

APPENDIX B

FORM OF CLOSING AGREEMENT FOR CONVENTIONS WITH AN ANTI-CONDUIT LIMITATION

CLOSING AGREEMENT ON FINAL DETERMINATION COVERING SPECIFIC MATTERS

Under section 7121 of the Internal Revenue Code of 1986, as amended (the “Code”), the taxpayer (as identified on the signature page of this agreement by taxpayer’s name and address) (herein referred to as “Taxpayer”) and the Commissioner of Internal Revenue (the “Commissioner”) make the following closing agreement (this “Closing Agreement”):

WHEREAS, the Business Profits article of the income tax convention between the United States and Treaty Country (as identified on the signature page of this Closing Agreement), under which benefits are being claimed (the “Convention”), exempts insurance or reinsurance premiums paid to a resident of Treaty Country from the Federal excise tax imposed by section 4371 *et seq.* of the Code (the “Insurance Excise Tax”) only to the extent that (i) the policy was not entered into as part of a conduit arrangement, (ii) the premium was a receipt of a business of insurance carried on by an enterprise of Treaty Country, and (iii) the insurer or reinsurer qualifies under the Limitation on Benefits article of the Convention;

WHEREAS, section 3.01 of Rev. Proc. 2003–78 provides that the person otherwise required to remit the Insurance Excise Tax on account of premiums paid to a foreign insurance or reinsurance company may consider the premium exempt from the Insurance Excise Tax under an income tax treaty if premiums are paid to an insurer or reinsurer that is a resident for treaty purposes of a country with which the United States has a treaty containing an excise tax exemption and, prior to filing the return for the taxable period, such person has knowledge that Taxpayer has in effect for such taxable period a closing agreement with the Internal Revenue Service to be liable as a United States taxpayer for the Insurance Excise Tax pursuant to section 4371 *et seq.*, subject to an applicable exemption under the Convention or any other convention from the Insurance Excise Tax; and

WHEREAS, Taxpayer represents that it is and anticipates continuing to be eligible for benefits under the Convention.

IT IS HEREBY DETERMINED AND AGREED THAT:

(1) Taxpayer shall, for purposes of this closing agreement, be liable as a United States taxpayer for the Insurance Excise Tax on premiums pursuant to section 4371 *et seq.*, subject to an applicable exemption from the Insurance Excise Tax under the Convention or any other convention.

(2)(a) Returns of Insurance Excise Tax due under and pursuant to this Closing Agreement and section 4371 *et seq.* of the Code shall be made by Taxpayer, or by Taxpayer's authorized representative on Taxpayer's behalf, by filing Form 720, *Quarterly Federal Excise Tax Return*, for each return period covered by this Closing Agreement.

(b) For purposes of determining the tax with respect to premiums received on policies issued by the Taxpayer that do not qualify for an exemption under the Convention because Taxpayer, as part of a conduit arrangement, reinsures, in whole or in part, a policy of insurance or reinsurance with any person(s) not entitled to exemption from the Insurance Excise Tax under the Convention or any other convention, the tax reportable on the return (Form 720) shall be computed on the basis of the percentage of such policies reinsured. For purposes of the preceding sentence, Taxpayer may consider a reinsurer to be entitled to exemption from the excise tax if the reinsurer is a party to a closing agreement with the Internal Revenue Service, pursuant to Rev. Proc. 2003-78 or a predecessor revenue procedure, under the Convention or an income tax convention between the United States and another country.

(c) Forms 720 shall be filed with the Internal Revenue Service Center, Cincinnati, OH 45999-0009.

(d) Taxpayer, or Taxpayer's authorized representative, shall make the required Federal tax deposits of the Insurance Excise Tax in such manner and at such times as are provided in the Federal tax regulations and in the instructions for Form 720.

(3) Taxpayer agrees that this Closing Agreement is not intended to modify the liability for the Insurance Excise Tax under section 4371 *et seq.* of the Code.

(4) Taxpayer agrees that, for purposes of determining its Insurance Excise Tax liability pursuant to this Closing Agreement and for purposes of verifying Taxpayer's entitlement to benefits under the Convention, Taxpayer will maintain for a period of 6 years from the end of each taxable period to which this Closing Agreement applies (i) accounts and records of items of insurance and reinsurance, and (ii) records to establish eligibility for benefits under the Convention, in each case, that will be made available upon written request by the Internal Revenue Service at the place mutually agreed upon by the Service and Taxpayer. Taxpayer will be allowed 60 days, or other period of time determined as reasonable by the Service within which to make available its accounts and records.

(5) If it is determined that there is an underpayment in respect of any Insurance Excise Tax determined to be due pursuant to this Closing Agreement and section 4371 *et seq.* of the Code, the Internal Revenue Service shall issue a statement of notice and demand for the tax due plus any interest and applicable penalties. Notice of any underpayment shall be sent to Taxpayer at the name and address shown on the Form 720, if a Form 720 was filed for the period for which an underpayment is determined by the Internal Revenue Service, or otherwise to Taxpayer's registered address in Treaty Country. Payment of all additional amounts due shall be made in accordance with the terms specified in the statement of notice and demand. Collection of such amounts not paid per notice and demand shall be in accordance with paragraph (6) hereof.

(6)(a) As security for payment of tax, Taxpayer shall cause an irrevocable letter of credit to be issued by a United States bank that is a member of the Federal Reserve System, or by a United States branch or agency of a foreign bank that is on the National Association of Insurance Commissioners list of banks from which letters of credit may be accepted, in favor of the Internal Revenue Service in the amount of \$75,000, unless the Internal Revenue Service determines that circumstances warrant a letter of credit in an increased amount. Such letter of credit must be effective as of the date that the Closing Agreement is signed by the Commissioner or his delegate, and must provide that it will be automatically extended by the issuing bank for periods of one year, without amendment, from the then relevant expiration date unless the issuing bank notifies the Internal Revenue Service in writing at least 90 days prior to the then relevant expiration date by registered mail that the issuing bank will not extend the letter of credit for any additional period.

(b) The Service may issue a statement of notice and demand with respect to:

(i) Any tax shown on a Form 720 (original, amended, or substitute for return) that is not paid with such return; or

(ii) Any proposed additional liability for the Insurance Excise Tax sustained by the Internal Revenue Service Regional Director of Appeals having jurisdiction over such matter, if the time for filing a protest of such proposed liability has expired, provided that the statement of notice and demand has been issued as provided in paragraph (5) hereof.

(c) If, after the conditions in paragraph (6)(b) hereof have been met, the tax, interest, and any applicable penalties are not paid in accordance with the terms of the statement of notice and demand, collection of such amounts will be made by resorting to such letter of credit, to the extent thereof, before any levy or proceeding in court for collection is instituted against Taxpayer.

(d) If such letter of credit is drawn upon, it must be reinstated to \$75,000, or such higher amount as determined by the Internal Revenue Service pursuant to paragraph (6)(a) of this Closing Agreement, within 60 days after the date drawn upon.

(7)(a) Solely by reason of the execution by Taxpayer and the Commissioner of this Closing Agreement, any person otherwise required to remit the Insurance Excise Tax on insurance or reinsurance premiums pursuant to section 46.4374-1(c) of the Excise Tax Regulations may consider premiums paid to Taxpayer after the effective date of this Closing Agreement as exempt under the Convention from the Insurance Excise Tax, unless such person has knowledge that the foreign insurer or reinsurer did not qualify for benefits under the Convention during the relevant taxable period.

(b) Taxpayer agrees that the Commissioner or his or her authorized delegate may disclose, by publication or otherwise, Taxpayer's name as an insurer or reinsurer that has entered into a closing agreement under this revenue procedure.

(8) Taxpayer agrees to promptly notify the Competent Authority of Treaty Country and the Internal Revenue Service of any change that results in Taxpayer no longer qualifying for benefits under the Convention with respect to the Insurance Excise Tax. Taxpayer also agrees to promptly notify any person that has previously relied on this Closing Agreement and is required to remit the Insurance Excise Tax on account of premiums paid to Taxpayer that Taxpayer is not entitled to exemption from the Insurance Excise Tax.

(9) The statement submitted in accordance with section 3.04(1)(a) of Rev. Proc. 2003-78 is valid for the period provided in section 1.1441-1(e)(4)(ii) of the Treasury Regulations, or any successor regulations, beginning on the effective date of this Closing Agreement. On or before the expiration of the original validity period, or any subsequent validity period, Taxpayer will file with the Commissioner the same statement, signed under penalties of perjury, along with one copy of the closing agreement to the address set forth in subparagraph (e) of paragraph (10).

(10)(a) This Closing Agreement shall continue in effect until terminated as provided in subparagraph (b) of this paragraph.

(b) This Closing Agreement may be terminated by either Taxpayer or the Commissioner by giving the other written notice of the notifying party's intent to terminate. The decision to terminate is solely at the discretion of the party giving such notice. This Closing Agreement shall be terminated at the close of the last day of the quarterly return period immediately following the return period within which the written notice of termination is given. Taxpayer agrees that the Commissioner or his or her authorized delegate may disclose, by publication or otherwise, Taxpayer's name as an insurer or reinsurer whose closing agreement under this revenue procedure has been terminated.

(c) Taxpayer hereby agrees to file a return, Form 720, marked "Final Return" for the taxable period within which this Closing Agreement terminates pursuant to subparagraph (b) of this paragraph, in accordance with rules provided in the Federal tax regulations and the instructions for Form 720. Taxpayer also agrees to furnish a duplicate of such "Final Return" to the address set forth in subparagraph (e) of this paragraph.

(d) Taxpayer agrees that the letter of credit issued pursuant to paragraph (6) hereof shall remain in effect for a period of not less than 60 days after the "Final Return" has been filed in accordance with subparagraph (c) hereof, or until the examination of Taxpayer's returns is completed and any additional tax due has been paid, whichever is later.

(e) Taxpayer agrees to file the statement required by paragraph (9) and the duplicate Form 720 required by subparagraph (c) of this paragraph at the following address:

Internal Revenue Service
Attn: SE:LB:WEIIC:FPP:FPPO:1190
290 Broadway, 12th Floor, MS-12 E
New York, NY 10007 USA

WHEREAS, the determinations set forth above are hereby agreed to by Taxpayer:

This Closing Agreement is final and conclusive except:

(1) the matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of material fact;

(2) it is subject to the Code sections that expressly provide that effect be given to their provisions (including any stated exception for section 7122) notwithstanding any other law or rule of law; and

(3) if it relates to a tax period ending after the date of this agreement, it is subject to any change or modification of applicable statutes or tax conventions that apply to that tax period.

IN WITNESS WHEREOF, the above parties have subscribed their names to these presents, in triplicate.

Date _____

By _____

Title _____
(Name of Taxpayer and authorized representative)

Address _____

Taxpayer Identification Number _____

(If the applicant does not already have a TIN, one will be supplied by the Service pursuant to the completed Form SS-4 submitted with the request for the closing agreement)

Treaty Country _____

Associate Chief Counsel (International)

Date _____

By _____

Director, International

Date _____

By _____