

June 12, 2009

The New York State Insurance  
Department  
25 Beaver Street  
New York, NY 10004

**Cooperation and Information Exchange between the New  
York State Insurance Department and the Financial Services  
Agency of Japan Related to Persons or Entities Engaged in the  
Business of Insurance**

Dear Mr. Eric R. Dinallo,

It is with great honor that the New York State Insurance Department and the Financial Services Agency of Japan agree to share a common interest in strengthening international cooperation to ensure sound insurance and financial markets globally. The need to enhance the sharing of information between both Authorities is important for the comprehensive supervision of insurance institutions that have been established in both jurisdictions.

It is understood that this Letter, including any attachment or exhibits hereto, does not in itself have any legal force but intends to confirm the willingness of the Financial Services Agency of Japan to use its powers to cooperate with the New York State Insurance Department, to provide a framework for future cooperation, and to explain the terms and conditions under which the Financial Services Agency of Japan is able to cooperate and share information with the New York State Insurance Department.

Sincerely yours,

The Financial Services Agency of Japan



Tatsuo Yamasaki  
Deputy Commissioner for International Affairs

## Attachment

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## **Cooperation and Information Exchange Related to Persons or Entities Engaged in the Business of Insurance between the New York State Insurance Department and the Financial Services Agency of Japan**

### **Overview**

In light of the growing globalization of insurance markets, and pursuant to Section 110 of New York Insurance Law, the New York State Insurance Department (“NYSID”) and the Financial Services Agency of Japan (“FSA Japan”) (collectively, the “Authorities”) hereby enter into these exchange Letters to provide a formal basis for cooperation and coordination, including for the exchange, handling, protection and return of information in their possession and, where appropriate, investigative assistance with respect to persons and entities engaged in the business of insurance. The NYSID and the FSA Japan express, through these Letters, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates and functions.

**The NYSID** regulates all insurance business transacted in New York State and is the primary regulator for insurance entities domiciled therein. In its capacity as regulator, the NYSID administers, interprets and enforces the provisions of New York’s insurance laws and regulations, and is vested and charged with all rights, powers and duties as expressed or reasonably implied by the New York Insurance Law.

**The FSA Japan** is responsible for ensuring the stability of Japan’s financial system, protecting depositors, insurance policyholders and securities investors, and accommodating finance through measures such as planning and policymaking concerning the financial system, inspection and supervision of private sector financial institutions, including insurers, and surveillance of securities transactions.

## Definitions

1. For purposes of this Letter, unless the context states otherwise:

- (a) “Applicable laws, regulations and requirements” means any law, regulation or requirement applicable in the State of New York and/or in Japan, and where the context permits, includes any rule, direction, requirement, guidance or policy made or given by, or to be taken into account by an Authority
- (b) “Authority” or “Authorities” means the NYSID and/or FSA Japan.
- (c) “Confidential Information” means:
  - (i) Any documents or records deemed confidential by New York law, regulation, requirements or privilege, including, but not limited to, draft examination reports; examination work papers; analyses of financial condition; reports of fraudulent activity; records regarding holding company transactions; and trade secrets or records maintained for the regulation of commercial enterprise, which if disclosed would cause substantial injury to the competitive position of the subject enterprise. Confidential information also includes records the disclosure of which would constitute unwarranted invasion of personal privacy, would impair present or imminent contract awards or collective bargaining negotiations, or would endanger the life or safety of any person; records compiled for law enforcement purposes; certain inter-agency or intra-agency correspondence; computer access codes; and examination questions or answers requested prior to the final administration of such questions.
  - (ii) Any non-public information which FSA Japan staff members have obtained. Section 100 of Japan’s National Public Service Law (NPSL) provides that: “a national employee shall not divulge any secret which may have come to his/her knowledge in the performance of his/her duties. This shall also be applied after he/she has left his/her position”.
- (d) “Emergency Situation” means any situation or event that could materially affect or impair the financial or operational condition of a Regulated Entity or Person or substantially affect the public interest of the jurisdiction of either Authority and that, accordingly, must be handled in an expedited manner.
- (e) “FSA Japan” means the Financial Services Agency of Japan.
- (f) “Hosting Authority” means the Authority in whose jurisdiction the On-Site Visits will be performed.
- (g) “Visiting Authority” means the Authority performing the On-Site Visits.
- (h) “NYSID” means State of New York Insurance Department.
- (i) “On-Site Visit” means any routine or regulatory visit or examination of the books, records or premises of a Regulated or Related Entity or Person.

- (j) “Person” means a natural person, legal entity, partnership or unincorporated association.
- (k) “Regulated Entity” or “Regulated Person” means a company or person engaged in insurance activities subject to the supervision of the NYSID and/or the FSA Japan.
- (l) “Related Entity or Person” means a company or person engaged in insurance activities, or legal entities or sub-groups of a Regulated Entity or Person, including affiliates, branches or subsidiaries, regulated by the NYSID and/or the FSA Japan.
- (m) “Requesting Authority” means the Authority seeking assistance/information.
- (n) “Responding Authority” means the Authority responding to a request for assistance/information.

### **Purpose and Objective of this Letter**

2. The purpose of this Letter is to establish a formal basis for consultation, cooperation and coordination between the FSA Japan and the NYSID, and to provide for the exchange of information relevant to each Authority’s supervisory, regulatory and examination responsibilities.

### **Requests for Assistance**

3. Requests for assistance include, among other things, requests to: (1) confirm or verify information; (2) obtain information about a specified person or entity; (3) discuss issues of mutual interest between the Authorities; question or take testimony of persons designated by the Requesting Authority; and conduct visits or examinations of Regulated/Related Entities or Persons. Requests for assistance that include requests for Confidential Information shall follow the procedure set forth in this Letter. If a request for assistance is made under this agreement, each Authority shall use reasonable efforts to assist the other, subject to its laws and overall policy.

4. This Letter does not create any legally binding obligations, confer any rights, modify, or supersede any domestic laws or regulatory requirements in force in, or applying to, the State of New York or Japan. This Letter does not confer upon any person the right or ability, directly or indirectly, to obtain, suppress or exclude any information or to challenge the execution of a request for assistance under this Letter. This Letter is not intended to affect any other arrangements, such as any MoU, that is in existence to which either of the Authorities is a party.

5. The Authorities acknowledge that they may only provide information under this Letter if permitted or not prevented under applicable laws, regulations and requirements.

6. The Authorities shall consider and promptly respond to all requests for assistance regarding: (1) the safety, soundness, or financial condition of a Regulated Entity or Person; or (2) the insurance activities of a Regulated Entity or Person. Where Confidential Information is involved, the decision to share this information is at the sole

discretion of the Responding Authority; however, the Responding Authority shall use reasonable efforts to share such information.

### **Procedures for Making/Responding to Requests for Assistance**

7. To the extent possible, all requests for assistance shall be in writing and, if made orally, the provisions of Paragraph 13 below must be followed. Requests for assistance must be directed to the appropriate appointed contact person(s) identified in Exhibit A hereto, and should include the following:

(a) A description of the information, confirmation or verification sought by the Requesting Authority, identifying relevant persons and specific questions to be asked;

(b) A general description of the matter that is the subject of the request and the purpose for which the information is sought;

(c) The desired time period for reply, and where appropriate, an explanation of the urgency thereof; and

(d) A description of other persons or entities, if any, to whom further disclosure of information provided to the Requesting Authority would be necessary, and the purpose such disclosure would serve.

8. Each Responding Authority shall use reasonable efforts to assess, on a case-by-case basis, whether any Confidential Information that has been requested can be provided under the terms of this Letter. Where the request cannot be fulfilled in whole or in part, the Responding Authority shall consider whether it, or any other regulatory authority in its jurisdiction, has the ability to render assistance to the Requesting Authority and, to the extent possible, shall use reasonable efforts to facilitate such assistance.

9. In deciding whether and to what extent to fulfill a request, the Responding Authority may take into account:

(a) Whether the request for assistance conforms with this Letter;

(b) Whether the request for assistance involves the administration of a law, regulation or requirement that has no close parallel in the jurisdiction of the Responding Authority;

(c) Whether compliance with the request for assistance would be so burdensome as to disrupt the proper performance of the Responding Authority's regulatory functions;

(d) Whether it would be detrimental or otherwise contrary to the public interest or the essential national interest of the Responding Authority's jurisdiction to provide the information requested;

(e) Any other matters specified by the laws, regulations and requirements of the Responding Authority's jurisdiction (in particular those relating to confidentiality, professional secrecy, data protection, privacy and procedural fairness); and

(f) Whether complying with the request may otherwise be prejudicial to the performance by the Responding Authority of its functions.

## **Confidentiality**

10. The Authorities may voluntarily and in their sole discretion provide information, including Confidential Information, without having received a request for assistance.

11. In responding to any request for assistance, the Responding Authority shall identify any information that is provided pursuant to this Letter that constitutes Confidential Information.

12. The Authorities agree to request Confidential Information only if it is relevant to their lawful supervision or examination of a Regulated Entity or Person, and shall use the Confidential Information they receive under this Letter only for those purposes.

13. To the extent possible, all requests for Confidential Information shall be made in writing and addressed to the appropriate appointed contact person(s) identified in Exhibit A. Where, due to an Emergency Situation or exceptional circumstances, an oral request is necessary, such request shall thereafter be confirmed by the Requesting Authority in writing within ten (10) business days. Requests for Confidential Information made at in-person meetings between the Authorities do not require a subsequent written confirmation if such oral requests will be noted in the minutes of the meetings between the Authorities.

14. In assessing a request for assistance or information, the Responding Authority may rely on the confirmation of equivalent confidentiality protections or other certification or confirmation by the Requesting Authority of its ability and authority to maintain the protected nature of Confidential Information. The Responding Authority may also rely on other relevant issues, such as its own knowledge of the Requesting Authority's practices and procedures.

15. The NYSID states that pursuant to New York Insurance Law § 110, it has the legal authority necessary to enter into this Letter and to protect from disclosure, and otherwise preserve, the confidential or privileged nature of any Confidential Information that it requests and receives pursuant to this Letter. A copy of the law establishing such authority is attached hereto as Exhibit B.

16. The FSA Japan states that pursuant to National Public Service Law § 100, it has the legal authority necessary to enter into this Letter, and agrees to protect and otherwise preserve any confidential information obtained pursuant to this Letter from disclosure. A copy of the law establishing such authority is attached hereto as Exhibit B.

17. All Responding Authority Confidential Information belongs to, and shall remain the property of, the Responding Authority. The Requesting Authority shall, in accordance with applicable laws, regulations and pursuant to the terms of this Letter, take all actions reasonably necessary to preserve, protect, and maintain the confidentiality of such Confidential Information and any privileges associated therewith.

18. The Requesting Authority shall restrict access to Responding Authority Confidential Information to those employees and agents of the Requesting Authority who are subject to the Requesting Authority's confidentiality obligations, are under its direct supervision and control, and who have a need for such information that is consistent with, and directly related to, the purposes for which the information was requested.

19. The Requesting Authority may provide Confidential Information received under this Letter to other authorities, such as state, federal or international regulatory or law enforcement officials who have authority over the Regulated Entity that is the subject of the Confidential Information, provided that the Requesting Authority:

- (a) notifies the Responding Authority promptly;
- (b) obtains prior consent from the Responding Authority; and
- (c) prior to passing on the Confidential Information, confirms that each recipient thereof agrees to maintain the confidential status of the information provided and has the legal authority to do so.

20. Where there is a subpoena or other legally enforceable demand for information supplied under this Letter, the Requesting Authority shall notify the Responding Authority. The Requesting Authority shall use all reasonable legal means to resist such a demand, including asserting such appropriate legal exemptions or privileges with respect to that information as may be available, and shall afford the Responding Authority the opportunity to take whatever action it deems appropriate to preserve, protect and maintain the confidential nature of the information provided, including consenting to any application by the Responding Authority to intervene in any action to preserve the confidentiality of Responding Authority Confidential Information.

21. Each Authority will attach a copy of the confidentiality provisions applicable in its country to this Letter as Exhibit B. The Authorities will inform each other in due course if the confidentiality regime is significantly affected by a change of law or a court decision.

### **On-Site Visits**

22. The NYSID and the FSA Japan recognize that cooperation is particularly useful in assisting each other in carrying out On-Site Visits of Regulated or Related Entities and Persons in both jurisdictions. To that end, the Authorities agree to comply with the following procedures prior to conducting On-Site Visits:

- (a) The Visiting Authority shall notify the Hosting Authority of: the Visiting Authority's intent to conduct an On-Site Visit, by itself or by an authorized third party; the time frame for the visit, and the scope of such visit. Where practicable, the Visiting Authority shall notify the Hosting Authority of the visit one week prior to informing the Regulated or Related Entity or Person that it will be the subject of the On-Site Visit; and

(b) The Visiting Authority may, in its discretion, exchange with the Hosting Authority the information obtained as a result of the On-Site Visit. The Hosting Authority may, in its discretion, accompany the Visiting Authority to, and assist the Visiting Authority with, any On-Site Visits.

## **Costs**

23. Where the cost of fulfilling a request is deemed substantial, the Responding Authority may, on a case-by-case basis, require the Requesting Authority to bear some or all of such costs.

## **Consultation Between the Authorities**

24. The Authorities shall keep the operation of this Letter under review and shall consult with each other as necessary with a view to improving its operation and resolving any concerns that have arisen out of its operation.

25. Where a specific conduct outlined in a request for assistance constitutes a breach of a law, regulation or requirement in the jurisdiction of both Authorities, the Authorities shall consult with each other to determine the most appropriate means for each Authority to provide the assistance requested.

## **Commencement and Termination of this Agreement**

26. These Letters shall take effect when both Authorities have signed and exchanged them and shall continue to have effect until terminated by either Authority upon thirty (30) days written notice. Termination shall not in any way affect the rights or obligations of either Authority with respect to Confidential Information previously provided under this Letter or any privileges associated with such information.

## **Others**

27. Information received from the FSA Japan shall not be used in criminal proceedings carried out by a court or a judge, unless the procedures mentioned in the following paragraph are taken. (These procedures do not apply where information received is used in criminal proceedings which are not carried out by a court or a judge, or when used in civil/administrative proceedings.).

28. Where information is needed for criminal proceedings carried out by a court or a judge, a request shall be submitted, in accordance with the procedures for Japan's provision of mutual legal assistance in criminal matters to foreign countries, which are set out in the Law for International Assistance in Investigation (LIAI) and Other Related Matters or relevant international agreements, should there be any.

**EXHIBIT A**

**Contact Persons for:**

**New York State Insurance Department  
25 Beaver Street  
New York, NY 10004**

Name: Joseph Fritsch  
Title: Director of Insurance Accounting Policy  
Telephone Number: (212) 480-2299  
Fax Number: (212) 480-2310  
Email: [jfritsch@ins.state.ny.us](mailto:jfritsch@ins.state.ny.us)

**OR**

Name: D. Monica Marsh  
Title: Supervising Attorney  
Telephone Number: (212) 480-5298  
Fax Number: (212) 480-5272  
Email: [dmarsh@ins.state.ny.us](mailto:dmarsh@ins.state.ny.us)

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**Contact Persons for:**

**The Financial Services Agency of Japan  
3-2-1 Kasumigaseki Chiyoda-ku,  
Tokyo, 100-8967**

Name: Hitoshi Shimura  
Title: Director, Office of International Affairs  
Telephone Number: +81-3-3506-6204  
Fax Number: +81-3-3506-6113  
E-mail: [hitoshi.shimura@fsa.go.jp](mailto:hitoshi.shimura@fsa.go.jp)

**OR**

Name: Nobuyasu Sugimoto  
Title: Deputy Director (Insurance)  
Telephone Number: +81-3-3506-6743  
Fax Number: +81-3-3506-6113  
Email: [n-sugimoto@fsa.go.jp](mailto:n-sugimoto@fsa.go.jp)

**EXHIBIT B****New York Insurance Confidentiality Statute:****Insurance Law § 110. Cooperation with Other Regulatory Agencies**

(a) In order to assist in the performance of the superintendent's duties under this chapter, the superintendent:

(1) may share documents, materials or other information, including the confidential and privileged documents, materials or information with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient has the authority and agrees to maintain the confidentiality and privileged status of the document, material or other information; provided, however, that this paragraph shall not be construed as limiting access to records pursuant to article six of the public officers law;

(2) may receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information;

(3) may enter into agreements governing sharing and use of documents, materials or information consistent with this subsection.

(b) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the superintendent under this section or as a result of sharing as authorized in this section.

**Japan's Confidentiality Provisions****National Public Service Law § 100. Cooperation with Other Regulatory Agencies**

A national employee shall not divulge any secret which may have come to his/her knowledge in the performance of his/her duties. This shall also be applied after he/she has left his/her position.