

**IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
No. 6405 of 2011**

IN THE MATTER OF PATERNOSTER UK LIMITED

and

IN THE MATTER OF ROTHESAY LIFE LIMITED

and

IN THE MATTER OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

The Scheme

pursuant to Part VII of the Financial Services and Markets Act 2000 for the transfer to Rothesay Life Limited of the business of Paternoster UK Limited.

Table of Contents

Contents	Page
1 Interpretation	1
2 Preliminary	9
3 Transfer of the business and assets	10
4 Transfer of liabilities	10
5 Allocation of Transferred Policies.....	11
6 Allocation of Transferred Assets.....	11
7 Allocation of Transferred Liabilities	11
8 Continuity	12
9 Rights and Obligations under Transferred Policies.....	14
10 Excluded Policies	14
11 Premiums and mandates	15
12 Declaration of Trust by Transferor.....	16
13 Indemnities	16
14 Effective Time.....	18
15 Costs and Expenses	18
16 Modifications or Additions	19
17 Third Party Rights.....	19
18 Governing law	19

Part A - Definitions

1 Interpretation

1.1 Definitions

In this Scheme, unless inconsistent with the subject or context, the following expressions bear the meanings respectively set opposite them:

“Act”	the Financial Services and Markets Act 2000 together with the rules and regulations implemented pursuant thereto;
“Actuarial Function Holder”	the person appointed from time to time to perform the office of actuarial function pursuant to SUP 4.3.1(1)(a)R;
“Admissible Assets”	assets of a type listed in Annex 7 of Chapter 2 of GENPRU;
“Admissible Value”	in connection with a set of Admissible Assets, the value of those Admissible Assets, determined in accordance with the rules from time to time in GENPRU and INSPRU applicable to valuing such assets in FSA Returns;
“Capital Resources Requirement”	the meaning set out in the Glossary;
“Condition”	the meaning set out in paragraph 14.3;
“Court”	the High Court of Justice in England and Wales;
“Effective Time”	the date and time at which this Scheme becomes effective in accordance with paragraph 14;
“Encumbrance”	any mortgage, charge, pledge, security, lien, option, restriction, right of first refusal, right of pre-emption, third party right or interest, any other encumbrance or security interest of any kind and any other type of preferential arrangement (including title, transfer and retention arrangements) having a similar effect;
“Excluded Policies”	<p>Policies written, or assumed, by the Transferor, under which any liability remains unsatisfied or outstanding at the Effective Time, or proposals for insurance received by, the Transferor:</p> <p>(a) in the course of effecting or carrying out insurance business in the UK or any other EEA State, in respect of which:</p> <p>(i) for the purpose of Part VII of the Act an EEA State other than the UK is the State of the commitment; and</p> <p>(ii) the FSA has not prior to the issue of the Order by which the Court sanctions this Scheme delivered a certificate in the form required by paragraph 4 of Part I of Schedule 12 to the Act in respect of the relevant EEA State which is</p>

the State of the commitment,

and for these purposes, “**State of the commitment**” bears the meaning ascribed thereto in paragraph 6 of Part I of Schedule 12 to the Act and “**EEA State**” bears the meaning ascribed thereto in paragraph 8 of Part I of Schedule 3 to the Act; or

- (b) which are not capable of being transferred pursuant to Part VII of the Act at the Effective Time;

and any further Policy issued by the Transferor pursuant to the exercise of any right or option under an Excluded Policy as described in paragraph 10.5;

“Excluded Policies Reassurance Agreement”	the reinsurance agreement to be entered into between the Transferor and the Transferee in respect of Excluded Policies in the form agreed between the parties pursuant to paragraph 10.2;
“FSA”	the Financial Services Authority or such other governmental, statutory or other authority as shall from time to time carry out such functions in relation to insurance companies as are allocated to the FSA under the Act;
“FSA Handbook”	the Handbook of rules and guidance made by the FSA from time to time pursuant to the Act;
“FSA Returns”	the returns required to be deposited with the FSA pursuant to paragraph 9.6 of IPRU(INS) in the FSA Handbook;
“GENPRU”	the General Prudential Sourcebook or, as the case may be, such successor provisions of the FSA Handbook as most closely replace the contents thereof;
“Glossary”	the Glossary to the FSA Handbook;
“INSPRU”	the Prudential Sourcebook for Insurers forming part of the FSA Handbook or, as the case may be, such successor provisions of the FSA Handbook as most closely replace the contents thereof;
“Long-Term Insurance Business”	the meaning set out in the Glossary;
“Long-Term Insurance Fund”	the meaning set out in INSPRU 1.5.22R;
“Order”	an order made by the Court pursuant to Section 111 of the Act sanctioning this Scheme and any order (including any subsequent order) in relation to this Scheme made by the Court pursuant to Section 112 of the Act;

“Policy” and “Policyholder”	each have the meaning, as appropriate, set out in Section 424(2) of the Act and Regulation 2 of the Financial Services and Markets Act 2000 (Meaning of “Policy” and “Policyholder”) Order 2001 and including at any time any constituent part of a Policy which, in the opinion of the Transferee Actuarial Function Holder, gives rise to any separately identifiable benefit;
“Proceedings”	the meaning set out in paragraph 8.2;
“Records”	means all documents, files and other records, whether in physical or electronic form, relating to the Transferred Business, Transferred Policies, the Transferred Assets, the Residual Assets, the Transferred Liabilities and the Residual Liabilities which are in the possession of, or under the control of, the Transferor;
“Residual Assets”	<ul style="list-style-type: none"> (a) any property or other rights of the Transferor in respect of which the Court has declined to order the transfer to the Transferee under Section 112 of the Act; (b) any other property of the Transferor attributable to the Transferred Business (including any right or benefit under any Transferred Policy) where the Transferor and the Transferee agree that the transfer of such property should be delayed; (c) any property of the Transferor which is outside the jurisdiction of the Court or in respect of which its transfer pursuant to an order of the Court is not recognised by the laws of the jurisdiction in which the property is situated; (d) any property of the Transferor which cannot be transferred or vested in the Transferee for any other reason; (e) property with an Admissible Value equal to the Solvency Amount; and (f) any proceeds of sale or income or other accrual or return, whether or not in the form of cash, earned or received from time to time after the Effective Time in respect of any property referred to in paragraphs (a) to (e) of this definition;
“Residual Liability”	<p>any liability whatsoever, other than under an Excluded Policy, of the Transferor:</p> <ul style="list-style-type: none"> (a) that is attributable to or connected with a Residual Asset and arises at any time before the Subsequent Transfer Date applicable to that Residual Asset; (b) in respect of which the Court has declined to order the

transfer to the Transferee under Section 112 of the Act;

- (c) any liability of the Transferor which cannot be transferred to or vested in the Transferee for any other reason; or
- (d) attributable to the Transferred Business (including any liability to Tax in respect of all transactions, income, profits and gains effected, earned, accrued or received on, or in respect of, the Transferred Business and the Transferred Assets at or before the Effective Time) where the Transferor and the Transferee agree that the transfer of such liability should be delayed or that such liability should not be transferred;

“Scheme” this Scheme in its original form or with or subject to any modification, addition or condition that may be approved or imposed in accordance with paragraph 18;

“Shareholder Fund” the fund containing the property and liabilities of the Transferor or of the Transferee, as the context so requires, other than those allocated to their Long-Term Insurance Funds or otherwise attributable to their Long-Term Insurance Businesses;

“Solvency Amount” the Admissible Value of such property as the Transferor Board, having taken appropriate actuarial advice, shall determine as sufficient to meet its Capital Resources Requirements taking full account of the Excluded Policies Reassurance Agreement in relation to Excluded Policies;

“Subsequent Transfer Date” in relation to any Residual Asset or Residual Liability, the date after the Effective Time on which such Residual Asset or Residual Liability is or is to be transferred to the Transferee, namely:

- (a) in respect of any Residual Asset falling within paragraph (a), (c) or (d) of the definition of “Residual Assets”, and of any Residual Liability which is attributable to or connected with that Residual Asset, or which falls within paragraph (b) or (c) of the definition of Residual Liability, the date on which any impediment to its transfer shall have been removed or overcome;
- (b) in respect of any Residual Asset falling within paragraph (b) or (f) of the definition of Residual Assets, of any Residual Liability which is attributable to or connected with that Residual Asset, and of any Residual Liability falling within paragraph (d) of the definition of Residual Liability, the date on which the parties agree the transfer should take effect; and

	(c) in respect of Residual Assets falling within paragraph (e) of the definition of Residual Assets and of any Residual Liability which is attributable to or connected with those Residual Assets, the date on which such assets are no longer required to meet the Capital Resources Requirement of the Transferor;
“SUP”	the Supervision Manual forming part of the FSA Handbook;
“Tax” or “Taxation”	all forms of tax, duty, rate, levy, charge or other imposition or withholding whenever and by whatever authority imposed and whether of the United Kingdom or elsewhere, including income tax, corporation tax, advance corporation tax, capital gains tax, inheritance tax, value added tax, customs duties, excise duties, stamp duty, stamp duty reserve tax, stamp duty land tax, national insurance and other similar contributions, and any other taxes, duties, rates, levies, charges, imposts or withholdings corresponding to, similar to, replaced by or replacing any of them, together with any interest, penalty or fine in connection with any taxation;
“Transferee”	Rothesay Life Limited, a company incorporated in England and Wales (registered number 06127279), whose registered office is at Peterborough Court, 133 Fleet Street, London EC4A 2BB;
“Transferee Actuarial Function Holder”	the Actuarial Function Holder of the Transferee;
“Transferee Board”	the board of directors of the Transferee, or, with reference to any decision in this Scheme the responsibility for which is assigned to the Transferee Board, any committee or individual to whom the board of directors of the Transferee has at that time delegated the authority to make that decision;
“Transferee Group”	the Transferee, any holding company from time to time of the Transferee and any subsidiary from time to time of any such holding company;
“Transferee Long-Term Insurance Fund”	the Long-Term Insurance Fund of the Transferee;
“Transferee Shareholder Fund”	the Shareholder Fund of the Transferee;
“Transferor”	Paternoster UK Limited, a company incorporated in England and Wales (registered number 5656083), whose registered office is at Fleet Place House, 2 Fleet Place, London EC4M 7RF;
“Transferor Board”	the board of directors of the Transferor or, with reference to any decision in this Scheme the responsibility for which is assigned to the Transferor Board, any committee or individual to whom the board of directors of the Transferor has at that time delegated the authority to make that decision;

“Transferor Long-Term Insurance Fund”	the Long-Term Insurance Fund of the Transferor;
“Transferor Shareholder Fund”	the Shareholder Fund of the Transferor;
“Transferred Assets”	<p>all property of the Transferor whatsoever and wheresoever situated as at the Effective Time, other than:</p> <p>(a) the Residual Assets; and</p> <p>(b) the rights, benefits and powers under the Excluded Policies,</p> <p>but including all rights and powers under or by virtue of the Transferred Policies and including the Records, and all rights, title and interest of the Transferor in the Records;</p>
“Transferred Business”	the whole undertaking and business of the Transferor, whatsoever and wheresoever (including the Transferred Policies) other than the Residual Assets, the Residual Liabilities and the Excluded Policies;
“Transferred Liabilities”	all liabilities of the Transferor as at the Effective Time (other than any liabilities attributable to the Excluded Policies and the Residual Liabilities) whatsoever and wheresoever, including all liabilities under the Transferred Policies and all liability to Tax (other than any that is a Residual Liability) in respect of all transactions, income, profits and gains effected, earned, accrued or received on, or in respect of, the Transferred Business and the Transferred Assets on or before the Effective Time;
“Transferred Policies”	<p>every Policy or, as the context may require, part of a Policy written or assumed by the Transferor under which any liability or contingent liability remains unsatisfied or outstanding at the Effective Time, including:</p> <p>(a) all proposals for insurance received by the Transferor before the Effective Time which have not become Policies in force by the Effective Time but which subsequently become Policies; and</p> <p>(b) any Policy written by the Transferor that has lapsed on or before the Effective Time and which is reinstated by the Transferee after the Effective Time,</p> <p>but excluding the Excluded Policies; and</p>
“UK” or “United Kingdom”	the United Kingdom of Great Britain and Northern Ireland.

1.2 In this Scheme:

- 1.2.1 any reference to the Transferee Board or the Transferor Board having taken **“appropriate actuarial advice”** or similar shall mean the advice of the Actuarial Function Holder and, if the Transferee Board or the Transferor Board, as

appropriate, determines in its absolute discretion to obtain external actuarial advice, that external actuarial advice;

- 1.2.2 “**assets**” includes property, rights and powers of any description;
- 1.2.3 “**liabilities**” includes duties and obligations of every description (whether present or future, actual or contingent);
- 1.2.4 “**property**” includes property, assets, rights (including contingent rights as to the repayment of Tax), benefits and powers of every description (whether present or future, actual or contingent) and, for the avoidance of doubt, includes investment management agreements, service agreements and external and internal reinsurance agreements (where relevant) and includes property held on trust and any interest whatsoever in any of the foregoing;
- 1.2.5 “**transfer**” includes (as the context may require) “assign”, “assignment” or “assignment”, “dispose” or “disposal” or “convey” or “conveyance”;
- 1.2.6 any reference to the singular shall (where appropriate) include a reference to the plural and vice versa and any reference to the masculine shall include a reference to the feminine and neuter and vice versa (unless the context otherwise requires);
- 1.2.7 save as expressly provided otherwise, any reference in this Scheme to an enactment, a statutory provision or any subordinate legislation (including for the avoidance of doubt provisions of the FSA Handbook) shall be deemed to include a reference to that enactment, statutory provision or subordinate legislation as amended, replaced or re-enacted from time to time after the date of this Scheme and to any instrument or order made from time to time after the date of this Scheme under such enactment, statutory provision or subordinate legislation;
- 1.2.8 expressions used in this Scheme which have meanings under the Act shall bear those meanings (unless the context otherwise requires);
- 1.2.9 any references to paragraphs or Parts are to paragraphs or Parts of this Scheme (unless the context otherwise requires);
- 1.2.10 headings are inserted for convenience only and shall not affect the construction of this Scheme;
- 1.2.11 any reference to a person shall include a reference to any individual, company, firm, partnership, joint venture, association, organisation, trust or agency, whether or not having a separate legal personality;
- 1.2.12 if a period of time is specified from a given day or date or from the day or date of an actual event, it shall be calculated exclusive of that day or date;
- 1.2.13 any reference to writing shall include any modes of reproducing words in a legible and non-transitory form;
- 1.2.14 any reference to a document in the form agreed is to the form of the relevant document agreed between the parties in accordance with this Scheme and for the purpose of identification initialled by or on behalf of the parties prior to the date on which the Court sanctions this Scheme;
- 1.2.15 the expression “**variation**” or “**varied**” shall include any variation, supplement, deletion, replacement or termination, however effected;

1.2.16 any reference to an amount shall be exclusive of any applicable value added or other Tax (unless the context otherwise requires); and

1.2.17 any reference to “**including**” shall mean “including without limitation”.

Part B - Introduction

2 Preliminary

- 2.1** At the date of this Scheme, each of the Transferor and the Transferee is an insurer (as defined in the Glossary) and each is permitted under Part IV of the Act to effect and carry out Long-Term Insurance Business in the UK.
- 2.2** It is proposed that the whole of the Long-Term Insurance Business of the Transferor and the Transferor Shareholder Fund shall, in accordance with the Scheme, be transferred to the Transferee (and that an Order be made accordingly for the sanction of this Scheme) and that, by the Order by which this Scheme is sanctioned, provision be made, as hereinafter appearing, for, *inter alia*, the transfer to the Transferee of the Transferred Business.

Part C - Transfer of Business

3 Transfer of the business and assets

- 3.1** At the Effective Time the Transferred Business shall be transferred to and vest in the Transferee in accordance with this Scheme, so that:
- 3.1.1** at the Effective Time the Transferred Assets and all the interest of the Transferor in them shall by the Order and without any further act or instrument be transferred to the Transferee subject to all Encumbrances (if any) affecting such assets; and
 - 3.1.2** on and with effect from each Subsequent Transfer Date each Residual Asset to which such Subsequent Transfer Date applies and all the interest of the Transferor in it shall by the Order and without any further act or instrument be transferred to the Transferee subject to all Encumbrances (if any) affecting such asset.
- 3.2** The Transferee shall accept without investigation, requisition or objection such title as the Transferor shall have at the Effective Time to the Transferred Assets and the Transferred Business and, at each Subsequent Transfer Date, to each Residual Asset transferred on that Subsequent Transfer Date.
- 3.3** The Transferee and the Transferor shall each execute such documents as the Transferee may require to effect or perfect the transfer to the Transferee of the Transferred Assets and the Transferred Business.
- 3.4** Where any of the Transferred Assets are held by the Transferor as trustee, the Transferee shall hold those assets as trustee subject to the same trusts with effect from the Effective Time.

4 Transfer of liabilities

- 4.1** At the Effective Time the Transferred Liabilities shall by the Order and without any further act or instrument be transferred to, and shall become liabilities of, the Transferee and shall cease to be liabilities of the Transferor.
- 4.2** On each Subsequent Transfer Date each Residual Liability to which such Subsequent Transfer Date applies shall by the Order and without any further act or instrument be transferred to, and shall become a liability of, the Transferee and shall cease to be a liability of the Transferor.
- 4.3** From the Effective Time the Transferee shall discharge on the Transferor's behalf or, failing which, shall indemnify the Transferor against the Transferred Liabilities and Residual Liabilities on the terms set out in paragraph 13.

Part D - Long-Term Insurance Fund

5 Allocation of Transferred Policies

- 5.1** With effect from the Effective Time all the Transferred Policies shall be allocated to the Transferee Long-Term Insurance Fund.
- 5.2** Any applications for Policies (other than Excluded Policies) or increases to Policies (other than Excluded Policies) received by the Transferor before the Effective Time which have not been accepted before the Effective Time shall be treated as if they were applications for Policies or increases to Policies made to the Transferee after the Effective Time and, if duly accepted by the Transferee, shall be allocated to the Transferee Long-Term Insurance Fund pursuant to paragraph 5.1 as if they were applications for Policies or increases to Policies made to the Transferee after the Effective Time.
- 5.3** All premiums and increases on Transferred Policies after the Effective Time shall be allocated to the Transferee Long-Term Insurance Fund.

6 Allocation of Transferred Assets

- 6.1** At the Effective Time, all the Transferred Assets allocated to the Transferor Shareholder Fund shall be allocated to the Transferee Shareholder Fund.
- 6.2** At the Effective Time, all the Transferred Assets not otherwise allocated pursuant to paragraph 6.1 shall be allocated to the Transferee Long-Term Insurance Fund.
- 6.3** All rights and benefits arising under the Excluded Policies Reassurance Agreement and the beneficial interest in all property held on trust pursuant to paragraph 12.1, and the right to receive any payment, property or right pursuant to paragraph 12.3, to the extent that, but for falling within the provisions of paragraph 12.1, such property (or the property to which such payment, property or right relates) would have fallen within the provisions of this paragraph and to the extent that the same relate to Policies, shall be allocated to the Transferee Long-Term Insurance Fund.
- 6.4** On and with effect from the applicable Subsequent Transfer Date each Residual Asset to which that Subsequent Transfer Date relates shall be allocated to the Transferee Long-Term Insurance Fund or the Transferee Shareholder Fund depending on where it would have been allocated in accordance with the provisions of the paragraphs above had it been a Transferred Asset.

7 Allocation of Transferred Liabilities

- 7.1** At the Effective Time, or the applicable Subsequent Transfer Date (as the case may be), Transferred Liabilities and Residual Liabilities arising from or in respect of Transferred Policies, Transferred Assets, Residual Assets or Transferred Business shall be allocated to the Transferee Long-Term Insurance Fund or the Transferee Shareholder Fund depending on where the relevant Transferred Policies, Transferred Assets, Residual Assets or Transferred Business from or in respect of which such liability arises has been allocated under paragraph 5 or 6.

- 7.2** At the Effective Time, all Transferred Liabilities not allocated under paragraph 7.1 which are allocated to the Transferor Long-Term Insurance Fund immediately prior to the Effective Time shall be allocated to the Transferee Long-Term Insurance Fund.
- 7.3** At the Effective Time, all Transferred Liabilities not allocated under paragraph 7.1 which are allocated immediately prior to the Effective Time to the Transferor Shareholder Fund shall be allocated to the Transferee Shareholder Fund.
- 7.4** On and with effect from the Effective Time, liabilities under the Excluded Policies Reassurance Agreement shall be allocated to the Transferee Long-Term Insurance Fund.
- 7.5** Any liability to indemnify the Transferor pursuant to paragraph 13.3 and the liability to discharge liabilities on the Transferor's behalf, or failing which to indemnify the Transferor, pursuant to paragraph 13, shall be allocated to the Transferee Long-Term Insurance Fund or the Transferee Shareholder Fund depending on where such liability (or the property to which such liability relates) would have been allocated in accordance with the provisions above had it been a Transferred Liability.
- 7.6** On and with effect from the applicable Subsequent Transfer Date each Residual Liability to which that Subsequent Transfer Date relates shall be allocated to the Transferee Long-Term Insurance Fund or the Transferee Shareholder Fund depending on where it would have been allocated in accordance with the provisions above had it been a Transferred Liability.
- 7.7** If any doubt or difference shall arise as to the allocation or attribution of any Transferred Policy, Transferred Asset, Transferred Liability, Residual Asset or Residual Liability in accordance with this Scheme, having regard to the obligation to treat policyholders fairly, the same shall be determined by the Transferee Board, having taken appropriate advice.

8 Continuity

- 8.1** At and with effect from the Effective Time or Subsequent Transfer Date, as the case may be, all references to the Transferor in any contracts with any party, or in any document or instrument, relating to the Transferred Business shall, insofar as they were transferred to the Transferee, be read and construed as if the same were references to the Transferee so that such contract, document or instrument shall take effect as if the Transferee was the original party to the contract, document or instrument in place of the Transferor.
- 8.2** At and with effect from the Effective Time, any judicial, quasi-judicial, administrative or other proceedings (whether by way of a claim, complaint, demand, legal proceedings, execution or judgement, arbitration, regulatory review or process) (the "**Proceedings**") which are threatened, pending or current by or against the Transferor in relation to the Transferred Business, the Transferred Assets or the Transferred Liabilities (or, in connection with a Residual Asset or Residual Liability, on and with effect from the Subsequent Transfer Date applicable to it) shall be continued by or against the Transferee and the Transferee shall be entitled to any and all defences, claims, counterclaims and rights of set-off that would have been available to the Transferor in relation to the relevant part(s) of such Proceedings.
- 8.3** At and with effect from the Effective Time, any judgement, settlement, order or award under existing or past Proceedings obtained by or against the Transferor in relation to the Transferred Business, the Transferred Assets or the Transferred Liabilities (or, in connection with a Residual Asset or Residual Liability, on and with effect from the

Subsequent Transfer Date applicable to it) shall be enforceable by or against the Transferee if such judgement, settlement, order or award has not already been satisfied prior to the Effective Time or the relevant Subsequent Transfer Date (as the case may be).

8.4 All references in any Transferred Policy to:

- 8.4.1 the Transferor;
- 8.4.2 its offices;
- 8.4.3 its board of directors;
- 8.4.4 its auditor;
- 8.4.5 its Actuarial Function Holder; or
- 8.4.6 any other officers, employees or agents of the Transferor,

shall from and after the Effective Time be read as references to, respectively:

- 8.4.7 the Transferee;
- 8.4.8 its offices;
- 8.4.9 its board of directors;
- 8.4.10 its auditor;
- 8.4.11 its Actuarial Function Holder (as appropriate); or
- 8.4.12 the appropriate officers, employees or, where appropriate, agents of the Transferee.

In particular, but without limitation, all rights and/or duties exercisable or expressed to be exercisable or responsibilities to be performed by any of:

- 8.4.13 the Transferor;
- 8.4.14 its board of directors;
- 8.4.15 its auditor;
- 8.4.16 its Actuarial Function Holder; or
- 8.4.17 any other officers, employees or agents of the Transferor

in relation to any of the Transferred Policies shall, from the Effective Time, be exercisable or required to be performed by, respectively:

- 8.4.18 the Transferee;
- 8.4.19 its board of directors;
- 8.4.20 its auditor;
- 8.4.21 its Actuarial Function Holder (as appropriate); or
- 8.4.22 the appropriate officers, employees or, where appropriate, agents of the Transferee,

as the case may be.

9 Rights and Obligations under Transferred Policies

9.1 At and with effect from the Effective Time, the Transferee shall become entitled to all the rights, benefits and powers of the Transferor whatsoever subsisting at the Effective Time under or by virtue of the Transferred Policies.

9.2 Every person who is a holder of any of the Transferred Policies shall, at and with effect from the Effective Time, become entitled, in succession to, and to the exclusion of, any rights which he may have had against the Transferor under any of the Transferred Policies, to the same rights against the Transferee as were available to him against the Transferor under such Policy and (as regards Transferred Policies under which premiums or other sums attributable or referable thereto continue to be payable) shall at and with effect from the Effective Time account to the Transferee for any further or additional premiums or other sums attributable or referable thereto as and when the same become due and payable.

9.3 If any person entitled to do so with respect to a Transferred Policy exercises any right or option granted under the terms of that Policy and either:

9.3.1 the right or option provides for a new, additional or replacement Policy to be issued or amendments to be made to an existing Transferred Policy; or

9.3.2 it is appropriate, in the opinion of the Transferee Actuarial Function Holder, in order to comply with that right or option to issue a new Policy or, as the case may be, amend an existing Transferred Policy,

such person shall be entitled to require that the obligation thereby arising shall be satisfied by the issue by the Transferee of a Policy which complies with the terms of such right or option.

10 Excluded Policies

10.1 The Excluded Policies shall not be transferred to the Transferee by this Scheme and, subject to paragraph 10.6, the liabilities under the Excluded Policies shall remain liabilities of the Transferor (except where such Excluded Policy has been novated to the Transferee and is treated as a Transferred Policy pursuant to paragraph 10.6) but shall at all times after the Effective Time be reinsured in their entirety into the Transferee on terms consistent with those described in paragraphs 10.2 to 10.4.

10.2 On or prior to the Effective Time, the Transferor and the Transferee shall enter into the Excluded Policies Reassurance Agreement pursuant to which, on and with effect from the Effective Time, all the liabilities of the Transferor attributable to the Excluded Policies and all other amounts paid or payable by the Transferor in respect of the Excluded Policies (including amounts paid or payable in connection with the surrender of any Excluded Policy) shall be reinsured in their entirety into the Transferee for as long as the relevant Excluded Policies continue in force as policies of the Transferor.

10.3 The premiums payable under the Excluded Policies Reassurance Agreement shall comprise an amount equal to:

10.3.1 the aggregate amount of the mathematical reserves relating to the Excluded Policies reassured as at the Effective Time which shall be deemed to have been satisfied by the transfer to the Transferee of the appropriate proportion of the Transferred Assets; and

10.3.2 all subsequent premium payments and all other amounts (save for claim payments pursuant to the Excluded Policies Reassurance Agreement) received by the Transferor in respect of such Excluded Policies at any time after the Effective Time.

10.4 The rights and liabilities of the Transferee in respect of the Excluded Policies Reassurance Agreement, the deduction of charges and the obligation to make payments in respect of claims made, shall be calculated so as to ensure that benefits are provided to holders of Excluded Policies which are the same as the benefits which would have accrued to such policyholders if such Excluded Policies had been Transferred Policies.

10.5 If any person entitled to do so with respect to an Excluded Policy exercises any right or option granted under the terms of that Policy and either:

10.5.1 the right or option provides for a new, additional or replacement Policy to be issued or amendments to be made to an existing Policy; or

10.5.2 it is appropriate in the opinion of the relevant Actuarial Function Holder in order to comply with that right or option to issue a new Policy, or, as the case may be, amend an existing Policy,

such person shall be entitled to require that the obligation thereby arising shall be satisfied by the issue by the Transferor of a Policy which complies with the terms of such right or option. Any new Policy issued by the Transferor pursuant to this paragraph 10.5 shall be treated as an Excluded Policy and shall be reinsured on the basis set out in this paragraph 10.

10.6 The Transferee shall use its reasonable endeavours to procure the novation to it of any Excluded Policy with effect from the Effective Time or such later date as such novation is procured. If any Excluded Policy is novated or transferred to the Transferee, the property and liabilities relating to such Policy shall, to the extent not previously transferred, be transferred to the Transferee and such Policy shall thereafter be dealt with by the Transferee under the provisions of this Scheme in all respects as if such Excluded Policy were a Transferred Policy.

11 Premiums and mandates

11.1 All premiums attributable or referable to the Transferred Policies shall from the Effective Time be payable to the Transferee.

11.2 Any direct debit mandate, standing order or other instruction or authority in force at the Effective Time (including any instruction given to a bank by its customer in the form of a direct debit or standing order) and providing for the payment by a bank or other intermediary of premiums or other sums payable to the Transferor under or in respect of any Transferred Policy or other contract which forms part of the Transferred Business shall thereafter take effect as if it had provided for and authorised such payment to the Transferee.

11.3 Any mandate or other instruction or authority in force at the Effective Time as to the manner of payment of any sum payable by the Transferor under any Transferred Policy or other contract which forms part of the Transferred Business shall at and from the Effective Time continue in force as an effective mandate, instruction or authority to the Transferee.

12 Declaration of Trust by Transferor

12.1 If:

12.1.1 any property of the Transferor is not, or is not capable of being, transferred to and vested in the Transferee by the Order at the Effective Time by reason of such property being a Residual Asset or for any other reason; or

12.1.2 any Residual Asset is not, or is not capable of being, transferred to and vested in the Transferee by the Order on the Subsequent Transfer Date applicable thereto; or

12.1.3 in any circumstances the Transferee shall decide before the Effective Time (or, in the case of any Residual Asset, before the Subsequent Transfer Date applicable thereto) that it is expedient not to effect a transfer of any property of the Transferor,

the Transferor shall, from the Effective Time (but save to the extent that giving effect to such a trust would require a consent or waiver which has not been obtained), hold any property referred to in paragraphs 12.1.1 to 12.1.3 together with any proceeds of sale or income or other right accrued or return arising in respect thereof (including any payment, property or right within paragraph 12.3 below) on trust absolutely for the Transferee.

12.2 At and with effect from the Effective Time, the Transferor shall be subject to the exclusive directions of the Transferee in respect of any property referred to in paragraph 12.1 until the relevant property:

12.2.1 is transferred to or otherwise vested in the Transferee; or

12.2.2 is disposed of (whereupon the relevant Transferor shall, so far as it is able, account to the Transferee for the proceeds of sale thereof),

and the Transferee shall have authority to act as the attorney of the Transferor in respect of such property for all such purposes.

12.3 In the event of any payment being made to, property being received by or right being conferred upon the Transferor after the Effective Time in respect of the Transferred Business, any Transferred Asset or any Residual Assets, the Transferor shall hold the same on trust for the Transferee. As soon as is reasonably practicable after its receipt, unless the parties agree that such payment, property or right be retained by the Transferor as a Residual Asset, the Transferor shall pay over the full amount of such payment or (to the extent to which it is able to do so) transfer such property or right to, or in accordance with the directions of, the Transferee and the Transferee shall indemnify the Transferor on demand against any costs incurred in making any such payment or transfer.

12.4 The Solvency Amount shall only be subject to the provisions of paragraph 12.3 insofar as that is consistent with the Transferor continuing to satisfy the requirements of the FSA in relation to maintaining capital resources which meet its Capital Resources Requirement.

13 Indemnities

13.1 Subject to paragraph 13.2, at and with effect from the Effective Time, the Transferee shall discharge or indemnify the Transferor against:

13.1.1 charges, costs, liabilities and claims arising in respect of all Transferred Liabilities and Residual Liabilities which are payable by the Transferor; and

- 13.1.2 save as otherwise provided in this Scheme, any other liability of the Transferor whether arising before or after the Effective Time.
- 13.2** The Transferee shall not indemnify the Transferor against and shall not be obliged to discharge the Transferor from:
- 13.2.1 any liability of the Transferor to the extent that they are entitled to recover the same from any third party (including by way of insurance); or
- 13.2.2 any liability which would fall on the Transferor by virtue of paragraph 13.4 unless, and then only to the extent that, the Transferor shall have failed to recover any such amount pursuant to rights they may have against any third party (including under any applicable contract of insurance), having used all reasonable endeavours to do so.
- 13.3** The Transferee shall discharge or indemnify the Transferor against any costs and/or expenses which either of them may incur in pursuing any claim against any such third party as is referred to in paragraph 13.2 (including under any applicable contract of insurance). Subject thereto, the Transferor shall take such steps as the Transferee shall require in order to pursue the rights either of them may have against any such third party (including under any applicable contract of insurance). The Transferee shall be entitled to have conduct of all litigation or other proceedings in respect of any such claim (including taking such action in the name of and on behalf of the Transferor as the Transferee shall determine). In that connection, the Transferor shall give all such assistance as the Transferee may reasonably require in conducting all proceedings.
- 13.4** Subject to paragraph 13.5, the Transferor shall indemnify the Transferee against all liabilities, losses, claims and expenses in respect of the Transferred Business, the Transferred Assets, the Residual Assets, the Transferred Liabilities and the Residual Liabilities:
- 13.4.1 to the extent they are otherwise recoverable by the Transferor from any third party; or
- 13.4.2 in connection with any defect (whether in title or otherwise) in relation to, or any other diminution in the value of, any property transferred to the Transferee to the extent that the loss resulting therefrom is otherwise recoverable from any third party.
- 13.5** The indemnity in paragraph 13.4 shall be limited to such amounts as the Transferor shall recover pursuant to the rights either of them may have against any third party (including under any applicable contract of insurance).

Part E - Miscellaneous

14 Effective Time

14.1 Subject to paragraph 14.3 and the High Court having made an Order under Section 111 of the Act sanctioning this Scheme, the Scheme shall take effect at 11.59pm (London time) on:

14.1.1 14 December 2011, failing which, on such later date as the said Condition is satisfied or waived, unless (in either case) the directors of the Transferor and the Transferee have resolved before that date that it shall not take effect on such date; and

14.1.2 if the said directors do so resolve, such other date (not being later than 31 March 2012) as the said directors shall fix.

14.2 If this Scheme does not take effect on or before 31 March 2012, or such later date as the Court may allow upon the application of the Transferee and the Transferor, it shall lapse.

14.3 The Scheme shall not become effective at the Effective Time unless at or prior thereto the Transferor and the Transferee (as appropriate) receive such Tax clearances and confirmations (in terms acceptable to each of the Transferor and the Transferee) from HM Revenue & Customs as each of the Transferor and the Transferee (acting reasonably) consider appropriate or the requirement for any such confirmation is waived in whole or in part by each of the Transferor and the Transferee (the "**Condition**").

15 Establishment of other Long-Term Insurance Funds and Vesting Annuities

Nothing in this Scheme shall at any time prevent the Transferee from:

15.1 establishing and maintaining other Long-Term Insurance Funds or sub-funds and writing in or reinsuring into any such other Long-Term Insurance Funds or sub-funds any new Long-Term Insurance Business; and

15.2 allocating an immediate annuity in respect of a Transferred Policy to a Transferee Long-Term Insurance Fund other than that to which it is initially allocated in accordance with this Scheme.

16 Data Protection

16.1 On and with effect from the Effective Time, the Records, which may include personal data protected under the Data Protection Act 1998, shall be transferred to the Transferee and may be used by the Transferee for, and disclosed by the Transferee to, and used by, any agent or contractor of the Transferee to the same extent that they were used by the Transferor and its agents or contractors prior to the Transfer for all purposes in connection with the Transferred Policies including administration thereof and all matters relevant or incidental thereto, and no consent from the individual Policyholders in respect of such disclosure, transfer and use of Records shall be required.

16.2 To the extent that an authority has been given to the Transferor in connection with a Transferred Policy by the Policyholder thereof or by any other relevant person, whether

pursuant to the Data Protection Act 1998 or otherwise, such authority shall, on and after the Effective Time, be deemed to have been given to the Transferee.

17 Costs and Expenses

Except as otherwise agreed in writing, the Transferor and the Transferee shall each bear their own costs and expenses in relation to the preparation and carrying into effect of this Scheme, whether before or after the Effective Time.

18 Modifications or Additions

18.1 The Transferor and the Transferee may at any time before the Effective Time consent for and on behalf of the persons bound by this Scheme and all other persons concerned (other than the FSA) to any modification or addition to this Scheme or to any further condition or provision affecting the same which, prior to its sanction of this Scheme, the Court may approve or impose.

18.2 Any amendment to this Scheme after the Effective Time must:

18.2.1 be approved, if applicable, by the Court (such Court approval not being necessary in the event of immaterial amendments or in the event of manifest error);

18.2.2 be notified to the FSA, who shall have the right to attend and be heard at any hearing of the Court (if applicable) at which such application is considered; and

18.2.3 be accompanied by a certificate from an independent expert to the effect that in his opinion the proposed amendment will not materially adversely affect the reasonable expectations (including taking account of appropriate obligations to treat customers fairly) of the holders of Transferred Policies or Excluded Policies in any material respect.

19 Third Party Rights

A person who is not a party to this Scheme may not enforce any terms of this Scheme.

20 Governing law

This Scheme shall be governed by and construed in accordance with English law.

Date: 27 July 2011

**IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
No. 6405 of 2011**

**IN THE MATTER OF PATERNOSTER UK LIMITED
and
IN THE MATTER OF ROTHESAY LIFE LIMITED
and
IN THE MATTER OF THE FINANCIAL SERVICES AND MARKETS ACT 2000**

SCHEME

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