

**IN THE HIGH COURT OF JUSTICE**

**CHANCERY DIVISION**

**COMPANIES COURT**

**IN THE MATTER OF**

**MARINE SHIPPING MUTUAL INSURANCE COMPANY LIMITED**

**-and-**

**IN THE MATTER OF**

**NORTH OF ENGLAND PROTECTING AND INDEMNITY ASSOCIATION LIMITED**

**-and-**

**IN THE MATTER OF PART VII**

**THE FINANCIAL SERVICES AND MARKETS ACT 2000**

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**SUMMARY STATEMENT OF THE TERMS OF THE SCHEME AND**

**SUMMARY OF THE SCHEME REPORT**

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## **SUMMARY OF THE TERMS OF THE SCHEME**

1. Marine Shipping Mutual Insurance Company Limited ("MSMI") and North of England Protecting and Indemnity Association Limited ("NOE") are mutual insurance companies registered in the United Kingdom, and authorised to carry on general insurance business in the United Kingdom.
2. MSMI ceased underwriting new insurance business on 30 June 2011 and is now in the process of managing the run off of its outstanding liabilities.
3. Pursuant to the terms of a Framework Agreement between NOE and MSMI dated 23 August 2011 a transaction was completed upon 2 November 2011 whereby, inter alia, the corporate membership rights of all MSMI members were terminated and MSMI became a wholly owned subsidiary of NOE. This resulted in MSMI's member policyholders becoming non-member policyholders of MSMI with no corporate membership rights.
4. The entirety of the insurance business of MSMI (in run off) is to transfer to NOE by way of an insurance business transfer scheme ("the Scheme") pursuant to Part VII of the Financial Services & Markets Act 2000 ("FSMA").
5. The Scheme will result in the transfer of all rights, benefits, powers, obligations and liabilities of MSMI under its insurance policies to NOE.
6. The Scheme will have no effect on the terms and conditions of cover, the amount of premium payable or the duration of any policy written by MSMI.
7. All policyholders of MSMI will become non-member policyholders of NOE.
8. All other assets and liabilities of MSMI will be transferred to NOE pursuant to the Scheme on the Effective Date. However, certain assets of MSMI shall be retained by MSMI in order to meet applicable minimum capital requirements, until such time as MSMI's authorisation to carry on general insurance business is cancelled by the Prudential Regulation Authority (the "PRA"), following which such assets shall transfer to NOE and it is expected that MSMI shall be dissolved.
9. References to MSMI in any contract of insurance (including any applicable Rules), contract of reinsurance or any other contract to which MSMI is a party shall be read as references to NOE.
10. All legal proceedings which are pending by or against MSMI at the Effective Date (as defined at paragraph 15 below) or arise after the Effective Date will be continued by or against NOE, which shall be entitled to the same defences, claims, counter-claims and rights of set-off that would have been available to MSMI.
11. Any payment (including any reinsurance receipts) made to, property received by or right conferred upon MSMI in relation to the transferring business shall be transferred to NOE.
12. In the event that any insurance, reinsurance or retrocession policy of MSMI cannot be transferred to NOE on the Effective Date (as defined at paragraph 15 below), all liabilities of MSMI arising out of that policy shall remain liabilities of MSMI but shall be reinsured in their entirety by NOE until such time as they are subsequently transferred to NOE, whereupon they shall become liabilities of NOE.

13. In the event that any asset of MSMI (other than any asset retained by MSMI in order to meet applicable minimum capital requirements) cannot be transferred to NOE on the Effective Date (as defined at paragraph 15 below), that asset shall be held by MSMI on trust for NOE until such time as it is subsequently transferred to NOE, whereupon it shall belong to NOE.
14. NOE may, on its own behalf and on behalf of all other persons concerned (other than the PRA and/or the Financial Conduct Authority (the "FCA")), agree to any modification of or addition to this Scheme or to any further condition or provision affecting the same that the High Court may approve or impose whether before or after the Effective Date (as defined below) provided that any modification to the substance of the Scheme may only be made with the consent of the PRA and the FCA.
15. Subject to the approval of the Court at a hearing due to be held on 20 October 2015 the Scheme is expected to come into effect at 00:01 on 1 November 2015, although it may be delayed by agreement between MSMI and NOE to no later than 31 March 2016 ("the Effective Date").

## **SUMMARY OF THE SCHEME REPORT**

### **1. Introduction**

Keith Tucker, a Fellow of the Institute and Faculty of Actuaries in the UK and an Associate of the Society of Actuaries in the USA ("the Expert"), has been appointed to act as an independent expert to prepare a report dated 12 June 2015 ("the Report") in respect of the Scheme. His appointment was approved by the Financial Services Authority ("the FSA") in accordance with section 109 of FSMA. The Expert has only considered and prepared a Report on the Scheme, and has not considered any alternative schemes.

MSMI and NOE were authorised and regulated by the FSA until 1 April 2013 when changes to the structure of the FSA were introduced resulting in MSMI and NOE being authorised by the Prudential Regulation Authority ("the PRA") and regulated by the PRA and the Financial Conduct Authority.

This document is only a brief summary of the Report. It does not cover all matters dealt with in the Report and anyone wishing to have a detailed understanding of the content of the Report should read the Report in full. The Report and this summary can be viewed at [www.nepia.com](http://www.nepia.com) and [www.msmi.co.uk](http://www.msmi.co.uk) and a copy of each of the Report, the Scheme and this summary can also be requested free of charge by contacting Chris Owen whose contact details are as follows:

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Telephone: +44 191 232 5221 (Monday to Friday 9.00am to 5.00pm)

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This summary of the Report has been prepared solely for the purposes of compliance with the requirements of FSMA and should not be relied upon for any other purposes by any party. This summary is subject to the same limitations on its use as those set out in the Report itself.

In carrying out his review and producing the Report, the Expert has relied, without detailed verification, upon the accuracy and the completeness of the data and information provided to him by MSMI and NOE. His conclusions depend on the substantial accuracy of this data, information and the underlying calculations. At the time of preparing the Report, the Expert was not aware of any issue that might cause him to doubt the accuracy of the data and other information provided to him by MSMI and NOE. He has confirmed that all information that he has requested in relation to his review has been provided.

The Expert has approved this summary and considers this summary sufficient to convey the general nature of his review and his conclusions on the terms and effect of the Scheme, as are more particularly described at section 3 of this summary.

### **2. The Report**

The Report covers the following areas:

#### **The Background and Purpose of the Scheme**

The historical relationship and transactions between MSMI and NOE have resulted in the current situation of MSMI being a wholly owned subsidiary of NOE and all insurance risks of MSMI, net of insurance risks insured under external reinsurance arrangements, being reinsured with NOE.

It is proposed that the insurance business written by MSMI is to be transferred by way of an insurance business transfer scheme pursuant to Part VII of FSMA to NOE with the effect that:

- all assets and liabilities of MSMI will be transferred to NOE (save that certain assets of MSMI shall be retained by MSMI in order to meet applicable minimum capital requirements, until such time as MSMI's authorisation to carry on general insurance business is cancelled by the PRA, following which such assets shall transfer to NOE and it is expected that MSMI shall be dissolved);
- the transferring business will continue to have the same management;
- all policyholders of MSMI will become policyholders of NOE;
- all reinsurance agreements with external reinsurance parties will transfer to NOE;
- the net insurance risks of MSMI insured by NOE will be the same as the net liabilities of MSMI currently reinsured by NOE under existing arrangements.

The main purpose of the Scheme is to achieve more efficient use of capital and savings in costs by managing one company, NOE, rather than managing two separate companies, NOE and MSMI. The Expert concludes that he has no reason to doubt that this is likely to be the beneficial outcome of the Scheme.

#### **The Scheme's impact on the Transferring Policyholders of MSMI**

The report assesses the impact of the Scheme upon transferring policyholders of MSMI in the following areas:

##### **External Reinsurance Arrangements**

The Report examines the effect of the Scheme upon MSMI's external reinsurance arrangements and concludes that they will continue with the same financial effects and service standards pre- and post-Effective Date. This conclusion is based on the fact that the reinsured liabilities and the reinsurers will not change as a result of the Scheme.

The Report also considers the impact of the Scheme upon MSMI policyholders in the event that one or more of MSMI's external reinsurers default on their liabilities to MSMI and concludes that:

- since the total gross claims of MSMI are relatively minor compared to the consolidated NOE total gross claims and NOE's surplus assets, a reinsurance default by one or more of MSMI's external reinsurance parties would be unlikely to cause any financial problems due to the fact that NOE would put additional funds as required in MSMI. Moreover, NOE's reputation in the market would suffer if such additional funds were not forthcoming;

- the protection afforded to MSMI policies against such a default will be enhanced by the Scheme as they will benefit directly from the larger pool of surplus assets in NOE.

### **Claims**

The Report goes on to consider the impact of the Scheme upon MSMI in the event of a deteriorating claims experience in relation to MSMI claims with the need to increase claims payments and claims technical provisions. The Report concludes that the Scheme has no effect on the risks facing MSMI in such circumstances.

### **Financial Strength**

The Report compares the gross technical provisions and surplus assets of NOE and MSMI as well as their capital positions under Solvency I, ICAS and Solvency II and concludes that:

- The policyholders of MSMI will benefit from a greater level of surplus assets (expressed as a percentage of the gross technical provisions for claims) as part of the larger company NOE than if MSMI were a totally separate company;
- NOE has the greater financial strength when compared to MSMI and post-Effective Date the transferred MSMI policyholders will benefit from the greater financial strength of NOE.

### **Standard of Service**

The report notes that MSMI policies now and post-Effective Date will continue to be managed by the same personnel in NOE and concludes that the Scheme will have no impact upon the standards of service given to MSMI policyholders.

### **The Scheme's impact on Remaining Policyholders and the Member of MSMI**

Although the intention is for all of MSMI's policyholders to transfer to NOE, the Scheme allows for the possibility of some MSMI policies ("Residual Policies") to remain within MSMI in the event that there is some unanticipated reason why they cannot be transferred to NOE on the Effective Date. In such circumstances the liabilities of MSMI in respect of those Residual Policies will continue to be reinsured by NOE until such time as they are transferred to NOE by other means.

The Report considers the impact of the Scheme upon Residual Policies and concludes that, in the unlikely event that there are any Residual Policies, the situation for such policies will be substantially the same pre- and post-Effective Date as they are currently reinsured with NOE under existing reinsurance arrangements and would continue to be reinsured with NOE post-Effective Date.

The Report also finds that there are no proprietary Members' rights issues to consider in the event that there are any Residual Policies since NOE will be the sole Member of MSMI pre- and post-Effective Date.

### **The Scheme's impact on the Current Policyholders and Members of NOE**

The Report considers the impact of the Scheme upon NOE in the event of MSMI suffering a deteriorating claims experience with the need to increase claims payments and claims technical provisions. The Report concludes that, based on the assumption that MSMI's external reinsurance

parties would honour their commitments under external reinsurance arrangements, the Scheme has no material effect on the net risks facing NOE as a result of such a deteriorating claims experience.

The Report also considers the impact of the Scheme upon NOE in the event that one or more of MSMI's external reinsurers default on their liabilities and concludes that, whilst the situation post-Effective Date is different from that pre-Effective Date in that NOE assumes the whole risk of a reinsurance default by one or more of the external reinsurance parties, in a practical sense the risks faced by NOE and its Members are little changed by the Scheme.

The Report goes on to conclude that the Scheme has no material financial impact on the policyholders of NOE (both Member and non-Member) and no material impact on the proprietary interests of the Members of NOE. The Report also concludes that the Scheme will not have a material effect on NOE's risk profile and policyholders whether as a going concern or in an insolvency situation.

### **Impact of merger of NOE and Sunderland Marine Insurance Company Limited**

On 28 February 2014 Sunderland Marine Insurance Company Limited ("SMI") became a wholly owned subsidiary of NOE.

The Report considers the impact of the Scheme on the financial situation of SMI and concludes that the Scheme will not have a material impact on the financial situation of SMI, which will be little changed pre- and post-Effective Date.

The Report also considers the impact of the parent company guarantee given by NOE to SMI and concludes that it has minimal impact on the financial security of MSMI policyholders both pre- and post-Effective Date.

### **3. Conclusions**

The overall conclusions of the Report are:

- The Scheme has a beneficial effect on NOE in terms of future administration costs and future capital requirements.
- MSMI policyholders will benefit directly from the greater financial strength of NOE post-Effective Date.
- The Scheme has no material financial impact on NOE's risk profile and policyholders whether as a going concern business or in an insolvency situation.
- The Scheme has no material impact on the proprietary interests of the members of NOE.
- The Scheme has no impact on the service standards for all policyholders in NOE and MSMI.
- The Scheme has minimal impact for SMI policyholders.

#### **4. Supplementary Report**

The Expert's analysis has been based upon the material supplied to him, including balance sheets and other information, based on accounting positions as at 20 February 2014 in respect of MSMI and NOE and as at 31 December 2013 and 28 February 2014 in respect of SMI. Since the proposed Effective Date for the Scheme is 1 November 2015, he will revisit the analysis closer to the time to confirm that there have been no material changes to the information that he has reviewed that would affect his overall opinion. He will then prepare and issue a supplementary report to be made available to the Court prior to the final Court hearing.