Part I. Insurance Exchanges – A Commentary

A. Introduction

On March 31, 1980, a history-making trading floor opened near the financial district in lower Manhattan in New York City. This trading floor was not for dealing in stocks, bonds, options, or pork bellies, but for the broking and underwriting of insurance contracts. It was the first general purpose insurance exchange in North America and was followed by operating insurance exchanges in Miami and Chicago. In the ensuing years these exchanges – patterned after the 300-year-old English insurance exchange, Lloyd's of London – struggled to become significant markets, enjoyed the attention of their early success and celebrity, experienced the pains of growth and severe market shifts, suffered underwriting failures, and searched for their market niche.

As these exchanges emerge from their first critical years, they seek to refine their own individual character, attract new players, expand their market participation, and become integral parts of the national and international insurance scenes. At the same time they are attempting to establish a form of effective self-regulation previously unknown in American insurance. Whether they succeed in this cause or not will depend on their ability to deal with and learn from the misfortunes of their first years. While one of the exchanges has exceeded its early expectations, the burdens on the other two may be too great to overcome.

These exchanges may soon be joined by a sister to the north, as Canada prepares to open its own exchange – modeled after the American exchanges. Other states are also considering the possibility of authorizing exchanges, and one state – Texas – has enacted enabling legislation.

But what are insurance exchanges?

How do they operate?

What is the extent of their success or failure?

What kinds of business are written on exchanges?

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Why weren't there exchanges in the United States before 1980?

Who can participate in an exchange?

What are the requirements for membership . . . .

As an underwriter?

As a broker?

What are the advantages of membership?

Who are the current participants and how have they done?

How are these exchanges regulated?

How effective is self-regulation?

What limitations exist on exchange activity?

What are the security aspects of exchanges?

What is the future for exchanges?

Will there be other exchanges formed?

Exchange: A Guide to an Alternative Insurance Market™ is designed to be the central source for answers about insurance exchanges in North America. Whether you are an underwriter, manager, broker, intermediary, customer, or owner, or an attorney, accountant, actuary, adjuster or other insurance professional with an interest in, or representing others interested in insurance exchanges, *Exchange*™ will be your primary reference.

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B. What Is an Insurance Exchange?

An insurance exchange is a centralized marketplace for the brokering and underwriting of insurable risks.

There are six basic elements which make up an insurance exchange:

1. A common trading floor.
2. Exclusively a broker's market.
3. Underwriting syndicates are severally (and not jointly) liable.
4. All transactions are centrally processed.
5. Self-regulating through
   - common rules for the conduct of business, and
   - maintaining the financial integrity of exchange members.
6. A security or guaranty fund.

1. Common Trading Floor. The focal point of an exchange marketplace is a room or floor, the "trading floor", where underwriters review and consider risk proposals presented by brokers. The underwriters sit in their own designated area of the trading floor, which may be a desk, booth, cubicle or "underwriting box". Approved by the exchange, the underwriters represent insurance or reinsurance entities commonly referred to as underwriting members or "syndicates". Submissions of risks to underwriters are generally made on the trading floor by exchange-approved brokers or reinsurance intermediaries, who can market a risk around the floor until completion of the placement. Although each exchange may have different rules for the placement of business, including allowing or prohibiting submissions by electronic or other off-exchange means, the actual binding or recording of a risk generally must occur on the trading floor.

2. Exclusively a Broker's Market. An underwriting syndicate can conduct an insurance business only on the exchange of which it is a member, and it cannot be a member of more than one exchange. Also, an underwriting syndicate can accept only that business submitted to its underwriter by an exchange-approved broker. A broker, however, is free to become a member of any exchange where it meets the requirements for exchange membership, and it can present business not only to exchange syndicates, but to any insurance company

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within the jurisdiction of its license. On the other hand, only those brokers approved by an exchange are entitled to submit business to syndicates on that exchange. In other words, the exchange broker not only has exclusive access to any exchange of which it is a member, but also the freedom to use an exchange as one of many markets. Obviously the more significant the exchange market, the more valuable this exclusive access becomes to the broker.

3. Several (and not joint) Liability of Underwriting Syndicates. Underwriting syndicates approved for exchange membership accept risks for their own accounts and not jointly with other syndicates. This means that even though many syndicates may participate on the same risk, their liability is several and not joint, with each syndicate's liability limited to its percentage of participation. Also, each syndicate is its own separate business entity, competing with all other syndicates on the exchange. This competitive market distinguishes a true exchange from a pool, facility or other joint underwriting venture where all participants are committed equally to all the risks accepted by the facility.

4. Centralized Processing of All Transactions. One of the main functions of the exchange entity is to process the transactions entered into by its members on the trading floor. This processing begins with the recording of the transaction, as evidenced by a written summary of the transaction (the placement slip) presented by the broker and signed or initialled by the participating underwriter(s). The transaction is then tracked by the exchange facility, including recording of premiums; issuance of contracts, endorsements and amendments; collection and payment of claims, credits or returns; and providing statistical data with respect to each transaction as required by the members.

5. Self-Regulating. Since they are centralized, self-contained markets, insurance exchanges are substantially self-regulating. This self-regulation is most apparent in two areas.

– *Common Rules for the Conduct of Business.* The exchange entity is responsible for managing the facility, which it accomplishes through common rules for members' participation and conduct of business on the exchange. These common rules of conduct, which are binding on all exchange participants, can cover a spectrum of topics, including the criteria for initial acceptance of new members, procedures for the placement of business, requisites for withdrawal from the exchange, and disciplinary actions for failure to comply.

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– *Financial Integrity.* Through their authority to establish limitations or guidelines for writing business, to mandate reports, to provide access to recorded data on exchange transactions, and to audit or examine members, exchanges have the resources they need to closely monitor the financial stability of their syndicates. This ability is coupled with the authority to take action against members in financial difficulty, including the authority to require members to cease or to suspend writing business, or to seek the rehabilitation or liquidation of syndicates. Effectively, then, exchanges impose financial stability and strength requirements on their members much as state regulators impose financial requirements on licensed insurers.

6. Security or Guaranty Fund. Insurance exchanges are marketplaces composed of a number of underwriting syndicates, each writing for their own account and not jointly. Exchanges establish relatively modest minimum capital requirements for syndicates to participate in the market, and are exempt from state guaranty fund assessments and protections. Therefore, should a syndicate become insolvent or otherwise unable to satisfy its financial commitments, there is no obligation on the rest of the syndicates to provide financial support, and no state guaranty fund "safety net." To enhance the acceptance of the exchanges in the broader market, therefore, each exchange maintains its own security or guaranty fund. These funds derive their assets through assessments on premiums written on the exchange, or through required deposits of syndicate assets in trust, or both.

The funds respond only in the event of certain defined circumstances – generally following the liquidation of a syndicate. An exchange's security or guaranty fund payments are also subject to monetary or other restrictions, such as per risk monetary limitations, restrictions on payments to related parties, limitations on certain types of coverages, or overall payment caps for any one insolvency. Considering that neither of the two main types of business written on exchanges – reinsurance and excess and surplus lines insurance – are generally covered by state guaranty funds, this security or guaranty fund protection can be a significant factor in choosing an insurance exchange as a market over a reinsurance company or a surplus lines carrier. The strength – size and availability – of the security or guaranty fund can also be a significant factor in choosing one exchange over another.

These six basic elements of an insurance exchange are the foundation for the following commentary on the history, operations, regulation and comparisons of insurance exchanges in North America.

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C. Historical Perspective

Once upon a cycle – in the mid-1970's – there was a capacity crisis in the property/casualty insurance marketplace. Unable to obtain adequate coverage in the traditional markets, insurance buyers began demanding solutions to their immediate requirements and long-term answers to persistent market cycles. Politicians, insurance regulators, state legislators, and industry leaders – broker and underwriter – joined in the search for a more responsive market.

One answer was the insurance exchange concept. Proponents of the exchange concept pointed to the tremendous success of Lloyd's of London in the U.S. market. Why couldn't a similar form of market be created in the United States to serve the same function – providing flexible leadership in meeting new and developing insurance needs, and helping to level the peaks and valleys of increasingly severe market shifts? As the dialog developed, the focus moved away from the need for more flexible and responsive markets, to a patriotic cry for "keeping the premium dollar home."

Why were there no centralized insurance markets like Lloyd's in the United States? To answer that question, one must look at the historical development of the regulation of the domestic insurance industry.

The earliest insurance companies in the United States were chartered by state legislatures. These charters contained some minimal regulatory provisions, but it was not until the mid-19th century that state insurance departments were organized to oversee the industry. Two key developments in this period significantly advanced state regulation of the insurance industry: The Supreme Court decision in *Paul v. Virginia* (75 U.S. [8 Wall.] 168) in 1869, and the founding in 1871 of the National Convention of Insurance Commissioners (now known as the National Association of Insurance Commissioners, or the NAIC). *Paul v. Virginia* upheld the constitutionality of a state's regulation of foreign insurers operating within its boundaries, and the NAIC established an effective means for state regulators to exchange data and develop model laws, regulations and forms.

State regulation did not go uncontested. The Supreme Court was repeatedly asked to reconsider the *Paul v. Virginia* decision on this issue, and several legislative attempts were made to replace state regulation with federal regulation. None of these attempts were successful, however; until 1944, when in *U.S. v. Southeastern Underwriters*

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Association (322 U.S. 533, rehearing den., 323 U.S. 811) the Supreme Court held that the business of insurance was interstate commerce and therefore subject to the federal antitrust laws. This unexpected decision (at least to the insurance industry) prompted the passage in 1945 of the McCarran-Ferguson Act, specifically making the business of insurance (i) a matter for state regulation, and (ii) exempt from federal antitrust laws except in cases involving boycott, coercion or intimidation, or where state regulation is not effective.

The issue of federal versus state regulation, and the debate over the continuation of the McCarran-Ferguson exemption, are still alive today. Although federal laws – such as the Employee Retirement Income Security Act of 1974 and the federal securities laws – as interpreted by the courts have successfully narrowed the scope of state regulation, and the attacks on McCarran-Ferguson intensify, the *rara avis* of a substantially state-regulated insurance industry continues to the present.

Largely as a result of the uncertainty created by the *Southeastern Underwriters Association* case, many states adopted statutes requiring the prior approval of all rates, including those of industry rating bureaus developed to use the pooled experience of many companies. Insurers were not required to follow or belong to rating bureaus, and deviations from bureau rates could be obtained – even by bureau members. These exceptions created an atmosphere of competition while, at the same time, they addressed regulators' concerns over the drastic rate-cutting practices of thinly-capitalized companies which could result in numerous bankruptcies and unprotected customers – concerns which never seem out-of-date.

In addition to significantly controlling the rates charged by insurers, state regulators developed standard policy forms to protect customers against confusing and inadequate contracts and unscrupulous, quick-dollar peddlers, particularly in the field of fire insurance.

The focus of regulatory efforts on rates and forms made the development of a viable, self-regulated, centralized insurance marketplace in the United States impractical at best. Brokers could not submit risks directly to an underwriter or underwriters, negotiate terms and conditions of coverage, and expect to bind coverage. The need to obtain rate and form approval before completing the contract in most cases left innovation and leadership in new coverages to the overseas

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exchange — Lloyd's of London. Lloyd's thrived in the domestic market, building a reputation as the "insurer of the world" (and Betty Grable's legs) on the inability of the U.S. insurance industry to provide the unusual but necessary coverages American businesses sought.

In the 1960's, "open competition" laws prohibiting agreements to adhere to bureau rates and relying instead on free competition to regulate rates were first considered by state legislators. At the same time, reinsurance became an increasingly significant industry in itself, unfettered by the rate and form requirements placed on the primary companies by state regulators. These two trends — a movement towards open competition and an unprecedented growth in the reinsurance industry — only intensified during the capacity crisis of the mid-1970's.

The impact of these two trends was reflected in New York State, with the adoption of the "Free Trade Zone" and insurance exchange legislation on June 22, 1978. The Free Trade Zone was New York's response to the perceived need for greater market flexibility, by allowing licensed insurers in New York to write large or hard-to-place commercial risks free from rate and form restrictions. The insurance exchange concept — originally conceived as a reinsurance exchange — was a direct result of the concern over shrinking capacity and the flow of premium dollars overseas. Neither concept was able to obtain the necessary legislative and regulatory backing on its own; together, however, the Free Trade Zone and the insurance exchange proved themselves a strong legislative package which won broad acceptance.

The 1978 insurance exchange legislation in New York simply authorized a 13-member committee composed of industry, business and government leaders, to draft a constitution detailing the framework and operations of an exchange. The constitution was not adopted until February of 1979, and the New York Insurance Exchange did not open until March 31, 1980. New York's action was followed by the legislatures in Illinois and Florida, which adopted enabling legislation on September 24, 1979, and October 1, 1979, respectively. The Illinois Insurance Exchange opened on November 20, 1981, and the Insurance Exchange of the Americas opened in Miami on April 4, 1983.

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D. Operating and Authorized Exchanges

1. New York Insurance Exchange, Inc.

After the enactment of the June 1978 legislation in New York, authorizing the drafting of a constitution for an insurance exchange, a blue-ribbon committee was appointed for this undertaking. This committee, known as the "Committee of Thirteen", was chaired by the then-superintendent of insurance, Albert B. Lewis – the regulatory visionary of the exchange concept – and composed of appointees representing New York Governor Hugh Carey, legislative leaders, the insurance industry and commercial insurance consumers. The Committee of Thirteen created a number of working groups, each formed to draft various parts of the constitution (e.g., membership criteria, powers of the governing board, mechanics of the market operations, and security issues).

Many organizations contributed significant time and effort to this project, but the work went slowly. The legislative deadline for presenting a constitution acceptable to the legislature and the superintendent of insurance passed before a document acceptable to the committee members could be finalized. Thus, when the document was in acceptable form, it became necessary for the New York legislature to enact the Constitution and By-Laws of the New York Insurance Exchange as a statute. On February 21, 1979, this legislation was adopted. But the Exchange still did not exist.

Under the legislation, the exchange entity was to be incorporated under the New York Not-For-Profit Corporation Law. This was accomplished by filing a Certificate of Incorporation on April 30, 1979.

The 1979 legislation also provided for the appointment of an initial board of governors to act until the first meeting of members. This initial board, like the Committee of Thirteen, was appointed by the Governor, the Superintendent, and legislative leaders. The initial Board supervised the solicitation of members; prepared, issued and reviewed applications; approved the initial applicants for charter membership; and called the first meeting of members, which was held on July 9, 1979. Thirteen underwriting syndicates and thirty-three brokers had been approved for membership for that first members' meeting.

At their first meeting the members elected a permanent Board of Governors, composed of six underwriting governors, two broker governors, and four "public" governors with no connection to the insurance industry. The first Chairman of the Board of Governors, T.

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Vincent Learson (former Chairman of IBM), was elected out of the ranks of these public governors. Mr. Learson epitomized the level of interest this exchange was able to generate in the business community. The Board of Governors constituted a virtual "who's who" of insurance and industry leadership, including:

Maurice R. Greenberg – Chairman of American International Group, Inc.

John Cox – President of INA Insurance Company.

Richard Stewart – Vice President of The Chubb Group and a former New York Superintendent of Insurance.

Harold Hudson – Chairman of General Reinsurance Corporation.

John Ricker – Chairman of The Continental Insurance Companies.

Ian MacGregor – Partner with Lazard Freres & Co., who was later picked by Prime Minister Margaret Thatcher of Great Britain to run British Steel.

Alton G. Marshall – President of the Rockefeller Center;

Jerome Kretchmer – former New York City Environmental Protection Agency head under Mayor John Lindsay.

Industry's support – as evidenced by the involvement of such prestigious Governors – was reflected in the Exchange's initial membership as well. Most of the original underwriting members were owned or sponsored by leading companies in the industry, both insurers and brokerage firms. The substantial involvement of major insurance industry forces distinguishes the New York Insurance Exchange from other exchanges in the United States. It is also a major reason the New York exchange was able to operate first.

It was eight and one-half months from the first meeting of members in July of 1979, however, before the exchange opened for business. On March 31, 1980, Governor Hugh Carey opened the 7,500 square-foot trading floor at the corner of John and William Streets in downtown Manhattan. The first full-service insurance exchange in the United States was finally a reality, two years after the first legislative authority had been enacted!.

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This trading floor — once a bank branch office — was divided by wood panelled partitions into 29 cubicles, or underwriting boxes. Several well-planned risks were presented to exchange underwriters that day. The second day of exchange operations —April 1, 1980 — saw the start of a crippling ten-day transit strike in New York City which reduced the business in the city — and on the Exchange floor — to a trickle. Even after the strike, however, real activity on the Exchange continued to be slow in developing. The tight market of the mid-1970s, which had spawned the Exchange legislation, had given way to a soft market of excess capacity. A new market, like the New York Insurance Exchange, was not going to meet easy acceptance. The need for the market was no longer so pressing.

From its opening on March 31 through the end of 1980, a total of only $17 million was written on the New York Insurance Exchange. Nearly all of this business was reinsurance, and much of it was "directed" business from related organizations. Activity increased significantly by year-end, however, as brokers came to realize the relative ease of placement on an exchange market, and ceding companies began to accept the exchange syndicates as reinsurers. The next several years witnessed extraordinary growth on the New York Insurance Exchange, so that by the end of 1984, it ranked in the aggregate as the eighth largest reinsurer by premium ($345.6 million) and fifth largest by policyholder surplus ($182.6 million) in the United States. The number of syndicates grew from sixteen on opening day to thirty-five active syndicates by December 31, 1984, and the number of participating brokers exceeded one hundred, including most of the major national brokers and reinsurance intermediaries.

But all was not well in Camelot! The rapid growth in premium volume, coupled with the extreme soft market conditions of the early 1980s created an impression in the industry that the Exchange was really the market of last resort, the "dumping ground" for the submissions from the bottom drawer that could not be placed anywhere else. These suspicions were only fortified by the early results. Although the premium volume was increasing at a breathtaking speed, so too were the reported combined ratios (the ratio of losses and expenses to premium) as well as the concerns of the Board of Governors. These concerns led to the adoption by the Board in August 1982 of "Business Review Guidelines," designed to prevent the over-leveraging of a syndicate's surplus, and to provide an early-warning system for the Board so it could act to prevent a syndicate from writing itself into insolvency.

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Under these guidelines, several syndicates were asked to stop writing new and renewal business, but the action may have been too late. The high volume of treaty reinsurance written by several syndicates kept them high on the premium volume list for years after they stopped writing. These syndicates were well over guideline limits when the limits were first imposed and, therefore, the cessation was ineffective in bringing them back in line. These syndicates also had written large volumes of business at a time of over-capacity and extremely soft pricing, with no "good times" to fall back on. Thus the seeds of financial trouble were present in the first few years of the New York Insurance Exchange.

Of course, leveraging in excess of the guidelines would lead to financial difficulty for syndicates only if the premium received was inadequate for the risks assumed. Considering the period involved, financially troubled operations were probably inevitable. By the end of 1985, the worst fears were realized. Volume dropped on the Exchange for the first time in its short history, from $345.6 million to $309.5 million; additional syndicates ceased writing business or sought to withdraw from the Exchange; capital contributions were used to bolster sagging surplus rather than fund new syndicates; and several syndicates (primarily the ones which first exceeded the guidelines) were placed under joint control with the Exchange to allow even closer monitoring of their financial activity by the Exchange. By Summer 1986, more drastic action was considered necessary by the Exchange Board, and in August 1986, five syndicates were declared insolvent by the Exchange Board and the New York Superintendent of Insurance was petitioned to liquidate four of them.

At the same time the Exchange was forced to deal with the financial excesses of the early 1980s, it was also plagued by the adverse publicity of the withdrawal of several of its major industry participants and a back-office operation that had not kept pace with its growth.

From the beginning the New York Insurance Exchange was supported by many of the major insurance companies: companies like Continental, Prudential, Crum & Forster, First State, Chubb and General Reinsurance all supported syndicates on the Exchange. But by the middle of 1986, all of these companies had either withdrawn their syndicates or ceased their activity and put them in run-off. The reasons given for these withdrawals did not mention a lack of confidence in the Exchange; rather most cited internal restructuring within the parent organization as the motivating factor. There is no reason to doubt these announced reasons. Their committments to

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exchange syndicates were relatively insignificant when compared to the overall activity of these large parent groups, and most of them did in fact consolidate or otherwise restrict their other underwriting activities at the end of the soft underwriting cycle. The market, however, speculated on the abandonment of the Exchange by many of its major players, and believed the worst.

Concomitantly, the Exchange's growing reputation for poor recordkeeping and slow payment of claims compounded the difficult task of stabilizing the Exchange market and attracting new participants. The Exchange's back-office inefficiency resulted from several factors, most significantly the nature of the Exchange itself. In less than five years, the Exchange's premium volume grew from nothing to more than $300 million. The number of transactions handled by the Exchange grew too rapidly for effective control, resulting in shortcuts, ineffective procedures, and productivity delays. In addition, since many syndicates participated on most risks without a "lead-follow" system (See *Part II A: How an Insurance Exchange Works*, infra), many time-consuming reviews and approvals were needed which significantly slowed the contract issuance and claims payment processes.

Despite all of these difficulties, the Exchange continued as a viable and significant operation. Through 1985 and into 1986, the insurance market hardened significantly as capacity shrank and prices firmed. The syndicates which had not written excessively, or which had the financial resources to obtain additional capacity, were able to participate in the changing market, so that capacity was available on the Exchange. New investors began looking at the advantages of the exchange market: the ease of access to the marketplace, the relatively small capital requirements to participate, and the immediate approval in all states where the exchange itself is approved.

The management of the facility, however, did not provide the necessary support for the market recovery in two essential areas. First, the cost of maintaining the facility was not controlled. The cumbersome and inefficient back-office operation was not able to adjust to the reduced premium volume, thus substantially increasing the unit cost to the syndicates with no corresponding gain in productivity or effectiveness. In addition, Exchange members were saddled with the burden of paying for a financially disastrous mortgage on its new building on Fulton Street in downtown Manahattan with its impressive (but empty) trading floor.

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Second, the insolvencies lingered without any satisfactory resolution – a constant reminder of the past, yet with the attendant expense and energy required. Although the exchange board had petitioned the superintendent of insurance to liquidate four syndicates in August 1986 (and three more in September 1987) the perception was that the board did too little too late to avoid the necessity of such drastic action, and that the board's extensive and varied powers went largely unused. This course was dictated, according to the exchange's management, by the New York regulators' insistence that the exchange adhere to traditional regulatory strictures. Unwilling to challenge the regulators' authority, the exchange board failed to attempt any of the various options proposed for working out the financial difficulties of the insolvent syndicates.

Because the exchange did not — or could not — provide a meaningful response for its own insolvent members, brokers and ceding companies then started reconsidering their approval of the exchange as a marketplace. This erosion of broker and ceding company support, together with the onus of the uncontrolled costs of the facility caused the remaining solvent syndicates to further reconsider their commitment to the exchange, resulting in eleven syndicates filing plans of withdrawal to be effective by year-end 1987.

Although shaken by this rash of withdrawals which further eroded its membership base, the fate of the New York Insurance Exchange may well have been sealed by the action of the board of directors of the exchange's security fund. On September 2, 1987 the security fund's board of directors called down the $500,000 deposits of each syndicate on the exchange — a total of $25 million — to meet the potential claims against the security fund resulting from the declared syndicate insolvencies. Although all syndicates knew — or should have known — the potential for such a call (*See Part II A 10: Security and Guaranty Funds*), the timing of the security fund's action coming the day after the last day for notifying the exchange of an intention to withdraw as of year-end, sent a shockwave through the exchange market ultimately forcing the exchange board to reopen the window for withdrawal.

As a result of this, all but ten syndicates petitioned to withdraw. On November 23, 1987, the Exchange members on the recommendation of the Board of Governors voted to temporarily suspend the writing of new and renewal business on the Exchange in order to review the financial condition of all its syndicates and to reassess its operation and expenses.

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In retrospect, the New York Insurance Exchange had opened at the worst possible time – at the beginning of one of the softest pricing and over-capacity periods in the insurance industry's history. Yet in the face of this unfortunate timing, it was developing into a significant reinsurance and surplus lines market with a nucleus of active syndicates. Despite its survival of the soft market of the early 1980s, the inability to deal effectively with regulators, insolvencies, withdrawals, and back-office difficulties, seems to have overwhelmed the New York Insurance exchange. It would be left to the "other" exchange to show the potential for the exchange market concept.

2. Illinois Insurance Exchange, Inc.

While the effort to form an insurance exchange was drawing industry, legislative, regulatory and media attention in New York, other states began exploring the exchange concept as well. Two states, Illinois and Florida, pursued the possibility beyond the talking stage and eventually adopted enabling legislation.

The Illinois effort began in 1979, before the New York exchange opened. Although the New York exchange enjoyed diverse support, the support was still less than universal. The regulatory environment in New York, many thought, made it doubtful that a successful self-regulating insurance exchange was possible there. Also, if the establishment of the New York exchange were delayed, the reasoning went, a backup was needed. In fact, some observers believe that the Illinois legislative effort received significant support from a leading national brokerage firm, intent on pressuring New York to move forward.

Given New York City's financial problems of the time – and the anti-New York sentiment which resulted – many industry and business supporters of the exchange concept were looking for a location away from the Big Apple. If the exchange concept were a good idea, it should be located nearer the nation's geographic center. Chicago, with its central location and significant insurance expertise, seemed an ideal spot.

That is not to say that the anti-New York sentiment created the Illinois exchange. Indeed, the exchange legislation in Illinois was initially promoted and sponsored by the Illinois legislature and regulators, and not by the insurance industry or consumers. Also, the Illinois exchange was intended by its founders to be a direct and excess market and not the reinsurance market envisioned in New

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York. The Illinois exchange, then, was not designed primarily to replace or even compete directly with the New York exchange.

The New York exchange was substantially a reinsurance market. Its expertise – whether from an underwriting, broking or administration perspective – was in the reinsurance arena, and, in fact, it was originally conceived as a reinsurance exchange. Direct insurance was added to the mix to gain broader support for the enabling legislation. The Chicago insurance community, on the other hand, is recognized for its surplus lines expertise, and it was this strength that the founders hoped would distinguish the Illinois effort.

The original enabling legislation was introduced in Illinois in early 1979 by Bernard Epton, a lawyer and a legislator from Chicago and a recognized expert in insurance law. Epton chaired the Insurance Law Study Commission of the Illinois House of Representatives, and from this position he was able to gain the support of Governor James Thompson's administration, including the Insurance Department. Initially, no attempt was made to solicit the support of the Illinois insurance industry for this legislation. The rationale (at the end of a very tight market) was that an exchange would attract private investors, individual and corporate, and the industry would in turn support the development of additional capacity. The legislation was passed without a dissenting vote and signed by the Governor in September 1979.

The Illinois Insurance Exchange Act directed the Insurance Department to initiate development of an exchange. To accomplish this, the Department approached major national insurance brokers, particularly Marsh & McLennan and Fred S. James, Inc. – both of which had their presidents located in Chicago at the time. Although his firm was already committed to the New York exchange – which was just then emerging from the legislative process and was preparing to begin operations in April of 1980 – Marsh & McLennan's president (Harold Hines) suggested a roundtable group, composed of chief executive officers of major Illinois domestic companies and other interested parties, to assist the Illinois Insurance Department in its legislative mandate.

Representatives from Allstate Insurance Group, CNA Insurance Companies, the Kemper Group, the Ryan Group, Fred S. James, and an independent stockbroker convened early in 1980 to discuss the development of the Illinois exchange. This group concluded that the Department should seek its first potential syndicate backers primarily

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from among the ranks of insurers, since they would be the most likely to understand the market and provide the necessary expertise. Also, without resolution of the tax questions, it would be difficult to attract non-insurance investors. From those included in the roundtable, however, only the Allstate Insurance Group chose to form a syndicate.

At the same time it was seeking syndicate investors, the Insurance Department was also considering candidates for an interim board of directors as provided in the exchange legislation. Legislators, the administration, and insurance companies all submitted their recommendations. It was not possible, however, to follow the legislative intent in the composition of the interim board. The legislation called for thirteen members on the interim board, three of which were to be "broker-subscribers" – defined as an "exchange broker who has made a subscription" or an investment in a syndicate. Since the exchange did not yet exist, it was not possible for such an animal to exist as well. So the Insurance Department deviated from the statute and selected three brokers to the board who held no equity interest in a syndicate. This quirk in the Illinois exchange statute continues to pose an irony for the Illinois exchange: even though the exchange is a broker market, most of its authorized brokers – with few exceptions – hold no equity interest in a syndicate, and therefore have no vote on exchange issues.

The requirement that a broker must have an equity interest in a syndicate to vote is ironic in another sense. In New York, the Insurance Department adopted a regulation restricting ownership by brokers in underwriting syndicates. At about the same time, the Fisher Report (*"Self-Regulation at Lloyd's, Report of the Fisher Working Party," May, 1980*) recommended that Lloyd's brokers limit their involvement in underwriting agencies at Lloyd's – a recommendation that eventually led Lloyd's brokers to divest themselves of their interests in underwriting agencies over a period of years. In New York and at Lloyd's, the reasoning was that brokers should not be able to direct both the placement and the underwriting of risks. An underwriter should be free to underwrite, and not be influenced by an "owner-broker." In contrast, intentionally or not, Illinois has provided an incentive for brokers to gain a direct equity interest in the underwriting syndicates with which they do business.

By mid-1980, the interim board had been appointed, had held its organizational meeting, and had begun to establish the facility. The

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principal Insurance Department official responsible for the development and promotion of the exchange concept — James M. Skelton — was hired as its Managing Director in December of 1980. Underwriting activity, however, did not commence until January 1982.

A number of factors led to this delay. The Illinois exchange encountered considerable difficulty in attracting syndicate participation. Many of the large insurance companies were already committed to New York, were waiting to see how that market fared, or were simply not convinced that the exchange concept was either necessary or workable. Furthermore, the overall insurance market had turned from one of undercapacity and high prices, to one of severe overcapacity and pandemic price cutting. The demand for new markets was gone. At a time when the Illinois exchange was touting its potential as a surplus lines market, the admitted market was accepting all but the most difficult placements, and excess and surplus lines carriers struggled to maintain their books of business. And, finally, the exchange could not attract the non-insurance investor because of unresolved tax questions surrounding underwriting syndicates (*See Part II C: Investors and Taxes*).

Nevertheless, by January 1982, the Illinois exchange had approved eight syndicates with about $17 million in capital, and underwriting activity finally began on the twelveth floor of the Insurance Exchange Building on West Jackson Boulevard in downtown Chicago. Predictably, the activity was limited. In fact, exchange activity continued to be extremely limited through 1982, 1983, 1984 and into 1985. For instance, in 1984 — its third full year of underwriting — the aggregate written premiums on the exchange totalled $15.5 million, compared to the $156.4 million of business written on the New York exchange in its third year, 1982. As it turns out, this limited activity was probably the best thing that could have happened to the Illinois exchange!

The Illinois exchange nearly closed by the end of 1984 for lack of significant activity. One syndicate — the LWB Syndicate, Inc., a Crum & Forster-owned syndicate bearing the initials of the exchange's chairman, Louis W. Biegler — almost single-handedly carried the exchange by underwriting a significant portion of all the business written on the exchange, consisting mostly of reinsurance.

Considering the indiscriminate underpricing which characterized the insurance market at the time, this unplanned and unwanted inactivity inured to the benefit of the exchange. The early 1980's

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proved, in hindsight, to be the worst possible time to be writing reinsurance or surplus lines. Prices tumbled as underwriters attempted to — unsuccessfully — maintain their market shares, relying on high interest rates to shore up underwriting losses. The exchanges were doubly affected since, as new markets, they were following markets which were more likely to be subject to adverse selection. The problems created by the cash-flow underwriting policies of most insurers during this period are clearly demonstrated by the experience of the New York exchange and the syndicate insolvencies which occured in that market (*See Part I D 1: New York Insurance Exchange, Inc.*)

Since activity on the Illinois exchange was limited, no threat of insolvencies developed. The one syndicate actively writing during these years — LWB Syndicate — paid the consequences, however. LWB was forced to cease writing, and eventually transferred its book of business to its parent organization.

If the Illinois exchange has a hero, it is the LWB Syndicate. It allowed the exchange to survive during the soft market of its early years, and to establish its market credibility and back-office procedures without the pressures of unfettered volume. By mid-1985, the market had turned significantly, and capacity was once again in demand. Ten new Illinois syndicates were formed and prepared to start writing. For the first nine months of 1985, the exchange syndicates wrote over $29 million in premium, almost double the 1984 writings. By year-end the writings reached almost $70 million. The Illinois exchange was on the verge of realizing its full potential, but the syndicate that had kept it in the hunt was gone.

Several new syndicates were attracted to join the market by the end of 1985. Unlike most of their predecessors, however, these new syndicates were geared to writing specialty primary or excess and surplus lines business, not reinsurance. In 1986, the Illinois exchange syndicates wrote more than $260 million in premium, compared to the $70 million written in 1985. More significantly, however, was the shift in business from substantially reinsurance to substantially excess and surplus lines. The players originally envisioned for the Chicago exchange had arrived, and the founders' vision could now be realized.

3. Insurance Exchange of the Americas, Inc.

The story goes like this: Returning home from a business trip, Miami lawyer and legislator William Sadowski read about the proposed new insurance exchange in New York and decided that an exchange in Florida would be an excellent idea. A Florida exchange

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would expand the insurance industry in Florida, and take advantage of Florida's weather and geographic location to promote Florida as a national and international insurance and financial center. The idea was received enthusiastically by the legislature and the Florida insurance department, and enabling legislation was quickly adopted in September 1979 – six months before the New York exchange opened and one month before Illinois adopted its enabling legislation.

It would be another two and one-half years, however, before the Florida exchange – grandly named The Insurance Exchange of the Americas – would open its trading floor. And within four years of its opening, the Florida exchange would face ridicule for its exaggerated claims, it would suffer not one but several spectacular scandals, it would seemingly overcome its checkered heritage to attract new syndicates and begin to rival its New York and Illinois bretheren, and then it would suspend all underwriting operations of its syndicates.

After numerous delays and difficulty in attracting sufficient capital to support an operating exchange, the Florida exchange finally opened in April 1983 with four syndicates capitalized at a total of $6 million. Through December of that year, exchange syndicates wrote an aggregate of only $4.6 million in gross written premiums, increasing to $36.5 million in the first full year of operations (1984). By the end of 1985, the Florida exchange had twenty-three syndicates, recording an aggregate of $131.9 million in gross written premium. The 1986 outlook was for writings to exceed $200 million – rivaling the success of the other operating exchanges. The outlook was a little too rosy, however.

By February 1987, the Insurance Exchange of the Americas had voluntarily suspended all underwriting activity by its syndicates, eight of its twenty-two syndicates were in court-ordered rehabilitation (one syndicate had ceased operating in 1985), and most of the other syndicates were fighting efforts by the insurance department to place all exchange syndicates under court supervised rehabilitation. The exchange and its members were rocked by controversy, scandals, lawsuits and regulatory intervention – all of which have raised considerable doubt on the part of industry observers that the exchange can survive as a viable market.

What went wrong? How did this market go from rags to riches and back to rags in so short period of time? Does the possible failure of the Florida exchange portend a similar fate for other exchanges?

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Does the Florida experience prove that self-regulated insurance exchanges cannot work in this country? Are there any lessons in this affair – lessons the other North American exchanges would do well to learn? As in New York, a close look at the Florida exchange history, structure, regulation and operation will reveal the seeds of the exchange's failures. The Florida experience does not prove that exchanges do not work. On the contrary, this is another, but different, lesson in how *not* to structure, regulate and operate an insurance exchange, and again demonstrates the importance of all six of the basic elements of an insurance exchange (*See Part I B: What is an Insurance Exchange?*).

The decision to locate an insurance exchange in Florida probably was not fully supportable. An exchange, by its very nature, requires a concentration of broker and underwriting expertise – talent which was not present in Florida in sufficient numbers to support an exchange. The exchange proponents, however, were counting on two "advantages" over the New York and Illinois exchanges: the geographic and ethnic proximity to the growing markets in Central and South America, and the attraction of its warm climate to talent in the London, New York, and other markets. To promote itself as an American Lloyd's, and to attract insurance expertise to the Florida market, the Florida exchange hired an Englishman, Alan Teale, as its first president in June 1981. With a reported twenty-eight years of experience in the London market and well-connected to the Lloyd's hierarchy, Mr. Teale soon became an active promoter of southern Florida and the Insurance Exchange of the Americas.

Everywhere the New York and Illinois managements went to promote their active exchanges, there was the unopened Florida exchange promoting itself as if it were equally active. Despite the claims of extensive capital commitments, underwriting and broker expertise, and sources of business, the Florida exchange did not open until April 4, 1983 – and then with only four syndicates and $6 million in total capital, the bare minimum per syndicate under the exchange legislation. Although management had big plans for the Florida exchange, they were unable to overcome its limitations, particularly:

– a lack of experienced insurance and reinsurance personnel, broker, underwriting or back office;

– the restraints placed on exchange operations by the enabling legislation; and

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- currency control rules that restricted access to the South and Central American markets.

Despite these limitations, the Florida exchange management still pressed their case before brokers and insureds.

However, the exchange seemed to generate negative publicity even when events did not directly involve the exchange. For example, the first elected chairman of the exchange – attorney Stephen Arky – committed suicide in July 1985. At the time, he was being investigated in connection with the collapse of a client – ESM Securities – a failure that had set off a financial crisis in the Ohio savings and loan business. But most of the Florida exchange's problems were of its own doing.

The Florida exchange leadership believed it had to attract quality underwriters from London and other markets to be competitive. The bait was the challenge of creating a "Lloyd's in the colonies" under the warm southern Florida sun. The formula apparently attracted a leading marine underwriter at Lloyd's, Peter Cameron-Webb. Mr. Cameron-Webb left England for southern Florida, and the exchange board was more than anxious to admit an underwriting "superstar." By the end of 1985, however, there were allegations of widespread misappropriation of premium funds from PCW Syndicate, Mr. Cameron-Webb's former syndicate at Lloyd's. Because of the publicity surrounding Mr. Cameron-Webb and the PCW Syndicate scandal, Mr. Cameron-Webb terminated his association with the Florida exchange in December, 1985.

While these personalities and events caused more than their share of headlines, they were not the undoing of the Florida exchange. In fact, none of these events have any significant bearing on the problems which resulted in the suspension of underwriting on the exchange. The real problem lay in the exchange's conception and construction. Poor execution may have exacerbated the problems, but the foundation was already seriously and irreparably flawed.

The first sign of serious trouble at the Florida exchange came in July 1985 when one of the four original syndicates on the exchange ceased writing due to heavy losses. On its surface, this development seems not much different than the fate suffered by financially troubled syndicates in New York and Illinois, which had also succumbed to the effects of the extremely soft market of the early 80's. There was a difference here, however – this shut-down occured less than two

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years after the opening of the exchange, and business in the first of those two years was presumably quite slow.

In early 1986, a lawsuit was instituted by Omaha Indemnity Company (a subsidiary of Mutual of Omaha) against two Florida exchange syndicates and others, charging that the two syndicates (capitalized at only $1.5 million each) were liable for treaty reinsurance claims to Omaha Indemnity in amounts projected as high as $60 million. As well as raising questions of the responsibility for placing that kind of volume with such modestly capitalized entities, the suits and countersuits brought unwanted attention to problems created by the rapid growth of the Florida exchange from mid-1984 through 1986. New revelations of unreported and unrecorded placements, back office snafus, skyrocketing losses and regulatory unrest were made almost daily. With 1986 recorded gross written premium in excess of $200 million on an aggregate policyholders' surplus of slightly more than $30 million, the prospect of significant unrecorded contracts was especially frightening.

Finally, in January 1987, the owner of a syndicate and the management company that operated a total of four syndicates audited its exchange operations. Instead of finding a profit, the audit revealed widespread losses. The result was a significant write-off by the parent, and leading to the suspension of a major underwriting operation on the exchange.

The insurance commissioner, Bill Gunter, acted on this audit and forced three of the syndicates into court-supervised rehabilitation, and forced the exchange board to suspend all underwriting operations on the exchange indefinitely. At one point, the commissioner attempted to have all exchange syndicates placed into rehabilitation, but several syndicates resisted the effort by successfully arguing that the commissioner had failed to prove their individual insolvency. As teams of examiners, auditors, actuaries, accountants and lawyers pored over the exchange and syndicate records to determine the full extent of the damage, the suspension continued.

Nicholas L. S. Cross — who assumed the post of exchange president just weeks before the fateful suspensions — and the commissioner have publicly expressed confidence that the exchange will be able to resume activity and eventually attract new capital to the exchange. Despite their public optimism, however, prospects for resumption of significant activity on the Florida exchange decrease

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daily. The overhead of the exchange facility cannot be absorbed indefinitely without an active, writing membership, and the existing business must continue to be serviced (even if no losses are paid) until the status of each syndicate can be resolved.

What factors brought the Florida exchange to this unenviable state? One prevalent view is that the Florida exchange was largely an unregulated, undisciplined, undercapitalized "club" run by a group of unsophisticated managers, and used by unscrupulous brokers and intermediaries as a resting place for their "bottom-of-the-drawer" business. Before adopting this view, and concluding that the exchange failed as a self-regulated organization, we should consider the following:

– The Florida commissioner, and not the exchange, has the statutory responsibility for investigating and approving new exchange members.

– The Florida commissioner, and not the exchange, has the statutory responsibility for the review, audit and examination of exchange syndicates.

– The Florida commissioner and the Florida governor each had two appointees sitting on the exchange board since its inception. Presumably, therefore, the commissioner had or should have had direct knowledge of and input to the deliberations and decisions of the exchange board.

– The Florida commissioner, and not the exchange's board of governors, has the statutory authority to discipline members of the exchange.

– The Florida statute, and not the exchange management, established the highly-leveraged 8.5 to 1 net premium-to-surplus ratio (recently reduced by legislative action to 8 to 1 on a gross basis, and 4 to 1 on a net basis – still above generally accepted regulatory standards), seemingly giving legislative sanction to the disastrously excessive writings on minimal surplus.

Based on a reading of the enabling statute, the Florida insurance exchange is not self-regulated. In fact, a strong argument can be made that the Insurance Exchange of the Americas is not an exchange at all, but an accumulation of regulated insurance companies labelled "underwriting members" – or "syndicates." These members

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are answerable not to the exchange market and its board of governors, but to the commissioner of insurance. The statute barely mentions the exchange or the board of governors, except to authorize a constitution and by-laws, and to establish the make-up of the board. The board is given no statutory authority to manage the affairs of the exchange!

The statute details the power and authority of the state insurance commissioner over the members of the exchange – from investigation and approval for membership, audit and examination of members, rehabilitation or liquidation of syndicates, to disciplinary action against members – never mentioning a role for the exchange or its board of governors in the process. In return for submitting to this highly controlled, regulated and inflexible environment, underwriting syndicates are granted the "privileges" of a central location and low initial capital requirements. As already discussed, an exchange is much more than a central location, and an exchange should offer much more than easy entry into the underwriting of risks via low capital requirements. (*See Part I B: What is an Insurance Exchange?*).

The constitution and by-laws of the Florida exchange – largely copied directly from the New York exchange's constitution and by-laws – give the illusion of an actual exchange, but whether the exchange concept is realized is subject to the will of the insurance commissioner, and is not statutorily protected. The commissioner could – and, in fact, did – preempt the independence of the exchange board and management. The commissioner's response to the financial revelations of early 1987 seemed to ignore his past participation in the management and supervision of the exchange. Instead, the Florida commissioner responded to the problems of the exchange by seeking and obtaining changes in the legislation which added to the commissioner's already extensive control and authority over the exchange and its members. These changes included an increase of appointed governors from one-third to a majority of the board, thus altering its structure so that it bears even less resemblance to a true insurance exchange.

Perhaps the Florida exchange did not respond meaningfully to its several crises because it did not have the tools normally available to a self-regulating marketplace. Where is the incentive for a board, members or managers to police their market while the insurance commissioner holds all the real power? How can you demand or expect accountability from an exchange board that holds no real power? Is a sense of market possible under the Florida structure? Could it just be

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that the lack of a true market ensured the eventual collapse of the Florida exchange?

4. The Canadian Insurance Exchange

If thoughtful study and conscientous planning can ensure the success of an insurance exchange, The Canadian Insurance Exchange will surely thrive! Committees, consultants, legislators, regulators and advisors have been studying, proposing, restudying and planning for the Canadian exchange since 1982. If the exchange opens as announced on January 1, 1988, it will have been almost six years in the making.

The process began in November 1982, with the appointment of the Insurance Exchange Advisory Committee by the Province of Ontario. Robert H. Hilborn – then Senior Vice President of the international brokerage firm of Johnson & Higgins Willis Faber Ltd. – was named as chairman. A year later, in November 1983, the Advisory Committee reported that an insurance exchange located in Canada would be a commercially viable and valuable entity. On January 17, 1985, the Government of Ontario appointed an Implementation Committee comprised of senior executives of insurers, reinsurers, intermediaries, brokers and government representatives – again chaired by Mr. Hilborn. The Implementation Committee, funded by the Ontario Government, engaged the services of the management consulting firm of Touche Ross & Partners and the legal firm of Fraser & Beatty to assist it in "the implementation of a fully operational insurance exchange which will be self-regulating and self-financing."

The foregoing quote is from a report issued by the Implementation Committee in November 1985 entitled "The Proposed Canadian Insurance Exchange." The report describing the proposed exchange – its organization, operation and regulation, and statisatical justification for the proposed market – was distributed to prospective syndicate investors, managers, brokers and other interested parties. On the basis of this report and a survey of its recipients, the Implementation Committee reported in early 1986 that an exchange was feasible and should be pursued. An action plan, prepared by the Implementation Committee and its consultants, was submitted to the Ministry of Financial Institutions of Ontario in April 1986. The Plan was approved by the Ontario Cabinet in June 1986, and the enabling legislation – referred to as the Canadian Insurance Exchange Act of 1986

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– received Royal Assent (hence becoming law) on December 18, 1986.

Since the Canadian insurance exchange was now incorporated, but did not yet have any members, an Interim Board was appointed by the Ontario Government. Robert Hilborn – "present at the creation" through his service as chairman of the Insurance Exchange Advisory Committee, was named Chairman of the Interim Board. With other prominent leaders of the Canadian insurance, business and professional communities, the Interim Board has continued the detailed planning, review and organization which has been the trademark of the Canadian exchange. The Interim Board has also:

- hired Edward F. Belton, the former president of the Insurers Advisory Association of Canada as President and Chief Executive Officer;
- adopted detailed by-laws and rules for the management, operation and regulation of the market;
- approved the first four underwriting managers authorized to represent syndicates on the exchange; and
- acquired space for the exchange trading floor in the financial center of Toronto, Canada.

By the Summer of 1987, however, the Canadian exchange had no syndicates organized or prepared to commit capital to the market. At the same time market conditions were changing rapidly to softer pricing and greater competition for existing capital. In other words, the environment that might attract capital to a new exchange had ebbed significantly. What effect these developments will have on the ability of the Canadian exchange to attract syndicate capital remains to be seen. Perhaps history will show that the Canadian exchange was so busy studying and planning that the opportunities presented by the tight markets in 1985 and 1986 were lost to it. On the other hand, by ensuring a strong, well-conceived concept, the Canadian exchange may avoid the procedural and operational problems that have plagued some U.S. exchanges in their early years.

Only after the Canadian exchange is funded and operational will the feasibility studies be borne out or disproved. Tremendous expertise, energy and effort has gone into planning and preparing for this exchange. The successes and failures of the other American exchanges have received a considerable amount of scrutiny. Only time will determine the actual vitality and synergism of the Canadian

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exchange and whether the market has adequate industry support as well as the legislative support already demonstrated. Finally, only after the exchange has been open for a few years will it be possible to determine whether its structure is flexible enough – or too rigid and overplanned – to allow it to work as a self-financing and self-regulating market, the objectives stated by its founders.

5. The Texas Insurance Exchange

What Canada took six years to accomplish – adopt enabling insurance exchange legislation – the Texas legislature did in a matter of months. On June 17, 1987, the Governor of the State of Texas signed an act calling for "the creation, operation, financing, regulation, and taxation of the Texas Insurance Exchange." The speed with which this legislation was enacted highlights an approach to organizing an exchange bearing little resemblance to the Canadian effort.

On the one hand, no feasibility study was conducted in Texas; no implemetation committee was appointed; and representatives from Texas made no junkets to New York, Chicago, Miami, and London to study the other exchanges. The Texas legislature simply adopted legislation proposed by the Texas State Board of Insurance, spearheaded by the Board's Chairman, Lyndon L. Olson, Jr. The result is a broad statutory outline for the establishment of an exchange in Texas which would operate under its own constitution and by-laws, subject to regulations promulgated by the Texas Insurance Department.

On the other hand, there was no significant industry or consumer support for or input to the legislation, and there is no formal advisory or implementation group in Texas to carry out the organization of an exchange under the legislative authority. The Texas legislature, on the recommendation of the State Board of Insurance, has simply placed the tools on the table for interested parties to pick up and use.

Whether the Texas approach will produce a viable, operating exchange at a significantly faster pace than the studied approach used in Canada remains to be seen. It may well be that the circumstances and expectations in Texas do not warrant the time, effort and expense associated with the studied effort in Canada, particularly since the Texas insurance regulators have had several years to observe and study the existing U.S. exchanges, their enabling legislation, operations and development. Texas is a fertile source of surplus lines premium, which may make it a logical site for a surplus lines oriented exchange.

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Enacting the Texas legislation took relatively little effort. It committed no one to do anything with the legislation, and it does not cost the taxpayers anything. Having the law on the books, however, may make it possible to act quickly and effectively when the opportunity arises, such as during the next tight market.

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