

Date: 3/8/18

2018 Spring National Meeting
Milwaukee, Wisconsin

REINSURANCE (E) TASK FORCE
Sunday, March 25, 2018
3:30 – 5:00 p.m.
Wisconsin Center—Ballroom B—1st Floor

ROLL CALL

Maria T. Vullo, Chair	New York	Gary Anderson	Massachusetts
Chlora Lindley-Myers, Vice Chair	Missouri	Mike Chaney	Mississippi
Jim L. Ridling	Alabama	Matthew Rosendale	Montana
Lori K. Wing-Heier	Alaska	Bruce R. Ramge	Nebraska
Peter Fuimaono	American Samoa	Roger A. Seigny	New Hampshire
Allen W. Kerr	Arkansas	Marlene Caride	New Jersey
Dave Jones	California	Mike Causey	North Carolina
Michael Conway	Colorado	Jon Godfread	North Dakota
Katharine L. Wade	Connecticut	Jillian Froment	Ohio
Trinidad Navarro	Delaware	John D. Doak	Oklahoma
Stephen C. Taylor	District of Columbia	Javier Rivera Rios	Puerto Rico
David Altmaier	Florida	Elizabeth Kelleher Dwyer	Rhode Island
Ralph T. Hudgens	Georgia	Raymond G. Farmer	South Carolina
Gordon I. Ito	Hawaii	Julie Mix McPeak	Tennessee
Dean L. Cameron	Idaho	Kent Sullivan	Texas
Stephen W. Robertson	Indiana	Todd E. Kiser	Utah
Doug Ommen	Iowa	Michael S. Pieciak	Vermont
Ken Selzer	Kansas	Scott A. White	Virginia
Nancy G. Atkins	Kentucky	Allan L. McVey	West Virginia
James J. Donelon	Louisiana	Ted Nickel	Wisconsin
Eric A. Cioppa	Maine		

NAIC Support Staff: Jake Stultz/Dan Schelp

AGENDA

1. Consider Adoption of its 2017 Fall National Meeting Minutes
—*Superintendent Maria T. Vullo (NY)* Attachment One
2. Consider Adoption of the Qualified Jurisdiction (E) Working Group Report
—*Brett Barratt (UT)*
3. Consider Adoption of the Reinsurance Financial Analysis (E) Working Group Report
—*John Rehagen (MO)*
4. Discuss the US-EU Covered Agreement and Next Steps After the Public Hearing
—*Superintendent Maria T. Vullo (NY)* Attachment Two
5. Receive a Status Report on the States' Implementation of the Revised *Credit for Reinsurance Model Law* (#785), the Revised *Credit for Reinsurance Model Regulation* (#786) and the *Term and Universal Life Insurance Reserve Financing Model Regulation* (#787)—*Dan Schelp (NAIC)*
6. Discuss Any Other Matters Brought Before the Task Force
—*Superintendent Maria T. Vullo (NY)*
7. Adjournment

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Draft Pending Adoption

Date: 12/11/17

Reinsurance (E) Task Force
Honolulu, Hawaii
December 3, 2017

The Reinsurance (E) Task Force met in Honolulu, HI, and via conference call Dec. 3, 2017. The following Task Force members participated: Maria T. Vullo, Chair, (NY); Chlora Lindley-Myers, Co-Vice Chair, represented by John Rehagen (MO); Bruce R. Ramge, Co-Vice Chair, represented by Justin Schrader (NE); Lori K. Wing-Heier (AK); Jim L. Ridling, represented by Sheila Travis (AL); Allen W. Kerr, represented by Mel Anderson (AR); Dave Jones represented by Kenneth Schnoll (CA); Marguerite Salazar, represented by Rolf Kaumann (CO); Katharine L. Wade represented by Kathy Belfi (CT); Stephen C. Taylor represented by Sean O'Donnell (DC); Trinidad Navarro represented by Dave Lonchar (DE); David Altmaier represented by Ray Spudeck (FL); Ralph T. Hudgens represented by Mark Ossi (GA); Doug Ommen represented by Jim Armstrong (IA); Jennifer Hammer represented by Eric Moser (IL); Stephen W. Robertson represented by Roy Eft (IN); Ken Selzer represented by Richard Ramos (KS); James J. Donelon represented by Melissa Gibson (LA); Gary Anderson represented by Robert Macullar (MA); Eric A. Cioppa and Robert Wake (ME); Matthew Rosendale represented by Steve Matthews (MT); Roger A. Sevigny represented by Patricia Gosselin (NH); Richard J. Badolato represented by Steve Kerner (NJ); Mike Causey represented by Jackie Obusek (NC); Jillian Froment represented by Dale Bruggeman (OH); John D. Doak represented by Joel Sander (OK); Elizabeth Kelleher Dwyer represented by Jack Broccoli (RI); Raymond G. Farmer represented by Lee Hill (SC); Julie Mix McPeak represented by Michael Humphreys and Lorrie Brouse (TN); Kent Sullivan represented by Mike Boerner (TX); Todd E. Kiser represented by Brett J. Barratt (UT); Jacqueline K. Cunningham represented by Doug Stolte (VA); Michael S. Pieciak represented by David Provost (VT); and Ted Nickel and Randy Milquet (WI).

1. Adopted its Nov. 1 Minutes

Mr. Rehagen chaired the meeting of the Reinsurance (E) Task Force in the absence of Superintendent Vullo, who was unable to attend the meeting in person but participated via conference call. The Task Force met Nov. 1 and took the following action: 1) adopted its Summer National Meeting minutes; 2) adopted its Oct. 3 minutes, which included adoption of its 2018 proposed charges; 3) heard an update on the Bilateral Agreement Between the United States of America and the European Union (EU) on Prudential Measures Regarding Insurance and Reinsurance (covered agreement); 4) adopted the memorandum of the Reinsurance Investment Security (E) Subgroup; 5) adopted the report of the Reinsurance Financial Analysis (E) Working Group; 6) exposed a memorandum from the Reinsurance Financial Analysis (E) Working Group proposing revisions to modify the *Uniform Application Checklist for Certified Reinsurers* and to integrate Kroll Bond Rating Agency into the matrix of ratings and collateral levels for certified reinsurers; 7) received a report regarding the definition of covered policies under the *Term and Universal Life Insurance Reserve Financing Model Regulation* (#787); and 8) adopted a memorandum in response to a referral from the Blanks (E) Working Group proposing that the life financial statement blank and the fraternal financial statement blank be combined into a single reporting blank for both quarterly and annual reporting. Mr. Armstrong made a motion, seconded by Mr. Kerner, to adopt the Task Force's Nov. 1 minutes (Attachment One). The motion passed unanimously.

2. Adopted the Report of the Qualified Jurisdiction (E) Working Group

Mr. Barratt provided the report of the Qualified Jurisdiction (E) Working Group. Mr. Barratt stated that the last report from the Working Group was at the Summer National Meeting, and at that time the Working Group was instructed to cease work on the European Union (EU) Solvency II Report and to proceed with the requested evaluation of any new EU member states.

Mr. Barratt noted that as a result of the signing of the covered agreement on Sept. 22, the Working Group had not met to discuss the pending EU Solvency II Report. He stated that the Working Group will remain ready to resume that effort. Further, he noted that the Working Group will also stand ready to proceed with an evaluation of any jurisdictions that confirms an interest in pursuing qualified jurisdiction status.

Mr. Barratt stated that in accordance with the provisions of the *Process for Developing and Maintaining the NAIC List of Qualified Jurisdictions*, the Working Group will need to re-evaluate the status of the supervisory authorities currently included on the *NAIC List of Qualified Jurisdictions*. Seven qualified jurisdictions were approved as of Jan. 1, 2015, and each designation is valid for five years, until Dec. 31, 2019, so that work will need to begin near the end of 2018 or beginning of

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2019. Mr. Barratt made a motion, seconded by Mr. Schrader, to adopt the report of the Qualified Jurisdiction (E) Working Group. The motion passed unanimously.

3. Adopted the Report of the Reinsurance Financial Analysis (E) Working Group

Mr. Rehagen provided the report of the Reinsurance Financial Analysis (E) Working Group. Mr. Rehagen stated that the Working Group met Oct. 26 and Sept. 12 in regulator-to-regulator session, pursuant to paragraph 3 (specific companies, entities or individuals) of the NAIC Policy Statement on Open Meetings. During these meetings, the Working Group discussed 16 passporting renewal applications, four passporting applications and held a discussion of responses with respect to two follow-up letters on 2017 passported reinsurers. Mr. Milquet made a motion, seconded by Mr. Eft, to adopt the report of the Reinsurance Financial Analysis (E) Working Group. The motion passed unanimously.

4. Adopted the Recommendation of Kroll Bond Rating Agency as an NRSRO for Certified Reinsurer Purposes

Mr. Rehagen discussed a recommendation to consider Kroll Bond Rating Agency as an acceptable rating agency for purposes of certifying reinsurers under the *Credit for Reinsurance Model Regulation* (#786). Mr. Rehagen noted that Model #786 provides that acceptable rating agencies include A.M. Best, Fitch Ratings, Moody's Investor Service, Standard & Poor's or any other nationally recognized statistical rating organization (NRSRO). He noted that Model #786 does not provide a protocol for selection of such rating agency by a state, or what collateral tier to assign its ratings.

Mr. Rehagen stated that at the Nov. 1 meeting of the Reinsurance (E) Task Force, three items were exposed for a 30-day public comment period ending Dec. 1. Mr. Rehagen stated that the exposed items included: 1) a memorandum from the Working Group to the Task Force that included a discussion of the review process and a recommendation that Kroll Bond Rating Agency be considered as an NRSRO for certified reinsurer purposes; 2) proposed revisions to the *Uniform Application Checklist for Certified Reinsurers* implementing this recommendation; and 3) a recommended matrix of ratings and collateral levels for certified reinsurers assigning proposed reinsurance collateral tiers for Kroll Bond Rating Agency (refer to Attachment One-D, Attachment One-E and Attachment One-F).

Mr. Rehagen noted that two comment letters were received with respect to the exposures. The comment letter from the American Council of Life Insurers (ACLI) (Attachment Two) noted that it had no concerns with adding Kroll Bond Rating Agency as an acceptable rating agency for purposes of certifying reinsurers under Section 8B(3) of Model #786 and that it was supportive of the proposed changes to the *Uniform Application Checklist for Certified Reinsurers*. Mr. Rehagen noted that the ACLI did add that full, annual applications should only be required to the lead state and with respect to any states not relying on certification by another NAIC-accredited jurisdiction. Mr. Rehagen stated that the current policy of the NAIC and the Working Group is to only require full certified reinsurer applications to the lead state.

Steve Clayburn (ACLI) noted that the intent of the comments from the ACLI was to state that it is in agreement with the exposed memorandum and revisions to the *Uniform Application Checklist for Certified Reinsurers* and the matrix of ratings and collateral levels for certified reinsurers.

Mr. Rehagen stated that the second comment letter came from Mr. Milquet (Attachment Three). Mr. Rehagen summarized Mr. Milquet's comments, stating that there was a concern with the current language in Model #786, specifically the language stating "or any other Nationally Recognized Statistical Rating Organization," because not every NRSRO is registered to provide financial strength ratings on insurance companies, which is a requirement under Model #786. Mr. Rehagen noted that Kroll Bond Rating Agency does provide financial strength ratings for insurance companies, and that this issue was discussed by the Reinsurance Financial Analysis (E) Working Group in making its recommendation to the Task Force. Mr. Rehagen noted that Mr. Milquet's comments further stated that if any state does not include the language stating "or any other Nationally Recognized Statistical Rating Organization" in its regulation, that the state would not be able to recognize Kroll Bond Rating Agency as an acceptable NRSRO for certified reinsurer purposes. Mr. Rehagen noted that the issue was discussed with the NAIC Legal Division, which believed that most, if not all, states have this language in their regulation, but that each state would need to make a determination as to whether it will recognize Kroll Bond Rating Agency under its own regulatory authority.

The Task Force determined that the language in the *Uniform Application Checklist for Certified Reinsurers* should be updated to clarify that the NRSRO must be recognized by the U.S. Securities and Exchange Commission (SEC) and a provider of financial strength ratings for insurance companies. Input into this matter was provided by Mr. Rehagen,

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Mr. Milquet, Mr. Wake, Mr. Kaumann, Mr. Spudeck and Matt Todd (NAIC). The Task Force proposed additional language in the *Uniform Application Checklist for Certified Reinsurers* on page 6 of that attachment, in the section discussing “Financial Strength Ratings (Stand-Alone or Group)” at the end of the note, which states that the NRSRO must be “recognized by the SEC to provide financial strength ratings on insurance companies.” Mr. Rehagen stated that additional language had been reviewed by the NAIC Legal Division and that this clarification was considered to be nonsubstantial and would not require an additional exposure.

Mr. Armstrong made a motion, seconded by Mr. Kaumann, to adopt the recommendation that states may consider Kroll Bond Rating Agency as an acceptable NRSRO for certified reinsurer purposes, and that the Task Force adopt the *Uniform Application Checklist for Certified Reinsurers* with the additional language stating that the NRSROs be “recognized by the SEC to provide financial strength ratings on insurance companies” and the proposed matrix of ratings and collateral levels for use with Kroll Bond Rating Agency. The motion passed unanimously.

5. Discussed the NAIC Process Regarding the Covered Agreement

Superintendent Vullo discussed the NAIC process regarding the covered agreement. Superintendent Vullo stated that the covered agreement includes provisions related to group capital, group supervision and reinsurance collateral. She noted that the states have 60 months, or five years, to adopt reinsurance reforms removing reinsurance collateral requirements for EU reinsurers that meet the prescribed minimum conditions. Superintendent Vullo stated that under the federal Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), the Federal Insurance Office (FIO) has the authority to issue determinations that may have the effect of preempting state laws that it determines are inconsistent with the terms of the covered agreement and that treat EU reinsurers less favorably than domestic reinsurers.

Superintendent Vullo stated that at its Nov. 1 meeting, the Task Force discussed the NAIC process for addressing the reinsurance collateral issues concerning the covered agreement. She noted that state insurance commissioners have begun initial discussions addressing the process for moving forward with respect to the covered agreement. Superintendent Vullo stated that the process will begin by having a public hearing, tentatively scheduled for Feb. 20, 2018, in New York City, specifically devoted to the reinsurance aspects of the covered agreement. Superintendent Vullo stated that prior to the public hearing, the Task Force will request comments from state insurance regulators and industry to allow for a full discussion.

Superintendent Vullo stated that the Task Force is looking for ideas on how states should address the covered agreement. She stated that there are several options for implementation of the covered agreement and that the Task Force wants input from all interested parties and state insurance regulators that are interested in participating in the process.

Superintendent Vullo noted that the purpose of the public hearing will be to hear perspectives. She stated that the Task Force requests interested parties and state insurance regulators to provide their views on how to address the risks that are created for U.S. ceding companies as a result of the covered agreement, and that there will be the need to include some additional “guardrails” in the qualified jurisdiction process if qualified jurisdictions are afforded the covered agreement treatment, in order to ensure the continued financial solvency of U.S. ceding insurers. Superintendent Vullo noted that the intent of the NAIC process for the implementation of the covered agreement is to be open and transparent.

Matthew Wulf (Swiss Re), representing Swiss Re, Zurich Insurance Group, International Underwriting Agency (IUA), Lloyd’s, the Association of Bermuda Insurers and Reinsurers (ABIR), and the General Insurance Association of Japan (GIAJ), stated that it is appropriate to extend the same benefits from the covered agreement to the existing qualified jurisdictions. Mr. Wulf stated that his group is willing to help take a look at the law during the NAIC process. Mr. Wulf stated that changes will need to be made to the *Credit for Reinsurance Model Law* (#785) and Model #786.

Dennis Burke (Reinsurance Association of America—RAA) stated that he agrees with the NAIC’s efforts to implement changes and with Mr. Wulf’s statement regarding qualified jurisdictions and the importance of maintaining a level playing field for all reinsurers. Mr. Burke emphasized that the process must be done expeditiously and that there would be a large amount of work to be done in a short period of time.

Sabrina Miesowitz (Lloyd’s America) stated that she agrees that the covered agreement should be implemented in a way that qualified jurisdictions will be treated the same as the EU companies covered by the agreement, and that this should be implemented in a way so that the qualified jurisdictions will not need their own covered agreements.

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William Marcoux (DLA Piper), representing the International Underwriting Association of London (IUA), stated that the covered agreement is a significant endorsement of state-based insurance regulation and that the final agreement recognizes the U.S. approach to regulation. Mr. Marcoux reiterated that the timeline for implementation is very tight and that the covered agreement includes an obligation to use best effort to implement in the 60-month time frame. Mr. Marcoux proposed an approach where collateral would be reduced by 20% each year of the 60-month period, causing it to reach 0% at the end of the five years. He also suggested that steps be taken between now and the public hearing in February so that no time is wasted.

Having no further business, the Reinsurance (E) Task Force adjourned.

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MEMORANDUM

TO: Financial Condition (E) Committee

FROM: NAIC President Julie Mix McPeak (TN)
Commissioner David Altmaier (FL), Chair, Financial Condition (E) Committee
Superintendent Maria T. Vullo (NY), Chair, Reinsurance (E) Task Force

DATE: March 14, 2018

RE: Covered Agreement: Proposed Next Steps

Executive Summary

On Feb. 20, 2018, the NAIC held a Public Hearing in New York to address the reinsurance collateral provisions of the “Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance” (Covered Agreement). The Covered Agreement was signed Sept. 22, 2017, and would eliminate reinsurance collateral requirements for European Union (EU) reinsurers that meet certain requirements in order for U.S. insurers that cede to them to take credit for such reinsurance on their financial statements. The states will need to take action with respect to reinsurance collateral reforms within 60 months or be subject to potential federal preemption. The Covered Agreement also contains provisions regarding group supervision, group capital and information-sharing.

Based on public comments and testimony received at the Public Hearing, we recommend that the Financial Condition (E) Committee take the following actions with respect to the Covered Agreement:

- Adopt a Request for NAIC Model Law Development with respect to the *Credit for Reinsurance Model Law* (#785) and the *Credit for Reinsurance Model Regulation* (#786) (Attachment A). Specifically, these models should be revised to (a) conform to the requirements in the Covered Agreement with respect to EU reinsurers, and (b) provide reinsurers domiciled in NAIC qualified jurisdictions other than within the EU (currently, Bermuda, Japan, Switzerland and, after Brexit, the United Kingdom) with similar reinsurance collateral reductions as those to be implemented to comply with the Covered Agreement, with provisions regarding group supervision, group capital, information sharing and enforcement.
- Adopt charges to the Reinsurance (E) Task Force, and its Qualified Jurisdiction (E) Working Group and Reinsurance Financial Analysis (E) Working Group to make certain revisions to Model #785 and Model #786, and to develop processes to implement the changes to the models.
- Adopt charges to the Capital Adequacy (E) Task Force and the Statutory Accounting Principles (E) Working Group to address related reinsurance collateral issues raised at the Public Hearing.

Upon adoption of these recommendations by the Financial Condition (E) Committee, they will then be presented to the Executive (EX) Committee for final consideration of adoption.

Public Hearing

The Public Hearing was presided over by NAIC President Julie Mix McPeak (TN), Commissioner David Altmaier (FL), chair of the Financial Condition (E) Committee, and Superintendent Maria T. Vullo (NY), chair of the Reinsurance (E) Task Force. Also in attendance at the Public Hearing were: NAIC President-Elect Eric A. Cioppa (ME); NAIC Vice President Raymond G. Farmer (SC); Most Recent Past President Ted Nickel (WD); Commissioner Tom Glause (WY); Commissioner Katharine L. Wade (CT); Acting Commissioner Marlene Caride and Director Peter L. Hartt (NJ); Superintendent Elizabeth Kelleher Dwyer (RI); and Director Chlora Lindley-Myers represented by John Rehagen (MO).

During the Public Hearing, the NAIC heard from 18 speakers, including a representative of the U.S. Department of the Treasury, U.S. domestic insurers and U.S. trade associations, and international reinsurers and international trade associations. A complete list of speakers is attached to this memorandum as Attachment B. The NAIC also received 20 comment letters from a wide variety of stakeholders and interested parties. These comment letters are posted on the web page of the Reinsurance (E) Task Force, and are attached to this memorandum as Attachment C. There were approximately 160 people in attendance at the Public Hearing, with another 181 participating via conference call.

While there was a range of viewpoints expressed by the various parties in attendance, many of the impacted parties recommended that the NAIC amend Model #785 and Model #786 to afford reinsurers domiciled in NAIC qualified jurisdictions other than within the EU with similar reinsurance collateral requirements as those provided to EU reinsurers under the Covered Agreement. Nearly all of the domestic insurers and/or their trade organizations were clear that in order for reinsurers domiciled in qualified jurisdictions other than within the EU to obtain Covered Agreement-like treatment, those qualified jurisdictions must provide to the states the same treatment and recognition afforded by EU countries pursuant to the Covered Agreement. Therefore, any revisions to Model #785 and Model #786 must incorporate the standards included in the Covered Agreement, the most noteworthy among such standards being the requirement that the qualified jurisdiction must agree to recognize the states' approach to group supervision, including group capital.

Furthermore, many commenters recommended that the NAIC and states give consideration in the model law framework to enforcement mechanisms and other protections in the event that a reinsurer, an EU jurisdiction or another qualified jurisdiction were to breach the Covered Agreement (as determined pursuant to its terms) or in the case of a non-EU qualified jurisdiction fail to adhere to the Covered Agreement-like obligations to which it must agree under the proposed model law revisions.

Request for NAIC Model Law Development

We recommend the Financial Condition (E) Committee consider adoption of the attached Request for NAIC Model Law Development to amend Model #785 and Model #786, and forward the request to the Executive (EX) Committee for its approval. In addition, pending adoption by the Executive (EX) Committee, we further recommend the Committee direct NAIC staff to begin drafting proposed changes to the models for consideration and review by the Reinsurance (E) Task Force. The initial draft developed by NAIC staff should be consistent with the proposed approach, and should also incorporate other changes based on comments made or considered during the Public Hearing that might be consistent with the objectives in the revised approach.

Charges to Reinsurance (E) Task Force and its Working Groups

In order to facilitate the Request for NAIC Model Law Development (as discussed above), we recommend the Committee consider adoption of the following proposed charge to the Reinsurance (E) Task Force:

- “The Reinsurance (E) Task Force is directed to develop revisions to the *Credit for Reinsurance Model Law* (#785) and the *Credit for Reinsurance Model Regulation* (#786) to conform to the terms of the Covered Agreement. ***Complete by 2018 Fall National Meeting.***”

- “The Reinsurance (E) Task Force is directed to develop revisions to the *Credit for Reinsurance Model Law* (#785) and the *Credit for Reinsurance Model Regulation* (#786) to allow reinsurers domiciled in NAIC qualified jurisdictions other than within the EU to realize reinsurance collateral requirements similar to those provided under the Covered Agreement under specified circumstances. In order for an insurer domiciled in a qualified jurisdiction outside of the EU to receive the same collateral requirement treatment as provided to EU-domiciled reinsurers, that non-EU qualified jurisdiction must agree to adhere to all other standards imposed upon the EU in the Covered Agreement, including the requirement that the qualified jurisdiction must agree to recognize the states’ approach to group supervision, including group capital. As part of its deliberations, the Task Force should consult with international regulators, in addition to all other interested parties. ***Complete by 2018 Fall National Meeting.***”
- “The Reinsurance (E) Task Force is directed to develop revisions to the *Credit for Reinsurance Model Law* (#785) and the *Credit for Reinsurance Model Regulation* (#786) to address the effect of a breach of the Covered Agreement (as determined pursuant to its terms) on a reinsurer’s collateral obligations and the effect of a failure of a non-EU qualified jurisdiction to meet the standards imposed by its agreement or acknowledgment to adhere to the terms of the Covered Agreement and/or the model law and regulation. ***Complete by 2018 Fall National Meeting.***”

In order to facilitate the recognition of the states’ approach to group supervision and group capital, as well as to facilitate mutual recognition and information-sharing between the states and qualified jurisdictions, there were public comments and testimony submitted at the Public Hearing that the states should receive firm commitments that the qualified jurisdictions will recognize the states’ group solvency and group capital standards in order for their domiciled reinsurers to receive reinsurance collateral considerations. Some methods discussed to achieve this result were memoranda of understanding (MOUs) with qualified jurisdictions, or inclusion of such requirements in the revised Model #785 and Model #786 and/or the *Process for Developing and Maintaining the NAIC List of Qualified Jurisdictions*. We recommend the Committee consider adoption of the following proposed charge to the Qualified Jurisdiction (E) Working Group:

- “In conjunction with any revisions to the *Credit for Reinsurance Model Law* (#785) and the *Credit for Reinsurance Model Regulation* (#786), the Qualified Jurisdiction (E) Working Group is directed to consider changes to the *Process for Developing and Maintaining the NAIC List of Qualified Jurisdictions* to require that qualified jurisdictions recognize key NAIC solvency initiatives, including group supervision, group capital standards, and as well as require strengthening of the information-sharing requirements between the states and qualified jurisdictions, in order for reinsurers domiciled in qualified jurisdictions to receive similar treatment to EU reinsurers under the Covered Agreement, and processes of removal of qualified jurisdiction status in the event of a breach. ***Complete by the 2018 Fall National Meeting.***”

Finally, there were public comments and testimony submitted at the Public Hearing that it will be necessary for the NAIC and the states to increase financial solvency surveillance of reinsurers doing business in the states with reduced and then eliminated reinsurance collateral requirements per the Covered Agreement, and any revisions made to conform state credit for reinsurance laws to the Covered Agreement. We would recommend the Committee consider adoption of the following proposed charge to the Reinsurance Financial Analysis (E) Working Group:

- “The Reinsurance Financial Analysis (E) Working Group is directed to consider changes in its current methods of monitoring certified reinsurers domiciled in Qualified Jurisdictions to incorporate changes to state reinsurance collateral requirements caused by the EU Covered Agreement and any changes to the *Credit for Reinsurance Model Law* (#785) and *Credit for Reinsurance Model Regulation* (#786) to provide similar treatment to reinsurers domiciled in Qualified Jurisdictions. ***Complete by the 2019 Fall National Meeting.***”

Additional Charges

In addition to the approach to be taken by the NAIC relative to modifying Model #785 and Model #786, NAIC members also discussed during the Public Hearing the question of placing regulatory guardrails on domestic ceding insurers for any change to the collateral requirements of their reinsurers as a result of the Covered Agreement. The general consensus among those insurers who would be impacted by guardrails and testified at the Public Hearing was that no additional guardrails are needed, largely because any changes to Model #785 and Model #786 would be mitigated by the risk-sensitive approach that is embedded in the 2018 Property & Casualty (P&C) Risk Based Capital (RBC) formula.

By way of background, the 2018 P&C RBC formula assigns a different charge to a ceding company's reinsurance recoverables based on the financial strength ratings of the relevant reinsurer(s). In doing so, the formula captures the credit risk in a way that considers the potential losses in surplus by the ceding company without collateral. (It does give credit if collateral is received.) The risk factors are based, in part, on similar risk factors used by one of the credit rating agencies. If an unrated reinsurer is authorized, then uncollateralized reinsurance recoverables are treated the same as under the 2017 P&C RBC formula (a 10% charge). If an unrated reinsurer is unauthorized, then uncollateralized reinsurance recoverables are treated as though the reinsurer had the lowest rating.

The revised approach to reinsurance credit risk seems to address the credit risk to the ceding company, and it is suggested the same approach should be explored for use in the other formulas. As such, we recommend the Committee consider adoption of the following proposed charge to the Capital Adequacy (E) Task Force:

- “Review and possibly modify the Life and Health risk-based capital (RBC) formulas specific to reinsurance credit risk charges to be based on the financial strength of the reinsurer consistent with the Property & Casualty (P&C) RBC formula, giving due consideration to public default experience and current factors used by credit rating agencies. Consider also whether adjustments are needed to the P&C RBC formula to consider such information relative to non-rated reinsurers. ***Complete by the 2020 Fall National Meeting.***”

Also discussed during the Public Hearing by at least one interested party was the need for the NAIC to reconsider how the Schedule F penalty is constructed and, more specifically, whether it should be removed in favor of the use of an “allowance for doubtful accounts” method within statutory accounting. While this was not discussed in any detail at the Public Hearing, we believe now may be an appropriate time to reconsider whether the Schedule F penalty needs to be revised, such as by adding detail to account for reinsurance recoverables from reinsurers in the EU and NAIC qualified jurisdictions other than within the EU, including a method by which this information would be reflected during each implementation stage of reduction of collateral requirements. To that end, we suggest the Committee consider adoption of the following charge to the Statutory Accounting Principles (E) Working Group:

- “Review and possibly modify Schedule F and any corresponding annual financial statement pages to determine how best to reflect the expected changes to the *Credit for Reinsurance Model Law* (#785) and the *Credit for Reinsurance Model Regulation* (#786). Give due consideration to alternatives, including whether an allowance for doubtful accounts is appropriate. ***Complete by the 2020 Fall National Meeting.***”

Next Steps

Upon adoption of these recommendations by the Financial Condition (E) Committee, they will then be presented to the Executive (EX) Committee for final consideration of adoption. The Financial Condition (E) Committee and the Reinsurance (E) Task Force would then be charged to make conforming amendments to the Model #785 and Model #786, as well as address any other issues noted.

It is our hope for the Reinsurance (E) Task Force to have a working draft of any revisions to Model #785 and Model #786 by the Summer National Meeting, and for the NAIC membership to consider adoption of any revisions by the 2018 Fall National Meeting. Any resulting revisions to Model #785 and Model #786 will be done through an open and transparent process, and interested parties will have additional opportunities to comment and discuss these proposed changes at various points in the process.

ATTACHMENT A: REQUEST FOR NAIC MODEL LAW DEVELOPMENT

This form is intended to gather information to support the development of a new model law or amendment to an existing model law. Prior to development of a new or amended model law, approval of the respective Parent Committee and the NAIC's Executive Committee is required. The NAIC's Executive Committee will consider whether the request fits the criteria for model law development. Please complete all questions and provide as much detail as necessary to help in this determination.

Please check whether this is: New Model Law or Amendment to Existing Model

1. Name of group to be responsible for drafting the model:

Reinsurance (E) Task Force

2. NAIC staff support contact information:

Daniel Schelp
dschelp@naic.org
 (816) 783-8027

Jake Stultz
jstultz@naic.org
 (816) 783-8481

3. Please provide a brief description of the proposed new model or the amendment(s) to the existing model. If you are proposing a new model, please also provide a proposed title. If an existing model law, please provide the title, attach a current version to this form and reference the section(s) proposed to be amended.

- *Credit for Reinsurance Model Law (#785)*
- *Credit for Reinsurance Model Regulation (#786)*

On Sept. 22, 2017, the U.S. Department of the Treasury and the Office of the U.S. Trade Representative signed the "Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance" (Covered Agreement). The Covered Agreement includes requirements on group capital, group supervision and reinsurance collateral. The Covered Agreement would eliminate reinsurance collateral requirements for European Union (EU) reinsurers that maintain a minimum amount of own funds equivalent to \$250 million and a solvency capital ratio (SCR) of 100% under Solvency II. Conversely, U.S. reinsurers that maintain capital and surplus equivalent to €226 million with a risk-based capital (RBC) of 300% of authorized control level would not be required to maintain a local presence in order to do business in the EU.

On Nov. 6, 2011, the NAIC membership adopted revisions to Section 2E of Model #785 and Section 8 of Model #786, which will be impacted by the Covered Agreement. These revisions served to reduce reinsurance collateral requirements for certified non-U.S. licensed reinsurers that are licensed and domiciled in qualified jurisdictions. Prior to these amendments, for states that adopted the models or a substantially similar law and/or regulation, in order for their domestic U.S. ceding companies to receive reinsurance credit, the reinsurance must either have been ceded to U.S. licensed reinsurers or secured by collateral representing 100% of U.S. liabilities for which the credit was recorded.

While the group capital and group supervision provisions of the Covered Agreement are not expected to require changes to the states' laws, the states will need to take action with respect to reinsurance collateral provisions within 60 months (five years) or face potential federal preemption by the Federal Insurance Office (FIO). Specifically, it is recommended that Model #785 and Model #786 be revised to conform to the requirements of the Covered Agreement, and to provide reinsurers domiciled in other NAIC qualified jurisdictions other than within the EU with similar reinsurance collateral requirements as those provided to EU reinsurers under the Covered Agreement. In addition, any revisions to Model #785 and Model #786 should incorporate other standards included in the Covered Agreement, the most noteworthy among such standards being the requirement that the qualified jurisdiction must agree to recognize the states' approach to group supervision, including group capital, as well as provisions for enforcement of these requirements.

4. Does the model law meet the Model Law Criteria? Yes or No (Check one)

(If answering no to any of these questions, please reevaluate charge and proceed accordingly to address issues).

- a. Does the subject of the model law necessitate a national standard and require uniformity amongst all states? Yes or No (Check one)

If yes, please explain why:

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) provides that a state insurance law or regulation may be subject to preemption upon a determination by the FIO director, in accordance with notice and other procedural requirements set forth in the Dodd-Frank Act, that the state insurance measure is inconsistent with a covered agreement and results in less favorable treatment of non-U.S. insurers subject to the covered agreement than a U.S. insurer domiciled, licensed or otherwise admitted in the state. Under the Covered Agreement, the states have 60 months (five years) from signature of the agreement to enact reinsurance reforms removing collateral requirements for EU reinsurers that meet the prescribed conditions in the Covered Agreement.

- b. Does Committee believe NAIC members should devote significant regulator and Association resources to educate, communicate and support this model law?

Yes or No (Check one)

5. What is the likelihood that your Committee will be able to draft and adopt the model law within one year from the date of Executive Committee approval?

1 2 3 4 5 (Check one)

High Likelihood

Low Likelihood

Explanation, if necessary:

As previously noted, the states have 60 months (five years) from signature of the Covered Agreement (Sept. 22, 2017) to conform their reinsurance collateral requirements for applicable EU reinsurers to the terms of the Covered Agreement, or face potential federal preemption through determinations by the FIO director. Under the Covered Agreement, the process for considering potential preemption determinations of state laws that are inconsistent with the Covered Agreement begins 42 months following signature of the agreement, with any preemption determination required to be completed by the end of the 60-month period. In order to meet this rigid time frame, it will be important for the NAIC membership to complete the proposed revisions to Model #785 and Model #786 as soon as is reasonably possible, in order to provide the states with the maximum time to implement the revisions.

6. What is the likelihood that a minimum two-thirds majority of NAIC members would ultimately vote to adopt the proposed model law?

1 2 3 4 5 (Check one)

High Likelihood

Low Likelihood

Explanation, if necessary: See previous discussion.

7. What is the likelihood that state legislatures will adopt the model law in a uniform manner within three years of adoption by the NAIC?

1 2 3 4 5 (Check one)

High Likelihood

Low Likelihood

Explanation, if necessary: See previous discussion.

8. Is this model law referenced in the NAIC Accreditation Standards? If so, does the standard require the model law to be adopted in a substantially similar manner?

On April 9, 2013, the NAIC adopted the significant elements of the 2011 revisions to Model #785 and Model #786 as an “optional” accreditation standard. Specifically, under this optional standard, a state is not required to adopt the certified reinsurer revisions to the models, but if it chooses to reduce its reinsurance collateral requirements, the state’s laws and regulations must be substantially similar to the key elements of the revisions. Effective Jan. 1, 2019, the NAIC membership made the current *Reinsurance Ceded to Certified Reinsurers* provisions of Part A: Laws & Regulations—Traditional Insurers a required and uniform accreditation standard applicable to all NAIC-accredited jurisdictions. This new uniform standard continues to require that accredited jurisdictions adopt the provisions of the models in a substantially similar manner.

9. Is this model law in response to or impacted by federal laws or regulations? If yes, please explain.

Yes. Under Title V of the Dodd-Frank Act, the U.S. Department of the Treasury and the Office of the U.S. Trade Representative are authorized to jointly negotiate covered agreements, defined under the Dodd-Frank Act as written bilateral or multilateral agreements between the United States and one or more foreign governments, authorities or regulators regarding prudential measures with respect to insurance or reinsurance, on the condition that the prudential measures subject to a covered agreement achieve a level of protection for insurance or reinsurance consumers that is “substantially equivalent” to the level of protection achieved under U.S. state insurance laws. The Covered Agreement was negotiated pursuant to authority included within the Dodd-Frank Act and has been represented to be an agreement consistent with such authority. The Covered Agreement requires the states to eliminate reinsurance collateral requirements for EU reinsurers that maintain a minimum amount of own funds equivalent to \$250 million and a solvency capital ratio (SCR) of 100% under Solvency II. The states will need to take action with respect to reinsurance collateral reforms within 60 months (five years) or face potential federal preemption determinations by the FIO director.

ATTACHMENT B: LIST OF SPEAKERS AT PUBLIC HEARING

- 1. U.S. Department of the Treasury**
—*Jared Sawyer, Deputy Assistant Secretary, Financial Institutions Policy*
- 2. Reinsurance Association of America (RAA)**
—*Karalee C. Morell, Vice President and Assistant General Counsel*
- 3. Allstate**
—*Kevin Spataro, Senior Vice President, Accounting Policy and Research*
- 4. International Underwriting Association of London (IUA)**
—*Bill Marcoux, DLA Piper*
- 5. National Association of Mutual Insurance Companies (NAMIC)**
—*Michelle Rogers, Assistant Vice President, International and Regulatory Affairs*
- 6. Association of Bermuda Insurers and Reinsurers (ABIR)**
—*John Huff, President and Chief Executive Officer*
- 7. The Cincinnati Insurance Company**
—*Scott A. Gilliam, Vice President, Government Relations*
- 8. Chubb**
—*Tracey Laws, Senior Vice President and General Counsel, Global Government and Industry Affairs*
- 9. CNA Insurance Companies**
—*Jeffery C. Alton, Vice President, Global Regulatory Policy and Affairs*
- 10. American Insurance Association (AIA)**
—*Stephen Simchak, Vice President and Chief International Counsel*
—*Steve Bennett, Associate General Counsel*
- 11. Lloyd's America**
—*Sabrina A. Miesowitz, Associate General Counsel*
- 12. Swiss Re America**
—*Matthew Wulf, Head State Regulatory Affairs Americas*
- 13. XL Catlin Group**
—*Elisabeth Ditomassi, Head of Compliance and Regulatory Affairs – North America*
- 14. American Council of Life Insurers (ACLI)**
—*Carolyn Cobb, Vice President, Chief Counsel*
- 15. General Insurance Association of Japan (GIAJ)**
—*Mamoru Otsubo, General Manager*
- 16. Aon Benfield**
—*Michael McClane, Managing Director*
- 17. American Academy of Actuaries**
—*Arnold Dicke, Chair, Reinsurance Committee*
- 18. Property Casualty Insurers Association of America (PCI)**
—*Robert Woody, Vice President for Policy*

ATTACHMENT C: PUBLIC COMMENTS RECEIVED

The NAIC received 20 comment letters, which are also posted on the web page of the Reinsurance (E) Task Force: www.naic.org/cmte_e_reinsurance.htm.

1. **Association of Bermuda Insurers and Reinsurers (ABIR)**
2. **American Council of Life Insurers (ACLI)**
3. **Allstate**
4. **American Academy of Actuaries**
5. **American Insurance Association (AIA)**
6. **Aon Benfield**
7. **California Department of Insurance**
8. **Chubb**
9. **Cincinnati Insurance Companies**
10. **CNA Insurance**
11. **GDV (German Insurance Association)**
12. **General Insurance Association of Japan**
13. **International Underwriting Association**
14. **Liberty Mutual Insurance**
15. **Lloyd's America**
16. **National Association of Mutual Insurance Companies (NAMIC)**
17. **Reinsurance Association of America (RAA)**
18. **Swiss Re Americas and Zurich North America**
19. **Switzerland Federal Department of Finance**
20. **XL Catlin**