies”** means the Registrar of Companies in Bermuda.

**“Business Day”** means a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealings in foreign exchange and foreign currency deposits) in London, New York and Bermuda.

**“Buy-Out Amounts”** means the Aquilo Buy-Out Amount and the Retro Funds Buy-Out Amount.

**“Buy-Out Transaction”** means the transaction to be implemented by the Schemes, including (without limitation) the acquisition of the Acquired Shares by the Purchaser in consideration for the Buy-Out Amounts, the Adverse Development Cover becoming effective, the execution of the Deed of Release, and the distribution of the Scheme Consideration to Scheme Creditors.

**“C Shares”** means the issued and outstanding series C shares of the Public Fund and includes (save where the context so requires) the Depository Interests issued by the Depository in respect of those shares.

**“Chapter 15”** means Chapter 15 of the U.S. Bankruptcy Code.

**“Chapter 15 Cases”** means the Chapter 15 cases with respect to the Bermuda Proceedings.

**“Chapter 15 Enforcement Order”** means an order issued by the U.S. Bankruptcy Court recognising and enforcing the terms of this Scheme and the Buy-Out Transaction, on terms satisfactory to the Scheme Company and the Undertaking Parties.

**“Claim”** means a claim, potential claim, counterclaim, potential counterclaim, right of set-off, indemnity, cause of action, demand, suit, right to payment (whether or not such right is reduced to judgment), right or interest of any kind or nature whatsoever, whether in law or in equity, civil or criminal, contractual or in tort (including, but not limited to, negligence, fraud or breach of fiduciary duty), and whether direct or derivative in nature, whether known or unknown, suspected or unsuspected, contingent or actual, liquidated or unliquidated, matured or unmatured, direct or indirect, disputed or undisputed, secured or unsecured, fixed or undetermined, present or future, however and whenever arising and in whatever capacity and jurisdiction.

**“Closing Date”** means the date on which each of the steps set out in Clause 3.5(a), (b) and (c) has occurred.

**“Closing NAV”** is an amount equal to Current NAV:

- (i) *plus* the Transaction Costs Reserve Release (where applicable),
- (ii) *plus* the Administrative Expenses Contribution,
- (iii) *less* Administrative Expenses.

**“Conditions Precedent”** means the conditions precedent for the Schemes set out in Clause 3.2 of the Scheme and Clause 3.2 of the Public Fund Scheme.

**“Court”** means the Supreme Court of Bermuda.

**“Current NAV”** means, if the Net Asset Value attributable to the Shares that has been announced for the most recent month end prior to the Closing Date, adjusted to exclude the impact of any Transaction Costs or increased reserve on account of Transaction Costs or litigation liabilities reflected in such amount, is greater than the Net Asset Value of the Shares as of 31 August 2021, then the Net Asset Value attributable to the Shares that has been announced for the most recent month end prior to the Closing Date, or otherwise the Net Asset Value of the Shares as of 31 August 2021.

**“Deed of Release”** means a deed of release to be dated on or about the Closing Date between the Scheme Creditors, the Public Fund Scheme Creditors, the Scheme Company, the Public Fund, the Manager, the Reinsurer, the Funding Cos, the Purchaser, the Adverse Development Cover Provider and Markel Corporation pursuant to which the parties shall grant releases of certain claims and liabilities as contemplated by the Schemes.

**“Depository”** means Link Market Services Trustees (Nominees) Limited, acting in the capacity as Depository for the Public Fund.

**“Depository Interests”** means the dematerialised depository interests issued by the Depository in respect of the issued and outstanding Ordinary Shares and C Shares.

**“Early Consent Fee Amount”** means a cash fee equal to 2% of the aggregate Current NAV of Scheme Creditors who had executed support undertakings by 9 November 2021 at 11.59 p.m. (Bermuda time).

**“Excluded Creditors”** means the “Investor Parties” subject to and as defined in the Settlement Agreement.

**“Explanatory Statement”** means the explanatory statement issued by the Scheme Companies in compliance with section 99 and section 100(1)(a) of the Companies Act relating to the Schemes.

**“Funding Cos”** means SOAFC I, Inc., SOAFC II, Inc. and SOAFC III, Ltd as lenders pursuant to the Purchase Price Loan Agreement.

**“Group Settlement Deed”** means a deed to be entered in to by the Manager, the Public Fund, the Private Fund and the Reinsurer, pursuant to which, on and from the Closing Date, the Management Agreements will be terminated and all rights or claims arising therefrom including pursuant to the indemnities contained therein will be released.

**“HWH”** means HWH Realty Holdings LLC.

**“Insurance Management Agreement”** means that certain discretionary insurance management agreement dated 8 December 2015 between the Manager and the Reinsurer.

**“Investor Claims”** means all Claims at any time arising out of, relating to, or in connection with any investment in or exposure to the Scheme Companies (and/or any of their segregated accounts, if applicable) or the Markel CATCo Business, and/or the Scheme Creditors’ Shares, including, without limitation, any such Claims: based on any oral or written statements or omissions by any person; based in tort (including, but not limited to, negligence, fraud or breach of fiduciary duty), contract, or the laws that govern the offer and sale of securities under the law of any jurisdiction; based on breach of fiduciary or other duties or breach of any contracts or deviations from operations; based on any argument or theory of alter ego, vicarious liability, agency, or piercing the corporate veil; for breach of representation, warranty or undertaking; based on an event of default or under any indemnity given under or in connection with any such Claim; based on indemnification, whether statutory or otherwise in any jurisdiction; for damages, restitution, contribution, attorneys’ fees, costs, or other liability; or as a result of any recovery by any person of a payment on the grounds of preference or otherwise, and any Claims which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings.

**“JPLs”** means Simon Appell and John McKenna in their capacities as joint provisional liquidators of the Scheme Company, the Public Fund, the Manager and the Reinsurer.

**“Loan”** has the meaning given to that term under the Purchase Price Loan Agreement.

**“Lodgement Date”** has the meaning given in Clause 2.2 of this Scheme.

**“Management Agreements”** means, collectively, (a) the Private Fund Management Agreement, (b) the Public Fund Management Agreement and (c) the Insurance Management Agreement.

**“Manager”** means Markel CATCo Investment Management Ltd.

**“Markel CATCo Business”** means the retro-reinsurance and reinsurance business carried out by the Manager and the Reinsurer with respect to the assets held by the Scheme Companies and the management and solicitation of investments in respect thereof.

**“Markel Corporation”** means the corporation which indirectly wholly owns Markel CATCo Investment Management Ltd. and is incorporated in the Commonwealth of Virginia (USA).

**“Markel Group”** means Markel Corporation and its Affiliates.

**“Master Fund”** means the Segregated Account known as the Markel CATCo Diversified Fund.

**“Master Fund SP”** means side pocket shares of the Private Fund issued in respect of the Master Fund.

**“Net Asset Value”** or **“NAV”** has the meaning set out in the Private Fund Bye-Laws.

**“Ordinary Course Fees”** means the aggregate of the following amounts in respect of each SP of the Retro Funds, and the Aquilo Fund, which amounts are allocated to Retro Funds Shares or Aquilo Fund Shares *pro rata* in proportion to the Current NAV of such Shares:

	<b>Operating expenses estimate</b>	<b>Reserve</b>	<b>Total</b>
2016 Master Fund SP	0	\$141,653	<b>\$141,653</b>
2017 Master Fund SP	\$1,982,885	\$1,202,747	<b>\$3,185,632</b>
2018 Master Fund SP	\$3,982,732	\$1,817,844	<b>\$5,800,575</b>
2019 Master Fund SP	\$4,038,313	\$1,538,543	<b>\$5,576,857</b>
Aquilo	\$1,131,284	\$526,257	<b>\$1,657,540</b>

**“Ordinary Shares”** means the issued and outstanding ordinary shares of the Public Fund and includes (save where the context so requires) the Certificated Shares and the Depositary Interests issued by the Depositary in respect of those shares.

**“Partners”** means Partners Capital Investment Group LLP.

**“Principal Transaction Documents”** means the Deed of Release, the Purchase Price Loan Agreement and the Relationship and Economics Rights Agreement, each in substantially the form made available to Scheme Creditors on the Schemes Website, subject to any modification made in accordance with the terms of this Scheme.

**“Private Fund”** means Markel CATCo Reinsurance Fund Ltd.

**“Private Fund Bye-Laws”** means the bye-laws of the Private Fund.

**“Private Fund Management Agreement”** means that certain discretionary investment management agreement dated 8 December 2015 between the Manager and the Private Fund on behalf of each Segregated Account.

**“Private Fund Sanction Order”** means the office copy of the order of the Court sanctioning the Scheme.

**“Private Fund Shares”** means the shares issued by the Private Fund in respect of the Segregated Accounts.

**“Proceeding”** means any process, suit, action, legal or other proceeding, including without limitation any arbitration, mediation, alternative dispute resolution, judicial review, adjudication, demand, execution, distraint, restraint, forfeiture, re-entry, seizure, lien, enforcement of judgment or enforcement of any security.

**“Provisional Liquidations”** means the liquidation proceedings commenced by each of the Manager, the Private Fund, the Public Fund, and the Reinsurer under Part XIII of the Companies Act, in their present form or with or subject to any modifications, additions or conditions approved or imposed by the Court or approved in accordance with the terms of each such liquidation proceeding.

**“Public Fund”** means CATCo Reinsurance Opportunities Fund Ltd.

**“Public Fund Management Agreement”** means that certain discretionary investment management agreement dated 8 December 2015 between the Manager and the Public Fund.

**“Public Fund Sanction Order”** means the office copy of the order of the Court sanctioning the Public Fund Scheme.

**“Public Fund Scheme”** means the scheme of arrangement in respect of the Public Fund.

**“Public Fund Scheme Creditors”** means all persons that are beneficially interested in the Public Fund Shares as at the Scheme Record Time, in their capacity as creditors of the Public Fund in relation to their potential Investor Claims.

**“Public Fund Scheme Distribution”** means the distribution of the Retro Funds Scheme Distribution received by the Public Fund to Public Fund Shareholders in accordance with the terms of the Public Fund Scheme.

**“Public Fund Shares”** means the Ordinary Shares and/or the C Shares, as applicable.

**“Purchase Price Loan Agreement”** means the loan agreement, to be dated on or about the Closing Date, between *inter alios*, the Funding Cos, the Purchaser and the Reinsurer, pursuant to which the Funding Cos will advance the Loans to the Purchaser for the purchase of the Acquired Shares.

**“Purchaser”** means SPC, Ltd. as purchaser pursuant to the Relationship and Economic Rights Agreement.

**“Reinsurer”** means Markel CATCo Re Ltd.

**“Relationship and Economic Rights Agreement”** means that certain relationship agreement, to be dated on or about the Closing Date, between the Purchaser, the Private Fund, the Manager and the Reinsurer governing the purchase of the Acquired Shares and economic rights of the Reinsurer and the Private Fund on a go forward basis. .

**“Released Parties”** has the meaning given to it in the Deed of Release.

**“Reserve”** means a reserve of approximately \$5.2 million to cover Ordinary Course Fees.

**“Retro Funds”** means, collectively, the Master Fund, the Diversified Fund II, the Limited Diversified Arbitrage Fund, the Diversified Arbitrage Fund, the GTL Diversified Fund, the Markel Diversified Fund and the QIC Diversified Fund.

**“Retro Funds Accelerated Distribution”** means a cash distribution to holders of Retro Fund Shares in an amount equal to 100% of the Closing NAV of each Scheme Creditors’ Retro Funds Shares.

**“Retro Funds Buy-Out Amount”** means the purchase price to be paid by the Purchaser to the Private Fund (pursuant to the terms of the Relationship and Economic Rights Agreement) in exchange for the Acquired Shares in respect of the Retro Funds.

**“Retro Funds Scheme Distribution”** means a distribution to Private Fund Scheme Creditors with interests in the Retro Funds of:

- (a) each shareholders’ proportion of the Retro Funds Accelerated Distribution; and
- (b) each shareholders’ proportion of the Additional Consideration,

such distributions to be allocated to Private Fund Scheme Creditors with interests in the Retro Funds *pro rata* in proportion to their Closing NAV and to be made in accordance with the Private Fund Bye-Laws.

**“Retro Funds Shares”** means the Shares issued by the Retro Funds to their shareholders, other than any such shares held by another Retro Fund.

**“Sanction Orders”** means the Private Fund Sanction Order and the Public Fund Sanction Order.

**“Scheme”** means the scheme of arrangement in relation to the Private Fund under section 99 of the Companies Act in its present form or with or subject to any modifications, additions or conditions approved or imposed by the Court or approved in accordance with the terms of each such scheme of arrangement.

**“Scheme Company”** means the Private Fund, and together with the Public Fund, the **“Scheme Companies”**.

**“Scheme Consideration”** means the entitlements of Scheme Creditors and the Public Fund Scheme Creditors pursuant to the Schemes, including without limitation, the Retro Funds Scheme Distribution, Aquilo Scheme Distribution and/or the Public Fund Scheme Distribution, as applicable.

**“Scheme Creditors”** means all persons other than Excluded Creditors that are beneficially interested in the Private Fund Shares as at the Scheme Record Time, in their capacity as creditors of the Private Fund (and/or any of its segregated accounts) in relation to their potential Investor Claims.

**“Scheme Record Time”** means 1 March 2022 at 2 p.m. (Bermuda Time).

**“Schemes Website”** means the website providing further information related to the Schemes and the Buy-Out Transaction at <https://catcobuyout.alixpartners.com>.

**“Security”** means the security to be granted in favour of the Funding Cos to secure repayment of the Loans, as set out in the Purchase Price Loan Agreement.

**“Security Documents”** means the documents in a form reasonably satisfactory to the Funding Cos pursuant to which the Security is granted.

**“Segregated Account”** means each of the following funds: (a) Master Fund, (b) Diversified Fund II, (c) Limited Diversified Arbitrage Fund, (d) Diversified Arbitrage Fund, (e) GTL Diversified Fund, (f) Markel Diversified Fund, (g) QIC Diversified Fund, and (h) Aquilo Fund.

**“Settlement Agreement”** means the agreement dated 3 February 2022 between Markel Corporation, the Manager (on its own behalf and on behalf of the Private Fund), HWH and certain funds managed by Partners.

**“Shares”** means, with respect to the Private Fund, the Private Fund Shares and, with respect to the Public Fund, the Public Fund Shares.

**“SP”** means a side pocket, 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 assets.

**“Transaction Costs”** means the transaction costs for implementing the Schemes (including the fees and costs incurred by the JPLs, the U.S. Expert and all legal and other advisers to the Scheme Companies, including the Advisers), which shall, to the extent not already allocated, be allocated as follows:

- a) in respect of the Retro Funds, an allocation of 90% of the Transaction Costs to all Retro Funds Shares, *pro rata* in proportion to the Current NAV of such shares; and
- b) in respect of the Aquilo Funds, an allocation of 10% of the Transaction Costs to all Aquilo Fund Shares, *pro rata* in proportion to the Current NAV of such shares.

**“Transaction Costs Reserve Release”** means in respect of each Retro Fund SP, 75% of the amount held by the Private Fund in respect of such SP as a reserve on account of potential litigation costs related to Investor Claims.

**“Transaction Documents”** means the Ancillary Transaction Documents and the Principal Transaction Documents.

**“U.S. Bankruptcy Court”** means the U.S. Bankruptcy Court for the Southern District of New York.

**“U.S. Expert”** means Daniel M. Glosband, in respect to a legal opinion prepared on behalf of the Manager in support of the Schemes.

**“Undertaking Parties”** means the Manager, the Reinsurer, the Funding Cos and the Purchaser.

**“Work Fee”** means a cash fee equal to 2% of the Current NAV of funds managed by PKA A/S and Almitas Capital.

## 1.2 *Interpretation*

In this Scheme, unless the context otherwise requires or otherwise expressly provides for:

- (a) references to “Clauses” are references to the Clauses of this Scheme;
- (b) references to a “person” include references to an individual, firm, partnership, company, corporation, unincorporated body of persons or any state or state agency;
- (c) references to a statute or statutory provision include the same as subsequently modified, amended or re-enacted from time to time;
- (d) references to an agreement, deed or document shall be deemed to also refer to such agreement, deed or document as amended, supplemented, restated, varied, replaced and/or novated (in whole or in part) from time to time and to any agreement, deed or document executed pursuant thereto;
- (e) references to time shall be to prevailing Bermuda time;
- (f) the singular includes the plural and *vice versa* and words importing one gender shall include all genders;
- (g) the term “including” means “including without limitation;” and
- (h) headings are for ease of reference only and shall not affect the interpretation of this Scheme.

## 2. **Application and Effectiveness of the Scheme**

2.1 The compromise and arrangement effected by the Scheme shall bind:

- (a) all Scheme Creditors;
- (b) the Scheme Company; and



- (c) each of Undertaking Parties in accordance with the terms of their undertaking to be so bound.
- 2.2 Unless otherwise stated, the provisions of the Scheme shall take effect on and from the time that both of the following conditions are satisfied:
  - (a) the Public Fund Scheme has been sanctioned by the Court; and
  - (b) copies of the Sanction Orders are delivered to the Bermuda Registrar of Companies for registration (the “**Lodgement Date**”).
- 2.3 As soon as reasonably practicable following the Lodgement Date, the Scheme Company shall notify the Scheme Creditors in accordance with Clause 6.9 (*Notice*) (including through the Schemes Website) that the Scheme has become effective.
- 3. Implementation of the Buy-Out Transaction**
- 3.1 On and from the Lodgement Date, each Scheme Creditor hereby irrevocably authorises, instructs, empowers and appoints the Scheme Company (acting by any authorised signatory (being any director of the Scheme Company or attorney of the Scheme Company appointed pursuant to a duly executed power of attorney)) as the true and lawful agent and attorney of that Scheme Creditor (the “**Attorney**”), so that the Attorney may:
  - (a) sign, execute and deliver the Deed of Release for and on behalf of that Scheme Creditor, such that each Scheme Creditor will become a party to and be bound by the Deed of Release;
  - (b) take any such other action as may be reasonably necessary, or desirable, to give effect to the terms of the Scheme, the Deed of Release or any other Transaction Document;
  - (c) agree on its behalf any amendments to the Scheme, Deed of Release or any other Transaction Document, which the Scheme Company and (if applicable) the other person(s) party to the Scheme, the Deed of Release or such other Transaction Document (acting reasonably and in good faith) consider(s) necessary, or desirable, in order to ensure that, without limitation:
    - (i) the information and categories of information contained, or referred to, in any formula, schedule, annex or similar, signature blocks, parties’ provisions, notice details or blank in any Transaction Document reflect the relevant information and categories of information as of the applicable date;
    - (ii) any Transaction Document may be duly executed and delivered; and/or
    - (iii) the Deed of Release and any other Transaction Document is legal, valid, binding and enforceable upon the parties to them in accordance with the Scheme.
- 3.2 The Closing Date shall occur as soon as reasonably practicable following the occurrence of each of the following (together, the “**Conditions Precedent**”):
  - (a) the Manager, the Public Fund, the Private Fund and the Reinsurer have entered into the Group Settlement Deed;
  - (b) the U.S. Bankruptcy Court has issued the Chapter 15 Enforcement Order; and
  - (c) each of the conditions precedent set out in the Purchase Price Loan Agreement have been satisfied.
- 3.3 The Scheme Company shall take all steps and execute all documents as are reasonably required to satisfy the Conditions Precedent as soon as possible following the Lodgement Date.

- 3.4 On or before the Closing Date the following shall occur:
- (a) the Scheme Company and the Undertaking Parties (as applicable) shall enter into and implement the Purchase Price Loan Agreement and the Relationship and Economic Rights Agreement;
  - (b) the Reinsurer and the Purchaser shall grant the Security;
  - (c) the Funding Cos shall provide the Loans to the Purchaser pursuant to the terms of the Purchase Price Loan Agreement;
  - (d) the Purchaser shall acquire the Acquired Shares pursuant to the Relationship and Economic Rights Agreement;
  - (e) relevant steps will be taken by the Private Fund so that the Adverse Development Cover becomes effective; and
  - (f) the Purchaser or one of its Affiliates (as applicable) will pay to the Private Fund and/or the Public Fund, as relevant, the Additional Consideration, the Administrative Expenses Contribution, and the Early Consent Fee Amount; and
  - (g) the Work Fee will be paid to those parties entitled to it as agreed between the Scheme Companies and those parties.
- 3.5 On the Closing Date the following shall occur:
- (a) the Deed of Release will be executed by the Scheme Company on its own behalf (in respect of its general account and each of the Retro Funds and the Aquilo Fund) and on behalf of the Scheme Creditors and by all other parties thereto and shall become effective in accordance with its terms;
  - (b) the Group Settlement Deed shall become effective; and
  - (c) the Scheme Company shall initiate the Retro Funds Scheme Distribution and the Aquilo Scheme Distribution in accordance with the Private Fund Bye-Laws; and
  - (d) the Scheme Company shall initiate the payment of the Early Consent Fee to eligible Private Fund Scheme Creditors.
- 3.6 The Scheme Company shall take all steps and execute all documents as are reasonably required to cause the Closing Date to occur as soon as reasonably practicable following satisfaction of the Conditions Precedent.
- 3.7 If the Closing Date does not occur on or before the date which is 15 Business Days after the Lodgement Date (or such other date not later than 45 Business Days after the Lodgement Date as the Scheme Company may determine and of which notice is given to all Scheme Creditors), the terms of and the obligations on the parties under or pursuant to clauses 3 of the Scheme shall lapse and all the compromises and arrangements provided by the Scheme (including the execution of the Deed of Release on behalf of any or all of the Scheme Creditors) shall be of no effect.
- 3.8 The authority granted under Clause 3.1 above shall be treated for all purposes whatsoever and without limitation as having been granted by deed under the laws of Bermuda.
- 4. Action Contrary to the Scheme**
- 4.1 Prior to the Closing Date (or, if earlier, the date on which the Scheme lapses in accordance with Clause 3.8), the Scheme Creditors shall not take any actions which would be inconsistent with the Schemes, including exercising any rights, remedies, powers or discretions in respect of any Investor Claim (or instructing any other person to do the same).

**5. General**

*Modification*

- 5.1 The Scheme Creditors hereby agree that the Scheme Company may, at any Court hearing to sanction this Scheme, consent on behalf of itself and all Scheme Creditors to any modification of, or addition to, this Scheme, the Deed of Release and/or any of the other Transaction Documents or any terms or conditions which, in each case, the Court may think fit to approve or impose, provided that such modification, addition, term or condition does not have an adverse effect on the rights of the Scheme Creditors, or any of them.

*Assignments or Transfers*

- 5.2 The Scheme Company shall not be under any obligation to recognise any assignment or transfer of Shares that occurs in the period after the Scheme Record Time up to the Closing Date, provided that, where the Scheme Company has received from the relevant parties written notice of such assignment or transfer, the Scheme Company may in its absolute discretion and subject to such evidence as it may reasonably require, agree to recognise such assignment or transfer, subject to the assignee or transferee agreeing to be bound by the terms of this Scheme and to be treated as a Scheme Creditor for the purposes of this Scheme.

*Exercise of Discretion*

- 5.3 Where, under or pursuant to any provision of this Scheme, a matter is to be determined by the Scheme Company, it shall be determined by the board of directors of the Scheme Company, in their discretion in such manner as they may consider fair and reasonable. If any difficulty shall arise in determining any such matter either generally or in any particular case or in ensuring the result described above, it shall be resolved by the board of directors of the Scheme Company in such manner as it shall consider to be fair and reasonable and its decision shall, insofar as permitted by law, be final and binding on all concerned.

*Performance of Obligations on Dates Other than a Business Day*

- 5.4 If any obligation is to be performed under the terms of this Scheme on a date other than a Business Day and is not capable of being performed on such date, the relevant obligation shall be performed on the next Business Day.

*Further Assurance*

- 5.5 On and from the Lodgement Date, each Scheme Creditor undertakes to the Scheme Company, and the Scheme Company undertakes to each Scheme Creditor, to provide such further assistance (at the cost of the Scheme Company) as may be reasonably required to implement the Scheme.

*Severability*

- 5.6 If at any time any provision of the Scheme is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of that provision under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision of the Scheme under the law of that jurisdiction shall in any way be affected or impaired thereby.

*Notice*

- 5.7 Any notice or other written communication to be given under or in relation to this Scheme shall be given in the English language in writing and shall be deemed to have been duly given if it is posted to the Scheme Website.

*Governing Law and Jurisdiction*

- 5.8 The operative terms of this Scheme and any non-contractual obligations arising out of or in connection with this Scheme shall be governed by and construed in accordance with the laws of Bermuda. The Scheme Creditors and the Scheme Company hereby agree that the Court shall have exclusive jurisdiction to hear and determine any suit, action or Proceeding and to settle any dispute which arises out of or in connection with the terms of this Scheme or its implementation or out of any action taken or omitted to be taken under this Scheme or in connection with the administration of this Scheme and for such purposes the Scheme Creditors and the Scheme Company irrevocably submit to the jurisdiction of the Court.

Dated this            day of

**EXHIBIT G-1**

**Private Fund Scheme Sanction Order**

**IN THE SUPREME COURT OF BERMUDA  
COMMERCIAL COURT  
COMPANIES (WINDING UP)  
Case No. 307 of 2021**

**IN THE MATTER OF MARKEL CATCO REINSURANCE FUND LTD.  
(PROVISIONAL LIQUIDATORS APPOINTED FOR RESTRUCTURING PURPOSES)  
AND IN THE MATTER OF SECTION 99 OF THE COMPANIES ACT 1981  
AND IN THE MATTER OF THE SEGREGATED ACCOUNTS COMPANIES ACT 2000**

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**ORDER**

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**UPON** the Petition presented by Markel CATCo Reinsurance Fund Ltd. (the “**Company**”) dated 9 March 2022 seeking the sanction of the scheme of arrangement set out in the Schedule to this Order (the “**Scheme**”) pursuant to Section 99 of the Companies Act 1981

**AND UPON HEARING** Leading Counsel for the Company and Counsel for the Joint Provisional Liquidators of the Company

**AND UPON READING** the Order dated 16 February 2022 (pursuant to which the Company convened the Scheme Meetings), the Scheme, the report of the Chairman of the Scheme Meetings, the evidence filed in support of the Petition, and the Petition

**AND UPON** adopting in this Order, for ease of reference only, the defined terms contained in the Scheme

**AND UPON** each of SOAFC I, Inc., SOAFC II, Inc., SOAFC III, Ltd (the Funding Cos) and SPC, Ltd. (the Purchaser) having given an **UNDERTAKING** to (a) take all such actions as are required to implement and give effect to the terms of each of the Schemes as sanctioned by the Bermuda Court pursuant to Section 99 of the Companies Act, in accordance with and subject to its terms and (b) execute and, with effect from the Closing Date, be bound by the Transaction Documents to which it is a party, and any other documents which are required to implement and give effect to the Scheme and the Buy-Out Transaction

**IT IS ORDERED THAT:**

1. The Court hereby sanctions the Scheme set out in the Schedule to this Order.
2. The Company or its attorneys shall, as soon as reasonably practicable, deliver a copy of this order to the Registrar of Companies for registration.

**DATED** the 11<sup>th</sup> day of March 2022.



JUSTICE MUSSENDEN

## **SCHEDULE**





March 4, 2022

**IN THE SUPREME COURT OF BERMUDA  
CIVIL JURISDICTION  
(COMMERCIAL COURT)  
Case 2021: No. 307  
IN THE MATTER OF MARKEL CATCO REINSURANCE FUND LTD.  
AND IN THE MATTER OF THE COMPANIES ACT 1981**

**SCHEME OF ARRANGEMENT  
UNDER SECTION 99 OF THE COMPANIES ACT 1981  
BETWEEN  
MARKEL CATCO REINSURANCE FUND LTD.  
– AND THE –  
SCHEME CREDITORS (AS DEFINED HEREIN)**

## 1. Definitions and Interpretation

### 1.1 Definitions

In this Scheme, the following expressions shall, unless the context otherwise requires, have the following meanings:

**“Acquired Shares”** means the shares in the segregated accounts of the Reinsurer to be acquired by the Purchaser from the Private Fund in exchange for the Buy-Out Amounts in accordance with the terms of the Relationship and Economic Rights Agreement.

**“Additional Consideration”** means an amount to be allocated to all Scheme Creditors equal to each Scheme Creditor’s *pro rata* entitlement (based on the proportion that the Closing NAV of each Scheme Creditor’s shareholding in the Private Fund comprises in relation to the aggregate Closing NAV of all Private Fund shareholders including the Excluded Creditors) to \$44 million.

**“Administrative Expenses”** means the Transaction Costs, the Ordinary Course Fees and the Reserve.

**“Administrative Expenses Contribution”** means an aggregate cash amount equal to the greater of: (i) \$20 million, and (ii) Transaction Costs, less any amount of Transaction Costs which has been paid by the Private Fund and allocated against the NAV of the Settling Shares, which amount will be contributed by Markel Corporation or one of its Affiliates to the Private Fund and attributed to Retro Funds Shares and Aquilo Fund Shares *pro-rata* in proportion to the Current NAV of such shares.

**“Adverse Development Cover”** means adverse development cover (and/or entering into new reinsurance contracts, or amending existing reinsurance contracts) to one or more fronting reinsurers of the Aquilo Fund that will enable the release of trapped cash to the Private Fund.

**“Adverse Development Cover Provider”** means Markel Bermuda Limited, an Affiliate of Markel Corporation, or any other Affiliate of Markel Corporation that will provide the Adverse Development Cover.

**“Advisers”** means:

- (a) AlixPartners UK LLP;
- (b) ASW Law Limited;
- (c) Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates (and Counsel instructed by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates to advise on, and to appear before the Supreme Court of Bermuda in relation to, the Schemes) as legal advisers to the Scheme Companies;
- (d) Conyers Dill & Pearman Limited;
- (e) Finance and Risk Services Limited;
- (f) Simpson, Thacher & Bartlett LLP; and
- (g) the JPLs in the personal capacities,

together with the respective Related Parties of each of the foregoing.

**“Affiliate”** means, in respect of a company:

- (a) a company that directly or indirectly owns, controls, or holds with power to vote, 50 percent or more of the outstanding voting securities of the company, other than an entity that holds such securities:

- (i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or
  - (ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;
- (b) a company 50 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the company, or by an entity that directly or indirectly owns, controls, or holds with power to vote, 50 percent or more of the outstanding voting securities of the company, other than an entity that holds such securities:
  - (i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or
  - (ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;
- (c) a person whose business is operated under a lease or operating agreement by the company, or person substantially all of whose property is operated under an operating agreement with the company; or
- (d) an entity that operates the business or substantially all of the property of the company under a lease or operating agreement.

**“Ancillary Transaction Documents”** means the Security Documents and all scheduled, instruments, resolutions or other documentation necessary to implement and give effect to the Transaction Documents.

**“Aquila Accelerated Distribution”** means a cash distribution to holders of Aquilo Fund Shares as at the Scheme Record Time in an amount equal to 100% of the Closing NAV of the Aquilo Fund Shares.

**“Aquila Buy-Out Amount”** means the purchase price to be paid by the Purchaser to the Private Fund (pursuant to the terms of the Relationship and Economic Rights Agreement) in exchange for the Acquired Shares in respect of the Aquilo Fund.

**“Aquila Fund”** means the Aquilo Fund of the Private Fund.

**“Aquila Fund Shares”** means the shares issued by the Aquilo Fund to its shareholders.

**“Aquila Scheme Distribution”** means a distribution to Private Fund Scheme Creditors with interests in Shares issued by the Aquilo Fund of:

- a) each shareholders’ proportion of the Aquilo Accelerated Distribution; and
- b) each shareholders’ proportion of the Additional Consideration,

such distributions to be allocated to Private Fund Scheme Creditors with interests in Shares issued by the Aquilo Fund *pro rata* in proportion to their Closing NAV and to be made in accordance with the Private Fund Bye-Laws.

**“Attorney”** has the meaning given in Clause 3.1 of this Scheme.

**“Bermuda Proceedings”** means, collectively, the Provisional Liquidations and the Schemes.

**“Bermuda Registrar of Companies”** means the Registrar of Companies in Bermuda.

**“Business Day”** means a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealings in foreign exchange and foreign currency deposits) in London, New York and Bermuda.

**“Buy-Out Amounts”** means the Aquilo Buy-Out Amount and the Retro Funds Buy-Out Amount.

**“Buy-Out Transaction”** means the transaction to be implemented by the Schemes, including (without limitation) the acquisition of the Acquired Shares by the Purchaser in consideration for the Buy-Out Amounts, the Adverse Development Cover becoming effective, the execution of the Deed of Release, and the distribution of the Scheme Consideration to Scheme Creditors.

**“C Shares”** means the issued and outstanding series C shares of the Public Fund and includes (save where the context so requires) the Depository Interests issued by the Depository in respect of those shares.

**“Chapter 15”** means Chapter 15 of the U.S. Bankruptcy Code.

**“Chapter 15 Cases”** means the Chapter 15 cases with respect to the Bermuda Proceedings.

**“Chapter 15 Enforcement Order”** means an order issued by the U.S. Bankruptcy Court recognising and enforcing the terms of this Scheme and the Buy-Out Transaction, on terms satisfactory to the Scheme Company and the Undertaking Parties.

**“Claim”** means a claim, potential claim, counterclaim, potential counterclaim, right of set-off, indemnity, cause of action, demand, suit, right to payment (whether or not such right is reduced to judgment), right or interest of any kind or nature whatsoever, whether in law or in equity, civil or criminal, contractual or in tort (including, but not limited to, negligence, fraud or breach of fiduciary duty), and whether direct or derivative in nature, whether known or unknown, suspected or unsuspected, contingent or actual, liquidated or unliquidated, matured or unmatured, direct or indirect, disputed or undisputed, secured or unsecured, fixed or undetermined, present or future, however and whenever arising and in whatever capacity and jurisdiction.

**“Closing Date”** means the date on which each of the steps set out in Clause 3.5(a), (b) and (c) has occurred.

**“Closing NAV”** is an amount equal to Current NAV:

- (i) *plus* the Transaction Costs Reserve Release (where applicable),
- (ii) *plus* the Administrative Expenses Contribution,
- (iii) *less* Administrative Expenses.

**“Conditions Precedent”** means the conditions precedent for the Schemes set out in Clause 3.2 of the Scheme and Clause 3.2 of the Public Fund Scheme.

**“Court”** means the Supreme Court of Bermuda.

**“Current NAV”** means, if the Net Asset Value attributable to the Shares that has been announced for the most recent month end prior to the Closing Date, adjusted to exclude the impact of any Transaction Costs or increased reserve on account of Transaction Costs or litigation liabilities reflected in such amount, is greater than the Net Asset Value of the Shares as of 31 August 2021, then the Net Asset Value attributable to the Shares that has been announced for the most recent month end prior to the Closing Date, or otherwise the Net Asset Value of the Shares as of 31 August 2021.

**“Deed of Release”** means a deed of release to be dated on or about the Closing Date between the Scheme Creditors, the Public Fund Scheme Creditors, the Scheme Company, the Public Fund, the Manager, the Reinsurer, the Funding Cos, the Purchaser, the Adverse Development Cover Provider and Markel Corporation pursuant to which the parties shall grant releases of certain claims and liabilities as contemplated by the Schemes.

**“Depository”** means Link Market Services Trustees (Nominees) Limited, acting in the capacity as Depository for the Public Fund.

**“Depository Interests”** means the dematerialised depository interests issued by the Depository in respect of the issued and outstanding Ordinary Shares and C Shares.

**“Early Consent Fee Amount”** means a cash fee equal to 2% of the aggregate Current NAV of Scheme Creditors who had executed support undertakings by 9 November 2021 at 11.59 p.m. (Bermuda time).

**“Excluded Creditors”** means the “Investor Parties” subject to and as defined in the Settlement Agreement.

**“Explanatory Statement”** means the explanatory statement issued by the Scheme Companies in compliance with section 99 and section 100(1)(a) of the Companies Act relating to the Schemes.

**“Funding Cos”** means SOAFC I, Inc., SOAFC II, Inc. and SOAFC III, Ltd as lenders pursuant to the Purchase Price Loan Agreement.

**“Group Settlement Deed”** means a deed to be entered in to by the Manager, the Public Fund, the Private Fund and the Reinsurer, pursuant to which, on and from the Closing Date, the Management Agreements will be terminated and all rights or claims arising therefrom including pursuant to the indemnities contained therein will be released.

**“HWH”** means HWH Realty Holdings LLC.

**“Insurance Management Agreement”** means that certain discretionary insurance management agreement dated 8 December 2015 between the Manager and the Reinsurer.

**“Investor Claims”** means all Claims at any time arising out of, relating to, or in connection with any investment in or exposure to the Scheme Companies (and/or any of their segregated accounts, if applicable) or the Markel CATCo Business, and/or the Scheme Creditors’ Shares, including, without limitation, any such Claims: based on any oral or written statements or omissions by any person; based in tort (including, but not limited to, negligence, fraud or breach of fiduciary duty), contract, or the laws that govern the offer and sale of securities under the law of any jurisdiction; based on breach of fiduciary or other duties or breach of any contracts or deviations from operations; based on any argument or theory of alter ego, vicarious liability, agency, or piercing the corporate veil; for breach of representation, warranty or undertaking; based on an event of default or under any indemnity given under or in connection with any such Claim; based on indemnification, whether statutory or otherwise in any jurisdiction; for damages, restitution, contribution, attorneys’ fees, costs, or other liability; or as a result of any recovery by any person of a payment on the grounds of preference or otherwise, and any Claims which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings.

**“JPLs”** means Simon Appell and John McKenna in their capacities as joint provisional liquidators of the Scheme Company, the Public Fund, the Manager and the Reinsurer.

**“Loan”** has the meaning given to that term under the Purchase Price Loan Agreement.

**“Lodgement Date”** has the meaning given in Clause 2.2 of this Scheme.

**“Management Agreements”** means, collectively, (a) the Private Fund Management Agreement, (b) the Public Fund Management Agreement and (c) the Insurance Management Agreement.

**“Manager”** means Markel CATCo Investment Management Ltd.

**“Markel CATCo Business”** means the retro-reinsurance and reinsurance business carried out by the Manager and the Reinsurer with respect to the assets held by the Scheme Companies and the management and solicitation of investments in respect thereof.

**“Markel Corporation”** means the corporation which indirectly wholly owns Markel CATCo Investment Management Ltd. and is incorporated in the Commonwealth of Virginia (USA).

**“Markel Group”** means Markel Corporation and its Affiliates.

**“Master Fund”** means the Segregated Account known as the Markel CATCo Diversified Fund.

**“Master Fund SP”** means side pocket shares of the Private Fund issued in respect of the Master Fund.

**“Net Asset Value”** or **“NAV”** has the meaning set out in the Private Fund Bye-Laws.

**“Ordinary Course Fees”** means the aggregate of the following amounts in respect of each SP of the Retro Funds, and the Aquilo Fund, which amounts are allocated to Retro Funds Shares or Aquilo Fund Shares *pro rata* in proportion to the Current NAV of such Shares:

	Operating expenses estimate	Reserve	Total
2016 Master Fund SP	0	\$141,653	<b>\$141,653</b>
2017 Master Fund SP	\$1,982,885	\$1,202,747	<b>\$3,185,632</b>
2018 Master Fund SP	\$3,982,732	\$1,817,844	<b>\$5,800,575</b>
2019 Master Fund SP	\$4,038,313	\$1,538,543	<b>\$5,576,857</b>
Aquilo	\$1,131,284	\$526,257	<b>\$1,657,540</b>

**“Ordinary Shares”** means the issued and outstanding ordinary shares of the Public Fund and includes (save where the context so requires) the Certificated Shares and the Depository Interests issued by the Depository in respect of those shares.

**“Partners”** means Partners Capital Investment Group LLP.

**“Principal Transaction Documents”** means the Deed of Release, the Purchase Price Loan Agreement and the Relationship and Economics Rights Agreement, each in substantially the form made available to Scheme Creditors on the Schemes Website, subject to any modification made in accordance with the terms of this Scheme.

**“Private Fund”** means Markel CATCo Reinsurance Fund Ltd.

**“Private Fund Bye-Laws”** means the bye-laws of the Private Fund.

**“Private Fund Management Agreement”** means that certain discretionary investment management agreement dated 8 December 2015 between the Manager and the Private Fund on behalf of each Segregated Account.

**“Private Fund Sanction Order”** means the office copy of the order of the Court sanctioning the Scheme.

**“Private Fund Shares”** means the shares issued by the Private Fund in respect of the Segregated Accounts.

**“Proceeding”** means any process, suit, action, legal or other proceeding, including without limitation any arbitration, mediation, alternative dispute resolution, judicial review, adjudication, demand, execution, distraint, restraint, forfeiture, re-entry, seizure, lien, enforcement of judgment or enforcement of any security.

**“Provisional Liquidations”** means the liquidation proceedings commenced by each of the Manager, the Private Fund, the Public Fund, and the Reinsurer under Part XIII of the Companies Act, in their present form or with or subject to any modifications, additions or conditions approved or imposed by the Court or approved in accordance with the terms of each such liquidation proceeding.

**“Public Fund”** means CATCo Reinsurance Opportunities Fund Ltd.

**“Public Fund Management Agreement”** means that certain discretionary investment management agreement dated 8 December 2015 between the Manager and the Public Fund.

**“Public Fund Sanction Order”** means the office copy of the order of the Court sanctioning the Public Fund Scheme.

**“Public Fund Scheme”** means the scheme of arrangement in respect of the Public Fund.

**“Public Fund Scheme Creditors”** means all persons that are beneficially interested in the Public Fund Shares as at the Scheme Record Time, in their capacity as creditors of the Public Fund in relation to their potential Investor Claims.

**“Public Fund Scheme Distribution”** means the distribution of the Retro Funds Scheme Distribution received by the Public Fund to Public Fund Shareholders in accordance with the terms of the Public Fund Scheme.

**“Public Fund Shares”** means the Ordinary Shares and/or the C Shares, as applicable.

**“Purchase Price Loan Agreement”** means the loan agreement, to be dated on or about the Closing Date, between *inter alios*, the Funding Cos, the Purchaser and the Reinsurer, pursuant to which the Funding Cos will advance the Loans to the Purchaser for the purchase of the Acquired Shares.

**“Purchaser”** means SPC, Ltd. as purchaser pursuant to the Relationship and Economic Rights Agreement.

**“Reinsurer”** means Markel CATCo Re Ltd.

**“Relationship and Economic Rights Agreement”** means that certain relationship agreement, to be dated on or about the Closing Date, between the Purchaser, the Private Fund, the Manager and the Reinsurer governing the purchase of the Acquired Shares and economic rights of the Reinsurer and the Private Fund on a go forward basis. .

**“Released Parties”** has the meaning given to it in the Deed of Release.

**“Reserve”** means a reserve of approximately \$5.2 million to cover Ordinary Course Fees.

**“Retro Funds”** means, collectively, the Master Fund, the Diversified Fund II, the Limited Diversified Arbitrage Fund, the Diversified Arbitrage Fund, the GTL Diversified Fund, the Markel Diversified Fund and the QIC Diversified Fund.

**“Retro Funds Accelerated Distribution”** means a cash distribution to holders of Retro Fund Shares in an amount equal to 100% of the Closing NAV of each Scheme Creditors’ Retro Funds Shares.

**“Retro Funds Buy-Out Amount”** means the purchase price to be paid by the Purchaser to the Private Fund (pursuant to the terms of the Relationship and Economic Rights Agreement) in exchange for the Acquired Shares in respect of the Retro Funds.

**“Retro Funds Scheme Distribution”** means a distribution to Private Fund Scheme Creditors with interests in the Retro Funds of:

- (a) each shareholders’ proportion of the Retro Funds Accelerated Distribution; and
- (b) each shareholders’ proportion of the Additional Consideration,

such distributions to be allocated to Private Fund Scheme Creditors with interests in the Retro Funds *pro rata* in proportion to their Closing NAV and to be made in accordance with the Private Fund Bye-Laws.

**“Retro Funds Shares”** means the Shares issued by the Retro Funds to their shareholders, other than any such shares held by another Retro Fund.

**“Sanction Orders”** means the Private Fund Sanction Order and the Public Fund Sanction Order.

**“Scheme”** means the scheme of arrangement in relation to the Private Fund under section 99 of the Companies Act in its present form or with or subject to any modifications, additions or conditions approved or imposed by the Court or approved in accordance with the terms of each such scheme of arrangement.

**“Scheme Company”** means the Private Fund, and together with the Public Fund, the **“Scheme Companies”**.

**“Scheme Consideration”** means the entitlements of Scheme Creditors and the Public Fund Scheme Creditors pursuant to the Schemes, including without limitation, the Retro Funds Scheme Distribution, Aquilo Scheme Distribution and/or the Public Fund Scheme Distribution, as applicable.

**“Scheme Creditors”** means all persons other than Excluded Creditors that are beneficially interested in the Private Fund Shares as at the Scheme Record Time, in their capacity as creditors of the Private Fund (and/or any of its segregated accounts) in relation to their potential Investor Claims.

**“Scheme Record Time”** means 1 March 2022 at 2 p.m. (Bermuda Time).

**“Schemes Website”** means the website providing further information related to the Schemes and the Buy-Out Transaction at <https://catcobuyout.alixpartners.com>.

**“Security”** means the security to be granted in favour of the Funding Cos to secure repayment of the Loans, as set out in the Purchase Price Loan Agreement.

**“Security Documents”** means the documents in a form reasonably satisfactory to the Funding Cos pursuant to which the Security is granted.

**“Segregated Account”** means each of the following funds: (a) Master Fund, (b) Diversified Fund II, (c) Limited Diversified Arbitrage Fund, (d) Diversified Arbitrage Fund, (e) GTL Diversified Fund, (f) Markel Diversified Fund, (g) QIC Diversified Fund, and (h) Aquilo Fund.

**“Settlement Agreement”** means the agreement dated 3 February 2022 between Markel Corporation, the Manager (on its own behalf and on behalf of the Private Fund), HWH and certain funds managed by Partners.

**“Shares”** means, with respect to the Private Fund, the Private Fund Shares and, with respect to the Public Fund, the Public Fund Shares.

**“SP”** means a side pocket, 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 assets.



**“Transaction Costs”** means the transaction costs for implementing the Schemes (including the fees and costs incurred by the JPLs, the U.S. Expert and all legal and other advisers to the Scheme Companies, including the Advisers), which shall, to the extent not already allocated, be allocated as follows:

- a) in respect of the Retro Funds, an allocation of 90% of the Transaction Costs to all Retro Funds Shares, *pro rata* in proportion to the Current NAV of such shares; and
- b) in respect of the Aquilo Funds, an allocation of 10% of the Transaction Costs to all Aquilo Fund Shares, *pro rata* in proportion to the Current NAV of such shares.

**“Transaction Costs Reserve Release”** means in respect of each Retro Fund SP, 75% of the amount held by the Private Fund in respect of such SP as a reserve on account of potential litigation costs related to Investor Claims.

**“Transaction Documents”** means the Ancillary Transaction Documents and the Principal Transaction Documents.

**“U.S. Bankruptcy Court”** means the U.S. Bankruptcy Court for the Southern District of New York.

**“U.S. Expert”** means Daniel M. Glosband, in respect to a legal opinion prepared on behalf of the Manager in support of the Schemes.

**“Undertaking Parties”** means the Manager, the Reinsurer, the Funding Cos and the Purchaser.

**“Work Fee”** means a cash fee equal to 2% of the Current NAV of funds managed by PKA A/S and Almitas Capital.

## 1.2 *Interpretation*

In this Scheme, unless the context otherwise requires or otherwise expressly provides for:

- (a) references to “Clauses” are references to the Clauses of this Scheme;
- (b) references to a “person” include references to an individual, firm, partnership, company, corporation, unincorporated body of persons or any state or state agency;
- (c) references to a statute or statutory provision include the same as subsequently modified, amended or re-enacted from time to time;
- (d) references to an agreement, deed or document shall be deemed to also refer to such agreement, deed or document as amended, supplemented, restated, varied, replaced and/or novated (in whole or in part) from time to time and to any agreement, deed or document executed pursuant thereto;
- (e) references to time shall be to prevailing Bermuda time;
- (f) the singular includes the plural and *vice versa* and words importing one gender shall include all genders;
- (g) the term “including” means “including without limitation;” and
- (h) headings are for ease of reference only and shall not affect the interpretation of this Scheme.

## 2. **Application and Effectiveness of the Scheme**

2.1 The compromise and arrangement effected by the Scheme shall bind:

- (a) all Scheme Creditors;
- (b) the Scheme Company; and

- (c) each of Undertaking Parties in accordance with the terms of their undertaking to be so bound.
- 2.2 Unless otherwise stated, the provisions of the Scheme shall take effect on and from the time that both of the following conditions are satisfied:
  - (a) the Public Fund Scheme has been sanctioned by the Court; and
  - (b) copies of the Sanction Orders are delivered to the Bermuda Registrar of Companies for registration (the “**Lodgement Date**”).
- 2.3 As soon as reasonably practicable following the Lodgement Date, the Scheme Company shall notify the Scheme Creditors in accordance with Clause 6.9 (*Notice*) (including through the Schemes Website) that the Scheme has become effective.
- 3. **Implementation of the Buy-Out Transaction**
- 3.1 On and from the Lodgement Date, each Scheme Creditor hereby irrevocably authorises, instructs, empowers and appoints the Scheme Company (acting by any authorised signatory (being any director of the Scheme Company or attorney of the Scheme Company appointed pursuant to a duly executed power of attorney)) as the true and lawful agent and attorney of that Scheme Creditor (the “**Attorney**”), so that the Attorney may:
  - (a) sign, execute and deliver the Deed of Release for and on behalf of that Scheme Creditor, such that each Scheme Creditor will become a party to and be bound by the Deed of Release;
  - (b) take any such other action as may be reasonably necessary, or desirable, to give effect to the terms of the Scheme, the Deed of Release or any other Transaction Document;
  - (c) agree on its behalf any amendments to the Scheme, Deed of Release or any other Transaction Document, which the Scheme Company and (if applicable) the other person(s) party to the Scheme, the Deed of Release or such other Transaction Document (acting reasonably and in good faith) consider(s) necessary, or desirable, in order to ensure that, without limitation:
    - (i) the information and categories of information contained, or referred to, in any formula, schedule, annex or similar, signature blocks, parties’ provisions, notice details or blank in any Transaction Document reflect the relevant information and categories of information as of the applicable date;
    - (ii) any Transaction Document may be duly executed and delivered; and/or
    - (iii) the Deed of Release and any other Transaction Document is legal, valid, binding and enforceable upon the parties to them in accordance with the Scheme.
- 3.2 The Closing Date shall occur as soon as reasonably practicable following the occurrence of each of the following (together, the “**Conditions Precedent**”):
  - (a) the Manager, the Public Fund, the Private Fund and the Reinsurer have entered into the Group Settlement Deed;
  - (b) the U.S. Bankruptcy Court has issued the Chapter 15 Enforcement Order; and
  - (c) each of the conditions precedent set out in the Purchase Price Loan Agreement have been satisfied.
- 3.3 The Scheme Company shall take all steps and execute all documents as are reasonably required to satisfy the Conditions Precedent as soon as possible following the Lodgement Date.

- 3.4 On or before the Closing Date the following shall occur:
- (a) the Scheme Company and the Undertaking Parties (as applicable) shall enter into and implement the Purchase Price Loan Agreement and the Relationship and Economic Rights Agreement;
  - (b) the Reinsurer and the Purchaser shall grant the Security;
  - (c) the Funding Cos shall provide the Loans to the Purchaser pursuant to the terms of the Purchase Price Loan Agreement;
  - (d) the Purchaser shall acquire the Acquired Shares pursuant to the Relationship and Economic Rights Agreement;
  - (e) relevant steps will be taken by the Private Fund so that the Adverse Development Cover becomes effective; and
  - (f) the Purchaser or one of its Affiliates (as applicable) will pay to the Private Fund and/or the Public Fund, as relevant, the Additional Consideration, the Administrative Expenses Contribution, and the Early Consent Fee Amount; and
  - (g) the Work Fee will be paid to those parties entitled to it as agreed between the Scheme Companies and those parties.
- 3.5 On the Closing Date the following shall occur:
- (a) the Deed of Release will be executed by the Scheme Company on its own behalf (in respect of its general account and each of the Retro Funds and the Aquilo Fund) and on behalf of the Scheme Creditors and by all other parties thereto and shall become effective in accordance with its terms;
  - (b) the Group Settlement Deed shall become effective; and
  - (c) the Scheme Company shall initiate the Retro Funds Scheme Distribution and the Aquilo Scheme Distribution in accordance with the Private Fund Bye-Laws; and
  - (d) the Scheme Company shall initiate the payment of the Early Consent Fee to eligible Private Fund Scheme Creditors.
- 3.6 The Scheme Company shall take all steps and execute all documents as are reasonably required to cause the Closing Date to occur as soon as reasonably practicable following satisfaction of the Conditions Precedent.
- 3.7 If the Closing Date does not occur on or before the date which is 15 Business Days after the Lodgement Date (or such other date not later than 45 Business Days after the Lodgement Date as the Scheme Company may determine and of which notice is given to all Scheme Creditors), the terms of and the obligations on the parties under or pursuant to clauses 3 of the Scheme shall lapse and all the compromises and arrangements provided by the Scheme (including the execution of the Deed of Release on behalf of any or all of the Scheme Creditors) shall be of no effect.
- 3.8 The authority granted under Clause 3.1 above shall be treated for all purposes whatsoever and without limitation as having been granted by deed under the laws of Bermuda.
- 4. Action Contrary to the Scheme**
- 4.1 Prior to the Closing Date (or, if earlier, the date on which the Scheme lapses in accordance with Clause 3.8), the Scheme Creditors shall not take any actions which would be inconsistent with the Schemes, including exercising any rights, remedies, powers or discretions in respect of any Investor Claim (or instructing any other person to do the same).

**5. General**

*Modification*

- 5.1 The Scheme Creditors hereby agree that the Scheme Company may, at any Court hearing to sanction this Scheme, consent on behalf of itself and all Scheme Creditors to any modification of, or addition to, this Scheme, the Deed of Release and/or any of the other Transaction Documents or any terms or conditions which, in each case, the Court may think fit to approve or impose, provided that such modification, addition, term or condition does not have an adverse effect on the rights of the Scheme Creditors, or any of them.

*Assignments or Transfers*

- 5.2 The Scheme Company shall not be under any obligation to recognise any assignment or transfer of Shares that occurs in the period after the Scheme Record Time up to the Closing Date, provided that, where the Scheme Company has received from the relevant parties written notice of such assignment or transfer, the Scheme Company may in its absolute discretion and subject to such evidence as it may reasonably require, agree to recognise such assignment or transfer, subject to the assignee or transferee agreeing to be bound by the terms of this Scheme and to be treated as a Scheme Creditor for the purposes of this Scheme.

*Exercise of Discretion*

- 5.3 Where, under or pursuant to any provision of this Scheme, a matter is to be determined by the Scheme Company, it shall be determined by the board of directors of the Scheme Company, in their discretion in such manner as they may consider fair and reasonable. If any difficulty shall arise in determining any such matter either generally or in any particular case or in ensuring the result described above, it shall be resolved by the board of directors of the Scheme Company in such manner as it shall consider to be fair and reasonable and its decision shall, insofar as permitted by law, be final and binding on all concerned.

*Performance of Obligations on Dates Other than a Business Day*

- 5.4 If any obligation is to be performed under the terms of this Scheme on a date other than a Business Day and is not capable of being performed on such date, the relevant obligation shall be performed on the next Business Day.

*Further Assurance*

- 5.5 On and from the Lodgement Date, each Scheme Creditor undertakes to the Scheme Company, and the Scheme Company undertakes to each Scheme Creditor, to provide such further assistance (at the cost of the Scheme Company) as may be reasonably required to implement the Scheme.

*Severability*

- 5.6 If at any time any provision of the Scheme is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of that provision under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision of the Scheme under the law of that jurisdiction shall in any way be affected or impaired thereby.

*Notice*

- 5.7 Any notice or other written communication to be given under or in relation to this Scheme shall be given in the English language in writing and shall be deemed to have been duly given if it is posted to the Scheme Website.

*Governing Law and Jurisdiction*

- 5.8 The operative terms of this Scheme and any non-contractual obligations arising out of or in connection with this Scheme shall be governed by and construed in accordance with the laws of Bermuda. The Scheme Creditors and the Scheme Company hereby agree that the Court shall have exclusive jurisdiction to hear and determine any suit, action or Proceeding and to settle any dispute which arises out of or in connection with the terms of this Scheme or its implementation or out of any action taken or omitted to be taken under this Scheme or in connection with the administration of this Scheme and for such purposes the Scheme Creditors and the Scheme Company irrevocably submit to the jurisdiction of the Court.

Dated this 4<sup>th</sup> day of March 2022

**IN THE SUPREME COURT OF BERMUDA  
COMMERCIAL COURT  
COMPANIES (WINDING UP)  
Case No. 307 of 2021**

**IN THE MATTER OF MARKEL CATCO REINSURANCE  
FUND LTD. (PROVISIONAL LIQUIDATORS APPOINTED  
FOR RESTRUCTURING PURPOSES)  
AND IN THE MATTER OF SECTION 99 OF THE  
COMPANIES ACT 1981  
AND IN THE MATTER OF THE SEGREGATED  
ACCOUNTS COMPANIES ACT 2000**

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**ORDER**

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**aswlaw**

ASW Law Limited | Crawford House  
50 Cedar Avenue | Hamilton, HM11  
BERMUDA

**Attorneys to the Applicant  
KALG/7363-005**

**EXHIBIT G-2**

**Public Fund Scheme Sanction Order**

**IN THE SUPREME COURT OF BERMUDA  
COMMERCIAL COURT  
COMPANIES (WINDING UP)  
Case No. 309 of 2021**

**IN THE MATTER OF CATCO REINSURANCE OPPORTUNITIES FUND LTD.  
(PROVISIONAL LIQUIDATORS APPOINTED FOR RESTRUCTURING PURPOSES)  
AND IN THE MATTER OF SECTION 99 OF THE COMPANIES ACT 1981  
AND IN THE MATTER OF THE SEGREGATED ACCOUNTS COMPANIES ACT 2000**

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**ORDER**

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**UPON** the Petition presented by CATCo Reinsurance Opportunities Fund Ltd. (the “**Company**”) dated 9 March 2022 seeking the sanction of the scheme of arrangement set out in the Schedule to this Order (the “**Scheme**”) pursuant to Section 99 of the Companies Act 1981

**AND UPON HEARING** Leading Counsel for the Company and Counsel for the Joint Provisional Liquidators of the Company

**AND UPON READING** the Order dated 16 February 2022 (pursuant to which the Company convened the Scheme Meetings), the Scheme, the report of the Chairman of the Scheme Meetings, the evidence filed in support of the Petition, and the Petition

**AND UPON** adopting in this Order, for ease of reference only, the defined terms contained in the Scheme

**AND UPON** each of SOAFC I, Inc., SOAFC II, Inc., SOAFC III, Ltd (the Funding Cos) and SPC, Ltd. (the Purchaser) having given an **UNDERTAKING** to (a) take all such actions as are required to implement and give effect to the terms of each of the Schemes as sanctioned by the Bermuda Court pursuant to Section 99 of the Companies Act, in accordance with and subject to its terms and (b) execute and, with effect from the Closing Date, be bound by the Transaction Documents to which it is a party, and any other documents which are required to implement and give effect to the Scheme and the Buy-Out Transaction



**IT IS ORDERED THAT:**

1. The Court hereby sanctions the Scheme set out in the Schedule to this Order.
2. The Company or its attorneys shall, as soon as reasonably practicable, deliver a copy of this order to the Registrar of Companies for registration.

**DATED** the 11<sup>th</sup> day of March 2022.



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JUSTICE MUSSENDEN

## **SCHEDULE**



March 4, 2022

**IN THE SUPREME COURT OF BERMUDA  
CIVIL JURISDICTION  
(COMMERCIAL COURT)**

**Case 2021: No. 309**

**IN THE MATTER OF CATCO REINSURANCE OPPORTUNITIES FUND LTD.  
AND IN THE MATTER OF THE COMPANIES ACT 1981**

**SCHEME OF ARRANGEMENT  
UNDER SECTION 99 OF THE COMPANIES ACT 1981  
BETWEEN  
CATCO REINSURANCE OPPORTUNITIES FUND LTD.  
- AND THE -  
SCHEME CREDITORS (AS DEFINED HEREIN)**

## 1. Definitions and Interpretation

### 1.1 Definitions

In this Scheme, the following expressions shall, unless the context otherwise requires, have the following meanings:

**“Acquired Shares”** means the shares in the segregated accounts of the Reinsurer, to be acquired by the Purchaser from the Private Fund in exchange for the Buy-Out Amounts in accordance with the terms of the Relationship and Economic Rights Agreement.

**“Additional Consideration”** means an amount to be allocated to all Scheme Creditors equal to each Scheme Creditor’s *pro rata* entitlement (based on the proportion that the Closing NAV of each Scheme Creditor’s shareholding in the Private Fund comprises in relation to the aggregate Closing NAV of all Private Fund shareholders including the Excluded Creditors) to \$44 million.

**“Administrative Expenses”** means the Transaction Costs, the Ordinary Course Fees and the Reserve.

**“Administrative Expenses Contribution”** means an aggregate cash amount equal to the greater of: (i) \$20 million, and (ii) Transaction Costs, less any amount of Transaction Costs which has been paid by the Private Fund and allocated against the NAV of the Settling Shares, which amount will be contributed by Markel Corporation or one of its Affiliates to the Private Fund and attributed to Retro Funds Shares and Aquilo Fund Shares *pro-rata* in proportion to the Current NAV of such shares.

**“Adverse Development Cover”** means adverse development cover (and/or entering into new reinsurance contracts, or amending existing reinsurance contracts) to one or more fronting reinsurers of the Aquilo Fund that will enable the release of trapped cash to the Private Fund.

**“Adverse Development Cover Provider”** means Markel Bermuda Limited, an Affiliate of Markel Corporation, or any other Affiliate of Markel Corporation that will provide the Adverse Development Cover.

**“Advisers”** means:

- (a) AlixPartners UK LLP;
- (b) ASW Law Limited;
- (c) Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates (and Counsel instructed by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates to advise on, and to appear before the Supreme Court of Bermuda in relation to, the Schemes) as legal advisers to the Scheme Companies;
- (d) Conyers Dill & Pearman Limited;
- (e) Finance and Risk Services Limited; and
- (f) Simpson, Thacher & Bartlett LLP; and
- (g) the JPLs in the personal capacities,

together with the respective Related Parties of each of the foregoing.

**“Affiliate”** means, in respect of a company:

- (a) a company that directly or indirectly owns, controls, or holds with power to vote, 50 percent or more of the outstanding voting securities of the company, other than an entity that holds such securities:

- (i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or
  - (ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;
- (b) a company 50 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the company, or by an entity that directly or indirectly owns, controls, or holds with power to vote, 50 percent or more of the outstanding voting securities of the company, other than an entity that holds such securities—
  - (i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or
  - (ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;
- (c) a person whose business is operated under a lease or operating agreement by the company, or person substantially all of whose property is operated under an operating agreement with the company; or
- (d) an entity that operates the business or substantially all of the property of the company under a lease or operating agreement.

**“Ancillary Transaction Documents”** means the Security Documents and all scheduled, instruments, resolutions or other documentation necessary to implement and give effect to the Transaction Documents.

**“Aquila Accelerated Distribution”** means a cash distribution to Private Fund Scheme Creditors with interests in Shares issued by the Aquilo Fund in an amount equal to 100% of the Closing NAV of the Aquilo Fund Shares

**“Aquila Buy-Out Amount”** means the purchase price to be paid by the Purchaser to the Private Fund (pursuant to the terms of the Relationship and Economic Rights Agreement) in exchange for the Acquired Shares in respect of the Aquilo Fund .

**“Aquila Fund”** means the Aquilo Fund of the Private Fund.

**“Aquila Fund Shares”** means the shares issued by the Aquilo Fund to its shareholders.

**“Aquila Scheme Distribution”** means a distribution to Private Fund Scheme Creditors with interests in Shares issued by the Aquilo Fund of:

- a) each shareholders’ proportion of the Aquilo Accelerated Distribution; and
- b) each shareholders’ proportion of the Additional Consideration,

such distributions to be allocated to Private Fund Scheme Creditors with interests in Shares issued by the Aquilo Fund *pro rata* in proportion to their Closing NAV and to be made in accordance with the Private Fund Bye-Laws.

**“Attorney”** has the meaning given in Clause 4.1 of this Scheme.

**“Bermuda Proceedings”** means, collectively, the Provisional Liquidations and the Schemes.

**“Bermuda Registrar of Companies”** means the Registrar of Companies in Bermuda.

**“Business Day”** means a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealings in foreign exchange and foreign currency deposits) in London, New York and Bermuda.

**“Buy-Out Amounts”** means the Aquilo Buy-Out Amount and the Retro Funds Buy-Out Amount.

**“Buy-Out Transaction”** means the transaction to be implemented by the Schemes, including (without limitation) the acquisition of the Acquired Shares by the Private Fund in consideration for the Buy-Out Amounts, the Adverse Development Cover becoming effective, the execution of the Deed of Release, and the distribution of the Scheme Consideration to Scheme Creditors.

**“C Share Distribution”** means the distribution by the Public Fund paid to Distribution Date C Shareholders of the amount of the Retro Funds Scheme Distribution received by the Public Fund attributable to C Shares, less the C Share Expenses Reserve, in accordance with the Bye-Laws of the Public Fund.

**“C Share Expenses Reserve”** means \$1,076,403.

**“C Shares”** means the issued and outstanding series C shares of the Public Fund and includes (save where the context so requires) the Depository Interests issued by the Depository in respect of those shares.

**“Certificated Shares”** means the Public Fund Shares issued in certificated form.

**“Chapter 15”** means Chapter 15 of the U.S. Bankruptcy Code.

**“Chapter 15 Cases”** means the Chapter 15 cases with respect to the Bermuda Proceedings.

**“Chapter 15 Enforcement Order”** means an order issued by the U.S. Bankruptcy Court recognising and enforcing the terms of this Scheme and the Buy-Out Transaction, on terms satisfactory to the Scheme Company and the Undertaking Parties.

**“Claim”** means a claim, potential claim, counterclaim, potential counterclaim, right of set-off, indemnity, cause of action, demand, suit, right to payment (whether or not such right is reduced to judgment), right or interest of any kind or nature whatsoever, whether in law or in equity, civil or criminal, contractual or in tort (including, but not limited to, negligence, fraud or breach of fiduciary duty), and whether direct or derivative in nature, whether known or unknown, suspected or unsuspected, contingent or actual, liquidated or unliquidated, matured or unmatured, direct or indirect, disputed or undisputed, secured or unsecured, fixed or undetermined, present or future, however and whenever arising and in whatever capacity and jurisdiction.

**“Closing Date”** means the date of completion on which each of the steps set out in Clause 3.5(a), (b) and (c) has occurred.

**“Closing NAV”** is an amount equal to Current NAV:

- (i) *plus* the Transaction Costs Reserve Release (where applicable),
- (ii) *plus* the Administrative Expenses Contribution,
- (iii) *less* Administrative Expenses .

**“Conditions Precedent”** means the conditions precedent for the Schemes set out in Clause 3.2 of the Scheme and Clause 3.2 of the Private Fund Scheme.

**“Court”** means the Supreme Court of Bermuda.

**“Current NAV”** means, if the Net Asset Value attributable to the Shares that has been announced for the most recent month end prior to the Closing Date, adjusted to exclude the impact of any Transaction Costs or increased reserve on account of Transaction Costs or litigation liabilities reflected in such amount, is greater than the Net Asset Value of the Shares as of 31 August 2021, then the Net Asset Value attributable to the Shares that has been announced for the most recent month end prior to the Closing Date, or otherwise the Net Asset Value of the Shares as of 31 August 2021.

**“Deed of Release”** means a deed of release to be dated on or about the Closing Date between the Scheme Creditors, the Private Fund Scheme Creditors, the Scheme Company, the Private Fund, the Manager, the Reinsurer, the Funding Cos, the Purchaser, the Adverse Development Cover Provider and Markel Corporation pursuant to which the parties shall grant releases of certain claims and liabilities as contemplated by the Schemes.

**“Depository”** means Link Market Services Trustees (Nominees) Limited, acting in the capacity as Depository for the Public Fund.

**“Depository Interests”** means the dematerialised depository interests issued by the Depository in respect of the issued and outstanding Ordinary Shares and C Shares.

**“Distribution Date C Shareholders”** means holders of C Shares or Depository Interests representing C Shares on the Public Fund Distribution Record Date.

**“Distribution Date Ordinary Shareholders”** means the holders of Ordinary Shares or Depository Interests representing Ordinary Shares on the Public Fund Distribution Record Date.

**“Early Consent Fee Amount”** means a cash fee equal to 2% of the aggregate Current NAV of Scheme Creditors who had executed support undertakings by 9 November 2021 at 11.59 p.m. (Bermuda time).

**“Excluded Creditors”** has the meaning given to it in the Private Fund Scheme.

**“Explanatory Statement”** means the explanatory statement issued by the Scheme Companies in compliance with section 99 and section 100(1)(a) of the Companies Act relating to the Schemes.

**“Funding Cos”** means SOAFC I, Inc., SOAFC II, Inc. and SOAFC III Ltd as lenders pursuant to the Purchase Price Loan Agreement.

**“Group Settlement Deed”** means a deed to be entered into by the Manager, the Public Fund, the Private Fund and the Reinsurer, pursuant to which, on and from the Closing Date, the Management Agreements will be terminated and all rights or claims arising therefrom including pursuant to the indemnities contained therein will be released.

**“Insurance Management Agreement”** means that certain discretionary insurance management agreement dated 8 December 2015 between the Manager and the Reinsurer.

**“Investor Claims”** means all Claims at any time arising out of, relating to, or in connection with any investment in or exposure to the Scheme Companies (and/or any of their segregated accounts, if applicable) or the Markel CATCo Business, and/or the Scheme Creditors’ Shares, including, without limitation, any such Claims: based on any oral or written statements or omissions by any person; based in tort (including, but not limited to, negligence, fraud or breach of fiduciary duty), contract, or the laws that govern the offer and sale of securities under the law of any jurisdiction; based on breach of fiduciary or other duties or breach of any contracts or deviations from operations; based on any argument or theory of alter ego, vicarious liability, agency, or piercing the corporate veil; for breach of representation, warranty or undertaking; based on an event of default or under any indemnity given under or in connection with any such Claim; based on indemnification, whether statutory or otherwise in any jurisdiction; for damages, restitution, contribution, attorneys’ fees, costs, or other liability; or as a result of any recovery by any person of a payment on the grounds of preference or otherwise, and any Claims which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings.

**“JPLs”** means Simon Appell and John McKenna in their capacities as joint provisional liquidators of the Scheme Company, the Private Fund, the Manager and the Reinsurer.

**“Loan”** has the meaning given to that term under the Purchase Price Loan Agreement.



**“Lodgement Date”** has the meaning given in Clause 2.2 of this Scheme.

**“Management Agreements”** means, collectively, (a) the Private Fund Management Agreement, (b) the Public Fund Management Agreement and (c) the Insurance Management Agreement.

**“Manager”** means Markel CATCo Investment Management Ltd.

**“Markel CATCo Business”** means the retro-reinsurance and reinsurance business carried out by the Manager and the Reinsurer with respect to the assets held by the Scheme Companies and the management and solicitation of investments in respect thereof.

**“Markel Corporation”** means the corporation which indirectly wholly owns Markel CATCo Investment Management Ltd. and is incorporated in the Commonwealth of Virginia (USA).

**“Markel Group”** means Markel Corporation and its Affiliates.

**“Master Fund”** means the Segregated Account known as the Markel CATCo Diversified Fund.

**“Master Fund SP”** means side pocket shares of the Private Fund issued in respect of the Master Fund.

**“Net Asset Value”** or **“NAV”** means assets at fair value less liabilities, including any accrued but unpaid expenses.

**“Ordinary Course Fees”** means the aggregate of the following amounts in respect of each SP of the Retro Funds, and the Aquilo Fund, which amounts are allocated to Retro Funds Shares or Aquilo Fund Shares *pro rata* in proportion to the Current NAV of such Shares:

	Operating expenses estimate	Reserve	Total
2016 Master Fund SP	0	\$141,653	<b>\$141,653</b>
2017 Master Fund SP	\$1,982,885	\$1,202,747	<b>\$3,185,632</b>
2018 Master Fund SP	\$3,982,732	\$1,817,844	<b>\$5,800,575</b>
2019 Master Fund SP	\$4,038,313	\$1,538,543	<b>\$5,576,857</b>
Aquilo	\$1,131,284	\$526,257	<b>\$1,657,540</b>

**“Ordinary Share Distribution”** means the distribution by the Public Fund to Distribution Date Ordinary Shareholders of the amount of the Retro Funds Scheme Distribution received by the Public Fund attributable to Ordinary Shares, less the Ordinary Share Expenses Reserve, in accordance with the Bye-Laws of the Public Fund.

**“Ordinary Share Expenses Reserve”** means \$1,130,252.

**“Ordinary Shares”** means the issued and outstanding ordinary shares of the Public Fund and includes (save where the context so requires) the Certificated Shares and the Depository Interests issued by the Depository in respect of those shares.

**“Principal Transaction Documents”** means the Deed of Release, the Purchase Price Loan Agreement, and the Relationship and Economics Rights Agreement, each in substantially the form made available to Scheme Creditors on the Schemes Website, subject to any modification made in accordance with the terms of this Scheme.

**“Private Fund”** means Markel CATCo Reinsurance Fund Ltd.



**“Private Fund Management Agreement”** means that certain discretionary investment management agreement dated 8 December 2015 between the Manager and the Private Fund on behalf of each Segregated Account.

**“Private Fund Sanction Order”** means the office copy of the order of the Court sanctioning the Private Fund Scheme.

**“Private Fund Scheme”** means the scheme of arrangement in respect of the Private Fund.

**“Private Fund Scheme Creditors”** means all persons other than Excluded Creditors that are beneficially interested in the Private Fund Shares as at the Scheme Record Time, in their capacity as creditors of the Private Fund (and/or any of its segregated accounts) in relation to their potential Investor Claims.

**“Private Fund Shares”** means the shares issued by the Private Fund in respect of the Segregated Accounts.

**“Proceeding”** means any process, suit, action, legal or other proceeding, including without limitation any arbitration, mediation, alternative dispute resolution, judicial review, adjudication, demand, execution, distraint, restraint, forfeiture, re-entry, seizure, lien, enforcement of judgment or enforcement of any security.

**“Provisional Liquidations”** means the liquidation proceedings commenced by each of the Manager, the Private Fund, the Public Fund, and the Reinsurer under Part XIII of the Companies Act, in their present form or with or subject to any modifications, additions or conditions approved or imposed by the Court or approved in accordance with the terms of each such liquidation proceeding.

**“Public Fund”** means CATCo Reinsurance Opportunities Fund Ltd.

**“Public Fund Bye-Laws”** means the bye-laws of the Public Fund.

**“Public Fund Distribution Record Date”** means the record date fixed by the Board of Directors of the Public Fund for payment of the Public Fund Scheme Distribution.

**“Public Fund Management Agreement”** means that certain discretionary investment management agreement dated 8 December 2015 between the Manager and the Public Fund.

**“Public Fund Sanction Order”** means the office copy of the order of the Court sanctioning the Scheme.

**“Public Fund Scheme Distribution”** means the C Share Distribution and the Ordinary Share Distribution.

**“Public Fund Shares”** means the Ordinary Shares and/or the C Shares, as applicable.

**“Purchase Price Loan Agreement”** means the loan agreement, to be dated on or about the Closing Date, between *inter alios*, the Funding Cos, the Purchaser and the Reinsurer, pursuant to which the Funding Cos will advance the Loans to the Purchaser for the purchase of the Acquired Shares.

**“Purchaser”** means SPC, Ltd. as purchaser pursuant to the Relationship and Economic Rights Agreement.

**“Reinsurer”** means Markel CATCo Re Ltd.

**“Relationship and Economic Rights Agreement”** means that certain relationship agreement, to be dated on or about the Closing Date, between the Purchaser, the Private Fund, the Manager and the Reinsurer governing the purchase of the Acquired Shares and economic rights of the Reinsurer and the Private Fund on a go forward basis.

**“Released Parties”** has the meaning given to it in the Deed of Release.

**“Reserve”** means a reserve of approximately \$5.2 million to cover Ordinary Course Fees.

**“Retro Funds”** means, collectively, the Master Fund, the Diversified Fund II, the Limited Diversified Arbitrage Fund, the Diversified Arbitrage Fund, the GTL Diversified Fund, the Market Diversified Fund and the QIC Diversified Fund.

**“Retro Funds Accelerated Distribution”** means a cash distribution to Private Fund Scheme Creditors with interests in the Retro Funds in an amount equal to 100% of the Closing NAV of each Private Fund Scheme Creditor’s Retro Funds Shares.

**“Retro Funds Buy-Out Amount”** means the purchase price to be paid by the Purchaser to the Private Fund (pursuant to the terms of the Relationship and Economic Rights Agreement) in exchange for the Acquired Shares in respect of the Retro Funds

**“Retro Funds Scheme Distribution”** means a distribution to Private Fund Scheme Creditors with interests in the Retro Funds of:

- a) each shareholders’ proportion of the Retro Funds Accelerated Distribution; and
- b) each shareholders’ proportion of the Additional Consideration,

such distributions to be allocated to Private Fund Scheme Creditors with interests in the Retro Funds *pro rata* in proportion to their Closing NAV and to be made in accordance with the Private Fund Bye-Laws.

**“Retro Funds Shares”** means the Shares issued by the Retro Funds to their shareholders, other than any such shares held by another Retro Fund.

**“Sanction Orders”** means the Public Fund Sanction Order and the Private Fund Sanction Order.

**“Scheme”** means the scheme of arrangement in relation to the Public Fund under section 99 of the Companies Act in its present form or with or subject to any modifications, additions or conditions approved or imposed by the Court or approved in accordance with the terms of each such scheme of arrangement.

**“Scheme Company”** means the Public Fund.

**“Scheme Consideration”** means the entitlements of Scheme Creditors and the Private Fund Scheme Creditors pursuant to the Schemes, including without limitation, the Retro Funds Scheme Distribution, Aquilo Scheme Distribution and/or the Public Fund Scheme Distribution, as applicable.

**“Scheme Creditors”** all persons that are beneficially interested in the Public Fund Shares, as at the Scheme Record Time in their capacity as creditors of the Public Fund in relation to their potential Investor Claims.

**“Scheme Record Time”** means 1 March 2022 at 2 p.m. (Bermuda Time).

**“Schemes Website”** means the website providing further information related to the Schemes and the Buy-Out Transaction at <https://catcobuyout.alixpartners.com>.

**“Security”** means the security to be granted in favour of the Funding Cos to secure repayment of the Loans, as set out in the Purchase Price Loan Agreement.

**“Security Documents”** means the documents in a form reasonably satisfactory to the Funding Cos pursuant to which the Security is granted.

**“Segregated Account”** means each of the following funds: (a) Master Fund, (b) Diversified Fund II, (c) Limited Diversified Arbitrage Fund, (d) Diversified Arbitrage Fund, (e) GTL Diversified Fund, (f) Markel Diversified Fund, (g) QIC Diversified Fund, and (h) Aquilo Fund.

**“Shares”** means, with respect to the Private Fund, the Private Fund Shares and, with respect to the Public Fund, the Public Fund Shares.

**“SP”** means a side pocket, 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 assets.

**“Transaction Costs”** means the transaction costs for implementing the Schemes (including the fees and costs incurred by the JPLs, the U.S. Expert and all legal and other advisers to the Scheme Companies, including the Advisers), which shall, to the extent not already allocated, be allocated as follows:

- a) in respect of the Retro Funds, an allocation of 90% of the Transaction Costs to all Retro Fund Shares, *pro rata* in proportion to the Current NAV of such shares; and
- b) in respect of the Aquilo Funds, an allocation of 10% of the Transaction Costs to all Aquilo Fund Shares, *pro rata* in proportion to the Current NAV of such shares.

**“Transaction Costs Reserve Release”** means in respect of each Retro Fund SP, 75% of the amount held by the Private Fund in respect of such SP as a reserve on account of potential litigation costs related to Investor Claims.

**“Transaction Documents”** means the Ancillary Transaction Documents and the Principal Transaction Documents.

**“Undertaking Parties”** means the Manager, the Reinsurer, the Funding Cos and the Purchaser.

**“U.S. Expert”** means Daniel M. Glosband, in respect to a legal opinion prepared on behalf of the Manager in support of the Schemes.

**“Work Fee”** means a cash fee equal to 2% of the Current NAV of funds managed by PKA A/S and Almitas Capital.

## 1.2 Interpretation

In this Scheme, unless the context otherwise requires or otherwise expressly provides for:

- (a) references to “Clauses” are references to the Clauses of this Scheme;
- (b) references to a “person” include references to an individual, firm, partnership, company, corporation, unincorporated body of persons or any state or state agency;
- (c) references to a statute or statutory provision include the same as subsequently modified, amended or re-enacted from time to time;
- (d) references to an agreement, deed or document shall be deemed to also refer to such agreement, deed or document as amended, supplemented, restated, varied, replaced and/or novated (in whole or in part) from time to time and to any agreement, deed or document executed pursuant thereto;
- (e) references to time shall be to prevailing Bermuda time;
- (f) the singular includes the plural and *vice versa* and words importing one gender shall include all genders;
- (g) the term “including” means “including without limitation;” and
- (h) headings are for ease of reference only and shall not affect the interpretation of this Scheme.

**2. Application and Effectiveness of the Scheme**

2.1 The compromise and arrangement effected by the Scheme shall bind:

- (a) all Scheme Creditors
- (b) the Scheme Company; and
- (c) each of the Undertaking Parties in accordance with the terms of their undertaking to be so bound.

2.2 Unless otherwise stated, the provisions of the Scheme shall take effect on and from the time that both of the following conditions are satisfied:

- (a) the Private Fund Scheme has been sanctioned by the Court; and
- (b) copies of the Sanction Orders are delivered to the Bermuda Registrar of Companies for registration (the “**Lodgement Date**”).

2.3 As soon as reasonably practicable following the Lodgement Date, the Scheme Company shall notify the Scheme Creditors in accordance with Clause 6.9 (*Notice*) (including through the Schemes Website) that the Scheme has become effective

**3. Implementation of the Buy-Out Transaction**

3.1 On and from the Lodgement Date, each Scheme Creditor hereby irrevocably authorises, instructs, empowers and appoints the Scheme Company (acting by any authorised signatory (being any director of the Scheme Company or attorney of the Scheme Company appointed pursuant to a duly executed power of attorney)) as the true and lawful agent and attorney of that Scheme Creditor (the “**Attorney**”), so that the Attorney may:

- (a) sign, execute and deliver the Deed of Release for and on behalf of that Scheme Creditor, such that each Scheme Creditor will become a party to and be bound by the Deed of Release;
- (b) take any such other action as may be reasonably necessary, or desirable, to give effect to the terms of the Scheme, the Deed of Release or any other Transaction Document;
- (c) agree on its behalf any amendments to the Scheme, Deed of Release or any other Transaction Document, which the Scheme Company and (if applicable) the other person(s) party to the Scheme, the Deed of Release or such other Transaction Document (acting reasonably and in good faith) consider(s) necessary, or desirable, in order to ensure that, without limitation:
  - (i) the information and categories of information contained, or referred to, in any formula, schedule, annex or similar, signature blocks, parties’ provisions, notice details or blank in any Transaction Document reflect the relevant information and categories of information as of the applicable date;
  - (ii) any Transaction Document may be duly executed and delivered; and/or
  - (iii) the Deed of Release and any other Transaction Document is legal, valid, binding and enforceable upon the parties to them in accordance with the Scheme.

3.2 The Closing Date shall occur as soon as reasonably practicable following the occurrence of each of the following (together, the “**Conditions Precedent**”):

- (a) the Manager, the Public Fund, the Private Fund and the Reinsurer have entered into the Group Settlement Deed; and
- (b) the U.S. Bankruptcy Court has issued the Chapter 15 Enforcement Order; and

- (c) each of the conditions precedent set out in the Purchase Price Loan Agreement have been satisfied.
- 3.3 The Scheme Company shall take all steps and execute all documents as are required to satisfy the Conditions Precedent as soon as possible following the Lodgement Date.
- 3.4 On or before the Closing Date the following shall occur:
- (a) the Private Fund and the Undertaking Parties (as applicable) shall enter into and implement the Purchase Price Loan Agreement and the Relationship and Economic Rights Agreement;
  - (b) the Reinsurer and the Purchaser shall grant the Security;
  - (c) the Funding Cos shall provide the Loans to the Purchaser pursuant to the terms of the Purchase Price Loan Agreement;
  - (d) the Purchaser shall acquire the Acquired Shares pursuant to the Relationship and Economic Rights Agreement;
  - (e) relevant steps will be taken by the Private Fund so that the Adverse Development Cover becomes effective; and
  - (f) the Purchaser or one of its Affiliates (as applicable) will pay to the Private Fund and/or the Public Fund, as relevant, the Additional Consideration, the Administrative Expenses Contribution, and the Early Consent Fee Amount; and
  - (g) the Work Fee will be paid to those parties entitled to it as agreed between the Scheme Companies and those parties.
- 3.5 On the Closing Date the following shall occur:
- (a) the Deed of Release will be executed by the Scheme Company on its own behalf and on behalf of the Scheme Creditors and by all other parties thereto and shall become effective in accordance with its terms;
  - (b) the Group Settlement Deed shall become effective;
  - (c) the Private Fund shall initiate the Retro Funds Scheme Distribution and the Aquilo Scheme Distribution in accordance with the Private Fund Bye-Laws; and
  - (d) the Scheme Company shall initiate the payment of the Early Consent Fee to eligible Public Fund Scheme Creditors.
- 3.6 The Scheme Company shall take all steps and execute all documents as are reasonably required to cause the Closing Date to occur as soon as reasonably practicable following satisfaction of the Conditions Precedent.
- 3.7 The Scheme Company shall make the Public Fund Scheme Distribution to Scheme Creditors in accordance with the Public Fund Bye-Laws within 5 Business Days of receipt of its share of the Retro Funds Scheme Distribution.
- 3.8 If the Closing Date does not occur on or before the date which is 15 Business Days after the Lodgement Date (or such other date not later than 45 Business Days after the Lodgement Date as the Scheme Company may determine and of which notice is given to all Scheme Creditors), the terms of and the obligations on the parties under or pursuant to clause 3 of the Scheme shall lapse and all the compromises and arrangements provided by the Scheme (including the execution of the Deed of Release on behalf of any or all of the Scheme Creditors) shall be of no effect.
- 3.9 The authority granted under Clause 3.1 above shall be treated for all purposes whatsoever and without limitation as having been granted by deed under the laws of Bermuda.

**4. Action Contrary to the Scheme**

- 4.1 Prior to the Closing Date (or, if earlier, the date on which the Scheme lapses in accordance with Clause 3.9), the Scheme Creditors shall not take any actions which would be inconsistent with the Schemes, including exercising any rights, remedies, powers or discretions in respect of any Investor Claim (or instructing any other person to do the same).

**5. General**

*Modification*

- 5.1 The Scheme Creditors hereby agree that the Scheme Company may, at any Court hearing to sanction this Scheme, consent on behalf of itself and all Scheme Creditors to any modification of, or addition to, this Scheme, the Deed of Release and/or any of the other Transaction Documents or any terms or conditions which, in each case, the Court may think fit to approve or impose, provided that such modification, addition, term or condition does not have an adverse effect on the rights of the Scheme Creditors, or any of them.

*Assignments or Transfers*

- 5.2 The Scheme Company shall not be under any obligation to recognise any assignment or transfer of Shares that occurs in the period after the Public Fund Distribution Record Date up to the Closing Date, provided that, where the Scheme Company has received from the relevant parties written notice of such assignment or transfer, the Scheme Company may in its absolute discretion and subject to such evidence as it may reasonably require, agree to recognise such assignment or transfer, subject to the assignee or transferee agreeing to be bound by the terms of this Scheme and to be treated as a Scheme Creditor for the purposes of this Scheme.

*Exercise of Discretion*

- 5.3 Where, under or pursuant to any provision of this Scheme, a matter is to be determined by the Scheme Company, it shall be determined by the Board of Directors, in their discretion in such manner as they may consider fair and reasonable. If any difficulty shall arise in determining any such matter either generally or in any particular case or in ensuring the result described above, it shall be resolved by the Board of Directors in such manner as it shall consider to be fair and reasonable and its decision shall, insofar as permitted by law, be final and binding on all concerned.

*Performance of Obligations on Dates Other than a Business Day*

- 5.4 If any obligation is to be performed under the terms of this Scheme on a date other than a Business Day and is not capable of being performed on such date, the relevant obligation shall be performed on the next Business Day.

*Further Assurance*

- 5.5 On and from the Lodgement Date, each Scheme Creditor undertakes to the Scheme Company, and the Scheme Company undertakes to each Scheme Creditor, to provide such further assistance (at the cost of the Scheme Company) as may be reasonably required to implement the Scheme.

*Severability*

- 5.6 If at any time any provision of the Scheme is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of that provision under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision of the Scheme under the law of that jurisdiction shall in any way be affected or impaired thereby.



*Notice*

- 5.7 Any notice or other written communication to be given under or in relation to this Scheme shall be given in the English language in writing and shall be deemed to have been duly given if it is posted to the Scheme Website.

*Governing Law and Jurisdiction*

- 5.8 The operative terms of this Scheme and any non-contractual obligations arising out of or in connection with this Scheme shall be governed by and construed in accordance with the laws of Bermuda. The Scheme Creditors and the Scheme Company hereby agree that the Court shall have exclusive jurisdiction to hear and determine any suit, action or Proceeding and to settle any dispute which arises out of or in connection with the terms of this Scheme or its implementation or out of any action taken or omitted to be taken under this Scheme or in connection with the administration of this Scheme and for such purposes the Scheme Creditors and the Scheme Company irrevocably submit to the jurisdiction of the Court.

Dated this 4<sup>th</sup> day of March 2022

**IN THE SUPREME COURT OF BERMUDA  
COMMERCIAL COURT  
COMPANIES (WINDING UP)  
Case No. 309 of 2021**

**IN THE MATTER OF CATCO REINSURANCE  
OPPORTUNITIES FUND LTD. (PROVISIONAL  
LIQUIDATORS APPOINTED FOR RESTRUCTURING  
PURPOSES)  
AND IN THE MATTER OF SECTION 99 OF THE  
COMPANIES ACT 1981  
AND IN THE MATTER OF THE SEGREGATED  
ACCOUNTS COMPANIES ACT 2000**

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**ORDER**

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SUPREME COURT BERMUDA

2022 MAR 11 AM 10:15

**aswlaw**

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**Attorneys to the Applicant  
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