

CAPITAL RE CORP

Filed by
ACE LTD

FORM SC 13D/A

(Amended Statement of Beneficial Ownership)

Filed 10/29/99

Address	1325 AVE OF THE AMERICAS 18TH FLR NEW YORK, NY 10019
Telephone	2129740100
CIK	0000829277
SIC Code	6331 - Fire, Marine, and Casualty Insurance
Industry	Insurance (Prop. & Casualty)
Sector	Financial
Fiscal Year	12/31

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

SCHEDULE 13D
Under the Securities Exchange Act of 1934
(Amendment No. 2)

CAPITAL RE CORPORATION

(Name of Issuer)

Common Stock, Par Value \$.01 Per Share
(Title of Class of Securities)

140432 10 5
(CUSIP Number of Class of Securities)

Edward S. Best
Mayer, Brown & Platt
190 South LaSalle Street
Chicago, Illinois 60603
(312) 782-0600

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)

October 25, 1999
(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition which is the subject of this Schedule 13D, and filing this schedule because of Rule 13d-1(b)(3) or (4), check the following box

Check the following box if a fee is being paid with this statement . A fee is not required only if the reporting person: (1) has a previous statement on file reporting beneficial ownership of more than five percent of the class of securities described in Item 1; and (2) has filed no amendment subsequent thereto reporting beneficial ownership of five percent or less of such class.)
(See Rule 13d-7.)

SCHEDULE 13D

Item 2. Identity and Background (a) - (c)

This statement is being filed by ACE Limited, a company organized under the laws of the Cayman Islands ("ACE"). ACE's principal offices are located at The ACE Building, 30 Woodbourne Avenue, Hamilton HM 08 Bermuda. ACE, through its subsidiaries, provides insurance and reinsurance to a diverse group of companies throughout the world. The names, business addresses and principal occupation or employment (and the name, principal business and address of any corporation or other organization in which such employment is conducted) of each of the persons specified by Instruction C of the Schedule 13D is set forth on Schedule 1 hereto.

This statement is also being filed by ACE Bermuda Insurance, Ltd., a company organized under the laws of Bermuda ("ACE Bermuda"). ACE Bermuda is a wholly owned subsidiary of ACE. ACE Bermuda's principal offices are located at The ACE Building, 30 Woodbourne Avenue, Hamilton HM 08 Bermuda. ACE Bermuda provides insurance and reinsurance to a diverse group of companies throughout the world. The names, business addresses and principal occupation or employment (and the name, principal business and address of any corporation or other organization in which such employment is conducted) of each of the persons specified by Instruction C of the Schedule 13D is set forth on Schedule 1 hereto. ACE Bermuda transferred its shares of Capital Re to ACE.

All executive officers and directors of ACE and ACE Bermuda are citizens of the United States except for Glen M. Renfrew who is a citizen of Australia, Christopher Z. Marshall, Robert Blee and Larry P. Lombardo who are citizens of Bermuda, John Burville, John C. Charman, Andrew Gibbs and Keith P. White who are citizens of England, Dermot Smurfit who is a citizen of Ireland and John Engstrom who is a citizen of Sweden.

Item 3. Source and Amount of Funds or Other Consideration

On October 25, 1999, ACE offered to acquire all the shares of Capital Re Corporation ("Capital Re") common stock not already owned by ACE for \$14.00 per share in ordinary shares of ACE plus cash (the "October 25 Offer"). On October 26, 1999, ACE entered into an amended and restated agreement and plan of merger (the "Amended Merger Agreement") reflecting the terms of the October 25 Offer. Under the Amended Merger Agreement, Capital Re's stockholders will receive 0.65 ordinary shares of ACE plus an amount of cash which, on a per share basis, will deliver \$14.00 per share to Capital Re stockholders, subject to a minimum of \$1.30 per Capital Re share in cash and a maximum of \$4.68 per Capital Re share in cash. The source for the cash is the working capital and bank lines of ACE. On October 26, 1999 ACE entered into a Stand-By Capital Commitment Agreement ("Capital Commitment") with Capital Re providing for ACE or one of its subsidiaries to make loans to Capital Re up to \$50,000,000, which loans are convertible into Common Stock of Capital Re. See the full text of the October 25 Offer, the Amended Merger Agreement, ACE's October 26, 1999 press release (the "Press Release") and the Capital Commitment which are attached hereto as Exhibit 99.9, Exhibit 99.10, Exhibit 99.11 and Exhibit 99.12, respectively, and incorporated herein by reference.

Item 4. Purpose of Transaction

On October 21, 1999, ACE filed suit in the Delaware Chancery Court against Capital Re and sought a temporary restraining order to prevent Capital Re from terminating its existing merger agreement with ACE. A hearing was held on October 25, 1999 and the request for the temporary restraining order was denied.

See the full text of the October 25 Offer, the Amended Merger Agreement, the Press Release and the Capital Commitment which are attached hereto as Exhibit 99.9, Exhibit 99.10, Exhibit 99.11 and Exhibit 99.12, respectively, and incorporated herein by reference.

Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer

See the full text of the October 25 Offer, the Amended Merger Agreement, the Press Release and the Capital Commitment, which are attached hereto as Exhibit 99.9, Exhibit 99.10, Exhibit 99.11 and Exhibit 99.12, respectively, and incorporated herein by reference.

Item 7. Material to Be Filed as Exhibits

Exhibit Number -----	Description -----
99.1	Stock Purchase Agreement, dated as of February 19, 1999 between ACE Bermuda Insurance, Ltd. and Capital Re Corporation (Incorporated by Reference to Exhibit 10.19 to the Annual Report on Form 10-K for the year ended December 31, 1998 of Capital Re Corporation (1-10995))

- 99.2 First Amendment to Stock Purchase Agreement dated as of March 16, 1999 between ACE Bermuda Insurance, Ltd. and Capital Re Corporation (Incorporated by Reference to Exhibit 10.20 to the Annual Report on Form 10-K for the year ended December 31, 1998 of Capital Re Corporation (1-10995))
- 99.3 Second Amendment to Stock Purchase Agreement dated as of May 26, 1999 between ACE Bermuda Insurance, Ltd. and Capital Re Corporation (Incorporated by Reference to Exhibit 10.21 to the Current Report on Form 8-K (Date of Earliest Event Reported: May 26, 1999) of Capital Re Corporation (1-10995))
- 99.4 Agreement and Plan of Merger, dated as of June 10, 1999, among Capital Re Corporation, ACE Limited and CapRe Acquisition Corp. (Incorporated by Reference to Exhibit 2.1 to the Current Report on Form 8-K (Date of Earliest Event Reported: May 26, 1999) of Capital Re Corporation (1-10995))
- 99.5 Stock Option Agreement, dated as of June 10, 1999, between Capital Re Corporation and ACE Limited (Incorporated by Reference to Exhibit 2.2 to the Current Report on Form 8-K (Date of Earliest Event Reported: May 26, 1999) of Capital Re Corporation (1- 10995))
- 99.6 Agreement among ACE Limited and ACE Bermuda Insurance, Ltd. pursuant to Rule 13d-1(f)(1) and ACE Limited on June 24, 1999 (Incorporated by reference to Exhibit 99.6 to Schedule 13D filed June 24, 1999)
- 99.7 Letter dated as of October 14, 1999 from ACE Limited to the Board of Directors of Capital Re Corporation, pursuant to which ACE Limited amended the terms of its offer for all of the issued and outstanding capital stock of Capital Re Corporation. (Incorporated by reference to Exhibit 99.7 of Amendment No. 1 to Schedule 13D filed October 19, 1999).
- 99.8 Letter dated as of October 18, 1999 from ACE Limited to the Board of Directors of Capital Re Corporation, pursuant to which ACE Limited further amended the terms of its offer for all of the issued and outstanding capital stock of Capital Re Corporation. (Incorporated by reference to Exhibit 98.8 of Amendment No. 1 to Schedule 13D filed October 19, 1999).

- 99.9 Letter dated as of October 25, 1999 from ACE Limited to the Board of Directors of Capital Re Corporation, pursuant to which ACE Limited further amended the terms of its offer for all of the issued and outstanding capital stock of Capital Re Corporation.
- 99.10 Amended and Restated Agreement and Plan of Merger dated as of October 26, 1999 among Capital Re Corporation, ACE Limited and Capital Re Acquisition Corporation.
- 99.11 ACE Limited Press Release dated October 26, 1999.
- 99.12 Stand-By Capital Commitment Agreement dated as of October 26, 1999 between Capital Re Corporation and ACE Limited.

SIGNATURE

After reasonable inquiry and to the best of its knowledge and belief, the undersigned certifies that the information set forth in this statement is true, complete and correct.

Date: October 28, 1999

ACE LIMITED

By: /s/ Christopher Z. Marshall

Name: Christopher Z. Marshall
Title: Chief Financial Officer

ACE BERMUDA INSURANCE, LTD.

By: /s/ Christopher Z. Marshall

Name: Christopher Z. Marshall
Title: Director

SCHEDULE I

DIRECTORS AND EXECUTIVE OFFICERS OF ACE LIMITED

The name and present principal occupation or employment of each of the directors and executive officers of ACE Limited ("ACE") are set forth below. Unless otherwise indicated, the director's or officer's business address is The ACE Building, 30 Woodbourne Avenue, Hamilton HM 08 Bermuda. Except as set forth below, each occupation set forth opposite an individual's name refers to ACE.

Present Principal Occupation Name or Employment

Michael G. Atieh
Vice President - U.S. Human Health Division, Merck & Company, Inc. Merck & Company, Inc.
770 Sumneytown
Pike West Point, PA 19486

Robert Blee, Chief Accounting Officer

John Burville, Chief Actuary

John C. Charman
Chief Executive Officer, ACE Global Markets ACE Global Markets
Crosby Court 38
Bishopsgate London EC2N 4DL
England

Bruce L. Crockett
Retired President & CEO, COMSAT Corporation 906 Frome Lane
McLean, VA 22102-2106

Brian Duperreault
Chairman, President and Chief Executive Officer

John Engstrom
President and Chief Executive Officer, Tempest Reinsurance Company Tempest Reinsurance Company Limited (a subsidiary of ACE) Wessex House
45 Reid Street
Hamilton HM 12 Bermuda

Dominic J. Frederico
Chairman, President & Chief Executive Officer ACE INA Holdings, Inc.
2 Liberty Place
1601 Chestnut Street
Philadelphia, PA 19192

Meryl D. Hartzband
Principal - Investment Director, Marsh & McLennan Capital Inc. Marsh & McLennan Capital Inc.
20 Horseneck Lane
Greenwich, CT 06830

Robert M. Hernandez
Vice Chairman & Chief Financial Officer, USX Corporation USX Corporation
600 Grant Street
Room 6105
Pittsburgh, PA 15219-4776

Donald Kramer
Vice Chairman
ACE USA
Suite 1600, 90 Park Avenue
New York, New York 10016

Christopher Z. Marshall
Chief Financial Officer

Robin J.W. Masters
Chief Investment Officer

Peter Mear
General Counsel and Secretary

Peter Menikoff
Former President & CEO, CONEMSCO, Inc.
3 Willowick Circle
Houston, TX 77024

Thomas J. Neff
Chairman, Spencer Stuart & Associates
Spencer Stuart & Associates
277 Park Avenue
New York, NY 10172

Dennis B. Reding
President and Chief Executive Officer, ACE USA Inc. 2 Liberty Place
1601 Chestnut Street
Philadelphia, PA 19192

Glen M. Renfrew
Retired Managing Director & CEO, Reuters Holdings plc Suite 618
48 Par-La-Ville Road
Hamilton HM 12 Bermuda

Robert Ripp
Retired Chairman & CEO, AMP Incorporated 21 Old Logging Road
Bedford, NY 10506

Gary Schmalzriedt, President & Chief Executive Officer ACE Bermuda Insurance Ltd.

Kingsley Schubert, President & Chief Executive Officer ACE International
2 Liberty Place
1601 Chestnut Street
Philadelphia, PA 19192

Walter A. Scott
Retired Chairman of ACE Limited
Fairview Under the Mountain Road
R.R. Box 17
So. Londonderry, VT 05155

Dermot Smurfit
Joint Deputy Chairman, Jefferson Smurfit Group Jefferson Smurfit Group plc
Beech Hill
Clonskeagh Dublin 4
Ireland

Robert W. Staley
Vice Chairman, Emerson Electric Co.
Emerson Electric Co.
8000 W. Florissant Avenue
St. Louis, MO 63136

Gary M. Stuart
Executive Vice President - Finance, Union Pacific Corporation Union Pacific Corporation
1416 Dodge Street
Omaha, NE 68179

Sidney F. Wentz
Chairman -- Board of Trustees, Robert Wood Johnson Foundation Robert Wood Johnson Foundation
Route 1 & College Road
East Princeton, NJ 08543-2316

Keith P. White
Chief Administrative Officer

The name and present principal occupation or employment of each of the directors and executive officers of ACE Bermuda Insurance, Ltd. are set forth below. The business address for each director and officer is The ACE Building, 30 Woodbourne Avenue, Hamilton HM 08 Bermuda. Except as set forth below, each occupation set forth opposite an individual's name refers to ACE Bermuda.

Present Principal Occupation Name or Employment

John Burville
Chief Actuary, ACE Limited

Randi Cigelnik
Senior Vice President, General Counsel and Secretary

Brian Duperreault
Chairman, President and Chief Executive Officer, ACE Limited

Dominic J. Frederico
President, ACE Bermuda Insurance, Ltd.

Andrew Gibbs
Senior Vice President and Chief Financial Officer

Larry P. Lombardo
Executive Vice President, Operations

Christopher Z. Marshall
Chief Financial Officer, ACE Limited

Peter Mear
General Counsel and Secretary, ACE Limited

Gary Schmalzriedt
President and Chief Executive Officer, ACE Bermuda Insurance, Ltd.

Keith P. White
Chief Administrative Officer, ACE Limited

Exhibit 99.9

October 25, 1999

Board of Directors
Capital Re Corporation
1325 Avenue of the Americas
New York, New York 10019

Dear Sirs:

This letter is to propose a further improvement to our October 14, 1999 and October 18, 1999 offers (the October 14 letter, as revised by the October 18 letter and this letter, the "Revised Offer") to amend the terms of our existing merger agreement, dated June 10, 1999 (the "Merger Agreement"). ACE Limited ("ACE") hereby offers to amend the terms of the existing Merger Agreement to provide for the acquisition of the shares of common stock of Capital Re Corporation ("Capital Re") not already owned by ACE for \$14.00 per share in ordinary shares of ACE and cash, as more fully set forth below. We and our financial advisors strongly believe that our Revised Offer is more favorable, from a financial point of view, to your stockholders than the current proposal made by XL Capital Ltd. ACE remains committed to completing a strategic combination with Capital Re which is in the best interests of both ACE's and Capital Re's stockholders.

For each outstanding share of Capital Re common stock not currently owned by ACE, ACE is offering 0.65 of an ACE ordinary share plus an amount of cash which, on a per share basis, will deliver \$14.00 per share to Capital Re stockholders, subject to a minimum of \$1.30 per Capital Re share in cash (or approximately \$42 million) and a maximum of \$4.68 per Capital Re share (or \$150 million). The value of the ACE ordinary shares to be delivered to Capital Re stockholders would be valued based upon the average closing price of the ordinary shares over the five-day trading period ending three business days prior to the stockholder vote on an amended agreement. Based upon an assumed average closing price of \$16.9375 (ACE's closing price on October 22, 1999), Capital Re stockholders would receive for each Capital Re share 0.65 ACE ordinary share and \$3.00 in cash.

This offer would provide Capital Re stockholders with \$14.00 per share in value at closing for ACE five-day average closing prices from \$14.34 to \$19.54. Capital Re stockholders would receive even greater value as ACE's share price climbs above \$19.54 per share since our revised offer does not limit the maximum value of the consideration to be received by Capital Re shareholders.

There continues to be no financing contingency to our revised offer and the terms and conditions of our offer are consistent in all other respects with our letter of October 14, 1999 letter as revised by our letter of October 18, 1999.

We have reviewed the proposal made by XL in its letter dated October 15, 1999. We will provide to employees and other non-executive management substantially similar compensation, bonus and option arrangements as contained in the XL October 15, 1999 letter. We reserve the right to substantially match the XL offer with respect to executive management compensation, bonus and option arrangements.

In light of our Revised Offer, we would expect that you would promptly (i) execute an amendment to the Merger Agreement, (ii) withdraw your notices of October 10, 1999 and October 14, 1999 regarding your intention to enter into a binding agreement with XL and (iii) terminate all negotiations with XL Capital.

Should you require additional information or clarification regarding any of the matters discussed in this letter, please call me at (441) 299-9276, Dominic Frederico at (215) 778-4125, our outside counsel, Eddie Best at (312) 701-7100 or our outside financial advisor, Mark Adley of Credit Suisse First Boston at (212) 325-3538.

Very truly yours,

Brian Duperreault Chairman, President and Chief Executive Officer

Exhibit 99.10

AMENDED AND RESTATED AGREEMENT AND PLAN OF MERGER

among

CAPITAL RE CORPORATION,

ACE LIMITED

and

CAPRE ACQUISITION CORP.

Dated as of October 26 , 1999

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AMENDED AND RESTATED AGREEMENT AND PLAN OF MERGER

THIS AMENDED AND RESTATED AGREEMENT AND PLAN OF MERGER (hereinafter called this "Agreement"), dated as of October 26, 1999 among Capital Re Corporation, a Delaware corporation (the "Company"), ACE Limited, a company incorporated with limited liability under the Cayman Islands Companies Law ("Parent"), and CapRe Acquisition Corp., a Delaware corporation and a wholly-owned subsidiary of Parent ("Merger Subsidiary").

RECITALS

WHEREAS, the Company, Parent and Merger Subsidiary are parties to an Agreement and Plan of Merger dated as of June 10, 1999 (the "Original Agreement"); and

WHEREAS, the respective boards of directors of each of Parent, Merger Subsidiary and the Company have determined that the merger of the Company with and into Merger Subsidiary (the "Merger") upon the terms and subject to the conditions set forth in this Agreement is advisable and have approved the Merger;

WHEREAS, the Company and Parent have entered into a Stock Option Agreement dated as of June 10, 1999 (the "Stock Option Agreement"), pursuant to which the Company has granted Parent an option to purchase shares of common stock of the Company under certain circumstances;

WHEREAS, the Company, Parent and Merger Subsidiary desire to make certain representations, warranties, covenants and agreements in connection with this Agreement; and

WHEREAS, the Company, Parent and merger Subsidiary desire to amend and restate the Original Agreement as set forth herein.

NOW, THEREFORE, in consideration of the premises, and of the representations, warranties, covenants and agreements contained herein, the parties hereto agree as follows:

ARTICLE I THE MERGER

1.1. The Merger.

Upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time (as defined in Section 1.3) the Company shall be merged with and into Merger Subsidiary and the separate corporate existence of the Company shall thereupon cease. Merger Subsidiary shall be the surviving corporation in the Merger (sometimes hereinafter referred to as the "Surviving Corporation"), and the separate corporate existence of Merger Subsidiary with all

its rights, privileges, immunities, powers and franchises shall continue unaffected by the Merger except as otherwise provided herein. The Merger shall have the effects specified in the Delaware General Corporation Law, as amended (the "DGCL").

1.2. Closing.

The closing of the Merger (the "Closing") shall take place (i) at the offices of Mayer, Brown & Platt, 1675 Broadway, New York, New York, at 9:00 A.M. on the third business day after the day on which the last to be fulfilled or waived of the conditions set forth in Article VII (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the fulfillment or waiver of those conditions) shall be satisfied or waived in accordance with this Agreement or (ii) at such other place and time and/or on such other date as the Company and Parent may agree in writing (the "Closing Date").

1.3. Effective Time.

As soon as practicable following the Closing, the Company, Merger Subsidiary and Parent will cause a Certificate of Merger (the "Certificate of Merger") to be executed, acknowledged and filed with and accepted for record by the Delaware Secretary of State (the "Secretary") as provided in Section 251 of the DGCL. The Merger shall become effective at the time the Certificate of Merger is filed with the Secretary or at such later time as may be agreed to by the Company and Parent and set forth in the Certificate of Merger (the "Effective Time").

1.4. Reservation of Right to Revise Structure.

In the event the sum of (i) the aggregate Cash Component of the Merger Consideration plus (ii) \$75 million plus (iii) an amount reasonably calculated

to equal the cash to be paid in lieu of fractional shares and in respect of Dissenting Shares (the "Total Cash Consideration") exceeds one-half of the sum of (i) the fair market value of the aggregate Merger Consideration to be paid in the Merger plus (ii) \$75 million (the "Total Consideration"), at Parent's

election, the Merger may alternatively be structured so that Merger Subsidiary is merged with and into the Company. No change in structure shall (1) alter or change the amount or kind of the Merger Consideration, (2) materially impede or delay the consummation of the transactions contemplated by this Agreement or (3) materially and adversely affect the ability of any party to timely perform its obligations under this Agreement or otherwise to consummate the transactions contemplated by this Agreement. If Parent makes any such election, the parties agree to execute an appropriate amendment to this Agreement and any other documents necessary in order to reflect such election.

**ARTICLE II
THE SURVIVING CORPORATION**

2.1. The Certificate of Incorporation.

At the Effective Time, the certificate of incorporation of Merger Subsidiary shall be the certificate of incorporation of the Surviving Corporation, until thereafter amended as provided therein or by applicable law (the "Certificate of Incorporation").

2.2. The Bylaws.

The bylaws of Merger Subsidiary in effect at the Effective Time shall be the Bylaws of the Surviving Corporation (the "Bylaws"), until thereafter amended as provided therein, as set forth in the Certificate of Incorporation or by applicable law.

2.3. Directors.

The directors of Merger Subsidiary at the Effective Time shall, from and after the Effective Time, be the directors of the Surviving Corporation until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Certificate of Incorporation and the Bylaws.

2.4. Officers.

The officers of the Company at the Effective Time shall, from and after the Effective Time, be the officers of the Surviving Corporation until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or termination.

**ARTICLE III
CONVERSION OF SHARES**

3.1. Effect on Stock.

At the Effective Time, as a result of the Merger and without any action on the part of the holder of any stock of the Company:

(a) Merger Consideration. Each share (each a "Share" or, collectively, the "Shares") of common stock, par value \$.01 per share, of the Company ("Company Common Stock") issued and outstanding immediately prior to the Effective Time (other than any Shares of Company Common Stock to be cancelled pursuant to Section 3.1(b) and Dissenting Shares) shall be converted into, and become exchangeable for the right to receive the "Merger Consideration." The Merger Consideration shall consist of (i) 0.65 of an ordinary share, par

value \$.041666667 per share, of Parent ("Parent Shares") (including any related Rights issued pursuant to the Rights Agreement (the "Parent Rights Agreement") dated May 7, 1999 between Parent and The Bank of New York) (the "Exchange Ratio") and (ii) an amount of cash (the "Cash Component") equal to the greater of (A) \$1.30 and (B) the difference (if positive) between (I) \$14.00 and (II) the product of (1) 0.65 multiplied by (2) the average closing price (the "Average Closing of a Parent Share on the New York Stock Exchange ("NYSE") as reported in The Wall Street Journal (New York City edition) for the five consecutive trading days ending three trading days prior to the Effective Time; provided that the Cash Component shall in no event be greater than \$4.68. At the Effective Time, all Shares shall no longer be outstanding and shall automatically be canceled and retired and shall cease to exist, and each certificate (a "Certificate") formerly representing any of such Shares shall thereafter represent only the right to receive the Merger Consideration, cash in lieu of fractional Parent Shares pursuant to Section 3.2(e), if any, and any distribution or dividend pursuant to Section 3.2(c).

(b) Cancellation of Shares. Each Share issued and outstanding immediately prior to the Effective Time and owned by Parent or owned by the Company or any direct or indirect Subsidiary of Parent or of the Company (in each case other than Shares that are owned on behalf of third parties), shall, by virtue of the Merger and without any action on the part of the holder thereof, cease to be outstanding and shall be canceled and retired without payment of any consideration therefor.

(c) Merger Subsidiary. At the Effective Time, each share of common stock of Merger Subsidiary issued and outstanding immediately prior to the Effective Time shall remain one validly issued, fully paid and nonassessable share of common stock, \$0.01 par value, of the Surviving Corporation.

3.2. Exchange of Certificates for Shares.

(a) Exchange Agent. Promptly after the Effective Time, Parent shall deposit, or shall cause to be deposited, with an exchange agent, who shall be the Parent's transfer agent or another entity selected by Parent prior to the Effective Time with the Company's approval, which shall not be unreasonably withheld (the "Exchange Agent"), for the benefit of the holders of Shares, certificates representing the Parent Shares and, after the Effective Time, if applicable, any cash, dividends or other distributions with respect to Parent Shares to be issued or paid pursuant to Section 3.1 (including the Cash Component of the Merger Consideration and cash in lieu of fractional Parent Shares) in exchange for Shares outstanding immediately prior to the Effective Time upon due surrender of the Certificates (or affidavits of loss in lieu thereof) pursuant to the provisions of this Article III (such certificates for Parent Shares, together with the amount of any dividends or other distributions payable with respect thereto and any Cash Component of the Merger Consideration and/or cash in lieu of fractional Parent Shares, being hereinafter referred to as the "Exchange Fund").

(b) Exchange Procedures. Promptly after the Effective Time, Parent shall cause the Exchange Agent to mail to each holder of record of Shares (i) a letter of transmittal

specifying that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates (or affidavits of loss in lieu thereof) to the Exchange Agent, such letter of transmittal to be in such form and have such other provisions as Parent and the Company may reasonably agree prior to the Effective Time, and (ii) instructions for use in effecting the surrender of the Certificates in exchange for (A) certificates representing Parent Shares and (B) the Cash Component of the Merger Consideration, cash in lieu of fractional Parent Shares and any unpaid dividends and other distributions pursuant to Section 3.2(c). Subject to Section 3.2(h), upon surrender of a Certificate for cancellation to the Exchange Agent together with such letter of transmittal, duly executed, the holder of such Certificate shall be entitled to receive in exchange therefor (x) a certificate representing that number of whole Parent Shares that such holder is entitled to receive pursuant to this Article III, (y) a check in the amount (after giving effect to any required tax withholdings) of any Cash Component of the Merger Consideration, cash in lieu of fractional Parent Shares and any unpaid dividends or other distributions that such holder has the right to receive pursuant to

Section 3.2(c), and the Certificate so surrendered shall forthwith be canceled. No interest will be paid or accrued on any amount payable upon due surrender of the Certificates. In the event of a transfer of ownership of Shares that is not registered in the transfer records of the Company, a certificate representing the proper number of Parent Shares, together with a check for any Cash Component of the Merger Consideration, cash to be paid in lieu of fractional Parent Shares and any other dividends or distributions in respect thereof, may be issued and/or paid to such a transferee if the Certificate formerly representing such Shares is presented to the Exchange Agent, accompanied by all documents required to evidence and effect such transfer and to evidence that any applicable stock transfer taxes have been paid. If any certificate for Parent Shares is to be issued in a name other than that in which the Certificate surrendered in exchange therefor is registered, it shall be a condition of such exchange that the Person (as defined below) requesting such exchange shall pay any transfer or other taxes required by reason of the issuance of certificates for Parent Shares in a name other than that of the registered holder of the Certificate surrendered, or shall establish to the satisfaction of Parent or the Exchange Agent that such tax has been paid or is not applicable. For the purposes of this Agreement, the term "Person" shall mean any individual, corporation (including not-for-profit), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, governmental entity or other entity of any kind or nature.

(c) Distributions with Respect to Unexchanged Shares; Voting.

(i) All Parent Shares to be issued pursuant to the Merger shall be deemed issued and outstanding as of the Effective Time and whenever a dividend or other distribution is declared by Parent in respect of Parent Shares, the record date for which is after the Effective Time, that declaration shall include dividends or other distributions in respect of all shares issuable pursuant to this Agreement. No dividends or other distributions in respect of Parent Shares shall be paid to any holder of any unsurrendered Certificate until such Certificate is surrendered for exchange in accordance with this Article

III. Subject to the effect of applicable laws, following surrender of any such Certificate, there shall be issued and/or paid to the holder of the certificates representing whole Parent Shares issued in exchange therefor,

without interest, (A) at the time of such surrender, the dividends or other distributions with a record date after the Effective Time and a payment date on or prior to such time of surrender payable with respect to such whole Parent Shares and not paid and (B) at the appropriate payment date, the dividends or other distributions payable with respect to such whole Parent Shares with a record date after the Effective Time and with a payment date subsequent to surrender.

(ii) Holders of unsurrendered Certificates who were the registered holders at the Effective Time shall not be entitled to vote after the Effective Time at any meeting of Parent stockholders (or consent in connection with any consent of stockholders in lieu of a meeting).

(d) Transfers. After the Effective Time, there shall be no transfers on the stock transfer books of the Company of the Shares that were outstanding immediately prior to the Effective Time.

(e) Fractional Shares. Notwithstanding any other provision of this Agreement, no fractional Parent Shares will be issued and any holder of Shares entitled to receive a fractional Parent Share but for this Section 3.2(e) shall be entitled to receive a cash payment in lieu thereof, which payment shall equal the amount determined by multiplying (i) the fraction of a Parent Share to which such holder would otherwise be entitled by (ii) the Average Closing Price. The fractional share interests of each holder of Company Common Stock shall be aggregated, so that no such holder shall receive cash in an amount equal to or greater than the value of one Parent Share.

(f) Investment of the Exchange Fund. The Exchange Agent shall invest any cash included in the Exchange Fund as directed by Parent on a daily basis. Any interest and other income resulting from such investments shall promptly be paid to Parent.

(g) Termination of Exchange Fund. Any portion of the Exchange Fund (including the proceeds of any investments thereof and any Parent Shares) that remains unclaimed by the stockholders of the Company for 180 days after the Effective Time shall be paid to Parent. Any stockholders of the Company who have not theretofore complied with this Article III shall thereafter look only to Parent for payment of their Parent Shares and any cash, dividends and other distributions in respect thereof payable and/or issuable pursuant to Section 3.1 and Section 3.2 (c) upon due surrender of their Certificates (or affidavits of loss in lieu thereof), in each case, without any interest thereon. Notwithstanding the foregoing, none of Parent, the Surviving Corporation, the Exchange Agent or any other Person shall be liable to any holder of Shares for any amount properly delivered to a public official pursuant to applicable abandoned property, escheat or similar laws.

(h) Lost, Stolen or Destroyed Certificates. In the event any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by Parent, the posting by

such Person of a bond in customary amount as indemnity against any claim that may be made against it with respect to such Certificate, the Exchange Agent will issue in exchange for such lost, stolen or destroyed Certificate the Parent Shares and any cash payable and any unpaid dividends or other distributions in respect thereof pursuant to Section 3.2(c) upon due surrender of and deliverable in respect of the Shares represented by such Certificate pursuant to this Agreement.

(i) Further Assurances. At and after the Effective Time, the officers and directors of the Surviving Corporation will be authorized to execute and deliver, in the name and on behalf of the Company or Merger Subsidiary, any deeds, bills of sale, assignments or assurances and to take and do, in the name and on behalf of the Company or Merger Subsidiary, any other actions and things to vest, perfect or confirm of record or otherwise in Parent or in the Surviving Corporation any and all right, title and interest in, to and under any of the rights, properties or assets acquired or to be acquired by Parent or the Surviving Corporation as a result of, or in connection with, the Merger.

3.3. Appraisal Rights.

(a) Dissenting Stock. Each outstanding Share as to which a written demand for appraisal is filed in accordance with (S) 262 of the DGCL at or prior to the Stockholders Meeting (as hereinafter defined) and not withdrawn at or prior to the Stockholders Meeting and which is not voted in favor of the Merger shall not be converted into or represent a right to receive the Merger Consideration hereunder unless and until the holder shall have failed to perfect, or shall have effectively withdrawn or lost his or her right to appraisal of and payment for his or her Shares under such (S) 262, at which time his or her Shares shall be treated in accordance with Section 3.3(b) below. All such Shares as to which such a written demand for appraisal is so filed and not withdrawn at or prior to the time of such vote and which are not voted in favor of the Merger, except any such Shares the holder of which, prior to the Effective Time, shall have effectively withdrawn or lost, his or her right to appraisal of and payment for his or her Shares under such (S) 262, are herein called "Dissenting Shares." The Company shall give Parent prompt notice upon receipt by the Company of any written demands for appraisal rights, withdrawal of such demands, and any other instruments served pursuant to (S) 262 of the DGCL, and the Company shall give Parent the opportunity to direct all negotiations and proceedings with respect to such demands. The Company shall not voluntarily make any payment with respect to any demands for appraisal rights and shall not, except with the prior written consent of the Parent, settle or offer to settle any such demands. Each holder of Shares who becomes entitled, pursuant to (S) 262 of the DGCL, to payment for his or her Shares under the provisions of such section shall receive payment therefor from the Surviving Corporation and such Shares shall be canceled.

(b) Conversion of Dissenting Shares. If prior to the Effective Time any stockholder of the Company shall fail to perfect, or shall effectively withdraw or lose, his or her right to appraisal of and payment for his or her Dissenting Shares under (S) 262 of the DGCL, the Shares of such holder shall be treated for purposes of this Article III like any other Shares. If,

after the Effective Time, any holder of Shares shall fail to perfect, or shall effectively withdraw or lose, his or her right to appraisal of and payment for his or her Dissenting Shares under (S) 262 of the DGCL, each Dissenting Share of such holder shall be treated as though such share has been converted into the right to receive the Merger Consideration as provided in this Article III.

3.4. Adjustments to Prevent Dilution.

In the event that after the date hereof and prior to the Effective Time the Company changes the number of Shares or securities convertible or exchangeable into or exercisable for Shares, or Parent changes the number of Parent Shares or securities convertible or exchangeable into or exercisable for Parent Shares, issued and outstanding prior to the Effective Time, as a result of a reclassification, stock split (including a reverse split), stock dividend or distribution, recapitalization, merger, subdivision, issuer tender or exchange offer, or other similar transaction, the Merger Consideration shall be equitably adjusted.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the corresponding sections or subsections of the Company disclosure schedule attached to this agreement (the "Company Disclosure Schedule"), the Company hereby represents and warrants to Parent and Merger Subsidiary that:

4.1. Organization, Good Standing and Qualification.

The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and each of its Subsidiaries (as defined in Section 9.12(b)) is a corporation or other entity duly organized, validly existing and in good standing under the laws of its respective jurisdiction of organization. The Company and each of its Subsidiaries has full power and authority (corporate and other) to own, lease and operate its respective properties and assets and to carry on its business as presently conducted and as proposed to be conducted, except where the failure to hold such franchises, grants, licenses, certificates, permits, consents and orders, or to have such power and authority, would not, when taken together with all other such failures, reasonably be expected to have a Company Material Adverse Effect (as defined in Section 9.12(b)). The Company has made available to Parent a complete and correct copy of the Company's and each Subsidiary's charter and by-laws or other organizational documents, each as amended to and as in effect as of the date hereof.

4.2. Capitalization.

The authorized capital stock of the Company consists of 75,000,000 Shares, of which 32,526,619 Shares were outstanding as of the close of business on October 25, 1999, and 25,000,000 shares of Preferred Stock, par value \$.01 per share (the "Preferred Shares"), of which no shares were outstanding as of the close of business on the date hereof. All of the outstanding

Shares have been duly authorized and are validly issued, fully paid and nonassessable. The Company has no commitments to issue or deliver Shares or Preferred Shares, except that, as of October 25, 1999, there were an aggregate of not greater than 6,460,000 Shares reserved for issuance pursuant to the Company's 1992 Employee Stock Option Plan, 1997 Employee Stock Option Plan, 1993 Director's Stock Option Plan and the Performance Share Plan (the "Company Stock Plans"). Each of the outstanding shares of capital stock or other securities of each of the Company's Subsidiaries is duly authorized, validly issued, fully paid and nonassessable and owned by the Company or a direct or indirect wholly-owned subsidiary of the Company, free and clear of any lien, pledge, security interest, claim or other encumbrance. Section 4.2 of the Company Disclosure Schedule sets forth in the aggregate, by Company Stock Plan, the number of options and stock appreciation rights outstanding, their grant price, the date such options or rights were granted and the class and number of Shares reserved for issuance pursuant to each such Company Stock Plan, together with the name of each holder of an option or stock appreciation right outstanding under any such Company Stock Plan, (such options and rights being collectively referred to as the "Company Options"), a description of the exercise or purchase prices, vesting schedules, expiration dates, and class and number of Shares subject to each such Company Option, together with a listing of all Company Options that shall vest at the Effective Time as a result of the Merger. Except as described in Section 4.2 of the Company Disclosure Schedule, there are no preemptive or other outstanding rights, options, warrants, conversion rights, stock appreciation rights, redemption rights, repurchase rights, agreements, arrangements or commitments to issue or sell any shares of capital stock or other securities of the Company or any of its Subsidiaries or any securities or obligations convertible or exchangeable into or exercisable for, or giving any Person a right to subscribe for or acquire, any securities of the Company or any of its Subsidiaries, and no securities or obligations evidencing such rights are authorized, issued or outstanding. The Company does not have outstanding any bonds, debentures, notes or other obligations the holders of which have the right to vote (or, except as referred to in this Section 4.2, convertible into or exercisable for securities having the right to vote) with the stockholders of the Company on any matter.

Except as described in Section 4.2 of the Company Disclosure Schedule or as specifically described in this Agreement or the Stock Option Agreement, since June 30, 1999, the Company has not (i) made or agreed to make any stock split or stock dividend, or issued or permitted to be issued any shares of capital stock, or securities exercisable for or convertible into shares of capital stock, of the Company other than pursuant to and as required by the terms of any Company Stock Plan; (ii) repurchased, redeemed or otherwise acquired any shares of capital stock of the Company; or (iii) other than its regular quarterly cash dividend of \$0.04 per share, declared, set aside, made or paid to the stockholders of the Company dividends or other distributions on the outstanding shares of capital stock of the Company.

4.3. Company Subsidiaries.

(a) Section 4.3(a)(i) of the Company Disclosure Schedule sets forth the name and jurisdiction of incorporation of each of the Company's Subsidiaries. The Company conducts its insurance operations through the Subsidiaries set forth in Section 4.3(a)(ii) of the Company

Disclosure Schedule (collectively, the "Company Insurance Subsidiaries"). Each of the Company Insurance Subsidiaries is (1) duly licensed or authorized as an insurance company or reinsurer in its jurisdiction of incorporation, (2) duly licensed or authorized as an insurance company or reinsurer in each other jurisdiction where it is required to be so licensed or authorized, and (3) duly authorized in its jurisdiction of incorporation and each other applicable jurisdiction to write each line of business reported as being written in the Company SAP Statements (as hereinafter defined), except, in any such case, where the failure to be so licensed or authorized would not, individually or in the aggregate, be reasonably expected to have a Company Material Adverse Effect. The Company has made all required filings under applicable holding company statutes except where the failure to file would not be reasonably expected to have a Company Material Adverse Effect.

(b) Except for the Company's Subsidiaries, securities held in the Company's investment portfolio and except as set forth in Section 4.3(b) of the Company Disclosure Schedule, the Company does not directly or indirectly own any equity or similar interest in, or any interest convertible into or exchangeable or exercisable for any equity or similar interest in, any corporation, partnership, joint venture or other business association or entity.

4.4. Corporate Authority; Approval and Fairness.

(a) The Company has all requisite power and authority and has taken all corporate action necessary in order to execute, deliver and perform its obligations under this Agreement and the Stock Option Agreement, and subject only to approval of the Merger by the holders of at least a majority of the outstanding Shares (the "Company Requisite Vote"), to consummate the Merger. This Agreement and the Stock Option Agreement have been duly executed and delivered by the Company and (assuming the due authorization, execution and delivery hereof and thereof by Parent and the Company) constitute legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, except as enforceability may be limited or affected by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws and equitable principles now or hereafter in effect and affecting the rights and remedies of creditors generally.

(b) The Board of Directors of the Company has duly and validly approved and taken all corporate action required to be taken by the Board of Directors (in each case by a unanimous vote of all the directors in office at such time) for the consummation of the transactions contemplated by this Agreement and the Stock Option Agreement, including, but not limited to, (i) having determined that this Agreement, the Stock Option Agreement and the transactions contemplated hereby and thereby, taken together, are advisable and are fair to and in the best interests of the stockholders of the Company, and

(ii) having resolved to recommend that the holders of the Shares adopt this Agreement and approve the Merger. The affirmative vote in favor of the adoption of this Agreement by the Company Requisite Vote is the only vote of the holders of any class or series of Company capital stock necessary to approve this Agreement and the Merger. No vote of the stockholders of the Company is required to approve the Stock Option Agreement. The Board of Directors of the Company has received the opinion of its financial

advisor Goldman, Sachs & Co., to the effect that, as of the date of such opinion, the Merger Consideration is fair from a financial point of view to the holders of Shares.

4.5. Governmental Filings; No Violations.

Subject to obtaining the Private Consents (as defined below) and except for all filings, permits, authorizations, consents and approvals as may be required under, and compliance with other applicable requirements of, the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), state securities or "blue sky" laws, state takeover laws, state and foreign insurance regulatory laws and commissions, including Lloyd's of London and the U.K. Treasury Department, and for the approval of this Agreement by the Company's stockholders and the filing and recordation of this Agreement or the Certificate of Merger as required by the DGCL, and except as may result from any facts or circumstances relating solely to the Parent or its Affiliates, neither the execution, delivery or performance of this Agreement or the Stock Option Agreement nor the consummation by the Company of the transactions contemplated hereby or thereby nor compliance by the Company with any of the provisions hereof or thereof will (i) result in any breach or violation of any provision of the certificate of incorporation or by-laws or similar organizational documents of the Company or of any of its Subsidiaries, (ii) require any filing with, or permit, authorization, consent or approval of, any United States or foreign court, arbitral tribunal, administrative agency or commission or other governmental or other regulatory authority, body, commission or agency, including the Corporation of Lloyd's (a "Governmental Entity"), except where the failure to obtain such permits, authorizations, consents or approvals or to make such filings would not have a Company Material Adverse Effect, (iii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, amendment, cancellation, acceleration or increase in the rate of interest) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, guarantee, other evidence of indebtedness, lease, license, contract, agreement or other instrument or obligation to which the Company or any of its Subsidiaries is a party or by which any of them or any of their properties or assets may be bound (a "Contract") or result in the creation of a lien upon any of the properties or assets of the Company or any of its Subsidiaries or (iv) violate any order, writ, injunction, judgment, decree, statute, rule, regulation or other Law applicable to the Company, any of its Subsidiaries or any of their properties or assets, except in the case of clauses (iii) and (iv) for violations, breaches, defaults, or rights of termination, amendment, cancellation or acceleration or liens, which would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

Section 4.5 of the Company Disclosure Schedule sets forth, to the knowledge of the Responsible Executive Officers of the Company (as defined in Section 9.12(b)), a list of contracts (by category and type, where applicable) material to the Company and its Subsidiaries, taken as a whole, pursuant to which consents or waivers ("Private Consents") are or may be required prior to consummation of the transactions contemplated by this Agreement (subject to the exception set forth above).

4.6. Company Reports; Financial Statement.

(a) The Company has delivered or made available to Parent true and complete copies of each registration statement, report, proxy statement or information statement prepared by it since January 1, 1996, including (i) the Company's Annual Report on Form 10-K for the year ended December 31, 1998, (ii) the Company's definitive Proxy Statement for its 1998 Annual Meeting of Stockholders, and (iii) the Company's Quarterly Report on Form 10-Q for the quarterly periods ended March 31, 1999 and June 30, 1999, each in the form (including exhibits, annexes and any amendments thereto) filed with the Securities and Exchange Commission (the "SEC") (collectively, including any such reports filed subsequent to the date hereof, the "Company Reports"). Each Company Report complied in all material respects with the applicable requirements of the Securities Act of 1933 (the "Securities Act") and the rules and regulations promulgated thereunder, or the Exchange Act and the rules and regulations promulgated thereunder, each as in effect on the date so filed. Each report filed by the Company with the SEC subsequent to the date hereof and prior to the Effective Time will comply in all material respects with the applicable requirements of the Securities Act and the rules and regulations promulgated thereunder, or the Exchange Act and the rules and regulations promulgated thereunder, each as in effect on the date so filed. No Subsidiary of the Company is required to file any form, report, statement, schedule, registration statement or other document with the SEC. As of their respective dates, the Company Reports did not, and any Company Reports filed with the SEC subsequent to the date hereof will not, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading. Each of the consolidated balance sheets included in or incorporated by reference into the Company Reports (including the related notes and schedules) fairly presents, or will fairly present, the consolidated financial position of the Company and its Subsidiaries as of its date and each of the consolidated statements of income and of changes in financial position included in or incorporated by reference into the Company Reports (including any related notes and schedules) fairly presents, or will fairly present, the consolidated results of operations, retained earnings and changes in financial position, as the case may be, of the Company and its Subsidiaries for the periods set forth therein (subject, in the case of unaudited statements, to notes and normal year-end audit adjustments that will not be material in amount or effect), in each case in accordance with generally accepted accounting principles ("GAAP") consistently applied during the periods involved, except as may be noted therein.

(b) The Company has delivered or made available to Parent true and complete copies of the annual and quarterly statements of each of the Company Insurance Subsidiaries as filed with the applicable insurance regulatory authorities for the three years ended December 31, 1998 and the quarterly period ended March 31, 1999 and June 30, 1999, including all exhibits, interrogatories, notes, schedules and any actuarial opinions, affirmations or certifications or other supporting documents filed in connection therewith (collectively, the "Company SAP Statements"). The Company SAP Statements were prepared in conformity with statutory accounting practices prescribed or permitted by the applicable insurance regulatory authority

consistently applied for the periods covered thereby and present fairly the statutory financial position of such Company Insurance Subsidiaries for the respective periods then ended. The Company SAP Statements complied in all material respects with all applicable laws, rules and regulations when filed, and no material deficiency has been asserted with respect to any Company SAP Statements by the applicable insurance regulatory body or any other governmental agency or body. The annual statutory balance sheets and income statements included in the Company SAP Statements have been audited by Ernst & Young LLP and the Company has delivered or made available to Parent true and complete copies of all audit opinions related thereto. The Company has delivered or made available to Parent true and complete copies of all examination reports of insurance departments and any insurance regulatory agencies since January 1, 1995 relating to the Company Insurance Subsidiaries.

4.7. Absence of Certain Changes.

Except as disclosed in the Company Reports filed prior to the date hereof or in Company press releases or other public announcements prior to the date hereof (the "Public Announcements") or as set forth in Section 4.7 or Section 4.8 of the Company Disclosure Schedule and except as otherwise provided in or contemplated by this Agreement, since December 31, 1998 (the "Company Audit Date"), the Company and its Subsidiaries have conducted their respective businesses only in, and have not engaged in any material transaction other than according to, the ordinary and usual course of such businesses and there has not been: (a) any change in the financial condition, properties, business or results of operations of the Company and its Subsidiaries, or any transaction, commitment, dispute or other event, or any other development or combination of developments that, individually or in the aggregate, has had or is reasonably likely to result in a Company Material Adverse Effect; (b) any material damage, destruction or other casualty loss with respect to any material asset or property owned, leased or otherwise used by the Company or any of its Subsidiaries, whether or not covered by insurance; (c) any authorization, declaration, setting aside or payment of any dividend or other distribution in respect of the capital stock of the Company, except as permitted by Section 6.1 hereof; (d) any change by the Company in accounting principles, practices or methods other than as required by changes in applicable GAAP or statutory accounting principles; (e) any material addition to the Company's consolidated reserves for unpaid losses and loss adjustment expenses prior to the date of this Agreement; (f) any material change in the accounting, actuarial, investment, reserving, underwriting or claims administration policies, practices, procedures, methods, assumptions or principles of any Company Insurance Subsidiary; or (g) any repurchase or redemption of any Shares. Since the Company Audit Date, except as provided for herein or as disclosed in the Company Reports or Public Announcements filed or made prior to the date hereof or as set forth in Section 4.7 of the Company Disclosure Schedule, there has not been any increase in the compensation payable or that could become payable by the Company or any of its Subsidiaries to officers at the senior vice president level or above or key employees or any amendment of any of the Company Compensation and Benefit Plans (as defined in Section 4.9(a)).

4.8. Litigation and Liabilities.

Except as disclosed in the Company Reports or in the Public Announcements filed or made prior to the date hereof or as set forth in section 4.8 of the Company Disclosure Schedule, there are no (a) actions, suits, claims, proceedings or investigations (or, to the knowledge of the Responsible Executive Officers of the Company, any basis for any person to assert any claim reasonably likely to result in liability or any other adverse determination) pending against, or to the knowledge of the Responsible Executive Officers of the Company, threatened against or affecting, the Company or any of its Subsidiaries or any of their respective properties before any Governmental Entity or otherwise that (i) individually or in the aggregate would be expected to have a Company Material Adverse Effect, (ii) in any manner challenges or seeks to prevent, enjoin, alter or delay the transactions contemplated hereby or (iii) alleges criminal action or inaction or (b) liabilities, debts, claims or obligations of any nature on the date of this Agreement, whether accrued, absolute, direct or indirect, contingent or otherwise, whether due or to become due, that would be required to be included on a balance sheet prepared in accordance with GAAP on the date hereof, and there is no existing condition or set of circumstances that would reasonably be expected to result in such a liability ("Company Liabilities"), except (i) Company Liabilities incurred in the ordinary and usual course of business and consistent with past practice since December 31, 1998, (ii) Company Liabilities incurred in connection with or as a result of the transactions contemplated by this Agreement and (iii) Company Liabilities that would not reasonably be expected to have a Company Material Adverse Effect.

As of the date hereof, neither the Company, its Subsidiaries nor any of their respective properties is subject to any order, writ, judgment, injunction, decree, determination or award having, or that would reasonably be expected to have, a Company Material Adverse Effect or that would prevent or delay the consummation of the transactions contemplated hereby. Except as disclosed in the Company Reports, there are no pending or, to the knowledge of the Responsible Executive Officers of the Company, threatened claims for indemnification by the Company or any of its Subsidiaries in favor of directors, officers, employees and agents of the Company or any of its Subsidiaries.

4.9. Employee Benefits.

(a) Except as set forth in Section 4.9(a) of the Company Disclosure Schedule, none of the Company or any of its Subsidiaries maintains, is a party to, participates in or has any liability or contingent liability with respect to:

(i) any "employee welfare benefit plan" or "employee pension benefit plan" (as those terms are defined in sections 3(1) and 3(2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), respectively), other than a "multiemployer plan" (as defined in section 3(37) of ERISA);

(ii) any retirement or deferred compensation plan, incentive compensation plan, stock plan, unemployment compensation plan, vacation pay, severance pay, bonus or benefit arrangement, insurance or hospitalization program or any other fringe benefit arrangements for any current or former employee, director, consultant or agent, whether pursuant to contract, arrangement, custom or informal understanding, which does not constitute an employee benefit plan (as defined in section 3(3) of ERISA); or

(iii) any employment agreement or consulting agreement.

(b) A true and correct copy of each of the plans, arrangements, and agreements listed in section 4.9(b) of the Company Disclosure Schedule (referred to hereinafter as "Employee Benefit Plans"), and all contracts relating thereto, or to the funding thereof, including, without limitation, all trust agreements, insurance contracts, administration contracts, investment management agreements, subscription and participation agreements, and record keeping agreements, each as in effect on the date hereof, has been supplied to the Parent. In the case of any Employee Benefit Plan which is not in written form, the Parent has been supplied with an accurate description of such Employee Benefit Plan as in effect on the date hereof. A true and correct copy of the most recent annual report, actuarial report, accountant's opinion of the plan's financial statements, summary plan description and Internal Revenue Service determination letter with respect to each Employee Benefit Plan, to the extent applicable, and a current schedule of assets (and the fair market value thereof assuming liquidation of any asset which is not readily tradable) held with respect to any funded Employee Benefit Plan has been supplied to the Purchaser, and there have been no material changes in the financial condition in the respective plans from that stated in the annual reports and actuarial reports supplied.

(c) As to all Employee Benefit Plans:

(i) All Employee Benefit Plans comply and have been administered in form and in operation in all material respects with all applicable requirements of Law, and no event has occurred which will or could cause any such Employee Benefit Plan to fail to comply with such requirements and no notice has been issued by any governmental authority questioning or challenging such compliance.

(ii) All Employee Benefit Plans which are employee pension benefit plans comply in all material respects in form and in operation with all applicable requirements of sections 401(a) and 501(a) of the Internal Revenue Code of 1986, as amended (the "Code"); there have been no amendments to such plans which are not the subject of a favorable determination letter issued with respect thereto by the Internal Revenue Service or for which the time to file a timely request for a determination letter has lapsed; and no event has occurred which will or could give rise to disqualification of any such plan under such sections or to a tax under section 511 of the Code.

(iii) None of the assets of any Employee Benefit Plan are invested in employer securities or employer real property.

- (iv) There have been no "prohibited transactions" (as described in section 406 of ERISA or section 4975 of the Code) with respect to any Employee Benefit Plan and none of the Company or any of its Subsidiaries has engaged in any prohibited transaction.
- (v) There have been no acts or omissions by the Company which have given rise to or may give rise to fines, penalties, taxes or related charges under section 502 of ERISA or Chapters 43, 47 or 68 of the Code for which the Company or any of its Subsidiaries may be liable.
- (vi) Except as set forth in Section 4.9(c) of the Company Disclosure Schedule, none of the payments contemplated by the Employee Benefit Plans would, in the aggregate, constitute excess parachute payments (as defined in section 280G of the Code (without regard to subsection (b) (4) thereof)).
- (vii) There are no actions, suits or claims (other than routine claims for benefits) pending or threatened involving any Employee Benefit Plan or the assets thereof and no facts exist which could give rise to any such actions, suits or claims (other than routine claims for benefits).
- (viii) No Employee Benefit Plan is subject to Title IV of ERISA.
- (ix) Each Employee Benefit Plan which constitutes a "group health plan" (as defined in section 607(i) of ERISA or section 4980B(g)(2) of the Code), including any plans of current and former Affiliates which must be taken into account under sections 4980B and 414(t) of the Code or section 601 of ERISA, have been operated in material compliance with applicable law, including coverage requirements of section 4980B of the Code and section 601 of ERISA to the extent such requirements are applicable, except where failure to do so would not have a Company Material Adverse Effect.
- (x) None of the Company or any of its Subsidiaries has any liability or contingent liability for providing, under any Employee Benefit Plan or otherwise, any post-retirement medical or life insurance benefits, other than statutory liability for providing group health plan continuation coverage under Part 6 of Title I of ERISA and section 4980B of the Code.
- (xi) Actuarially adequate accruals for all obligations under the Employee Benefit Plans are reflected in the financial statements of the Company and such obligations include a pro rata amount of the contributions and PBGC premiums which would otherwise have been made in accordance with past practices and applicable law for the plan years which include the Closing Date.

(d) None of the Company nor any of its Subsidiaries contributes to, has contributed to, or has any liability or contingent liability with respect to a multiemployer plan (as defined in section 3(37) of ERISA).

(e) Section 4.9(e) of the Company Disclosure Schedule describes in all material respects all employment contracts and similar arrangements between the Company or any of its Subsidiaries and their respective executive officers, and all plans and arrangements pursuant to which the Company or any of its Subsidiaries is obligated to make any payment or confer any benefit upon any officer, director, employee or agent of the Company or any of its Subsidiaries as a result of or in connection with any of the transactions contemplated by this Agreement or any transaction or transactions resulting in a change in control of the Company or any of its Subsidiaries. Except as set forth in Section 4.9(e) of the Company Disclosure Schedule, the Merger will not (i) entitle any employees of the Company or its Subsidiaries to severance pay, (ii) accelerate the time of payment or vesting or trigger any payment of compensation or benefits under, increase the amount payable or trigger any other material obligation pursuant to, any Employee Benefit Plan, or (iii) result in any breach or violation of, or default under, any Employee Benefit Plan.

(f) All Employee Benefit Plans covering current or former non-U.S. employees of the Company and its Subsidiaries comply in all material respects with applicable local law. The Company and its Subsidiaries have no material unfunded liabilities with respect to any Employee Benefit Plan that covers such non-U.S. employees.

4.10. Compliance with Laws; Permits.

Except as set forth in the Company Reports or Public Announcements filed or made prior to the date hereof or Section 4.10 of the Company Disclosure Schedule, the businesses of each of the Company and its Subsidiaries have been, and are being, conducted in compliance with all applicable federal, state, local or foreign laws, statutes, ordinances, rules, regulations, judgments, orders, injunctions, decrees, arbitration awards, agency requirements, licenses or permits (including insurance laws and regulations) of any Governmental Entity ("Laws"), and all notices, reports, documents and other information required to be filed thereunder within the last three years were properly filed and were in compliance with such Laws, except in any such case for noncompliance that, individually or in the aggregate, would not reasonably be expected to have a Company Material Adverse Effect or prevent or materially impair the ability of the Company to consummate the transactions contemplated by this Agreement. Except as set forth in the Company Reports filed prior to the date hereof or in section 4.10 of the Company Disclosure Schedule and except for routine examinations by state governmental entities charged with supervision of insurance companies ("Insurance Regulators"), no investigation or review by any governmental entity with respect to the Company or any of its Subsidiaries is pending or, to the knowledge of the Responsible Executive Officers of the Company, threatened, nor has any governmental entity indicated an intention to conduct the same, except for those the outcome of which would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect or prevent or

materially impair the ability of the Company to consummate the transactions contemplated by this Agreement. No material change is required in the Company's or any of its Subsidiaries' processes, properties or procedures in connection with any such Laws, and the Company has not received any notice or communication of any material noncompliance with any such Laws that has not been cured as of the date hereof. The Company and its Subsidiaries each has all permits, licenses, franchises, variances, exemptions, orders and other governmental authorizations, consents and approvals necessary to conduct its business as presently conducted except those the absence of which would not, individually or in the aggregate, have a Company Material Adverse Effect or prevent or materially impair the ability of the Company to consummate the Merger and the other transactions contemplated by this Agreement.

4.11. Intellectual Property.

The Company and its Subsidiaries own or possess, or have all necessary rights and licenses in, all patents, patent rights, licenses, inventions (whether or not patentable or reduced to practice), copyrights (whether registered or unregistered), know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), registered and unregistered trademarks, service marks and trade names and other intellectual property rights (collectively, "Intellectual Property") necessary to conduct their business as conducted and proposed to be conducted, except such Intellectual Property the failure to own, possess, have all rights and licenses in would not have a Company Material Adverse Effect. Neither the Company nor any of its Subsidiaries has received any unresolved notice of, or is aware of any fact or circumstance that would give any Person a right to assert, infringement or misappropriation of, or conflict with, asserted rights of others or invalidity or unenforceability of any Intellectual Property owned by the Company or any of its Subsidiaries. To the knowledge of the Responsible Executive Officers of the Company, the use of such Intellectual Property to conduct the business and operations of the Company and its Subsidiaries as conducted or proposed to be conducted does not infringe on the rights of any Person, except such infringement that would not have a Company Material Adverse Effect. To the knowledge of the Responsible Executive Officers of the Company, no Person is challenging, infringing on or otherwise violating any right of the Company or any of its Subsidiaries with respect to any Intellectual Property owned by or licensed to the Company or any of its Subsidiaries. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will result in a loss or limitation in the rights and licenses of the Company to use or enjoy the benefit of any Intellectual Property employed by the Company or any of its Subsidiaries in connection with its business as conducted or proposed to be conducted, except for such loss or limitation which would not have a Company Material Adverse Effect.

4.12. Year 2000 Compliance.

The Company has established an implementation plan and budgeted a reasonably sufficient amount of capital and resources to institute software systems which include design, performance and functionality and which are intended to ensure (it being acknowledged and agreed by the parties hereto that such intention may never be realized) that such software systems

do not cause the Company to experience invalid or incorrect results or abnormal software operation related to calendar year 2000, except where such invalid or incorrect results or abnormal software operation would not, individually or in the aggregate, have a Company Material Adverse Effect. Such plan and budget envision the creation of software systems which include calendar year 2000 date conversion and compatibility capabilities. As of the date of this Agreement, such plan, in respect of the business of the Company, is generally proceeding on schedule.

4.13. Environmental Laws.

Except for matters arising from the ordinary business activities of the Company Insurance Subsidiaries or to the extent that any inaccuracy in any of the following representations, individually or in the aggregate with any other inaccuracy under the following representations, would not reasonably be expected to have a Company Material Adverse Effect, (a) each of the Company and each of its Subsidiaries is in compliance with all Environmental Laws applicable to the properties, assets or businesses of the Company and its Subsidiaries, and possesses and complies with and has possessed and complied with all Environmental Permits required under such laws; (b) none of the Company and its Subsidiaries has received any Environmental Claim, and none of the Company and its Subsidiaries is aware, after reasonable inquiry, of any threatened Environmental Claim or of any Environmental Claim pending or threatened against any entity for which the Company or any of its Subsidiaries may be responsible;

(c) none of the Company and its Subsidiaries has assumed, contractually or by operation of law, any liabilities or obligations under any Environmental Laws;

(d) there are no present or, to the best knowledge of the Company, past events, conditions, circumstances, practices, plans or legal requirements that would reasonably be expected to result in liability to the Company or any of its Subsidiaries under Environmental Laws, or reasonably be expected to increase the burden on the Company or any of its Subsidiaries of complying with Environmental Laws or of obtaining, renewing, or complying with all Environmental Permits required under such laws; (e) there are and, to the best knowledge of the Company, there have been no Hazardous Materials or other conditions at or from any property owned, operated or otherwise used by the Company or any of its Subsidiaries now or, to the best knowledge of the Company, in the past that would reasonably be expected to give rise to liability of the Company or any of its Subsidiaries under any Environmental Law and (f) the Company has provided to Parent all Environmental Reports in the possession or control of the Company or any of its Subsidiaries.

4.14. Investment Company.

Neither the Company nor any of its Subsidiaries is an "investment company" as defined under the Investment Company Act of 1940, as amended, and neither the Company nor any of its Subsidiaries sponsors any person that is such an investment company.

4.15. Takeover Statutes.

No restrictive provision of any "fair price," "moratorium," "control share" or other similar anti-takeover statute or regulation, including, but not limited to, (S)___203 of the

DGCL, (each a "Takeover Statute") or restrictive provision of any applicable anti-takeover provision in the Certificate of Incorporation or Bylaws of the Company, is, or at the Effective Time will be, applicable to the Company, Parent, the Shares, the Merger or any other transaction contemplated by this Agreement.

4.16. Taxes.

Except as set forth in section 4.16 of the Company Disclosure Schedule:

(a) the Company and each of its Subsidiaries have timely and accurately filed all Tax Returns (as defined in Section 9.12 (b)) which are required by all applicable laws to be filed by them, and have paid, or made adequate provision for the payment of, all Taxes (as defined in Section 9.12

(b)) which have or may become due and payable pursuant to said Tax Returns and all other Taxes, governmental charges and assessments received to date other than those Taxes being contested in good faith for which adequate provision has been made on the most recent balance sheet included in the Company Reports. The Tax Returns of the Company and its Subsidiaries have been prepared, in all material respects, in accordance with all applicable laws consistently applied;

(b) all Taxes which the Company and its Subsidiaries are required by law to withhold and collect have been duly withheld and collected, and have been paid over, in a timely manner, to the proper Taxing Authorities (as defined in Section 9.12 (b)) to the extent due and payable;

(c) no liens for Taxes exist with respect to any of the assets or properties of the Company or its Subsidiaries, except for statutory liens for Taxes not yet due or payable or that are being contested in good faith; and

(d) there is no audit, examination, deficiency, or refund litigation pending with respect to any Taxes and during the past three years no Taxing Authority has given written notice of the commencement of any audit, examination, deficiency or refund litigation, with respect to any Taxes.

4.17. Labor Matters.

The Company is not aware that any officer, director, executive or key employee of the Company or any of its Subsidiaries or any group of employees of the Company or any of its Subsidiaries has any plans to terminate his, her or its employment with the Company or any of its Subsidiaries (other than as previously described to Parent in writing). Except as described in Section 4.17 of the Company Disclosure Letter,

(a) the Company and its Subsidiaries have complied with all laws relating to the employment of labor, including provisions thereof relating to wages, hours, equal opportunity, and collective bargaining, and (b) no labor dispute with employees of the Company or any of its Subsidiaries exists or, to the knowledge of the Responsible Executive Officers of the Company, is threatened. Neither the Company nor any of

its Subsidiaries is a party to or otherwise bound by any collective bargaining agreement, contract or other agreement or understanding with a labor union or labor organization. There are no strikes, work stoppages or labor disputes pending or, to the knowledge of the Responsible Executive Officers of the Company, threatened with respect to the employees of the Company or any of its Subsidiaries. There is no representation claim or petition or complaint pending before the National Labor Relations Board or any state or local labor agency and, to the knowledge of the Responsible Executive Officers of the Company, no question concerning representation has been raised or threatened. No charges with respect to or relating to the business of the Company or any its Subsidiaries are pending before the Equal Employment Opportunity Commission, or any state or local agency responsible for the prevention of unlawful employment practices, which would if adversely determined have a Company Material Adverse Effect.

4.18. Title to Property.

Except as set forth in the Company Reports or in section 4.18 of the Company Disclosure Schedule, the Company and each of its Subsidiaries have good and indefeasible title to all of their properties and assets, free and clear of all material defects and all encumbrances, except liens for taxes not yet due and payable and such encumbrances or other imperfections of title, if any, as do not materially detract from the value of or interfere with the present use of the property affected thereby or which would not reasonably be expected to have a Company Material Adverse Effect, and except for encumbrances which secure indebtedness reflected in the financial statements included in the Company Reports.

4.19. Material Contracts.

All of the material Contracts of the Company and its Subsidiaries are in full force and effect and are valid, binding and enforceable against the Company or its Subsidiaries in accordance with their respective terms. True and complete copies of all such material Contracts have been delivered or otherwise made available by the Company to Parent. Except as set forth in Section 4.19 of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries is, has received any notice or has any knowledge that any other party is, in default in any respect under any Contract to which the Company or any of its Subsidiaries is a party or the assets, business or operations thereof may be bound or affected or under which it or its Subsidiaries' respective assets, business or operations receives benefits, except for those defaults that have not had or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, and there has not occurred any event that with the lapse of time or the giving of notice would constitute such a default. Neither the Company nor any of its Subsidiaries is party to any agreement containing any provision or covenant that would reasonably be expected to have a Company Material Adverse Effect on the ability of the Company or any of its Subsidiaries ,assuming the consummation of the transactions contemplated by this Agreement, to (a) sell any products or services of or to any other person, (b) engage in any line of business or (c) compete with or to obtain products or services from any person or limiting the ability of any person to provide products or services to the Company or any of its Subsidiaries.

Subject to obtaining the Private Consents and except as set forth in Section 4.19 of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries is a party to or bound by any contract, agreement or arrangement which would cause the rights or obligations of any party thereto to change upon the consummation of the Merger, except for any such contract, agreement or arrangement which would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

4.20. Brokers and Finders.

Neither the Company nor any of its executive officers, directors or employees has employed any broker or finder or incurred any liability for any brokerage fees, commissions or finders fees in connection with the Merger or the other transactions contemplated in this Agreement, except that the Company has employed Goldman, Sachs & Co. as its financial advisor, the arrangements with respect to which have been disclosed to Parent prior to the date hereof.

4.21. Insurance Matters.

(a) The Company has heretofore provided or otherwise made available to Parent true, complete and correct copies of all material fire and casualty, general liability, business interruption, product liability and other insurance policies maintained by the Company and its Subsidiaries. All such policies are in full force and effect and no event has occurred that would give any insurance carrier a right to terminate any such policy. Neither the Company nor any of its Subsidiaries has been denied or had any policy of insurance revoked or rescinded. All such policies are adequate to insure against risks to which the Company and its properties are exposed in such amounts and subject to such terms as are commercially reasonable.

(b) Except as otherwise would not, individually or in the aggregate, be reasonably likely to have a Company Material Adverse Effect, all policies, binders, slips, certificates, annuity contracts and participation agreements and other agreements of insurance, whether individual or group, in effect as of the date hereof (including all applications, supplements, endorsements, riders and ancillary agreements in connection therewith) that are issued by the Company Insurance Subsidiaries (the "Company Insurance Contracts") and any and all marketing materials, are, to the extent required under applicable law, on forms approved by applicable insurance regulatory authorities or which have been filed and not objected to by such authorities within the period provided for objection, and such forms comply in all material respects with the insurance statutes, regulations and rules applicable thereto and, as to premium rates established by the Company or any Company Insurance Subsidiary which are required to be filed with or approved by insurance regulatory authorities, the rates have been so filed or approved, the premiums charged conform thereto in all material respects, and such premiums comply in all material respects with the insurance statutes, regulations and rules applicable thereto.

(c) All reinsurance and coinsurance treaties or agreements, including retrocessional agreements, to which the Company or any Company Insurance Subsidiary is a party or under which the Company or any Company Insurance Subsidiary has any existing rights, obligations or liabilities are in full force and effect except for such treaties or agreements the failure to be in full force and effect as individually or in the aggregate are not reasonably likely to have a Company Material Adverse Effect. Neither the Company nor any Company Insurance Subsidiary, nor, to the knowledge of the Responsible Executive Officers of the Company, any other party to a reinsurance or coinsurance treaty or agreement to which the Company or any Company Insurance Subsidiary is a party, is in default in any material respect as to any provision thereof, and no such agreement contains any provision providing that the other party thereto may (whether with notice, lapse of time or both) terminate such agreement solely by reason of the transactions contemplated by this Agreement. The Company has not received any notice to the effect that the financial condition of any other party to any such agreement is impaired with the result that a default thereunder may reasonably be anticipated, whether or not such default may be cured by the operation of any offset clause in such agreement. No insurer or reinsurer or group of affiliated insurers or reinsurers accounted for the direction to the Company and the Company Insurance Subsidiaries or the ceding by the Company and the Company Insurance Subsidiaries of insurance or reinsurance business in an aggregate amount equal to two percent or more of the consolidated gross premium income of the Company and the Company Insurance Subsidiaries for the year ended December 31, 1998.

(d) Prior to the date hereof, the Company has delivered or made available to Parent a true and complete copy of any actuarial reports prepared by actuaries, independent or otherwise, with respect to the Company or any Company Insurance Subsidiary since December 31, 1995, and all attachments, addenda, supplements and modifications thereto (the "Company Actuarial Analyses"). The information and data furnished by the Company or any Company Insurance Subsidiary to its independent actuaries in connection with the preparation of the Company Actuarial Analyses were accurate in all material respects. Furthermore, to the knowledge of the Responsible Executive Officers of the Company, each Company Actuarial Analysis was based upon an accurate inventory of policies in force for the Company and the Company Insurance Subsidiaries, as the case may be, at the relevant time of preparation, was prepared using appropriate modeling procedures accurately applied and in conformity with generally accepted actuarial standards consistently applied, and the projections contained therein were properly prepared in accordance with the assumptions stated therein.

4.22. Liabilities and Reserves.

(a) The reserves carried on the company sap statements of each Company Insurance Subsidiary for the year ended December 31, 1998 for future insurance policy benefits, losses, claims and similar purposes (including claims litigation) are in compliance in all material respects with the requirements for reserves established by the insurance departments of the state of domicile of such Company Insurance Subsidiary, were determined in all material respects in accordance with generally accepted actuarial standards and principles consistently applied, were determined in accordance with SAP and are fairly stated in all material respects in accordance

with sound actuarial and statutory accounting principles. Such reserves were adequate in the aggregate to cover the total amount of all reasonably anticipated liabilities of the Company and each Company Insurance Subsidiary under all outstanding insurance, reinsurance and other applicable agreements as of the respective dates of such Company SAP statements. The admitted assets of the Company and each Company Insurance Subsidiary as determined under applicable laws are in an amount at least equal to the minimum amounts required by applicable laws. In addition, the Company has delivered or made available to Parent copies of all work papers used as the basis for establishing the reserves for the Company and the Company Insurance Subsidiaries at December 31, 1997 and December 31, 1998, respectively. With respect to the quarterly period ended June 30, 1999, the Company will establish the reserves set forth in Section 4.22 of the Company Disclosure Schedule.

(b) Except for regular periodic assessments in the ordinary course of business or assessments based on developments which are publicly known within the insurance industry, to the knowledge of the Responsible Executive Officers of the Company, no claim or assessment is pending or threatened against any Company Insurance Subsidiary which is peculiar or unique to such Company Insurance Subsidiary by any state insurance guaranty associations in connection with such association's fund relating to insolvent insurers which if determined adversely would, individually or in the aggregate, be reasonably likely to have a Company Material Adverse Effect.

**ARTICLE V
REPRESENTATIONS AND WARRANTIES OF
PARENT AND MERGER SUBSIDIARY**

Parent and Merger Subsidiary hereby, jointly and severally, represent and warrant to the Company that:

5.1. Merger Subsidiary.

- (a) Merger Subsidiary is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.
- (b) The authorized capital stock of Merger Subsidiary consists of 1,000 shares of common stock, par value \$.01 per share, all of which are validly issued and outstanding and are, and at the Effective Time will be, owned solely by Parent, and there are (i) no other voting securities of Merger Subsidiary, (ii) no securities of Merger Subsidiary convertible into or exchangeable for shares of common stock or other voting securities of Merger Subsidiary and (iii) no options or other rights to acquire from Merger Subsidiary, and no obligations of Merger Subsidiary to issue or deliver, shares of common stock or other voting securities or securities convertible into or exchangeable for shares of common stock or other voting securities of Merger Subsidiary.

(c) Merger Subsidiary has not conducted any business prior to the date hereof and has no, and prior to the Effective Time will have no, assets, liabilities or obligations of any nature other than those incident to its formation and pursuant to this Agreement and the Merger and the other transactions contemplated by this Agreement.

5.2. Organization, Good Standing and Qualification. Parent is a company incorporated with limited liability, validly existing and in good standing under the Cayman Islands Companies Law, and each of its Subsidiaries is a corporation or other entity duly organized, validly existing and in good standing under the laws of its respective jurisdiction of organization. Neither Parent nor Merger Subsidiary is required to be authorized, qualified, licensed or domesticated as a foreign corporation under any United States federal, state or local corporate law. Parent has made available to the Company a complete and correct copy of Parent's and each Subsidiaries' charter and by-laws or other organizational documents, each as amended to and as in effect as of the date hereof.

5.3. Capitalization.

The authorized capital stock of Parent consists of 300 million Parent Shares, of which 194,059,295 shares were outstanding as of the close of business on October 25, 1999, and 10 million other shares, none of which are outstanding. All of the outstanding Parent Shares have been duly authorized and are validly issued, fully paid and nonassessable. Parent has no commitments to issue or deliver Parent Shares, except that, as of September 30, 1999, there were an aggregate of not greater than 40,000,000 Parent Shares reserved for issuance pursuant to Parent's employee benefit plans existing on the date hereof (the "Parent Stock Plans"), and 500,000 shares of Parent preferred stock subject to issuance pursuant to the Parent Rights Agreement. Each of the outstanding shares of capital stock or other securities of each of Parent's Subsidiaries is duly authorized, validly issued, fully paid and nonassessable and owned by Parent or a direct or indirect wholly-owned subsidiary of Parent, free and clear of any lien, pledge, security interest, claim or other encumbrance. There are no preemptive or other outstanding rights, options, warrants, conversion rights, stock appreciation rights, redemption rights, repurchase rights, agreements, arrangements or commitments to issue or sell any shares of capital stock or other securities of Parent or any of its Subsidiaries or any securities or obligations convertible or exchangeable into or exercisable for, or giving any Person a right to subscribe for or acquire, any securities of Parent or any of its Subsidiaries, and no securities or obligations evidencing such rights are authorized, issued or outstanding. Parent does not have outstanding any bonds, debentures, notes or other obligations the holders of which have the right to vote (or, except as referred to in this Section 5.3, convertible into or exercisable for securities having the right to vote) with the stockholders of Parent on any matter.

5.4. Corporate Authority.

(a) Each of Parent and Merger Subsidiary has all requisite corporate power and authority and has taken all corporate action necessary in order to execute, deliver and

perform its obligations under this Agreement, the Stock Option Agreement and to consummate the Merger. This Agreement is a valid and binding obligation of each of Parent and Merger Subsidiary, as the case may be, enforceable against Parent and Merger Subsidiary in accordance with its terms, except as enforceability may be limited or affected by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws and equitable principles now or hereafter in effect and affecting the rights and remedies of creditors generally.

(b) The Board of Directors of Parent (at a meeting duly called and held) has approved this Agreement and the Merger and the other transactions contemplated hereby and thereby. The Parent Shares, when issued in connection with the consummation of the transactions contemplated hereby, will be validly issued, fully paid and nonassessable, and no stockholder of Parent will have any preemptive right of subscription or purchase in respect thereof. The Parent Shares, when so issued, will be registered under the Securities Act and Exchange Act and registered or exempt from registration under any applicable state securities or "blue sky" laws.

5.5. Governmental Filings; No Violations.

(a) Except for all filings, permits, authorizations, consents and approvals as may be required under, and compliance with other applicable requirements of, the Securities Act, the Exchange Act, the HSR Act, state securities or "blue sky" laws, state takeover laws, state and foreign insurance regulatory laws and commissions, including Lloyd's of London and the U.K. Treasury Department, and except as may result from any facts or circumstances relating solely to the Company or its Affiliates, in connection with the execution and delivery of this Agreement by Parent and Merger Subsidiary and the consummation by Parent and Merger Subsidiary of the Merger and the other transactions contemplated hereby and thereby, there are no filings, authorizations, consents, approvals or notices required with or by any Court, administrative agency, commission, government or regulatory authority, domestic or foreign, except those that the failure to make or obtain would not, individually or in the aggregate, have a Parent Material Adverse Effect or prevent, materially delay or materially impair the ability of Parent or Merger Subsidiary to consummate transactions contemplated by this Agreement.

(b) Subject to compliance with the filings described in Section 5.5(a), the execution, delivery and performance of the Stock Option Agreement by Parent and this Agreement by Parent and the Merger Subsidiary, as the case may be, does not, and the consummation by Parent or Merger Subsidiary of the Merger and the other transactions contemplated hereby or thereby will not, constitute or result in (i) a breach or violation of, or a default under, the certificate of incorporation or bylaws of Parent or Merger Subsidiary, or the comparable governing instruments of any of Parent's other Subsidiaries, or (ii) a breach or violation of, or a default under, the acceleration of any obligations (with or without notice, lapse of time or both) pursuant to, any Contracts binding upon Parent or any of its Subsidiaries, except for any conflict, breach, violation, default or acceleration that would not reasonably be expected to have a Parent Material Adverse Effect or prevent, materially delay or materially impair the

ability of Parent or Merger Subsidiary to consummate the transactions contemplated by this Agreement, as the case may be.

5.6. Parent Reports; Financial Statements.

Parent has delivered or made available to the Company true and complete copies of each registration statement, report, proxy statement or information statement prepared by it since September 30, 1998 (the "Parent Audit Date"), including (a) Parent's Annual Report on Form 10-K for the year ended September 30, 1998, (b) Parent's definitive Proxy Statement for its 1999 Annual Meeting of Stockholders, and (c) Parent's Quarterly Reports on Form 10-Q for the quarterly periods ended December 31, 1998, March 31, 1999 and June 30, 1999, each in the form (including exhibits, annexes and any amendments thereto) filed with the SEC (collectively, including any such reports filed between the date hereof and the Effective Time, the "Parent Reports"). As of their respective dates, the Parent Reports complied, and any Parent Reports filed with the SEC between the date hereof and the Effective Time will comply, as to form in all material respects with the requirements of the Securities Act or the Exchange Act, as applicable, and the rules and regulations of the SEC. As of their respective dates, the Parent Reports did not, and any Parent Reports filed with the SEC between the date hereof and the Effective Time will not, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading. Each of the consolidated balance sheets included in or incorporated by reference into the Parent Reports (including the related notes and schedules) fairly presents, or will fairly present, the consolidated financial position of Parent and its Subsidiaries as of its date and each of the consolidated statements of income and of changes in financial position included in or incorporated by reference into the Parent Reports (including any related notes and schedules) fairly presents, or will fairly present, the consolidated results of operations, retained earnings and changes in financial position, as the case may be, of Parent and its Subsidiaries for the periods set forth therein (subject, in the case of unaudited statements, to notes and normal year-end audit adjustments that will not be material in amount or effect), in each case in accordance with GAAP consistently applied during the periods involved, except as may be noted therein.

5.7. Absence of Certain Changes.

Except as disclosed in the Parent Reports filed prior to the date hereof and except as otherwise provided in or contemplated by this Agreement, since the Parent Audit Date, Parent and its Subsidiaries have conducted their respective businesses only in, and have not engaged in any material transaction other than according to, the ordinary and usual course of such businesses and there has not been any change in the financial condition, properties, business or results of operations of Parent and its Subsidiaries, or any transaction, commitment, dispute or other event, or any other development or combination of developments that, individually or in the aggregate, has had or is reasonably likely to result in a Parent Material Adverse Effect.

5.8. Litigation and Liabilities.

Except as disclosed in the Parent Reports filed prior to the date hereof, there are no (a) civil, criminal or administrative actions, suits, claims, hearings, investigations, proceedings, judgments, decrees, orders or injunctions outstanding, pending or, to the knowledge of the Responsible Executive Officers of Parent, threatened against Parent or any of its Subsidiaries or (b) obligations or liabilities of any nature, whether or not accrued, contingent or otherwise and whether or not required to be disclosed ("Parent Liabilities") other than (i) Parent Liabilities incurred since December 31, 1998 in the ordinary and usual course of business and consistent with past practice, (ii) Parent Liabilities incurred in connection with or as a result of the transactions contemplated by this Agreement, (iii) Parent Liabilities incurred in connection with or as a result of the acquisition of the property and casualty business of Cigna and (iv) Parent Liabilities that would not reasonably be expected to have a Parent Material Adverse Effect.

5.9. Brokers and Finders.

Neither Parent nor any of its executive officers, directors or employees has employed any broker or finder or incurred any liability for any brokerage fees, commissions or finders fees in connection with the Merger or the other transactions contemplated in this Agreement, except that Parent has employed Credit Suisse First Boston Corporation as its financial advisors, the arrangements with respect to which have been disclosed to the Company prior to the date hereof.

5.10. Financing.

Parent or Merger Subsidiary has on the date hereof and will have at the Effective Time sufficient cash, assets readily convertible into cash and borrowing availability under committed credit facilities to consummate the Merger (including payment of the Cash Component of the Merger Consideration) and the transactions contemplated hereby on a timely basis in accordance with this Agreement.

ARTICLE VI COVENANTS

6.1. Interim Operations of the Company.

Except as expressly contemplated by this Agreement or the Stock Option Agreement or consented to in writing by Parent (in its sole discretion), during the period from the date of this Agreement to the Effective Time, the Company and its Subsidiaries will conduct their operations only in, and neither the Company nor any of its Subsidiaries shall take any action except in, the ordinary and usual course of business and consistent with past practice, and the

Company and its Subsidiaries will use their best efforts to preserve intact their business organization, to keep available the services of their officers and key employees and to maintain advantageous relationships with ceding companies, customers, licensors, licensees, suppliers, contractors, distributors, business partners and others having business relationships with the Company or its Subsidiaries, as the case may be. Without limiting the generality of the foregoing, prior to the Effective Time, neither the Company nor any of its Subsidiaries will, without the prior written consent of Parent (such consent to be given or withheld in Parent's sole discretion):

(a) except as expressly contemplated by this Agreement, split, combine or reclassify any shares of its capital stock or other securities, declare, pay, set aside for payment or consummate any dividend or other distribution payable in cash, stock, property or otherwise in respect of its capital stock or other securities, or directly or indirectly redeem, purchase or otherwise acquire any shares of its capital stock or other securities other than regular quarterly cash dividends paid by the Company not in excess of \$0.04 per share;

(b) authorize for issuance, issue, sell, pledge, dispose of, encumber, deliver or agree or commit to issue, sell, pledge or deliver (whether through the issuance or granting of any options, warrants, commitments, subscriptions, rights to purchase or otherwise) any capital stock of any class of the Company or any Subsidiary or any securities convertible into or exercisable or exchangeable for shares of capital stock of any class of the Company or any Subsidiary, except as required by options outstanding on the date hereof pursuant to the Company Stock Plans and agreements disclosed in Section 4.9(a) of the Company Disclosure Schedule, or amend any of the terms of any such securities or agreements outstanding as of the date hereof;

(c) (i) incur any material indebtedness not previously approved by Parent, (ii) incur any other indebtedness except in the ordinary course of business, (iii) pledge or otherwise encumber shares of capital stock of the Company or its Subsidiaries or (iv) mortgage or pledge any of its material assets, tangible or intangible, or create any lien thereupon other than (A) liens for Taxes or other assessments or charges of Governmental Authorities that are not yet delinquent or that are being contested in good faith by appropriate proceedings, in each case, with respect to which adequate reserves or other appropriate provisions are being maintained to the extent required by GAAP; (B) statutory liens of landlords and mortgagees of landlords and liens of carriers, warehousemen, mechanics, materialmen and other liens imposed by Law and created in the ordinary course of business for amounts not yet more than 30 days overdue or that are being contested in good faith by appropriate proceedings, in each case, with respect to which adequate reserves or other appropriate provisions are being maintained to the extent required by GAAP; (C) leases or subleases, easements, rights-of-way, covenants and consents that do not interfere materially with the ordinary conduct of the business of the Company or detract materially from the value of the property to which they attach or materially impair the use thereof to the Company; (D) liens granted by the Company to lenders pursuant to credit agreements in existence on the date hereof and (E) Liens granted in the ordinary course of business and consistent with past practice;

(d) except as may be required by Law or as contemplated by this Agreement, enter into, adopt, amend or terminate any bonus, profit sharing, compensation, severance, termination, stock option, stock appreciation right, restricted stock, performance unit, stock equivalent, stock purchase agreement, pension, retirement, deferred compensation, employment, severance or other Employee Benefit Plan; or enter into or amend any employment or severance agreement with, increase in any material manner the salary, wages, bonus, commission, or other compensation or benefits of any director or executive officer of the Company or any of its Subsidiaries, except with respect to new employees employed in the ordinary course of business and those agreements with key employees previously disclosed to Parent; or increase in any manner the salary, wages, bonus, commission, or other compensation or benefits of any other officer, employee or agent of the Company or any of its Subsidiaries except for increases in the ordinary course of business and consistent with past practice; or pay any benefit not required by any plan and arrangement as in effect as of the date hereof (including, without limitation, the granting of stock options, stock appreciation rights or performance units);

(e) acquire (by merger, amalgamation, consolidation or acquisition of stock or assets) any corporation, partnership or other business organization or division thereof or make any material investment either by purchase of stock or securities, contributions to capital, property transfer or acquisition (including by lease) of any material amount of properties or assets of any other individual or entity;

(f) except as expressly required herein, pay, discharge or satisfy any claims, liabilities or obligations (absolute, accrued, contingent or otherwise), other than the payment, discharge or satisfaction in the ordinary course of business and consistent with past practice of liabilities (x) reflected or reserved against on the consolidated balance sheet of the Company dated June 30, 1999 (the "Latest Balance Sheet") or (y) incurred in connection with the transactions contemplated by this Agreement or in the ordinary course of business and consistent with past practice;

(g) amend the certificate of incorporation or any similar document of the Company or any of its Subsidiaries;

(h) adopt a plan of complete or partial liquidation or resolutions providing for the complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization of the Company or any of its Subsidiaries;

(i) enter into any new lines of business (whether or not part of the insurance or reinsurance business), change any material policy forms, change the pricing formula for material insurance policies, materially change its investment policies or guidelines or otherwise make material changes to the operation of its business or change its loss reserve methodology other than as expressly provided in this Agreement;

- (j) invest any investment securities of the Company in investments that are not rated in one of the four highest categories by a "nationally recognized statistical rating agency," as defined in the rules or regulations of the SEC;
- (k) sell (whether by merger, consolidation or otherwise), lease, encumber, transfer or dispose of any assets outside the ordinary course of business consistent with past practices or any assets that are material to the Company or any of its Subsidiaries, or enter into any material commitment or transaction outside the ordinary course of business consistent with past practices (except with respect to any assets related to RGB Underwriting Agencies, Ltd.);
- (l) authorize or make or commit to make any capital expenditures, except for transactions in the ordinary course of business consistent with past practice (but in no event in excess of \$100,000 in the aggregate) or pursuant to agreements or commitments entered into by the Company or any of its Subsidiaries prior to the date hereof, unless otherwise reserved against in the Latest Balance Sheet;
- (m) make any Tax elections or settle or compromise any material United States federal, state, local or other foreign income tax liability, or waive or extend the statute of limitations in respect of any such Taxes;
- (n) pay or agree to pay in settlement or compromise of any suits or claims of liability against the Company, any of its Subsidiaries or its directors, officers, employees or agents more than an aggregate of \$1,000,000 for all such suits and claims, it being understood that without the prior written consent of Parent, no such settlement or compromise shall be entered into involving non-monetary obligations;
- (o) except as expressly contemplated by this Agreement or pursuant to agreements or commitments entered into by the Company or any of its Subsidiaries prior to the date hereof and disclosed in Section 6.1 of the Company Disclosure Schedule, knowingly take any action likely to materially decrease or diminish the assets or net worth of the Company or any of its Subsidiaries (except for reserves in the ordinary course of business and consistent with past practice);
- (p) except as may be required as a result of a change in law or in GAAP, change any of the accounting principles or practices used by it;
- (q) enter into any agreement providing for the acceleration or payment or performance or other consequence as a result of a change in control of the Company or any of its Subsidiaries; or
- (r) take any action or agree, in writing or otherwise, to take any of the foregoing actions or any action that would make any representation or warranty in Article IV hereof materially untrue or incorrect.

6.2. Interim Operations of Merger Subsidiary.

During the period from the date of this Agreement to the Effective Time, Merger Subsidiary shall not engage in any activities of any nature except as provided in or contemplated by this Agreement.

6.3. No Solicitation.

From and after the date hereof, neither the Company nor any of its Subsidiaries shall (whether directly or indirectly through its or their officers, directors, agents, representatives, advisors or other intermediaries (collectively, "Representatives")), nor shall the Company or any of its Subsidiaries authorize or permit any of its or their Representatives to, (a) solicit, initiate, encourage (including by way of furnishing information) or take any action knowingly to facilitate the submission of any inquiries, proposals or offers (whether or not in writing) from any person relating to, other than the transactions contemplated by this Agreement and the Stock Option Agreement, (i) any acquisition or purchase of 15% or more of the consolidated assets of the Company and its Subsidiaries or of 15% or more of any class of equity securities of the Company or any of its Subsidiaries, (ii) any tender offer (including a self tender offer) or exchange offer that if consummated would result in any person beneficially owning 15% or more of any class of equity securities of the Company or any of its material Subsidiaries (including through the ownership of securities convertible or exercisable into or exchangeable for equity securities of the Company), (iii) any merger, consolidation, business combination, sale of substantially all the assets, recapitalization, liquidation, dissolution or similar transaction involving the Company or any of its Subsidiaries whose assets, individually or in the aggregate, constitute 15% or more of the consolidated assets of the Company or

(iv) any other transaction the consummation of which would or would reasonably be expected to impede, interfere with, prevent or materially delay the Merger (any of the foregoing, a "Transaction Proposal"), or agree to or endorse any Transaction Proposal, or (b) enter into or participate in any discussions or negotiations regarding any of the foregoing, or furnish to any other person any information with respect to its business, properties or assets in connection with any of the foregoing, or otherwise cooperate in any way with, or knowingly assist or participate in, facilitate or encourage, any effort or attempt by any other person to do or seek any of the foregoing; provided, however, that the foregoing shall not prohibit the Company, prior to the receipt of the Company Requisite Vote, (A) from complying with Rule 14e-2 and Rule 14d-9 under the Exchange Act with regard to a bona fide tender offer or exchange offer or (B) from participating in negotiations or discussions with or furnishing information to any person in connection with an unsolicited bona fide Transaction Proposal which is submitted in writing by such person to the Board of Directors of the Company after the date of this Agreement and prior to the Company Requisite Vote; provided further, however, that prior to participating in any such discussions or negotiations or furnishing any information, (i) the Company receives from such person an executed confidentiality agreement on terms not less favorable to the Company than the Confidentiality Agreement, a copy of which shall be provided only for informational purposes to Parent, and (ii) the Board of Directors of the Company shall have concluded in good faith, based on the advice of its outside financial advisors, that such Transaction Proposal is reasonably likely to be or to

result in a Superior Proposal, and based on the written advice of its outside legal counsel, that participating in such negotiations or discussions or furnishing such information is required in order to prevent the Board of Directors of the Company from breaching its fiduciary duties to its stockholders under the DGCL; and provided, further, that the Board of Directors of the Company shall not take any of the foregoing actions unless it provides Parent with contemporaneous notice thereof. If the Board of Directors of the Company receives a Transaction Proposal, then the Company shall promptly inform Parent in writing of the terms and conditions of such proposal and the identity of the person making it. The Company agrees that it will keep Parent informed, on a current basis, of the terms of any such proposals or offers and, to the extent disclosure is not prohibited by the terms of any confidentiality agreement with the party making such Transaction Proposal, the status of any such material discussions or negotiations. The Company agrees to immediately cease and cause its Representatives to cease any and all existing activities, discussions or negotiations with any parties conducted heretofore with respect to any of the foregoing, and shall use its reasonable best efforts to cause any such parties in possession of confidential information about the Company that was furnished by or on behalf of the Company to return or destroy all such information in the possession of any such party or in the possession of any agent or advisor of any such party. The Company agrees not to release any third party from, or waive any provisions of, any confidentiality or standstill agreement to which such party or its Subsidiaries is a party. The Company shall ensure that its officers, directors and employees and any investment banker or other Representative retained by it are aware of the restrictions described in this Section 6.3. "Superior Proposal" means any of the transactions described in clause (i), (ii) or (iii) of the definition of Transaction Proposal (with all of the percentages included in the definition of such term raised to 51% for purposes of this definition) with respect to which any required financing is committed or, in the good faith judgment of the Board of Directors of the Company, based on the written advice of its outside financial advisors, is reasonably capable of being financed by the person making the proposal, and with respect to which the Board of Directors of the Company shall have concluded in good faith, based on the written advice of its outside legal counsel and financial advisors, is reasonably capable of being completed, taking into account all legal, financial, regulatory and other aspects of the Transaction Proposal and the person making the proposal, and would, if consummated, result in a transaction more favorable to the Company's stockholders from a financial point of view than the transactions contemplated by this Agreement.

6.4. Information Supplied.

Each of the Company and Parent agree, as to itself and its Subsidiaries, that none of the information supplied or to be supplied by it or its Subsidiaries for inclusion or incorporation by reference in (a) the Registration Statement on Form S-4 (including any amendments thereto) to be filed with the SEC by Parent in connection with the issuance of Parent Shares in the Merger (including the proxy statement and prospectus (the "Prospectus/Proxy Statement") constituting a part thereof) (such Registration Statement, as amended or supplemented, the "S-4 Registration Statement") will, at the time the S-4 Registration Statement (or any post-effective amendment) becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to

be stated therein or necessary to make the statements therein, not misleading,

(b) the Prospectus/Proxy Statement and any amendment or supplement thereto will, at the date of mailing to stockholders and at the times of the meetings of stockholders of the Company and Parent to be held in connection with the Merger, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading and (c) the Statement on Schedule 13E-3 (such statement, as amended or supplemented, is herein referred to as the "Schedule 13E-3") to be filed with the SEC by Parent will, at the time it is first filed with the SEC, and at any time it is amended or supplemented and at the time of the Stockholders Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading.

6.5. Stockholders Meeting.

Whether or not the Board of Directors of the Company shall take any action permitted by the third sentence of this Section 6.5, the Company shall cause a meeting of its stockholders (the "Stockholders Meeting") to be duly called and held as soon as practicable after the date of this Agreement for the purpose of voting on the adoption of this Agreement. The Board of Directors of the Company shall (i) include in the Proxy Statement/Prospectus the recommendation described in Section 4.4 (the "Company Board Recommendation") and the written opinion of Goldman, Sachs & Co., dated the date of this Agreement, to the effect that, as of the date hereof, the Merger Consideration is fair, from a financial point of view, to the holders of Company Common Stock and (ii) use its reasonable best efforts to obtain the necessary vote in favor of the adoption of this Agreement by its stockholders. The Board of Directors of the Company shall not withdraw, amend, modify or qualify in a manner adverse to Parent the Company Board Recommendation (or announce publicly its intention to do so), except that prior to the receipt of the Company Requisite Vote, the Board of Directors of the Company shall be permitted to withdraw, amend, modify or materially qualify in a manner adverse to Parent the Company Board Recommendation (or publicly announce its intention to do so), upon three business days' prior notice to Parent, but only if (i)(A) the Company has complied with Section 6.3, (B) an unsolicited bona fide written Transaction Proposal with respect to the Company shall have been made after the date of this Agreement by any person other than Parent or its affiliates and such proposal is pending at the time of such action and (C) the Board of Directors of the Company shall have concluded in good faith, on the basis of the advice of its outside financial advisors (confirmed in writing to the Board of Directors), that such Transaction Proposal is a Superior Proposal (as defined in Section 6.3), or (ii) there has been any change in the financial condition, properties, business or results of operations of Parent and its Subsidiaries, or any transaction, commitment, dispute or other event, or any other development or combination of developments that, individually or in the aggregate, has had or is reasonably likely to result in a Parent Material Adverse Effect, and, on the basis of advice of its outside legal counsel (confirmed in writing to the Board of Directors), that the Board of Directors is required to withdraw, amend or modify the Company Board Recommendation in order to prevent it from breaching its fiduciary duties to the stockholders of the Company under the DGCL.

6.6. Filings; Other Actions; Notification.

(a) Parent and the Company shall as promptly as practicable prepare and file with the SEC the Prospectus/Proxy Statement or an amendment or supplement thereto, and Parent shall as promptly as practicable prepare and file with the SEC the S-4 Registration Statement, or an amendment or supplement thereto, and the Schedule 13E-3 as promptly as practicable. Parent and the Company each shall use its reasonable best efforts to have the S-4 Registration Statement declared effective under the Securities Act as promptly as practicable after such filing, and promptly thereafter mail the Prospectus/Proxy Statement to the respective stockholders of each of the Company and Parent. Parent shall also use its reasonable best efforts to obtain prior to the effective date of the S-4 Registration Statement all necessary state securities law or "blue sky" permits and approvals required in connection with the Merger and to consummate the other transactions contemplated by this Agreement and will pay all expenses incident thereto. Parent further agrees to file as promptly as practicable following the Effective Time a post-effective amendment to the S-4 Registration Statement to convert it to a Form S-3 shelf registration covering resales of Parent Shares by affiliates of the Company and to cause the same to become effective.

(b) The Company and Parent each shall from the date hereof until the Effective Time cooperate with the other and use (and shall cause their respective Subsidiaries to use) its reasonable best efforts to cause to be done all things necessary, proper or advisable on its part under this Agreement and applicable Laws to cause the conditions to closing set forth in Article VII to be satisfied and otherwise to consummate and make effective the Merger and the other transactions contemplated by this Agreement as soon as practicable, including preparing and filing as promptly as practicable all documentation to effect all necessary notices, reports and other filings and to obtain as promptly as practicable all consents, registrations, approvals, permits and authorizations necessary or advisable to be obtained from any third party (including rating agencies) and/or any governmental entity in order to consummate the Merger or any of the other transactions contemplated by this Agreement; provided, however, that nothing in this Section 6.6 shall require, or be construed to require, Parent, in connection with the receipt of any regulatory approval, to proffer to, or agree to (i) sell or hold separate and agree to sell or to discontinue or limit, before or after the Effective Time, any assets, businesses, or interest in any assets or businesses of Parent, the Company or any of their respective Affiliates (or to consent to any sale, or agreement to sell, or discontinuance or limitation by the Company of any of its assets or businesses) or (ii) agree to any conditions relating to, or changes or restriction in, the operations of any such asset or businesses which, in either case would be reasonably expected to materially and adversely impact the economic or business benefits to Parent of the transactions contemplated by this Agreement. Subject to applicable laws relating to the exchange of information, Parent and the Company shall have the reasonable opportunity to review in advance and comment on, and to the extent practicable each will consult the other on, all the information relating to Parent or the Company, as the case may be, and any of their respective Subsidiaries, that appear in any filing made with, or written materials submitted to, any third party and/or any governmental entity in connection with the Merger and the other transactions contemplated by

this Agreement. In exercising the foregoing right, each of the Company and Parent shall act reasonably and as promptly as practicable.

(c) The Company and Parent each shall, upon request by the other, furnish the other with all information concerning itself, its Subsidiaries, directors, executive officers and stockholders and such other matters as may be reasonably necessary or advisable in connection with the Prospectus/ Proxy Statement, the S-4 Registration Statement or any other statement, filing, notice or application made by or on behalf of Parent, the Company or any of their respective Subsidiaries to any third party and/or any governmental entity in connection with the Merger and the transactions contemplated by this Agreement.

(d) The Company and Parent each shall keep the other apprised of the status of matters relating to completion of the transactions contemplated hereby, including promptly furnishing the other with copies of notice or other communications received by Parent or the Company, as the case may be, or any of its Subsidiaries, from any third party and/or any governmental entity with respect to the Merger and the other transactions contemplated by this Agreement. The Company and Parent each shall give prompt notice to the other of any change that is reasonably likely to result in a Company Material Adverse Effect or Parent Material Adverse Effect, respectively.

6.7. Taxation. Each of Parent and the Company shall use its reasonable best efforts before and after the Effective Time to cause the Merger to qualify as a reorganization under the provisions of Section 368(a) of the Code and to obtain the opinions of their respective counsel to the effect that the Merger will be treated for Federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Code, and that each of Parent, Merger Subsidiary and the Company will be a party to that reorganization within the meaning of Section 368(b) of the Code. If Parent determines that the Total Cash Consideration will exceed one-half of the Total Consideration, or counsel to either Parent or the Company is otherwise unable to provide the anticipated opinion regarding the qualification of the Merger as a reorganization, Parent and the Company shall restructure the Merger as described in Section 1.4 hereof, and the opinions of counsel described in the first sentence of this Section 6.7 shall not be delivered.

6.8. Access.

Between the date of this Agreement and the Effective Time, Parent and the Company will each (and shall cause its Subsidiaries to) afford access to authorized representatives (including, without limitation, attorneys, auditors, financial advisors and actuaries) of the other during normal business hours to all its books and records, facilities, accountants and key employees and will permit such party and its authorized representatives to make such inspections as they may reasonably require and will cause its officers and employees to furnish such party and its authorized representatives such financial and operating data and other information with respect to its business and properties as such party and its authorized representatives may from time to time reasonably request. No investigation pursuant to this Section shall affect or be deemed to modify any representation or warranty made by the

Company, Parent or Merger Subsidiary, and provided, further, that the foregoing shall not require the Company or Parent to permit any inspection, or to disclose any information, that (i) in the reasonable judgment of the Company or Parent, as the case may be, would result in the disclosure of any trade secrets of third parties or violate any of its obligations with respect to confidentiality if the Company or Parent, as the case may be, shall have used all reasonable efforts to obtain the consent of such third party to such inspection or disclosure or (ii) would violate any attorney-client privilege of the Company or Parent, as the case may be. All requests for information made pursuant to this Section 6.8 shall be directed to such Person as may be designated by the Company and Parent, as the case may be, pursuant to Section 9.6 hereof. All such information shall be governed by the terms of the Confidentiality Agreement (as hereinafter defined).

6.9. Affiliates.

At least 10 days prior to the Effective Time, the Company shall deliver to Parent a list of names and addresses of those Persons who will be, in the opinion of the Company, "affiliates" of the Company within the meaning of Rule 145 under the Securities Act. The Company shall exercise its best efforts to deliver or cause to be delivered to Parent, at least 1 day prior to the Effective Time, from each affiliate of the Company identified in the foregoing list, a letter in the form attached as Exhibit A. The certificates representing Parent Common Stock received by such affiliates shall bear a customary legend regarding applicable Securities Act restrictions.

6.10. Stock Exchange Listing.

Parent shall use its best efforts to cause the Parent Shares to be issued in the Merger to be approved for listing on the NYSE subject to official notice of issuance, prior to the Closing Date.

6.11. Publicity.

The Company and Parent shall consult with each other prior to issuing, and will provide each other with a meaningful opportunity to review, comment upon and concur with, any press releases or otherwise making public announcements with respect to the Merger and the other transactions contemplated by this Agreement, and prior to making any filings with any third party and/or any governmental entity with respect thereto, except as may be required by law, court process or by obligations pursuant to any listing agreement with or rules of any national securities exchange or interdealer quotation service.

6.12. Benefits.

(a) At the Effective Time, each outstanding Company Option shall be canceled, and each outstanding Company Option identified in Section 4.2 of the Company

Disclosure Schedule (the "Roll-Over Options") shall be replaced by an option (a "Parent Option") to acquire Parent Shares under Parent's existing stock option plan.

(b) The cancellation of the Roll-Over Options and replacement with Parent Options shall comply in all respects with, and shall be performed in accordance with, the methodology prescribed by the provisions of Section 424(a) of the Code and the regulations thereunder, and each Parent Option shall provide the option holder with vesting and termination rights that are no less favorable to him than were provided under the Roll-Over Option for which it was replaced as of the Effective Time. The parties contemplate that, consistent with the methodology prescribed by Section 424(a) of the Code and the applicable regulations thereunder, the Parent Options will be adjusted such that (i) the difference between the Fair Market Value (as defined below) as of the Closing Date of the Parent Shares subject to the Parent Option and the aggregate exercise price of the Parent Option immediately after the Effective Time remains the same as the aggregate difference between the Implied Value (as defined below) of the shares of Company Common Stock subject to the Roll-Over Option and the aggregate exercise price of the Roll-Over Option immediately prior to the Effective Time, and (ii) the aggregate exercise price of the Parent Option remains the same as the aggregate exercise price of the Roll-Over Option. For purposes of this Section 6.12, the "Fair Market Value" of a Parent Share as of any date shall be the average of the closing prices of Parent Shares on the New York Stock Exchange as reported in The Wall Street Journal (New York City edition) for the 5 consecutive trading days ending three trading days prior to such date and the "Implied Value" of a share of Company Common Stock shall be equal to the Cash Component plus the Fair Market Value as of the Closing Date of the Exchange Ratio.

(c) In lieu of the replacement of Roll-Over Options with Parent Options as provided for in Sections 6.12(a) and (b), if the holder of any such Company Option so consents in writing, at the Effective Time each outstanding Company Option with a per share exercise price equal to or greater than the Implied Value per share of Company Common Stock shall be canceled and replaced with an option (a "Substitute Parent Option") to acquire a number of Parent Shares equal to the number of shares of Company Common Stock subject to such Company Option multiplied by the Implied Value per share of Company Common Stock divided by the Fair Market Value of a Parent Share as of the Closing Date. Each Substitute Parent Option shall have an exercise price per Parent Share subject to such Substitute Parent Option equal to the Fair Market Value per Parent Share as of the Closing Date. Each Substitute Parent Option shall have a ten-year term commencing at the Effective Time and shall vest as follows: 1/3 of the Substitute Parent Options shall become vested on each of the first, second, and third year anniversaries of the Effective Time provided the employee is employed by Parent or a Subsidiary of Parent on such date.

(d) As promptly as practicable after the Effective Time, Parent shall issue to each holder of an outstanding Company Option a document evidencing the foregoing cancellation and the issuance by Parent of a Parent Option or a Substitute Parent Option, as applicable, having the terms provided for in Section 6.12(b) or Section 6.12(c), as applicable, and effective as of the Effective Time.

(e) If the Parent Options issued pursuant to Section 6.12(a) above are not already covered by an effective registration statement, Parent will file a registration statement as promptly as practicable after the Effective Time, which registration statement will cover the Parent Shares issuable upon exercise of the Parent Options granted in substitution of the Roll-Over Options, and Parent will use its reasonable best efforts to cause such registration statement to become effective under the Securities Act and to maintain such registration statement in effect until the exercise or termination of all such Parent Options.

(f) Parent agrees that, during the period commencing at the Effective Time and ending on the first anniversary thereof, the employees of the Company and its Subsidiaries will continue to be provided with benefits under employee benefit plans (other than plans involving the issuance of Shares) that are no less favorable in the aggregate than those benefits currently provided by the Company and its Subsidiaries to such employees. For a period of one year following the Effective Time, Parent shall provide, or cause the Surviving Company to provide, severance benefits for Company employees whose employment is terminated during such period which are at least equal to the severance benefits provided in Section 6.12(f) of the Company Disclosure Schedule. Following the Effective Time, Parent shall honor, or shall cause the Surviving Company to honor, all individual employment or severance agreements in effect for employees (or former employees) of the Company as of the date hereof to the extent that such individual agreements are listed in Section 6.12(f) of the Company Disclosure Schedule; provided, however, that nothing contained herein shall prevent Parent from amending or terminating any such agreement in accordance with its terms.

(g) As promptly as possible after the Effective Time, Parent shall grant up to 168,000 Parent Shares under its 1998 Long-Term Incentive Plan to employees of the Company and its Subsidiaries designated by the Company's Executive Committee (subject to the approval by Parent). All such Parent Shares shall be covered by an appropriate registration statement under the Securities Act and shall be granted as restricted stock awards ("Parent Restricted Stock") subject to vesting as follows: 1/3 of the shares of Parent Restricted Stock shall become vested on each of the first, second, and third year anniversaries of the Effective Time provided the employee is employed by Parent or a Subsidiary of Parent on such date.

(h) Parent shall pay to each executive who is a member (an "Executive") of the Executive Committee of the Company (the "Executive Committee") retention payments of \$200,000 on each of January 1, 2002 and January 1, 2003 if such Executive continues to be employed by Parent or a Subsidiary of Parent on such date.

(i) At the Effective Time Parent will grant to each Executive Parent Options 50,000 to purchase Parent Shares with an exercise price equal to the lower of (i) the Fair Market Value of Parent Shares as of the date of this Agreement and (ii) the Fair Market Value of Parent Shares as of the Closing Date. Such Parent Options shall vest as follows: 1/3 of the Parent Options shall become vested on each of the first, second, and third year anniversaries of the Effective Time provided the Executive is employed by Parent or a Subsidiary of Parent on such date.

Company (when acting in such capacity), determined as of the Effective Time (each, an "Indemnified Party" and, collectively, the "Indemnified Parties"), against any costs or expenses (including reasonable attorneys' fees and expenses), judgments, fines, losses, amounts paid in settlement claims, damages or liabilities (collectively, "Costs") incurred in connection with any claim, action, suit, proceeding or investigation, actual or threatened, whether civil, criminal, administrative or investigative, in whole or in part based on or arising in whole or in part out of matters existing or occurring at or prior to the Effective Time, whether asserted or claimed prior to, at or after the Effective Time, to the fullest extent that the Company would have been permitted under Delaware law and its certificate of incorporation or bylaws in effect on the date hereof to indemnify such Person (and Parent shall also advance expenses as incurred to the fullest extent permitted under applicable law provided the Person to whom expenses are advanced provides (i) a written affirmation of his or her good faith belief that the standard of conduct necessary for indemnification has been met, and (ii) an undertaking to repay such advances if it is ultimately determined that such Person is not entitled to indemnification).

(b) Parent shall cause to be maintained, for a period of not less than three years from the Effective Time, the Company's current directors' and officers' liability insurance policy to the extent that it provides coverage for events occurring prior to the Effective Time (the "D&O Insurance") for all present and former directors and officers of the Company or any subsidiary thereof, so long as the annual premium therefor would not be in excess of 150% of the last annual premium paid for the D&O Insurance prior to the date of this Agreement (150% of such premium, the "Maximum Premium"); provided that Parent may, in lieu of maintaining such existing D&O Insurance as provided above, cause no less favorable coverage to be provided under any policy maintained for the benefit of the directors and officers of Parent or a separate policy provided by the same insurer. If the existing D&O Insurance expires, is terminated or canceled by the insurer or if the annual premium would exceed the Maximum Premium during such period, Parent shall obtain, in lieu of such D&O Insurance, such comparable directors' and officers' liability insurance as can be obtained for the remainder of such period for an annualized premium not in excess of the Maximum Premium and on terms and conditions no less advantageous than the existing D&O Insurance.

(c) The provisions of this Section are in addition to the rights that an Indemnified Party may have under the certificate of incorporation, bylaws or agreements of or with the Company or any of its Subsidiaries or under applicable law. Parent agrees to pay all costs and expenses (including fees and expenses of counsel) that may be incurred by any Indemnified Party in successfully enforcing the indemnity or other obligations under this Section. The provisions of this Section shall survive the Merger and are intended to be for the benefit of, and shall be enforceable by, each of the Indemnified Parties, their heirs and their representatives

6.16. Purchase of Ordinary Shares.

Prior to the Effective Time, neither the Company, its Subsidiaries nor any of their directors, officers, employees or affiliates shall, directly or indirectly, purchase, otherwise

acquire, sell or otherwise dispose of any Ordinary Shares or any other security convertible or exchangeable into or exercisable for Ordinary Shares or take any other action, except as expressly set forth in this Agreement, that could reasonably be expected to have any influence on the price of the Ordinary Shares. The Company shall promptly notify Parent of, to the extent that the Company has actual knowledge thereof, any action on the part of any third party to influence the price of the Ordinary Shares or the intention of any third party to influence the price of the Ordinary Shares.

6.17. Other Actions by the Company and Parent.

(a) Takeover Statute. If any Takeover Statute is or may become applicable to the Merger or the other transactions contemplated by this Agreement, each of Parent and the Company and its board of directors shall grant such approvals and take such actions as are necessary so that such transactions may be consummated as promptly as practicable on the terms contemplated by this Agreement or by the Merger and otherwise act to eliminate or minimize the effects of such statute or regulation on such transactions.

(b) Notification of Certain Matters. The Company shall give prompt notice to Parent, and Parent shall give prompt notice to the Company, of any material failure of the Company or Parent, as the case may be, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder; provided, however, that the delivery of any notice pursuant to this Section 6.17(b) shall not limit or otherwise affect the remedies available hereunder to the party receiving such notice.

(c) Consents and Approvals. (i) Each of the Company, Parent and Merger Subsidiary will use its reasonable best efforts to comply promptly with all legal requirements which may be imposed on it with respect to this Agreement and the transactions contemplated hereby, which actions shall include furnishing all information in connection with approvals of or filings with any Governmental Entity, including any schedules or reports required to be filed with the SEC, and including any approvals or filings which are not compulsory but are desirable to obtain in the reasonable opinion of Parent, Merger Subsidiary and the Company, and will promptly cooperate with and furnish information to each other in connection with any such requirements imposed upon any of them or any of their Subsidiaries in connection with this Agreement and the transactions contemplated hereby. Each of the Company, Parent and Merger Subsidiary will, and will cause its Subsidiaries to, take all reasonable actions necessary to obtain any consent, authorization, order or approval of, or any exemption by, any Governmental Entity or other public or private third party required to be obtained or made by Parent, Merger Subsidiary, the Company or any of their Subsidiaries or necessary in the reasonable opinion of Parent, Merger Subsidiary or the Company in connection with the Merger or the taking of any action contemplated thereby or by this Agreement.

(ii) The Company and Parent will (i) take all actions necessary to make the filings required of it or its Affiliates under the HSR Act with respect to the transactions contemplated by this Agreement as promptly as practicable following the date of this Agreement,

(ii) comply with any request for additional information received from the Federal Trade Commission or the Antitrust Division of the Department of Justice pursuant to the HSR Act, (iii) cooperate with each other in connection with filings under the HSR Act and (iv) request early termination of the applicable waiting period.

(iii) In case at any time after the Effective Time any further action is necessary or desirable to carry out the purposes of this Agreement, the proper officers and directors of Parent and the Surviving Corporation shall use all reasonable efforts to take, or cause to be taken, all such necessary actions.

6.18. Coordination of Dividends.

After the date of this Agreement, Parent and the Company will coordinate with each other regarding the declaration of dividends in respect of the Parent Ordinary Shares and the Company Common Stock and the record dates and payment dates relating thereto, it being the intention of the parties that holders of Parent Ordinary Shares and shares of Company Common Stock will not receive two dividends, or receive no dividends, for any single calendar quarter with respect to their shares of Company Common Stock and/or the Parent Ordinary Shares any such holder receives in exchange therefor in the Merger.

6.19. Release and Discharge.

From and after the Effective Time, Parent and Merger Subsidiary do hereby release and forever discharge the Company, each Subsidiary of the Company and each officer, director, employee agent, representative, financial advisor and attorney of the Company or any Subsidiary of the Company (collectively, the "Company Parties") from any and all actions, causes of action, claims, demands, debts, damages, loss of services, costs, attorneys' fees, obligations, judgments, expenses, compensation or liabilities of any nature whatsoever, in law or in equity, whether known or unknown, contingent or absolute, that Parent or Merger Subsidiary now have, may have ever had in the past or may have in the future against the Company Parties by reason of or arising out of any breach or alleged breach of the Original Agreement or this Agreement (including Sections 6.1, 6.3, 6.5, 6.17(c) or 8.3(a) of the Original Agreement and this Agreement) occurring prior to the date of this Agreement in connection with or arising out of the Transaction Proposals made prior to the date of this Agreement by XL Capital Ltd. The foregoing does not constitute an admission by the Company or any Company Party that any such breach has occurred. Parent and Merger Subsidiary agree that they shall, from the date hereof, forbear from commencing, prosecuting or threatening to commence or prosecute any litigation in any court or other tribunal against the Company or any Company Party relating to any breach or alleged breach of the Original Agreement or this Agreement unless and until consummation of a Transaction Proposal following termination of this Agreement under circumstances in which Parent has received or is entitled to receive a termination fee under Section 8.5(b) or 8.5(c) of this Agreement (the "Forbearance Termination Date"); provided that with respect to the existing litigation between Parent and the Company, both parties agree not to file any motions or take any other action in respect of such litigation until the Forbearance Termination Date; provided,

further, both parties agree that they shall not assert as any defense to any amendment of pleadings or filing of motions in the foregoing litigation any lapse of time or lateness due to the forbearance of the other party provided for in this Section 6.19.

ARTICLE VII CONDITIONS

7.1. Conditions to Each Party's Obligation to Effect the Merger.

The respective obligation of each party to effect the Merger is subject to the satisfaction or waiver at or prior to the Effective Time of each of the following conditions:

- (a) **Stockholder Approval.** The Merger shall have been duly approved by holders of Shares constituting the Company Requisite Vote.
- (b) **NYSE Listing.** The Parent Shares issuable to the Company stockholders pursuant to this Agreement shall have been authorized for listing on the NYSE upon official notice of issuance.
- (c) **Regulatory Consents.** The waiting period applicable to the consummation of the Merger under the HSR Act shall have expired or been terminated. All regulatory approvals and other actions or approvals by any Governmental Entity required to permit the consummation of the Merger (including those that are not compulsory but are desirable to obtain in the reasonable opinion of Parent, Merger Subsidiary and the Company)(collectively, "Governmental Consents"), shall have been obtained (provided that any such Governmental Consents shall have been obtained without any conditions, restrictions or limitations which would reasonably be expected to materially limit or diminish the benefits to be derived from the Merger by Parent) and such approvals shall be in full force and effect.
- (d) **Litigation.** No court or governmental entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any law, statute, ordinance, rule, regulation, judgment, decree, injunction or other order (whether temporary, preliminary or permanent) that is in effect and restrains, enjoins or otherwise prohibits consummation of the Merger (collectively, an "Order") and no governmental entity shall have instituted any proceeding which continues to be pending seeking any such Order; provided, however, that the parties hereto shall use their reasonable best efforts to have any such injunction, order, restraint or prohibition vacated.
- (e) **S-4.** The S-4 Registration Statement shall have become effective under the Securities Act. No stop order suspending the effectiveness of the S-4 Registration Statement shall have been issued, and no proceeding for that purpose shall have been initiated or be threatened by the SEC.

7.2. Conditions to Obligations of Parent and Merger Subsidiary.

The obligations of Parent and Merger Subsidiary to effect the Merger are also subject to the satisfaction or waiver by Parent at or prior to the Effective Time of the following condition:

Performance of Obligations of the Company. The Company shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date, and Parent shall have received a certificate signed on behalf of the Company by an executive officer of the Company to such effect.

7.3. Conditions to Obligation of the Company.

The obligation of the Company to effect the Merger is also subject to the satisfaction or waiver by the Company at or prior to the Effective Time of the following condition:

Performance of Obligations of Parent and Merger Subsidiary. Each of Parent and Merger Subsidiary shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date, and the Company shall have received a certificate signed on behalf of Parent by an executive officer of Parent and on behalf of Merger Subsidiary by an executive officer of Merger Subsidiary to such effect.

ARTICLE VIII TERMINATION

8.1. Termination by Mutual Consent.

This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time, whether before or after the approval by stockholders of the Company and Parent referred to in Section 7.1(a), by mutual written consent of the Company by action of their respective Boards of Directors.

8.2. Termination by Either Parent or the Company.

This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time by action of the Board of Directors of either Parent or the Company if (a) the Merger shall not have been consummated by February 28, 2000, whether such date is before or after the date of approval by the stockholders of the Company (the "Termination Date"), provided, however, that the Termination Date shall be extended by 60 days if the sole reason for the failure to consummate the Merger is the failure to obtain the Government Consents described in Section 7.1(c); (b) the approval of the Company's stockholders required by Section 7.1(a) shall not have been obtained at a meeting duly convened therefor or at any adjournment or

postponement thereof; or (c) any Order permanently restraining, enjoining or otherwise prohibiting consummation of the Merger shall become final and non-appealable; provided, that the right to terminate this Agreement pursuant to clause (a) or (b) above shall not be available to any party that has breached in any material respect its obligations under this Agreement in any manner that shall have caused the occurrence of the failure of the Merger to be consummated or, in the case of the Company, its stockholder approval to be obtained.

8.3. Termination by the Company.

This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time, whether before or after the approval by stockholders of the Company referred to in Section 7.1(a), by action of the Board of Directors of the Company if:

(a) (i) the Company is not in material breach of any of the terms of this Agreement, (ii) the Merger shall not have been approved by the Company's stockholders as required by Section 7.1(a), (iii) the Board of Directors of the Company authorizes the Company, subject to complying with the terms of this Agreement, to enter into a binding written agreement concerning a transaction that constitutes a Superior Proposal and the Company notifies Parent in writing that it intends to enter into such an agreement, attaching the most current version of such agreement to such notice, (iv) Parent does not make, prior to five business days after receipt of the Company's written notification of its intention to enter into a binding agreement for a Superior Proposal (the "Alternative Transaction Notice"), an offer that the Board of Directors of the Company determines, in good faith after consultation with its financial advisors, is at least as favorable, as the Superior Proposal, taking into account the long term prospects and interests of the Company and its stockholders and (v) the Company prior to such termination pays to Parent in immediately available funds the fees required to be paid pursuant to Section 8.5; or

(b) there is a breach by Parent of any covenant or agreement contained in this Agreement that (i) is not curable or, if curable, is not cured within 20 days after written notice of such breach is given by the Company to Parent and (ii) would cause a condition set forth in Section 7.3 to be incapable of being satisfied.

Without limiting the generality of the foregoing Section 8.3(a), the Company agrees and acknowledges (x) that it cannot terminate this Agreement pursuant to Section 8.3(a) in order to enter into a binding agreement referred to in clause (iii) of Section 8.3(a) until at least the date falling six business days after receipt of the Alternative Transaction Notice and (y) to notify Parent promptly if its intention to enter into a written agreement referred to in its Alternative Transaction Notice shall change at any time after giving such notification.

8.4. Termination by Parent.

This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time, by action of the Board of Directors of Parent if:

(a) the Company enters into a binding agreement for a Superior Proposal;

(b) there is a breach by the Company of any covenant or agreement contained in this Agreement that (i) is not curable or, if curable, is not cured within 20 days after written notice of such breach is given by the Parent to the Company and (ii) would cause a condition set forth in Section 7.2 to be incapable of being satisfied; or

(c) the Company or its Board of Directors shall have (i) withdrawn, modified or amended in any respect adverse to Parent its recommendation of the adoption of this Agreement or failed to reconfirm its recommendation of this Agreement or the Merger within five business days after a written request by Parent to do so, (ii) failed to mail the Proxy Statement/Prospectus to its stockholders as promptly as practicable after the Form S-4 is declared effective, unless such failure was caused by the actions or inactions of Parent or its representatives, or failed to include in such statement the Company Board Recommendation, (iii) approved, recommended or entered into an agreement with respect to, or consummated, any Transaction Proposal from a person other than Parent or any of its affiliates, (iv) resolved to do any of the foregoing or (v) in response to the commencement of any tender offer or exchange offer for 10% or more of the outstanding Company Common Stock, not recommended rejection of such tender offer or exchange offer within ten business days after the commencement thereof (as such term is defined in Rule 14d-2 under the Exchange Act).

8.5. Effect of Termination and Abandonment.

(a) In the event of the termination of this Agreement and the abandonment of the Merger pursuant to this Article VIII, this Agreement (other than as set forth in Section 9.1) shall become void and of no effect with no liability on the part of any party hereto (or of any of its directors, officers, employees, agents, legal and financial advisors or other representatives); provided, however, except as otherwise provided herein, no such termination shall relieve any party hereto of any liability or damages resulting from any willful or grossly negligent breach of this Agreement

(b) In the event that this Agreement is terminated (i) by the Company pursuant to Section 8.3(a) or (ii) by Parent pursuant to Section 8.4(a), then the Company shall promptly, but in no event later than two days after the date of such termination or date of entrance into an agreement concerning a transaction that constitutes an Acquisition Proposal or such earlier time as required by this Agreement, pay to Parent a termination fee of \$25 million payable by wire transfer of same day funds.

(c) In the event that this Agreement is terminated by Parent pursuant to Section 8.2(b) and prior to, or at the time of, the meeting referred to therein any Person shall have made an Acquisition Proposal to the Company or any of its Subsidiaries or any of its stockholders or shall have publicly announced an intention (whether or not conditional to make an Acquisition Proposal with respect to the Company or any of its Subsidiaries and, if within 12 months of such termination, the Company enters into an agreement concerning a transaction that

constitutes an Acquisition Proposal, the Company at the time of entering into such agreement, shall pay to Parent the termination fee of \$25 million payable by wire transfer of same day funds.

(d) In the event this Agreement is terminated by Parent pursuant to Section 8.4(b), then the Company shall promptly, but in no event later than two business days after Parent shall have requested payment of its charges and expenses incurred in connection with the transactions contemplated hereby ("Expenses"), pay to Parent the amount of such Expenses up to a maximum of \$3,000,000 payable by wire transfer of same day funds.

(e) In the event this Agreement is terminated by the Company pursuant to Section 8.3(b), then Parent shall promptly, but in no event later than two business days after the Company shall have requested payment of its Expenses, pay to the Company the amount of such Company Expenses up to a maximum of \$3,000,000 payable by wire transfer of same day funds.

(f) The Company and Parent each acknowledge that the agreements contained in Sections 8.5(b)-(e) are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, the Company, Parent and Merger Subsidiary would not enter into this Agreement; accordingly, if the Company fails to promptly pay the amount due pursuant to Section 8.5(b), Section 8.5(c) or Section 8.5(d), or Parent fails to promptly pay the amount due pursuant to Section 8.5(e), and, in order to obtain such payment, Parent or the Company, as the case may be, commences a suit which results in a judgment against Parent or the Company, as the case may be, for any such amount, the Company shall pay to Parent or Parent shall pay to the Company, as the case may be, its costs and expenses (including attorneys' fees) in connection with such suit, together with interest from the date of termination of this Agreement on the amounts owed at the prime rate of Morgan Guaranty Trust Company of New York in effect from time to time during such period plus two percent.

ARTICLE IX MISCELLANEOUS AND GENERAL

9.1. Survival.

This Article IX and the agreements of the Company, Parent and Merger Subsidiary contained in Section 6.7 (Taxation), Section 6.12 (Benefits), Section 6.15 (Indemnification; Directors' and Officers' Insurance) and 6.19 (Release and Discharge) shall survive the consummation of the Merger. This Article IX and the agreements of the Company, Parent and Merger Subsidiary contained in Section 6.14 (Expenses), Section 6.19 (Release and Discharge) and Section 8.5 (Effect of Termination and Abandonment) shall survive the termination of this Agreement. All other representations, warranties, covenants and agreements in this Agreement shall not survive the consummation of the Merger or the termination of this Agreement.

9.2. Modification or Amendment.

Subject to the provisions of the applicable law, at any time prior to the Effective Time, the parties hereto may modify or amend this Agreement, by written agreement executed and delivered by duly authorized officers of the respective parties.

9.3. Waiver of Conditions.

Any failure of Parent or Merger Subsidiary, on the one hand, or the Company, on the other hand, to comply with any obligation, covenant, agreement or condition herein may be waived in writing by the Company or Parent, respectively, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Whenever this Agreement requires or permits consent by or on behalf of any party hereto, such consent shall be given in writing in a manner consistent with the requirements for a waiver of compliance as set forth in this Section 9.3.

9.4. Counterparts.

This Agreement may be executed in any number of counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

9.5. Governing Law; Waiver of Jury Trial.

(a) THIS AGREEMENT SHALL BE DEEMED TO BE MADE IN AND IN ALL RESPECTS SHALL BE INTERPRETED, CONSTRUED AND GOVERNED BY AND IN ACCORDANCE WITH THE LAW OF THE STATE OF DELAWARE WITHOUT REGARD TO THE CONFLICT OF LAW PRINCIPLES THEREOF.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE STOCK OPTION AGREEMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE STOCK OPTION AGREEMENTS, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR THE STOCK OPTION AGREEMENTS. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF

THIS WAIVER, (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (iv) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE STOCK OPTION AGREEMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.5.

9.6. Notices.

Any notice, request, instruction or other document to be given hereunder by any party to the others shall be in writing and shall be deemed given if delivered personally or sent by overnight courier or by facsimile to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

if to Parent or Merger Subsidiary:

ACE Limited
The ACE Building
30 Woodbourne Avenue
Hamilton HM 08 Bermuda
Facsimile: (441) 295-3997
Attention: General Counsel

Copy to:

Mayer, Brown & Platt
190 South LaSalle Street
Chicago, IL 60603
Facsimile: (312) 701-7711
Attention: Edward S. Best

if to the Company:

Capital Re Corporation
1325 Avenue of the Americas
New York, New York 10019
Facsimile: (212) 581-3268
Attention: General Counsel

Copy to:

Hogan & Hartson L.L.P.
111 South Calvert Street
Baltimore, Maryland 21202
Facsimile: (410) 539-6981
Attention: Michael J. Silver

or to such other persons or addresses as may be designated in writing by the party to receive such notice as provided above.

9.7. Entire Agreement; No Other Representations.

This Agreement (including any exhibits hereto), the Stock Option Agreement, the Company Disclosure Schedule, any agreements between Parent and stockholders of the Company to vote in favor of this Agreement and the Merger and against any competing proposals and the Confidentiality Agreement dated February 5, 1998, between Parent and the Company (the "Confidentiality Agreement") constitute the entire agreement, and supersede all other prior agreements, understandings, representations and warranties both written and oral, among the parties, with respect to the subject matter hereof; provided that Parent and Merger Subsidiary shall not be deemed to have waived or otherwise affected their rights with respect to any breach or alleged breach of the Original Agreement other than as provided in Section 6.19. The parties hereto agree that the Confidentiality Agreement shall be hereby amended to provide that any provision therein which in any manner would be inconsistent with this Agreement or the transactions contemplated hereby or thereby shall terminate as of the date hereof; provided, however, that such provisions of the Confidentiality Agreement other than subparagraph (a) of the fourth paragraph thereof shall be reinstated in the event of any termination of this Agreement.

9.8. No Third Party Beneficiaries.

Except as provided in Section 6.12 (Benefits), Section 6.15 (Indemnification; Directors' and Officers' Insurance) and Section 6.19 (Release and Discharge) this Agreement is not intended to confer upon any Person other than the parties hereto any rights or remedies hereunder.

9.9. Severability.

The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability or the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

9.10. Interpretation.

The table of contents and headings herein are for convenience of reference only, do not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof. Where a reference in this Agreement is made to a Section or Exhibit,

such reference shall be to a Section of or Exhibit to this Agreement unless otherwise indicated. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

9.11. Assignment.

This Agreement shall not be assignable by operation of law or otherwise; provided, however, that Parent may designate, by written notice to the Company, another wholly-owned direct or indirect Subsidiary to be a party to the Merger in lieu of Merger Subsidiary, in which event all references herein to Merger Subsidiary shall be deemed references to such other Subsidiary, except that all representations and warranties made herein with respect to Merger Subsidiary as of the date of this Agreement shall be deemed representations and warranties made with respect to such other Subsidiary as of the date of such designation.

9.12. Definitions.

(a) Location of Certain Definitions.

Affiliate.....	Section 9.12(b)
Agreement.....	Preamble
Alternative Transaction Notice.....	8.3(a)
Average Closing Price.....	3.1(a)
Bylaws.....	2.2
Cash Component.....	3.1(a)
Certificate.....	3.1(a)
Certificate of Incorporation.....	2.1
Certificate of Merger.....	1.3
Closing.....	1.2
Closing Date.....	1.2
Code.....	4.9
Company.....	Preamble
Company Actuarial Analyses.....	4.21(d)
Company Audit Date.....	4.7
Company Board Recommendation.....	6.5
Company Common Stock.....	3.1(a)
Company Disclosure Schedule.....	Preamble to Article IV
Company Insurance Contracts.....	4.21(b)
Company Insurance Subsidiaries.....	4.3(a)
Company Liabilities.....	4.8
Company Material Adverse Effect.....	9.12(b)
Company Option.....	4.2
Company Parties.....	6.19

Company Requisite Vote.....	4.4(a)
Company SAP Agreements.....	4.6(b)
Company Stock Plans.....	4.2
Confidentiality Agreement.....	9.7
Contracts.....	4.5
Costs.....	6.15(a)
D&O Insurance.....	6.15(b)
DGCL.....	1.1
Effective Time.....	1.3
Employee Benefit Plans.....	4.9(b)
Environmental Claim.....	9.12(b)
Environmental Laws.....	9.12(b)
Environmental Permits.....	9.12(b)
Environmental Report.....	9.12(b)
ERISA.....	4.9(a)(i)
ERISA Affiliate.....	4.9(c)
Exchange Act.....	4.5
Exchange Agent.....	3.2(a)
Exchange Fund.....	3.2(a)
Exchange Ratio.....	3.1(a)
Expenses.....	8.5(d)
GAAP.....	4.6(a)
Governmental Consents.....	7.1(c)
Governmental Entity.....	4.5
Hazardous Materials.....	9.12(b)
HSR Act.....	4.5
Indemnified Parties.....	6.15(a)
Insurance Regulators.....	4.10
Intellectual Property.....	4.11
Latest Balance Sheet.....	6.1(f)
Laws.....	4.10
Maximum Premium.....	6.15(b)
Merger.....	Recitals
Merger Consideration.....	3.1(a)
Merger Subsidiary.....	Preamble
NYSE.....	3.1(a)
Order.....	7.1(d)
Parent.....	Preamble
Parent Audit Date.....	5.6(a)
Parent Liabilities.....	5.8
Parent Material Adverse Effect.....	9.12(b)
Parent Option.....	6.12(a)
Parent Reports.....	5.6(a)
Parent Rights Agreement.....	3.1(a)

Parent SAP Statements.....	5.6(b)
Parent Shares.....	3.1(a)
Parent Stock Plans.....	5.3
Person.....	3.2(b)
Preferred Shares.....	4.2
Private Consents.....	4.5
Prospectus/Proxy Statement.....	6.4
Representatives.....	6.3
Responsible Executive Officers of the Company.....	9.12(b)
Roll-Over Options.....	6.12(a)
S-4 Registration Statement.....	6.4
Schedule 13E-3.....	6.4
SEC.....	4.6(a)
Secretary.....	1.3
Securities Act.....	4.6(a)
Share, Shares.....	3.1(a)
Stockholders Meeting.....	6.5
Subsidiary.....	9.12(b)
Superior Proposal.....	6.3
Surviving Corporation.....	1.1
Takeover Statute.....	4.15
Tax, Taxes, Taxable.....	9.12(b)
Taxing Authority.....	9.12(b)
Tax Return.....	9.12(b)
Termination Date.....	8.2
Total Cash Consideration.....	1.4
Total Consideration.....	1.4
Transaction Proposal.....	6.3

(b) Certain Other Definitions

"Affiliate" of a Person means any other Person who (i) directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with, such Person or (ii) owns more than 5% of the capital stock or equity interest in such Person. "Control" means the possession of the power, directly or indirectly, to direct or cause the direction of the management and policies of a Person whether through the ownership of voting securities, by contract or otherwise.

"Company Material Adverse Effect" means a material adverse effect on the properties, business, assets, conditions (financial or otherwise), liabilities or results of operations of the Company and its Subsidiaries taken as a whole, other than effects caused by changes in general economic conditions or conditions generally affecting the insurance or reinsurance industry.

"Environmental Claim" means any written or oral notice, claim, demand, action, suit, complaint, proceeding or other communication by any person alleging liability or potential liability arising out of, relating to, based on or resulting from (i) the presence, discharge, emission, release or threatened release of any Hazardous Materials at any location, whether or not owned, leased or operated by the Company or any of its Subsidiaries or (ii) circumstances forming the basis of any violation or alleged violation of any Environmental Law or Environmental Permit or (iii) otherwise relating to obligations or liabilities under any Environmental Laws; provided, however, that the term "Environmental Claim" shall not include any such claim, demand, action, suit, complaint, proceeding or other communication under an insurance or reinsurance policy issued by the Company.

"Environmental Laws" means all applicable statutes, rules, regulations, ordinances, orders, decrees and common law, in each case of any Governmental Entity, as they exist at the date hereof, relating in any manner to contamination, pollution or protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, the Solid Waste Disposal Act, the Resource Conservation and Recovery Act, the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, the Emergency Planning and Community-Right-to-Know Act, the Safe Drinking Water Act, all as amended, and similar state laws.

"Environmental Permits" means all permits, licenses, registrations and other governmental authorizations required for the Company and its Subsidiaries and the operations of the Company's and its Subsidiaries' facilities to conduct its business under Environmental Laws.

"Environmental Report" means any report, study, assessment, audit, or other similar document that addresses any issue of noncompliance with, or liability under, any Environmental Law that may affect the Company or any of its Subsidiaries.

"Hazardous Materials" means any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products, polychlorinated biphenyls, urea-formaldehyde insulation, asbestos, pollutants, contaminants, radioactivity, and any other substances of any kind, whether or not any such substance is defined as hazardous or toxic under any Environmental Law, that is regulated pursuant to or could give rise to liability under any Environmental Law.

"Parent Material Adverse Effect" means a material adverse effect on the properties, business, assets, conditions (financial or otherwise), liabilities or results of operations of Parent and its Subsidiaries taken as a whole, other than effects caused by changes in general economic conditions or conditions generally affecting the insurance or reinsurance industry.

"Responsible Executive Officers of the Company" shall mean the persons designated as such in the preamble to the Company Disclosure Schedule.

"Responsible Executive Officers of Parent" shall mean Brian Duperreault, the Chairman, President and Chief Executive Officer of Parent, Dominic Frederico, the Chairman, President and Chief Executive Officer of ACE INA Holdings, Inc., Christopher Z. Marshall, the Chief Financial Officer of Parent and Peter Mear, the General Counsel and Secretary of Parent.

"Subsidiary" means, with respect to the Company, Parent or Merger Subsidiary, as the case may be, any entity, whether incorporated or unincorporated, of which at least a majority of the securities or ownership interests having by their terms ordinary voting power to elect a majority of the board of directors or other persons performing similar functions is directly or indirectly owned or controlled by such party or by one or more of its respective Subsidiaries or by such party and any one or more of its respective Subsidiaries.

"Tax" (including, with correlative meaning, the terms "Taxes" and "Taxable") shall mean, with respect to any Person, (i) all taxes, domestic or foreign, including without limitation any income (net, gross or other, including recapture of any tax items such as investment tax credits), alternative or add-on minimum tax, gross income, gross receipts, gains, sales, use, leasing, lease, user, ad valorem, transfer, recording, franchise, profits, property (real or personal, tangible or intangible), fuel, license, withholding on amounts paid to or by such Person, payroll, employment, unemployment, social security, excise, severance, stamp, occupation, premium, environmental or windfall profit tax, custom, duty or other tax, or other like assessment or charge of any kind whatsoever, together with any interest, levies, assessments, charges, penalties, additions to tax or additional amounts imposed by any Taxing Authority, (ii) any joint or several liability of such Person with any other Person for the payment of any amounts of the type described in (a) of this definition and (iii) any liability of such Person for the payment of any amounts of the type described in

(i) as a result of any express or implied obligation to indemnify any other Person.

"Tax Return(s)" shall mean all returns, consolidated or otherwise (including without limitation informational returns), required to be filed with any Taxing Authority.

"Taxing Authority" shall mean any authority responsible for the imposition of any Tax.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers or managers of the parties hereto as of the date first written above.

CAPITAL RE CORPORATION

By: _____

ACE LIMITED

By: _____

CAPRE ACQUISITION CORP.

By: _____

Exhibits

Exhibit A Form of Company Affiliate Letter Date
ACE Limited
The ACE Building
30 Woodbourne Avenue
Hamilton HM 08 Bermuda

Capital Re Corporation
1325 Avenue of the Americas
New York, New York 10019

Ladies and Gentlemen:

I have been advised that as of the date hereof, I may be deemed to be an "affiliate" of Capital Re Corporation, a Delaware corporation (the "Company"), as such term (i) is defined for purposes of paragraphs (c) and (d) of Rule 145 of the Rules and Regulations (the "Rules and Regulations") of the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), or (ii) is used in and for purposes of Accounting Series Releases 130 and 135, as amended, of the Commission. Pursuant to the terms of the Agreement and Plan of Merger dated as of June 10, 1999, as it may be amended, supplemented or modified from time to time (the "Merger Agreement"), among the Company, ACE Limited, a Cayman Islands company ("Parent"), and CapRe Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Parent ("Merger Sub"), Merger Sub will be merged with and into the Company (the "Merger"). Capitalized terms used herein but not defined herein shall have the meanings ascribed to such terms in the Merger Agreement. In consideration of the agreements contained herein, Parent's reliance on this letter in connection with the consummation of the Merger and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, I hereby represent, warrant and agree that I will not make any sale, transfer or other disposition of any Ordinary Shares received by me pursuant to the Merger in violation of the Securities Act or the rules and regulations thereunder. I have been advised that the issuance of the Ordinary Shares pursuant to the Merger will have been registered with the Commission under the Securities Act on a Registration Statement on Form S-4. I have also been advised, however, that since I may be deemed to be an affiliate of the Company at the time the Merger is submitted for a vote of the stockholders of the Company, the Ordinary Shares received by me may be disposed of by me only (i) pursuant to an effective registration under the Securities Act, (ii) in conformity with the volume and other limitations of Rule 145 promulgated by the Commission under the Securities Act, or (iii) in reliance upon an exemption from registration that is available under the Securities Act. I also understand that instructions will be given to Parent's transfer agent with respect to the Ordinary Shares to be received by me pursuant to the Merger and that there may be placed on the certificates representing such Ordinary Shares, or any substitutes therefor, a legend stating in substance as follows: **THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ISSUED IN A TRANSACTION TO WHICH RULE 145 PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, APPLIES AND MAY ONLY BE SOLD OR OTHERWISE TRANSFERRED IN COMPLIANCE WITH THE REQUIREMENTS OF RULE 145 OR PURSUANT TO A REGISTRATION STATEMENT UNDER THAT ACT OR AN EXEMPTION FROM SUCH REGISTRATION.** It is understood and agreed that the legend set forth above shall be removed upon surrender of certificates bearing such legend by delivery of substitute certificates without such legend if I shall have delivered to Parent an opinion of counsel, in form and substance reasonably satisfactory to Parent, to the effect that they sale or disposition of the shares represented by the surrendered certificates may be effected without registration of the offering, sale and delivery of such shares under the Securities Act. I further understand and agree that Parent is under no obligation to register the sale, transfer or other disposition of the Ordinary Shares by me or on my behalf under the Securities Act or to take any other action necessary in order to make compliance with an exemption from such registration available. Execution of this letter should not be considered an admission on my part that I am an "affiliate" of the Company as described in the first paragraph of this letter, or as a waiver of any rights I may have to object to any claim that I am such an affiliate on or after the date of this letter. This letter agreement constitutes the complete understanding between Parent and me concerning the subject matter hereof. Any notice required to be sent to either party hereunder shall be sent by registered or certified mail,, return receipt requested, using the addresses set forth herein or such other address as shall be furnished in writing by the parties. This letter agreement shall be governed by and construed and interpreted in accordance with, the laws of the State of Delaware. If you are in agreement with the foregoing, please so indicate by signing below and returning a copy of this letter to the undersigned, at which time this letter shall become a binding agreement between us.

Very truly yours,

By:

Name: Address:

Accepted this day of _____, 1999.

ACE LIMITED

By:

Name:

Title:

CAPITAL RE CORPORATION

By:

Name:

Title:

Exhibit 99.11

HAMILTON, Bermuda--(BUSINESS WIRE)--Oct. 26, 1999--ACE Limited (NYSE: ACL) announced today that it has signed an amended merger agreement with Capital Re Corporation (NYSE: KRE). Under the amended agreement, Capital Re's stockholders will receive 0.65 ordinary shares of ACE Limited plus an amount of cash which, on a per share basis, will deliver \$14.00 per share to Capital Re stockholders, subject to a minimum of \$1.30 per Capital Re share in cash and a maximum of \$4.68 per Capital Re share in cash.

It is anticipated that the transaction will be completed before the end of the calendar year, subject to, among other things, approval of the merger by Capital Re's stockholders.

The ACE Group of Companies provides insurance and reinsurance for a diverse group of clients. The company conducts its business on a global basis with operating subsidiaries in nearly 50 countries. Additional information can be found at: www.ancelimited.com.

Application of the Safe Harbor of the Private Securities Litigation Reform Act of 1995:

Certain statements made in this press release, such as the expected completion date of the Capital Re acquisition, are forward-looking statements, reflecting the Company's current views with respect to future events and are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Such statements involve risks and uncertainties which may cause actual results to differ from those set forth in these statements. Among other things, regulatory approvals could affect the estimated completion date and, as stated above, the transaction requires the approval of Capital Re's shareholders. In addition, the impact of mergers and acquisitions, the economic, competitive, insurance and reinsurance business conditions and other factors identified in the Company's filings with the Securities and Exchange Commission could affect the forward-looking statements contained in this press release. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the dates on which they are made. The Company undertakes no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

CONTACT: ACE Limited, Hamilton

Investor Contact:

Helen Wilson, 441/299-9283

or

Media Contact:

Wendy Davis Johnson, 441/299-9347

EXHIBIT 99.12

STAND-BY CAPITAL COMMITMENT AGREEMENT

This Stand-By Capital Commitment Agreement (this "Agreement") is made as of October 26, 1999 (the "Effective Date"), by and between Capital Re Corporation, a Delaware corporation (the "Borrower"), and ACE Limited, a company incorporated with limited liability under the Cayman Islands Companies Law (the "Lender"). Certain capitalized terms used in this Agreement are defined in Appendix A hereto.

The parties hereto agree as follows:

1. **Commitment.** The Lender agrees, upon the terms and subject to the condition set forth herein, to provide, or to cause one of its Subsidiaries to provide, loans to the Borrower in one or more installments (each, a "Loan") in an aggregate amount not to exceed U.S.\$50,000,000 (the "Commitment") at any time and from time to time during the period from the Effective Date to the Termination Date (as defined below). Amounts borrowed as Loans may be repaid and reborrowed by the Borrower in accordance with the provisions hereof.
2. **The Loans.** The Loans shall be made upon the Borrower's written notice delivered to the Lender at least five business days prior to the requested borrowing date, specifying the amount of the Loan and the requested borrowing date, which shall be a business day (in the United States and Bermuda). The obligation of the Lender to make Loans hereunder is subject to the condition that no Event of Default shall be continuing at the time of the making of such Loan. Each Loan made hereunder shall be made in United States Dollars and same day funds and shall be paid to such account or accounts as may be directed in writing by the Borrower. The Loans made by the Lender shall be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. Any failure so to record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Loans.
3. **Interest.** Interest shall accrue on the outstanding principal amount of the Loans made hereunder from the applicable borrowing date until paid at a rate per annum equal to the Applicable Rate and shall be payable quarterly in arrears on each March 31, June 30, September 30 and December 31 and upon any repayment. All accrued and unpaid interest shall be due and payable on the Termination Date. The Borrower additionally agrees to pay interest after the date the Loans become due (whether at stated maturity, by acceleration or otherwise), on the principal balance of the Loans outstanding from time to time and, to the extent not prohibited by law, on accrued interest thereon that is not paid when due, at a rate per annum equal to all times

to the sum of the Applicable Rate plus 2.0% per annum. Interest accruing after the Loans made hereunder become due shall be due and payable on demand.

4. Payment; Event of Default. The Borrower may, at any time or from time to time, prepay Loans in whole or in part without premium or penalty. Both principal and interest are payable to such account or accounts as the Lender may direct, in United States Dollars and same day funds, free and clear or, and without deduction for, any and all taxes, levies, imposts, deductions, charges, withholdings and liabilities with respect thereto. If any of the following events (each, an "Event of Default") shall occur: (a) the failure of the Borrower to pay within 30 days after the date when due any interest owed hereunder, (b) the failure of the Borrower to observe the covenants in Section 7 hereof, (c) the merger Agreement is terminated pursuant to Section 8.3(a) or 8.4(a) thereof, (d) after any termination of the Merger Agreement, the Borrower merges or consolidates or there is a sale of all or substantially all assets of the Borrower and its Subsidiaries, immediately after which merger, consolidation or sale the stockholders of the Borrower immediately prior to consummation thereof own less than a majority of the equity of the surviving company or the company to which such assets shall have been transferred, (e) the Borrower shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors, or (f) any proceeding shall be instituted by or against the Borrower seeking to adjudicate it as bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against it (but not instituted by it), such proceeding shall remain undismissed or unstayed for a period of 60 days, or the Borrower shall take any action to authorize any of the actions set forth above in this clause (f); then, in the case of an Event of Default described in clause (f), the Loans made under this Agreement shall be immediately due and payable, whereupon all principal of and interest on all Loans made under this Agreement shall become and be forthwith immediately due and payable; and in the case of any other Event of Default the Lender may declare all Loans made under this Agreement to be immediately due and payable and terminate the Commitment (the date of such declaration and termination, the "Termination Date"), whereupon all principal of and interest on all Loans made under this Agreement shall become and be forthwith immediately due and payable.

5. Conversion.

(a) Optional Conversion. At any time and from time to time after the Effective Date, subject to the required approval ("Regulatory Approval") of any Governmental Entity having jurisdiction over the Borrower or the Lender, the Lender shall have the right to convert, in whole or in part, the Loans outstanding under this Agreement into such number of shares of Common Stock as is equal to (x) the amount of Loans outstanding (plus any accrued

and unpaid interest) divided by (y) \$14.00 (the "Conversion Price"); provided, that if such conversion is limited by applicable law, only such amount as is permitted without Regulatory Approval shall be converted, and the Borrower and the Lender shall use all commercially reasonable efforts to obtain Regulatory Approval to allow conversion of any remaining portion to be converted. The Lender shall pay to the Borrower the Conversion Price in cash for each share of Common Stock converted from any unused portion of the Commitment.

(b) Mandatory Conversion. In the event of the termination of the Merger Agreement (other than pursuant to Sections 8.3(a) or 8.4(a) thereof), all of the Loans outstanding under this Agreement shall convert into such number of shares of Common Stock as is equal to the aggregate amount of the Loans (plus and accrued and unpaid interest) divided by the lesser of (x) the Conversion Price or (y) the current market price per share of Common Stock (as defined in Section 5(e)(iv)) on the date of such conversion; provided, that if such conversion is limited by applicable law, only such amount as is permitted without Regulatory Approval shall be converted, and the Borrower and the Lender shall use all commercially reasonable efforts to obtain Regulatory Approval to allow conversion of the remaining portion of the Loans.

(c) Fractional Shares. The Borrower will not issue any fractional shares of Common Stock upon conversion and, in lieu thereof, will deliver a check for the value of any such fractional share, determined by multiplying the Conversion Price by the fraction, rounded to the nearest cent.

(d) Company to Provide Conversion Stock. The Borrower shall reserve a sufficient number of shares of authorized but unissued Common Stock or Common Stock held in treasury to permit the conversion to be effected in full (the "Conversion Shares"). Upon conversion, the Lender shall provide notice thereof to the Borrower and the Borrower, no later than the fifth business day after such notice has been delivered, shall issue and deliver to the Lender a certificate for the number of full shares of Common Stock issuable upon such conversion and a check in lieu of any fractional share. The Borrower shall comply with all securities laws regulating the issuance and delivery of the Conversion Shares. The holders of the Conversion Shares shall be entitled to registration rights on the same terms as outlined in that certain Stock Option Agreement dated as of June 10, 1999 between the Borrower and ACE Limited.

(e) Adjustment.

(i) In case at any time the Borrower shall pay or make a stock dividend or other distribution in Common Stock on any class of capital stock of the Borrower, the Conversion Price in effect at the opening of business on the day following the date fixed for the determination of stockholders entitled to receive such dividend or other distribution shall be reduced so that the same shall equal the price determined by multiplying such Conversion Price by a fraction of which the numerator shall be the number of shares of Common Stock

outstanding at the close of business on the date fixed for such determination and the denominator shall be the sum of such number of shares and the total number of shares constituting such dividend or other distribution, such adjustment to become effective immediately after the opening of business on the day following the date fixed for such determination.

(ii) In case at any time the Borrower shall (A) subdivide its outstanding Common Stock, (B) combine its outstanding Common Stock into a smaller number of shares, or (C) issue by reclassification of its Common Stock (including any such reclassification in connection with a consolidation or merger in which the Borrower is the surviving corporation) any shares, the Conversion Price in effect at the effective date of such subdivision, combination or reclassification shall be proportionately adjusted so that the Lender shall be entitled to receive after such time the aggregate number and kind of shares which, if the Loans or the unused portion of the Commitment had been converted immediately prior to such time, the Lender would have owned upon such conversion and been entitled to receive upon such subdivision, combination or reclassification. Such adjustment shall be made successively whenever any event listed above shall occur.

(iii) In case at any time the Borrower shall fix a record date for the making of a distribution, by dividend or otherwise, to all holders of its Common Stock, of evidences of its indebtedness or assets (including securities (including warrant, options and rights), but excluding any dividend or distribution referred to in Section 5(e)(i) and any regular quarterly cash dividend), then in each such case the Conversion Price in effect after such record date shall be determined by multiplying the Conversion Price in effect immediately prior to such record date by a fraction, of which the numerator shall be the total number of outstanding shares of Common Stock multiplied by the current market price per share of Common Stock (as defined in Section

5(e)(iv)) on such record date, less the fair market value (as determined by the Board of Directors of the borrower of the portion of the assets or evidences of indebtedness so to be distributed, and of which the denominator shall be the total number of outstanding shares of Common Stock multiplied by such current market price per share of Common Stock. Such adjustment shall be made successively whenever such a record date is fixed; and in the event that such distribution is not so made, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such record date has not been fixed.

(iv) For the purpose of any computation under Sections 5(b) and 5(e)(iii), the current market price per share of Common Stock on any date shall be deemed to be the average of the closing prices on the New York Stock Exchange Composite Transaction Reporting System, as reported in the Wall Street Journal, for the 20 trading days immediately preceding the second trading day prior to the day in question.

(v) If the Borrower is a party to a merger, combination or other transaction which reclassifies or changes its outstanding Common Stock, the successor corporation shall enter into a supplemental agreement which shall provide that the Lender may

convert into the kind and amount of securities, cash or other assets which the Lender would have owned after such transaction if the Lender had converted immediately prior to the consummation of such transaction.

(vi) The Borrower may make such downward adjustments in the Conversion Price as it considers to be advisable in order that any event treated for United States Federal income tax purposes as a dividend of stock or stock rights shall not be taxable to the recipients.

6. Representations and Warranties.

(a) Organization, Good Standing and Qualification. The Borrower is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and each of its Subsidiaries is a corporation or other entity duly organized, validly existing and in good standing under the laws of its respective jurisdiction of organization. The Borrower and each of its Subsidiaries has full power and authority (corporate and other) to own, lease and operate its respective properties and assets and to carry on its business as presently conducted and as proposed to be conducted, except where the failure to hold such franchises, grants, licenses, certificates, permits, consents and orders, or to have such power and authority, would not, when taken together with all other such failures, reasonably be expected to have a Borrower Material Adverse Effect.

(b) Corporate Authority; Approval. The Borrower has all requisite power and authority and has taken all corporate action necessary in order to execute, deliver and perform its obligations under this Agreement. This Agreement has been duly executed and delivered by the Borrower and (assuming the due authorization, execution and delivery hereof by the Lender) constitutes the legal, valid and binding obligation of the Borrower enforceable against the Borrower in accordance with its terms.

(c) No Violations. Neither the execution, delivery or performance of this Agreement nor the consummation by the Borrower of the transactions contemplated hereby nor compliance by the Borrower with any of the provisions hereof will (i) result in any breach or violation of any provision of the certificate of incorporation or bylaws or similar organizational documents of the Borrower, (ii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, amendment, cancellation, acceleration or increase in the rate of interest) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, guarantee, other evidence of indebtedness, lease, license, contract agreement or other instrument or obligation to which the Borrower or any of its Subsidiaries is a party or by which any of them or any of their properties or assets may be bound (a "Contract") or result in the creation of a lien upon any of the properties or assets of the Borrower or any of its Subsidiaries or (iii) violate any order, writ, injunction, judgment, decree, statute, rule, regulation or other Law applicable to the Borrower, any of its

Subsidiaries or any of their properties or assets, except in the case of clause (ii) or (iii) for violations, breaches, defaults, or rights of termination, amendment, cancellation or acceleration or liens, which would not, individually or in the aggregate, reasonably be expected to have a Borrower Material Adverse Effect.

(d) Conversion Shares. The Borrower has reserved a sufficient number of shares of authorized but unissued Common Stock or Common Stock held in treasury to permit the conversion contemplated in Section 5 hereof to be effected in full. All of the Conversion Shares, when issued, will be validly issued, fully paid and non-assessable.

7. Covenants. So long as there are any Loans outstanding or the Lender has any Commitment hereunder, none of the Borrower, or its Subsidiaries will (a) declare or pay any dividends or return any capital to its stockholders or authorize or make any other distribution, payment or delivery of property or cash to its stockholders as such (other than (x) to the Borrower and (y) the Borrower's regular quarterly cash dividend of \$0.04 per share), or redeem, retire, purchase or otherwise acquire, directly or indirectly, for any consideration, any shares of any class of capital stock of the Borrower now or hereafter outstanding (or any warrants for or options or stock appreciation rights in respect of any of such shares) (other than management stock repurchases required by agreements in effect on the Effective Date), or set aside any funds for any of the foregoing purposes (all of the foregoing, "Dividends"), or (b) merge or consolidate with or into another entity (provided that a Subsidiary of the Borrower may merge with or into the Borrower or another Subsidiary of the Borrower so long as no Event of Default shall have occurred and be continuing or would result therefrom) or sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Borrower and its Subsidiaries.

8. Miscellaneous. The parties hereto agree to negotiate in good faith for any amendments to this Agreement necessary for regulatory purposes. No amendment or waiver of any provision of this Agreement shall be effective unless the same shall be in writing and signed by the Borrower and the Lender. None of the rights, duties and obligations of any party hereunder may be assigned except with the consent of the other party hereto; provided that the Lender may assign, in whole or in part, any Loans to any of its Subsidiaries. Any notice required or permitted to be delivered hereunder shall be deemed to have been given when given in writing by overnight carrier or facsimile to the address or number listed on the signature page hereto. This Agreement may be executed in any number of separate counterparts, each of which, when so executed, shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute but one and the same instrument. The illegality or unenforceability of any provision of this Agreement shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement. **THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICT OF LAW PRINCIPLES THEREOF.**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the date and year first above written.

Borrower:

CAPITAL RE CORPORATION

By:

Name:
Title:

Address for Notices:

1325 Avenue of the Americas
New York, New York 10019
Attention: General Counsel
Facsimile: (212) 581-3268

Lender:

ACE LIMITED

By:

Name:
Title:

Address for Notices:

The ACE Building
30 Woodbourne Avenue
Hamilton, HM 08
Bermuda

Appendix A

Certain Defined Terms. As used in the Agreement, the following terms shall have the following meanings:

"Applicable Rate" means 6% per annum.

"Borrower Material Adverse Effect" means a material adverse effect on the properties, business, assets, conditions (financial or otherwise), liabilities or results of operations of the Borrower and its Subsidiaries taken as a whole, other than effects caused by changes in general economic conditions or conditions generally affecting the insurance or reinsurance industry.

"Common Stock" means the common stock, par value \$.01 per share, of the Borrower.

"Governmental Entity" means any United States or foreign court, arbitral tribunal, administrative agency or commission or other governmental or other regulatory authority, body, commission or agency, including the Corporation of Lloyd's.

"Law" means any applicable federal, state, local or foreign laws, statutes, ordinances, rules, regulations, judgments, orders, injunctions, decrees, arbitration awards, agency requirements, licenses or permits (including insurance laws and regulations) of any Governmental Entity.

"Merger Agreement" means that certain Agreement and Plan of Merger dated as of the date hereof among the Borrower, the Lender and CapRe Acquisition Corp.

"Subsidiary" means, with respect to any person, any entity, whether incorporated or unincorporated, of which at least a majority of the securities or ownership interests having by their terms ordinary voting power to elect a majority of the board of directors or other persons performing similar functions is directly or indirectly owned or controlled by such person or by one or more of its respective Subsidiaries or by such person and any one or more of its

respective Subsidiaries.

End of Filing

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