National Association of Insurance Commissioners

Adopted by the Reinsurance (E) Task Force 9-15-09

# A BILL

To enact the Reinsurance Regulatory Modernization Act.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Reinsurance Regulatory Modernization Act of 2009."

**SEC. 2. REINSURANCE SUPERVISION REVIEW BOARD.**

(a) There is hereby established the Reinsurance Supervision Review Board as an instrumentality of the United States with the powers and authorities herein provided.

(b) Two types of reinsurers are hereby established in the United States, National Reinsurers and Port of Entry Reinsurers. In order to provide effective regulation by the States of these types of reinsurers, the Reinsurance Supervision Review Board is hereby given authority to:

(1) evaluate the reinsurance supervisory systems of the States to determine whether such jurisdictions qualify as Home State Supervisors or Port of Entry Supervisors under standards recommended by the NAIC and adopted by the Board;

(2) evaluate the reinsurance supervisory systems of non-U.S. Jurisdictions to determine whether they are eligible for recognition by the Board as Qualified Non-U.S. Jurisdictions under standards recommended by the NAIC and adopted by the Board;

(3) develop sample supervisory recognition agreements and information sharing and regulatory cooperation agreements, to be entered into uniformly by Port of Entry Supervisors with Qualified Non-U.S. Jurisdictions under standards recommended by the NAIC and adopted by the Board; and

(4) preserve the confidentiality of supervisory information within the Board's control, and enter into agreements with State, federal, and non-U.S. financial supervisory and law enforcement officials and agencies for sharing supervisory information on a confidential basis.

(c) The Reinsurance Supervision Review Board shall be an "agency" of the United States for purposes of subchapter II of chapter 5 and chapter 7 of Title 5.

**SEC. 3. MEMBERSHIP.**

(a) The Board. The Board shall consist of representatives of State insurance regulatory

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authorities, the Department of the Treasury, the Department of Commerce, and the Office of the United States Trade Representative.

(b) Composition. The Board shall consist of 15 directors appointed by the President by and with the advice and consent of the Senate as follows:

(1) Ten directors from the State insurance regulatory authorities in their respective States. Nominees for these 10 directorships shall be submitted to the President by the NAIC.

(2) Five directors from the Department of Treasury, from the Department of Commerce, and from the Office of the United States Trade Representative, as the President may appoint.

(c) Chairperson and vice-chairperson. The President shall designate 1 director as chairperson and 1 director as vice-chairperson of the Board. The chairperson shall be selected from among the 10 directors appointed pursuant to Section 3(b)(1). The chairperson and vice-chairperson shall serve in such capacity for the term of their appointment as directors.

(d) Terms.

(1) Initial terms. In appointing the initial Board, the President shall designate 5 of the appointed directors for initial terms of 3 years, 5 of the appointed directors for initial terms of 2 years, and 5 of the appointed directors for initial terms of 1 year.

(2) Thereafter. After the initial term, all directors shall be appointed for terms of 3 years.

(3) Succession and termination. The successor of any director appointed pursuant to Section 3(b)(1) shall likewise be appointed pursuant to Section 3(b)(1). The successor of any director appointed pursuant to Section 3(b)(2) shall likewise be appointed pursuant to Section 3(b)(2). A director may be appointed to succeed himself or herself. If any director shall cease employment in the State or Federal agency from which he or she was appointed pursuant to Section 3(b)(1) or 3(b)(2), the director's membership on the Board shall terminate and a successor shall be appointed in the manner set forth in this subsection for the remainder of the director's term.

(4) End of service. A director may continue to serve on the Board until his or her successor is appointed.

**SEC. 4. EVALUATION AND CERTIFICATION BY BOARD.**

(a) Home State and Port of Entry State Standards. The reinsurance activities of each type of reinsurer shall be supervised by a single State, the Home State or Port of Entry State, under model laws established by the NAIC and adopted uniformly by the individual States seeking certification as Home State or Port of Entry Supervisors. The NAIC shall recommend uniform standards, subject to review and adoption by the Board, for reinsurance supervisory systems of Home States and Port of Entry States that ensure that any such system that complies with such standards provides an acceptable level of prudential supervision over reinsurers regulated by such Home State or Port of Entry Supervisor. Any standards relating to ceded premium volume shall

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not unfairly discriminate against otherwise qualified States with respect to approval as a Home State or Port of Entry Supervisor.

(b) Evaluation of Home State and Port of Entry Supervisors. The Board shall certify which jurisdictions qualify as a Home State Supervisor or Port of Entry Supervisor.

(c) Evaluation of Non-U.S. Jurisdictions. The Board shall evaluate the reinsurance supervisory systems of non-U.S. jurisdictions, both initially and on an ongoing basis, consider the rights, benefits and the extent of reciprocal recognition afforded by non-U.S. jurisdictions to reinsurers licensed and domiciled in the U.S., determine the appropriate supervisory recognition approach for such jurisdictions, and create and publish a list of jurisdictions eligible to be recognized as Qualified Non-U.S. Jurisdictions.

(d) Fees. The Board shall establish a fee for conducting evaluations under this Section in the amount such that the aggregate of fees collected covers all costs of conducting evaluations under this Section and all other costs of the establishment and operation of the Board.

(e) Certification and Decertification of Home State and Port of Entry Supervisors. If, upon conducting an evaluation under this Section with respect to the reinsurance supervisory system of any State, the Board determines that the State qualifies to be a Home State or Port of Entry Supervisor, the Board shall certify such qualification and publish notice and evidence of such certification in an appropriate manner. The Board may establish a procedure to decertify those Home State and Port of Entry Supervisors that no longer meet the applicable standards for certification.

(f) Certification and Decertification of Qualified Non-U.S. Jurisdictions. If, upon conducting an evaluation under this Section with respect to the reinsurance supervisory system of any non-U.S. Jurisdiction, the Board determines that the jurisdiction qualifies to be recognized as a Qualified Non-U.S. Jurisdiction, the Board shall certify such qualification and publish notice and evidence of such certification in an appropriate manner. The Board may establish a procedure to decertify those Qualified Non-U.S. Jurisdictions that no longer meet the qualifications for certification.

(g) Public Notice and Comment. In developing standards, procedures, and fee levels, both the Board and the NAIC shall provide appropriate advance public notice and opportunity for public comment.

(h) Authority to Enter Agreements with Qualified Non-U.S. Jurisdiction Supervisors. A Port of Entry State is hereby authorized to enter into a supervisory recognition framework with a Qualified Non-U.S. Jurisdiction Supervisor, and enter into regulatory cooperation and information sharing agreements with Qualified Non-U.S. Jurisdictions, in accordance with standards and procedures recommended by the NAIC and adopted by the Board. This supervisory recognition framework may include the concepts of unilateral recognition of the Qualified Non-U.S. Jurisdiction by the Port of Entry State, mutual recognition between the Port of Entry State and the Qualified Non-U.S. Jurisdiction, or reciprocal treatment of reinsurers domiciled in the applicable jurisdictions.

(i) Confidentiality. All annual statement or other financial documents, materials, or information submitted by reinsurers pursuant to this Act which are not otherwise public information subject to

disclosure shall be exempted from disclosure under Title 5 Section 552(a) and shall be withheld from the public.

**SEC. 5. REQUIREMENTS FOR NATIONAL AND PORT OF ENTRY REINSURERS.**

A reinsurer shall be subject to the following requirements in order to be certified as a National Reinsurer by a Home State, or to be certified as a Port of Entry Reinsurer by a Port of Entry State:

(a) Reinsurers shall have a minimum capital and surplus requirement of $ 250 million to be eligible to be a National Reinsurer or a Port of Entry Reinsurer. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least $ 250 million and a central fund containing a balance of at least $ 250 million. The capital and surplus requirement of $ 250 million set forth in this subsection shall be subject to periodic review by the Board, and may be periodically adjusted by the Board if it is determined that such other capital and surplus requirement is appropriate and necessary.

(b) Pursuant to Section 6(a), credit for reinsurance ceded by a domestic ceding insurer to a National or Port of Entry Reinsurer shall not be denied if collateral provided by the National or Port of Entry Reinsurer is held in the United States in accordance with the following requirements-

(1) The Port of Entry or Home State Supervisor shall assign a reinsurer one of five ratings (Secure-1, Secure-2, Secure-3, Secure-4 or Vulnerable-5). National Reinsurers and Port of Entry Reinsurers shall be evaluated on a legal entity basis, with due consideration being given to the group rating where appropriate, for purposes of establishing their collateral requirements.

(2) For Port of Entry Reinsurers, the Port of Entry Supervisor's rating and corresponding collateral calculation as a percentage of the reinsurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers under this Act shall be as follows:

| **Ratings** | **Collateral Required** |
|---|---|
| Secure – 1 | 0% |
| Secure – 2 | 10% |
| Secure – 3 | 20% |
| Secure – 4 | 75% |
| Vulnerable – 5 | 100% |

(3) National Reinsurers rated by their Home State Supervisors in the Secure - 3 tier or above shall not be required to post any collateral for reinsurance assumed under this Act. For those National Reinsurers rated in the Secure - 4 tier, the Home State Supervisor shall require that 75% collateral be posted pursuant to Section 5(b)(5) and regulations promulgated thereunder. For those in the Vulnerable – 5 tier, the Home State Supervisor

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shall require that 100% collateral be posted pursuant to Section 5(b)(5) and regulations promulgated thereunder. The requirements of this paragraph shall be in force during the first two years of this Act, after which time the Board shall periodically determine new uniform and appropriate collateral amounts for National and Port of Entry Reinsurers including, with regard to Port of Entry Reinsurers, due consideration of the level of equivalence of prudential regulation and effective market access in the Port of Entry Reinsurer's jurisdiction.

(4) As part of the evaluation process, standards shall be recommended by the NAIC and adopted by the Board to be considered by the Home State or Port of Entry Supervisor in determining the appropriate rating of a reinsurer, and shall include but not be limited to the following:

(A) The reinsurer's financial strength rating from two or more rating agencies approved by the U.S. Securities and Exchange Commission or other successor regulatory agency, which shall correspond to the maximum rating that a reinsurer may be assigned, as determined by the Board under its practices and procedures.

(B) Compliance with reinsurance contractual terms and obligations, including contractual clauses deemed mandatory by the Board;

(C) The business practices of the reinsurer in dealing with its ceding insurers;

(D) For National Reinsurers, a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers);

(E) For Port of Entry Reinsurers, a review of a report filed annually in the form of the applicable NAIC Annual Statement Blank, in accordance with standards and procedures recommended by the NAIC and adopted by the Board;

(F) The reinsurer's reputation for prompt payment of claims under reinsurance agreements, including the proportion of the reinsurer's obligations that are more than 90 days past due or are in dispute, with particular attention to receivables payable to companies that are in administrative supervision or receivership;

(G) Regulatory actions against the reinsurer;

(H) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subsection (I) below;

(I) For Port of Entry Reinsurers, audited financial statements, regulatory filings, and actuarial opinions in accordance with standards and procedures recommended by the NAIC and adopted by the Board. Upon the initial certification, audited financial statements for the last 3 years filed with its non-U.S. Jurisdiction Supervisor;

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(J) The liquidation priority of obligations to a ceding insurer in the reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

(K) A reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The Port of Entry Supervisor shall receive prior notice from a reinsurer that proposes participation by the reinsurer in a solvent scheme of arrangement; and

(L) Any other information deemed relevant by the Home State or Port of Entry Supervisor.

(5) Security provided under this Section ("collateral") shall be held under standards and procedures recommended by the NAIC and adopted by the Board.

(6) In order to facilitate the prompt payment of claims, a Home State or Port of Entry Supervisor shall not require a National Reinsurer or a Port of Entry Reinsurer to post collateral for catastrophe recoverables for a period of 1 year from the date of the first instance of a reserve entry by the ceding insurer as a result of a loss from a defined catastrophic occurrence as recognized by the Home State or Port of Entry Supervisor. The one year deferral period is applicable only with respect to lines of property and casualty insurance and is contingent upon the respective National or Port of Entry Reinsurer continuing to pay claims in a timely manner.

(7) The Home State or Port of Entry Supervisor shall require National and Port of Entry Reinsurers to post 100% collateral upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.

(8) Affiliated reinsurance transactions shall receive the same opportunity for reduced collateral requirements pursuant to this Act as all other reinsurance transactions.

(9) Change in Rating or Revocation of Certification. The Port of Entry or Home State Supervisor shall not have discretion to waive additional collateral required in the case of a downgrade by a rating agency or other disqualifying circumstance.

(A) The Port of Entry Supervisor or Home State Supervisor shall have the authority to suspend, amend or withdraw a Port of Entry or National Reinsurer's certification at any time if the Port of Entry or National Reinsurer fails to meet its obligations or collateral requirements under this Act, or if other financial or operating results of the Port of Entry or National Reinsurer, or documented significant delays in payment by the Port of Entry or National Reinsurer, lead the Port of Entry or National Reinsurer's supervisor to reconsider the Port of Entry or National Reinsurer's ability or willingness to meet its contractual obligations.

(B) If the Home State Supervisor's or Port of Entry Supervisor's rating of a Port of Entry or National Reinsurer improves, the Port of Entry or National Reinsurer may meet the collateral requirements applicable to its new rating on a prospective basis, but the Home State or Port of Entry Supervisor shall require the Port of Entry or National Reinsurer to post collateral under the previously applicable

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collateral requirements as to all contracts in force on or before the effective date of the improved rating. If the Home State Supervisor's or Port of Entry Supervisor's rating of a Port of Entry or National Reinsurer declines, the Port of Entry or Home State Supervisor shall require the Port of Entry or National Reinsurer to meet the collateral requirements applicable to its new rating for all business subject to this Act.

(C) Notwithstanding the change of a Port of Entry or National Reinsurer's rating or withdrawal of its certification, U.S. ceding insurers that have ceded reinsurance to such Port of Entry or National Reinsurer may not be denied credit for reinsurance under Section 6(a)(3) for a period of 3 months for all reinsurance ceded to that Port of Entry or National Reinsurer, unless the reinsurance ceded to such Port of Entry or National Reinsurer is deemed by the respective Port of Entry or Home State Supervisor to be uncollectible.

(c) This Act confers no private right of action in any federal court for any Port of Entry Reinsurer rated by a Port of Entry Supervisor or any National Reinsurer rated by a Home State Supervisor to seek review of the Port of Entry Supervisor's or Home State Supervisor's rating decision. Nor shall any such Port of Entry Reinsurer or National Reinsurer be permitted to seek review of such a rating decision under Title 42, Section 1983. Nothing in this subparagraph precludes review of such a rating decision pursuant to the laws and regulations of the Port of Entry State or Home State.

(d) This Act shall not prohibit the parties to a reinsurance agreement from agreeing to provisions establishing collateral requirements that exceed the collateral requirements for National and Port of Entry Reinsurers under this Act.

**SEC. 6. PREEMPTION OF INCONSISTENT STATE LAWS AND ACTIONS.**

All laws, regulations, provisions, or other actions of a State are preempted to the extent that they are inconsistent with this Act.

(a) With respect to reinsurance ceded to a National or Port of Entry Reinsurer, if a State in which the ceding insurer is transacting insurance business regulates credit for reinsurance, the State may not directly or indirectly:

(1) impose collateral requirements that differ from those required by the Home State or Port of Entry Supervisor in accordance with this Act;

(2) regulate the financial condition of the National or Port of Entry Reinsurer, unless it is the Home State or Port of Entry Supervisor; or

(3) deny or limit credit for reinsurance except to the extent expressly permitted in accordance with this Act.

(b) This Section does not preempt the insurance regulatory authority of a Host State to determine whether a ceding insurer's reinsurance contracts transfer sufficient risk to qualify for reinsurance accounting treatment, to determine the amount of the ceding insurer's incurred loss

reserves, or to exercise other prudential regulatory powers over the ceding insurer, as long as those powers are not exercised in a manner that has the effect of frustrating or circumventing the purposes of this Act.

(c) This Section does not preempt the insurance regulatory authority of a Host State to determine the existence and adequacy of collateral held by, or under the control of, the ceding insurer consistent with Section 5(b)(5) and regulations promulgated thereunder.

(d) This Section does not preempt or affect any State law, rule, or regulation that regulates credit for reinsurance ceded to reinsurers that are not National or Port of Entry Reinsurers, as defined under this Act, at the time the reinsurance is ceded, or that regulates credit for reinsurance with respect to lines of insurance that are excluded from the scope of this Act at the time the reinsurance is ceded.

(e) This Act shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the Act. This Act shall not be applicable to life reinsurance contracts until the earlier of 24 months from the effective date of the Act, or the implementation of U.S. principles based reserving standards for life insurance by the NAIC.

**SEC. 7. RIGHT OF REVIEW.**

(a) A ceding insurer adversely affected or aggrieved by any action that is inconsistent with Section 6(a) of this Act by any State that regulates credit for reinsurance, or by the officer of any such State, shall be permitted to seek review by the Board of the action of the State or State officer, pursuant to rules and procedures to be established by the Board after notice and comment. In adjudicating any such claim, the Board is hereby authorized to order such relief as is necessary to ensure that any State or State officer that regulates credit for reinsurance acts in compliance with Section 6(a) of this Act.

(b) No action may be commenced in any Federal court by any ceding insurer challenging the action of any State or State officer as inconsistent with Section 6(a) of this Act, unless the ceding insurer shall have first presented the claim to the Board and its claim shall have been finally denied by the Board in writing. The failure of the Board to make final disposition of a claim within 6 months after it is filed shall, at the option of the ceding insurer any time thereafter, be deemed a final denial of the claim for purposes of this Section.

(c) No action may be brought under Title 42, Section 1983 against any State, any subdivision of any State, or any State officer alleging that the State, subdivision, or officer has violated this Act.

(d) Any State for which the Board denies certification or which the Board decertifies pursuant to Section 4(e) shall be entitled to judicial review of the Board's order.

**SEC. 8. CONSULTATION WITH FEDERAL AND STATE AGENCIES.**

The Board shall coordinate with Federal and State agencies, and the NAIC, as necessary to assist and advise the Board in performing its duties under this Act. The Board shall be responsible for receiving, analyzing, collecting and disseminating publicly available data and information and for issuing reports regarding reinsurance.

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**SEC. 9. DUTIES OF BOARD.**

(a) In addition to any other authority granted to the Board in this Act, the Board shall have the power—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, with the approval of the President, in any Federal, State, or other court;

(2) to conduct its operations and maintain offices, and to exercise all other rights and powers authorized by this Act, in any State, without regard to any qualification, licensing, or other provision of law in effect in such State (or a political subdivision thereof);

(3) to lease, purchase, accept gifts or donations of or otherwise acquire, improve, use, sell, exchange, or convey, all of or an interest in any property, wherever situated;

(4) to hire employees, professionals, and specialists, and elect or appoint officers, and to fix their compensation, define their duties, determine their qualification, and give them appropriate authority to carry out the purposes of the Act; and to establish the personnel policies and programs for the Board relating to conflicts of interest, rates of compensation, and such other matters as the Board considers appropriate;

(5) to allocate, assess, and collect fees established pursuant to Section 4(d); and

(6) to enter into agreements, incur liabilities, and do any and all other acts and things necessary, appropriate, or incidental to the conduct of its operations and the exercise of its obligations, rights, and powers imposed or granted by this Act.

(b) There is authorized to be appropriated not more than $_____ to supplement the amounts received under Section 4(d) for the costs of the establishment and operation of the Board.

**SEC. 10. DEFINITIONS.**

For purposes of this Act, the following definitions shall apply:

(1) Board. The term "Board" means the Reinsurance Supervision Review Board authorized by Section 2.

(2) Ceding insurer. The term "ceding insurer" means an insurer that is licensed and domiciled in a State and purchases reinsurance.

(3) Domiciled or Domiciliary. The terms "domiciled" or "domiciliary" mean, with respect to an insurer or reinsurer, to be incorporated or organized, and licensed.

(4) Insurance. The term "insurance" means any product, defined or regulated as insurance by the applicable State insurance regulatory authority.

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(5) Reinsurance. The term "reinsurance" means the assumption by an insurer of all or part of a risk undertaken by a ceding insurer.

(6) Reinsurance supervisory system. The term "reinsurance supervisory system" means, with respect to a State or non-U.S. jurisdiction, any officer, agency, board, commission, or other entity that has primary regulatory authority over the business of reinsurance for the State or non-U.S. jurisdiction, and the legal and operational framework under which that authority is exercised.

(7) State. The term "State" means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and any other territory or possession of the United States.

(8) State insurance regulatory authority. The term "State insurance regulatory authority" means, with respect to a State, the officer, agency, board, commission, or other entity of a State that has primary regulatory authority over the business of insurance for the State.

(9) Domiciliary Jurisdiction. The term "Domiciliary Jurisdiction" means the State in which the ceding insurer is domiciled.

(10) Home State. The term "Home State" means the qualifying State where the National Reinsurer is licensed and domiciled.

(11) Home State Supervisor. The term "Home State Supervisor" means the State insurance regulatory authority of a National Reinsurer.

(12) Host State. The term "Host State" means the domicile of the ceding insurer.

(13) Host State Supervisor. The term "Host State Supervisor" means the ceding insurer's domiciliary State insurance regulatory authority.

(14) National Association of Insurance Commissioners or NAIC. The terms "National Association of Insurance Commissioners" or "NAIC" means the organization of State insurance regulatory authorities from the States.

(15) National Reinsurer. The term "National Reinsurer" means a reinsurer that is licensed and domiciled in a home state and certified by such state to transact assumed reinsurance business across the United States while submitting solely to the regulatory authority of the home state supervisor for purposes of its reinsurance business.

(16) Non-U.S. Jurisdiction Supervisor. The term "Non-U.S. Jurisdiction Supervisor" means the domiciliary insurance regulatory authority of an assuming reinsurer from a non-U.S. jurisdiction.

(17) Port of Entry Reinsurer. The term "Port of Entry Reinsurer" means a non-U.S. assuming reinsurer that is organized in and licensed by a Qualified Non-U.S. Jurisdiction, certified in a Port of Entry State, and approved by such State to provide creditable

reinsurance to ceding insurers. Certification by a Port of Entry State does not provide independent authority for a Port of Entry Reinsurer to transact the business of insurance in a State.

(18) Port of Entry State. The term "Port of Entry State" means the State where a non-U.S. assuming reinsurer is certified in order to provide creditable reinsurance to ceding insurers.

(19) Port of Entry Supervisor. The term "Port of Entry Supervisor" means the State insurance regulatory authority of the Port of Entry State.

(20) Qualified Non-U.S. Jurisdiction. The term "Qualified Non-U.S. Jurisdiction" means a non-U.S. jurisdiction which has been approved by the Board as qualified to enter into regulatory cooperation and information agreements with Port of Entry Supervisors.

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