Sworn translation from Dutch to English of: Amended Petition to have two collective settlement agreements declared binding pursuant to Article 7:907 Netherlands Civil Code filed with the Amsterdam Court of Appeal on 1 October 2010 (in re "Converium")

Leiden, 24 February 2011

Translator's statement:

The undersigned, A.J.B. Burrough, registered as sworn translator for the English language at the District Court of The Hague and registered in the Dutch Register of Sworn Interpreters and Translators (RBTV) under no. 1963, hereby faithfully declares that the attached English translation is a faithful representation of the Dutch original (which is the authentic text).

A.J.B. Burrough MA (Leiden)

Sworn Translator

Attached:

1) English translation, 77 pages total

[translation from Dutch]

Court of Appeal in
Amsterdam
Date: 1 October 2010

Amended Petition to have two collective settlement agreements declared binding pursuant to Article 7:907 Netherlands Civil Code

In the matter of:

1. the legal entity under foreign law
SCOR HOLDING (SWITZERLAND) AG, previously known as Converium Holding AG, which has its seat at Zürich, Switzerland, and has chosen to have its address for service in this matter at Strawinskylaan 1999 (1077 XV), Amsterdam,
Petitioner 1
lawyer: mr. D.F. Lunsingh Scheurleer

2. the legal entity under foreign law
ZURICH FINANCIAL SERVICES LTD,
which has its seat at Zürich, Switzerland, and has chosen to have its address for service in this matter at Claude Debussylaan 80, 1082 MD Amsterdam,
Petitioner 2
lawyer: mr. R.W. Polak

3. the foundation **STICHTING CONVERIUM SECURITIES COMPENSATION FOUNDATION**,
which has its seat in The Hague, and has chosen to have its address for service in this matter at New Babylon, Bezuidenhoutseweg 57, 2594 AC, The Hague
Petitioner 3
lawyer: mr. J.H. Lemstra

4. the association with full legal capacity
VEB NCVB,
which has its seat in The Hague, and has chosen to have its address for service in this matter at Amaliastraat 7 (2514 JC), The Hague, the Netherlands,

Petitioner 4
lawyer: mr. P.W.J. Coenen

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BY WAY OF INTRODUCTION

This Amended Petition seeks to provide certain non-U.S. investors in Converium Holding AG common stock (as described below) with compensation for certain losses they incurred from the decline in the price of their shares. This decline allegedly resulted from allegedly false statements about Converium's financial condition. Initially, this group of investors was included within the scope of a putative class action lawsuit filed in the United States District Court for the Southern District of New York. However, the U.S. court ruled that it did not have subject-matter jurisdiction over claims of those non-U.S. investors, and the court therefore excluded this group of investors from the class action. The class action was eventually settled, but provided relief only to U.S. investors. Nevertheless, the representatives of the non-U.S. investors in the U.S. class action were able to obtain two settlements for the benefit of the non-U.S. investors within the meaning of Articles 907-910 Book 7 of the Netherlands Civil Code and Articles 1013-1018 of the Netherlands Code of Civil Procedure.

Petitioners respectfully ask the Court of Appeal to declare the two settlements

binding, so that the non-U.S. investors can obtain relief for any alleged losses they may have suffered on their transactions in Converium common stock. It is unlikely that, besides the Amsterdam Court of Appeal, there is any forum in the world where the non-U.S. investors could obtain any form of relief at all on a collective basis, if the Court of Appeal were not to declare the proposed settlement agreements binding.

1. INTRODUCTION

1.1 SCOR Holding (Switzerland) AG (formerly known as Converium Holding AG ("**Converium**"))[1], Zurich Financial Services Ltd ("**ZFS**"), the Stichting Converium Securities Compensation Foundation (the "**Foundation**"), and the VEB NCVB (**"VEB"**) (collectively, the "**Petitioners**") request that the Court of Appeal declare binding the settlement agreements entered into by and among:

(i) Converium, the Foundation, and VEB on 8 July 2010 (the "**Converium Agreement**"; **Exhibit 1**) and

(ii) ZFS, the Foundation and VEB on 8 July 2010 (the "**ZFS Agreement**"; **Exhibit 2**) (the "Amended **Petition**")

Both the Converium Agreement and the ZFS Agreement (collectively, the "**Agreements**") are agreements within the meaning of Article 7:907 (1) of the Netherlands Civil Code ("**NCC**").

1.2 The Agreements, if declared binding, will allow certain purchasers of shares of Converium to obtain compensation. These Agreements concern persons who traded Converium shares on the SWX Swiss Exchange and any other non-U.S. exchanges in the period indicated below ("**Non-U.S. Exchange Shares**"). The compensation pertains to certain declines in the price of Non-U.S. Exchange Shares following Converium's announcements that it would take charges to increase reserves in its

[1] Insofar as possible, the terms defined and used in this petition are equivalent to the terms as defined in the (English language) Agreements. To aid legibility in Dutch, a number of these terms have not been translated literally in this petition. For completeness' sake, a list of corresponding terms in this petition and the Agreements is submitted as **Exhibit 22**.

North American operations, including the announcement of a USD 400 million charge on 20 July 2004.

1.3 The persons eligible for compensation under the Agreements are those persons or entities who purchased Non-U.S. Exchange Shares on the SWX Swiss Exchange or any other stock exchange located outside the United States of America **(**"**Non-U.S. Exchange**") during the period of 7 January 2002 through and including 2 September 2004 (the "**Relevant Period**") *and* resided outside the United States at the time of purchase ("**Non-U.S. Exchange Purchasers**").

1.4 Those Non-U.S. Exchange Purchasers who – after the binding declaration – participate in the settlements ("**Participating Shareholders**") will collectively be eligible to seek a total gross settlement payment of USD 58,400,000 (USD 40,000,000 pursuant to the Converium Agreement and USD 18,400,000 pursuant to the ZFS Agreement ("**Total Settlement Payment**"**)**). The Total Settlement Payment will be increased by accrued interest and reduced by expenses incurred by the Foundation (as defined below at 7.43), expenses incurred in administering the Agreements (the "**Administrative Expenses**"), any payable taxes (the "**Tax Expenses**"), and payment by the Foundation of a fee to its U.S. counsel ("**Principal Counsel**"), resulting in a total net settlement amount (**the** "**Net Settlement Fund**") for distribution to Participating Shareholders.

1.5 The Net Settlement Fund shall be distributed to Participating Shareholders who meet certain criteria as set out in the Settlement Distribution Plan (the "**Settlement Distribution Plan**"). The Settlement Distribution Plan will be discussed in more detail in chapter 10.

1.6 The Agreements also provide that the Participating Shareholders will release all claims that they might have against Converium, ZFS, and all legal entities and/or natural persons affiliated with Converium and ZFS arising out of or relating to the events that allegedly led to the declines in the price of Non-U.S. Exchange Shares.

1.7 The Agreements do not provide compensation to shareholders who (*i*) resided in the United States at the time they purchased Non-U.S.

Exchange Shares during the Relevant Period or (*ii*) purchased Converium American Depositary Shares ("**ADSs**") on the New York Stock Exchange during the Relevant Period (the "**U.S. Purchasers**"). As further explained below, separate settlements have been concluded for the benefit of the U.S. Purchasers.

1.8 In the consolidated class action (the "**U.S. Class Action**") filed in the United States District Court for the Southern District of New York (the "**U.S. District Court**"), the U.S. District Court certified a class consisting solely of the U.S. Purchasers. The U.S. District Court specifically excluded from the certified class the Non-U.S. Exchange Purchasers on the basis that it lacked subject-matter jurisdiction over their claims. The U.S. Class Action was inter alia based on the assertion that Converium and ZFS, among others, had made false statements regarding Converium's financial condition, including the adequacy of loss reserves in Converium's North American operations.

1.9 Converium and ZFS entered into separate agreements with the Public Employees' Retirement System of Mississippi ("**MPERS**"), on behalf of the U.S. Purchasers (the "**U.S. Settlements**"). In connection with the U.S. Settlements, Converium and ZFS also entered into separate agreements with Avalon Holdings Inc., an institutional investor based in Greece ("**Avalon**"), for the benefit of the Non-U.S. Exchange Purchasers. Converium agreed to settle the claims of the class of U.S. Purchasers and any claims the Non-U.S. Exchange Purchasers might have arising out of or relating to the events that allegedly led to the declines in the price of Non-U.S. Exchange Shares for an aggregate amount of USD 115,000,000. MPERS and Avalon allocated USD 75,000,000 of that amount to the class of U.S. Purchasers and USD 40,000,000 to the Non-U.S. Exchange Purchasers. ZFS agreed to settle the claims of the class of U.S. Purchasers and any claims the Non-U.S. Exchange Purchasers might have arising out of or relating to the events referred to above at 1.8 that allegedly led to the declines in the price of Non-U.S. Exchange Shares for an aggregate amount of USD 28,000,000, with USD 9,600,000 being allocated to the U.S. Purchasers and USD 18,400,000 being allocated to the Non-U.S. Exchange Purchasers. The settlements with the U.S. Purchasers were approved by the U.S.

District Court on 12 December 2008 (**Exhibit 3**). This decision became final on 25 June 2009. The Agreements are not conditioned in any way on the settlement of the U.S. Class Action (although both the Agreements and the U.S. Settlements arose out of the U.S. Class Action). Additionally, the U.S. Settlements were approved and have become final.

1.10 Because the Non-U.S. Exchange Purchasers were excluded from participation in the U.S. Class Action, they could not take part in the U.S. Settlements.

1.11 Apart from these proceedings, there is likely no other forum in which the Non-U.S. Exchange Purchasers could seek to recover on a collective basis any portion of any losses they may have suffered from their transactions in Non-U.S. Exchange Shares during the Relevant Period. Accordingly, if the Court of Appeal does not exercise its authority to grant the Amended Petition under Article 7:907 Netherlands Civil Code, the Non-U.S. Exchange Purchasers likely will be left without any relief at all. This in contrast to the U.S. Purchasers, who are being compensated through the U.S. Settlements.

1.12 As stated above in 1.1, the aim of the Amended Petition is to have the Agreements declared binding pursuant to Article 7:907 (1) NCC in conjunction with Article 1013 of the Netherlands Code of Civil Procedure ("**NCCP**") (the "**Binding Declaration**").

1.13 Converium and ZFS have denied throughout that they engaged in any wrongdoing, that they violated any laws, rules or regulations, or that the Non-U.S. Exchange Purchasers have suffered any compensable damages as a result of the events related to Converium's reserve increases during the Relevant Period and other events that were or could have been the subject of the U.S. Class Action. Converium and ZFS maintain their earlier denials and disputations with respect to their alleged liability and the damage allegedly suffered by Non-U.S. Exchange Purchasers. Nevertheless, Converium and ZFS consider it desirable to settle all claims relating to (i) Converium's reserve increases, (ii) other events that were or could have been the subject of the U.S. Class Action, and (iii) transactions by the Non-U.S. Exchange Purchasers in Non-U.S.

Exchange Shares during the Relevant Period. After all, settlement will, among other things, avoid the potential expense, distraction, time, uncertainty, and publicity associated with litigating any of these actual or potential claims (if litigation is even feasible).

1.14 After thoroughly analyzing the chances of success or failure in instituting proceedings, the Foundation concluded that, in practical terms, litigation was not a viable option, that settlement is the only way in which the Non-U.S. Exchange Purchasers will be able to obtain any reasonable compensation for their alleged losses, and that the Agreements provide reasonable compensation. The three most significant factors that played a role in this decision were:

- the procedural hurdles in non-U.S. litigation;
- the procedural hurdles in U.S. litigation; and
- the risk that claims would be refused on the merits.

Those three factors will be discussed in more detail in chapter 7.

1.15 Petitioners recognise the social desirability and necessity of settling their differences by means of the Agreements and of ensuring that the settlements thus reached by amicable means have the greatest possible scope through application of the Collective Settlement Act (*Wet collectieve afwikkeling massaschade* ("**WCAM**")). The number of registered Non-U.S. Exchange Purchasers is estimated to be well in excess of 3,000. Other information available to Petitioners appears to indicate that the group of Non-U.S. Exchange Purchasers comprises approximately 12,200 persons and/or legal entities (including nominees).

1.16 The amount of the compensation offered is reasonable, taking into account the duration of, and risks associated with, legal proceedings, including the fact that, as a consequence of the ruling of the U.S. District Court, the Non-U.S. Exchange Purchasers were excluded from the class and cannot pursue their claims in a United States court under the U.S. securities laws and the practical and legal difficulties of litigating similar claims outside the United States on a class-wide basis, as discussed in more detail in chapters 3 and 7.

2. PETITIONERS

Converium

2.1 Converium (Petitioner 1) is a reinsurance company governed by Swiss law and has its registered office in Zürich, Switzerland.

2.2 Converium's securities were listed on the SWX Swiss Exchange in Zürich, Switzerland, by means of ordinary shares from 11 December 2001 to 30 May 2008 and on the New York Stock Exchange in New York, New York, United States of America, by means of ADSs from 11 December 2001 to 7 January 2008. One share of Non-U.S. Exchange Shares represented the same interest as two ADSs. The shares and the ADSs will hereinafter be jointly referred to as the "**Securities**".

2.3 Before the stock exchange listings of the Securities, Converium was a subsidiary of ZFS and operated under the brand name Zurich Re.

2.4 Since 15 May 2008, following a successful public offer procedure and Swiss buyout procedure, SCOR SE has been the sole shareholder of Converium. The name "Converium" was later changed to SCOR Holding (Switzerland) AG.

ZFS

2.5 ZFS (Petitioner 2) is a company governed by Swiss law and has its registered office in Zürich, Switzerland. ZFS is a company offering and performing financial services through its subsidiaries worldwide.

2.6 Until 11 December 2001, Converium was a wholly owned subsidiary of ZFS. ZFS offered its entire ownership interest in Converium to investors through an initial public offering that became effective on 11 December 2001 (the **"IPO"**).

The Foundation

2.7 The Foundation (Petitioner 3) was incorporated under the laws of the Netherlands on 18 February 2009, with its registered office in The

Hague. Pursuant to its Articles of Association (**Exhibit 4**), the Foundation represents the interests of the Non-U.S. Exchange Purchasers. The Foundation was formed to negotiate and approve the terms of the formal Settlement Agreements following preliminary agreements between Avalon Holdings Inc. and Converium and ZFS. Avalon Holdings Inc. is an institutional investor that is based in Greece. It was one of the lead plaintiffs in the U.S. class action before the U.S. court's ruling on jurisdiction.

Organization of the Foundation

2.8 Pursuant to its Articles of Association, the Foundation is managed by the Executive Board (the "**Board**"). The supervision of the Board is the duty of the meeting of Participants, which also advises the Board. The Board consists of a chairman, a secretary and a treasurer, all of whom are independent of Converium and ZFS. The Board is responsible for making all decisions of the Foundation and has meetings as often as the chairman or two other members of the Board convene them. However, meetings are held at least twice a year.

2.9 The Board consists of André Baladi, from Switzerland (chairman), Hubert Alexander Groen, from the Netherlands (treasurer), and Tal Schibler, from Switzerland (secretary). The biographies of the Foundation directors are attached as **Exhibit 7**. To assist it in the day-to-day functions of the Foundation, the Board retained the services of an administrator (Patrick de Jong of Bureau De Jong & Osborne) and the services of a Dutch law firm (Pels Rijcken & Droogleever Fortuijn N.V.) to provide legal advice.

2.10 The Foundation, Converium and ZFS maintain an arm's-length relationship. The Foundation has no other business or economic relationship with Converium or ZFS. None of the Foundation's directors has any personal, business, or economic relationship with either Converium or ZFS or any of their board members or employees. In addition, members of the Foundation's Board are not current or former employees of, or advisors to, Converium or ZFS. Further, none of the

members of the Board purchased or held shares of Converium stock as of 1 January 2002 or later.

2.11 One of the Foundation's responsibilities is to regularly communicate with its Participants, including the VEB. To date, the Board has held several telephone conferences, exchanged several electronic mailings, and held two meetings with Participants in The Hague on 21 September 2009 and 29 June 2010. During the 21 September 2009 meeting, the Board met with Participants that had entered into Participation Agreements with the Foundation as of that time to discuss various issues related to the Settlement Agreements, including the status of the proposed Settlements, appointment of the Foundation's Principal Counsel and Dutch counsel, and adoption of the Foundation's 2010 budget and beyond as in conformity with article 9(3)(a) of the Articles of Association. During the 29 June 2010 meeting, Participants and the Board discussed items related to the annual report and financial statements for the year 2009, developments as to the finalization of the Agreements, and a revised budget for the year 2010. Minutes of every meeting of the Board are maintained by the secretary of the Foundation. Under the latter's responsibility, a list of Participants is also kept.

2.12 The parties described in **Exhibit 5** signed participation agreements (a model of which is attached as **Exhibit 6),** as a result of which they were registered as the Foundation's participants ("**Participants**"). As of the date of submission of this Amended Petition, the Foundation has 29 Participants from 12 different countries, including the VEB. The signed participation agreements are submitted as **Exhibit 26**. The Participants come from the principal countries in which Non-U.S. Exchange Shares were held during the Relevant Period, *i.e.*, Switzerland and the United Kingdom, but also from the Netherlands and numerous other countries. Various interest groups are also Participants in the Foundation, including the umbrella association of European shareholders ("**Euroshareholders**") and shareholder associations in the United Kingdom, France, Germany, Luxembourg, Spain, Italy, and Austria, in addition to the Netherlands (VEB).

2.13 The Foundation has, after careful consideration, in principle decided to retain The Garden City Group Inc., located at 105 Maxess Road, Melville, NY 11747, USA, to act as Claims Administrator (the "**Administrator**") in connection with the administration and implementation of the Agreements. The Foundation has instructed the Administrator to process, under the Foundation's ultimate responsibility, all claims made by Participating Shareholders if and when the Court of Appeal declares the Agreements binding. The Administrator has substantial experience in administering international securities settlements involving non-U.S. investors in non-U.S. securities on non-U.S. exchanges. The Garden City Group Inc. was also the administrator in the U.S. Settlements. A copy of a summary of the Administrator's relevant experience is attached as **Exhibit 8**.

The Financial Operations of the Foundation

2.14 Pursuant to Article 11 (4) of the Articles of Association of the Foundation, the Board of the Foundation must draw up annually, within six months after the end of the financial year, a balance sheet and a statement of assets and liabilities of the Foundation, as well as a report on its activities. Before the Board of the Foundation adopts these documents, Mazars Paardekooper Hoffman N.V. ("**Mazars**"), an independent accounting consultant within the meaning of Article 393, Book 2 NCC, (which was appointed by the Board), will undertake its audit of the Foundation's financial records. Mazars will report its findings to the Board and will set out the results of its audits in a statement on the accuracy of the information in the documents mentioned above. Mazars shall address its statement to the Board and to the meeting of Participants. Mazars has confirmed to the Foundation that it maintains no relationship with Converium, ZFS or related parties that could threaten its objectivity or independence in conducting the audit of the Foundation's financial statements.

2.15 In conjunction with the annual audit by Mazars, the Foundation's Administrator prepares an annual report that contains the Directors' report, a Governance Report, a status report on the settlements, legal proceedings and other information pertaining to the Participants, as well as the auditors' report. The Foundation's first annual report, which is

attached as **Exhibit 24**, which included the first financial statements of the Foundation for the period 18 February 2009 (the day the Foundation was founded) through 31 December 2009, was discussed during the Foundation's meeting of Participants and the Board on 29 June 2010. Mazars issued an unqualified opinion in connection with the Foundation's annual report for 2009, dated 10 June 2010. Following the meeting, the Foundation's Board formally approved and adopted the Annual Report and the financial statements for the year ended 31 December 2009. Following the meeting of Participants on 29 June 2010, the Foundation's budget was discussed, and the Board adopted a revised budget for the remainder of year 2010.

2.16 Additionally, until the Court of Appeal issues a final ruling declaring the Agreements binding, both Converium and ZFS review the proposed budget before it is adopted by the Board. Any disputes between Converium and ZFS and the Foundation regarding the payment or reasonableness of expenses incurred by the Foundation may be submitted to a dispute resolution body (which is discussed in paragraphs 4.10-4.11), whose function is to resolve disputes arising in connection with the Agreements.

2.17 The Foundation incurs operational expenses, which are set out in the Foundation's yearly budget. These expenses include liability insurance for the members of the Board, retention of the outside auditor and Dutch counsel, remuneration to members of the Board, and other usual business expenses. Since the Foundation's inception, €600,000 have been transferred to the Foundation from the Total Settlement Payment to pay Foundation expenses incurred in connection with the proposed settlements, and an additional €210,000 for Foundation expenses have been transferred to the Foundation from Converium pursuant to the Converium Agreement. The remainder of the Foundation's expenses will be paid from the Total Settlement Payment, as provided by the Agreements. A summary detailing the transfers to the Foundation and the dispositions from the €810,000 for expenses transferred to the Foundation to the date of submission of this Amended Petition has been included in the overview of the costs and types of expenses to be deducted from the Total Settlement Payment (**Exhibit 25**)

VEB

2.18 VEB (Petitioner 4), has represented for over 86 years the interests of Dutch securities holders, including predominately the interests of retail shareholders, as set forth in its articles of association (submitted as **Exhibit 9**). VEB has approximately 50,000 members and is the most important organization of its kind in the Netherlands. Among other things, VEB tries to achieve its objectives by exercising, on behalf of its members, the rights attached to the securities held by those members.

2.19 VEB frequently acts as the advocate of the interests of Dutch securities holders during shareholder meetings. In addition, and if necessary, VEB also acts through lawsuits and provides information to securities holders through, among other methods, its biweekly magazine called "Effect" (50,000 copies), its frequently visited website (www.veb.net), and other media.

2.20 In the negotiation and establishment of the Agreements, VEB represented the interests of the Dutch shareholders. VEB played a similar role in the *Shell* settlement, which the Court of Appeal recently declared binding on 29 May 2009 (LJN:BI 5744, JOR 2009, 197). VEB also represented the interests of shareholders in the *Vedior* settlement (15 July 2009, LJN:BJ 2691 JOR 2009, 325) and *Dexia* settlement (27 January 2007, JOR 2007,71).

2.21 VEB also has been involved in various collective settlements that have not been submitted for a binding declaration to the Amsterdam Court of Appeal, including the *Ahold* settlement in 2005 (in the amount of USD 1.1 billion), the *Unilever* settlement in 2006 (in the amount of EUR 325 million) and the *Numico* settlement in 2009 (in the amount of EUR 17 million).

2.22 Thus, VEB has undisputed knowledge and expertise with respect to the analysis of both the fairness and reasonableness of collective settlements such as the one at hand.

2.23 VEB is a Participant and is working with its sister organizations within Euroshareholders to promote the settlements throughout Europe.

3. BACKGROUND OF THE CREATION OF THE AGREEMENTS

3.1 In early October 2004, Converium, ZFS, and certain of their officers and directors were sued in various putative securities class action lawsuits[2] seeking damages in the U.S. District Court. Those cases were subsequently consolidated to become the U.S. Class Action mentioned in 1.8 above, in which MPERS and Avalon (collectively, the "**U.S. Plaintiffs**") were appointed by the U.S. District Court to serve as co-lead plaintiffs to lead the U.S. Class Action. Based on the factual allegations described below, the U.S. Plaintiffs alleged that Converium and ZFS had violated Sections 11, 12, and 15 of the U.S. Securities Act of 1933 (the "**Securities Act**") and Sections 10(b) and 20(a) of the U.S. Securities Exchange Act of 1934 (the "**Exchange Act**").

3.2 In the U.S. Class Action, the U.S. Plaintiffs made the following allegations against ZFS and Converium:

a. Converium, as a global reinsurance company, was required to establish loss reserves sufficient to reflect its expected obligation to pay future claims submitted on the reinsurance policies it had written. These loss reserves, established and periodically adjusted based on actuarial estimates, constituted the largest expense item on Converium's income statement.

b. Before the 11 December 2001 IPO, Converium encountered problems maintaining sufficient loss reserves for the reinsurance policies it had issued, particularly those issued by its North American operations. Studies prepared by Converium and by its actuarial consultants identified significant reserve deficiencies. Converium increased its loss reserves before the IPO, but they remained inadequate.

[2] Proceedings brought as a class action only formally become a class action after the court has certified the class.

c. After the IPO, Converium continued to encounter problems with the sufficiency of the reserves for its North American activities. The attempts to resolve these problems were not adequate to address the scope of the deficiencies.

d. During the first and second quarters of 2002, Converium Reinsurance (North America) Inc. incurred increasing losses to an amount of USD 50 million but only increased its loss reserves by USD 11.6 million and USD 24.4 million in May and June 2002, respectively.

e. On 28 October 2002, before the stock exchanges of Zürich and New York opened, Converium issued a press release announcing its financial results for the third quarter of 2002. In addition, Converium announced that it had increased its loss reserves for the third quarter of 2002 by almost USD 60 million and said that it anticipated another reserve increase of up to USD 75 million in the fourth quarter (most of which would be recorded by its North American operations). The fourth-quarter 2002 increase, announced on 19 November 2002, actually amounted to USD 70.3 million.

f. After this 28 October 2002 press release, the price of the Securities fell by approximately 10% in a single trading day.

g. The loss reserve deficiency in Converium's North American operations was increasing by as much as USD 50 million a quarter during 2002. Converium was aware, at that time, of estimates showing that the total reserve deficiency would be in excess of USD 290 million as of year-end 2002.

h. In 2003, Converium retained an outside actuarial consultant to re-examine its year-end 2002 loss reserves. The results of this additional study showed that Converium was under-reserved by over USD 430 million as of 31 December 2002.

i. In response to the abovementioned study, Converium announced a global reorganization intended to mask the reserve deficiency in the North American operations by reporting results by business lines rather than by geographical segments. Converium also implemented a scheme ("novations") that served to transfer under-reserved insurance contracts from its North American operations to its European operations, thereby further concealing the North American reserve deficiency.

j. Converium's reserve deficiency also continued to increase in 2003. On 20 July 2004, Converium announced that it would need to increase its loss reserves by another USD 400 million.

k. The market prices of the Securities declined by almost 50% on 20 July 2004.

l. On 30 August 2004, after trading had closed on the Swiss and New York exchanges, Converium announced it would again need to increase its loss reserves by USD 50-100 million. After this announcement, the market price of the Securities declined. According to *Bloomberg*, the price of Non-U.S. Exchange Shares on the SWX Swiss Exchange fell by 10.9 % on 31 August 2004.

m. On 2 September 2004, before trading began in Switzerland and New York, Converium announced that Standard & Poor's and A.M. Best had reduced their credit ratings for Converium. After this announcement, the prices of the Securities again declined. According to *Bloomberg*, the price of Non-U.S. Exchange Shares on the SWX Swiss Exchange fell by 11.68% on 2 September 2004.

n. Ultimately, Converium increased its loss reserves by USD 562 million and reported a loss for 2004 of USD 761 million. On 10 September 2004, Converium announced that it would place its North American operations into run-off and would no longer write reinsurance policies out of its U.S. offices.

3.3 The same underlying facts relating to the allegedly fraudulent conduct (the same purported misrepresentations and omissions) and the same contentions about the amount by which the price of Converium stock was allegedly artificially inflated by the allegedly fraudulent conduct applied equally in the U.S. Class Action to all members of the putative class, including all Non-U.S. Exchange Purchasers.

3.4 ZFS and Converium emphatically denied and disputed each and every allegation of wrongdoing advanced in the U.S. Class Action and summarised above.

3.5 The U.S. Plaintiffs sought to maintain the U.S. Class Action on behalf of all natural and legal persons and entities that had purchased or otherwise acquired the Securities in the period from 11 December 2001 (the date of the IPO) through 2 September 2004 (the date by which the U.S. Plaintiffs alleged that the full "truth" about Converium's loss reserves had been disclosed).

3.6 On 23 December 2005, the ZFS and Converium filed motions to dismiss[3] the U.S. Class Action on several substantive and procedural grounds.

3.7 In February 2006, while the motions to dismiss were pending, Converium announced that it was restating its previously issued financial results as of and for the years ended 31 December 1998 through 2004 and the quarters ended 31 March 2003 through 30 June 2005, because it had concluded that certain reinsurance transactions should have been accounted for using a different accounting method. Converium stated that these transactions should have been recognised using deposit accounting, rather than reinsurance accounting. The U.S. Plaintiffs then sought to add allegations in the U.S. Class Action on the basis of the aforementioned restatement by Converium of its previously published financial results.

[3] A preliminary interlocutory claim to dismiss on the basis that the plaintiff has failed to satisfy its duty to assert, *see e.g.*, D.J.T. Adler and D.F. Lunsingh Scheurleer, "Class action litigation in the U.S.", in: F.M.A. 't Hart, *Collectieve acties in de financiële sector*, NIBE-SVV-bundel, 2009, p. 168.

3.8 On 28 December 2006, the U.S. District Court granted in part and denied in part ZFS' and Converium's motions to dismiss. The U.S. District Court ruled that the Securities Act claims were barred by the applicable statute of limitations. The U.S. District Court also dismissed the Exchange Act claims against ZFS, as well as the Exchange Act claims against Converium to the extent they alleged misrepresentations in connection with the IPO. In addition, the U.S. District Court refused to allow the U.S. Plaintiffs to amend their complaint to add allegations concerning the aforementioned restatement by Converium of its financial statements.

3.9 In January 2007, the U.S. Plaintiffs moved for reconsideration of the dismissal of the Securities Act claims and the Exchange Act claims insofar as these related to the IPO. They also sought reconsideration of the denial of their motion to add the restatement allegations to the case. The U.S. District Court refused to reconsider its dismissal of the U.S. Plaintiffs' Securities Act claims, but did reinstate the Exchange Act claims against Converium, insofar as they related to the IPO. The U.S. District Court also denied U.S. Plaintiffs' request for reconsideration of its (negative) decision with respect to the motion to amend the complaint.

3.10 Following the U.S. District Court's ruling on the motions to dismiss, Converium answered the complaint in the U.S. Class Action and denied all of its material allegations advanced by the U.S. Plaintiffs, as summarised in 3.1 and 3.2 above, and denied any liability to the U.S. Plaintiffs or to the class.

3.11 Following the U.S. District Court's ruling on the motions to dismiss, the parties began to conduct extensive discovery. In particular, by the time the Agreements were reached, the U.S. Plaintiffs had reviewed several million pages of documents, and had taken the deposition testimony of approximately 30 witnesses.

3.12 In August 2007, the U.S. Plaintiffs and ZFS reached an agreement to settle the U.S. Class Action on behalf of all investors who purchased Securities between 11 December 2001 and 2 September 2004. The U.S. District Court preliminarily approved the ZFS settlement on 4 September

2007, but the court did not authorize notice of the settlement to be sent to the interested parties. The U.S. District Court did not grant final approval of the settlement, because it was waiting to see the outcome of further proceedings against Converium.

3.13 In the proceedings against Converium, on 28 September 2007, the U.S. Plaintiffs moved the U.S. District Court to certify a class as to Converium, consisting of all legal and natural persons who had purchased Securities during the period 11 December 2001 through 2 September 2004. Converium opposed this motion and argued, among other things, that the U.S. District Court lacked subject-matter jurisdiction over the claims of Non-U.S. Exchange Purchasers who had purchased Non-U.S. Exchange Shares on Non-U.S. Exchanges.

3.14 While the class certification motion was still pending in the U.S. District Court, the U.S. Plaintiffs and Converium jointly engaged the services of an experienced and highly reputable retired judge to attempt to mediate a settlement.

3.15 On 6 and 19 March 2008, the U.S. District Court ruled in the U.S. Class Action (**Exhibits 10 and 11**) that it had subject-matter jurisdiction only over the claims asserted by (*i*) legal or natural persons residing or domiciled in the United States who had bought the Securities on any stock exchange during the Relevant Period and (*ii*) all natural or legal persons, regardless of their place of residence or domicile, who had bought ADSs on the New York Stock Exchange during the Relevant Period. The U.S. District Court concluded that it did not have subject-matter jurisdiction over the claims of natural or legal persons who had purchased Non-U.S. Exchange Shares on Non-U.S. Exchanges *and* who were not residing or domiciled in the U.S. at the time of purchase (*i.e.*, the Non-U.S. Exchange Purchasers). The U.S. District Court also ruled that natural or legal persons who had purchased the Securities between 11 December 2001 and 6 January 2002 could not participate in the U.S. Class Action.

3.16 In view of the above, the U.S. District Court concluded that the U.S. Class Action could continue only as to (*i*) natural or legal persons who

had traded on Non-U.S. Exchanges from 7 January 2002 through 2 September 2004 and had resided or been domiciled in the United States of America at the time of purchase and (*ii*) all natural or legal persons who had bought ADSs on the New York Stock Exchange between 7 January 2002 and 2 September 2004, regardless of their place of residence or domicile at the time of purchase (the U.S. Purchasers mentioned in 1.7 above).

3.17 The U.S. District Court's ruling therefore excluded from the U.S. Class Action the Non-U.S. Exchange Purchasers. This exclusion concerned all natural and legal persons who at the time of the purchase of the Securities had bought the Securities on Non-U.S. Exchanges and who were not U.S. residents at the time of purchase, or in the event of a legal person, were not domiciled in the U.S. The shares held by these natural and legal persons amounted to approximately two-thirds of the outstanding shares of the Securities issued in the IPO and traded during the Relevant Period.

3.18 Because Avalon (a *Greek* investor) had purchased its Non-U.S. Exchange Shares on the SWX Swiss Exchange and was not domiciled in the U.S., it was excluded from the class as a result of the U.S. District Court's ruling, leaving MPERS as the sole lead plaintiff in the U.S. Class Action.

3.19 On 20 March 2008, MPERS and Avalon moved for reconsideration of the U.S. District Court's ruling excluding the Non-U.S. Exchange Purchasers from the class.

3.20 While that motion for reconsideration was pending before the U.S. District Court, Converium reached a settlement with MPERS, acting on behalf of the certified class in the U.S. Class Action, and with Avalon, acting for the benefit of the Non-U.S. Exchange Purchasers, to resolve all claims for an aggregate amount of USD 115,000,000. The settlement concerned all claims that had or could have been brought by the class in the U.S. Class Action or by the Non-U.S. Exchange Purchasers arising from or relating to their purchases or acquisitions of the Securities during the Relevant Period. At that time, the parties were still discussing the form of the overall settlement and where it should be presented for approval and a binding declaration.

3.21 The parties eventually agreed that the settlement would be finalised in two jurisdictions: (*i*) the settlement for the certified class would be submitted to the U.S. District Court in the U.S. Class Action and (*ii*) the settlement for the Non-U.S. Exchange Purchasers in the Amsterdam Court of Appeal. MPERS and Avalon then negotiated and agreed between themselves to allocate the Converium settlement amount with USD 75,000,000 going to the class in the U.S. Class Action and the remaining USD 40,000,000 going to the Non-U.S. Exchange Purchasers. As discussed in greater detail below in chapter 7, D, MPERS and Avalon agreed on this allocation because they considered the U.S. class members' claims to be stronger than the Non-U.S. Exchange Purchasers' potential claims, in that the Non-U.S. Exchange Purchasers had been excluded from the U.S. Class Action and had few (if any) other realistic options to seek recovery (in a different jurisdiction). The options for successfully bringing their alleged claims on *a collective basis* were, if possible, even more limited.

3.22 Also while the U.S. Plaintiffs' motion for reconsideration of the U.S. District Court's class certification ruling was pending, and to reflect the U.S. District Court's exclusion of the Non-U.S. Exchange Purchasers from the class, ZFS and the U.S. Plaintiffs reopened their settlement negotiations. The objective of this negotiation was to discuss dividing the ZFS settlement amount between the U.S. Purchasers and the Non-U.S. Exchange Purchasers to reflect the U.S. District Court's decision that it lacked subject-matter jurisdiction over the Non-U.S. Exchange Purchasers' claims. ZFS and the Plaintiffs ultimately agreed that USD 9,600,000 of ZFS' payment would be allocated to the class in the U.S. Class Action and that USD 18,400,000 would be allocated to the Non-U.S. Exchange Purchasers. This allocation represented the approximate ratio of U.S. Purchasers' shares to Non-U.S. Exchange Purchasers' shares – the allocation that the settling parties had expected to use when ZFS was intending to enter into a global settlement in August 2007 and before the U.S. Court ruled that it lacked subject-matter jurisdiction over the Non-U.S. Exchange Purchasers' claims. ZFS and the U.S. Plaintiffs signed an amended settlement agreement embodying these terms on 25 July 2008.

3.23 On 11 August 2008, the U.S. District Court preliminarily approved the U.S. Settlements and ordered that notice of their terms be sent to the shareholders and be published or disseminated via various sources, including the global edition of *The Wall Street Journal,* the *Neue Zürcher Zeitung* (Zürich, Switzerland), *Le Temps* (Geneva, Switzerland), the European edition of *The Economist,* and over the *PR Newswire.* The U.S. District Court did not receive a single objection to the U.S. Settlements or to the U.S. Plaintiffs' counsel's application for attorneys' fees of 20% of the total settlement amount plus reimbursement of their out-of-pocket expenses. On 12 December 2008, the U.S. District Court granted final approval to the U.S. Settlements (Exhibit 3). This decision became final on 25 June 2009.

3.24 The U.S. District Court's 6 March 2008 ruling that insufficient jurisdictional contacts with the U.S. existed to certify a global class of Converium investors effectively eliminated the possibility for Non-U.S. Exchange Purchasers to obtain any recovery in the U.S. for their losses, as described in more detail in chapter 7, D. The U.S. Plaintiffs and their counsel conducted research and contacted European lawyers in several countries to determine the best alternative to pursue the dismissed claims of the Non-U.S. Exchange Purchasers who were excluded from the U.S. Class Action. Because of statute of limitations issues and various restrictive procedural hurdles, it was determined that the Non-U.S. Exchange Purchasers did not have a strong legal position in Switzerland (the most obvious jurisdiction to bring a lawsuit against Converium and ZFS). During the settlement negotiations that resulted in the Agreements, all counsel involved in the litigation jointly came to the conclusion that the Netherlands is the European (and non-U.S.) jurisdiction in which the Non-U.S. Exchange Purchasers' interests could be represented on a group basis and that would offer the opportunity to declare the Agreements binding. Similarly, the Netherlands appears to be the only non-U.S. jurisdiction that permits the creation of a settlement vehicle that allows the Non-U.S. Exchange Purchasers to recover their losses on a collective basis unless they specifically elect not to be bound by the Agreements. See Chapter 11.

3.25 In December 2008, after agreement had been reached on the U.S. Settlements and the Agreements, Converium and ZFS individually also entered into separate settlements with the U.S. Securities and Exchange Commission (the "**SEC**") arising from the SEC's investigation into the issues underlying Converium's restatement of its financial statements, as described above in 3.6. As aforementioned, this restatement related to Converium's accounting methodology with respect to certain reinsurance transactions, and not to the central issue in the U.S. Class Action: the alleged inadequacy of Converium's loss reserves. Without admitting or denying the SEC's allegations, ZFS agreed to pay the SEC a penalty of USD 25 million and to disgorge USD 1 in connection with "gain obtained through wrongful conduct"[4]. The settlement entered into by the SEC and Converium did not include the payment of any penalty or monetary sum by Converium. The SEC announced in April 2010 that it intends to distribute ZFS' settlement payment to certain purchasers of Securities, including the Non-U.S. Exchange Purchasers. This distribution is independent of any distributions made or to be made under the U.S. Settlements and the Agreements. This SEC decision has no (negative) impact whatsoever on the distributions that will be made to the eligible Non-U.S. Exchange Purchasers, if the Court of Appeal declares the Agreements binding.

3.26 Other than the U.S. proceedings described in this chapter, no other civil, criminal, or administrative investigations, lawsuits, or proceedings have been initiated against Converium or ZFS, and no other judgments, settlements, penalties, or sanctions have been paid by or imposed against Converium or ZFS, anywhere in the world in connection with the matters at issue in this Amended Petition.

4. MAIN ELEMENTS OF THE AGREEMENTS

4.1 As will be shown below, the Agreements contain all of the requisite elements prescribed by Article 7:907 (2) NCC. Moreover, the

[4] Under US law, the repayment of the "gain obtained through wrongful conduct" is a necessary requirement for the SEC to be able to impose a fine. The amount of said gains mainly has a symbolic significance in the case at hand. The disgorgement of USD 1 exclusively served to facilitate the imposition of the penalty by the SEC.

Agreements do not contain any elements on the basis of which this Amended Petition should be rejected pursuant to Article 7:907 (3) NCC.

4.2 The Agreements specify the persons and entities who are eligible to seek compensation: the Non-U.S. Exchange Purchasers who do not, during the period as prescribed by Article 7:908(2) NCC, declare that they do not wish to be bound by the Agreements (the Participating Shareholders defined in 1.4) and who have a Recognized Claim under the Settlement Distribution Plan.

4.3 The Agreements specify that a total sum of compensation is available to the Participating Shareholders: USD 40,000,000 under the Converium Agreement and USD 18,400,000 under the ZFS Agreement, both plus accrued interest and less Foundation Expenses, Administrative Expenses, Principal Counsel's fees, and Tax Expenses. In addition, Converium has agreed to pay up to an additional € 200,000 to compensate for Foundation Expenses.

4.4 The Agreements state that, if the Agreements are declared binding, the Participating Shareholders will be eligible to seek compensation if they satisfy the criteria as specified in the Settlement Distribution Plan. In consultation with an economics expert engaged by the Foundation and its counsel, the Foundation has developed a plan through which the net settlement proceeds will be equitably distributed. This economics expert had the same role in connection with the settlement of the U.S. Class Action. In addition, to assist the Foundation in administering the settlements and processing all claims made by Participating Shareholders in accordance with the terms of the settlements, the Board has retained the Administrator. The Administrator has substantial experience administering settlements in international shareholder actions. The Settlement Distribution Plan is included as Exhibit C to the Agreements (Exhibits 1 and 2 to the Amended Petition) and is incorporated into them.

4.5 The Agreements provide that Participating Shareholders who wish to become eligible for compensation must submit their application for this using a prescribed form (the "**Claim Form**") by the "**Claim Date.**" This Claim Date will be either (*i*) 366 days following the date on which notice

of the issuance of the Binding Declaration must be published or (*ii*) for any Non-U.S. Exchange Purchaser who, on the date the notice was published, was not cognizant of his, her, or its eligibility to obtain compensation, 366 days after he, she, or it becomes cognizant of the availability of such compensation. However, in no event will a Claim Form be accepted if it is received by the Administrator more than five (5) years after the date on which the notice of the Binding Declaration was published. The Agreements thus provide for a claim period of at least one year in accordance with the provisions of Article 7:907(6) NCC and ¶ 6.34 of the Court of Appeal's decision in the *Shell* case.

4.6 The above-mentioned five-year limit on the filing of claims has been agreed by Petitioners by analogy to the five-year limitations period under Dutch law for general contract and tort claims in Article 3:307 and Article 3:310, NCC, respectively. Under Articles 7:907(1) and 7:908(1) NCC, the Agreements are contracts to provide compensation to persons and entities who claim to have suffered injury from their purchase of Non-U.S. Exchange Shares, so any claims submitted pursuant to the Agreements are equivalent to claims for contractual compensation. Those claims therefore should be treated as equivalent to contract claims that are subject to the five-year statute of limitations.

4.7 Aside from the above, pragmatic reasons require some limit on the time period during which Participating Shareholders may submit Claim Forms. Petitioners hope to distribute the full amount of available compensation to eligible Participating Shareholders as soon as possible. However, experience shows that, in settlements of this type, some money always remains after the first distribution of settlement funds. In addition, Petitioners have agreed to reserve at least USD 75,000 to pay claims filed by eligible Participating Shareholders who were not aware of their claims on the date on which the notice of the Binding Declaration was published. If the Foundation were – in principle – required to withhold any funds remaining after the initial distribution as well as the money reserved for later-filing claimants for a potentially open-ended number of years, the Foundation theoretically would never be able to make a final distribution to eligible Participating Shareholders and close its books. The five-year limitations periods in Articles 3:307 and 3:310

NCC at least put some ascertainable limit on the uncertain amount of time for which the Foundation must withhold distribution of the remaining settlement monies. They also provide the Participating Shareholders with a time frame within which they can expect to receive the final payment.

4.8 For the reasons mentioned above, Petitioners have included in Section II.C.6 of the Agreements the above-mentioned five-year limit on submission of Claim Forms by "late" Participating Shareholders. "Late" Participating Shareholders are those shareholders who, on the date the notice was published, were not cognizant of their eligibility to apply for compensation.

4.9 Each Claim Form submitted by a Participating Shareholder must supply various information and documentation to enable the Administrator to verify the claim and to determine whether the Participating Shareholder satisfies the terms of the Settlement Distribution Plan to be eligible for compensation, and if so, to determine the amount thereof. The Administrator shall determine for and on behalf of the Foundation whether a request submitted by a Participating Shareholder for payment under the Agreements is valid.

4.10 If a Participating Shareholder and the Foundation are unable to resolve a dispute about the claim of a Participating Shareholder to receive compensation or about the calculation thereof, the Participating Shareholder may refer the dispute to a dispute resolution body ("**Dispute Resolution Body**") that will resolve such disputes through "binding advice" under article 900 Book 7 of the Netherlands Civil Code or, alternatively, may initiate a proceeding in the Amsterdam District Court. The Dispute Resolution Body ("**DRB**") is an independent, one-person body governed by the Regulations of the Dispute Resolution Body (the "**Regulations**"). The DRB member, who has yet to be appointed, will be a retired judge or a person of similar capacity. The member of the DRB, nominated by the Foundation and subject to the approval of Converium, ZFS and VEB, will be appointed for an indefinite period of time. Pursuant to the DRB Regulations, the binding advisor shall be impartial and independent of the parties to the Settlement Agreements, including

the Foundation. Additionally, the binding advisor may not be employed by Converium, ZFS or VEB, and cannot be a current or former shareholder of Converium or ZFS. If the parties cannot agree on a DRB member to be recommended or appointed, they shall petition the District Court in Amsterdam to appoint the DRB member. The Regulations of the Dispute Resolution Body are incorporated into the Agreements and are annexed to them as Exhibit D. The fees and expenses of the DRB member relating to claimants' disputes shall be paid from the settlement funds. The Petitioners will inform the Court of Appeal prior to the hearing of the name of the person that will be appointed as the member.

4.11 The DRB can also resolve disputes that may arise in connection with the payment or the reasonableness of the Foundation's expenses. Such disputes may be submitted by Converium, ZFS or the Foundation. The parties must negotiate in good faith an appropriate process by which the dispute will be presented to, and decided by, the DRB. The parties to such dispute each must pay half of the fees and expenses incurred by the DRB. If Converium and ZFS join together in a dispute against the Foundation, they must each pay one quarter of the total of the DRB's total fees and expenses.

4.12 The Agreements allow Non-U.S. Exchange Purchasers who do not wish to be bound by the Agreements and the Binding Declaration to exclude themselves by submitting an opt-out statement. Petitioners have asked the Court of Appeal to approve a deadline for submitting this opt-out statement ending on the last day of the third month following the month in which notice is published as meant in Article 1017(3) Netherlands Code of Civil Procedure; provided, however, that a Non-U.S. Exchange Purchaser who could not have been aware of his, her, or its alleged damage as of the notice publication date may submit an opt-out statement within six months after being notified in writing of his, her, or its eligibility for compensation under the Agreements and of the right to submit an opt-out statement within that six-month period.

4.13 The Agreements contain termination provisions authorized under Article 7:908(4) NCC.

4.14 The table below states where the elements required under Article 7:907(2) NCC can be found in the Agreements, as well as the opt-out deadline of Article 7:908(2) NCC and the termination provisions under Article 7:908(4) NCC.

Element	**Article in Converium Agreement**	**Article in ZFS Agreement**
A description of the group or groups of persons for whom the agreement has been concluded, according to the nature and seriousness of the damage (art. 7:907(2)(a) NCC)	§§ II.A.3, XIII.A.51, XIII.A.55, and Exhibit D	§§ II.A.3, XIII.A.54, XIII.A.60, and Exhibit D
An indication as accurate as possible of the number of persons belonging to such group or groups (art. 7:907(2)(b) NCC)	§ XIII.A.51	§ XIII.A.54
The compensation awarded to these persons (art. 7:907(2)(c) NCC)	§§ I.A, II.A, XIII.A.49, XIII.A. 72, and Exhibit D	§§ I.A, II.A, XIII.A.52, XIII.A.78, and Exhibit D
The conditions these persons must fulfil in order to be eligible for this compensation (art. 7:907(2)(d) NCC)	§§ II.C, XIII.A.55, and Exhibit D	§§ II.C, XIII.A.60, and Exhibit D
The manner in which the compensation is determined and can be obtained (art. 7:907(2)(e) NCC)	§§ II.B, II.C, and Exhibit D	§§ II.B, II.C, and Exhibit D
The name and place of residence of the person to whom the written notification referred to in Article 908 ((2) and (3)) can be given (art. 7:907(2)(f) NCC)	§§ VII.A.1, XIII.A.2	§§ VII.A.1, VII.A.5, XIII.A.2
The conditions and time period for submitting an opt-out statement	§ VII	§ VII
The termination provision pursuant to Article 908 (4)	§ XI	§ XI

5. INTERNATIONAL JURISDICTION AND JURISDICTIONAL COMPETENCE

International Jurisdiction

5.1 For purposes of assessing its international jurisdiction, the Court of Appeal must treat as defendants those persons and entities on whose benefit Petitioners 3 and 4 (the Foundation and VEB) have signed the Agreements. After all, said persons and entities are being summoned to appear in connection with the Amended Petition.

5.2 For Non-U.S. Exchange Purchasers who were domiciled in the Netherlands at the time of the filing of this Amended Petition, the Court of Appeal can derive international jurisdiction under Article 2(1) of the Brussels I Regulation, as this Court concluded in its recent decision re the Shell Settlement on 29 May 2009 (LJN:BI5744, ¶ 5.18). The group of Non-U.S. Exchange Purchasers comprises approximately 200 Non-U.S. Exchange Purchasers who are domiciled in the Netherlands, many of whom are nominees, and seven of whom collectively held 285,498 Non-U.S. Exchange Shares. (**Exhibit 12**) (Petitioners currently have no information on the number of Non-U.S. Exchange Shares held by the other Non-U.S. Exchange Purchasers domiciled in the Netherlands.) Petitioners request that the Court of Appeal designate the list to be a "file" [*bestand*] in the sense of article 1(c) of the Dutch Personal Data Protection Act [*Wet bescherming persooonsgegevens*], so that the file is not included in the public case documents.

5.3 For Non-U.S. Exchange Purchasers domiciled in a state that is a signatory to the Brussels I Regulation or the EVEX Convention other than the Netherlands, the Court of Appeal can derive international jurisdiction pursuant to Article 6 (preamble) and (1) of said Regulation and Convention. After all, because Petitioners' claims against the latter group of shareholders and Petitioners' claims against the Non-U.S. Exchange Purchasers domiciled in the Netherlands are so closely connected, the proper administration of justice makes it expedient to hear and determine those claims together and to avoid the risk of irreconcilable judgments resulting from separate proceedings.

5.4 The Court of Appeal concluded in the *Shell* decision (¶ 5.21) that the "claims" at issue must be considered the actions to be brought by Shell against the persons to whom – according to those persons' assertions – damage has been caused by the events underlying a petition to declare a WCAM settlement binding. The Court of Appeal reasoned that:

> *'Insofar as these persons are domiciled in the Netherlands, one of those "claims" comprises this request for a binding declaration pursuant to Article 1013 NCCP. The other contracting states do not provide for such a "claim"; with respect to these countries one might consider claims aiming for a declaratory judgment that those persons are only entitled to a claim under the Settlement Agreement and that Shell is not additionally liable for wrongful conduct.'*

5.5 A similar situation exists here. The Petitioners' "claims" against the Non-U.S. Exchange Purchasers domiciled in the Netherlands arise under the WCAM, while Petitioners' claims against the Non-U.S. Exchange Purchasers domiciled in other contracting states to the Brussels I Regulation or the EVEX Convention are equivalent to claims for a declaratory judgment that those persons and entities are only eligible to pursue a claim under the Agreements and that Converium and ZFS are not additionally liable.

5.6 Petitioners' claims against persons and entities domiciled outside the Netherlands but in contracting states to the Brussels I Regulation or the EVEX Convention are so closely connected to Petitioners' claims against the Netherlands domiciliaries that it is expedient to hear and determine all of those claims together to avoid the risk of irreconcilable judgments resulting from separate proceedings. All of those claims are based on the same complex of facts, which allegedly constitutes wrongful action by ZFS and Converium *vis-à-vis* Non-U.S. Exchange Purchasers and which allegedly caused damage to said group of shareholders. This complex of facts did not occur in all the individual countries, but is "common" to all Non-U.S. Exchange Purchasers and "concentrated" in time and place.

5.7 This Court of Appeal reached a similar conclusion in the *Shell* case (in ¶ 5.21):

> '*It is forthwith evident that in the event of the adjudication of these disputes in separate countries and even by different courts within a single country, this will not only lead to great divergence but also to conflicting and irreconcilable judgments in the process, since the divergence will also occur within the same factual and legal situations.*'

5.8 All of those claims are additionally based on the same Agreements, which seek to provide compensation to the Non-U.S. Exchange Purchasers and to limit Converium's and ZFS' further liability for any allegedly wrongful conduct. If Converium and ZFS could not assert their claims against the entire group of Non-U.S. Exchange Purchasers in a single proceeding, the Agreements would not exist, because no Non-U.S. Exchange Purchaser has a pending lawsuit against Converium or ZFS anywhere in the world based on his, her, or its purchase or acquisition of Non-U.S. Exchange Shares during the Relevant Period (with the exception of the U.S. Class Action from which they were eventually excluded). In view of the absence of such proceedings, Converium and ZFS do not have the intention to provide compensation to Non-U.S. Exchange Purchasers on an individual basis. The Agreements are designed to address all Non-U.S. Exchange Purchasers' potential claims against Converium and ZFS on a global basis and/or via a global resolution, and Petitioners would not have made those Agreements if such a global resolution were not feasible.

5.9 In view of the above, Petitioners' claims against all Non-U.S. Exchange Purchasers – whether they are domiciled in the Netherlands or in another contracting state to the Brussels I Regulation or the EVEX Convention – are so closely interconnected that they must be determined together and simultaneously to avoid the risk of irreconcilable judgments resulting from separate proceedings.

5.10 With regard to Non-U.S. Exchange Purchasers who are not resident or domiciled in a contracting state to the Brussels I Regulation or the EVEX

Convention, the Dutch courts have jurisdiction pursuant to Article 3 (preamble) and (a) NCCP, because two Petitioners – namely the Foundation and VEB – are domiciled in the Netherlands. This Court reached a similar conclusion in the *Shell* decision, where it held (in ¶ 5.16) that Article 3 (preamble) and (a) NCCP created international jurisdiction for the Dutch courts over Non-U.S. Exchange Purchasers who were not domiciled in above-mentioned contracting states, because "five of the applicants have their domicile in the Netherlands."

5.11 Neither the EEX Regulation nor section 3 Dutch Code of Civil Procedure gives the court the option to decline jurisdiction by relying on a *forum-non-conveniens* - doctrine if jurisdiction is the result of application of the relevant rules.

Jurisdiction

5.12 The Amsterdam Court of Appeal has exclusive jurisdiction pursuant to Article 1013 (3) NCCP to take cognizance of this Amended Petition

6. REPRESENTATIVENESS

Introduction

6.1 Article 7:907(1) NCC states that a contract that is the subject of a WCAM petition must be "entered into by a foundation or association possessing full legal capacity," and Article 7:907(3), opening words, and (f) NCC require the foundation or association to be sufficiently representative of the interests of those for whose benefit a settlement agreement was concluded.

6.2 The factors that should be assessed when determining a foundation's or association's representativeness with regard to the interests of persons and entities in whose favour the WCAM-contract has been made were enumerated during the passage of the WCAM through Parliament:

> '*The representativeness of the interest group may be inferred, for example, from the other activities which the group has performed in order to serve the interests of the aggrieved parties, from the*

> *number of aggrieved parties who have joined or are members of the group or from the extent to which the aggrieved parties themselves accept the group as representative. The representativeness may also be inferred from the fact that the group has acted as a negotiating partner in relation to the damage causing event(s), not only in relation to the party or parties causing the damage but also, for example, in relation to the government authorities. Acting as spokesperson in the media may also be an important indication.'*[5]

6.3 In its judgment of 27 January 2007 (JOR 2007,71) in the *Dexia* case, the Amsterdam Court of Appeal held the following in ¶ 5.26:

> *'It is not necessary that it appears for each of the four petitioners individually that they are representative of the whole group of aggrieved persons. It follows from the statutory rules that it is sufficient that the petitioners jointly sufficiently represent the interests of the persons for whose benefit the agreement under the Dutch Act on the Collective Settlement of Mass Damage Claims (WCAM) was concluded, provided that each of the petitioners individually is sufficiently representative of a sufficiently large group of these persons.'*

6.4 This principle was confirmed in the Court of Appeal's judgments of 29 May 2009 (LJN:BI5744) re *Shell* (¶ 6.22) and of 15 July 2009 (LJN:BJ2691) re *Vedior* (¶ 4.20). In the *Vedior* judgment, the Court added that the assessment of representativeness of joint parties should take into consideration the fact that it is likely that a significant portion (possibly even a majority) of the persons awarded compensation under the Agreement reside or are established outside the Netherlands. However, if all other criteria are met, the single possibility that a significant portion (perhaps even a majority) of the persons or entities awarded compensation under the Agreement might reside or be established outside the Netherlands does not prevent the agreement from

[5] Explanatory Memorandum, Parliamentary Papers II 2003-2004, 29414, no. 3, p. 16. *See also* the loose-leaf publication of the Code of Civil Procedure, Title 14, note 2 (A.J.M. van Mierlo).

being declared binding (*Vedior* judgment ¶ 4.7). Those persons or entities fully belong to the "persons on whom damage allegedly was inflicted" within the meaning of Article 7:907(1) NCC.

6.5 Petitioners observe that the representativeness of the VEB – which is both a Petitioner and a Participant in the Foundation – for the interests of shareholders who reside in the Netherlands has been accepted without reservation by this Court of Appeal in previous WCAM proceedings (judgment of 27 January 2007, JOR 2007, 71, re *Dexia*; judgment of 29 May 2009, LJN:BI5744, re *Shell*; judgment of 15 July 2009, LJN:BJ2691, re *Vedior*).

6.6 Further, with regard to the representativeness of the Foundation, the following applies. In its judgment of 29 May 2009 (LJN:BI5744) re *Shell* (¶¶ 6.3, 6.21-6.25), this Court of Appeal held that a similar foundation – the Stichting Shell Reserves Compensation Foundation, which was organized to provide relief to purchasers of Shell securities who claimed to have been injured by a decline in the value of their shares in a certain period – was sufficiently representative of the group of non-U.S. exchange purchasers of Shell securities to satisfy Articles 7:907(1) and (3)(f) NCC. In the *Vedior* proceedings, a similar foundation that had Dutch and foreign institutional investors and shareholder organizations as its participants was also deemed to be sufficiently representative of the interests of persons for the benefit of whom the settlement was concluded, regardless of whether they resided or were established inside or outside the Netherlands (*Vedior* decision ¶ 4.21).

6.7 The Foundation and VEB are sufficiently representative of the interests of the Non-U.S. Exchange Purchasers, on the following grounds:

* The number, location, and characteristics of the Participants of the Foundation and the members of VEB; and
* The activities of the Foundation and VEB in the interest of the Participating Shareholders before and after the conclusion of the Agreements.

6.8 The above will be explained in more detail below. First, Petitioners discuss the statutory objectives of the Foundation and VEB.

6.9 The Foundation, according to article 3.1 of its Articles of Association (see Exhibit 4), has as its purpose:

> *'(a) representing the interests of the Investors and Interest Groups in connection with the Settlement Agreements to be submitted to the Court of Appeal pursuant to the Dutch Class Action Financial Settlement Act (Wet Collectieve Afwikkeling Massaschade);*
> *(b) acquiring and distributing financial compensation for the damages (or part thereof) the Investors claim to have suffered, with due observance of the Settlement Agreements, and to do all that is related or may be conducive to the foregoing, all in the broadest sense of the word.'*

6.10 VEB has as its statutory objective (see Exhibit 9, article 3.1) "the promotion of the interests of shareholders in the broadest sense of the word." As the Court of Appeal stated in the *Shell* decision (¶ 6.23), VEB

> '*actually develops numerous activities that can be qualified as the common promotion of the interests of shareholders residing or having abode in the Netherlands. That is why it is indeed sufficiently representative (...) with regard to persons residing or having abode in the Netherlands for the benefit of whom the Settlement Agreement has been concluded*.'

Number of Participants and members

6.11 The Foundation and its Participants, including VEB and its members, represent, both individually and jointly, a significant number of shareholders. These shareholders are domiciled in various countries, consistent with the geographic spread of the Non-U.S. Exchange Purchasers during the Relevant Period.

6.12 By entering into a Participation Agreement, each Participant agrees until the settlement funds are distributed (i) to supervise the policies set by the Foundation's Board, (ii) to advise the Foundation on general business matters, and (iii) to support the Settlement Agreements and the parties' intentions to petition the Amsterdam Court of Appeal to declare the Agreements binding.

6.13 As stated in the Foundation's Articles of Association, the Foundation's Participants must be consulted for resolutions of the Board to adopt the Foundation's budget; its balance sheet, statement of assets and liabilities, and annual report of its activities; to amend the Foundation's Articles of Association; and to dissolve the Foundation. Moreover, Participants maintain authority to appoint or dismiss members of the Foundation's Board by resolution.

6.14 The majority of the Participants come from (i) Switzerland, where the overwhelming majority of the registered holders of Non-U.S. Exchange Shares as well as the headquarters of Converium were located, and (ii) the United Kingdom. Switzerland and the United Kingdom also have by far the largest number of registered Non-U.S. Exchange Shares. As of 31 December 2003, 2,467 registered shareholders residing in Switzerland held 17.64% of the registered common shares (7,017,127 shares), and 19 registered shareholders residing in the United Kingdom held 24.44% (9,719,918 shares) of the registered common shares as of that same date. (See opinion of Dr. Scott Hakala, **Exhibit 13**, in particular Exhibit C attached thereto). (These numbers reflect only registered shares and registered shareholders. The settling parties do not know the number of beneficial owners for whom registered shareholders might be acting as nominees.) Other information provided by the Administrator shows that there are about 8,500 shareholders from Switzerland and about 1,500 shareholders from the United Kingdom and that the total number of Non-U.S. Exchange Purchasers is approximately 12,000 (**Exhibit 19**).

6.15 The Participants from Switzerland are Baumann & CIE Banquers, Providentia AG, Generali (Schweiz) Holding AG, EKZ Zürich, Comunitas Vorsorgestiftung, and Baloise Asset Management (see Exhibit 5). The Participants from the United Kingdom are Aviva

Investors Global Services Ltd., Hermes Investment Management Ltd., M&G Investment Management Ltd., Merseyside Pension Scheme, Electricity Supply Pension Scheme, Mars Associates Retirement Plan, The Scottish Investment Trust PLC, and Scottish & Newcastle Pension Plan Trustee Ltd, MGN Pension Trustees Ltd as well as the United Kingdom Shareholders Association, a UK shareholder organization (see Exhibit 5).

6.16 Other Participants are located in:

- the Netherlands (MN Services NV, Stichting Mars Pensioenfonds, and VEB),
- Singapore (Government of Singapore Investment Corporation Pte Ltd., which owned approximately 5% of the Non-U.S. Exchange Shares),
- Belgium (BNP Paribas Investment Partners Be Holding S.A.),
- Greece (Avalon), and
- other European countries (including other shareholder organizations from France, Germany, Luxembourg, Spain, Italy, and Austria, and Euroshareholders) (see Exhibit 5).

6.17 A considerable number of registered holders of Securities come from these countries (see opinion of Dr. Scott Hakala, Exhibit 13, in particular Exhibit C attached thereto).

6.18 As explained in 2.19 et seq., VEB also promotes the interests of Dutch retail shareholders. It has at this time approximately 50,000 members, making it the biggest promoter of retail shareholders' interests in the Netherlands.

6.19 The Participants, or insofar as applicable their members, similarly to all other Non-U.S. Exchange Purchasers, allegedly suffered injury during the Relevant Period as a result of the same allegedly fraudulent conduct and material misstatements made by Converium and ZFS. They and seek compensation for the damages they sustained (or for their members, where the participant is an interest group). The facts relevant to the alleged misstatements and omissions are the same for the Participants

(and/or their members) and all other Non-U.S. Exchange Purchasers, all of whom were allegedly affected all in the same manner. Participants hope to obtain financial recovery for themselves or for their members in the same manner as the other Participating Shareholders pursuant to the Plan of Distribution incorporated in the Settlement Agreements. Apart from their shared interest in having the Court of Appeal declare the Settlement Agreements binding, each of the Foundation's twenty-nine (29) Participants is an independent, private or institutional investor, or a shareholder interest group.

6.20 At the time of filing the Amended Petition Petitioners do not have information about the actual holdings of each Participant in Converium stock during the Relevant Period. Each Participant, upon signing the Participant Agreement, confirmed that it had purchased Converium stock during the Relevant Period. Upon obtaining this information, Petitioners will provide it to the Court.

Other activities by the Foundation and VEB

6.21 The representativeness of the Foundation and VEB is further illustrated by their activities for the benefit of the Non-U.S. Exchange Purchasers. The Foundation has engaged a public relations advisor to ensure that adequate publicity is given to the Agreements. On behalf of the Foundation, the settlements were discussed with large international investors at major international conferences aimed specifically at investors, held in March 2009[6] in Amsterdam, in July 2009[7] in Frankfurt, in June 2009[8] and March 2010[9] in London, in January 2010[10] in Geneva, in April 2010[11] in Edinburgh, in May 2010[12] in Brussels and in April 2010[13] in Washington, D.C. Since the conclusion of the Agreements, and even during the final negotiations towards the Agreements, the

[6] Organized by ICGN.
[7] Organized by Deminor.
[8] Organized by the UK Trade Union Congress.
[9] Organized by the International Corporate Governance Network (ICGN).
[10] Organized by Deminor.
[11] Organized by the National Association of Pension Funds.
[12] Organized by Deminor.
[13] Organized by the Council of Institutional Investors.

Foundation and VEB have actively and successfully attracted new Participants.

7. THE COMPENSATION IS NOT UNREASONABLE

Introduction

7.1 Petitioners believe that the amount of compensation for which Non-U.S. Exchange Purchasers will be eligible is the best alternative for a swift, certain, and reasonable recovery for their alleged losses. Without these Agreements, Non-U.S. Exchange Purchasers would have limited, if any, ability to recover their losses in U.S. courts or other countries. It is even more likely that these Agreements offer Non-U.S. Exchange Purchasers the only possibility for compensation. Taking into account the wide support for the Agreements among Non-U.S. Exchange Purchasers (including the Participants[14]), the lack of any litigation outside the U.S. by Non-U.S. Exchange Purchasers, the limited options (if any) for recovery through litigation, and the speed with which compensation could be obtained under the Agreements, Petitioners respectfully submit that a Binding Declaration of the Agreements providing for the Total Settlement Payment of USD 58,400,000 is fair and reasonable.

A. *Lack of Litigation Brought Outside the U.S. by Non-U.S. Exchange Purchasers*

7.2 Not a single action has been filed outside the U.S. against Converium or ZFS asserting any claims in connection with the adequacy or inadequacy of Converium's loss reserves or Converium's statements about its financial condition as described in Chapter 3. The resolution of the U.S.

[14] As discussed above, the Foundation, which is a Dutch entity and a Petitioner in this proceeding, is composed of 29 Participants that have signed Participation Agreements and affirmatively support the Agreements. The Participants of the Foundation are from countries around the world, including Switzerland, the Netherlands, the United Kingdom, and Singapore, where most of the Non-U.S. Exchange Purchasers resided during the Relevant Period.

Class Action has brought an end to all proceedings that were pending in the U.S. against ZFS and Converium with respect to the current issue.

7.3 The lack of litigation suggests that no Non-U.S. Exchange Purchaser considers bringing a lawsuit to be a viable option. This conclusion is not surprising, because, as discussed in more detail below, further litigation is not realistically feasible at this point for the Non-U.S. Exchange Purchasers. This group would not be able to prosecute a class action for damages outside the United States. And if Non-U.S. Exchange Purchasers were to file separate actions in Europe or anywhere else outside the United States, their possible claims may have become time-barred, either fully or in part, and Non-U.S. Exchange Purchasers would have to prove all elements of their claims required for establishing liability without having the possibility of conducting pre-trial discovery. Additionally, in each individual case, the court would have to decide a number of very complex factual and legal issues, including whether ZFS and Converium could be held liable under the applicable law and the extent of the losses for which they could be held accountable (if liability could even be established). And, moreover, if the Non-U.S. Exchange Purchasers were not successful on their claims, they would be subject to "loser pays" rules in most countries (including Switzerland, the United Kingdom, and the Netherlands).

7.4 The lack of pending litigation anywhere outside the United States also means that Non-U.S. Exchange Purchasers would be unable to benefit from any precedent from such lawsuits. Consequently, the relief provided by the Agreements effectively is the only concrete and viable relief available to the Non-U.S. Exchange Purchasers.

7.5 By contrast, if the Agreements are declared binding, the Non-U.S. Exchange Purchasers who did not file any suit against Converium and/or ZFS (or against any of the other defendants in the U.S. Class Action) and who do not timely and validly exclude themselves from the effect of the Binding Declaration will be eligible to seek a compensation payment without having had to incur the substantial time, expense, and risks associated with bringing potential individual litigation.

B. *Reasonable Balance of Risks and Benefits of Settlement*

7.6 In the opinion of Petitioners, the Agreements offer a reasonable balance between the risks involved in any actions that could be initiated by the Non-U.S. Exchange Purchasers on the one hand, and the benefits that Non-U.S. Exchange Purchasers could obtain from the Agreements on the other. A Non-U.S. Exchange Purchaser who does not wish to be bound by the Agreements will be free to exclude himself, herself, or itself from the effect thereof and to individually pursue his, her, or its claims in a separate forum or otherwise. Nevertheless, as set forth in greater detail below, there are serious procedural and substantive hurdles to bringing such an action.

(a) *The Procedural Hurdles in Non-U.S. Litigation*

7.7 If a Non-U.S. Exchange Purchaser were to file an action relating to Converium's loss reserves and the decline in Converium's stock price, Switzerland might be the most likely forum for such a case, because both Converium and ZFS are based in Switzerland. Accordingly, the Foundation retained a distinguished expert on Swiss law to prepare an opinion on the viability of any such potential proceedings in Switzerland. This expert concluded that all possible claims of Converium investors would almost certainly be barred by the applicable statutes of limitations. As Professor Dr. Peter Nobel, Chair for Swiss and International Business Law at the Institute for European and International Business Law at the University of St. Gallen, Switzerland, explains in an opinion written at the Foundation's request, Swiss law allows investors to bring a civil claim for initial public offering prospectus liability under Article 752 of the Swiss Code of Obligations ("**CO**") or a civil claim for liability for an unlawful act under Article 41 of the Swiss CO. (**Exhibit 14,** ¶¶27-30, ¶¶37-41, respectively) Civil prospectus liability claims brought under Art. 752 CO must be brought within 5 years from the time the plaintiff actually learned of his damage and of the person liable (a "relative" limitations period), but in all events no more than 10 years from the day after the day of the act causing the damage (an "absolute" limitations period) (Art. 760 CO, Exhibit 14, ¶¶ 31-36). For civil claims alleging "unlawful acts" under Art. 41 CO, a one-year relative limitations period

applies under Art. 60(1) CO, and the absolute limitations period is ten years after the day the unlawful act occurred. If a claim asserted under Art. 760 or Art. 41 CO results from an act that is illegal under the criminal law, then the statute of limitations may be longer than under the civil statutes of limitations. (Exhibit 14, ¶¶ 44-47, see 7.14 below)

7.8 The relative limitations period begins to run when the injured party receives actual knowledge of the basic element of the damage and of the identity of the person liable. (Exhibit 14, ¶¶ 42-43) However, in determining when a claimant received actual knowledge, the Swiss Federal Court (the highest court in Switzerland) in practice takes into consideration whether the damaged party "acted indifferently or with a total lack of interest in protecting his rights" (Exhibit 14, ¶ 33). A damaged party is expected to act in good faith. (Exhibit 14, ¶¶ 33, 43)

7.9 In the present matter, Converium issued the prospectus for its IPO in December 2001 – more than eight years ago. Converium began disclosing its loss-reserve deficiencies in 2002. According to the U.S. Plaintiffs, it fully disclosed the alleged "full truth" about its financial condition by 2 September 2004: more than five years ago. Therefore, even if the statute of limitations were to run only from the last of those dates, *i.e.*, when the full disclosure of the alleged "truth" occurred in September 2004, a claim for civil prospectus liability under Article 752 CO still would be time-barred under the applicable 5-year relative limitations period. (Exhibit 14, ¶35) Likewise, an action brought for civil claims under Art. 41 CO's one-year relative limitations period would be time-barred. (Exhibit 14, ¶¶ 13 and 14) Furthermore, the criminal statutes of limitations are not likely to be implicated here, because no criminal proceedings have been brought in Switzerland or elsewhere as a result of the disclosures and conduct at issue here.

7.10 Under Swiss law the U.S. Class Action against Converium and ZFS also would not interrupt the applicable statute of limitations period. According to Professor Dr. Nobel, the U.S. District Court did not have jurisdiction over the Non-U.S. Exchange Purchasers' claims under either Swiss or U.S. law, so Swiss law would not view the U.S. Class Action as

capable of stopping the Swiss statutes of limitations for the Non-U.S. Exchange Purchasers' potential claims (Exhibit 14, ¶ 22).

7.11 Moreover, even if Non-U.S. Exchange Purchasers somehow could overcome this (statute of limitations) obstacle, then additional strong procedural barriers would exist to litigating such claims in Switzerland (and elsewhere), as Professor Dr. Nobel describes in detail in his opinion. For example, in a Swiss proceeding, (*i*) Non-U.S. Exchange Purchasers would not have access to pre-trial discovery, so they would need to invest substantial resources drafting the initial complaint and preparing for trial without being able to obtain documents and information directly from ZFS and Converium; (*ii*) each Non-U.S. Exchange Purchaser would need to prove that he, she, or it actually relied on Converium's alleged misrepresentations (causal connection), because Swiss law (unlike federal law in the United States) does not have the reliance doctrine that makes it simpler for plaintiffs to file claims in situations like the matter at hand; (*iii*) contingency fee arrangements with counsel are prohibited under Swiss law, so litigants would have to pay their counsel substantial fees associated with prosecuting such actions; (*iv*) if not successful, the plaintiffs would also risk having to pay costs and attorneys fees to Converium and ZFS, and (*v*) a final judgment from a Swiss court on such a complex matter could take 3 to 6 years or longer from the date of the filing of the complaint. (Exhibit 14, Section VI.C e (¶ 121)

7.12 Additionally, each Non-U.S. Exchange Purchaser would have to initiate individual proceedings, because proceedings similar to class actions for damages in the United States are not available in Switzerland (or most other jurisdictions), and courts therefore would need to evaluate each Non-U.S. Exchange Purchaser's claim separately. Such actions could last for many years, causing Non-U.S. Exchange Purchasers to incur large costs, and could ultimately result in Non-U.S. Exchange Purchasers' receiving no compensation. Moreover, a Non-U.S. Exchange Purchaser's individual damages could be *de minimus* and not sufficient to justify the risks or expense of litigating at all. A litigant would at most have a minor chance of success in advance. In view of this, the certainty of payment to eligible Non-U.S. Exchange Purchasers through the Agreements far outweighs the risks of (continued) litigation.

7.13 In addition, as Professor Dr. Nobel further explains in his opinion, proving causation and damages can be very problematic in cases such as this one, where damages are sought based on allegedly false statements made in a prospectus or related documentation. (Exhibit 14, ¶¶ 75-76) Under the strict prerequisites of establishing a causal connection as employed by the Swiss courts, Non-U.S. Exchange Purchasers suing under Swiss law would have to prove that in all likelihood the false statements caused an incorrect share price and that the incorrect share price caused damage. Additionally, Non-U.S. Exchange Purchasers would need to demonstrate that they purchased the shares directly based on the false statements. In fact, the Swiss Federal Court has acknowledged the difficulty of proving the causal connection in cases concerning prospectus liability. (Exhibit 14, ¶¶ 77-79) Consequently, any such claims for damages would generally be difficult to prove and could effectively be contested by ZFS and Converium on the merits.

7.14 Finally, because all potential claims for damages based on the violation of provisions of civil law are time-barred under Swiss law, Non-U.S. Exchange Purchasers seeking to pursue a legal cause of action in Switzerland might try to proceed by claiming a violation of a provision of the Swiss criminal law, which provides a longer statute of limitations (Exhibit 14, ¶¶ 44-47). But any Non-U.S. Exchange Purchasers who sought to bring such claims in Switzerland would have to satisfy not only the various procedural requirements set forth above, but also a heavy set of substantive legal burdens. For example, a plaintiff would need to prove that officers or directors of ZFS and/or Converium violated Swiss criminal law. This too, however, would be extremely difficult to prove – especially where, as here, no criminal investigation or proceeding has been initiated in Switzerland (or anywhere else in the world) based on the underlying events and/or the disclosures that this Amended Petition concerns. It is much more difficult to prove criminal behaviour than to prove a non-criminal unlawful act. For example, for criminal fraud under Art. 146 SPC[15], the element of deceitful misrepresentation as well as proof of intent for self-enrichment are very high hurdles.

[15] In his English language opinion, Professor Dr. Nobel uses the abbreviation SPC for "Swiss Penal Code".

(b) *The Procedural Hurdles in U.S. Litigation*

7.15 The Non-U.S. Exchange Purchasers also would not likely be able to litigate their claims (again) before a United States court.

7.16 As discussed above, the U.S. Class Action was originally brought on behalf of all investors – including the Non-U.S. Exchange Purchasers – who bought or otherwise acquired Securities during the period from 11 December 2001 through 2 September 2004. However, at the class certification stage, the U.S. District Court ruled that it did not have subject-matter jurisdiction over the claims of non-U.S. persons and/or legal entities not domiciled in the U.S. who had purchased Converium shares on Non-U.S. Exchanges. The U.S. District Court therefore excluded the Non-U.S. Exchange Purchasers from the U.S. Class Action.

7.17 In ruling that it did not have subject-matter jurisdiction over the claims of the Non-U.S. Exchange Purchasers, the U.S. District Court applied two tests, well-established in U.S. case law, for determining whether the United States securities laws and regulations cover non-U.S. investors' transactions in securities of non-U.S. corporations on non-U.S. exchanges. The first criterion is the "conduct test" (*i.e.*, whether the defendants' conduct in the U.S. was significant and material to the alleged fraud and directly caused the non-U.S. investors' alleged losses). The second criterion is the "effects test" (*i.e.*, whether conduct outside the U.S. had a substantial adverse effect on U.S. investors or U.S. securities markets). The U.S. District Court held that the U.S. Plaintiffs could meet neither test on behalf of the Non-U.S. Exchange Purchasers.

7.18 As mentioned, the tests applied by the U.S. District Court were based on existing precedent. The correct application of the test by the U.S. District Court was reaffirmed in a decision issued in an unrelated case (*Morrison v. National Australia Bank Ltd.*, 547 F.3d 167 (2d Cir. 2008)) by the United States Court of Appeals for the Second Circuit. This is the appeals court that would have had jurisdiction to hear any appeal from the judgments of the U.S. District Court in the matter at hand. In a decision issued on 24 June 2010, the United States Supreme Court affirmed the decision of the United States Court of Appeals for the

Second Circuit in *Morrison*, but discarded the "conduct" and "effects" tests, holding instead that the anti-fraud provision of the U.S. securities laws "reaches the use of a manipulative or deceptive device or contrivance only in connection with the purchase or sale of a security listed on an American stock exchange, and the purchase or sale of any other security in the United States." *Morrison v. National Australia Bank Ltd*. (United States Supreme Court 24 June 2010; 130 S. Ct. 2869 (2010)). Under this decision, the Non-U.S. Exchange Purchasers cannot pursue their claims under the U.S. securities laws.

7.19 Following the aforementioned order of the U.S. District Court, ruling that it had no subject-matter jurisdiction to hear the claims of the Non-U.S. Exchange Purchasers, the U.S. Plaintiffs filed a motion asking the U.S. District Court to reconsider its ruling on jurisdiction and to take into consideration evidence obtained through discovery purportedly indicating that certain conduct in furtherance of the alleged fraud took place in the U.S. The likelihood of success on any motion for reconsideration is generally very low. Moreover, given the appellate court's aforementioned decision in the *Morrison* case, in which the application of the well-established tests was reconfirmed, the U.S. Plaintiffs' chances of succeeding on appeal were estimated to be particularly low. As further described in the opinion of Professor Linda Silberman, Martin Lipton Professor of Law at the New York University School of Law (**Exhibit 15**), written at the request of the Foundation, the new evidence presented by the U.S. Plaintiffs in their motion for reconsideration was not likely to alter the U.S. District Court's original ruling that it lacked subject-matter jurisdiction over the Non-U.S. Exchange Purchasers' claims because the critical decisions concerning the alleged fraud had taken place in Switzerland and the allegedly false and misleading written statements quoted in the U.S. Plaintiffs' complaint had been drawn up in Switzerland and/or had been disclosed from Switzerland. (Exhibit 15, ¶¶ 41-42)

7.20 While the U.S. Plaintiffs were awaiting the U.S. District Court's decision on their motion for reconsideration, the Court of Appeals for the Second Circuit issued its *Morrison* decision referred to above, which essentially confirmed the legal analysis conducted by the U.S. District Court on

subject-matter jurisdiction. Following said decisions of the Court of Appeal and the Supreme Court in the *Morrison* case, the U.S. Plaintiffs' likelihood of prevailing on their motion would have been even lower. (Exhibit 15, ¶43)

7.21 Finally, the Non-U.S. Exchange Purchasers do not have any other forum in the U.S. in which they realistically could expect to be able to bring their claims insofar as based on federal securities laws and regulations. They cannot institute an action in a U.S. state court alleging the types of claims asserted in the U.S. Class Action, because Exchange Act claims are exclusively subject to jurisdiction in the federal court system and cannot be pursued in state courts. In addition, the Securities Litigation Uniform Standards Act of 1998 ("SLUSA") would likely bar litigation of the Securities Act claims on a classwide or collective basis in a U.S. state court. (Exhibit 15, ¶¶ 51, 56) Moreover, the U.S. District Court has already ruled that those claims are time-barred, so another U.S. court probably would be unwilling to disagree with that ruling in a related case**.**

7.22 Nor could the Non-U.S. Exchange Purchasers realistically pursue state-law (as opposed to federal-law) claims on an individual basis. Were they to do so, each Non-U.S. Exchange Purchaser would need to prove that he, she, or it actually relied on the alleged misrepresentations in Converium's financial statements, because state law does not have the presumed-reliance doctrine. This burden of proof likely would doom any such individual actions. In addition, the issue of statutes of limitations would continue to arise in this case. (Exhibit 15, ¶ 56) Finally, there is a slight possibility that Non-U.S. Exchange Purchasers might be able to avoid SLUSA by asserting a class action claim under the substantive laws of a Non-U.S. jurisdiction, including Switzerland. However, as Professor Silberman also explains, the class action would ultimately be dismissed by the U.S. court on *forum non conveniens* grounds. (Exhibit 16, ¶¶ 52-56)

7.23 Thus, following the U.S. District Court's ruling that the Non-U.S. Exchange Purchasers could not bring their federal securities claims in U.S. federal courts, the Non-U.S. Exchange Purchasers have virtually no viable litigation options either in the United States or in any other

country, including Switzerland. As discussed above – the claims in Switzerland probably would be time-barred, pretrial discovery is unavailable, contingent attorneys' fees agreements are unavailable, the Non-U.S. Exchange Purchasers could be liable for the defendants' attorneys' fees under "loser pay rules," and proceedings similar to the class action mechanism in the U.S. do not exist. (Exhibit 14, ¶¶35, 43, 101-102, 114-116, 117)

(c) *Challenges on the Merits*

7.24 In addition to the procedural hurdles that Non-U.S. Exchange Purchasers would face in bringing their claims, they also would need to take account of the substantive challenges that could be asserted against their claims.

7.25 The issues underlying the Amended Petition at hand are also complex, as they relate to the level at which loss reserves are to be maintained for covering possible liabilities by (globally operating) reinsurance companies. It is not easy to predict a court's findings on these matters. In the context of the U.S. Class Action, ZFS and Converium presented strong defences to the U.S. Plaintiffs' allegations of misrepresentation or other wrongful conduct and the alleged damage incurred.

7.26 Central elements of ZFS' and Converium's arguments were that :

(i) reinsurance loss reserves are mere estimates that are inherently imprecise;

(ii) the amount of required reserves can appropriately rise over time as additional information regarding claims becomes known to a reinsurer;

(iii) the amounts reserved for the benefit of potential losses were based on best estimates by respected, independent actuaries who advised Converium on this; and

(iv) inadequacies in the level of the reserves resulting from honest errors in the establishment and maintenance of loss reserves cannot give rise to a claim for fraud or intentional misconduct. Significantly, no U.S. criminal prosecutor or any corresponding authority from another

country ever investigated or took action against Converium or ZFS with respect to this matter.

Moreover, many of Converium's peers in the reinsurance industry in a similar situation show a comparable pattern of conduct. They too increased reserves during the Relevant Period attributable to their own North American operations, thereby supporting ZFS' and Converium's argument that the reserve increases were here also attributable to reinsurance industry-wide adverse developments, not fraud or deception. Accordingly, a court could find that ZFS and Converium did not act with fraudulent intent because, among other reasons, the actuarial reviews conducted by Converium's auditors and the clean audit opinions they provided each year supported the belief that the reserves were adequate. Converium could also defeat an allegation that it acted with fraudulent intent in novating purportedly problematic reinsurance contracts from Converium's North American operations to its Zurich operations by arguing that the novation did not affect the company's consolidated financial statements during the Relevant Period (because the North American and Zurich operations' financial reports ultimately were consolidated into the corporate financial statements that were released to the investing public).

7.27 Therefore, in light of the foregoing, it is highly likely that Non-U.S. Exchange Purchasers would face significant difficulties were they to bring claims for damages in Switzerland or any other country. But for the Agreements, the Non-U.S. Exchange Purchasers would be unlikely to recover any of their alleged losses at all.

C. *Wide Support from Non-U.S. Exchange Purchasers and Shareholder Organizations*

7.28 Because, in light of the alternatives, the proposed compensation is reasonable – and is probably the only form of relief available to the Non-U.S. Exchange Purchasers – the Agreements are supported by a broad and diverse group of Non-U.S. Exchange Purchasers and shareholder organizations. Those entities represent a significant percentage of the Non-U.S. Exchange Shares purchased during the Relevant Period and are

therefore sufficiently representative of the population of Non-U.S. Exchange Purchasers.

7.29 As of the date of the filing of this Amended Petition, the legal entities listed in Exhibit 5 have signed Participation Agreements in which they affirmatively support the Agreements. These entities collectively represent shareholders in Switzerland, the United Kingdom, the Netherlands, and Singapore, where the substantial majority of the Non-U.S. Exchange Purchasers reside, see 6.12. Notwithstanding the wide support for the Agreements, certain Petitioners received letters in July 2008 from counsel representing 12 investors who allegedly have expressed concern about certain aspects of the compensation awarded under the Agreements and have reserved their right to exclude themselves (opt out) from the effect of the Binding Declaration. To date, Petitioners have not received any further communications from those investors or their representatives. Accordingly, Petitioners do not know whether the investors and/or their organisation will file statements of defence to the Amended Petition or exclude themselves from the effect of a possible Binding Declaration.

7.30 Similarly, VEB, an influential retail shareholder organization in the Netherlands, is not only a Participant of the Foundation but also one of the Petitioners. As already discussed in 2.19 *et seq.*, VEB has approximately 50,000 members and represents the interests of Dutch retail shareholders in connection with the Agreements. VEB has also been in contact with its sister shareholder organizations throughout Europe. It has secured their support for the Agreements. These sister organisations include shareholder associations in the United Kingdom, France, Germany, Spain, Italy, Luxembourg, and Austria. Euroshareholders has also stated its support for the Agreements. Together, VEB and its sister organizations represent over 90,420 members in eight countries throughout Europe (see Exhibit 5).

D. *Reasonableness of the Total Settlement Payment*

7.31 The Agreements offer Non-U.S. Exchange Purchasers the certainty of a Total Settlement Payment of USD 58,400,000, plus accrued interest, less

Principal Counsel's attorneys' fees approved by the Foundation, Foundation Expenses, Administrative Expenses, and any Tax Expenses. The Net Settlement Fund will be distributed among the eligible Participating Shareholders pursuant to the Settlement Distribution Plan. Petitioners believe that this is a good end result for the Non-U.S. Exchange Purchasers.

7.32 The Total Settlement Payment represents a payment by ZFS of USD 18,400,000 and a payment by Converium of USD 40,000,000, which amounts already have been transferred into separate interest-bearing escrow accounts jointly controlled by the Foundation and by ZFS and Converium, respectively. After the Binding Declaration has become binding and the termination period has expired (see 4.13), the Foundation will have exclusive disposal of the balance on the accounts concerned. The monies will remain in these accounts until they are distributed to eligible Participating Shareholders pursuant to the Settlement Distribution Plan.

7.33 MPERS and Avalon negotiated the allocation of Converium's settlement payment of USD 115,000,000 with one another. If all eligible investors in the U.S. settlement and all eligible investors in the non-U.S. settlement were to submit claims, the smaller group of claimants would share a larger compensation amount (USD 75,000,000) in the U.S. settlement than the larger group of Non-U.S. Exchange Purchasers (USD 40,000,000).

7.34 This difference is explained by the fact that the legal position of the members of the class in the U.S. Class Action is significantly more favourable than is that of the Non-U.S. Exchange Purchasers. As described above and in the opinion of Professor Dr. Nobel, the Non-U.S. Exchange Purchasers have been excluded from the U.S. Class Action, and it is unlikely that they would be able to successfully bring claims for damages in other jurisdictions (or even in another court in the United States). Professor Nobel's opinion concludes that the Non-U.S. Exchange Purchasers would have to overcome various quite substantial procedural and legal hurdles in order to bring a successful action in Switzerland. Moreover, as discussed above and in the opinion of

Professor Silberman, it is unlikely that the Non-U.S. Exchange Purchasers could proceed in the United States with federal securities claims as a consequence of the U.S. District Court's ruling and the subsequent appellate court and Supreme Court decisions in the *Morrison* case (Exhibit 15, ¶¶ 57-58).

7.35 As a result of the U.S. District Court's ruling (Exhibits 10 and 11), the Non-U.S. Exchange Purchasers find themselves in a significantly worse legal position than the U.S. Purchasers. In effect, the court's ruling served to materially discount the value of the Non-U.S. Exchange Purchasers' claims in relation to the U.S. Purchasers' claims. In light of this, it was reasonable for MPERS and Avalon to agree that the Non-U.S. Exchange Purchasers should receive less compensation pursuant to the Converium Agreement than the members of the class in the U.S. Class Action received under Converium's U.S. Settlement. (See Exhibit 15, **¶57**) This difference notwithstanding, if the Agreements are declared binding, the Non-U.S. Exchange Purchasers will receive a generous recovery to compensate them for their losses without their having to initiate any lawsuit (with the exception of the U.S. Class Action, in which they ultimately could not participate) or incur any costs.

7.36 At the time Converium had reached a settlement with MPERS and Avalon, the members of the class in the U.S. Class Action knew that at least some of their claims had withstood the motions to dismiss submitted by Converium and would be litigated on a class-wide basis in the U.S. District Court, where:

(i) they would enjoy discovery procedures;

(ii) they would not need to prove, in accordance with the presumed-reliance doctrine, that they actually had individually relied on the alleged misrepresentations in Converium's financial statements and annual reports;

(iii) they would not need to pay lawyers' fees, because contingency-fee arrangements were available; and

(iv) they would not risk an order to pay costs if they were to lose at trial.

None of these advantages was (or is) available to the Non-U.S. Exchange Purchasers, because the U.S. District Court held that it did not have subject-matter jurisdiction to hear their claims. As aforementioned, these advantages would also not be available to any Non-U.S. Exchange Purchasers who wanted to litigate their claims individually or collectively outside the United States.

7.37 In contrast to the Converium settlement, in which U.S. Purchasers were allocated a larger percentage of the total amount, ZFS' aggregate settlement payment has been allocated proportionately among all investors, regardless of their domicile. ZFS paid USD 9,600,000 to U.S. Purchasers in the U.S. Settlements and has agreed to pay USD 18,400,000 to the Non-U.S. Exchange Purchasers under the ZFS Agreement. This ratio works out at one-third to U.S. Purchasers and two-thirds to Non-U.S. Exchange Purchasers and represents the approximate ratio of U.S. Purchasers to Non-U.S. Exchange Purchasers at the time of the IPO (the only relevant time period for ZFS, because ZFS had no ownership interest in Converium after the IPO and therefore could not be held liable and/or responsible for any of Converium's alleged actions and/or conduct after the IPO).

7.38 The reason for the difference in apportionment between the aggregate Converium payment and the aggregate ZFS payment is explained by the different times and procedural stages of the U.S. Class Action at which the Agreements were achieved.

7.39 When ZFS entered into its original settlement covering all shareholders in 2007, the U.S. District Court had not yet held that it lacked subject-matter jurisdiction over the claims of the Non-U.S. Exchange Purchasers. Thus, at that time it appeared that the Non-U.S. Exchange Purchasers and the U.S. Purchasers were still in the same legal position in the U.S. District Court, and, had those legal positions not changed with the U.S. District Court's subsequent class certification ruling, the Non-U.S. Exchange Purchasers and the U.S. Purchasers would have shared in the settlement amount in proportion to the amount of securities and/or the value thereof that each group had purchased during the Relevant Period. ZFS, MPERS, and Avalon agreed to maintain this ratio following the U.S.

District Court's class certification ruling to reflect the intent of their original agreement. The negotiating parties did not want to penalize the Non-U.S. Exchange Purchasers for the U.S. District Court's decision not to finalise the original ZFS settlement in 2007 (by approving it), but to first await the decision in the proceedings against Converium.

7.40 In contrast to the course of affairs in regard to the creation of the ZFS Agreement described above, by the time Converium agreed to make its aggregate settlement payment in 2008, the Non-U.S. Exchange Purchasers and the U.S. Purchasers were no longer in the same legal position. As explained above and in Professor Silberman's Opinion, the Non-U.S. Exchange Purchasers had been excluded completely from the U.S. Class Action, and no other litigation was pending on their behalf. Accordingly, but for the Agreements, the Non-U.S. Exchange Purchasers most likely would be left with no recourse whatsoever to recover for alleged losses during the Relevant Period. This explains why MPERS and Avalon allocated a larger portion of Converium's total settlement payment to the members of the class in the U.S. Class Action: their claims were more valuable than were those of the Non-U.S. Exchange Purchasers. (Exhibit 15, ¶57)

E. *Reasonableness of the Amount of the Foundation Expenses and Administrative Expenses*

7.41 As set forth in the Agreements, and as approved by the Foundation as signatory to the Agreements, certain reasonable costs are necessary to implement the Agreements for the benefit of the Non-U.S. Exchange Purchasers. These expenses will be deducted from the Total Settlement Payment (USD 58,400,000).

7.42 First, in connection with implementing and administering the Agreements, there will be several necessary types of Administrative Expenses, including, for example, the expenses for providing notices and announcements to Non-U.S. Exchange Purchasers required by the WCAM (including the fees for retaining a bailiff), the expenses for publishing the summary announcements and notices, the expenses for establishing, staffing and maintaining a telephone response system, a

website, and an e-mail address concerning the Agreements, the expenses for calculating and distributing settlement relief to the Participating Shareholders, and the fees and expenses for the Dispute Resolution Body and costs for resolving any disputes relating to the calculation or distribution of settlement relief (Sections I.B and XIII.A.1 of the ZFS Settlement Agreement and Sections I.C and XIII.A.1 of the Converium Settlement Agreement and **Exhibit 23**).

7.43 The Foundation also has incurred and will continue to incur reasonable out-of-pocket expenses in creating and maintaining the Foundation, including, for example, remuneration to the members of the Foundation's Board, the purchase of directors and officers liability insurance, retention of outside auditors, Dutch counsel, and experts, the fees and costs of the Dispute Resolution Body, and other usual business expenses. Converium will pay 50% of the first € 400,000 in Foundation Expenses. All other Foundation Expenses will be paid from the Total Settlement Payment. Foundation Expenses are projected to be approximately € 1,559,751 for the seven-year period beginning in 2009 (**Exhibit 27**).

7.44 Finally, expenses incurred as a result of any payable Tax Expenses, including all taxes (if any) on the interest-bearing escrow accounts and/or any related costs, will be paid from the Total Settlement Payment.

F. *Reasonableness of the Amount of Principal Counsel's Remuneration*

7.45 If the Agreements are declared binding, a portion of the Total Settlement Payment will also be used to remunerate Principal Counsel for the legal services provided in litigating, negotiating, and achieving the Agreements in this matter on behalf of the Non-U.S. Exchange Purchasers. In connection with the Agreements, Principal Counsel informed ZFS and Converium that they would request that the Board of Directors of the Foundation approve a fee of 20% of the Total Settlement Payment. In arriving at the 20% request, Principal Counsel were guided by the U.S. District Court's approval of the same percentage fee in the U.S. Class Action. The 20% fee also was approved by Principal Counsel's client Avalon, which is also a Participant in the Foundation. Neither

Converium nor ZFS takes a position with respect to Principal Counsel's fee request, or to the Foundation's agreement to it.

7.46 Principal Counsel made a presentation as to their fee request to the Foundation's Board of Directors. At the Board's request, Principal Counsel also provided an informational memorandum, containing a substantiation of the request with references to *(i)* similar requests in other similar U.S. securities class action settlements, *(ii)* the U.S. District Court's order approving Principal Counsel's application for the same percentage of fee in the U.S. Class Action, and *(iii)* the guidelines U.S. courts generally use when assessing comparable requests. Copies of the informational memorandum and other materials provided by Principal Counsel to the Foundation's Board of Directors are attached as **Exhibit 28**. As part of its due diligence, the Board obtained additional information concerning fees awarded to counsel in similar class actions in the U.S. The Board believed that U.S. precedents were relevant here because the Agreements arose out of litigation that began in the U.S. A copy of the material independently obtained by the Board is attached as **Exhibit 29.**

7.47 The Board held a telephonic meeting on 17 August 2009 to deliberate on Principal Counsel's request to determine the fee. On 21 September 2009, the Board issued a resolution finding the fee request reasonable. This was based on the following considerations:

(i) U.S. practice regarding the allowance of such requests,

(ii) the U.S. District Court's fee award of the same percentage (20% of the total settlement payment) in the U.S. Class Action for representation of the members of the class,

(iii) the fact that the transcript of the final fairness hearing in the U.S. District Court indicated that the U.S. District Court had taken into consideration that Principal Counsel would make a similar fee request in this proceeding; and

(iv) the request is not inappropriate in comparison to fees awarded in other similar cases in the U.S.

The Board's resolution of 21 September 2001 is attached as **Exhibit 16.**

7.48 Additionally, Principal Counsel's request is reasonable in light of the fact that, as described above, the Non-U.S. Exchange Purchasers were excluded from the class of investors who would obtain recovery in the U.S. Class Action. Nevertheless, Principal Counsel succeeded in reaching settlement agreements with both ZFS and Converium to settle the claims asserted against them in the U.S. Class Action and also to obtain relief for the Non-U.S. Exchange Purchasers who had been excluded from that action.

7.49 All other monies after deduction of the expenses described above (the Net Settlement Fund) will be distributed to the Non-U.S. Exchange Purchasers pursuant to the Settlement Distribution Plan discussed in detail in Chapter 10 below. A schedule reflecting the types of costs and expenses to be deducted from the Total Settlement Amount including the current estimates of those costs and expenses, is attached as Exhibit 25.

G. *Speed with Which Recovery Can Be Obtained*

7.50 At the time of filing this Amended Petition, no individual litigation is pending. Petitioners expect that eligible Non-U.S. Exchange Purchasers will receive compensation under the Agreements much more quickly than if they were now to institute legal proceedings.

7.51 If the Non-U.S. Exchange Purchasers would have to bring claims through litigation, those actions would take a substantial amount of time, and it would take many years before any compensation would be awarded in a final judgment. In contrast, if the Agreements are declared binding, the eligible Non-U.S. Exchange Purchasers will receive swift compensation and without having to invest the time, expense and/or effort associated with litigation.

8. CONVERIUM AND ZFS HAVE PROVIDED SUFFICIENT SECURITY

8.1 Converium and ZFS have provided sufficient security for the payment of the claims of the Non-U.S. Exchange Purchasers under the Agreements.

8.2 Before the Converium Agreement was executed, Converium had already caused the settlement amount of USD 40,000,000 to be paid into an escrow account established by Principal Counsel. Within ten business days following execution of the Converium Agreement, Principal Counsel will cause the settlement amount (plus interest, less Tax Expenses and incurred, paid, or payable Foundation Expenses) to be transferred to a separate, interest-bearing account under the joint control of Converium and the Foundation (the **"Converium Settlement Escrow Account"**).

8.3 Likewise, before the ZFS Agreement was executed, ZFS had already caused the settlement amount of USD 18,400,000 to be paid into an escrow account established by Principal Counsel. Within ten business days following execution of the ZFS Agreement, Principal Counsel will cause the settlement amount (plus interest, less taxes and incurred, paid, or payable expenses) to be transferred to a separate, interest-bearing account under the joint control of ZFS and the Foundation (the **"ZFS Settlement Escrow Account"**).

8.4 The proofs of payment are submitted as **Exhibits 17 and 18.**

9. SIZE OF THE GROUP OF NON-U.S. EXCHANGE PURCHASERS IS SUFFICIENT

9.1 The group of Non-U.S. Exchange Purchasers is estimated to include approximately 12,000 natural and legal persons (Exhibit 19). The exact (or even approximate) number of Non-U.S. Exchange Purchasers is impossible to determine at this point, because so many shareholders held (or hold) stock through nominees: persons or legal entities holding shares for clients in their own name.

9.2 However, Converium's Form 20-F, filed with the SEC on 9 April 2004, states that, as of 31 March 2004, 3,586 shareholders (nominees and individuals) were identified by name in Converium's stock register and that only 26 of those shareholders (including nominees) were domiciled in the United States. Accordingly, even excluding shares held by

insiders[16], the number of Non-U.S. Exchange Purchasers can be asserted to be well over 3,000 individuals, pension funds, and other legal entities, with some of the legal entities probably holding shares on behalf of hundreds or thousands of distinct shareholders outside the United States (Exhibit 13, ¶ 21). Other information provided by the Administrator shows that there are a total of approximately 12,000 Non-U.S. Exchange Purchasers (including nominees) (Exhibit 19).

9.3 The most recent settlement agreement declared binding by this Court of Appeal, concerning *Vedior*, involved only 2,000 persons who were eligible to share in a settlement fund of €4.25 million. The Agreements here involve many more interested persons (and a much larger settlement fund) than did the *Vedior* settlement. Thus, in the opinion of Petitioners, the group of Non-U.S. Exchange Purchasers is of a sufficient size to meet the requirement of Article 7:907(3)(g) NCC and to justify declaring the Agreements binding.

10. PLAN OF DISTRIBUTION

10.1 As described in paragraphs 3.12 - 3.17 and 3.22, the allocation of the total amount paid by ZFS (USD 28 million) to settle the claims of the U.S. Purchasers and the Non-U.S. Exchange Purchasers (USD 9.6 million and USD 18.4 million, respectively) was based on the state of the law and facts at the time the original agreement to settle was reached, *i.e.*, prior to the U.S. District Court's decision to exclude the Non-U.S. Exchange Purchasers from the class.

10.2 Distribution of the Net Settlement Fund (*i.e.*, the balance left after all fees and expenses are deducted from the Total Settlement Amount) to Participating Shareholders who submit valid Claim Forms will be made according to the terms of the Settlement Distribution Plan, a copy of which is attached as Exhibit C to the Agreements. The Settlement Distribution Plan is designed to achieve an equitable distribution of the Net Settlement Fund among the Participating Shareholders and to compensate only those Non-U.S. Exchange Purchasers who suffered a

[16] *E.g.*, Converium directors or employees.

loss as a result of the allegedly fraudulent conduct.

10.3 The Foundation, which developed the Settlement Distribution Plan in consultation with an economics expert retained by it, believes that the plan ensures a fair and reasonable distribution of the Net Settlement Fund among the Participating Shareholders.

10.4 The expert analysis performed to develop the Settlement Distribution Plan entailed studying the market reaction to the public disclosures that revealed or described the alleged misrepresentations or their effects. The analysis also included a calculation of the reasonable dollar amount of artificial inflation allegedly present in the price of the Securities throughout the Relevant Period that was attributable to the alleged misrepresentations. The price decline associated with each particular disclosure, adjusted to eliminate the effects, if any, attributable to general market or industry conditions, was also measured, using standard statistical techniques to ensure that the price reaction was outside the range of normal market movements (Exhibit 13, Section III.B).

10.5 Additionally, in the interest of reasonableness and fairness, the Settlement Distribution Plan provides that, to the extent a Participating Shareholder had an overall market gain from his, her or its purchases of Non-U.S. Exchange Shares during the Relevant Period, that person or entity will not be eligible to a distribution from the Net Settlement Fund. Similarly, if a Participating Shareholder had an overall market loss, but that loss was less than the total recognized claim (the "Recognized Claim") calculated under the Settlement Distribution Plan, that Participating Shareholder's recovery will be limited to the amount of his, her or its actual market loss.

10.6 The Administrator will determine the so-called "Recognized Loss Amount," calculated in accordance with the Settlement Distribution Plan, for each Participating Shareholder who submits a valid Claim Form, as well as each such Participating Shareholder's *pro rata* share of the Net Settlement Fund. Calculation of the Recognized Loss Amount will depend upon several factors, including when the securities were purchased during the Relevant Period, and whether those securities were

held until the conclusion of the Relevant Period or sold during the Relevant Period, and if so, when. The formula for calculating Recognized Loss Amounts is the same as the formula applied (and approved by the U.S. District Court) in calculating Recognized Loss Amounts for U.S. Purchasers for purposes of determining their proportionate shares of the recovery allocated to the U.S. Class Action. Similarly, the other provisions governing how the calculations and the allocation will be made are the same as those for claims made in the U.S. Class Action. The Settlement Distribution Plan contains various examples of how claims will be calculated.

10.7. In sum, the Settlement Distribution Plan, developed in consultation with the Foundation's economics experts, was designed to fairly and rationally allocate the proceeds of the Net Settlement Fund among Participating Shareholders based on the alleged wrongdoing and the resulting damages.

10.8 Until all the claim forms have been submitted and assessed, it is not possible to determine how much any Participating Shareholder will recover; nor can any meaningful estimate of a "per share recovery" be made both because there are currently no data to determine (i) how many investors in Converium common stock will submit valid claims and (ii) how many shares for each investor will be eligible for compensation. Moreover, "per share" recoveries will vary depending on when a share was purchased and sold, or whether it was still held by the Participating Shareholder at the close of the Relevant Period.

10.9 A calculation of an ***estimated*** "per share recovery" can be made on the Total Settlement Amount and the estimated number of affected shares. Such estimates are based upon assumptions that, of course, may not necessarily turn out to be accurate. With respect to the settlements of the U.S. Class Action, Lead Plaintiff's damages expert estimated that Converium common stock and ADSs representing approximately 10 million shares of Converium stock purchased by class members may have been affected by the conduct at issue in the U.S. Class Action. If all class members elected to participate in the settlements, the average per-share recovery from the settlement fund would be approximately

USD 8.46 per affected share before the deduction of attorneys' fees, costs and expenses as approved by the U.S. District Court. The Foundation's economic expert has estimated that approximately 30 million shares of Converium stock purchased by Non-U.S. Exchange Purchasers may have been affected by the conduct at issue. (See supplemental Hakala opinion, submitted as **Exhibit 30**). If all affected Non-U.S. Exchange Purchasers elected to participate in the settlements, the average per-share recovery from the settlement funds would be approximately USD_XXX_ per affected share before the deduction of attorneys' fees, costs and expenses. However, it is relevant here, as also noted in the supplemental Opinion of Dr. Hakala submitted as Exhibit 30, that many of the abovementioned approximately 30 million shares were not held during the entire Relevant Period and accordingly will have not suffered the full damage as calculated in the proposed Settlement Distribution. In such case, the amount will be raised that the Settlement Distribution Plan provides for distribution to Non-U.S. Exchange Purchasers who did suffer full damage.

10.10 The comparison of estimated "recoveries" set forth in 10.9 above might not be meaningful because of the large disparity of the costs involved in the implementation of the Agreements and those incurred in the U.S Class Action. The Total Settlement Amount will be reduced by certain fees and expenses that were not present in the U.S. Class Action. Many of these expenses cannot even be estimated at this time. Thus, for example, for implementing the Agreements, unlike in the U.S. Class Action, two entities had to be created: the Foundation (as noted above, the current estimated budgeted expenses of the Foundation through 2015 is €1,379,751) and the Dispute Resolution Body to resolve disputes with claimants who dispute determinations concerning their claims. Tthe costs of the DRB cannot be estimated but, depending on the number of claimants who seek a determination, the costs could be *de minimis* or substantial.

10.11 Other significant expenses that were not incurred in the U.S. Class Action but are present in this action include the following:

(a) In the U.S. Class Action, only one settlement notice was sent by

the claims administrator by regular mail to class members. In this action, two notices - the Notice of the Hearing and Notice of the Binding Declaration - are required and must be served in accordance with the legal requirements under Dutch and EU law and under the Hague Convention; This means that the notices in this action will be processed by a Mailing House (responsible for establishing a database and for printing and sending the notices) and by a bailiff, while the Dutch proceedings will also require the engagement of a claims administrator to process the claims forms;

(b) In the U.S. Class Action, a summary notice was published in three (3) newspapers and the European edition of *The Economist*. In this action, the summary notice will be published in seventeen (17) newspapers (and will be translated into the local language where each newspaper is published) throughout the world;

(c) In the U.S. Class Action, the notice were translated into (only) 3 languages, whereas in this action, the notices will be translated into at least a total of 4 languages

10.12 The above shows there is a large disparity in the costs of the implementation of the Agreements when compared to the costs in the settlement of the U.S. Class Action.

10.13 A meaningful comparison of the recoveries in the U.S. Class Action and in the proceedings in this Court is also not possible because the amount that any given eligible exchange purchaser will receive will be affected by the number of claims submitted (for various reasons, not all eligible purchasers will submit claims); the timing of the purchases and sales of the shares covered by the claims submitted[17]; and the number of claims

[17] As reflected in the Settlement Distribution Plan, certain purchase and sale transactions do not result in any Recognized Loss Amount because the relative amount of inflation in the share price remained constant or increased during the period (see, e.g. Settlement Distribution Plan paragraph 8.A. (i)), and the amount of the Recognized Loss Amounts with respect to other purchases varies depending on when the shares were purchased, when they were sold, or whether they were still owned at the end of the relevant period (see, *e.g.* id.

that satisfy all the requirements – such as providing the required supporting documentation – to be deemed valid.[18] Petitioners do not know whether the number of valid claims in the Settlements will be the same as in the U.S. Class Action.

11. PROCEDURAL ISSUES

Opt-out period

11.1 If the Court of Appeal declares the Agreements binding, Non-U.S. Exchange Purchasers will have the right to state that they do not wish to be bound by the effect of the Agreements. Non-U.S. Exchange Purchasers who do not wish to be bound by the Agreements should give written (or e-mail) notification of this decision to:

Converium Holding AG International Settlement
c/o The Garden City Group, Inc.
P.O. Box 9616
Dublin, OH 43017-4916
U.S.A.
questions@converiumsettlements.com

11.2 Petitioners request that the Court of Appeal fix the period within which this notification must be given (the opt-out period), as referred to in Article 7:908(2), NCC, at a period of three full calendar months, ending on the last day of the third month following the calendar month in which notice of the binding declaration has been published. This three-month period is the same period that the Court of Appeal approved in its judgment in the *Shell* case (¶ 8.1).

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at paragraph 8.A. (ii) and (iii)).

[18] These "unknowns" can have a very significant impact on the distribution amounts that will be paid to claimants. Thus, for example, in the U.S. Action, while 1,636 Proofs of Claim were submitted, only 589 were deemed acceptable in whole or in part and recommended to the U.S. Court for payment.

11.3 Petitioners understand, however, that this Court of Appeal ruled in the *Shell* case (¶ 6.36) that a Non-U.S. Exchange Purchaser who could not have known (even with the exercise of reasonable diligence) of his, her, or its alleged damage as of the date the notice of the Binding Declaration was published may submit a notification of his, her, or its desire not to be bound by the Agreements after his, her, or its alleged damage has become known. Such a Non-U.S. Exchange Purchaser must submit a written notification of his, her, or its wish not to be bound by the Binding Declaration to the Administrator within six months after being informed in writing of his, her, or its eligibility for compensation and the possibility of submitting an "opt-out statement", in accordance with Article 7:908(3) NCC.

11.4 In any case, Petitioners request the Court of Appeal to fix the length of the period in which Non-U.S. Exchange Purchasers must give notification of their wish not to be bound by the Agreement as the Court deems necessary and appropriate.

Hearing date and notice of hearing

11.5 Petitioners respectfully ask the Court of Appeal to schedule a hearing for considering this Amended Petition. Petitioners propose that the hearing date be no sooner than six months following the date on which Petitioners expect to be able to send notice of the hearing to the Non-U.S. Exchange Purchasers. This six-month period will provide Non-U.S. Exchange Purchasers with extensive and/or sufficient advance notice of the hearing.

11.6 This conclusion is to an important part based on Article 7 of the Dutch EC Service Regulation (Implementation) Act [*Uitvoeringswet EG-betekeningsverordening*] and Article 10 of the Dutch The Hague Service Convention (Implementation) Act 1965 [*Uitvoeringswet Haags Betekenings-verdrag 1965*]. Petitioners are of the view that, in the light of the relatively large number of countries and persons involved, serious account needs to be taken of the fact that in a number of cases, it might not be possible to obtain timely proof of delivery, service or notification to the interested parties (defendants) if the hearing were to be scheduled less than six months after the last notices were sent. For this reason, it

cannot be excluded that the application of Article 7 EC Service Regulation (Implementation) Act and Article 10 of the Dutch The Hague Service Convention (Implementation) Act 1965 might be raised. In such case, if the hearing were to have been scheduled to take place less than six months after the latest dispatch date of the notices, the Court of Appeal might have to adjourn the hearing until at least six months from the final date of dispatch of the notice have passed. This leads to the conclusion that the hearing should be scheduled such that there are at least six months between the dispatch date of the last notices and the hearing.

11.7 The exact number of Non-U.S. Exchange Purchasers is not known. However, as discussed above in chapter 9, the number of registered Non-U.S. Exchange Purchasers is estimated to be in excess of 3,000. Information provided by the Administrator shows the number of Non-U.S. Exchange Purchasers to be approximately 12,000 (including nominees) (Exhibit 19). The number of Non-U.S. Exchange Shares in net purchased on the SWX Swiss Exchange in Zürich between 7 January 2002 and 2 September 2004 (the Relevant Period) is estimated to be in excess of 30 million.

11.8 A large percentage of the Non-U.S. Exchange Shares were bearer shares and formed part of the Swiss book-entry transfer system for securities. This means that, in principle, only the SWX Swiss Exchange or the member institutions – and not Petitioners – have the names and addresses of the natural and legal persons who purchased Non-U.S. Exchange Shares. Neither the SWX Swiss Exchange nor the member institutions would be entitled to supply this information to Petitioners, even if they have it. Furthermore, Non-U.S. Exchange Shares were held in some cases by financial institutions or other nominees (whether as 'custodian' or in some other capacity) for beneficial owners who had an interest derived from the Non-U.S. Exchange Shares. At best, the name of the 'intermediary' would be known in such cases.

11.9 The chart in Exhibit 13 (exhibit C attached thereto) shows the geographic spread of those Non-U.S. Exchange Purchasers who are known by name.

11.10 Petitioners consider that the Non-U.S. Exchange Purchasers whose names and addresses are unknown must be regarded as interested parties who have no known place of residence or actual abode and that they must accordingly be given notice of the hearing by the announcement thereof in newspapers as designated by the Court in accordance with Article 1013(5) NCCP.

11.11 Article 1013(1)(c) NCC provides that a petition for a binding declaration must state the names and places of residence of the persons for whom the agreement has been concluded and who are known to the petitioners. Petitioners request the Court to rule that the list of names and addresses of the registered Non-U.S. Exchange Purchasers known to them, submitted as Exhibit 19, constitutes a 'file' within the meaning of Article 1 (c) of the Personal Data Protection Act and therefore does not form part of the public case documents.

11.12 Petitioners intend to give the Non-U.S. Exchange Purchasers who are known by name notice of the hearing by means of the standard letter submitted as **Exhibit 20**, and in accordance with following procedures approved in the *Shell* case (¶ 5.7), unless the Court of Appeal decides otherwise:

(1) For Non-U.S. Exchange Purchasers in the Netherlands known to Petitioners, the notice shall be sent by ordinary letter to the latest residence addresses known to Petitioners.

(2) For Non-U.S. Exchange Purchasers who are known to Petitioners but who do not have a known address in the Netherlands and whose last-known domicile or habitual residence is in some other country, the notice shall be served by a bailiff, to be appointed by Petitioners, in accordance with the following conditions:

(a) For Non-U.S. Exchange Purchasers with a last-known domicile or habitual residence in a state where EU Regulation 1393/2007 (the "**EC**

Service Regulation") applies, the notice shall be effected by a letter taking into account the provisions of Article 14 of the EC Service Regulation, including the provision that the state concerned accepts notices of judicial documents by mail.

(b) For Non-U.S. Exchange Purchasers with a last-known domicile or habitual residence in a state where a relevant service regulation or a similar procedure applies, and the Netherlands also is a party to such regulation or procedures, the notice shall be effected insofar as possible directly by a letter, taking into account the conditions under which the state concerned accepts notices of judicial documents, or otherwise in a manner allowed under the applicable regulation or convention. Non-U.S. Exchange Purchasers with a last-known domicile or habitual residence in Switzerland shall be served with a copy of the notice in accordance with the Hague Service Convention (the "**Hague Service Convention**").

(c) For Non-U.S. Exchange Purchasers with a last-known domicile or habitual residence in any other state, the notice shall be effected by a registered letter, with no confirmation of receipt required.

(d) The bailiff shall investigate which regulations, conventions, and other rules and provisions apply in a specific case, and the bailiff shall comply with them.

(e) The bailiff who serves the international notices shall make a report to the Court of Appeal recording (*i*) the method of service, the day of

service, and the number of notices served, specified by country of destination, and (*ii*) the number of confirmations of receipt received, the number of notices returned, and the number of any other notifications stating that the notice did not reach the addressee, all specified by country of destination.

11.13 Petitioners further intend to announce the notice by means of publication in the following newspapers, in accordance with the provisions of Article 1013(5) NCCP. Additionally, the notice and announcement will take place via two wire services. In choosing these newspapers and wire services, Petitioners have taken into account the geographic distribution of the known Non-U.S. Exchange Purchasers.

The Wall Street Journal Europe
Financial Times (United Kingdom)
The Guardian (United Kingdom)
The Times of London (United Kingdom)
The Economist (European edition)
Het Financieele Dagblad (the Netherlands)
NRC Handelsblad (the Netherlands)
Neue Zürcher Zeitung (Switzerland)
Le Temps (Switzerland)
L'Agefi (Switzerland)
Handelszeitung (Switzerland)
Basler Zeitung (Switzerland)
Tages Anzeiger (Switzerland)
Die Weltwoche (Switzerland)
Die Welt (Germany)
Il Sole 24 Ore (Italy)
Les Echos (France)
La Tribune (France)
Luxemburger Wort
PR Newswire
Bloomberg L.P.

Petitioners will also publish the Amended Petition and the notices on the following websites:

- www.converiumsettlement.com
- www.blbglaw.com;
- www.srkw-law.com;
- www.cohenmilstein.com; and
- www.veb.net

11.14 Notices and announcements will be given in Dutch, English, French, German, Italian, and, insofar as necessary, in every other language that the Hague Service Convention, the EC Service Regulation, any other applicable service convention, or this Court of Appeal may require.

11.15 Petitioners propose that the brief description of the Agreements and the consequences of granting the Amended Petition be given, as referred to in Article 1013(5) NCCP, and as shown in **Exhibit 21**.

Period for submitting a statement of defence

11.16 Pursuant to Article 282(1) NCCP, an interested party may file a statement of defence until the date when a hearing starts. However, Article 1013(6) NCCP gives the Court of Appeal the possibility of departing from this provision and requiring statements of defence to be filed by a given time prior to the date on which the hearing is to take place.

11.17 Petitioners do not know whether any statements of defence will be filed, and they do not believe that any interested party would have valid defences to the Amended Petition. However, if any statements of defence are filed, it will be in the interests of due process for both the Court of Appeal and Petitioners to have sufficient time to evaluate the objections that have been filed to the Amended Petition. Moreover, Petitioners should have sufficient time to prepare properly for the hearing, including the preparation of a response to any statement of defence.

11.18 For the reasons mentioned above, Petitioners request the Court of Appeal to rule that any statements of defence must be filed no later than six weeks before the date of the hearing. This period is the same as the one this Court approved in the *Shell* case (¶ 5.8).

11.19 The Agreements provide that Non-U.S. Exchange Purchasers or any other interested persons or entities with standing to do so, including a foundation or association within the meaning of Article 1014 NCCP, may appear at the Hearing to make oral statements in person or through counsel admitted to the bar in the Netherlands, or through any other counsel as permitted pursuant to Article 16h *et seq.* of the Lawyers Act ("*Advocatenwet*"), assuming that the party concerned hires such counsel at his, her, or its own expense consistent with Article 279(3) NCCP.

11.20 Petitioners respectfully ask the Court of Appeal to order that any such persons or entities who wish to make oral statements at the hearing must so notify the Court and Petitioners' counsel no later than four weeks before the date of the hearing.

Case management conference

11.21 Petitioners are aware that the Court of Appeal has already rendered (provisional) decisions on a number of these procedural items at the case management conference of 24 Augustus 2010. For procedural reasons Petitioners have maintained these requests in this Amended Petition.

FOR THESE REASONS:

Petitioners request the Court of Appeal:

(i) To, by way of a decision prior to the hearing:

1. direct that the drafts of the individual notice and the publication notice of the hearing (Exhibits 21 and 22) meet the requirements of Article 1013(5) NCCP and, if they do not, indicate what should be changed in order for these documents to meet these requirements;

2. direct that the announcement be published in the newspapers as proposed by Petitioners in 11.13 (or in other publications of comparable circulation and geographic reach) or, alternatively, direct in which newspapers the announcement should be published;

3. direct that, after Petitioners have been able express their views on this in a case management conference, the hearing is to take place on a date that, also in view of the reasons advanced above in 11.6, grants Petitioners sufficient time to appropriately notify known interested parties, which date may be adjourned at the Court's discretion, and to schedule and announce this date only after the Court has approved and adopted the texts of the notices;

4. direct that any statements of defence must be filed no later than six weeks before the hearing, and copies thereof must be sent simultaneously to Petitioners' lawyers; and

5. direct that any interested parties who wish to make oral statements of defence at the hearing under Article 279(3) NCCP must notify the Court and Petitioners' counsel in writing no later than four weeks before the date of the hearing;

(ii) declare in the final decision that the Agreements, including Preamble, the Distribution Plan and the Dispute Resolution Body regulations, are binding in relation to the persons and parties mentioned in the Agreements who have acquired rights in accordance with the last sentence of Article 7:907(1) NCC; and

(iii) direct in the final decision that the period within which an eligible Non-U.S. Exchange Purchaser must give written notice to the Administrator that he, she, or it does not wish to be bound will expire on the last day of the third calendar month following the month in which the notice mentioned in Article 1017(3) NCCP has been published, on the understanding that Non-U.S. Exchange Purchasers who could not have known of their alleged damage as of the date of the earlier notice can submit an opt-out statement within six

months after they have been notified in writing of the fact that they are eligible for payment under the Agreement and of the possibility of submitting an opt-out statement within the aforementioned six-month period, or in any event to specify such other period as the Court of Appeal considers to be in keeping with the proper administration of justice.

30 September/1 October 2010, Amsterdam / The Hague

Petitioner 1's lawyer (*mr*. D.F. Lunsingh Scheurleer, on whose behalf *mr*. I.N. Tzankova)

Petitioner 2's lawyer (*mr*. R.W. Polak, on whose behalf *mr*. J. van der Beek)

Petitioner 3's lawyer (*mr*. J.H. Lemstra)

Petitioner 4's lawyer (*mr*. P.W.J. Coenen)

LIST OF EXHIBITS

1. Converium Agreement (with exhibits);

2. ZFS Agreement (with exhibits);

3. Judgment of 12 December 2008 by the United States District Court, Southern District of New York

4. Articles of Association of the Foundation

5. List of Participants

6. Model Participation Agreement

7. Biographies A. Baladi, H.A. Groen, and T. Schibler

8. Information on the Administrator

9. Articles of Association of VEB NCVB

10. Judgment of 6 March 2008 of the United States District Court, Southern District of New York

11. Judgment of 19 March 2008 of the United States District Court, Southern District of New York

12. List of registered Non-U.S. Exchange Purchasers domiciled in the Netherlands (to follow as soon as possible)

13. Opinion of Dr. Scott Hakala

14. Opinion Professor Dr. Peter Nobel

15. Opinion Professor Dr. Linda Silberman

16. Foundation Board Resolution dated 21 September 2009

17. Proof of payment - Converium

18. Proof of payment - ZFS

19. List of known interested parties

20. Proposed text of individual notice of hearing

21. Proposed text of announcement (notice of hearing)

22. Table of corresponding terms

23. Administrator Expenses

24. Foundation Annual Report

25. Overview of costs and expenses Foundation and VEB

26. Signed Participation Agreements (29)

27. Foundation Budget

28. Information on U.S. Counsel's fees (Converium) (3)

29. Article on U.S. attorneys' fees (general)

30. Supplemental Opinion Dr. Scott Hakala