

INEX INSURANCE EXCHANGE GUARANTY FUND

PLAN OF OPERATION

Section 1.1. Plan of Operation. This Plan of Operation is adopted pursuant to the Regulations of the INEX Insurance Exchange, as amended from time to time (the "Regulations"), and Section 3.1(f) of the By-laws of the INEX Insurance Exchange Guaranty Fund, an Illinois not-for-profit corporation, as amended from time to time (the "By-laws"), and shall become effective upon written adoption by the Board of Directors of the INEX Insurance Exchange Guaranty Fund (the "Guaranty Fund Board").

Section 1.2. Definitions. Unless otherwise specified below, terms used herein shall have the same meaning ascribed to such terms in the Regulations.

(a) "Available Amount" with respect to any particular insolvency, shall mean the amount in the Premium Surcharge Account as of the Date of Insolvency, minus a reserve for General Expenses based upon the Guaranty Fund Board's estimate of such amounts, up to a maximum of \$15,000,000, which shall be deposited in the Special Premium Surcharge Account for that particular insolvency. Only if the Available Amount determined with respect to any particular insolvency shall be less than \$15,000,000, income accruing on the Available Amount after the Date of Insolvency shall be considered part of the Available Amount. Premium surcharges becoming due after the Date of Insolvency and any other amounts becoming part of the Premium Surcharge Account after the Date of Insolvency (and the income accruing thereon) shall not be considered part of the Available Amount. In determining the "Available Amount," the provisions of Section 4.9 hereof shall apply.

(b) "By-laws" shall mean the By-laws of the INEX Insurance Exchange Guaranty Fund, as amended from time to time.

(c) "Cash Guaranty Amount" shall mean the lesser of \$500,000 or the Guaranty Amount.

(d) "Claimant" shall mean, collectively, all persons or entities insured or reinsured under any one or more policies or reinsurance contracts underwritten by an insolvent syndicate insuring the same, or substantially the same persons or entities to which any unpaid Insurance Obligation of the insolvent syndicate is owed, subject to the following limitations:

(i) All named insureds, additional insureds or other parties entitled to benefit in any way under a single policy or certificate of insurance of the insolvent syndicate, or under more than one policy or certificate insuring substantially the same insureds shall be considered one Claimant, and represented for purposes of this Plan by the first named insured under the first such policy or certificate issued by the syndicate, regardless of (A) the number, identity or type of insureds or persons claiming benefits, (B) the number or form of policies or certificates under which insurance obligations may be owed, or (C) the number of risks, causes of loss, losses, occurrences or claims or other Unpaid Insurance Obligations that may be asserted by or against any or all of such insureds.

(ii) A ceding company, and all other parties that may claim any interest under any and all contracts of reinsurance, treaty or facultative, regardless of the number, kind or type of such contracts reinsuring such ceding company, and regardless of the number, kind or amount of claims or losses under such contracts shall be considered one Claimant represented by the first named ceding company under such contracts.

(e) "Code" shall mean the Illinois Insurance Code, as amended from time to time.

(f) "Covered Claims" shall mean claims for Unpaid Insurance Obligations of an insolvent

syndicate to a Claimant, meeting the requirements of Section 4.3 hereof.

(g) "Date of Insolvency" shall mean the date on which the Exchange Board determines, after an examination, audit or pursuant to an internal Exchange hearing, that a syndicate has become insolvent.

(h) "Date of Liquidation" shall mean the date on which a court of competent jurisdiction issues a final order of liquidation with respect to an insolvent Member Syndicate. For purposes of this Plan of Operation, the term "final order of liquidation" shall mean an order with respect to which all appeals have been exhausted and for which the time for filing appeals has lapsed with no appeal having been filed.

(i) "Exchange" shall mean the INEX Insurance Exchange.

(j) "Exchange Board" shall mean the Board of Trustees of the INEX Insurance Exchange.

(k) "General Expenses" shall mean those expenses of the Guaranty Fund other than Related Expenses.

(l) "Guaranty Amount" shall mean, with respect to each Member Syndicate, the amount equal to \$1,000,000 minus the aggregate amount withdrawn by the Guaranty Fund from the Guaranty Fund Custodial Account of such Member Syndicate for the purpose of paying or otherwise satisfying Unpaid Insurance Obligations or paying Related Expenses.

(m) "Guaranty Fund Board" shall mean the Board of Directors of the INEX Insurance Exchange Guaranty Fund.

(n) "Guaranty Fund Custodial Account" shall mean the custodial account required to be maintained by each Member Syndicate pursuant to Section 3.3 hereof.

(o) "Insolvent Syndicate Account" shall have the meaning ascribed to such term in Section 3.5 hereof.

(p) "Insurance Obligation" shall mean: (i) a liquidated claim for an incurred loss or liability or paid defense expense which is within the coverage of, and to the extent not in excess of the applicable limit of, a policy or reinsurance contract underwritten by a syndicate, or (ii) loss or expense paid or incurred by the Exchange which was incurred as a result of a syndicate's failure to meet its obligation to defend, indemnify or hold harmless the Exchange under the Regulations related to policies or contracts underwritten by a syndicate, or (iii) the unearned premium on a policy underwritten by a syndicate; provided, however, that Insurance Obligation shall not include:

(A) punitive, exemplary, or consequential damages;

(B) a payment to or inuring to the benefit of, an insolvent syndicate, any subscriber of an insolvent syndicate or any affiliate of any such subscriber;

(C) a claim or obligation of a syndicate to a policyholder under any policies or contracts that

were not issued through the facilities of the Exchange or pursuant to the policy-issuing procedures of the Exchange, but this exclusion shall not apply to any loss or expense incurred by the Exchange arising out of such a policy not issued through the facilities of the Exchange or in violation of policy-issuing procedures of the Exchange.

(q) "Member Syndicate" shall have the meaning ascribed to such term in Section 2.1 hereof.

(r) "Premium Surcharge Account" shall have the meaning ascribed to such term in Section 3.2 hereof.

(s) "Regulations" shall mean the Regulations of the INEX Insurance Exchange, as amended from time to time.

(t) "Related Expenses" shall mean those administrative expenses of the Guaranty Fund, the INEX Insurance Exchange Immediate Excess Security Association and the INEX Insurance Exchange which are directly related to the insolvency of a syndicate or syndicates and which would not arise but for such insolvency.

(u) "Special Guaranty Fund Assessment" shall have the meaning ascribed to such term in Section 5.2(a) hereof.

(v) "Special Premium Surcharge Account" shall have the meaning ascribed to such term in Section 3.4 hereof.

(w) "Termination Date" shall have the meaning ascribed to such term in Section 2.2(a) hereof.

(x) "Unpaid Insurance Obligations" shall mean those Insurance Obligations of an insolvent syndicate for which the syndicate would be liable but for its insolvency which are unpaid as of the Date of Liquidation, and which are not paid by any other insurance, benefit, guaranty fund or other source available to the Claimant or by the liquidator for the insolvent syndicate prior to payment by the Guaranty Fund.

(y) "Withdrawal Date" shall have the meaning ascribed to such term in Section 2.2(a) hereof.

ARTICLE II

Member Syndicates

Section 2.1. Membership. The member syndicates of the Guaranty Fund (the "Member Syndicates"), shall consist of every person admitted as a syndicate to the Exchange, including any syndicate whose status as a syndicate on the Exchange has been suspended pursuant to the Regulations. Such person shall automatically become a Member Syndicate on the effective date of its admission as a syndicate on the Exchange. The membership of the Guaranty Fund shall consist solely of Member Syndicates.

Section 2.2. Termination or Withdrawal of Membership.(a) A syndicate shall automatically cease to be a Member Syndicate as of the date on which the Exchange Board approves its withdrawal from the Exchange or on the date on which the Exchange Board enters a finding that such syndicate is insolvent and terminates such syndicate's authority to conduct business on the Exchange (the "Withdrawal Date" or "Termination Date," respectively); provided, however, that such syndicate's Guaranty Fund Custodial Account shall continue to be available to the Guaranty Fund for the payment of Covered Claims and Related Expenses to the extent provided in Section 4.8 hereof; and provided, further that such withdrawing or terminating syndicate shall continue to pay to the Guaranty Fund after its Withdrawal Date or Termination Date, premium surcharges at the then current rate on any and all premiums received on business written prior to such Withdrawal or Termination Date.

(b) Notwithstanding anything herein to the contrary, an insolvent syndicate shall cease to be a Member Syndicate on its Date of Insolvency, and all of the assets of such insolvent syndicate, including its Guaranty Fund Custodial Account, shall at all times be available to the INEX Insurance Exchange Immediate Access Security Association, to pay the claims of such syndicate including Related Expenses and Covered Claims.

ARTICLE III

Guaranty Fund Accounts

Section 3.1. Guaranty Fund. The Guaranty Fund shall be composed of two parts:

- (a) the Premium Surcharge Account as defined in Section 3.2 hereof; and
- (b) the Guaranty Fund Custodial Account as defined in Section 3.3 hereof.

Section 3.2. Premium Surcharge Account. Except as specified in Section 3.4, the Guaranty Fund shall maintain a separate account in which the Guaranty Fund shall hold all of the premium surcharges collected from Member Syndicates pursuant to Section 5.1 hereof ("the Premium Surcharge Account"). The Guaranty Fund may invest the assets in the Premium Surcharge Account in any manner in which domestic insurers may invest funds under the Code; provided, however, that in investing the funds, the Guaranty Fund shall take into consideration the liquidity of such investments for purposes of paying Related Expenses and Covered Claims. Any withdrawal from the Premium Surcharge Account for the purposes of paying Related Expenses and Covered Claims shall be made upon the signature of any two or more Directors of the Guaranty Fund. General Expenses of the Guaranty Fund shall be paid out of the Premium Surcharge Account. Any withdrawal from the Premium Surcharge Account for General Expenses shall be made upon the signature of one or more Directors of the Guaranty Fund or one or more agents of the Guaranty Fund so designated by the Guaranty Fund Board.

Section 3.3. Guaranty Fund Custodial Account. (a) Each Member Syndicate, as a condition of membership, shall establish and maintain a custodial account for the purposes described in this Plan of Operation. The total value of the assets maintained in this account shall not be less than \$1,000,000 except as otherwise provided herein. Not less than fifty percent (50%) of the value of

the assets to be maintained in the account shall consist of cash or marketable securities which qualify as syndicate investments as determined by the Exchange. The total value of the assets required herein will be reduced to the extent that amounts are withdrawn to satisfy obligations of the Guaranty Fund.

(b) Each syndicate shall enter into a written custodial agreement with an acceptable financial institution located in Illinois having trust powers. Such agreement and any amendment thereto shall be filed with and approved by the Exchange Board prior to such execution and shall be consistent with the Exchange Regulations.

Section 3.4 Special Premium Surcharge Account. As soon as possible after any Date of Insolvency, the Guaranty Fund shall establish a separate account in which it shall deposit the Available Amount relating to such insolvency, (the "Special Premium Surcharge Account"), up to the maximum amount payable for any one insolvency. In the event that all of the funds in any Special Premium Surcharge Account are not needed to satisfy the Related Expenses and Covered Claims of the insolvency to which such Account relates, the excess shall be returned to the Premium Surcharge Account for use in the next occurring insolvency.

Section 3.5. Insolvent Syndicate Accounts. As soon as possible after any Date of Insolvency, the Guaranty Fund shall establish a separate account in which it shall deposit all amounts other than the Available Amount, including but not limited to amounts withdrawn from the Guaranty Fund Custodial Accounts of Member Syndicates and any funds received from the Immediate Access Security Association or the Director of Insurance, as Liquidator of such insolvent syndicate (the "Insolvent Syndicate Accounts"). Funds deposited in the Insolvent Syndicate Account from different sources shall be kept in separate subaccounts. Any withdrawal from an

Insolvent Syndicate Account shall be made upon the signature of any two or more officers or agents of the Guaranty Fund so designated by the Guaranty Fund Board.

Section 3.6. Limitations. Regardless of any other provision of this Plan, and regardless of the existence of or amounts deposited in any Account described in this Plan, the maximum Available Amount and amount deposited into the Special Premium Surcharge Account, and paid in connection with the insolvency of any syndicate shall not exceed the maximum of \$15,000,000 in respect of all Related Expenses, and Unpaid Insurance Obligations of such insolvent syndicate.

ARTICLE IV

Procedures and Obligations with Respect to Insolvent

Member Syndicates

Section 4.1. Declaration of Insolvency. (a) The Exchange Board shall be responsible for regulating the solvency of any Member Syndicate of the Exchange. Neither the Guaranty Fund Board nor any of its directors, officers, agents, or employees shall have any duty or obligation to determine the financial condition of any Member Syndicate.

(b) If the Exchange Board or the Director of Insurance determines, after an examination, audit, or pursuant to an Exchange internal hearing, that a syndicate has become insolvent or financially impaired to the extent that its further transaction of business is hazardous to its policyholders, its creditors, or the public, it shall order the syndicate to cease and desist from assuming insurance or reinsurance obligations on the Exchange, or take such other action for the protection of policyholders and creditors as provided in Article V $\frac{1}{2}$ of the Code.

(c) Upon issuing a cease and desist order as provided in this section, the Board shall proceed

as follows:

- (i) Notify the Director of Insurance of such action and if the Director determines the syndicate to be insolvent or financially impaired, the Director shall report that determination to the Attorney General. The Attorney General shall apply forthwith by complaint on relation of the Director in the name of the People of the State of Illinois, as plaintiff, to the Circuit Court of Cook County, Illinois, for an order to rehabilitate, conserve, or liquidate the defendant syndicate as provided in Article XIII of the Illinois Insurance Code and for such other relief as the nature of the case and the interests of the policyholders, creditors, or the public may require.
- (ii) The Court upon entering an Order of Rehabilitation, Conservation or Liquidation, shall appoint the Director of Insurance as Rehabilitator, Conservator, or Liquidator, and the rehabilitation, conservation or liquidation shall be conducted pursuant to Article XIII of the Illinois Insurance Code.

Section 4.2. Actions Pursuant to Court Order. In the event that a court of competent jurisdiction has issued a final order of liquidation with respect to an insolvent syndicate and, upon notice from either the Director of Insurance or the Immediate Access Security Association that the assets of the insolvent syndicate have been, or are about to be exhausted, the Guaranty Fund Board shall take one or more of the following actions as it deems necessary:

- (a) Establish a Special Premium Surcharge Account out of which Covered Claims and Related Expenses in connection with such insolvency are to be paid;
- (b) To the extent that it has not already been accomplished, request that the Immediate Access Security Association or the Exchange Board draw on any letters of credit or other security

issued at the request of the insolvent syndicate for the benefit of the Exchange;

(c) Execute an agreement with the Director of Insurance, as Liquidator, confirming that the Guaranty Fund shall be reimbursed pursuant to (d) and (e) below and further that no payments are to be made from the Guaranty Fund except as consistent with this Plan of Operation and the appropriate Regulations of the Exchange;

(d) If requested by the Director of Insurance or by the Immediate Access Security Association and, at the discretion of the Guaranty Fund Board, pay claims out of the Special Premium Surcharge Account prior to the exhaustion of the insolvent syndicate's assets, on the condition that the Guaranty Fund takes, to the extent of such payments, a security interest in the assets of the estate of the insolvent syndicate; alternatively, the Guaranty Fund may loan funds to the Immediate Access Security Association for the purpose of paying Covered Claims and Related Expenses prior to the exhaustion of the insolvent syndicate's assets, on the condition that the Guaranty Fund takes, to the extent of such loans, a security interest in the assets of the estate of the insolvent syndicate;

(e) Request that the Director of Insurance, as Liquidator, make application to the court requesting authority to disburse funds to the Guaranty Fund from time to time out of the insolvent syndicate's marshalled assets as funds become available in amounts equal to disbursements made by the Guaranty Fund to the extent that the Guaranty Fund has made such disbursements in advance of the exhaustion of the insolvent syndicate's assets;

(f) Borrow money in order to pay Covered Claims prior to the withdrawal of funds from the Special Premium Surcharge Account or the Guaranty Fund Custodial Accounts, and pledge the funds or assets in the relevant Special Premium Surcharge Account, the Insolvent Syndicate Account

or the Guaranty Fund Custodial Accounts to secure such borrowed money;

(g) Review the estimated Covered Claims and Related Expenses with respect to such insolvency; determine the amount of funds necessary to satisfy such Covered Claims and Related Expenses, and; determine whether there are sufficient funds in the Special Premium Surcharge Account, up to the maximum amount payable for any one insolvency, to satisfy such Covered Claims and Related Expenses. If the amount in the Special Premium Surcharge Account is deemed insufficient, the Guaranty Fund Board shall establish an Insolvent Syndicate Account and shall request the Exchange Board to authorize disbursement, up to the maximum amount payable for any one insolvency, from the Guaranty Fund Custodial Accounts of the Member Syndicates to the Guaranty Fund to be deposited into the Insolvent Syndicate Account to pay such claims and expenses;

(h) Determine whether to pay the Covered Claims of the insolvent syndicate directly or to transfer funds to the Immediate Access Security Association or to the Director of Insurance, as Liquidator, for the payment of such claims; or

(i) If the Guaranty Fund has determined to pay Covered Claims directly, pay such Covered Claims pursuant to the provisions of this Plan of Operation.

(ii)

Section 4.3. Obligations of Guaranty Fund. (a) A Claimant which is owed Unpaid Insurance Obligations of an insolvent syndicate (which have not been satisfied by the Immediate Access Security Association or the Liquidator) may have a Covered Claim against the Guaranty Fund provided that such Covered Claim has arisen or accrued as of the Date of Insolvency, or arises or

accrues after such Date of Insolvency but prior to the earlier of:

- (i) The expiration date of the policy issued by the insolvent syndicate under which the Insurance Obligation arises;
- (ii) The effective date of any replacement policy issued to such claimant by an insurer other than the insolvent syndicate;
- (iii) The effective date of the cancellation of the policy issued by the insolvent syndicate; or
- (iv) Thirty (30) days after the Date of Liquidation.

However, a covered Claim of the Exchange arising out of an Insurance Obligation described in Section 1.2(p)(ii) shall be deemed to accrue at the time the syndicate issued the policy or contract or engaged in the conduct which is the subject of such Insured Obligation affecting the Exchange.

(b) No part of the Guaranty Fund shall be available or used to pay any expenses or unpaid insurance contractual obligations for any insolvency determined by the Exchange Board less than 366 days after the date of admission of such syndicate to the exchange.

(c) An Unpaid Insurance Obligation of an insolvent syndicate will not qualify as a Covered Claim payable by the Guaranty Fund unless: (i) such Unpaid Insurance Obligation is the subject of a Proof of Claim effectively filed with Office of the Special Deputy Receiver and the INEX Insurance Exchange Immediate Access Security Association on or before the claims filing deadline established by the Order of the Court presiding over the Liquidation of the insolvent syndicate, in compliance with the procedures established in such order; and (ii) the amount of such Unpaid Insurance Obligation is liquidated, and the Claimant presents acceptable evidence that the claim was paid (or liability for the claim was established) prior to the contingent claim deadline set by the Liquidation Court pursuant to Section 209 (4)(a) of Article XIII of the Illinois Insurance Code (215 ILCS

5/209(4)(a)) or such extension of time as may be granted by the Liquidation Court, or by the Guaranty Fund Board, in its discretion, for good cause shown.

Section 4.4. Limitations on Payment. (a) The maximum payment of the Guaranty Fund with respect to an insolvent syndicate shall not exceed:

- (i) The full amount of a Covered Claim for benefits under a worker's compensation insurance coverage;
- (ii) \$10,000 per Claimant for the return of unearned premium;
- (iii) \$300,000 per Claimant for all other Covered Claims (inclusive of any defense costs or other supplemental expenses); and
- (iv) The applicable limit of liability under the policy or contract applicable to such Unpaid Insurance Obligation of the insolvent syndicate.

(b) Notwithstanding anything herein to the contrary, the aggregate maximum payment by the Guaranty Fund with respect to all Related Expenses and Covered Claims for Unpaid Insurance Obligations shall not exceed Fifteen Million Dollars (\$15,000,000) with respect to any one insolvency. Multiple insolvencies which are treated as one insolvency pursuant to Section 4.9 hereof shall be treated as one insolvency for the purpose of this Section 4.4.

(c) By voluntarily seeking to mitigate the effects of the insolvency of an Exchange syndicate under this Plan, the Guaranty Fund, and its officers, Directors and members, undertake to act in a reasonable manner, in light of the extent of the Unpaid Insurance Obligation that may exist and the limited resources applicable to such Insurance Obligations. The Guaranty Fund expressly disclaims any ability, intent or agreement to guarantee any insurance obligation of any insolvent syndicate, or any intent, ability or agreement to pay any amount to any Claimant at any time. By the submission

of any claim to the Guaranty Fund, or the acceptance of any payment from the Guaranty Fund, every Claimant does expressly release and discharge the Guaranty Fund, its Officers, Trustees and Members, of and from any and all liability of any kind whatsoever to such Claimant and all persons interested in or claiming through such Claimant for the payment of any specific amount, at any specific time or for any deficiency, inequality or shortfall of such payment occurring at any time. There shall be no liability on the part of, and no cause of action shall arise against, the Guaranty Fund or against any transferee from the Guaranty Fund in connection with the transfer by reinsurance or otherwise of all or any part of an insolvent syndicate's business by reason of any action taken or any failure to take any action by the insolvent syndicate at any time.

Section 4.5. Source of Payment Funds. (a) Unless the Guaranty Fund has an acceptable agreement with the Department or a Liquidator per Section 4.2(c), it shall satisfy its obligations with respect to Related Expenses and Covered Claims only after the assets of the insolvent syndicate have been exhausted and from the following funds in the order of priority specified hereafter:

- (i) Any assets of the estate of the insolvent syndicate not otherwise paid out and to the extent such funds are readily available to the Guaranty Fund (in the sole opinion of the Guaranty Fund);
- (ii) The Available Amount of the Premium Surcharge Account up to the \$15,000,000 maximum payable for any one insolvency;
- (iii) Amounts deposited pursuant to one or more Special Guaranty Fund Assessments, but only if the Available Amount of the Premium Surcharge Account is less than

\$15,000,000;

- (iv) A maximum amount from the Guaranty Fund Custodial Account of each Member Syndicate (excluding the insolvent syndicate's Guaranty Fund Custodial Account) which equals the sum of the Cash Guaranty Amount in each Guaranty Fund Custodial Account, but only if the Available Amount of the Premium Surcharge Account is less than \$15,000,000.

Section 4.6. Withdrawal of Funds from Guaranty Fund Custodial Accounts. (a) For the purpose of paying Covered Claims and Related Expenses and as requested by the Immediate Access Security Association, the Guaranty Fund Board shall request the Exchange Board to cause funds to be withdrawn from the Guaranty Fund Custodial Accounts. Furthermore, notwithstanding anything herein to the contrary, in the event that the Immediate Access Security Association advises that the Available Amount with respect to a particular insolvency is, or is likely to be, insufficient to satisfy the obligations of the Guaranty Fund with respect to such insolvency, the Guaranty Fund Board may request funds to be so withdrawn (but not used) from the Guaranty Fund Custodial Accounts prior to the exhaustion of the Available Amount and deposited into the Insolvent Syndicate Account.

(b) Upon determination of the amount to be withdrawn from each Guaranty Fund Custodial Account, the Guaranty Fund Board shall give written notice of the same to the Member Syndicates. The Guaranty Fund Board shall then request the Exchange Board to withdraw such amounts from the respective Guaranty Fund Custodial Accounts and pay that amount to the Guaranty Fund.

(c) The Guaranty Fund may abate or defer, in whole or in part, such Guaranty Fund Custodial Account payment if, in the opinion of the Exchange Board, payment of such amount would endanger the ability of the Member Syndicate to fulfill its contractual obligations.

(d) In the event that the Guaranty Fund Board determines that the amounts withdrawn from the Special Premium Surcharge Account or the Guaranty Fund Custodial Accounts exceed the amount necessary to pay the Related Expenses and Covered Claims relating to the insolvency for which such amounts were withdrawn, the Guaranty Fund Board shall return the funds to the Premium Surcharge Account or to the Member Syndicates' respective Guaranty Fund Custodial Accounts as appropriate.

(e) Notwithstanding anything herein to the contrary, the Guaranty Fund shall not withdraw from any single Guaranty Fund Custodial Account:

- (i) with respect to any one insolvency (including multiple insolvencies which are deemed to be one insolvency pursuant to Section 4.9 hereof), an amount in excess of \$500,000; and
- (ii) with respect to all insolvencies in the aggregate, an amount in excess of \$1,000,000.

Section 4.7. Claims Procedures. (a) Subject to the limitations **on payment** set forth in Section 4.4 hereof, the Guaranty Fund will pay Covered Claims and Related Expenses in the following order of priority:

- (i) Class 1 - Related Expenses;
- (ii) Class 2 - Covered Claims for Unpaid Insurance Obligations of the insolvent syndicate (excluding Class 3 claims);
- (iii) Class 3 - Covered claims for Unpaid Insurance Obligations consisting of unearned premiums arising from policies or contracts of insurance or reinsurance underwritten by the insolvent syndicate.

(b) All Related Expenses and Covered Claims within each Class shall be paid, reserved for, or otherwise satisfied in full, up to the applicable limit of payment under this Plan, before payment of any Covered Claims of a subordinate priority Class. If sufficient funds are not available within the \$15,000,000 limit applicable to each insolvent syndicate to pay all of the Covered Claims of a particular Class, the Guaranty Fund shall attempt, but not be obligated, to pay an equal percentage of the amount otherwise payable under Section 4.4 of this Plan to each Claimant in respect of Covered Claims in such Class.

Section 4.8. Liability of Terminated or Withdrawing Syndicates. (a) If a syndicate voluntarily withdraws from the Exchange, merges, or its authority to conduct business on the Exchange is terminated, the amount remaining in its Guaranty Fund Custodial Account plus the remaining amounts deposited pursuant to one or more Special Guaranty Fund Assessments, shall be maintained for a three year period from the Withdrawal or Termination Date or for such less time as otherwise agreed to by the Exchange Board. The Guaranty Fund Custodial Account plus amounts deposited pursuant to one or more Special Guaranty Fund Assessments of a withdrawing or terminated syndicate shall be available for insolvencies determined prior to the Withdrawal or Termination Date or insolvencies determined for three years thereafter, but only for losses arising on or before the Termination or Withdrawal Date.

(b) Notwithstanding anything herein to the contrary, the amount of Covered Claims and Related Expenses which may be paid from the Guaranty Fund Custodial Account of a terminated or withdrawing syndicate shall not exceed for any one insolvency, the lesser of:

- (i) \$500,000; or
- (ii) a proportional share of the Guaranty Fund's obligations determined by dividing

the estimated Guaranty Fund's aggregate obligations to be satisfied from the Guaranty Fund Custodial Accounts by the number of syndicates whose custodial accounts are available as of the Withdrawal Date.

(c) Any amounts remaining in the withdrawing or terminated syndicate's Guaranty Fund Custodial Account plus any remaining amount deposited by the withdrawing syndicate pursuant to one or more Special Guaranty Fund Assessments shall be released to such syndicate or its successor after the Guaranty Fund is satisfied that no Covered Claims and Related Expenses remain to be paid from such Guaranty Fund Custodial Account, but in no event shall such amounts be released prior to three (3) years after the Withdrawal or Termination Date.

(d) The Guaranty Fund, its directors, officers, employees and agents shall not be liable to any person in connection with any claim arising from the release of the Guaranty Fund Custodial Account or of the amount deposited by the withdrawing syndicate pursuant to one or more Special Guaranty Fund Assessments of a withdrawing or terminating syndicate pursuant to Section 4.8(c) hereof.

Section 4.9. Multiple Insolvencies. (a) In the event that one or more syndicates are declared insolvent within ninety (90) days after a prior syndicate's Date of Insolvency, such insolvencies shall be combined and treated as one insolvency. For the purpose of this Section 4.9, the date on which a syndicate is declared insolvent shall be Date of Insolvency as defined in Section 1.2(e) hereof (or in the absence of a determination by the Exchange Board, as of the date on which it is declared insolvent by the Director of Insurance.)

(b) Notwithstanding anything herein to the contrary, insolvencies shall be combined pursuant to this Section 4.9 solely for the purposes of making the following determinations:

- (i) Limitations on the amounts payable from the Premium Surcharge Account and the Guaranty Fund Custodial Accounts;
- (ii) The priority of payments of Related Expenses and Covered Claims; and
- (iii) The establishment of Special Premium Surcharge Accounts and Insolvent Syndicate Accounts.

Section 4.10. Recordkeeping Requirements. Records shall be kept of all negotiations and meetings in which the Guaranty Fund or its representatives are involved concerning the Guaranty Fund's activities with respect to insolvent syndicates. Such records shall not be made public except upon the order of a court of competent jurisdiction.

Section 4.11. Preservation of Records. At any meeting of the Guaranty Fund Board called for the purpose of considering the insolvency of a Member Syndicate and the consequences thereof, the Guaranty Fund Board shall consider and decide what action, if any, should be taken to assure the proper retention of the records of the insolvent syndicate which are deemed necessary for the prompt and economic handling by the Guaranty Fund of its duties.

ARTICLE V

SURCHARGES, ASSESSMENTS, AND EXPENSES

Section 5.1. Premium Surcharge. (a) From time to time, as deemed necessary, the Exchange Board shall determine whether to levy a premium surcharge on the gross net premiums of policies underwritten by Member Syndicates, provided, however, that the recommended premium surcharge rate shall not exceed five (5%) percent.

(b) Member Syndicates shall not have any claim whatsoever against the Guaranty Fund for any premium surcharges paid by such Member Syndicates.

(c) The premium surcharges collected by the Guaranty Fund shall be held by the Guaranty Fund in a separate account and invested pursuant to Section 3.2 hereof.

(d) The expenses of collecting, maintaining and investing the Premium Surcharge Account shall be "General Expenses."

5.2. Special Guaranty Fund Assessments. (a) The Guaranty Fund Board may request the Exchange Board to make a special assessment against Member Syndicates at such times and in such amounts as the Exchange Board finds necessary (the "Special Guaranty Fund Assessments.")

(b) In the event that the Exchange Board determines that the Special Guaranty Fund Assessment assessed against the Member Syndicates pursuant to subsection (a) above exceeds the amount necessary to meet the obligations of the Guaranty Fund, and the Exchange Board further determines to refund such excess to the Member Syndicates, the Exchange Board shall provide the Guaranty Fund with a list of the Member Syndicates and their respective refunds which shall be made accordingly.

Section 5.3. Expenses. (a) General Expenses of the Guaranty Fund shall be paid from the Premium Surcharge Account.

(b) Related Expenses of the Guaranty Fund shall be paid from the funds described in Section 4.5 hereof in the order of priority set forth in Section 4.7 hereof.

(c) Unless otherwise provided herein, the classification of expenses as General or Related shall be made by the Guaranty Fund Board or its authorized delegate, and such classifications shall be conclusive.

ARTICLE VI

GENERAL POWERS AND DUTIES OF THE GUARANTY FUND

Section 6.1. General Powers. In addition to all other powers and authority granted to the Guaranty Fund pursuant to this Plan of Operation and the Regulations, the Guaranty Fund may:

(a) Enter into such contracts as may be necessary or proper to carry out its obligations under the Regulations;

(b) Borrow money to effect the purposes of the Regulations in accordance with this Plan of Operation and pledge all or any part of the Special Premium Surcharge Funds, Insolvent Syndicate Accounts or the Guaranty Fund Custodial Accounts to secure the payment of such indebtedness;

(c) Investigate claims brought against the Guaranty Fund and adjust, compromise, settle, and pay or otherwise satisfy the Covered Claims for which the Guaranty Fund is liable, deny all other claims and review settlements, releases and judgments to which the insolvent syndicate or its insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested;

(d) Employ or retain and reimburse such persons, including agents and employees, as are necessary;

(e) Negotiate and contract with any liquidator, rehabilitator, conservator or ancillary receiver to carry out the powers and duties of the Guaranty Fund; and

(f) Take such legal action as may be necessary to avoid payment of improper claims.

ARTICLE VII

RECORDS AND REPORTS

Section 7.1. Insolvency Report. At the conclusion of any insolvency pursuant to which the Guaranty Fund was obligated to pay Covered Claims, the Guaranty Fund Board shall prepare a

report for the Exchange Board containing such information as it may have in its possession bearing on the history and causes of such insolvency.

Section 7.2. Optional Reports/Recommendations to the Exchange. The Guaranty Fund Board may: (a) Make reports and recommend actions to the Exchange Board on any matters germane to the Guaranty Fund and its role; or

(b) Make recommendations to the Exchange Board for the detection and prevention of syndicate insolvencies.

Section 7.3. Minutes of Board and Committees. Minutes of the proceedings of each Board and committee meeting shall be made and retained by the Secretary/Treasurer of the Guaranty Fund. Copies of such minutes shall be provided to each Board or Committee member.

Section 7.4. Financial Records. The Guaranty Fund Board shall provide for the establishment of procedures for maintaining the financial records of the Guaranty Fund, including but not limited to, such records as are necessary to insure control of the Guaranty Fund's assets and to provide accurate information regarding the financial transactions of the Guaranty Fund, its agents, and the Guaranty Fund Board.

ARTICLE VIII

IMMUNITY, INDEMNIFICATION AND INSURANCE

Section 8.1. Immunity. No liability on the part of and no cause of action of any nature may arise against any Member Syndicate or its agents or employees, the Guaranty Fund or its agents or employees, the members of the Guaranty Fund Board, or the Director of Insurance or his

representatives, for any action taken by them in the performance of their powers and duties hereunder.

Section 8.2. Indemnification. (a) The Guaranty Fund shall indemnify any person who was or is a party or is threatened to be made party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Guaranty Fund) by reason of the fact that such person is or was a director or officer of the Guaranty Fund, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Guaranty Fund.

(b) The expenses incurred by the Guaranty Fund in indemnifying directors, officers, employees or agents pursuant to this Section 8.2 shall be General Expenses and shall be payable from the Premium Surcharge Account.

(c) The Board of Directors may, by resolution, extend the indemnification provisions of this Section 8.2 to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that such person is or was an employee or agent of the Guaranty Fund.

Section 8.3. Insurance. The Guaranty Fund shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Guaranty Fund against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such.

ARTICLE IX

MISCELLANEOUS

Section 9.1. Notice; Waiver of Notice. Unless specified otherwise herein, any notice required hereunder shall be given by written notice: delivered personally, mailed, sent by express courier, telex or telecopier. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, postage prepaid. If by express courier, such notice shall be deemed to be delivered when deposited with an express courier, fee prepaid for expenses, next-day delivery. If by telex or telecopier, such notice shall be deemed to be delivered when sent, answer back received (in the case of notice by telex) or when received (in the case of notice by telecopier). Notice to Directors or Member Syndicates shall be directed to the address of such Director or Member Syndicate as it appears on the records of the Guaranty Fund.

Section 9.2. Amendments to Plan of Operation. This Plan of Operation may be altered, amended or repealed and a new Plan of Operation may be adopted, by a majority of the full Guaranty Fund Board with the concurrence of the Exchange Board.

Section 9.3. Dissolution of Guaranty Fund. The Guaranty Fund may dissolve and wind up its affairs upon the adoption of a resolution to dissolve after a recommendation from the Exchange Board and by the vote of a majority of the full Guaranty Fund Board. Upon the adoption of such resolution by the Guaranty Fund Board, the Guaranty Fund shall cease to conduct its affairs except insofar as may be necessary for the proper winding up thereof, shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the Guaranty Fund, and shall proceed to collect its assets and apply and distribute them as provided for in The General Not For Profit Corporation Act and a plan of distribution adopted by a majority of the full Exchange Board.