



# Negotiating with Finesse

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# Preface

- The examples in this talk assume a straightforward inforce coinsurance deal is being negotiated to raise capital
- There is no single right way to negotiate – this talk reflects my style

# Phases

- RFP
- Quotes
- Letter of Intent (LOI)
- Final Contract

# RFP – The letter

- Sample letter with list of materials to include with it is posted
- Content:
  - What you are looking for (e.g., type of deal, structure)
  - Your objective (e.g., money, risk alleviation, surplus relief)
  - What you are offering – detailed data attachments
  - Your deadline for quotes (you may want to discuss what is reasonable with potential bidders before sending out the letter)

# RFP – Finding Prospects

- Brokers
- Your contacts
- Internet search – key words for capital: capital solutions, reinsurance, collateralization

Note: do some due diligence on your prospects to avoid counterparty risk

# Quotes

- Letters with proposed terms are usual response
- Generally, more data will be requested
- You should have a price in mind and have decided what the minimum is you will accept.
- Discussions will begin – often alternatives to your proposal will be offered. Note, this is the beginning of the negotiation process.
- You will have trade-offs to evaluate

# Quotes (continued)

- At this juncture, best to keep 2 or more bidders in play – turn down those you have no interest in continuing with
- Negotiations continue up to the Letter of Intent. At that point, you have to commit to a single party.

# Letter of Intent

- Term sheet, which has key details of offer (you decide what these key point are) – see sample posted
- Cover letter
  - Exclusivity period
  - Basis upon which can terminate discussions
  - Summary of transaction details
  - Is the offer binding? On what basis can the reinsurer change it?

# Contract

- Sample inforce coinsurance treaty is posted
- Types of coinsurance & financial implications (see Tillers' book for details)
  - Normal coinsurance – reserves transferred to reinsurer
  - Mod-co – cedant retains all reserves
  - Funds withheld co – cedant retains funds, but not reserves

# Contract (continued)

- Much more in-depth due diligence will be performed by reinsurer at this stage
- Original offer will probably be modified – which is why you want to have a limited exclusivity period in your LOI

# Getting the Deal Done

- Process management
- Getting to the Letter of Intent
- Negotiating the final contract
- General negotiating tips

# Process Management

- These deals are often major projects
- Form a project team and a negotiating team.
  - The negotiating team will be a subset of the project team.
  - 1 person should be designated as the lead negotiator – better to use a business person rather than an attorney.

# Process Management (cont.)

- To keep it moving and to avoid confusion, should practice good project management
- Press your schedule
- Keep track of all outstanding items, especially due diligence items
- Maintain a repository (folder) of all data sent
- Be forthcoming with info: the ultimate contract can be contested by the reinsurer if you have withheld information or misrepresented

# Getting to LOI – Know What You Want

- Price and terms
- Priorities and trade-offs
- Be open to alternatives your bidders may propose

# Getting to LOI – Price Isn't Everything

- It's not all about price
- Offer will change after all due diligence is completed
- Terms of the deal may cause you to lose on the back-end what you gained on the front end

# Getting to LOI – Monkey Wrenches

- Ultimate deal terms could be unpalatable in non-financial ways
  - Recourse from parent required
  - Variable fees, say on LOC
  - Recapture/termination provisions
- The reinsurer could be difficult to work with

# Negotiating the Final Contracts – Back Doors

- Look for back doors the reinsurer can use to exit (avoid payment).
  - Close these doors or shrink them.
  - If you can't close a back door, exact a price for exercising it (e.g., recapture option for you with make-whole).
  - Conversely, give yourself some back doors, and be willing to pay for back doors you want to keep open.

# Negotiating the Final Contracts – Effects on Your Books

- Go over all the monetary provisions carefully.
- Create Stat, GAAP and tax projections and look at RBC impact
- If multiple interlocking agreements are involved, negotiate them together, as the discussion can bog down on the subsidiary agreements.

# Negotiating Tips – Give & Take

- Start nice – establish some trust
- Listen – get your reinsurer's perspective
- Conversely, explain your needs or concerns
- Offer, and entertain, reasonable alternatives
- Reflect on reinsurer's motivations – how badly do they need this deal?

# Negotiating Tips – Leverage Examples

- Their desire to maintain good relations with you
- Link to other deals

# Negotiating Tips – Leverage Examples (cont.)

- Their desire to do the deal - let them know you have alternatives
  - Alternative arrangements/structures to deal you are doing
  - Other deals your firm may be working on or could do
  - Other bidders – better offers or terms
  - Your ability to terminate the deal



# Negotiating Tips – Your Stance

- Be firm where it really counts
- Confidence, even boldness – show no fear
- Stay focused on your goals – don't get caught up on winning