FILED

AUG 29 2025

INSURANCE REGULATION
Docketed by: A.M.V

OFFICE OF INSURANCE REGULATION

MICHAEL YAWORSKY
COMMISSIONER

Index: OIR 2025-168

IN THE MATTER OF:

CASE NO.: 401891-25-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. Following a complete review of the entire record, and upon consideration thereof, and otherwise being fully advised in the premises, the OFFICE hereby finds as follows:

1. The OFFICE has 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 through a certificate of authority issued by the OFFICE, pursuant to chapter 624, Part III, Florida Statutes.[1]

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. CAPACITY represented it would be able to effectuate a solvent runoff of its remaining liabilities.

[1] All statutory references contained herein refer to Florida Statutes (2025), unless otherwise noted.

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

7. As a result of the suspension and in accordance with section 624.421(4), CAPACITY's Certificate of Authority was set to expire on April 14, 2025.

8. The parties executed Consent Order 401106-25-CO on April 14, 2025, which reinstated CAPACITY's Certificate of Authority for thirty days and included a seventh 60-day extension of administrative supervision. Various provisions of Consent Order 401106-25-CO were subsequently extended on May 13, 2025, May 30, 2025, June 30, 2025, and July 31, 2025. CAPACITY's Certificate of Authority is currently set to expire on August 31, 2025.

9. CAPACITY represents that it has written no new business since October 7, 2022, and that it is in the process of running off its liabilities in accordance with the Runoff Plan filed with the OFFICE on March 13, 2023, as amended on March 30, 2023 and April 10, 2023. CAPACITY asserts that if one or more covered claims were to arise CAPACITY would honor those claims and resolve them in compliance with Florida law.

10. CAPACITY has represented that it will receive a cash infusion no later than September 5, 2025, totaling $2,500,000 United States Dollars ("USD"), inclusive of infusions previously made on April 15, 2025, May 15, 2025, and July 1, 2025. Evidence of this infusion shall be provided to the OFFICE within five days of receipt by CAPACITY.

11. CAPACITY shall submit to the OFFICE its 2024 annual financial statement and its 2025 quarterly financial statements no later than November 15, 2025. CAPACITY must file all subsequent financial statements in compliance with section 624.424.

12. Within ninety days of completion of its 2024 annual statement, CAPACITY must file with the OFFICE a balance sheet audit of such, performed by a third-party auditor engaged by CAPACITY.

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

14. Upon the execution of this Consent Order by CAPACITY and the OFFICE, CAPACITY shall further comply with the following:

(a) CAPACITY shall comply with the requirements of section 624.424, including, but not limited to, the filing of the annual statement, quarterly statements, an annual statement of opinion on loss and loss adjustment expense reserves, and the annual independent audited financial report. The OFFICE may require CAPACITY to begin filing monthly financial

statements at any time if the OFFICE deems it necessary to understand the financial condition of CAPACITY;

(b) CAPACITY shall maintain its principal place of business in Florida and shall make available to the OFFICE complete records of its affairs. CAPACITY shall also maintain its office, records, and assets in Florida, pursuant to section 628.271. The physical form, if any, of the assets shall also be maintained in Florida, or in compliance with section 628.511;

(c) CAPACITY shall at all times employ or have under contract one or more persons with the requisite knowledge and experience in statutory accounting to be able to advise, and file statements on behalf of CAPACITY, in accordance with the Statements of Statutory Accounting Principles established and maintained by the National Association of Insurance Commissioners ("NAIC"). If, at any time, CAPACITY does not have such persons on staff or under contract, CAPACITY will notify the OFFICE within three business days and provide a timeline acceptable to the OFFICE for when such positions will be filled, or contractual relationships established;

(d) CAPACITY shall maintain sufficient and adequate internal controls and supervision of any external contractor providing services in connection with the insurance transactions of CAPACITY, and shall further assume responsibility for the actions of said contractor as they relate to any performance under the service agreements;

(e) CAPACITY agrees that any managerial, administrative, or cost-sharing arrangements involving CAPACITY shall be in accordance with a formal written agreement and contain, at a minimum, the following:

i. A requirement of monthly cash settlement of any expenses incurred

for the month; and

ii. A clear delineation of the financial boundaries of each operation. Further, CAPACITY shall not bear any occupancy expenses for space which is occupied by any other entity and, upon examination, shall be prepared to demonstrate how the occupancy cost and space is allocated among co-located entities;

(f) Any agreements that CAPACITY enters into with any affiliated person, entity, or related party, as defined in Statement of Statutory Accounting Principles No. 25 of the NAIC Accounting Practices and Procedures Manual, shall be in writing and shall be submitted to the OFFICE for the OFFICE's review and prior written approval. "Affiliate" and "affiliated person" shall have the same meaning as in section 624.10;

(g) CAPACITY acknowledges that any reinsurance agreement it enters into shall maintain compliance with sections 624.404(4) and 624.610;

(h) CAPACITY's ultimate controlling person(s), as defined in section 628.801(2), shall file with the OFFICE the Enterprise Risk Report required by section 628.801(2), and any and all additional information necessary to evaluate the enterprise risk of CAPACITY and CAPACITY's affiliates;

(i) CAPACITY shall file updates to its Holding Company Registration Statement, as required by section 628.801, and Rule 69O-143.046, Florida Administrative Code;

(j) CAPACITY shall at all times maintain a minimum surplus as to policyholders of $2,000,000 USD.

15. Section 624.81(8) 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.

16. As of the date of execution of this Consent Order, CAPACITY agrees that it has been in administrative supervision since March 3, 2023, and conditions exist that necessitate an additional period of administrative supervision.

17. CAPACITY hereby consents to an additional period of administrative supervision of 120 days from the date of execution of this Consent Order.

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 and affirms that all information, explanations, representations, statements, and documents, including all attachments and supplements thereto provided to the OFFICE in relation to this Consent Order, 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.

20. 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.

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 in this Consent Order; have been superseded by subsequent orders, consent orders, or corrective action plans; or are inconsistent with this Consent Order.

22. 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.

23. 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).

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 it has entered into this Consent Order voluntarily, without coercion from the OFFICE, or any agent, employee, or designee of the OFFICE, and that CAPACITY has obtained legal counsel prior to entering into this Consent Order.

26. In accordance with section 624.87, 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. 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 notarized signature of the authorized representative of CAPACITY.

WHEREFORE, subject to the above terms and conditions, CAPACITY INSURANCE COMPANY's Certificate of Authority is reinstated effective April 14, 2025. The FLORIDA OFFICE OF INSURANCE REGULATION has determined that conditions justifying administrative supervision continue to exist, and administrative supervision is hereby extended for 120 days from the date of execution of this Consent Order.

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

DONE and ORDERED this 29 day of August, 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: Assistant Secretary

Date: 08/29/2025

STATE OF Florida

COUNTY OF Broward

The foregoing instrument was acknowledged before me by means of ☐ physical presence

or ☒ online notarization, this 29th day of August 2025, by Joseph Kurtz
(name of person)

as Assistant Secretary for Capacity Insurance Company.
(type of authority; e.g., officer, trustee, attorney in fact) (company name)

David Merkatz
NOTARY PUBLIC
STATE OF FLORIDA
Appt. No. HH 387674
Expires February 28, 2027
Online Notary Center

David Merkatz (Signature of the Notary)

David Merkatz
(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 02/28/2027

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