July 23, 2018

Messrs. Schelp and Stultz
Reinsurance Task Force
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

Re: Reinsurance (E) Task Force proposed revisions to the *Credit for Reinsurance Model Law* (#785) and the *Credit for Reinsurance Model Regulation* (#786), to incorporate relevant provisions of the *Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance ("Bilateral Agreement")*

VIA EMAIL: jstultz@naic.org dschelp@naic.org

Dear Messrs. Schelp and Stultz:

Allstate Insurance Company ("Allstate") appreciates the opportunity to comment on proposed revisions to **#785** *Credit for Reinsurance Model Law* and **#786** *Credit for Reinsurance Model Regulation*. As one of the world's largest purchasers of catastrophe reinsurance, Allstate is keenly interested in working with regulators and policymakers to ensure laws and regulations that are modified as a result of the Bilateral Agreement serve the interests of both policyholders and ceding companies. We commend the task force for the swiftness and completeness of their thoughtful work on the proposals.

Allstate's comments are limited to the proposed revisions to #785, *Credit for Reinsurance Model Law*, new subsection F, paragraph (7).

As proposed:

7. This subsection shall apply only to reinsurance agreements entered into, amended, or renewed on or after the [date of adoption of model revisions], and only with respect to losses incurred and reserves reported from and after the later of (i) the [date of adoption], or (ii) the effective date of such new reinsurance agreement, amendment, or renewal. This subsection shall not apply to reinsurance agreements entered into before the subsection's application, or to losses incurred or to reserves posted before the subsection's application.

Allstate's recommended modifications:

7. This subsection shall apply only to reinsurance agreements entered into~~, amended,~~ or renewed on or after the [date of adoption of model revisions], and only with respect to loss~~es~~ occurrences~~incurred~~ and reserves reported from and after the later of (i) the [date of adoption], or (ii) the effective date of such new reinsurance agreement~~, amendment,~~ or renewal. This subsection shall not apply to reinsurance agreements entered into before the subsection's application, or to loss~~es~~ occurrences~~incurred~~ or to reserves posted before the subsection's application.

Allstate Insurance Company
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Northbrook, Illinois 60062

The first recommended change is to remove reinsurance amendments as a trigger for application of the entire subsection F which is being added to incorporate relevant provisions of the Bilateral Agreement. Amendments are often not significant and may not involve renegotiation or repricing of the contract. For example, an amendment can result from a name change (but not entity change) of one of the parties referred to in the contract.

The second recommendation is to use the words “loss occurrences” in place of “losses incurred” in the paragraph. “Losses incurred” could unintentionally exclude, or not definitively include, incurred but not reported losses. We believe the intent is to capture all losses that have occurred from and subsequent to the later of the timeframes referenced in the paragraph. “Loss occurrences” is broad and would include all claim obligations from covered events whereas “losses incurred” is often used as accounting recognition terminology.

Allstate looks forward to continuing to work with you on reinsurance proposals directly or indirectly resulting from incorporating the relevant provisions of the Bilateral Agreement into the existing NAIC framework.

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Robert L. Zeman
Corporate Counsel

ACLI
Financial Security...for Life.
American Council of Life Insurers

July 23, 2018

Superintendent Maria T. Vullo
New York State Department of Financial Services
Chairwoman, NAIC Reinsurance (E) Task Force
Via email to jstultz@naic.org and dschelp@naic.org

Re: Proposed Revisions to the Credit for Reinsurance Model Law (#785) and Regulation (#786)

Dear Superintendent Vullo:

The American Council of Life Insurers (ACLI) advocates on behalf of approximately 290 member companies dedicated to providing products and services that contribute to consumers' financial and retirement security. ACLI members represent 95 percent of industry assets, 93 percent of life insurance premiums, and 98 percent of annuity considerations in the United States. 75 million families depend on our members' life insurance, annuities, retirement plans, long-term care insurance, disability income insurance and reinsurance products. Taking into account additional products including dental, vision and other supplemental benefits, ACLI members provide financial protection to 90 million American families.

ACLI Generally Supports: We appreciate the opportunity to comment on the proposed revisions to the *Credit for Reinsurance Model Law* (#785) and the *Credit for Reinsurance Model Regulation* (#786). With the two exceptions noted below, ACLI generally supports the proposed revisions. We also acknowledge and appreciate the timeliness of the proposed revisions, and we pledge our assistance in maintaining that timeliness in NAIC's process and in states' legislatures.

ACLI Encourages Two Substantive Adjustments: The draft revisions to the *Credit for Reinsurance Model Law* (#785) and the *Credit for Reinsurance Model Regulation* (#786) (CFR Models) are intended to incorporate relevant provisions of the *Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance* (U.S.-EU Covered Agreement). We understand that they are also intended to accord similar treatment to similarly qualified reinsurers headquartered in countries that NAIC endorses as a "Reciprocal Jurisdiction." We endorse and support those intentions.

We have two substantive concerns with the draft revisions.

- Reinsurers headquartered in non-EU Reciprocal Jurisdictions and meeting the U.S-EU Covered Agreement's standards should be subject to requirements identical to those that EU reinsurers must meet. The draft revisions propose unequal treatment for EU and non-EU reinsurers. We do not support that unequal treatment. We strongly urge clarifying revisions to accord identical treatment.
- The CFR Model Law (#785) draft subsection F.(5) on any cedant's insolvency should conform to Article 3, paragraph 4(k) of the U.S.-EU Covered Agreement, which requires the insolvent cedant's representative to seek a court order for any additional collateral. We strongly recommend revising subsection F.(5) to read: "The commissioner or the commissioner's representative may seek from the court supervising a ceding insurer's rehabilitation or liquidation an order requiring that the designated reinsurer post collateral for all the designated reinsurer's outstanding liabilities to the ceding insurer."

Substantive Comments

- ***Unequal Treatment:*** The draft revisions would authorize each commissioner to set requirements that may be different than those applicable to EU reinsurers and perhaps different than requirements applied to other non-EU reinsurers from the same Reciprocal Jurisdiction. This concerns us, as we believe that all reinsurers headquartered in jurisdictions that NAIC has determined to be "Reciprocal Jurisdictions" should be subject to identical requirements. We are also concerned because the draft revisions are vague on what those different requirements might be, how they would be determined, or whether they would apply equally to all reinsurers from a given Reciprocal Jurisdiction. We are also unclear on how any reinsurer-specific requirements would be administered in the state-based system. We would greatly appreciate further conversation on the following provisions:
    - ***Any other requirements:*** Proposed #785 subsection F.(1.)(h) would require any reinsurer to "satisfy any other requirements deemed relevant by the commissioner." Proposed #786 subsection 9.C.(8) would require any reinsurer to "satisfy any other requirements for recognition deemed relevant by the commissioner."
    - ***Definition of "Reciprocal Jurisdiction:"*** Proposed #786 subsection 9.B.(2)(e) confers discretion on each commissioner to use additional, unspecified factors in determining whether a country qualifies as a "Reciprocal Jurisdiction."
    - ***Solvency Ratio:*** Proposed #785 subsection F.(1.)(c) would authorize each commissioner to establish a minimum solvency ratio by regulation. Proposed #786 subsection 9.C.(3)(d) would affirm the commissioner's authority to establish for any non-EU reinsurer any solvency ratio that the commissioner finds appropriate. (We note that the provisions are not parallel, *i.e.,* the proposed #785 provision would allow each state to set by regulation a solvency ratio standard for each non-EU Reciprocal Jurisdiction, and the proposed #786 provision would allow each commissioner to establish a separate solvency ratio for each non-EU reinsurer, without promulgating a regulation.)
    - ***Capital and Surplus.*** Proposed #785 subsection F.(1)(b) would authorize each commissioner to establish by regulation a capital and surplus requirement for each non-EU Reciprocal Jurisdiction. Presumably the expectation is that proposed #786 subsection 9.C.(2) would establish USD $250,000,000 as the current minimum for all reinsurers headquartered in Reciprocal Jurisdictions. We would appreciate confirmation that is the intention.
- ***Cedant's Insolvency:*** Proposed #785 subsection F.(5) on any cedant's insolvency should conform to Article 3, paragraph 4(k) of the U.S.-EU Covered Agreement, which requires that the insolvent cedant's representative seek a court order for any additional collateral. We strongly recommend revising subsection F.(5) to read: "The commissioner or the commissioner's representative may seek from the court supervising a ceding insurer's rehabilitation or liquidation an order requiring that the designated reinsurer post collateral for all the designated reinsurer's outstanding liabilities to the ceding insurer." We cannot support the subsection as currently drafted.
- ***Reciprocal Jurisdiction:*** We are very interested in further discussion about how NAIC will determine whether a non-EU jurisdiction is a Reciprocal Jurisdiction. First, we would appreciate information on what additional factors might be considered under proposed #786 subsection 9.B.(2)(e). Second, both proposed #786 subsections 9.B.(2)(c) and (d) would require a non-EU jurisdiction to demonstrate that it has certain authority "through statute, regulation, or the equivalent…." We respectfully request further discussion on what is expected and how the provisions would operate in

practice. Finally, we ask that NAIC establish standards for deaccessioning a jurisdiction previously determined to be 'reciprocal,' as well as explain its potential effects on assuming and ceding insurers.

- ***Effective date*:** We strongly support the first sentence of proposed #785 draft subsection F.(7), as consistent with the U.S-EU Covered Agreement. We recommend deleting the second sentence, as inconsistent with it and confusing. We also recommend conforming current #786 subsection 8.A.(5) to the language in the U.S.-EU Covered Agreement, for clarity and consistency.

- ***Annual Notification:*** Proposed #785 subsection F.1.(g) is inconsistent with the U.S.-EU Covered Agreement. It would condition the assuming insurer's U.S. status on each commissioner receiving, at a time determined by each commissioner, an annual notification that the assuming insurer meets the stipulated capital and solvency ratio standards. We support the annual notification, which conforms to Article 3, paragraph *(l)* of the U.S.-EU Covered Agreement. We do not support conditioning the assuming insurer's status on the timing of that notification. We recommend deleting the phrase "at a time determined by the commissioner."

Editorial Comments

#785 Draft Revisions

- In subsection F.(1)(d)(i), we recommend replacing the phrase "subparagraphs (b) and (c)" with the phrase "subparagraphs (b) or (c)." This change would require the assuming insurer to notify the commissioner if either its capital and surplus falls or its solvency ratio dips below the minimum.
- Subsection F.(1)(d)(i) would require the assuming insurer to notify the commissioner if it has been in "serious noncompliance" with applicable law. That appropriately places the burden of notification on the assuming insurer, and we endorse that. We're unclear, however, about the relevance of any determination by the commissioner. Absent clarification, we recommend deleting the phrase "as determined by the commissioner."
- Subsection F.(4) addresses suspending and revoking the assuming insurer's status. It describes the effect of revoking it but not the effect of suspending it. Contrast that with current subsection 2.E.(5)(e) of the current Model Law, which states that the term "terminated" refers to revocation, suspension, voluntary surrender and inactive status. We would appreciate clarification of proposed subsection F.(4).
- In subsection F.(4), replace the phrase "require the assuming insurer maintain security" with the phrase "require the assuming insurer to maintain security."

#786 Draft Revisions

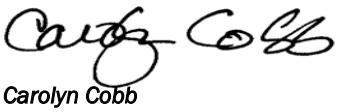
- Proposed subsection 9.C.(2)(c) proposes that capital and surplus for non-EU reinsurers be determined in reliance on exchange rates "compiled from key market contributors…." We would appreciate more information on what sources might be used to determine the level of capital and surplus as well as the exchange rates for non-EU countries.
- In proposed subsection 9.C.(4)(a), we recommend replacing the phrase "subparagraphs (b) and (c)" with the phrase "subparagraphs (b) or (c)." This change would require the assuming insurer to notify the commissioner if either its capital and surplus falls or its solvency ratio dips below the required minimum.

- We recognize that subsection 9.C.(5)(a) uses language from the U.S.-EU Covered Agreement. We propose that the introductory phrase might be clarified to read: "For the two years preceding entry into a reinsurance agreement with a ceding insurer domiciled in this state…."

Conforming terms within draft revisions to #785 and #786: We recommend conforming terms used throughout the draft amendments. Currently, various terms refer to the reinsurers (assuming insurer, assuming reinsurer) and cedants (ceding insurer, ceding company.)

We appreciate the Task Force's work on this important project and the opportunity to engage on these draft revisions. We look forward to working with the Task Force in support of timely adoption of revisions to the CFR Models in support of the U.S.-EU Covered Agreement.

Very truly yours,



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Re: Proposed Amendments to the Credit for Reinsurance Model Law (#785) and the Credit for Reinsurance Model Regulation (#786)—Implementation of the EU-U.S. Covered Agreement

Dear Mr. Stultz and Mr. Schelp:

The American Insurance Association ("AIA") thanks you for the opportunity to submit comments in response to the Reinsurance (E) Task Force's proposed amendments to the Credit for Reinsurance Model Law (#785) and the Credit for Reinsurance Model Regulation (#786).[1] The proposed amendments are in response to the Bilateral Agreement between the United States and the European Union on Prudential Measures Regarding Insurance and Reinsurance ("Covered Agreement") and its impact on the model law and regulation.

AIA supports the proposed amendments to the model law and regulation and appreciates the efforts of the Task Force in promptly addressing the issues raised by the Covered Agreement. AIA's guiding principle during this process is the zero collateral option available to qualified EU reinsurers by the Covered Agreement should be extended to qualified reinsurers domiciled in other foreign jurisdictions but only if those jurisdictions provide reciprocal rights to U.S. insurers and reinsurers with mutual acknowledgment of prudential supervision. The goal is to adopt a framework that assures U.S. standards on group supervision and capital requirements are respected on a mutual basis, and U.S. state regulation of insurers is recognized internationally. The critical issue for AIA is to treat all qualified reinsurers domiciled in qualified jurisdictions in

[1] AIA represents approximately 320 insurers that write more than $125 billion in U.S. property-casualty premiums each year. Our membership includes U.S. insurers that write insurance only within the U.S., U.S. insurers that write insurance inside and outside the U.S., and the U.S. subsidiaries of multi-national insurers.

the same manner as reinsurers from EU qualified jurisdictions are treated, so long as the jurisdiction accepts and recognizes the U.S. insurance regulatory system and does not impose market restrictions on U.S. insurers and reinsurers.

The Task Force's proposal creating reciprocal jurisdictions appears to accomplish this goal. The proposed model law and regulation provide that certain qualified reinsurers domiciled and licensed in a reciprocal jurisdiction do not need to post collateral for the ceding insurer to receive financial credit for the reinsurance. The proposal defines a reciprocal jurisdiction as one that has either entered a treaty with the U.S. regarding credit for reinsurance or a non-treaty qualified jurisdiction that meets additional requirements. The additional requirements are that the foreign jurisdiction: 1) provides that an insurer with its head office or domicile in such qualified jurisdiction shall receive credit for reinsurance ceded to a U.S.-domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in such qualified jurisdiction; 2) does not require a U.S. domiciled assuming insurer to establish or maintain a local presence as a condition for entering a reinsurance agreement or as a condition for the ceding insurer to recognize credit for the reinsurance; 3) provides that insurers and insurance groups that are domiciled or maintain their headquarters in a U.S. state shall be subject to only worldwide prudential insurance group supervision, including worldwide group governance, solvency and capital, as applicable by the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group; 4) provides that information regarding insurers, and their parent, subsidiary or affiliated entities shall be provided to the commissioner of the ceding insurer in accordance with a memorandum of understanding between the state commissioner and the qualified jurisdiction; and 5) other additional factors considered relevant by the state commissioner.

While AIA believes the ultimate goal should be the entry of additional U.S. bilateral agreements or accession to the existing covered agreement with the EU in some manner, with foreign jurisdictions outside the EU, in the absence of such agreements, an approach granting reciprocal jurisdiction status on jurisdictions recognizing U.S. state regulation of group supervision and capital requirements is appropriate. It is essential, however, that U.S. state regulators retain the authority and the will to ensure that only those foreign jurisdictions recognizing U.S. regulation of insurers on an international basis are accorded reciprocal status. Accordingly, while AIA supports the current proposed amendments, we wish to raise the following comments in response to certain provisions in the model law and regulation.

• *The Model Law's Definition of Reciprocal Jurisdiction Needs to be More Specific*: The proposed model law allows a ceding insurer to receive credit for reinsurance for cessions to a qualified reinsurer domiciled and licensed in a reciprocal jurisdiction without the posting of collateral by the reinsurer. The model law defines reciprocal jurisdictions as jurisdictions entering a treaty with the U.S. involving credit for reinsurance. The model law also permits non-treaty jurisdictions to be reciprocal jurisdictions. Unfortunately, the model law is mostly silent on the specific requirements for non-treaty jurisdictions, leaving those requirements to the proposed model regulation. The model law defines a reciprocal jurisdiction as any qualified jurisdiction (under the credit for reinsurance model law), which is not a party to a U.S. treaty relating to credit for reinsurance, "which meets certain additional requirements as specified by

the commissioner in regulation." Credit for Reinsurance Model Law, Proposed Section 2(F)(1)(a)(2). The specific requirements for a non-treaty jurisdiction to qualify as a reciprocal jurisdiction are subsequently set forth in the proposed model regulation at section 9(B)(2).

It is critical that if the zero collateral option is to be extended to reinsurers domiciled and licensed in jurisdictions that have not executed a treaty with the U.S., such foreign jurisdictions must recognize the U.S. standards on group supervision and capital requirements and must not impose any market access barriers on U.S. insurers and reinsurers. This requirement must be set forth in the model law and not be subject to subsequent regulations implementing the law. While AIA can understand the desire to set forth implementation specifics in the model regulation, at the very least the model law must include the standard of mutual respect and equal access to U.S. insurers and reinsurers to guide the implementing regulations. Otherwise, the law conceivably allows conferring of reciprocal status to non-treaty jurisdictions that fail to fully recognize U.S. state regulation of group supervision and capital standards and impose access restrictions to U.S. insurers and reinsurers. The model law needs to include specific language establishing this mutual respect of U.S. supervision and market access as a *sine qua non* of qualifying as a reciprocal jurisdiction. The model law also needs a specific provision authorizing the state regulator to review, and as necessary remove, reciprocal status on an ongoing basis.

• *Definition of Non-Treaty Reciprocal Jurisdiction*: Section 9(B)(2) of the model regulation includes the requirements for a qualified jurisdiction without a treaty to be eligible for reciprocal jurisdiction status. As stated above, the requirements of reciprocal jurisdiction status belongs in the model law rather than the regulation. In addition, subsection 9(B)(2)(c) requires modification. The subsection states the jurisdiction must: "Provide[] through statute, regulation or the equivalent in such qualified jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this state or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reported, as applicable, by the commissioner or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction." Read literally, the section suggests if an insurance group based in a foreign jurisdiction has an insurer domiciled in a U.S. state, the state commissioner would have worldwide supervision over the group. While we understand the intent of this section is to ensure that U.S. insurers and U.S. groups are subject to only U.S. capital and solvency supervision, and we support such intent, the proposed language may need a slight reworking.

• *Interplay between Certified and Reciprocal Reinsurer Status*: The proposal creates the category of a reciprocal reinsurer. By necessity, the model law and regulations, of course, retain the certified reinsurer category as well. Most reciprocal reinsurers presumably would also be, or at least previously have been, certified reinsurers. This dual status creates potential for ambiguity. A reinsurer presumably retains certified status even after attaining reciprocal status to handle legacy claims under reinsurance contracts entered previously. To eliminate potential confusion, the model law or regulation might specify how collateral is to be posted for certified reinsurers subsequently attaining reciprocal status and whether having obtained reciprocal status means that any such insurer must separately satisfy the requirements for a certified reinsurer each

year for historical assumed business. Likewise, the model law or regulation should clarify whether a reciprocal reinsurer, if it subsequently loses reciprocal status, may post collateral according to the certified reinsurer status it previously held.

• *Scope and Timing of Application of Reciprocal Status*: Proposed section 2(F)(7) states the reciprocal provisions "shall apply only to reinsurance agreements entered into, amended, or renewed on or after the [date of adoption of model revisions] and only with respect to losses incurred and reserves reported from and after the later of (i) the [date of adoption], or (ii) the effective date of such new reinsurance agreement, amendment, or renewal. This subsection shall not apply to reinsurance agreements entered into before the subsection's application, or to losses incurred or to reserves posted before the subsection's application."

AIA believes the word "amended" should be deleted from the proposed section. Allowing zero collateral to apply when a reinsurance agreement is merely amended, particularly if the amendment is minor or technical, could have severe unwanted financial consequences.

In addition, the triggering event for reciprocal status to apply to reinsurance contracts is not the date of adoption of the model revisions, but rather the date the reinsurer is qualified as a reciprocal reinsurer. For example, if a reinsurer's domiciliary jurisdiction is not classified as a reciprocal jurisdiction until 2024, only those contracts entered in or after 2024 should qualify for reciprocal status, even if the model is enacted in 2019. Otherwise, the change in collateral status is being applied retroactively to reinsurance agreements entered prior to the reinsurer's reciprocal rating.

Also, the language in the section regarding application of the section only to "losses incurred or to reserves reported/posted from and after the later of" the subsection's application poses problems for agreements that may be entered into after reciprocal status is obtained by the reinsurer but covering losses incurred or reserves posted prior to such status having been obtained, including adverse development covers and loss portfolio transfers. These agreements can relate to long tail claims occurring in the past but with the agreement signed after the losses have occurred or reserves reported/posted. To deal with these types of agreements and to better reflect the intent of this provision, the language could be modified as suggested below:

Proposed section 2(F)(7) may be modified as follows:

"This subsection shall apply only to reinsurance agreements entered into~~**, amended,**~~ or renewed on or after the [~~**date of adoption of model revisions**~~ **date of granting reciprocal status to the applicable assuming insurer**] and only with respect to losses ~~**incurred and reserves reported**~~ **ceded** from and after the later of (i) the [~~**date of adoption**~~ **date of granting reciprocal status to the applicable assuming insurer**], or (ii) the effective date of such new reinsurance agreement~~**, amendment,**~~ or renewal. This subsection shall not apply to reinsurance agreements entered into before the subsection's application, or to losses ceded ~~**incurred or to reserves posted**~~ before the subsection's application."

• *Requesting Information Beyond Scope of Treaty*: The model law includes a provision, at section 2(F)(1)(h), that the commissioner may request the reciprocal reinsurer to "satisfy any other

requirements deemed relevant by the commissioner." The section further provides that if such information request is beyond the scope of a treaty relating to credit for reinsurance, "the failure to satisfy such other requirements will not alter the ability of the ceding insurer to take credit for such reinsurance." This proposed language is somewhat confusing and, to an extent, places the ceding insurer in limbo as the issue becomes whether the ceding insurer may or may not take credit for reinsurance when an information request beyond the permissible scope of a treaty is made upon the reinsurer. To clear up potential confusion, the model law should simply provide the commissioner shall not require any additional information inconsistent with an executed treaty. In the alternate, the model law could state the reinsurer need not produce additional information if such information request is inconsistent with the treaty. Any loss of credit for reinsurance should be predicated upon removal of the reinsurer from the list of reinsurers with reciprocal status in the jurisdiction which necessarily in turn is based upon, among satisfaction of the other conditions, whether such reinsurer has provided all required information to the extent it may be required.

•*Affiliate Transactions*: The credit for reinsurance model regulation provisions pertaining to certified reinsurers includes a provision clarifying how certified reinsurer cessions to affiliates are to be treated for credit for reinsurance purposes. Section 8(A)(2) of the model regulation provides "Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions." Adding a similar provision in the reciprocal jurisdiction section of the model regulation would clarify whether reciprocal reinsurer cessions to affiliates are to be treated in a similar manner.

• *Reciprocal Jurisdiction Requirements*: Section 9(C) of the model regulation provides "Credit shall be allowed when the reinsurance is ceded to an assuming insurer meeting each of the conditions set forth below." The subsections then set forth various requirements the reinsurer must meet to qualify for zero collateral. The requirements are modeled after the requirements set forth in the Covered Agreement. This creates a potential problem if treaties are subsequently entered with other countries and the terms do not mirror those in the Covered Agreement. The proposal should contain some flexibility to handle subsequent treaties. Otherwise, the model law and regulation may need constant revision. A new proposed section could clarify that reinsurer requirements are to be consistent with any subsequent U.S. treaty relating to credit for reinsurance.

• *Posting of Collateral in Liquidation or Rehabilitation*: Proposed section 2(F)(5) of the model law provides "The commissioner shall require" a reciprocal reinsurer to post 100% collateral for the benefit of the ceding insurer or its estate upon entry of an order of rehabilitation, liquidation, or conservation against the ceding insurer. The mandatory nature of the posting of 100% collateral is inconsistent with the Covered Agreement. The Covered Agreement provides that 'if subject to a legal process of resolution, receivership, or winding up proceedings…,the ceding insurer, or its representative, may seek, and if determined appropriate by the court in which the resolution, receivership, or winding up proceedings is pending, may obtain an order requiring that the assuming insurer post collateral for all outstanding ceded liabilities." Covered Agreement, Article 3, Section 4(k). The model law should reflect the permissive nature of the Covered Agreement that the ceding insurer or the estate may request full collateral and the receivership court shall review and determine the request.

• *Definition of Reciprocal Jurisdiction Based on Treaty*: Section 9(B)(1) of the model regulation defines reciprocal jurisdictions based on entry of a treaty with the U.S. relating to credit for reinsurance. The section defines a reciprocal jurisdiction, in part, as "A non-U.S. jurisdiction that has entered into a treaty or international agreement with the United States regarding credit for reinsurance, all of the terms of which are relevant to credit for reinsurance are in effect, including an agreement entered into pursuant to [Dodd–Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. § 314]." This language is somewhat unclear and potentially suggests that *all* the terms of the treaty must relate to credit for reinsurance. It might be better to modify the language as follows: "A non-U.S. jurisdiction that has entered into a treaty or international agreement with the United States regarding credit for reinsurance, all of the terms of which **that** are relevant to credit for reinsurance are in effect, including an agreement entered into pursuant to [Dodd–Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. § 314]."

• *Suspension or Revocation of Status as a Reciprocal Reinsurer*: Section 9(F) of the model regulation discusses suspension and revocation of reciprocal reinsurer status. While the proposed regulations provide the commissioner is to give the reinsurer 30 days to remedy any alleged defect in the reinsurer's status as a reciprocal reinsurer and requires the commissioner to wait an additional 90 days to determine whether to deny statement credit for reinsurance for the ceding insurer and require the posting of collateral by the reinsurer, the regulation should give the commissioner discretion to allow a longer grace period for the ceding insurer to retain statement credit and for the reinsurer to remedy the alleged defect and/or post collateral. Elimination of credit all at once for a reinsurer's ceding insurers could have a significant financial impact on U.S. ceding insurers. In addition, reinsurers losing reciprocal status may not be in a position to immediately post full collateral on all their existing agreements. The model should provide commissioners discretion to temporarily delay sanctions and provide extended compliance periods for the reinsurer where immediate application of sanctions would be unfair to the parties or would pose a risk of unnecessary financial stress. The model should also specifically state whether a revocation of reciprocal status applies retroactively to existing agreements as well as prospectively to new and renewal agreements.

• *Treatment of Solvency Ratio for Associations*: Section 9(C)(3)(c) of the model regulation sets forth eligible solvency ratios for reinsurers that are associations, including incorporated and individual unincorporated underwriters. The section provides that the association must have a solvency ratio of 100% SCR under Solvency II or a Risk-Based Capital of 300% of the authorized control level. It is not specified whether the solvency level must be maintained across the entire syndicate or on a syndicate by syndicate basis.

• *Solvency and Capital Ratios*: Section 9(C)(3)(d) of the model regulation relates to solvency and capital ratios for eligible reciprocal reinsurers. After stating the commissioner has discretion to apply different ratios for other jurisdictions as applicable, the section further states"…provided that to the extent that information or agreement is not required by a treaty or international agreement referred to in [cite state law equivalent of Section 2(F)(1)(a)(i) of the Credit for Reinsurance Model Law], the failure to satisfy such other requirements will not alter the ability of the ceding insurer to take credit for such reinsurance." This language appears misplaced as neither the section nor the subsection relates to the providing of information by the

reinsurer. The language may more properly belong in Section 9(C)(5). Moreover, as discussed above in connection with section 2(F)(1)(h) of the model law, the proposed language in question is somewhat confusing and, to an extent, places the ceding insurer in limbo as the issue becomes whether the ceding insurer may or may not take credit for reinsurance when an information request beyond the permissible scope of a treaty is made upon the reinsurer. The language should provide either that the commissioner shall not require any additional information inconsistent with an executed treaty or that the reinsurer is not required to provide information inconsistent with an applicable treaty.

• *Solvent Schemes of Arrangement*: Section 2(F)(1)(d)(v) of the model law requires a reciprocal reinsurer include a representation that it is not presently participating in a solvent scheme of arrangement involving the state's ceding insurers and that it will provide 100% collateral should the reinsurer subsequently enter into such a solvent scheme of arrangement. The model law or regulation should define the scope of solvent schemes of arrangement to provide clarity regarding what type of reorganizations trigger the additional collateral requirements. For example, so-called Part VII transfers might be considered similar to solvent schemes. While the use of solvent schemes in the model law and regulation likely refer solely to fixed commutations of liabilities rather than Part VII transfers of liabilities to a different entity, clarification would be helpful. Moreover, to the extent Part VII liability transfers actually are contemplated within the meaning of a solvent scheme of arrangement, would any additional collateral be required if the transfer were to another qualified EU reinsurer or a reinsurer in another reciprocal jurisdiction? Additional collateral would not seem necessary if the reorganization or transfer was simply to another reciprocal reinsurer. As to solvent schemes functioning as commutations, the proposal should state whether the amount of liabilities for collateral purposes is to be determined by the ceding insurer, by the domiciliary regulator, or by the scheme itself?

• *Prompt Payment of Claims Calculation*: Section 9(C)(6)(b) of the model regulation calculates a reinsurer's practice of prompt payment by, among other factors, reference to the number of overdue reinsurance recoverables of 90 days or more in the amount of "$100,000 or its equivalent calculated by reference to foreign currency exchange rates compiled from key data contributors and established as of the preceding December 31." The Covered Agreement, however, establishes this requirement at a stable, non-floating, 90,400 Euro. Covered Agreement Article 3 Section 4(i)(ii). For EU reinsurers, at least, the regulation should set the threshold at 90,400 Euro. In addition, the regulation does not define "key data contributors."

• *Prompt Payment of Claims Calculation Aggregate Recoverable Amount*: Section 9(C)(6)(c) of the model regulation calculates a reinsurer's practice of prompt payment by whether the aggregate amount of overdue reinsurance recoverables of 90 days exceeds "$50,000,000 or its equivalent calculated by reference to foreign currency exchange rates compiled from key data contributors and established as of the preceding December 31." The Covered Agreement, however, establishes this requirement at a stable, non-floating, 45,200,000 Euro. Covered Agreement Article 3 Section 4(i)(ii). For EU reinsurers, at least, the regulation should set the threshold at 45,200,000 Euro. In addition, the regulation does not define "key data contributors."

AIA thanks you for the opportunity to offer comments on the proposed credit for reinsurance model law and regulation amendments and looks forward to continuing to work with the NAIC and all interested stakeholders during this process.

Sincerely,

Steven Bennett
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American Insurance Association

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July 23, 2018

Superintendent Maria T. Vullo, Chair (New York)
Director Chlora Lindley-Myers, Vice Chair (Missouri)
National Association of Insurance Commissioners, Reinsurance (E) Task Force

Attention: Mr. Jake Stultz, jstultz@naic.org
Mr. Dan Schelp dschelp@naic.org

RE: NAIC Exposed Proposed Revisions to the Credit for Reinsurance Model Law (#785) and the Credit for Reinsurance Model Regulation (#786) to Incorporate Relevant Provisions of the "Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance"

Dear Superintendent Vullo, Director Lindley-Myers, Members of the Task Force & Interested Regulators,

I write on behalf of The Association of Bermuda Insurers and Reinsurers (ABIR[1]), which represents the public policy interests of Bermuda's international insurers and reinsurers that protect consumers around the world.

Thank you for the opportunity to comment on the NAIC Exposed Proposed Revisions to the Credit for Reinsurance Model Law (#785) (Model Law [#785]) and the Credit for Reinsurance Model Regulation (#786) (Model Regulation [#786]) to Incorporate Relevant Provisions of the "Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance" ("Bilateral agreement", hereafter referred to as Covered Agreement).

ABIR appreciates the NAIC open meeting process[2] and looks forward to a consultative engagement among regulators and interested parties. ABIR encourages state regulators and NAIC to continue to advocate for open and transparent discussions at all levels in the

[1] ABIR members have headquarters and operations in Bermuda with operating subsidiaries in the United States and Europe and do business in more than 150 countries. Members employ nearly 35,000 people around the globe including more than 16,000 employees in the US, nearly 1,600 employees in Bermuda, and more than 8,600 in Europe. Over the past twenty years, ABIR members have paid claim payments to policyholders and ceding companies of over $208 billion in the U.S. and over $72 billion in the European Union.
[2] NAIC Policy Statement on Open Meetings Revised: 4/01/2014

implementation of the covered agreement and the modifications of the credit for reinsurance models.

ABIR supports the overall approach of the NAIC to implement the Covered Agreement. The creation of the reciprocal jurisdiction to include a non-U.S. jurisdiction that has entered into a treaty or international agreement with the United States regarding credit for reinsurance along with qualified jurisdictions which are not also a party to a treaty or international agreement is directionally correct. This approach will allow U.S. markets to fully leverage global reinsurance markets while implementing the covered agreement in a jurisdictionally agnostic manner and continue to protect U.S. ceding insurers and consumers with high quality reinsurance from global markets.

ABIR supports creating a level playing field among certified reinsurers. Building upon the proven NAIC and state regulator qualified jurisdiction process and certified reinsurer processes coupled with the recognition of jurisdictions with an international treaty or agreement will foster a level playing field and the continuation of high quality reinsurance for the U.S. with proven, claims-paying protection for American consumers. Bermuda reinsurers contribute heavily to this well-regulated market. As of July 20, 2018, NAIC Reinsurance Financial Analysis Working Group (ReFAWG) recommends twenty-six (26), certified reinsurers for passporting by the states. Eighteen (18) of these certified reinsurers—nearly 70%—have Bermuda as a domiciliary jurisdiction.[3] We fully expect Bermuda domiciled reinsurers to be equally represented in the new 'reciprocal reinsurers' category.

ABIR encourages state regulators to leverage model changes to drive consistency and coordination. With the benefit of several years of ReFAWGs work, state regulators should consider additional language on the passporting provision of the Credit for Reinsurance Model Law (#785), Section 2, F, (3) to encourage 'timely' creation and publication of the list of certified reinsurers.

> The commissioner shall **timely** create and publish a list of assuming insurers that have satisfied the conditions set forth in this subsection and to which cessions shall be granted credit in accordance with this subsection.

The Credit for Reinsurance Model Regulation lists the additional requirements of a qualified jurisdiction including a mechanism for information sharing. ABIR suggests state regulators consider inserting an option for a coordinated approach through a multilateral memorandum of understanding between the commissioners and such qualified jurisdictions and coordinated by the NAIC. Credit for Reinsurance Model Regulation (#786), Section 9, B, (2) (d):

> Provides through statute, regulation or the equivalent in such qualified jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if

[3] NAIC ReFAWG lists Lloyds of London (UK) entities collectively as one reinsurer.

applicable, shall be provided to the commissioner in accordance with a memorandum of understanding or similar document **including a multilateral memorandum of understanding coordinated by the NAIC** between the commissioner and such qualified jurisdiction.

ABIR highlights areas requiring clarification. ABIR requests further discussion and clarification on provisions of the models applicable to qualified jurisdictions that might be interpreted to vary from the terms of the Covered Agreement resulting in similar but not identical treatment between covered agreement and qualified jurisdictions. ABIR supports identical treatment between covered agreement jurisdictions and qualified jurisdictions.

***Capital*:**

Credit for Reinsurance Model Regulation (#786), Section 9, (C), (3), (a) to (d) might be read cumulatively meaning that assuming insurers in a qualified jurisdiction might have to comply with all four points which in practice, would mean that insurers should have and maintain on an ongoing basis, a certain solvency ratio applicable in the qualified jurisdiction as well as a RBC ratio of 300% of the authorized control level, calculated in accordance with the formula developed by state regulators and the NAIC.

Reciprocal reinsurers should not be required to hold both, but solely a certain solvency ratio applicable in the qualified jurisdiction as determined by state regulators and the NAIC. For example, the solvency ratio for European Economic Area (EEA) countries is 100% of the Solvency II solvency capital requirement (SCR). As a fully equivalent Solvency II jurisdiction, the Bermuda equivalent would be 100% of the Bermuda Enhanced Capital Requirement (ECR). An RBC ratio should only be required if the qualified jurisdiction does not have a similar solvency ratio concept. Additionally, it is unnecessary and conducive to an uneven playing field, to introduce Commissioner discretion in possibly requesting such other solvency or capital ratio as the Commissioner finds is appropriate.

ABIR recommends Model Regulation (#786), Section 9, (C) (3) paragraph to be redrafted as follows:

(3) The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, as follows:

(a) A solvency ratio of one hundred percent (100%) of the solvency capital requirement (SCR) as calculated under the Solvency II Directive issued by the European Union, or any similar ~~successor~~ solvency ratio~~,~~ as applicable in the territory in which the assuming insurer has its head office or is domiciled, as applicable; or

(b) A risk-based capital (RBC) ratio of three hundred percent (300%) of the authorized control level, calculated in accordance with the formula developed by the NAIC, as applicable in the territory in which the assuming insurer has its head office or is domiciled, as applicable; or

(c) If the assuming reinsurer is an association including incorporated and individual unincorporated underwriters, a solvency ratio of one hundred percent (100%) SCR under Solvency II (or any similar solvency ratio) or an RBC of three hundred percent (300%) of the authorized control level, as applicable in the territory in which the assuming reinsurer has its head office or is domiciled, as applicable; or

(d) Such other solvency or capital ratio as the commissioner finds is appropriate, as applicable in the territory in which the assuming insurer has its head office or is domiciled, as applicable; provided that to the extent that information or agreement is not required by a treaty or international agreement referred to in [cite state law equivalent of Section 2F(1)(a)(i) of the Credit for Reinsurance Model Law], the failure to satisfy such other requirements will not alter the ability of the ceding insurer to take credit for such reinsurance. In making this determination, the commissioner may rely upon recommendations published through the NAIC Committee Process.

***Applicable Reinsurance Agreements*:**

Model Law (#785), Section 2, (F), (7) should mirror the terms of the Covered Agreement by deleting the last sentence of the proposed language.

Rehabilitation, liquidation or conservation proceedings

Model Law (#785), Section 2, (F) (5) should mirror the terms of the Covered Agreement:

> Upon the entry of an order of rehabilitation, liquidation or conservation against a ceding insurer by a Court, the ceding insurer, or its representative, may seek and, if determined appropriate by the court, may obtain an order requiring that the assuming reinsurer post collateral for all outstanding ceded liabilities.

***Commissioner Discretion*:**

ABIR supports the work of the NAIC serving the diverse interests and priorities across its membership. The potential for a State Commissioners to exercise discretion without parameters or process, however, gives rise for concern in terms of consistent application. For example, Section 2, (F), (1) (a) (ii) of the Credit for Reinsurance Model Law (#785) defers the determination of a qualified jurisdiction to the commissioner and defines it as one which among others "meets certain additional requirements as specified by the commissioner in regulation." The Model Regulation (#786), Section 9, (B), (2), (e) allows the Commissioner to use its discretion when determining additional factors to be taken into account when assessing/ identifying a Reciprocal Jurisdiction. This discretion is not limited by established regulation promulgation processes.

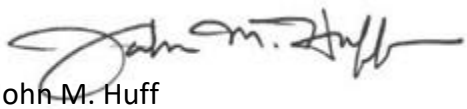
Qualified Jurisdictions are subject to a rigorous assessment process to obtain that status with state regulators and the NAIC, a process which is done in collaboration and coordination through the NAIC committee process. For a Commissioner to possibly exercise discretion to not recognize a qualified jurisdiction as a 'reciprocal jurisdiction' creates a significant amount of uncertainty; something which is not extended to jurisdictions falling under scope of a covered agreement. These variations may put qualified jurisdiction assuming insurers at a competitive disadvantage by creating an uneven playing field.

ABIR recommends early consideration of accreditation issues surrounding implementation of the models and consistent implementation by the States. Consistent implementation of the models will be key to successful modernization of the Credit for Reinsurance Models. It is highly

recommended that the NAIC Financial Regulation Standards and Accreditation (F) Committee accreditation process begin immediately after the approval of the models.

ABIR appreciates the opportunity to provide these comments and we look forward to the NAIC Summer National Meeting in Boston for further discussion of the proposed revisions to the Credit for Reinsurance Model Law (#785) and the Credit for Reinsurance Model Regulation (#786) to Incorporate Relevant Provisions of the Bilateral/Covered Agreement.

Sincerely,



John M. Huff
President & CEO

BILTIR
BERMUDA INTERNATIONAL LONG TERM INSURERS AND REINSURERS

July 23, 2018

VIA EMAIL to jstultz@naic.org and dschelp@naic.org

Reinsurance Task Force at the National Association of Insurance Commissioners
1100 Walnut Street
Suite 1500
Kansas City, MO 64106-2197

RE: Proposed Revisions to the Credit for Reinsurance Model Law and Regulation

The Bermuda International Long Term Insurers and Reinsurers ("**BILTIR**") thanks the National Association of Insurance Commissioners ("**NAIC**") for its commendable work on extending the benefits of the Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance (the "**Covered Agreement**") to Qualified Jurisdictions like Bermuda. The following comments are submitted by BILTIR, on behalf of our member companies, regarding "*Proposed Revisions to the Credit for Reinsurance Model Law and Regulation"* (the "**Proposals**").

BILTIR was formally incorporated on June 9, 2011 and represents 59 companies. BILTIR is committed to supporting the long term insurance and reinsurance industry's growth and success in Bermuda and globally.

We thank you for the opportunity for BILTIR members to share our thoughts and comments on the Proposals, which we outline below.

1. Support for General Direction

The Proposals represent an important step in international insurance regulatory cooperation. BILTIR supports the direction of the Proposals, which in our view go a long way to level the playing field and produce one standard that applies to all reinsurers meeting a basic set of standards.

Therefore, while BILTIR has additional suggestions, we support the NAIC's general direction and framework for revising the models.

2. Treatment of Non-EU Qualified Jurisdictions

We do emphasize that for the goal of a level and consistent playing field to be fulfilled, the requirements placed upon EU jurisdictions under the Covered Agreement and the requirements placed upon non-EU Qualified Jurisdictions need to be identical. Likewise, the framework in the

NAIC models needs to provide absolute certainty regarding those requirements in order for the industry and its regulators to evaluate whether the requirements are the same.

Several sections in both the Credit for Reinsurance Model Law (#785) ("**Model Law**") and Credit for Reinsurance Model Regulation (#786) ("**Model Regulation**") provide uncertainty in this area. For example, section F(1)(h) of the Model Law proposal requires the assuming insurer to "satisfy any other requirement deemed relevant by the commissioner" for its cedant to receive the benefit of the credit for reinsurance provisions. Furthermore, the definition of "Reciprocal Jurisdiction" in section 9(B)(2)(e) of the Model Regulation includes "[s]uch additional factors as may be considered in the discretion of the commissioner". Since the regulation would be expected to provide additional details, the framework appears to leave the open-ended potential for additional requirements to be imposed on non-EU jurisdictions. We recommend that further clarity be provided on what these additional requirements are.

We also seek clarity on whether the process for determining whether jurisdictions qualify as "Reciprocal Jurisdictions" will be the same as or different from the current process of determining whether jurisdictions qualify as "Qualified Jurisdictions".

3. Minimum Capital and Solvency Ratios

While BILTIR supports replacing financial strength ratings requirements with requirements to maintain on an ongoing basis solvency capital requirement ("**SCR**") (or equivalent) of the home jurisdiction, for the sake of clarity we would suggest that section 9(c)(3)(a) of the Model Regulation be revised to indicate that the solvency regime applicable in the relevant Qualified Jurisdiction will apply i.e.: revised language as follows:

> Section 9 (c)(3)(a) of the Model Regulation:
> "The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, as follows:
>
> (a) A solvency ratio of one hundred percent (100%) of the SCR as calculated under the Solvency II Directive issued by the European Union, or such ~~any similar successor solvency~~ ratio, as applicable ~~*in the territory*~~ *in the Reciprocal Jurisdiction* in which the assuming insurer has its head office or is domiciled; as applicable".

4. Cedant's Insolvency

We believe that subsection F(5) of the Model Law amendments runs counter to the language of the Covered Agreement. Article 2, paragraph (k) of the Covered Agreement states: "if subject to a legal process of resolution, receivership, or winding-up proceedings as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the

resolution, receivership, or winding-up proceedings is pending, may obtain an order requiring that the assuming insurer post collateral for all outstanding liabilities (…)".

We would therefore support the draft language of subsection F(5) of the Model Law being revised with the following language:

"The commissioner or the commissioner's representative may seek from the court supervising a ceding insurer's rehabilitation or liquidation, an order requiring that the designated reinsurer post collateral for all the designated reinsurer's outstanding liabilities to the ceding insurer".

5. Serious Non-Compliance

We agree with the elements of subsection F(1)(d)(i) of the Model Law amendments that would require the assuming insurer to notify the commissioner if it has been in "serious noncompliance" with applicable law. However, we find the relevancy of the wording pertaining to any determination by the commissioner to be unclear and recommend that the phrase "as determined by the commissioner" either be deleted or the intent further clarified.

6. Home Jurisdiction Confirmation

We recommend deleting the phrase "at a time determined by the commissioner" contained insubsection F(1)(g) of the proposed amendments to the Model Law, but are supportive of the requirement for the assuming insurer's home jurisdiction to confirm its capital and surplus as well as solvency ratio annually.

7. Disparate Treatment of Non-EU Insurers

We note that sections F(1)(b), (c), and (h) of the proposed amendments to the Model Law, and sections 9(B)(2)(e), 9(C)(3)(d) and 9(C)(8) of the Model Regulation all provide for potential disparate treatment of non-EU insurers. BILTIR therefore respectfully requests that the NAIC work toward a framework that treats EU and non-EU jurisdictions equivalently, and provide additional clarity regarding the standards imposed on non-EU jurisdictions.

We thank the NAIC for the opportunity to provide our feedback on the Proposals and are happy to address any questions you may have.

Sincerely,

BILTIR

CC BILTIR Board of Directors

THE CINCINNATI INSURANCE COMPANIES

The Cincinnati Insurance Company ▪ The Cincinnati Indemnity Company
The Cincinnati Casualty Company ▪ The Cincinnati Specialty Underwriters Insurance Company
The Cincinnati Life Insurance Company

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July 23, 2018

Honorable Maria T. Vullo, Chair
Reinsurance Task Force
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

RE: Comments of The Cincinnati Insurance Companies on Proposed Revisions to the Credit for Reinsurance Model Law (785) & Regulation (786)

Dear Superintendent Vullo:

The Cincinnati Insurance Companies ("Cincinnati") offer the following comments on the proposed changes to the Credit for Reinsurance Model Law (785) and Model Regulation (786), as exposed for comment by the Reinsurance Task Force on June 21, 2018.

INTRODUCTION. The proposed changes are being pursued by the NAIC to implement the terms of the covered agreement agreed to by United States and the European Union (EU) relating to reinsurance collateral, and to offer similar relief from reinsurance collateral to qualifying non-EU jurisdictions. The proposed changes would create a new category or foreign jurisdiction to be known as a "Reciprocal Jurisdiction." These jurisdictions would include jurisdictions that have entered into a treaty or other international agreement with the United States governing credit for reinsurance, and to other jurisdictions that have already been designated as a Qualified Jurisdiction and that meet certain other requirements. Reinsurers domiciled or headquartered in Reciprocal Jurisdictions would not be required to post collateral.

KEY PRINCIPLES. When the Reinsurance Task Force held its public hearing on this issue on February 20, 2018 in New York City, we emphasized four key principles in our public testimony:

1. To ensure the primacy of state insurance regulation in the implementation of the covered agreement, and when considering possible approaches to extend the covered agreement's zero reinsurance collateral benefit to non-EU jurisdictions (i.e., no new covered agreements, which erode the primacy of state insurance regulation).
2. To ensure that no jurisdiction gets the benefit of zero reinsurance collateral without granting mutual recognition of the entire U.S. system of insurance regulation.
3. To only grant the benefit of zero reinsurance collateral to non-EU jurisdictions which agree to adhere to all terms and conditions included in the U.S.-EU covered agreement.

4. To require reversion to 100% collateral for any assuming reinsurer domiciled in a jurisdiction which breaches the terms and conditions of the covered agreement, or breaches similar terms and conditions imposed upon non-EU jurisdictions as a condition to obtain the benefit of zero collateral.

Although the revisions to the Credit for Reinsurance Model Law (785) and Model Regulation (786) exposed for comment on June 21 are generally consistent with these key principles, they do fall short in several respects, as more fully explained below.

COMMENTS SUBMITTED BY OUR TRADE ASSOCIATIONS. We are members of three national insurance trade associations (ACLI, PCI and RAA), all of whom are preparing their own comments on the proposed changes to the Credit for Reinsurance Model Law (785) and Model Regulation (786). Having been privy to, and involved in, the preparation of the comment letters to be submitted by ACLI, PCI and RAA, we believe you will find those comment letters to be most helpful as you consider the need for amendments and clarifications to the Model Law & Regulation changes proposed by the Reinsurance Task Force on June 21.

CINCINNATI'S PRIMARY CONCERNS WITH THE PROPOSED CHANGES. Our primary concerns with the proposed changes to the Model Law and Regulation include the following:

1. Law vs. Regulation. Except for the forms included in the Credit for Reinsurance Model Regulation (786),[1] we believe that the **entirety** of the regulation, including the changes proposed on June 21, should be incorporated into the Credit for Reinsurance Model Law (785).

   We have always been concerned that too much of the NAIC's Credit for Reinsurance public policy pronouncement was contained in the model regulation, which is more prone to tinkering and gamesmanship than a legislatively-enacted model law. Some might argue that having a model law and a model regulation made sense in the pre-covered agreement era, when state insurance regulators may have needed more flexibility in the regulation of credit for reinsurance, but that is no longer the case. Regulatory flexibility is no longer compatible with the credit for reinsurance paradigm imposed on the states by the covered agreement, which requires strict adherence by all affected parties to the terms and conditions of the covered agreement. Regulatory flexibility is also incompatible with extension of the zero reinsurance collateral benefit to assuming reinsurers in non-EU jurisdictions since strict adherence to the terms and conditions under which the benefit is granted will be critical to all affected parties.

   In both instances (implementation of the covered agreement and adoption of the NAIC's proposed zero collateral paradigm for non-EU jurisdictions), there can be no room allowed for tinkering. The terms and conditions under which assuming reinsurers in Reciprocal Jurisdictions are exempt from posting reinsurance collateral in the U.S., and the terms and conditions under which Reciprocal Jurisdictions grant mutual recognition of the entire U.S. system of insurance regulation, **must be set in stone**.

   We therefore urge the Reinsurance Task Force to consolidate the Credit for Reinsurance Model Law (785) and the Credit for Reinsurance Model Regulation (786), and all proposed revisions, into the Credit for Reinsurance Model Law (785), with one exception: the forms included in the

[1] The forms promulgated in the Credit for Reinsurance Model Regulation (785) include Form AR-1 (Certificate of Assuming Reinsurer); Form CR-1 (Certificate of Certified Reinsurer); Form RJ-1 (Certificate of Reinsurer Domiciled in Reciprocal Jurisdiction); Form CR-F; and Form CR-S.

current Credit for Reinsurance Model Regulation (786), and the newly proposed form (Form RJ-1; Certificate of Reinsurer Domiciled in Reciprocal Jurisdiction), should remain in the model regulation.

2. The "Catch-All" Provisions. The proposed revisions to the Model Law and the Model Regulation include "catch-all" provisions under which any state regulator can supplement the requirements set forth in the models with additional requirements for qualifying as a Reciprocal Jurisdiction.[2] While we recognize that this is a common feature of NAIC models, we are also concerned that a decision by individual state regulators to add to the requirements of the models could prompt some foreign jurisdictions to seek new covered agreements with the U.S. to avoid varying state requirements. We would prefer to avoid additional covered agreements being negotiated since they conflict with the primacy of state insurance regulation. We would therefore urge the Reinsurance Task Force to consider eliminating these "catch all" provisions.

3. Full Mutual Recognition. When the Reinsurance Task Force held its hearing on this issue on February 20, Cincinnati testified that the NAIC must ensure that no jurisdiction gets the benefit of zero reinsurance collateral without granting mutual recognition of the entire U.S. system of insurance regulation. The proposed changes to the Model Regulation provide that a Reciprocal Jurisdiction may not subject U.S. insurers to global group supervision rules unless those requirements are consistent with those of the state granting credit for reinsurance to a ceding insurer or the ceding insurer's domiciliary state.[3] While this is positive, it falls short of an absolute requirement that the jurisdiction provide full mutual recognition of the entire U.S. system of regulation. Cincinnati urges the Reinsurance Task Force to add broader language clarifying that full mutual recognition is required.

4. Requiring Reversion to 100% Collateral. When the Reinsurance Task Force held its hearing on this issue on February 20, Cincinnati testified that a 100% reinsurance collateral requirement **should** be immediately imposed upon any assuming reinsurer domiciled in a jurisdiction which breaches the terms and conditions of the covered agreement, or breaches similar terms and conditions imposed upon non-EU jurisdictions as a condition to obtain the benefit of zero collateral. Section 9(F) of the proposed revisions to the Model Regulation seems to address this situation, but does not mandate reversion to 100% collateral when a breach occurs.[4] Cincinnati urges the Reinsurance Task Force to add clearer language clarifying that 100% collateral shall be immediately imposed in such cases and the procedures for re-imposing the 100% requirement.

Thank you for consideration of Cincinnati's comments.

Sincerely,

Scott A. Gilliam
Vice President—Government Relations
The Cincinnati Insurance Companies
Email: scott_gilliam@cinfin.com
Phone: 513-607-5717

[2] Proposed Revisions to Model Law (785), Section F(1)(h). Proposed Revisions to Model Regulation (786), Section 9(B)(2)(e).
[3] Proposed Revisions to Model Regulation (786), Section 9(B)(c)(2).
[4] Under Section 9(F), a commissioner "may revoke or suspend the eligibility of an assuming reinsurer" for zero collateral when a breach occurs, or "may require the assuming reinsurer to post security" when a breach occurs.

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July 23, 2018

Superintendent Maria T. Vullo, Chair
NAIC Reinsurance (E) Task Force
NAIC Central Office
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197
Attn: Jake Stultz and Dan Schelp

Re: Credit for Reinsurance Model Law (#785) and Credit for Reinsurance Model Regulation (#786)
Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance

Dear Superintendent Vullo and members of the Reinsurance Task Force,

CNA Financial Corporation (referred to in this letter as CNA, the Company, we, our, and us) appreciates the opportunity to provide written comments on proposed revisions to the *Credit for Reinsurance Model Law (#785)* and the *Credit for Reinsurance Model Regulation (#786)* in order to implement the *Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance* ("Bilateral Agreement").

Overall, CNA believes the proposed revisions reflect the amendments necessary to comply with the Bilateral Agreement. We appreciate the NAIC's thoughtful consideration and inclusion of many of the suggestions made by the stakeholders at the February 20th hearing in New York City. In particular, we believe the Reciprocal Jurisdiction concept is an elegant solution to the mutual recognition of group supervision concern that CNA and many other constituents raised at the hearing.

The one area of the proposal that CNA is concerned with is the disproportionate amount of guidance currently located in the regulation rather than the model law, rendering the model law impossible to implement without simultaneous adoption of the regulation. Unfortunately, the manner in which regulations are adopted varies by state. Therefore, it should be anticipated that in at least a handful of states the simultaneous adoption and implementation of these critical standards will not occur, causing inconsistent application and exposing gaps in the U.S. regulatory framework. We would suggest that more specific requirements be included in the model law to avoid this concerning situation. For example, the specific solvency and capital requirements that the reinsurer must meet and the process by which a commissioner is able to revoke a reinsurer's eligibility in the event of non-compliance is articulated in the regulation and not discussed in the model law. We propose that the law be modified to reflect these very critical provisions which would reduce the exposure to inconsistent application by the states.

In addition, the law provides for a significant amount of regulatory discretion, including the ability to "…approve a jurisdiction that does not appear on the list of Reciprocal Jurisdictions in accordance with criteria to be developed under regulations issued by the commissioner."[1] CNA proposes that the addition of any Reciprocal Jurisdiction is limited to the NAIC Committee Process in order to prevent regulatory

[1]*From the Credit for Reinsurance Model Law (#785) – F(2)(a) June 21, 2018 exposure draft*

arbitrage, similar to the publishing of qualified jurisdictions. This discretionary authority is particularly concerning when coupled with the ability of a commissioner to add an assuming insurer to the Reciprocal Jurisdiction list if an NAIC accredited jurisdiction has added such assuming insurer, as outlined in the law in paragraph F(3).

As always, CNA appreciates the opportunity to respond to these very important issues and would be available to answer any questions regarding our comment letter at the upcoming Boston National Meeting.

Sincerely,

Jeffery C. Alton

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9 Kanda Awajicho 2-Chome, Chiyoda-Ku Tokyo 101-8335, Japan
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July 23, 2018

Superintendent Maria T. Vullo
New York State Department of Financial Services
Chair, NAIC Reinsurance (E) Task Force
Via email to jstultz@naic.org, dschelp@naic.org

Re: GIAJ Comments on proposed revisions to the Credit for Reinsurance Model Law (#785) and the Credit for Reinsurance Model Regulation (#786)

Dear Superintendent Vullo,

The General Insurance Association of Japan (GIAJ)[1] appreciates the opportunity to comment on the proposed revisions to the Credit for Reinsurance Model Law (#785) and the Credit for Reinsurance Model Regulation (#786).

We welcome the overall direction of the revisions which, in general, take account of the principles we highlighted in our February comments[2] to the NAIC, including consistency with existing rules, fair treatment among reinsurers, efficiency of supervision, and removal of duplicative regulations.

We also believe that the proposed revisions effectively leverage the existing framework of Qualified Jurisdictions under Credit for Reinsurance Model Law (#785) and the Credit for Reinsurance Model Regulation (#786). We acknowledge that the proposed revisions realize reform in an efficient way by creating a new category of jurisdiction ("Reciprocal Jurisdictions"), which comprise Qualified Jurisdictions that meet certain requirements and allow credit for reinsurance ceded to an assuming insurer that has its head office or is domiciled in a Reciprocal Jurisdiction.

We expect each state regulator and the National Association of Insurance Commissioners (NAIC) to continue to move forward with the amendment and implementation of the Model Law/Regulation as well as the development of criteria and a process with respect to Reciprocal Jurisdictions in line with its objectives to promote improved regulation, effective competitive markets and policyholder protection.

[1] GIAJ is an industry organization whose 26 member companies account for about 95 percent of the total general insurance premiums in Japan which is one of seven jurisdictions listed in the NAIC List of Qualified Jurisdictions. Some of our members or their affiliates are certified reinsurers.
[2] https://www.naic.org/documents/cmte_e_reinsurance_related_180220_public_hearing_comment_letters.pdf

Our comments on individual points are as follows:

Model Regulation 9.B.(1)

We understand that a jurisdiction needs to meet one of the conditions set under 9.B.(1) and (2) of Model Regulation (#786) to be identified as a Reciprocal Jurisdiction. Therefore, “and” at the end of 9.B.(1) should be replaced with “or” in line with 2.F.(1)(a)of Model Law (#785).

Model Regulation 9.B.(2)(c)

9.B.(2)(c) of Model Regulation (#786) requires Qualified Jurisdictions to “provide” through statute, regulation or the equivalent that U.S. insurance groups will not be subject to group supervision by the qualified jurisdiction at the level of the worldwide parent undertaking. From the standpoint of efficiency, each state regulator and the NAIC should be satisfied if such an exemption is secured, in effect, and avoid requiring Qualified Jurisdictions to introduce prescriptive measures.

In order to clarify this point, the exordium of 9.B.(2)(c) could be rewritten as follows: “Provides through statute, regulation or the equivalent in such qualified jurisdiction, to the effect that”.

We wish to have clarification that this provision is not intended to, a) subject an insurance group whose “ultimate” parent is a non-U.S. undertaking to group supervision by the commissioner and b) deny group supervision by a non-U.S. jurisdiction where “ultimate” parent is domiciled in such jurisdiction. The NAIC should take due care in drafting this section so that phrases such as “domiciled or maintain their headquarters” will not create any misunderstanding.

Also, with regard to the term “headquarters”, we wish to have clarification whether there is any particular intention behind the use of this term since the term “head office” is used in other parts of the Model Law/Regulation.

Model Regulation 9.B.(2)(d)

With regard to the “memorandum of understanding” referred to in 9.B.(2)(d) of Model Regulation (#786), the use of The International Association of Insurance Supervisors (IAIS) Multilateral Memorandum of Understanding (MMoU) in line with 11.b. of “Process for Developing and Maintaining the NAIC List of Qualified Jurisdictions” should be allowed from the standpoint of consistency and efficiency of supervision.

Model Regulation 12. and 13.

The title of Model Regulation (#786) 12. and 13. should be amended as follows to reflect the addition of the new section 9:

- Section 12. Trust Agreements Qualified under Section ~~10~~ 11
- Section 13. Letter of Credit Qualified under Section ~~10~~ 11

Other comments

Periodic Evaluation of QJ and RJ

With regard to the Periodic Evaluation to which a QJ is to be subjected, we strongly encourage the Qualified Jurisdiction Working Group to introduce an abbreviated process that focuses on material changes in the applicable reinsurance supervisory system, as stipulated in 12.c. of "Process for Developing and Maintaining the NAIC List of Qualified Jurisdictions".

We wish to learn whether or not a QJ that meets the additional requirements (to be determined as a "Reciprocal Jurisdiction") will also be subject to re-evaluation every five years. If this is the case, such re-evaluation should be conducted in an abbreviated manner.

Assuming insurer and assuming reinsurer

We wish to have clarification if distinctions are made with regard to the use of the terms "assuming insurer" and "assuming reinsurer" in the Model Law/Regulation. We note that the term "assuming insurer" is used in the existing part of the Model Law/Regulation while the term "assuming reinsurer" is used in the "Bilateral Agreement between the United States of America and the European Union on Prudential Measures regarding Insurance and Reinsurance".

Sincerely,

Makoto Kawagoe
General Manager,
International Business Planning Department
The General Insurance Association of Japan

hannover re®

July 23, 2018

Superintendent Maria T. Vullo
Chair, Reinsurance (E) Task Force
National Association of Insurance Commissioners
Reinsurance Task Force

Dear Superintendent Vullo:

Hannover Re is pleased to provide these comments on the proposed revisions to the Credit for Reinsurance Model Law (the "Model Law") and Credit for Reinsurance Model Regulation (the "Model Regulation"), which were released on June 21, 2018. These changes are required to implement the provisions of the "Bilateral Agreement between the European Union and the United States of America on Prudential Measurers Regarding Insurance and Reinsurance" (more commonly known, and referred to below as, the "EU-US Covered Agreement" or the "Covered Agreement".)

As an initial matter, we wish to acknowledge and thank the Reinsurance Task Force for the prompt action it has taken in preparing these revisions. As discussed below, we also believe that this initial draft is a very productive step forward. We have a few specific comments, which are set forth below, but we are largely supportive of these draft revisions. We hope that it will be possible to resolve all open issues in Boston during the Task Force meeting.

Furthermore, we note and support the fact that the revisions are contained in new stand-alone sections of the Model Law and the Model Regulation. We believe this will assist significantly in explaining the changes to legislators and other stakeholders.

We do have the following comments on the proposals:

The Model Law

1. Sections 2F(1)(b)&(c) provide that the assuming reinsurer must have and maintain minimum capital and surplus and solvency or capital ratios "in an amount determined by the commissioner". We agree that it makes sense to put the exact amounts in the regulation. For EU and US based reinsurers, these amounts are established in the Covered Agreement. Accordingly, we suggest that these two sections should simply say the amounts "will be set forth in regulations," as opposed to saying "in an amount determined by the commissioner". This will help avoid deviations from the terms of the Covered Agreement.

2. Section 2F(1)(d)(v) requires each reinsurance agreement to include a representation that the assuming reinsurer is not participating in a solvent scheme of arrangement. Although the Covered Agreement provides that reinsurers will not participate in a solvent scheme process, there is no requirement to certify this in every reinsurance agreement, and to do so will be an administrative burden. Moreover, the reinsurer may not always have the chance to request inclusion of individual contract clauses (which are not standard clauses) to a treaty, as certain reinsurance participations will

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follow a lead reinsurer with a final treaty wording. We therefore suggest to add this certification to the mandatory Form RJ-1 where the assuming insurer confirms in writing to comply with this requirement.

3. Section 2F(1)(g) provides that the assuming insurer's domiciliary regulator must provide annual confirmation that the assuming reinsurer meets the capital and surplus and solvency or capital ratio required by law and regulation. The Covered Agreement only requires the domiciliary regulator to certify the minimum capital and surplus amount. We suggest this section be amended to conform with this obligation of the Covered Agreement.

4. Section 2F(1)(h) provides:

> "(h) The assuming insurer must satisfy any other requirements deemed relevant by the commissioner. To the extent that information or agreement is not required by a treaty or international agreement referred to in Subsection F(1)(a)(i), the failure to satisfy such other requirements will not alter the ability of the ceding insurer to take credit for such reinsurance. Nothing in this provision precludes an assuming insurer from providing the commissioner with information on a voluntary basis."

The Covered Agreement sets forth all the reporting requirements which are applicable to EU and US based reinsurers. We assume that the second sentence of (h) is intended to recognize this, but it may be misread by some to provide the commissioner with the authority to require additional reports from reinsurers covered by the Covered Agreement, which we assume is not the case. Accordingly, and to avoid any conflicts with the Covered Agreement, we suggest that this section be amended to read:

> "(h) Except where a treaty or international agreement referred to in Subsection F(1)(a)(i) sets forth the materials and information that are to be provided, the assuming insurer must satisfy any other requirements deemed relevant by the commissioner. The assuming insurer however, may also provide the commissioner with information on a voluntary basis."

The Model Regulation

Section 9(C)(2)(a) provides a US dollar amount for the minimum capital and surplus for qualifying reinsurers from Reciprocal Jurisdictions. The EU-US Covered Agreement provides a euro amount for EU based reinsurers (€226m). This amount should be added to this section. The same change is required in Section 9(C)(2)(b)(i)&(ii).

Section 9(C)(4)(f) and 9(C)(5) provides a series of documents that the reinsurer "must agree in writing" and "must provide" to the commissioner. The Covered Agreements provides that these documents are only to be supplied when requested by the commissioner. Some of this information is easily provided if needed, but some (like lists of all disputed and overdue recoverables) will take a substantial effort to report and it would seem inconsistent with the goals of the Covered Agreement (to reduce regulatory burdens on cross-border reinsurance) to have a blanket requirement for all reinsurers to be required to file all supplemental reports as well as to agree in writing to provide such documents. We suggest that the NAIC adopt the language of the Covered Agreement to provide

respective documents if requested by the commissioner (supervisory authority). This decision, we suggest, should be made in the first instance by the lead state regulator for the qualifying reinsurer.

Section 9(C)(6)(b)&(c) provide US dollar amounts for overdue recoverables. The Covered Agreement provides for euro equivalents, €90,400 and €45,200,000 respectively. These should be referenced.

Section 9(C)(7): As discussed above (see Model Law comment #3), the domiciliary supervisor of the reinsurer is only required by the Covered Agreement to certify the minimum capital and surplus.

Section 9(C)(8): We would suggest the same conforming change as set forth in Model Law comment #4 (above) regarding the authority for the commissioner to request any other information and respectively suggest this section also be amended to read:

> "Except where a treaty or international agreement referred to in Section 9 B (1) sets forth the materials and information that are to be provided, the assuming insurer must satisfy any other requirements deemed relevant by the commissioner. The assuming insurer however, may also provide the commissioner with information on a voluntary basis."

Sections 9(E)(1)&(2) provides a commissioner with the authority to defer to the determination of another accredited state in making a determination that an assuming insurer qualifies under Subsection C. This "lead state" approach with the passporting option for other states has worked well for the NAIC "Certified Reinsurer" process and we strongly support continuing this process for reinsurers from Reciprocal Jurisdictions.

Our final comment relates to two issues which are not addressed in the draft revisions, but which are contained in the EU-US Covered Agreement. Because the Covered Agreement requires amendments to US (and certain EU) laws and regulations, the agreement provides for a delay in the ultimate enforcement of its provisions. This includes an obligation for all new rules to be applicable within 60 months of the signature date of the agreement. As part of this phase in period, however, Articles 9(1)&(2) of the EU-US Covered Agreement provide that

> "(1) From the date of entry into force or provisional application of this Agreement, whichever is earlier, the Parties shall encourage relevant authorities to refrain from taking any measures which are inconsistent with any of the conditions or obligations of the Agreement....
>
> (2) From the date of entry into force or provisional application of this Agreement, whichever is earlier, the Parties shall take all measurers, as appropriate, to implement and apply this Agreement as soon as possible in accordance with Article 10."

The provisional application date of the Covered Agreement was November 17, 2017 and is the date from which Article 9 is applicable. While the NAIC finalizes its amendments to the Credit for Reinsurance Model Law and Credit for Reinsurance Model Regulation and then the states begin to enact these changes, we would like to ask that the Reinsurance Task Force take whatever practical immediate steps it can to harmonize the treatment of reinsurers from EU countries with the terms of

the Covered Agreement. This should include ensuring that reinsurers covered by the EU-US Covered Agreement only have to comply with the filing requirements set forth in the Covered Agreement. We assume and urge that the current uniform annual renewal filing date will be maintained.

We urge US regulators to take these steps, pursuant to Article 9 of the Covered Agreement, as good faith efforts at early implementation of the Covered Agreement. This is similar to what the German Supervisory Authority (BaFin) has done pursuant to administrative action to provide early relief from Germany's local presence requirement, which was of such concern to US reinsurers.

In addition, Article 9(3)(a) of the Covered Agreement provides for a 20% reduction of current collateral amounts per year, so that the collateral amounts are phased out to 0% by the implementation deadline. We believe this collateral reduction could be accommodated by use of the "any other form of security acceptable to the commissioner" language of section 3(D) of the Credit for Reinsurance Model Law.

We appreciate this opportunity to comment on the proposed revisions to the Model Law and Model Regulation. We would be pleased to address any questions or comments you have and to work with you to finalize and adopt these important revisions.

Sincerely Yours

Dr. York von Falkenhayn
General Manager
Regulatory Affairs & Innovation

FROM THE CHIEF EXECUTIVE

INTERNATIONAL
UNDERWRITING ASSOCIATION

18 July 2018

Superintendent Maria T. Vullo
Chair, Reinsurance (E) Task Force
National Association of Insurance Commissioners
Reinsurance Task Force

Dear Superintendent Vullo,

The International Underwriting Association of London (the "IUA") is pleased to provide these comments on the proposed revisions to the Credit for Reinsurance Model Law (the "Model Law") and Credit for Reinsurance Model Regulation (the "Model Regulation"), which were released on 21 June 2018. The IUA members include international insurers and reinsurers who are directly and significantly impacted by US credit for reinsurance rules and regulations. We have long supported the Reinsurance Task Force as it has modified these rules in light of market and regulatory developments.

THE WORLD OF INSURANCE

We greatly appreciate the efforts of the Task Force over the past several months to work to implement the provisions of the Bilateral Agreement Between the European Union and the United States of America on Prudential Measurers Regarding Insurance and Reinsurance" (the "EU-US Covered Agreement" or the "Covered Agreement"). We believe the proposed revisions to the Model Law and Model Regulation are very positive and advance the implementation work greatly. We are particularly supportive of the structure of the new sections of the Model Law and Model Regulation and of the proposals for covering certain non-US jurisdictions who qualify as "Reciprocal Jurisdictions." We think the construct proposed works well and will assist in building strong, reliable and competitive reinsurance markets in the US, the EU and a number of other countries.

We have seen the comments filed by Hannover Re, which we support. In addition, we would like to emphasize a few points:

1. In finalizing these changes we urge you to continue to seek efficiencies – for the benefit of both regulators and reinsurers. The Covered Agreement reflects the trust and confidence that EU and US regulators have in each other to adequately regulate their domestic markets, including reinsurers who operate in each other's markets on a cross border basis. Although the Covered Agreement properly gives regulators the authority to request certain additional information and reports, we hope that these requests will be limited to cases where there is a real need for the "host" regulator to check further on the financial condition and market performance of the

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reinsurer. Many if not all of the reinsurers who will be covered by the new rules have long, well established and impressive track records of operating in and supporting the US insurance market. They are well known to you and you know their regulators well. This same is true for EU regulators (and those from many other jurisdictions). We hope this leads to a norm where there is reliance placed on the domestic regulator for essential prudential and market conduct regulation.

2. We hope that you will make all reasonable efforts to advance the goals of Article 9 of the EU-US Covered Agreement, which calls on regulators to do what they reasonably can to deliver the benefits of the Covered Agreement prior to its implementation deadline. In particular, we hope that you will be able to deliver early application of the Covered Agreement's filing requirements (to replace those currently applicable to Certified Reinsurers) and to provide the phase in of the collateral reduction (20% per year, beginning this year).

3. Finally, we urge you to use the Covered Agreement and your new Reciprocal Jurisdiction provisions to strengthen the relationship between US state regulators and their international counterparts and, where reasonable to do so, to further develop the level of mutual reliance that exists among key regulatory jurisdictions. This will enhance the effectiveness and efficiency of global insurance regulation and it will assist regulators as they face evolving insurance markets and the new regulatory issues – and opportunities – they present.

We appreciate the opportunity to comment on these important revisions. We will be attending the Task Force meeting in Boston and would be pleased to address any comments or questions the Task Force has.

Yours sincerely,

D J Matcham
Chief Executive

IUA OF LONDON
INTERNATIONAL UNDERWRITING ASSOCIATION

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July 23, 2018

VIA Email maria.vullo@dfs.ny.gov

Hon. Maria T. Vullo
Superintendent of Financial Services of the State of New York and
Chair of National Association of Insurance Commissioners Reinsurance (E) Task Force
and members of the Task Force
New York State Department of Financial Services
One State Street
New York, New York 10004-1151

Re: Model Law 785 and Model Regulation 786 update: Request to include Kroll Bond Rating Agency, Approved NRSRO for Certified Reinsurer Purposes

Dear Chair Vullo and Members:

Thank you for the opportunity to comment on Model Law 785 (the "Law") and Model Regulation 786 (the "Regulation")

Because of the recent acceptance of Kroll Bond Rating Agency, Inc. ("KBRA") as an NRSRO for Certified Reinsurer Purposes, KBRA hereby respectfully requests to be included on the current list of acceptable NRSROs in both the Law and Regulation.

We make this request not only based on the acceptance described above, but also because of NAIC's inclusion of KBRA on the list of Uniform Application Checklist and the related matrix.

For your convenience, the attached appendix provides links to the updated Uniform Application Checklist and the related matrix to which KBRA referred above.

KBRA appreciates the work of the Reinsurance (E) Task Force and the Reinsurance Financial Analysis (E) Working Group that culminated in the acceptance of KBRA as an NRSRO for Certified Reinsurer Purposes. KBRA also appreciates the decision to include KBRA in the Uniform Application Checklist for Certified Reinsurers and in the related matrix. KBRA believes that

including KBRA in the Law and in the Regulation will aid in the NAIC's effort to maintain consistency throughout all of the relevant NAIC documentation.

Please feel free to contact me if further information is required.

Sincerely,

Murray R. Markowitz
Chief Compliance Officer

cc (via email): Dan Schelp, Managing Counsel, NAIC (dschelp@naic.org)
Jake Stultz, Senior Accounting Policy Advisor, NAIC (jstultz@naic.org)

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Appendix

At the December 3, 2017 fall national meeting of the Reinsurance (E) Task Force, a recommendation was adopted that the states may consider KBRA as an NRSRO for certified reinsurer purposes, including a) proposed revisions to the Uniform Application Checklist for Certified Reinsurers, with a clarification that the NRSRO must be recognized by the U.S. Securities and Exchange Commission to provide financial strength ratings on insurance companies; and the matrix of ratings and collateral levels for KBRA.

The Uniform Application Checklist for Certified Reinsurers is available on the NAIC website at: https://www.naic.org/documents/committees_e_reinsurance_related_uniform_application_checklist_for_cert_reins.pdf (*see page 6)*

The Certified Reinsurer Secure Ratings Matrix is available on the NAIC website at: https://www.naic.org/documents/cmte_e_reinsurance_financial_analysis_wg_certified_reinsurer_secure_ratings_matrix.pdf

SABRINA MIESOWITZ
Deputy General Counsel

LLOYD'S

July 19, 2018

Via Email

Superintendent Maria Vullo
New York Department of Financial Services
Chair, NAIC Reinsurance Task Force

Re: Proposed Revisions to Models 785 & 786

Dear Superintendent Vullo,

This comment letter is submitted on behalf of Underwriters at Lloyd's, London ("Lloyd's") in response to the proposed revisions to the NAIC Credit for Reinsurance Model Law (#785) and the Credit for Reinsurance Model Regulation (#786) (the "Proposed Revisions"). We appreciate the opportunity to provide these comments. We understand that, as noted in the exposure, the Proposed Revisions are intended to incorporate relevant provisions of the *Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance* (the "Bilateral Agreement"). At the outset Lloyd's would like to thank the Reinsurance Task Force ("RTF") for its work on this issue. The RTF has recognized the importance of implementing the Bilateral Agreement and has moved quickly to progress this issue.

Lloyd's believes that the Proposed Revisions represent a fairly straightforward incorporation of the terms of the Bilateral Agreement into the Models. It is clear that effort was made to follow the language of the Bilateral Agreement closely in order to avoid any gap between the Bilateral Agreement and its implementation. We were glad to see that the provisions of the Bilateral Agreement have been implemented in a manner that will allow the possibility for well-qualified reinsurers from vetted jurisdictions outside the EU to take advantage of the new Reciprocal Jurisdiction/Reinsurer regime. As we noted at the public hearing on this matter in February, implementation in this manner will avoid an un-level playing field in the global reinsurance market.

We do have a concern regarding the requirement related to notification of a reinsurer's participation in a solvent scheme of arrangement. The Bilateral Agreement requires that a reinsurer agree to make certain notifications and post 100% collateral if it enters into a solvent scheme of arrangement. We note that a similar notice requirement is contained in the certified reinsurer provisions of the NAIC Credit for Reinsurance Model Law (#785) and the Credit for Reinsurance Model Regulation (#786). In the Proposed Revisions this requirement was drafted in a manner that requires a provision to be inserted into each and every reinsurance contract. In particular, amended Section 2(F)(1)(d)(v) of Model 785 provides[1]:

> *Each reinsurance agreement must include a representation by the assuming insurer that it is not presently participating in any solvent scheme of arrangement which involves this state's ceding insurers, and agrees to notify the ceding insurer and the commissioner and to provide security in an amount equal to one hundred percent (100%) of liabilities attributable to the ceding insurer consistent with the terms of the scheme should the assuming reinsurer enter into such an arrangement.*

We agree that the Reciprocal Reinsurer regime should include a requirement that the reinsurer must provide notice of a solvent scheme of arrangement impacting US cedants to the cedants and their domiciliary regulators and that the reinsurer must agree to post 100% collateral. However, we do not think that this obligation should be address in a reinsurance contract provision. Rather it should be a legal and

[1] The same language also appears in Section 9(C)(4)(e) of Model 786.

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regulatory requirement. In our experience, it is unusual that a company subject to a regulatory requirement not only comply with that requirement but include an affirmation of such compliance in every contract that such requirement relates to. We are not aware of what additional protection the proposed representation affords cedants. We would suggest that the language of Section 2(F)(1)(d)(v) of Model 785[2] be amended to read as follows:

> ~~*Each reinsurance agreement must include a representation by t*~~*The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement which involves this state's ceding insurers, and agree~~s~~ to notify the impacted ceding insurer(s) and the commissioner and to provide security in an amount equal to one hundred percent (100%) of liabilities attributable to the ceding insurer(s) consistent with the terms of the scheme should the assuming reinsurer enter into such an arrangement.*

We also wanted to make note of one provision which applies specifically to Lloyd's. Section 9(C)(3)(c) deals with the solvency ratio requirement for the Lloyd's market. It provides:

> *If the assuming reinsurer is an association including incorporated and individual unincorporated underwriters, a solvency ratio of one hundred percent (100%) SCR under Solvency II (or any similar successor solvency ratio) or an RBC of three hundred percent (300%) of the authorized control level, as applicable in the territory in which the assuming reinsurer has its head office or is domiciled, as applicable*;

We note that since the Lloyd's market is domiciled in the UK which operates under Solvency II we are subject to this solvency regime. Lloyd's does not operate under the RBC regime. We are aware that this language is included in the Bilateral Agreement and we believe that the reference to RBC in regards to Lloyd's was an oversight. Since this provision contains the word "or" we believe that it is not problematic and Lloyd's will be evaluated in regards to its SCR under Solvency II.

As noted, we very much appreciate the efforts on the RTF in undertaking this implementation work. We look forward to continuing to work with the RTF and individual state regulators to ensure these reforms are adopted.

Regards,

[2] We suggest that the same change be made to Section 9(C)(4)(e) of Model 786.

Comments on June 21, 2018, Exposure Drafts

Amendments to Credit for Reinsurance Models #785 and 786

submitted by Robert Alan Wake, Maine Bureau of Insurance

Overall, I strongly support the proposed amendments, which need to be a high priority. I do have a number of technical suggestions for the Task Force to consider. Suggested revisions to the proposed amendments follow the comments in trackmode.

Effective date (# 785, § 2(F)(7)): By its terms, the CA applies "only to reinsurance agreements entered into, amended, or renewed on or after the date on which a measure that reduces collateral pursuant to this Article takes effect." One question is whether that means the statute or the regulation, but a more fundamental question is when collateral reduction (or rather, elimination) takes effect for a particular reinsurer. Tracking the language of the CA, the current draft provides that Subsection 2(F) applies only to post-effective-date losses incurred and reserves reported under post-effective-date treaties, and not to pre-effective date treaties or losses (redundant, but so is the CA). Beyond that, the draft is silent, leaving a significant hole, and seems to imply that regardless of when a reinsurer first requests recognition as an eligible reinsurer, it's eligible to assume reinsurance from domestic insurers without posting security retroactive to the effective date of This State's version of the Model Act. This makes no sense, and I don't think it's mandated by the CA. The Model Act and the CA do apply to all post-effective-date losses incurred and reserves reported under post-effective-date treaties, but the Model Act, consistent with the CA, applies by establishing a process for recognition as an eligible reinsurer. Collateral elimination should apply prospectively, as of the date that a particular reinsurer is recognized as eligible (subject, perhaps, to a transition process to be established by regulation allowing reinsurers that are already certified or can otherwise demonstrate that they were eligible on the effective date of the Model Act, to apply within a specified time window for a retroactive exemption from security requirements).

"preceding entry into the reinsurance agreement" (#786, §§ 9(C)(5)(a) through (d)): Again faithfully tracking the language of the CA, the Model Regulation calls for a series of filings that an eligible reinsurer must make each time it enters into a reinsurance agreement that's exempt from security requirements. This seems to be the CA's way of trying to make collateral elimination prospective, as discussed in the previous comment, but we should make it clearer and less burdensome, by requiring reinsurers to make only one set of filings, at the time they first request recognition as eligible reinsurers. I've also suggested adding language (at # 785, § 2(F)(1)(e) and # 786, § 9(E)(1)) giving the Commissioner the discretion to accept financial documentation filed with the lead state or the NAIC.

"when the reinsurance is ceded to an assuming insurer meeting each of the conditions" (# 785, § 2(F) preamble; # 786, §§ 9(A) & (C)): The conditions aren't all conditions on the reinsurer. Some of them are conditions on a particular reinsurance agreement. I suppose that technically, they could be treated as reinsurer qualifications, but that would imply that the remedy for a defect in a reinsurance treaty would be to revoke the reinsurer's eligibility under This Subsection, rather than to deny or reduce the credit for that particular treaty unless and until the defect is fixed. I've suggested a reorganization that requires the reinsurance to comply, and separates the conditions on the reinsurer (Paragraph (F)(1) of the Model Act), the jurisdiction

(Paragraph (F)(2)), and the treaty (Paragraph (F)(3)). Similarly, this draft establishes conditions that the assuming insurer must "agree to" at the time it requests recognition and listing as an eligible reinsurer, but doesn't directly require the assuming insurer to actually do them. I've proposed replacing that with a general agreement to comply with the substantive requirements, coupled with substantive requirements the assuming insurer must comply with on an ongoing basis.

"all of the terms of which relevant to credit for reinsurance are in effect" (# 785, § 2(F)(1)(a)(i); # 786, § 9(B)(1)): I don't think "in effect" is the standard we want. The CA takes effect in 2022, but it strongly encourages the states to come into compliance as soon as possible, and we're already in the "provisional application" stage. The real point isn't when it becomes legally binding, it's when we've achieved reciprocity, which means we want to look at more than whether the terms are "effective" – we need to look at whether the jurisdiction is in compliance. Furthermore, what's important to us for reciprocal recognition is the terms relating to reciprocity, and in the case of the EU, the biggest issues involve the group capital and group supervision terms, not the ones "relevant to credit for reinsurance." (We can't interpret this as meaning <u>everything</u> in the CA is relevant to credit for reinsurance, because the "relevant" clause is expressly phrased as words of limitation – if some terms are relevant and some are not, the most likely test for relevance that a judge will apply is whether that's part of the subject matter of a particular term.) Finally, the requirement that "all" relevant terms must be in effect seems overbroad. It's possible that for some reason, some relatively inconsequential provision might not be fully in effect, and by its plain language it's relevant to credit for reinsurance, but we decide it's not sufficiently material to sink the whole agreement. Or we don't even have the power to make that decision, because that side term isn't in effect but the central term requiring us to waive security requirements still <u>is</u> in effect. (Also, if we do keep the "all relevant terms in effect" requirement, the two drafts phrase it slightly differently and neither version really scans grammatically. It might be clearer if it were broken out as "provided that all terms of the agreement that are relevant to credit for reinsurance are in effect.")

"jurisdiction that has entered into a treaty or international agreement" (# 785, § 2(F)(1)(a); # 786, § 9(B)(1)): The one set of jurisdictions that are nearly certain to be recognized as Reciprocal Jurisdictions are the EU member states. But, as recognized in Model Act Clause (ii), <u>they</u> didn't enter into any treaty or international agreement, any more than we did, so we need to fix Clause (i) to recognize the EU.

"agreement regarding credit for reinsurance" (#785, § 2(F)(1)(a)(i); # 786, § 9(B)(1)): "Regarding" isn't the right word. A treaty or agreement <u>requiring</u> reinsurers to post collateral would also be "regarding" credit for reinsurance.

"any contemporaneous statement or statements by the duly authorized department of the United States," (# 785, § 2(F)(1)(a)(i); # 786, § 9(B)(1)): I don't think NCOIL will be the only ones who have concerns with such a vague and open-ended incorporation by reference into state law. If we need to mention this at all, it should be a statement clarifying that the Commissioner can consider such statements in deciding whether a potential Reciprocal Jurisdiction has met its obligations (or perhaps in deciding whether the treaty or agreement in question is the kind we're referring to in this clause). But I don't think we need this language in order to be able to consider these statements as a guide to interpretation, and I don't the statements can ever be

more than a guide to interpretation, especially if the forum where we need to defend our action is a federal court.

Head office, as applicable (# 785, §§ 2(F)(1)(a) & (c); # 786, §§ 9(A) & 9(C)): The phrase "as applicable" isn't found in the Covered Agreement. I suggest deleting it from Subparagraph (1)(a), because it doesn't seem helpful. It suggests that there are different frameworks under which a reinsurer might qualify, and whether we require a particular reinsurer to have its domicile in a reciprocal jurisdiction or to have its head office in a reciprocal jurisdiction depends on which of those frameworks is "applicable" to that reinsurer. As I read the Covered Agreement, it implies that either one will suffice, and we don't have the duty or the power to determine which one is "applicable" in a particular case. Which begs the question what a "head office" is, when a company's domicile and head office are different. Is it an EU thing? A Brexit-related thing? If possible, we ought to have a definition that allows us to determine what a company's "head office" is for purposes of the Model – the Covered Agreement implies that it involves some sort of recognition and quasi-domiciliary regulatory authority exercised by the head-office regulator. On the other hand, the use of "as applicable" in Subparagraph (1)(c) and in § 9(C) of the Model Regulation makes sense, and illustrates the correct usage – if the domicile and the head office are different, the jurisdiction that's "applicable" is the one we've recognized as its home regulator for purposes of Subparagraph (1)(a); however, "and is also licensed" does not belong here. This is a capital requirement – the licensing requirement is separate – and the phrase "and is also licensed" doesn't do anything to help us identify whose capital requirement we're incorporating by reference.

Foreign currency: Model # 786 specifies various dollar amounts, with annual exchange-rate adjustments for foreign currency. But that's not consistent with the CA, which hardwires specific dollar and Euro figures. Other potential Reciprocal Jurisdictions might request similar treatment.

No limit on capacity of parties to agree to contractual terms (Model # 785, § 2(F)(6)): As written, this gives the parties the right to opt out of any of the mandatory contractual terms. That can't be the intent, so I've added clarifying language.

Legal predecessor (# 785, § 2(F)(1)(e); # 786, § 9(C)(5)(a)): If the assuming insurer has a "legal predecessor," that entity is unlikely to still be around for us to impose any requirements. If we need information about the predecessor, we get it from the entity that's currently doing business and has submitted to our jurisdiction.

Assuming reinsurer: We refer variously to the "assuming insurer" and the "assuming reinsurer," sometimes in the same sentence, to mean the same company. The usual terms are "assuming insurer" and "reinsurer." We should either use one of those terms consistently, or use "reinsurer" when talking about the company in general and "assuming insurer" when in the context of a contract with a "ceding insurer" or with a "retrocessionaire."

May require security "consistent with the provisions of Section 3" (Model # 785, § 2(F)(4); Model # 786, § 9(F) (referencing "Section 10," meaning current Section 10, to be renumbered as Section 11)): Not necessarily. There are scenarios where a reinsurer might lose its reciprocal status but still be eligible for credit as a certified or accredited reinsurer or as a reinsurer maintaining a multibeneficiary trust.

"The commissioner may also require that such consent be provided and included in each reinsurance agreement" (# 785, § 2(F)(1)(d)(ii); # 786, § 9(C)(4)(b)(i)): The CA allows us to do it. We should do it, not just give ourselves the power to do it. (Alternatively, if there's concern that the CA only allows the Commissioner to do it and not the Legislature, add the qualifier "if required by the Commissioner" in # 785 and then establish the requirement in # 786.) The current draft also requires a funding clause (actually multiple funding clauses which I've suggested consolidating) and a warranty to the cedent that it isn't participating in a solvent scheme. We should also require all other mandatory clauses required by regulation – *i.e.*, the insolvency clause and the intermediary clause. This requirement is consistent with the CA because it doesn't discriminate between US and EU reinsurers.

"Nothing in this provision precludes an assuming insurer from providing the commissioner with information on a voluntary basis." (# 785, § 2(F)(1)(h); # 786, § 9(C)(8)): This seems to answer a question we're better off not even asking. I can see why the negotiators decided to include it in the CA, which regulates us, but in a regulation that regulates reinsurers, I don't see why this would even be in doubt unless we raise the subject.

Model Act (#785)

F. ~~(1)~~ Credit shall be allowed when the reinsurance is ceded in accordance with the requirements of this subsection to an assuming insurer ~~meeting~~ that has been recognized by the commissioner under Paragraph (1) as eligible for credit by reciprocity~~each of the conditions set forth below~~.

(1) The commissioner shall create and publish a list of assuming insurers that have satisfied the conditions set forth in this subsection and to which cessions shall be granted credit in accordance with this subsection. The commissioner may add an assuming insurer to such list if an NAIC accredited jurisdiction has added such assuming insurer to a list of such assuming insurers or if, upon initial eligibility, the assuming insurer submits the information to the commissioner as required under Paragraph (1)(d) of this subsection and complies with any additional requirements that the commissioner may impose by regulation.~~Credit shall be allowed when the reinsurance is ceded to an assuming insurer meeting each of the conditions set forth below.~~

(a) The assuming insurer must have its domicile or head office ~~or be domiciled~~ in~~, as applicable~~, and be licensed in, a jurisdiction that has been recognized as a reciprocal jurisdiction by the commissioner pursuant to ~~p~~Paragraph (2) of this subsection. ~~A "Reciprocal Jurisdiction" is a jurisdiction that meets one of the following:~~

~~(i) A non-U.S. jurisdiction that has entered into a treaty or international agreement with the United States regarding credit for reinsurance, all of the terms of which relevant to credit for reinsurance are in effect, and which the commissioner has recognized as a Reciprocal Jurisdiction in accordance with the terms and conditions of such treaty or agreement, any contemporaneous statement or statements by the duly authorized~~

Comment [RAW1]: "Such" means "that kind," not "that specific thing."

Comment [RAW2]: The rule seems to be that "this section *(etc.)*" takes lowercase but "Section *(etc.)* N" takes a capital, but if that's the rule, it isn't quite followed consistently.

~~department of the United States, and pursuant to regulations issued by the commissioner; or~~

~~(ii) A qualified jurisdiction, as determined by the commissioner pursuant to [Subsection 2E(3) of Credit for Reinsurance Model Law], which is not also a party to a treaty or international agreement referred to in subsection (i) above (or in the case that the European Union is a party to such treaty or international agreement, is a member state thereof) and which meets certain additional requirements as specified by the commissioner in regulation.~~

(b) The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated according to the methodology of its ~~domiciliary~~ domiciliary or head office jurisdiction, in an amount to be determined by the commissioner pursuant to regulation. If the assuming ~~re~~insurer is an association~~,~~ including incorporated and individual unincorporated underwriters, it must have and maintain on an ongoing basis minimum capital and surplus equivalents (net of liabilities), calculated according to the methodology applicable in its domiciliary or head office jurisdiction, and a central fund containing a balance in amounts to be determined by the commissioner pursuant to regulation.

(c) The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, to be determined by the commissioner pursuant to regulation. ~~If the assuming reinsurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain on an ongoing basis a minimum solvency or capital ratio in the territory where the assuming reinsurer has its head office or is domiciled, as applicable, and is also licensed.~~

(d) The assuming insurer must consent in writing to the jurisdiction of the courts of this state and to the appointment of the commissioner as agent for service of process. ~~The commissioner may also require that such consent be provided and included in each reinsurance agreement under the commissioner's jurisdiction.~~ Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms;

(e) The assuming insurer must agree and provide adequate assurance to the commissioner, in a form specified by the commissioner pursuant to regulation, ~~as follows:~~that it will comply with the requirements of this subsection.

(~~i~~f) The assuming insurer must provide prompt written notice and explanation to the commissioner if:

(i) ~~-~~it falls below the minimum requirements set forth in S~~s~~ubparagraphs (b) and (c);~~,~~

(ii) it enters into a solvent scheme of arrangement which involves this state's ceding insurers;

or

(iii) if any regulatory action is taken against it for serious noncompliance with applicable law as ~~determined~~ defined by the commissioner in regulation;

~~(ii) The assuming insurer must consent in writing to the jurisdiction of the courts of this state and to the appointment of the commissioner as agent for service of process. The commissioner may also require that such consent be provided and included in each reinsurance agreement under the commissioner's jurisdiction. Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms;~~

(~~iii~~g) The assuming insurer must ~~consent in writing to~~ pay all final judgments obtained by a ceding insurer, wherever enforcement is sought, ~~obtained by a ceding insurer,~~ that have been declared enforceable in the territory where the judgment was obtained;

~~(iv) Each reinsurance agreement must include a provision requiring the assuming reinsurer to provide security in an amount equal to one hundred percent (100%) of the assuming reinsurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming reinsurer resists enforcement of a final judgment that is enforceable under the law of the territory in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its resolution estate, if applicable; and~~

~~(v) Each reinsurance agreement must include a representation by the assuming insurer that it is not then presently participating in any solvent scheme of arrangement which involves this state's ceding insurers, and agrees to notify the ceding insurer and the commissioner and to provide security in an amount equal to one hundred percent (100%) of liabilities attributable to the ceding insurer consistent with the terms of the scheme should the assuming reinsurer enter into such an arrangement.~~

(~~e~~h) The assuming insurer, or its legal ~~predecessor or~~ successor~~,~~ where applicable, must provide certain documentation to the commissioner as specified by the commissioner in regulation. The commissioner shall have the discretion to accept documentation filed with another state or with the National Association of Insurance Commissioners in compliance with this requirement.

(~~f~~i) The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements, pursuant to criteria set forth in regulation.

(~~g~~i) The assuming insurer's supervisory authority must confirm to the commissioner on an annual basis, at a time determined by the commissioner, that the assuming ~~reinsurer~~ insurer complies with the requirements set forth in ~~s~~Subparagraphs (b) and (c).

(k~~h~~) The assuming insurer must satisfy any other requirements deemed relevant by the commissioner. To the extent that information or agreement is not required by a treaty or international agreement referred to in Subsection F(1)(a)(i), the failure to satisfy such other requirements will not alter the ability of the ceding insurer to take credit for such reinsurance. Nothing in this provision precludes an assuming insurer from providing the commissioner with information on a voluntary basis.

(2) The commissioner shall create and publish a list of Reciprocal Jurisdictions.

(a) A "Reciprocal Jurisdiction" is a jurisdiction that ~~meets one of the following~~is either:

(i) A non-U.S. jurisdiction that has entered into a treaty or international agreement with the United States ~~regarding credit for reinsurance,~~ that entitles certain assuming insurers regulated in that jurisdiction to assume ~~all of the terms of which relevant to credit for~~ reinsurance from United States ceding insurers without providing security~~are in effect,~~, or in the case of a treaty or international agreement between the United States and the European Union, is a member state of the European Union, and ~~which~~ the commissioner has ~~recognized as a Reciprocal Jurisdiction in accordance with the terms and conditions of such treaty or agreement, any contemporaneous statement or statements by the duly authorized department of the United States, and pursuant to regulations issued by the commissioner~~determined that the jurisdiction is in substantial compliance with all material terms of the agreement, including those requiring reciprocal treatment of United States insurers and reinsurers; or

(ii) A qualified jurisdiction, as determined by the commissioner pursuant to [Subsection 2E(3) of Credit for Reinsurance Model Law], which ~~is not also a party to a treaty or international agreement referred to in subsection (i) above (or in the case that the European Union is a party to such treaty or international agreement, is a member state thereof) and which~~ meets certain additional requirements as specified by the commissioner in regulation.

(b) A list of recommended Reciprocal Jurisdictions shall be published through the NAIC Committee Process. The commissioner shall consider this list in determining whether to recognize a jurisdiction as a Reciprocal Jurisdiction~~s~~, and the commissioner has the discretion to defer to this list. The commissioner may approve a jurisdiction that does not appear on the list of Reciprocal Jurisdictions in accordance with criteria ~~to be developed under~~specified ~~regulations issued~~ by the commissioner in regulation.

(~~b~~c) The commissioner may remove a jurisdiction from the list of Reciprocal Jurisdictions upon a determination that the jurisdiction no longer meets the requirements ~~of~~for a Reciprocal Jurisdiction in accordance with a process set forth in regulations issued by the commissioner. Upon removal of a Reciprocal Jurisdiction from this list, credit for reinsurance ceded to an assuming insurer which has its home office or is domiciled in that jurisdiction shall be allowed ~~, if~~only as otherwise allowed pursuant to [cite to state law equivalent to Credit for Reinsurance Model Law].

(3) All reinsurance agreements eligible for credit under this subsection must include the following provisions:

(a) A provision agreeing to submit to the jurisdiction of the courts of this state and to appoint the commissioner as agent for service of process;

(~~iv~~b) ~~Each reinsurance agreement must include a~~A provision requiring the assuming ~~re~~insurer to provide security in an amount equal to one hundred percent (100%) of the assuming ~~re~~insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if

(i) an order of rehabilitation, liquidation or conservation is entered against the ceding insurer;

(ii) the assuming insurer enters into any solvent scheme of arrangement which involves the ceding insurer; or

(iii) the assuming ~~re~~insurer resists enforcement of a final judgment that is enforceable under the law of the territory in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its resolution estate, if applicable; ~~and~~

(c~~v~~) Each reinsurance agreement must include a representation by the assuming insurer that it is not then presently participating in any solvent scheme of arrangement which involves this state's ceding insurers, and that it agrees to notify the ceding insurer and the commissioner ~~and to provide security in an amount equal to one hundred percent (100%) of liabilities attributable to the ceding insurer consistent with the terms of the scheme~~ should the assuming ~~re~~insurer enter into such an arrangement; and

(d) Any other provisions required by the commissioner in regulation.

~~The commissioner shall create and publish a list of assuming insurers that have satisfied the conditions set forth in this subsection and to which cessions shall be granted credit in accordance with this subsection. The commissioner may add an assuming insurer to such list if an NAIC accredited jurisdiction has added such assuming insurer to a list of such assuming insurers or if, upon initial eligibility, the assuming insurer submits the information to the commissioner as required under Paragraph (1)(d) of this subsection and complies with any additional requirements that the commissioner may impose by regulation.~~(4) If the commissioner determines that an assuming insurer no longer meets ~~the~~ one or more of the requirements under this subsection, the commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this subsection in accordance with procedures set forth in regulation. Revocation of an assuming insurer's eligibility by the commissioner will require the assuming insurer maintain security in a form acceptable to the commissioner and consistent with the provisions of Section 3 or with other provisions of this section, as applicable.

(5) ~~The commissioner shall require a~~An assuming insurer eligible for credit by reciprocity under this subsection ~~to~~ shall post one hundred percent (100%) security, for the benefit of the ceding insurer or its estate, upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.

(6) Nothing in this subsection shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in that reinsurance agreement not inconsistent with this subsection.

(7) This subsection shall apply only to reinsurance agreements entered into, amended, or renewed on or after the [effective date of ~~adoption of~~ model # 785 revisions], and only with respect to losses incurred and reserves reported from and after the later of (i) the [Model # 785 effective date ~~of adoption~~], or (ii) the effective date of such new reinsurance agreement, amendment, or renewal. ~~This~~ Reinsurance is not eligible for credit under this subsection if it is ceded under ~~shall not apply to~~a reinsurance agreement~~s~~ entered into before the ~~subsection's application~~assuming insurer was recognized by the commissioner under Paragraph (1) as eligible for credit by reciprocity, or if the ~~to~~ ceded losses were incurred or ~~to~~ reserves were posted before the assuming insurer was recognized by the commissioner under Paragraph (1) as eligible for credit by reciprocity ~~subsection's application~~.

Comment [RAW3]: Effective date and date of adoption are usually different.

Model Regulation (#786)

Section 9. Credit for Reinsurance—Reciprocal Jurisdictions

A. Pursuant to [cite state law equivalent of Section 2F of the Credit for Reinsurance Model Law], the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has its domicile or head office ~~or is~~

~~domiciled~~ in, ~~as applicable,~~ and is licensed in, a jurisdiction that has been recognized as a Reciprocal Jurisdiction by the commissioner, in compliance with this section and ~~which meets~~ the other requirements of this regulation.

B. A "Reciprocal Jurisdiction" is a jurisdiction that ~~meets one of the following~~is either:

(1) A non-U.S. jurisdiction that has entered into a treaty or international agreement with the United States that entitles certain assuming insurers regulated in that jurisdiction to assume~~regarding credit for~~ reinsurance from United States ceding insurers without providing security, ~~, all of the terms of which are relevant to credit for reinsurance are in effect,~~ including an agreement entered into pursuant to [Dodd–Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. § 314], or in the case of a treaty or international agreement between the United States and the European Union, is a member state of the European Union, and which the commissioner has recognized as a Reciprocal Jurisdiction in accordance with the terms and conditions of such treaty or agreement~~, any contemporaneous statement or statements by the duly authorized department of the United States,~~ and pursuant to Subsection D of this ~~regulation~~section upon a determination that the jurisdiction is in substantial compliance with all material terms of the agreement, including those requiring reciprocal treatment of United States insurers and reinsurers; ~~and~~or

(2) Any other qualified jurisdiction, as determined by the commissioner pursuant to [cite state law equivalent of Section 2E(3) of the Credit for Reinsurance Model Law and Section 8C of the Credit for Reinsurance Model Regulation], ~~which is not also a party to a treaty or international agreement referred to in subsection (1) above (or in the case that the European Union is a party to such treaty or international agreement, is a member state thereof) and~~ which the commissioner determines meets all of the following additional requirements:

(a) Provides that an insurer with its head office or domicile in such qualified jurisdiction shall receive credit for reinsurance ceded to a U.S.-domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in such qualified jurisdiction;

(b) Does not require a U.S.-domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the non-U.S. jurisdiction or as a condition to allow the ceding insurer to recognize credit for such reinsurance;

(c) Provides through statute, regulation or the equivalent in such qualified jurisdiction, that insurers and insurance groups that are

domiciled or maintain their headquarters in this state or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reported, as applicable, by the commissioner or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction;

(d) Provides through statute, regulation or the equivalent in such qualified jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such qualified jurisdiction; and

(e) Such additional factors as may be considered in the discretion of the commissioner.

C. Credit shall be allowed when the reinsurance is ceded to an assuming insurer ~~meeting~~ in compliance with each of the conditions set forth below.

(1) The assuming insurer must have its domicile or head office ~~or is domiciled~~ in, ~~as applicable,~~ and be licensed in, a jurisdiction that has been recognized as a Reciprocal Jurisdiction by the commissioner.

(2) The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated on an annual basis and confirmed as set forth in Subsection C(7) according to the methodology of its domiciliary jurisdiction, in the following amounts:

(a) No less than $250,000,000; or

(b) If the assuming ~~re~~insurer is an association, including incorporated and individual unincorporated underwriters:

(i) Minimum capital and surplus equivalents (net of liabilities) or own funds of the equivalent of at least $250,000,000; and

(ii) A central fund containing a balance of the equivalent of at least $250,000,000.

~~(c) In determining whether the amount of capital and surplus is equivalent, the commissioner may rely upon foreign currency exchange rates compiled from key market data contributors and established as of the preceding December 31.~~

(3) The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, as follows:

(a) A solvency ratio of one hundred percent (100%) of the solvency capital requirement (SCR) as calculated under the Solvency II Directive issued by the European Union, or any similar successor solvency ratio, as applicable in the territory in which the assuming insurer has its head office or is domiciled, as applicable;

(b) A risk-based capital (RBC) ratio of three hundred percent (300%) of the authorized control level, calculated in accordance with the formula developed by the NAIC, as applicable in the territory in which the assuming insurer has its head office or is domiciled, as applicable;

~~(c) If the assuming reinsurer is an association including incorporated and individual unincorporated underwriters, a solvency ratio of one hundred percent (100%) SCR under Solvency II (or any similar successor solvency ratio) or an RBC of three hundred percent (300%) of the authorized control level, as applicable in the territory in which the assuming reinsurer has its head office or is domiciled, as applicable; or~~

(~~d~~c) Such other solvency or capital ratio as the commissioner finds is appropriate, as applicable in the territory in which the assuming insurer has its head office or is domiciled, as applicable; provided that to the extent that information or agreement is not required by a treaty or international agreement referred to in [cite state law equivalent of Section 2F(1)(a)(i) of the Credit for Reinsurance Model Law], the failure to satisfy such other requirements will not alter the ability of the ceding insurer to take credit for such reinsurance. In making this determination, the commissioner may rely upon recommendations published through the NAIC Committee Process.

Comment [RAW4]: Seems confusing to say "Single assuming insurers must comply with the requirements of either (a) or (b). Lloyd's, on the other hand, must comply with the requirements of either (a) or (b)."

(4) The assuming insurer must agree to and provide adequate assurance, in the form of a properly executed Form RJ-1 (attached as an exhibit to this regulation), of its agreement to the following:

(a) The assuming insurer must agree to provide prompt written notice and explanation to the commissioner if it falls below the minimum requirements set forth in P~~p~~aragraphs (2) and (3) of this subsection, or if any regulatory action is taken against it for serious noncompliance with applicable law.

(b) The assuming insurer must consent in writing to the jurisdiction of the courts of this state and to the appointment of the commissioner as agent for service of process.

(i) ~~The commissioner may also require that s~~Such consent shall also be provided and included in each reinsurance agreement under the commissioner's jurisdiction.

(ii) Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms.

(c) The assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.

(d) Each reinsurance agreement must include a provision requiring the assuming ~~re~~insurer to provide security in an amount equal to one hundred percent (100%) of the assuming ~~re~~insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming ~~re~~insurer resists enforcement of a final judgment that is enforceable under the law of the territory in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its resolution estate, if applicable.

(e) Each reinsurance agreement must include a representation by the assuming insurer that it is not presently participating in any solvent scheme of arrangement which involves this state's ceding insurers, and agrees to notify the ceding insurer and the commissioner and to provide security in an amount equal to one hundred percent (100%) of liabilities attributable to the ceding insurer consistent with the terms of the scheme should the assuming ~~re~~insurer enter into such an arrangement.

(f) The assuming insurer must agree in writing to meet the applicable information filing requirements as set forth in Paragraph (5) of this subsection.

(5) The assuming insurer, or its legal ~~predecessor or~~ successor~~,~~ where applicable, must provide the following documentation to the commissioner:

(a) For the two years preceding ~~entry into the reinsurance agreement~~the assuming insurer's request to be listed by the commissioner as eligible for credit by reciprocity, and on an annual basis thereafter, the assuming ~~re~~insurer's or its legal predecessor's annual audited financial statements, in accordance with the applicable law of the territory of its head office or domiciliary jurisdiction, as applicable, including the external audit report;

(b) For the two years preceding the assuming insurer's request to be listed by the commissioner as eligible for credit by reciprocity~~entry into the reinsurance agreement~~, the solvency and financial condition report or actuarial opinion, if filed with the assuming ~~re~~insurer's supervisor;

(c) Prior to entry the assuming insurer's request to be listed by the commissioner as eligible for credit by reciprocity,~~into the reinsurance agreement~~ and not more than semi-annually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for 90 days or more, regarding reinsurance assumed from ceding insurers from this state; and

(d) Prior to the assuming insurer's request to be listed by the commissioner as eligible for credit by reciprocity,~~entry into the reinsurance agreement~~ and not more than semi-annually thereafter, information regarding the assuming ~~re~~insurer's assumed reinsurance by ceding company, ceded reinsurance by the assuming ~~re~~insurer, and reinsurance recoverable on paid and unpaid losses by the assuming ~~re~~insurer to allow for the evaluation of the criteria set forth in Paragraph (6) of this subsection.

(6) The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:

(a) More than fifteen percent (15%) of the reinsurance recoverables from the assuming insurer are overdue and in dispute as reported to the commissioner or other supervisor of the assuming insurer;

(b) More than fifteen percent (15%) of the assuming ~~re~~insurer's ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of 90 days or more which are not in dispute and which exceed for each ceding insurer $100,000, or its equivalent calculated by reference to foreign currency exchange rates compiled from key data contributors and established as of the preceding December 31; or

(c) The aggregate amount of reinsurance recoverable on paid losses which are not in dispute, but are overdue by 90 days or more, exceeds $50,000,000, or its equivalent calculated by reference to foreign currency exchange rates compiled from key data contributors and established as of the preceding December 31.

(7) The assuming insurer's supervisory authority must confirm to the commissioner on an annual basis that the assuming ~~re~~insurer complies with the requirements set forth in Paragraphs (2) and (3) of this subsection.

(8) If applicable provisions of a treaty or international agreement establishes figures denominated in a Reciprocal Jurisdiction's currency that supersede some or all of the U.S. dollar figures specified in this subsection, those provisions shall control. Otherwise, unless the commissioner agrees to use some different procedure at the request of a particular Reciprocal Jurisdiction, the commissioner shall calculate the dollar equivalent of foreign currency annually by reference to foreign currency exchange rates compiled from key data contributors and established as of the preceding December 31.

(~~8~~9) The assuming insurer must satisfy any other requirements for recognition deemed relevant by the commissioner. Nothing in this provision precludes an assuming insurer from providing the commissioner with information on a voluntary basis. To the extent that information or agreement is not required by a treaty or international agreement referred to in [cite state law equivalent of Section 2F(1)(a)(i) of the Credit for Reinsurance Model Law], the failure to satisfy such other requirements will not alter the ability of the ceding insurer to take credit for such reinsurance.

D. The commissioner shall create and publish a list of Reciprocal Jurisdictions.

(1) A list of recommended Reciprocal Jurisdictions shall be published through the NAIC Committee Process. The commissioner shall consider this list in determining Reciprocal Jurisdictions, and the commissioner has the discretion to defer to this list. The commissioner may approve a jurisdiction that does not appear on the list of Reciprocal Jurisdictions as provided by applicable law, regulation, or in accordance with criteria published through the NAIC Committee Process.

(2) The commissioner may remove a jurisdiction from the list of Reciprocal Jurisdictions upon a determination that the jurisdiction no longer meets one or more of the requirements of a Reciprocal Jurisdiction, as provided by applicable law, regulation, or in accordance with a process published through the NAIC Committee Process. Upon removal of a Reciprocal Jurisdiction from this list credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to [cite to state law equivalent of Credit for Reinsurance Model Law].

Drafting Note: It is anticipated that the NAIC will develop criteria and a process with respect to Reciprocal Jurisdictions that is similar to the NAIC *Process for Developing and Maintaining the NAIC List of Qualified Jurisdictions.* The NAIC and the states intend to communicate and coordinate with the U.S. Department of Treasury and United States Trade Representative and other relevant federal authorities with respect to the evaluation of Reciprocal Jurisdictions, as appropriate.

E. The commissioner shall create and publish a list of assuming insurers that have satisfied the conditions set forth in this section and to which cessions shall be granted credit in accordance with this section.

(1) If an NAIC accredited jurisdiction has determined that the conditions set forth in Subsection C have been met, the commissioner has the discretion to defer to that jurisdiction's determination, and add such assuming insurer to the list of assuming insurers to which cessions shall be granted credit in accordance with this subsection. The commissioner may accept financial documentation filed with the other accredited jurisdiction or with the NAIC in satisfaction of the filing requirements of Subparagraphs (a) and (b) of Subsection C(5).

(2) When requesting that the commissioner defer to another NAIC accredited jurisdiction's determination, an assuming insurer must submit a properly executed Form RJ-1 and additional information as the commissioner may require. A state that has received such a request will notify other states through the NAIC Committee Process and provide relevant information with respect to the determination of eligibility.

F. If the commissioner determines that an assuming insurer no longer meets one or more of the requirements under this section, the commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this section. If an assuming ~~re~~insurer no longer satisfies one of the requirements under this section, the commissioner may require the assuming ~~re~~insurer to post security in accordance with Section 7, 8 or 11, as applicable~~0~~, or adopt any similar requirement that will have substantially the same regulatory impact as security, in order for the commissioner to allow credit for reinsurance ceded by a domestic insurer to an assuming ~~re~~insurer. Before denying statement credit or imposing a requirement to post security or adopting any similar requirement that will have substantially the same regulatory impact as security, the commissioner shall:

(1) Communicate with the ceding insurer, the assuming ~~re~~insurer, and the assuming ~~re~~insurer's supervisory authority that the assuming ~~re~~insurer no longer satisfies one of the conditions listed in Subsection C of this section;

(2) Provide the assuming ~~re~~insurer with 30 days from the initial communication to submit a plan to remedy the defect, and 90 days from the initial communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary for policyholder and other consumer protection;

(3) After the expiration of 90 days or less, as set out in (2), if the commissioner determines that no or insufficient action was taken by the assuming ~~re~~insurer, the commissioner may impose any of the requirements as set out in this ~~S~~subsection; and

(4) Provide a written explanation to the assuming ~~re~~insurer of any of the requirements set out in this ~~S~~subsection.

Governor Michael L. Parson
State of Missouri

Department of Insurance
Financial Institutions
and Professional Registration
Chlora Lindley-Myers, Director

DIVISION OF INSURANCE COMPANY REGULATION

John F. Rehagen, Division Director

Superintendent Vullo,

I am looking forward to reviewing the industry and regulator comments and have just a few of my own that I would like to pass on for consideration. In addition to the new law and regulation revisions I also believe it is important to take the opportunity to update the existing certified reinsurer regulation since it will remain operational. See my thoughts below that I believe will help clear up some items that have caused difficulty in the Reinsurance Financial Analysis Working Group (ReFAWG) process and also to help with consistency between the Certified Reinsurer and Reciprocal Jurisdictions sections when possible.

Suggestions for the draft regulation:

- In Section 9.B.(2)(d) of the model regulation I recommend consideration be given to include the IAIS MMOU as a method to satisfy the information sharing requirement. There could be some confirmation done through the application or through ReFAWG/Qualified Jurisdictions that Reciprocal Jurisdictions agree to provide information under the IAIS MMOU.

Clean up to Section 8 of the existing model regulation:

- Create a new Section 8.B.(3)(v) insert "Kroll Bond Rating Agency". (The Reinsurance TF already approved)
- Revise the chart in Section 8.B.(4)(a) to include Kroll Bond Rating Agency with their equivalent ratings. (The Reinsurance TF already approved)
- Revise 8.B.(4)(h) and 8.B.(7)(d) similar to the draft Model Regulation Section 9.C.(5)(a). I have reviewed a lot of certified reinsurer filings over the years as a member and now Chair of ReFAWG and I have not seen a statutory audit from a qualified jurisdiction that is less conservative than a GAAP or IFRS audit. I believe we should use the most conservative measure for determining compliance with the minimum capital and surplus requirement which is how our companies are being measured.

Sincerely,

John F. Rehagen, CFE, ACI
Division Director
Division of Insurance Company Regulation
Missouri Department of Insurance, Financial Institutions and Professional Registration

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July 23, 2018

Superintendent Maria T. Vullo, Chair (NY)
Director Chlora Lindley-Myers, Vice Chair (MO)
NAIC Reinsurance (E) Task Force
1100 Walnut St.
Kansas City, MO 64016-2197
Attn: Jake Stultz (jstultz@naic.org) & Dan Schelp (dschelp@naic.org)

RE: NAMIC comments on proposed revisions to NAIC Credit for Reinsurance Model Law (#785) and Model Regulation (#786)

Dear Superintendent Vullo, Director Lindley-Myers, Members of the Task Force and Other Interested Regulators,

The following comments are submitted by the National Association of Mutual Insurance Companies (NAMIC)[1] on behalf of its member companies regarding proposed revisions to the NAIC's Credit for Reinsurance Model Law #785 and Model Regulation #786. As you are aware, on June 21, 2018, the NAIC Reinsurance (E) Task Force exposed proposed revisions to the Credit for Reinsurance Model Law (#785) and the Credit for Reinsurance Model Regulation (#786), which are intended to incorporate relevant provisions of the *Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance* ("Bilateral Agreement"), for public comment. These revisions incorporate input from the NAIC public hearing that was held on February 20, 2018 concerning implementation of the Covered Agreement and NAMIC would refer the Task Force to comments it made and submitted on February 6, 2018 in that regard.

By way of background, NAMIC has stated regarding its position on implementation of the Covered Agreement that it is adamantly opposed to preemption of state law in this area of regulation. To avoid preemption, adoption of collateral reform requirements described in the Covered Agreement must be accomplished in a coherent and expedited manner by the U.S. prior to the 2022 deadline. Inherent with any agreed collateral reduction between the U.S and the EU is mutual recognition of the U.S. group supervision and group capital regulatory framework, structure and implementation.

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[1]NAMIC is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies representing 40 percent of the total market. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers.
NAMIC member companies serve more than 170 million policyholders and write more than $253 billion in annual premiums. Our members account for 54 percent of homeowners, 43 percent of automobile, and 35 percent of the business insurance markets.
Through our advocacy programs we promote public policy solutions that benefit NAMIC member companies and the policyholders they serve and foster greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.

NAMIC further opposes any usage of future covered agreements to expand collateral reforms to other jurisdictions. The U.S. state-based approach adequately addresses any concerns expressed by those who seek assurances of a comprehensive impact analysis and a robust regulatory role in safeguarding solvency or other relevant factors for insurers and reinsurers. Further, expansion to other NAIC Qualified Jurisdictions can be accomplished by obtaining sufficient affirmance of mutual recognition among other similar terms as mentioned under the U.S.-EU Covered Agreement.

Regarding the proposed revisions for the Credit for Reinsurance Model Law and Regulation, NAMIC believes for the most part the proposed revisions address concerns as previously expressed to this Task Force. By defining "Reciprocal Jurisdiction" to include a non-U.S. jurisdiction that has entered into a treaty or international agreement as well as contemplating qualified jurisdictions, the definition should address the existing U.S.-EU Covered Agreement parties as well as expansion of collateral reforms to other current or future Qualified Jurisdictions.

Another important component contained in the proposed revisions to the Model Law includes collateral reinstatement where there is a failure to abide by the terms of agreements concerning the same. This is an important incentive to ensure parties continue to abide by certain parameters including, but not limited to, mutual recognition of the U.S. regulatory system without any additional terms or barriers to such relationships arising in an *ad hoc* manner. The prospective effective date is also a useful inclusion in that it will help clarify the terms and respective duties of the parties on a going forward basis and not cause confusion as to existing relations. Finally, the lack of discussion in the Model dealing with "guardrails" is positive as NAMIC has continued to expound that any loss of collateral is already considered in the Risk-Based Capital (RBC) for reinsurance credit design and therefore those concerns should no longer exist.

Despite the positive aspects of these intended provisions, NAMIC and its member companies continue to have questions regarding the following:

<u>The provisions requiring consent to the other aspects of the covered agreement are contained in the Model Regulation as opposed to the Model Law.</u> In order for the states to implement the Covered Agreement, sufficient and substantive authority must be posited to them that has the clear effect of law. Important and necessary clauses concerning mutual recognition should be included in the Model Law provisions to eradicate any questions later in the process.

Since the paramount concern in implementing the Covered Agreement is that state-based regulators will have the clarified legal tools to implement collateral reforms to avoid preemption, there is a deep reliance on the various state adoptions of the reforms including these Model revisions. Consequently, any potential area that could be utilized to argue lack of authority in this regard should be excised. It would make more sense from an assurance and stability standpoint that if the states must undertake these revisions again with their legislatures, then any need to revisit be kept to a minimum and that the maximum support of the legislature through an enacted law for the core principles be accomplished as opposed to rule-making. By way of example, the provisions in the Model Regulation 9(B)(2)(a)-(e) do not appear to be contained in the Model Law.

Moreover, there is a great deal of redundancy in the Model and the Regulation. As mentioned in earlier comments to the Task Force, due to the exigent need for states to adopt these reforms to avoid federal preemption in this area, simplicity and clarity are important considerations for attainment of determined goals. Therefore, the Model Law should speak to those precisely needed concepts while the Regulation should expound and clarify those concepts where discernment is necessary. A revision might need to be made to make the two Models complement each other rather than being redundant recitations and to assure adequate and clear parameters are placed in the Model Law from the outset so there is no confusion at a later critical date.

Should there be more emphasis on the co-existing conditions on the European Union to comply with the mutual recognition as contained in the Covered Agreement? The provisions in 2(F)(1)(a)(i) of the Model Law mentions a "non-U.S. jurisdiction that has entered into a treaty or international agreement with the United States regarding credit for reinsurance..." There should be an inclusion in that phraseology that not only an agreement exists but that the parties are in fact in compliance with the terms.

In the Model Regulation, in section 9(B)(2)(c), the terminology appears to somewhat include group capital within the confines of group supervision. While the two are inter-related, they are two regulatory regimes and there is a concern that acceptance of one of the concepts will or will not necessarily include the other. NAMIC believes this language should be further clarified or defined appropriately.

NAMIC commends the Task Force for its timely handling of its charge and its diligent efforts to move this important regulatory initiative to its intended outcome. While a great deal of work remains to achieve a national adoption of an acceptable reinsurance collateral regime to stave off any federal preemption of state laws pursuant to the Covered Agreement, these Model revisions appear to move the scope in the right direction. NAMIC wants to offer its continued assistance to the Task Force where needed on further modifications deemed necessary as these anticipated revisions are adopted and implemented by the NAIC.

Best regards,

Andrew Pauley, CPCU
Government Affairs Counsel

Property Casualty Insurers
Association of America
Advocacy. Leadership. Results.

Robert W. Woody
Vice President, Policy

July 23, 1018

Honorable Maria T. Vullo
Chair
Reinsurance Task Force
National Association of Insurance Commissioners
1100 Walnut Street
Suite 1500
Kansas City, MO 64106-2197

RE: Proposed Revisions to Credit for Reinsurance Model Law and Regulation

Dear Superintendent Vullo:

The Property Casualty Insurers Association of America (PCI) is pleased to offer the following comments on the proposed changes to the Credit for Reinsurance Model Law (785) and Model Regulation (786). PCI is composed of approximately 1,000-member companies and 340 insurance groups, representing the broadest cross section of home, auto, and business insurers of any national trade association.

The proposed changes would create a new category or foreign jurisdiction to be known as "Reciprocal Jurisdictions." These would include countries that have entered into a treaty or other international agreement with the United States governing credit for reinsurance, but also other jurisdictions that have already been designated as a Qualified Jurisdiction and that meet certain other requirements. Reinsurers domiciled or headquartered in Reciprocal Jurisdictions would not be required to post collateral.

When the Reinsurance Task Force held its hearing on this issue on February 20, PCI testified that the NAIC's top priority in making these changes should be to ensure that any jurisdictions that are not a party to an international agreement must not get the benefit of zero collateral unless they recognize the U.S. system of regulation as being equivalent to those of foreign jurisdictions such that U.S. insurers and reinsurers will not be subject to global group supervision and solvency requirements that differ from those in the U.S. PCI is therefore pleased that the proposed changes to the Model Regulation provide that a Reciprocal Jurisdiction may not subject U.S. insurers to global group supervision rules unless those requirements are consistent with those of the state granting credit for reinsurance to a ceding insurer or the ceding insurer's domiciliary state. However, while this is positive, it falls short of an absolute

requirement that the jurisdiction provide full mutual recognition of the entire U.S. system of regulation. PCI urges the Task Force to add broader language clarifying that full mutual recognition is required.

PCI is pleased that Reciprocal Jurisdiction status would also be denied to any jurisdiction that requires U.S. reinsurers to maintain a local presence as a condition of doing business in non-US jurisdictions. As the Task Force is aware, some foreign jurisdictions have sought to impose such requirements on U.S. reinsurers in the past, and it is therefore vital that the future imposition of such requirements would disqualify a foreign country from Reciprocal Jurisdiction status.

PCI notes that the important requirements noted above have been included in Paragraph B of Section 9 of the Model Regulation but have not been included in the proposed changes to the Model Law. Because they are of such critical importance, PCI strongly urges that these requirements be included in the Model Law as well. The NAIC should also carefully consider including the provisions of Paragraphs C, D, E, and F in the Model Law as well as this would make it clear that all of the requirements for becoming a Reciprocal Jurisdiction are important and could reduce the potential for unhelpful variations in state regulations.

The proposed revisions to the Model Law (in Section F(1)(h)) and the Model Regulation (in Section 9 B(e)) include "catch-all" provisions under which any state regulator can supplement the requirements set forth in the models with additional requirements for qualifying as a Reciprocal Jurisdiction. While we recognize that this is a common feature of NAIC models, we are also concerned that a decision by individual state regulators to add to the requirements of the models could prompt some foreign jurisdictions to seek new covered agreements with the U.S. to avoid varying state requirements. PCI members would prefer to avoid additional covered agreements being negotiated and would therefore urge the Task Force to consider eliminating these "catch all" provisions. The requirements set forth in the models are extensive and, subject to our comments above, we believe they generally set appropriate criteria for qualification as a Reciprocal Jurisdiction.

Thank you for consideration of PCI's comments.

Sincerely,

Robert W. Woody

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July 23, 2018

Superintendent Vullo, Chair
Reinsurance (E) Task Force
National Association of Insurance Commissioner
c/o Mr. Jake Stultz
Via e-mail jstultz@naic.org

Re: NAIC Request for Comments on Proposed Revisions to Credit for Reinsurance Model Law and Regulation to Address the Covered Agreement

Dear Superintendent Vullo:

The Reinsurance Association of America appreciates the opportunity to submit comments on the proposed revisions to the *Credit for Reinsurance Model Law (#785*) and the *Credit for Reinsurance Model Regulation (#786)* to address implementation of 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"), which was signed September 22, 2017. The Reinsurance Association of America (RAA) is a national trade association representing reinsurance companies doing business in the United States. RAA membership is diverse, including reinsurance underwriters and intermediaries licensed in the U.S. and those that conduct business on a cross-border basis.

The RAA appreciates the tremendous and timely progress made by the NAIC with respect to implementation of the Covered Agreement. While the RAA agrees with the overall approach achieved by the proposed revisions to the model law and regulation, we respectfully submit these comments in conjunction with oral comments to be presented at the 2018 Summer National Meeting of the Task Force in Boston in August.

Reciprocal Jurisdiction Requirements

The NAIC should add the delineated requirements that a qualified jurisdiction must satisfy to be deemed a Reciprocal Jurisdiction in model law Section 2(F)(1)(a)(ii), as opposed to only listing them in model regulation Section 9(B)(2). Uniformity in the states with respect to implementation of the model law and regulation is critical. In addition, including the requirements in the model law gives the requirements more legal force and avoids potential or perceived uncertainty for jurisdictions seeking Reciprocal Jurisdiction status.

Further, the inclusion of several provisions in both the model law and regulation create the appearance that Reciprocal Jurisdictions that do not have a formal treaty or other agreement with the U.S. could be subject to additional requirements than those contained in the Covered

Agreement and, therefore, could be subject to more requirements than EU member states under the Covered Agreement. These provisions include:

- "which meets certain additional requirements as specified by the commissioner in regulation" at the end of the paragraph in model law Section 2(F)(1)(a)(ii);
- "[t]he assuming insurer must satisfy any other requirements deemed relevant by the commissioner" in model law Section 2(F)(1)(h); and
- "[s]uch additional factors as may be considered in the discretion of the commissioner" in model regulation Section 9(B)(2)(e).

These provisions create uncertainties regarding the imposition of additional requirements at the commissioner's discretion and the potential for an unlevel playing field for such Reciprocal Jurisdictions. We recommend deleting these phrases or adding a qualifier to provide a level of certainty.

In addition, model regulation Section 9(B)(2)(c) specifies that a Reciprocal Jurisdiction must provide, through statute, regulation or the equivalent, "that insurers and insurance groups that are domiciled or maintain their headquarters in this state or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reported, as applicable, by the commissioner or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction." While we appreciate the intent of this language, we believe that the language should be clarified to require recognition of the overall U.S. state regulatory system, including group supervision and group capital. We also recommend that the language track the Covered Agreement language more closely. At a minimum, we suggest the following modifications to this provision:

> (c) Provides through statute, regulation or the equivalent in such qualified jurisdiction, in recognition of the U.S. state regulatory system, including its approach to group supervision and group capital, that insurers and insurance groups that are domiciled ~~or maintain their headquarters~~ in this state or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reported, as applicable, by the commissioner or the commissioner of the domiciliary state, and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction.

Model law section (F)(1)(g) states that "[t]he assuming insurer's supervisory authority must confirm to the commissioner on an annual basis, at a time determined by the commissioner, that the assuming reinsurer complies with the requirements set forth in subparagraphs (b) and (c). To achieve uniformity and avoid uncertainty for insurers and reinsurers, the NAIC should delete the reference to "at a time determined by the commissioner" or consider setting a specific time for compliance.

In model regulation Section 9(C)(6)(a), the paragraph should reference either the annual statement and/or the preceding December 31. We recommend revising the language as follows: "…overdue

and in dispute as reported to the commissioner or other supervisor of the assuming insurer as of the preceding December 31…"

Equal Treatment for U.S.-Accredited Jurisdictions

The NAIC should consider how the proposed revisions to the Model Law and Regulation impact the treatment of U.S. reinsurers in the United States. U.S. domiciled reinsurers should have the same access to U.S. markets that is afforded to reinsurers subject to the Covered Agreement or under the proposed Reciprocal Jurisdiction category. The NAIC should include specific language that extends the same eligibility for collateral treatment to reinsurers domiciled and licensed in any NAIC accredited state as those extended to reinsurers domiciled in the EU or any other Reciprocal Jurisdiction. A domestic reinsurer in an accredited state logically should receive the benefit in all other states without the need for separate licenses in each state when writing reinsurance in the U.S. Currently, a U.S. domestic reinsurer must obtain a license in all 50 states to get the same collateral treatment that would be accorded to Reciprocal Jurisdictions from the EU or another Reciprocal Jurisdiction under the proposed revisions as well as the language of the Covered Agreement. We propose to expand the definition of Reciprocal Jurisdiction by adding the following language in the model law as Section 2(F)(1)(a)(iii) and in the model regulation as Section 9(B)(3):

> U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as Reciprocal Jurisdictions.

Reciprocal Jurisdictions: Enforcement and Resulting Benefits

In the current model law Section 2(E)(3)(a) and regulation Section 8(C)(2), the qualified jurisdiction rules provide that the reinsurance supervisory system of the non-U.S. jurisdiction will be evaluated, "both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S." A jurisdiction currently must submit to this ongoing review to maintain its status as a Qualified Jurisdiction. To ensure that any Reciprocal Jurisdiction complies with its obligations on an ongoing basis, we believe that the NAIC must: (1) require an MoU with any Reciprocal Jurisdiction (other than the E.U.), or make appropriate amendments to an existing MoU; and (2) develop a more robust and immediate system to deal with non-compliance.

As noted in a "Drafting Note" in the proposed revisions to the model regulation, the NAIC Qualified Jurisdiction (E) Working Group has a Process document that sets forth the rules for developing and maintaining the qualified jurisdiction list. These rules provide that "[i]f the Qualified Jurisdiction Working Group finds the jurisdiction to be out of compliance at any time with the requirements to be a Qualified Jurisdiction, the specific reasons will be documented in a report to the jurisdiction under review, and the status as a Qualified Jurisdiction may be placed on probation, suspended or revoked." The NAIC process should include timely review and enforcement of Qualified Jurisdiction and new Reciprocal Jurisdiction rules.

The consequences to a Reciprocal Jurisdiction that fails to comply with the terms of its status must be immediate and objective. When formulating the rules for Reciprocal Jurisdictions, the NAIC

should include a requirement that a jurisdiction's status will be immediately suspended for prospective business upon a showing of material differential treatment of a U.S.-based reinsurer. Additionally, similar rules and procedures should be created for when an assuming insurer located in a Reciprocal Jurisdiction violates any condition necessary to qualify for zero collateral.

Insolvency Language

In model law Section (F)(5), the language of the model law should more closely track the language contained in the Covered Agreement. The model law states that "[t]he commissioner shall require an assuming insurer under this subsection to post one hundred percent (100%) security, for the benefit of the ceding insurer or its estate, upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer." The Covered Agreement in Article 3, Section 4(k) states that "[i]f subject to a legal process of resolution, receivership or winding-up proceedings as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the resolution, receivership or winding-up proceedings is pending, may obtain an order requiring that the assuming reinsurer post collateral for all outstanding ceding liabilities." The language in the draft model law is broader than that contained in the Covered Agreement. Revising this language to conform to the Covered Agreement language would avoid any conflicts or confusion.

Other Considerations for States' Implementation of Covered Agreement

As an immediate indication that the NAIC and states will be implementing the Covered Agreement terms in good faith, the NAIC and the states may wish to consider relaxing the collateral requirements and those applicable to reinsurers from Reciprocal Jurisdictions in accordance with the Covered Agreement. For example, the Covered Agreement suggests reducing the collateral requirements to 0 over 5 years by reducing the requirements by 20% each year. Another suggestion is that the state regulators, NAIC and the NAIC's Reinsurance Financial Analysis (E) Working Group (REFAWG) could relax the requirement that reinsurers from Reciprocal Jurisdictions provide reconciled financial statements or relieve them from providing actuarial opinions when they are not required to provide actuarial opinions to their non-U.S. based supervisor.

Technical Edits

The word "reported" in model regulation Section 9(B)(2)(c) should be "reporting".

The proposed model Reinsurance Certificate, Form RJ-1, contains minor typos that we suggest be edited as follows:

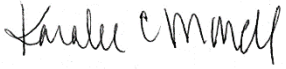
#6 (first line): "Agrees that ~~it~~ in each reinsurance agreement…"

#6 (second line): "…if the assuming **reinsurer** resists enforcement of a final…"

The RAA appreciates the opportunity to offer comments and work with the NAIC to effectively implement the Covered Agreement. We look forward to continued collaboration as the NAIC process advances. Please do not hesitate to contact us with any questions or concerns.

Sincerely,

Frank Nutter
President



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July 23, 2018

Re: NAIC Proposed Revisions to Credit for Reinsurance Models 785 & 786

Dear Mr. Stultz and Mr. Schelp,

Overview

Thank you for the opportunity to comment on the proposed revisions to the NAIC's Credit for Reinsurance Model Law and Credit for Reinsurance Model Regulation. The NAIC's work to implement the collateral reform aspects of the US-EU Covered Agreement are important to Swiss Re. In particular, the ability of re/insurers from qualified non-EU jurisdictions, such as Switzerland, to follow the same collateral rules as re/insurers in the EU is essential to prevent the creation of an uneven playing field. As a general principle, Swiss Re believes that re/insurers from a highly regarded regulatory jurisdiction should be allowed to assume risk freely on a cross-border basis. This principle seems to be supported by the NAIC, given the provisions in the proposed revisions that extend collateral changes and reciprocal jurisdiction considerations to companies and jurisdictions beyond the EU.

While the proposed revisions recognize this key consideration, there are instances in the draft where requirements deviate from the Covered Agreement and create disparate treatment between EU and non-EU re/insurers. The Covered Agreement delegates to the states and the NAIC important implementation powers and we appreciate the NAIC's leadership and this Task Force's leadership in moving ahead with the necessary work. Eliminating unnecessary inconsistencies and disparate treatment will be beneficial to both regulators and industry, and it will deter the other jurisdictions from seeking covered agreements.

For these reasons, Swiss Re recommends eliminating the inconsistencies between the Covered Agreement and the Credit for Reinsurance Models and treating all recognized reinsurers from Reciprocal Jurisdictions, whether subject to a Covered Agreement or not, the same.

Swiss Re

Comments on specific provisions

1. Model Law, Subsection F.(1)(b) and F.(1)(c) – because the Covered Agreement specifies minimum capital and surplus requirements and solvency ratios for EU re/insurers, the section leaves open the possibility for disparate treatment of non-EU re/insurers.

2. Model Law, Subsection F.(1)(h) – this subsection specifically authorizes additional requirements as deemed relevant by the Commissioner, but makes such additional requirements applicable only to non-EU re/insurers. Such disparate treatment is unnecessary.

3. Model Law, Subsection F.(5) – the express requirement for assuming insurers to post 100% collateral in the event of a cedent's rehabilitation, liquidation or conservation is inconsistent with the Covered Agreement provision addressing the same issue. The Covered Agreement provides the opportunity for court ordered 100% collateral, rather than outright imposition of the collateral.

4. Model Regulation, Subsection 9.C.(3) – because the Covered Agreement specifies minimum capital and surplus requirements and solvency ratios for EU re/insurers, the section leaves open the possibility for disparate treatment of non-EU re/insurers.

5. Model Regulation, Subsection 9.B.(2)(e) – this subsection specifically authorizes additional factors may be considered at the discretion of the Commissioner when determining Reciprocal Jurisdiction status, but such discretion would only be available when determining the status of non-EU jurisdictions. Such disparate treatment is unnecessary.

6. Model Regulation, Subsection 9.C.(8) – this subsection specifically authorizes additional requirements as deemed relevant by the Commissioner, but makes such additional requirements applicable only to non-EU re/insurers. Such disparate treatment is unnecessary.

7. Effective Date – while the effective date for the new proposed subsection tracks the effective date language in the Covered Agreement, it is inconsistent with the effective date language applicable to the current certified reinsurer provisions. The current certified reinsurer provisions themselves are not without controversy and confusion. In fact, some states have altered the effective date provisions when adopting the model law and regulation to eliminate the second sentence. Swiss Re suggest that now would be a good opportunity for the NAIC to provide clarity on the application of all collateral reform provisions and make the application of the effective dates consistent between the two sections. Specifically, we recommend using a modification of the first sentence from the certified reinsurer subsection of the model regulation (a sentence that has been used in multiple states as a less confusing alternative to the current regulation language): "Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective

Swiss Re

date of the recognition of the assuming insurer." Similarly, the current provisions in the model regulation should be amended to delete the second sentence in Section 8(A)(5).

We look forward to working with state regulators and the NAIC to refine the necessary revisions and implement them in the states. . Please let us know if there are questions.

Yours sincerely,

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