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INSURANCE REGULATION
Docketed by: EP

OFFICE OF INSURANCE REGULATION

MICHAEL YAWORSKY
COMMISSIONER

Index: OIR 2025-48

IN THE MATTER OF:

CASE NO.: 401106-25-CO

CAPACITY INSURANCE COMPANY
_____/

CONSENT ORDER

THIS CAUSE came for consideration as a result of discussions between CAPACITY INSURANCE COMPANY ("CAPACITY") and the FLORIDA OFFICE OF INSURANCE REGULATION ("OFFICE") concerning CAPACITY's Certificate of Authority to transact insurance in the state of Florida. The OFFICE, having considered the matter, and being otherwise advised in the premises, finds as follows:

1. The OFFICE has and will continue to maintain jurisdiction over the subject matter and the parties herein.

2. CAPACITY is a Florida-domiciled property and casualty insurer authorized to transact insurance in the state of Florida under Chapter 624, Part III, Florida Statutes, and is and shall remain subject to regulation by the OFFICE pursuant to the Florida Insurance Code.

3. On or about January 15, 2023, CAPACITY notified the OFFICE that it would not be able to maintain the statutorily required surplus and would likely be filing an impaired financial statement for year-end 2022, due to be filed on March 1, 2023, but represented it would be able to effectuate a solvent runoff of its remaining liabilities.

4. CAPACITY entered into a consent order placing it in public administrative supervision for a period of 120 days in Consent Order 307008-23-CO ("Supervision Order"),

which was filed on March 3, 2023. Prior to the expiration of that 120-day period, the parties agreed to a 120-day extension in Consent Order 312190-23-CO, a second 120-day extension in Consent Order 317178-23-CO, a third 120-day extension in Consent Order 323526-24-CO, a fourth 120-day extension in Consent Order 328800-24-CO, a fifth 120-day extension in Consent Order 400480-24-CO, and a sixth 60-day extension in Consent Order 400939-25-CO.

5. Paragraph 6 of the Supervision Order states as follows:

> 6. CAPACITY has been cooperative with the OFFICE and agrees to be placed under administrative supervision for a period of 120 days from the date of execution of this Consent Order and to be subject to the provisions of Sections 624.80-.87, Florida Statutes, as if an order were issued by the OFFICE. Such administrative supervision may be extended in 60-day increments at the OFFICE's sole discretion for as long as is necessary for the company to effectuate a smooth transition and orderly wind-down of its remaining policies and liabilities. All terms of the transition and wind-down of business are to be included in a Runoff plan ("Plan"), which is subject to the OFFICE's approval.

6. Administrative supervision of CAPACITY is currently set to expire on April 14, 2025.

7. On April 14, 2023, the OFFICE issued Immediate Final Order Case Number 308839-23-FO, which suspended CAPACITY's Certificate of Authority.

8. In accordance with section 624.421(4), Florida Statutes, CAPACITY's Certificate of Authority is set to expire on April 14, 2025.

9. CAPACITY represents that it has written no new business since October 7, 2022, and that they are in the process of running off their liabilities in accordance with the runoff plan they filed with the OFFICE on March 13, 2023, and thereafter modified and amended on March 30, 2023, and again on April 10, 2023. CAPACITY asserts that if one or more covered claims were to arise, that CAPACITY would honor those claims and resolve them in compliance with Florida Statutes.

10. CAPACITY warrants that it will receive a cash infusion totaling $250,000 on or before April 15, 2025. Evidence of the same shall be provided to the OFFICE within five (5) days of receipt. CAPACITY and the OFFICE expressly acknowledge and agree that such cash infusion shall be treated in all respects as an offset against and reduction to any amount owed or determined to be owed now or in the future to Capacity, pursuant to or as a result of the Tax Sharing Agreement, dated as of January 1, 2011, by and between CAPACITY and Focus Insurance Corporation.

11. CAPACITY has signed a binding term sheet for a proposed acquisition ("Proposed Acquisition") of CAPACITY and has provided the OFFICE with a copy of the same. The Proposed Acquisition, in part, would provide a capital infusion to ensure policyholder surplus remains sufficient to pay remaining liabilities.

12. CAPACITY shall not write any business in Florida or in any state without the prior written approval of the OFFICE.

13. Based upon its review of the binding term sheet and related documents and representations from CAPACITY, the OFFICE finds that the binding term sheet for the Proposed Acquisition coupled with the successful approval by the OFFICE of the Proposed Acquisition, no later than May 15, 2025, is evidence satisfactory to the OFFICE that the reason for suspension has been remedied and justifies the reinstatement of CAPACITY's Certificate of Authority effective April 14, 2025, pursuant to section 624.421(4), Florida Statutes.

14. Section 624.81(8), Florida Statutes, provides that the OFFICE "may extend the supervision in increments of 60 days or longer…if conditions justifying supervision exist." The OFFICE has determined that grounds exist to extend the period of administrative supervision of CAPACITY.

15. As of the date of the execution of this Consent Order, CAPACITY agrees that conditions exist that necessitate an additional period of administrative supervision.

16. CAPACITY hereby consents to an additional period of administrative supervision of 60 days from the date of execution of this Consent Order.

17. CAPACITY agrees that its Certificate of Authority shall expire on May 15, 2025, if the Proposed Acquisition is not approved by the OFFICE and effectuated by that date.

18. CAPACITY hereby knowingly and voluntarily waives the requirement of written notice under section 624.81(1), and agrees that any timelines outlined in this Consent Order will be binding, notwithstanding any timelines provided for in section 624.81.

19. CAPACITY agrees that all terms of the Supervision Order shall apply and remain in full force and effect, except as superseded by this Consent Order.

20. APPLICANT shall submit, or cause to be submitted, to the OFFICE any documents related to the Proposed Acquisition not already provided to the OFFICE.

21. Any prior orders, consent orders, or corrective action plans that CAPACITY has entered into with the OFFICE prior to the execution of this Consent Order shall apply and remain in full force and effect for CAPACITY, except where provisions of such orders, consent orders, or corrective action plans have expired, other than the Supervision Order as indicated above in paragraph 4; have been superseded by subsequent orders, consent orders, or corrective action plans; or are inconsistent with this Consent Order.

22. CAPACITY affirms that all information, explanations, representations, statements, and documents provided to the OFFICE in connection with the Proposed Acquisition, including all attachments and supplements thereto, are true and correct and fully describe all transactions, agreements, ownership structures, understandings, and control regarding the current situation,

acquisition, and future operations of CAPACITY. CAPACITY further agrees and affirms that said information, explanations, representations, statements, and documents, including all attachments and supplements thereto, are material to the issuance of this Consent Order and have been relied upon by the OFFICE in its determination to enter into this Consent Order.

23. Any deadlines, reporting requirements, other provisions, or requirements set forth in this Consent Order may be altered or terminated by written approval of the OFFICE. Such approval must be requested in writing prior to any proposed deviation from the terms of this Consent Order.

24. CAPACITY affirms that all representations made herein are true and all requirements set forth herein are material to the issuance of this Consent Order.

25. CAPACITY agrees that, upon execution of this Consent Order, failure to adhere to one or more of the terms and conditions contained herein may result, without further proceedings, in the OFFICE suspending, revoking, or taking other administrative action as it deems appropriate upon CAPACITY's Certificate of Authority in this state in accordance with sections 120.569(2)(n) and 120.60(6), Florida Statutes.

26. In accordance with section 624.87, Florida Statutes, CAPACITY agrees to pay to the OFFICE all expenses of supervision incurred subsequent to the date of execution of this Consent Order.

27. Except as provided in paragraph 26 above, each party to this action shall bear its own costs and fees.

28. In respect of this Consent Order, CAPACITY expressly waives a hearing in this matter, the making of findings of fact and conclusions of law by the OFFICE, and all further and other proceedings herein to which it may be entitled by law or rules of the OFFICE. CAPACITY hereby knowingly and voluntarily waives all rights to challenge or to contest this Consent Order

in any forum available to it, now or in the future, including the right to any administrative proceeding, state or federal court action, or any appeal.

29. The parties agree that this Consent Order shall be deemed to be executed when the OFFICE has signed a copy of this Consent Order bearing the signature of the authorized representative of CAPACITY. Further, CAPACITY agrees that the signature of its authorized representative as affixed to this Consent Order shall be under the seal of a Notary Public.

WHEREFORE, the FLORIDA OFFICE OF INSURANCE REGULATION finds that the requirements for CAPACITY INSURANCE COMPANY's Certificate of Authority to be reinstated have been satisfied and that conditions justifying administrative supervision continue to exist. CAPACITY INSURANCE COMPANY's Certificate of Authority is reinstated effective April 14, 2025, and the administrative supervision is hereby agreed to be extended for 60 days from the date of execution of this Consent Order. All terms and conditions contained herein are hereby ORDERED, and all other provisions of Consent Orders 307008-23-CO, 312190-23-CO, 317178-23-CO, 323526-24-CO, 328800-24-CO, 400480-24-CO, and 400939-25-CO remain unchanged by this Consent Order.

FURTHER, all terms and conditions contained herein are hereby ORDERED.

DONE and ORDERED this 14th day of April, 2025.

Michael Yaworsky, Commissioner
Office of Insurance Regulation

By execution hereof, CAPACITY INSURANCE COMPANY consents to entry of this Consent Order, agrees without reservation to all of the above terms and conditions, and shall be bound by all provisions herein. The undersigned represents that they have the authority to bind CAPACITY INSURANCE COMPANY to the terms and conditions of this Consent Order. The undersigned also certifies that they have provided the signature below voluntarily and without coercion, based upon the assistance of legal counsel for CAPACITY INSURANCE COMPANY.

CAPACITY INSURANCE COMPANY

By: Joseph Kurtz

[Corporate Seal]

Print Name: Joseph Kurtz

Title: Secretary

Date: 04/14/2025

STATE OF Florida

COUNTY OF Pasco

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☒ online notarization, this 14th day of April 2025, by Joseph Kurtz (name of person) as Officer (type of authority; e.g., officer, trustee, attorney in fact) for Capacity Insurance Company (company name).

William R Scharff Jr
NOTARY PUBLIC
STATE OF FLORIDA
Appt. No. HH 575957
Expires October 1, 2028
Online Notary Center

William R Scharff Jr
(Signature of the Notary)

William R Scharff Jr
(Print, Type or Stamp Commissioned Name of Notary)

Notarial Act performed by Audio-Video Communication.

Personally Known _____ OR Produced Identification X

Type of identification produced Driver's License

My Commission Expires 10/01/2028

COPIES FURNISHED TO:

SANDY P. FAY, ESQ
1401 NW 136th Ave
Suite 200
Sunrise, Florida 33323
Email: sfay@colodnyfass.com

JANE NELSON, DIRECTOR
Property & Casualty Financial Oversight
Florida Office of Insurance Regulation
200 East Gaines Street
Tallahassee, Florida 32399
Email: jane.nelson@floir.com

COURTNEY ALLYSON COLSTON-HAYES
ASSISTANT GENERAL COUNSEL
Florida Office of Insurance Regulation
200 East Gaines Street
Tallahassee, Florida 32399
Telephone: (850) 413-4174
Email: courtney.colston-hayes@floir.com

SHANNON MICHELLE SEAGRAVES
ASSISTANT GENERAL COUNSEL
Florida Office of Insurance Regulation
200 East Gaines Street
Tallahassee, Florida 32399
Telephone: (850) 413-4213
Email: michelle.seagraves@floir.com