October 16, 2018

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

Re: Extending Reciprocity with Respect to Reinsurance (E) Task Force Work on the *Credit for Reinsurance Model Law* (#785) and the *Credit for Reinsurance Model Regulation* (#786)

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

Dear Messrs. Schelp and Stultz:

Allstate Insurance Company ("Allstate") appreciates the opportunity to comment on the September 25, 2018 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 especially interested in working with regulators and policymakers to ensure laws and regulations that are modified as a result of the *Bilateral Agreement*[1] ("*BA*") serve the interests of both policyholders and ceding companies. Allstate wishes to bring attention to important recent developments that may not have been identified and evaluated by the NAIC Reinsurance Task Force.

The Task Force has moved with exceptional speed to both incorporate the terms of the *BA* into the models as well as include provisions extending the *BA* to non-European Union ("EU") jurisdictions under specified circumstances through creating a class of reinsurers known as "reciprocal jurisdictions." Since the Task Force's efforts relating to the *BA* began, information has emerged that should be considered within the Task Force's deliberations on the issue of reciprocity before finalizing its work on the Model Law and Regulation. As such, Allstate urges the Task Force and NAIC leaders to pause and consider the latest information available regarding the financial soundness of certain United Kingdom ("UK") based reinsurers that present concerns, while continuing to refine the proposed changes in the models.

United Kingdom Reinsurers Fail Solvency II Tests

Solvency II, which became effective January 1, 2016, determines minimum capital requirements (MCR) for insurance and reinsurance companies in the EU, which currently includes the UK. Prior to the Task Force establishing reciprocity, an investigation of recent activity in the UK involving reinsurers with insufficient Solvency II capital should be conducted as we believe the situation that has emerged suggests a level of reinsurer default risk may exist that is greater than that contemplated in the *BA*. Additionally, we note the absence of adequate disclosures related to actions that may be taken as a

[1] *Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance*

result of the Solvency II capital deficiencies. The following examples have been derived from public information reported to the UK Prudential Regulatory Authority:

- UK based reinsurer with insufficient Solvency II MCR and no additional source of capital may pursue a solvent scheme or scheme of arrangement[2] which would be financially disadvantageous to U.S. insureds and ceding companies as they will receive less money than what is owed/anticipated to be recovered. Potential partial remedy; assuming reinsurer provides letters of credit which may provide an added level of protection for U.S. insureds and cedents.

- UK based reinsurer has capital in excess of its Solvency II MCR, but may nevertheless voluntarily pursue a solvent scheme. In this situation, owners might benefit by settling with creditors on a discounted basis leading to an increase in net equity potentially distributable to current owners. Similar to the situation above, U.S. insureds and cedents may recover less than owed/anticipated to be recovered.

These UK-based situations have not been sufficiently evaluated nor have the potential outcomes or implications. These situations may be material and demonstrate that reciprocal laws and practices do not always operate as anticipated. Expanding the evaluation to the EU and other jurisdictions may yield evidence that raises questions about the potential for adverse financial outcomes to U.S. insureds and ceding insurers. The Task Force may address concerns by including provisions in the models which require capital in excess of the amount specified in the BA as well as ratings triggers to add protection for U.S. ceding companies who are exposed to losses when the credit of assuming reinsurance companies decline.

As always, Allstate is willing to provide its expertise to regulators. Please let us know of comments or questions.

Sincerely,

Kevin Spataro
Senior Vice President, Corporate Accounting Research
Ph: 847-402-0929

Copies to: DiAnn Behrens, Corporate Accounting Research
Marianne Carl, Senior Attorney
Tom Helsdingen, Statutory Reporting
Sam Pilch, Senior Group Vice President, Reinsurance
Robert L. Zeman, Corporate Counsel

[2] A scheme of arrangement is an English statutory procedure regulated by Part 26 (Arrangements and Reconstructions) of the Companies Act 2006 (formerly sections 425 to 427 of the Companies Act 1985). Part 26 of the Companies Act 2006 came into force on 6 April 2008, although legislation permitting schemes of arrangement in various forms has existed for over a century. The statutory provisions allow a company to reach a binding compromise or arrangement with its members or creditors, or any class of them. Source: Sidley Austin LLP, "Schemes of arrangement and their ongoing currency." Last modified 2010. https://www.sidley.com/~/media/files/publications/2010/01/schemes-of-arrangement-and-their-ongoing-currency/files/view-article/fileattachment/schemes-of-arrangement-and-their-ongoing-currenc .pdf.

October 16, 2018

Superintendent Vullo, Chair
Reinsurance (E) Task Force
National Association of Insurance Commissioner
c/o Mr. Jake Stultz and Mr. Dan Schelp
Via e-mail jstultz@naic.org & dschelp@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 American Insurance Association ("AIA")[1] and the Property Casualty Insurers Association of America ("PCI")[2] thank 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). 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 ("Bilateral Agreement") and its impact on the model law and regulation.

AIA and PCI, together with other trade organizations, filed a joint comment letter addressing issues relating to the consistency of the proposed model law and regulation to the Bilateral Agreement and ensuring that the requirements of the models do not impose additional requirements on non-EU jurisdictions. We submit this separate comment letter to address the significant issue of the application of the new zero collateral requirements to new reinsurance agreements. It is critical that the new zero collateral standard for foreign reinsurers qualifying under the reciprocal jurisdiction provisions applies only to reinsurance contracts entered or renewed on or after the foreign reinsurer has qualified for reciprocal status. We also recommend a slight modification to the proposed language to prevent loss portfolio transfers and adverse development cover agreements from exclusion under the new standard.

[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.

[2] PCI promotes and protects the viability of a competitive private insurance market for the benefit of consumers and insurers. 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. PCI members represent all sizes, structures, and regions, which protect families, communities, and businesses in the U.S. and across the globe. PCI members write $245 billion in annual premium, which is 38 percent of the nation's property casualty insurance marketplace.

When the credit for reinsurance model law and regulations were reformed in 2011 to allow U.S. ceding insurers to take credit for reinsurance ceded to certified foreign reinsurers who post less than 100% collateral, it was a fundamental principle agreed to by all interested parties that such new collateral requirements would apply on a prospective basis only. Reinsurance agreements entered into prior to the certification of the foreign reinsurer would still require 100% collateral for credit for reinsurance purposes, while reinsurance agreements entered or renewed on or after the reinsurer's certification would allow collateral posting based on a sliding scale tied to the financial condition and other factors of the certified reinsurer. All interested stakeholders during the discussions on the credit for reinsurance model agreed that ceding insurers' contracts with a foreign reinsurer prior to any subsequent certification of the foreign reinsurer, would retain the right to 100% collateral. This important principle is set forth at Section 8(A)(5) of the credit for reinsurance model regulation: "Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the date of the certification of the assuming insurer."

A similar provision should apply to agreements with qualified reinsurers in reciprocal jurisdictions. A U.S. ceding insurer should have the right to know the applicable collateral requirements when it is entering or renewing the specific reinsurance agreement with a foreign reinsurer. Assuming that the model law and regulations become effective in 2019, if a U.S. ceding insurer enters a reinsurance agreement in 2019 with a certified foreign reinsurer not from a reciprocal jurisdiction, the U.S. ceding insurer knows it has collateral protection based on the applicable sliding scale for that agreement. If the foreign jurisdiction subsequently is recognized as a reciprocal jurisdiction in 2024 and the foreign reinsurer qualifies for zero collateral, the no collateral requirement fairly should apply to all reinsurance agreements entered or renewed on or after 2024. However, it would not be equitable to the U.S. ceding insurer to remove all collateral from existing contracts with the foreign reinsurer entered or renewed from 2018 to 2024, prior to the reinsurer obtaining reciprocal status. Such removal of existing collateral amounts constitutes a retroactive application of the law and deprives the U.S. ceding insurer of a contract right it had when it entered the contract with the foreign reinsurer. As with the attainment of certified reinsurer status, the zero collateral provision should apply solely to contracts entered or renewed after the assuming insurer is recognized as a qualified insurer domiciled and licensed in a reciprocal jurisdiction.

In addition to removing the retroactive application of reciprocal status, AIA recommends that the proposed language in Section 2(F)(7) be modified to remove the "losses incurred" phrase. Tying application of reciprocal status requirements to only those "losses incurred" after reciprocal status negatively impacts loss portfolio transfers and adverse development covers. These type of agreements relate to long tail claims occurring in the past, but with agreements signed after the losses have occurred. However, the current wording of Section 2(F)(7) would have the unintended effect of excluding these contracts from the application of the reciprocal jurisdiction provisions. Removing the "losses incurred" phrase would eliminate this unintended problem.

To prevent retroactive changes to the collateral status of existing contracts and to remedy the loss portfolio transfer problem, we recommend the following modification to proposed Section 2(F)(7) of the model law:

"This subsection shall not apply to reinsurance agreements entered into before the ***~~subsection's application or to losses incurred~~*** ***assuming insurer domiciled and licensed in a reciprocal jurisdiction is listed as qualified n****or to liabilities ceded* ***prior to that listing*** ***~~before the subsection's application~~****."*

We thank 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
Associate General Counsel
American Insurance Association

Robert W. Woody
Vice President, Policy
Property Casualty Insurers Association of America

October 16, 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 accepting several of the comments submitted in our letter dated July 23, 2018. We note however there were certain BILTIR comments that were not addressed in the revised September 25, 2018 version of the "*Proposed Revisions to the Credit for Reinsurance Model Law and Regulation*" (the "**Revised Proposals**"). We believe those areas are fundamental to establishing a workable framework for achieving the goals of the model revisions, and therefore merit the attention of the Task Force as those revisions are finalized.

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

1. Treatment of Non-EU Qualified Jurisdictions

We reiterate that for the goal of a level and consistent playing field to be fulfilled, the requirements placed upon EU jurisdictions under the the *Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance* (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 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) amended September 25, 2018 ("**Model Law**") and Credit for Reinsurance Model Regulation (#786) amended September 25, 2018 ("**Model Regulation**") remain uncertain in this area. For example, as noted in our original comment, 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 still 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 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 continue to provide for potential disparate treatment of non-EU insurers. It is imperative to our BILTIR members 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. Likewise, disparate treatment threatens the core goal of resolving credit for reinsurance and mutual recognition issues through the NAIC model process, rather than other routes of achieving treatment equivalent to the Covered Agreement.

In the same vein, we continue to 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".

2. Cedant's Insolvency

Subsection F(5) of the Model Law was amended, however we still believe the subsection F(5) amendments are inconsistent with 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 (…)". The model revisions have gone out of their way to produce inconsistent results for EU and non-EU jurisdictions.

We have additional concens around the term '*conservation,*' which requires a lower standard to secure a court order, and is designed to be a lighter approach than rehabilitation or liquidation. Additionally, we believe there is a more onerous obligation contemplated to 'post 100% security' rather than to 'post collateral for all outstanding liabilities'. Therefore, we support the draft language of subsection F(5) of the Model Law be 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".

3. New Changes

Lastly, we note there has been additional language added to some sections of the Revised Proposals, for example section 9(B)(2(c) of the Model Regulation, where the implication of the amendment is for qualified jurisdictions to be required explicitly to recognize the U.S. state regulatory system, including its approach to group supervision and group capital, in order to seek to become a Reciprocal Jurisdiction. We suggest the Revised Proposals be designed so that the U.S. state regulatory system also has an obligation to mutually recognize the Reciprocal Jurisdiction's regulatory system including its approach to group supervision and group capital.

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

Sincerely,

BILTIR

CC BILTIR Board of Directors

DEPARTMENT OF INSURANCE
Legal Division, Corporate Affairs Bureau
45 Fremont Street, 24th Floor
San Francisco, CA 94105

Monica Macaluso
Attorney III
TEL: 415-538-4118
FAX: 415-904-5896
E-Mail: Monica.Macaluso@insurance.ca.gov
www.insurance.ca.gov

October 16, 2018

VIA ELECTRONIC MAIL **jstultz@naic.org**

Mr. Jake Stultz
Sr. Accounting Policy Advisor
National Association of Insurance Commissioners
1100 Walnut Street
Kansas City, MO 64016-2197

SUBJECT: Comments Related to the *Credit for Reinsurance Model Law* (#785) and the *Credit for Reinsurance Model Regulation* (#786) Exposure Drafts

Dear Mr. Stultz:

California respectfully presents the following comments related to the *Credit for Reinsurance Model Law* (#785) and the *Credit for Reinsurance Model Regulation* (#786) drafts that were exposed for comment on September 25, 2018.

1. With respect to Section 2.F.7. of #785, as it is presently drafted it begs the question of the effective date of the subsection— we believe the reference to "the subsection's application" is vague. We propose revising the language so the provision would read:

   This subsection shall apply only to reinsurance agreements entered into, amended, or renewed on or after the date on which this subsection takes effect, and only with respect to ceded losses incurred and reserves ceded from and after the later of (i) the effective date of this subsection, or (ii) the effective date of such new reinsurance agreement, amendment, or renewal.

   Alternatively, we support language previously proposed by Maine stating:

   Credit under this subsection may be taken only for reinsurance agreements entered into, renewed, or amended on or after the date the commissioner has determined that the assuming reinsurer is eligible for credit, and may not be taken for reinsurance of losses incurred or reserves reported before that date.

2. We suggest making the language in Section 2.F.1(b) of #785 consistent for assuming insurers and associations, and we propose that this language should remain "in an amount to be determined by the commissioner pursuant to regulation." The reference to "state regulation" is substantively no different than "determined by the commissioner pursuant to regulation," but is different stylistically from traditional NAIC drafting. For additional clarity we also suggest adding "of such jurisdiction" to "determined by the commissioner pursuant to regulation." Regardless, if the Task Force determines to keep the "state regulation" language, this language should be used for both assuming insurers and associations:

   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 ~~domicilary~~ domiciliary jurisdiction, in an amount ~~to be~~ determined by the commissioner of such jurisdiction pursuant to ~~set forth in state~~ regulation. If the assuming reinsurer 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 jurisdiction, and a central fund containing a balance in amounts ~~to be~~ determined by the commissioner of such jurisdiction pursuant to regulation.

3. We also suggest removing the clause, "consistent with the terms of any treaty or international agreement respecting reinsurance credit to which the United States is a party" in Section 2.F.1(d)(v) of #785. This clause makes the provision very long and "consistent with the terms" is redundant to the immediately preceding clause. We question the necessity for this provision, but if the Task Force feels it is necessary, we suggest a pared down alternative clause such as: "provided such arrangement conforms to the requirements of the apposite international reinsurance agreement." The idea here is to revert back to the definition of "international reinsurance agreement" contained at the end of Section 2. F.1(a)(i) of #785.

   Additionally, we believe that the definition of a solvent scheme of arrangement in Section 2.F.1(d)(v) of #785 should be reserved for the regulation. In the current drafts it is in both the law and regulation. It seems more suited for the regulation only.

4. Regarding Section 2.F.6 in #785, we suggest removing "consistent herewith," which is unclear. The language of the provision is trying to connote that the parties are free to negotiate security and other provisions that go beyond the minimum requirements stated in the statute and covered agreement, but the "consistent herewith" muddies the waters and in our view is unnecessary. It is preferable to keep the language here consistent with the certified reinsurer statute.

5. On Form RJ-1, we suggest adding to the end of Item #1 the language that was added in Section 9.C.4(b)(ii) of #786, "except with respect to insolvency or delinquency proceedings" so the language of the form mirrors the language of the regulation.

Sincerely,

Monica Macaluso
Sr. Attorney

cc: Mr. Kenneth Schnoll, General Counsel
Mr. Kim Hudson, Financial Surveillance Branch
Ms. Jennifer Chambers, Sr. Attorney, Corporate Affairs Bureau

EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL MARKETS UNION

REGULATION AND PRUDENTIAL SUPERVISION OF FINANCIAL INSTITUTIONS
The Director

Brussels, 16 October 2018
FISMA.D/MM

Superintendent Maria T. Vullo,
Chair of Reinsurance (E) Task Force
National association of Insurance Commissioner
c/o Mr. Jake Stultz (via email jstultz@naic.org)

Subject: Comments on the Proposed Revisions to the Credit for Reinsurance Model Law and Regulation

Dear Superintendent Vullo,

The Directorate General for Financial Stability, Financial Services and Capital Markets Union of the European Commission appreciates the possibility to comment on the Credit for reinsurance models 785 and 786.

The Bilateral Agreement between the European Union and United States of America on prudential measures regarding insurance and reinsurance ("the Agreement"[1]) provides legal certainty for insurers and reinsurers in the application of the EU and US prudential frameworks. In this respect, the Credit for reinsurance models represent an important step in the implementation of the Agreement as stipulated in Articles 9 and 10 of the Agreement.

Comments on the Credit for Reinsurance Model Law:

1. Section 2 of the Model Law defines reciprocal jurisdiction and in: Section 2(F)(1)(a)(i) states *"in the case of an international reinsurance agreement between the United States and European Union, is a member state of the European Union, and has been determined by the Commissioner to be in compliance with all material terms of the agreement"*.

   The above mentioned section provides the commissioner with power to determine if each individual EU member state complies or not with the terms of the agreement.

   We note that the Agreement provides the benefit of reciprocal jurisdiction to the EU, as party to the Agreement. The Agreement has been concluded between the European Union and the United States and it does not provide for the possibility to treat individual member states differently. The determination of EU member states compliance should not be at the discretion of the commissioner.

   This appears to be inconsistent with the provisions of the Agreement.

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1539695686400&uri=CELEX:22017A1006(01)

Type the address here and use Return to add additional lines.

2. Section 2(F)(1)(d)(ii) relates to the consent to the appointment of the commissioner as agent for service of process. The latest draft of article 2(F)(1)(d)(ii)v removes the reference to the *"under commissioner's jurisdiction"*.

   Article 3(4)(e) of the Agreement stipulates that "*where applicable for "service of process" purposes, the assuming reinsurer provides written confirmation to the Host supervisory authority of consent to the appointment of that supervisory authority as agent for service of process. The Host supervisory authority may require that such consent be provided to it and included in each reinsurance agreement under its jurisdiction*".

   The wording of Article 3(4)e of the Agreement provides for confirmation of consent to be submitted to the Host supervisory authority only. It would appear the new wording of section 2(F)(1)(d)(ii) would mean that confirmation of consent should be submitted to each state in which the assuming insurer intends to operate.

   This appears inconsistent with Article 3(4)e of the Agreement.

3. Section 2(F)(1)(d)(ii) includes an exception for the capacity to agree on alternative dispute mechanism as follows: *"(...), except with respect to insolvency or delinquency proceedings.*"

   Article 3(4) of the Agreement stipulates: *"Nothing in this Agreement shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms*".

   Could you please provide explanation about the need to add the above mentioned exclusion and its consequence ?

4. Section 2F(1)(h) reads as follows *"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"*.

   The above mentioned section expands the requirements that the commissioner can requests from the assuming insurer, beyond what is stipulated in the Agreement. The list of conditions and requirements has been clearly limited to those that feature in Article 3(4) of the Agreement.

   As such, the proposed drafting of Section 2F(1)(h) appears inconsistent with Article 3(4) of the Agreement.

5. The revised version of section 2(F)(7) states: "*This subsection shall not apply to reinsurance agreements entered into before the subsection's application, or to losses incurred or to liabilities ceded before the subsection's application*".

   Article 3(8) of the Agreement reads as follows *"(...) 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, and only with respect to losses incurred and reserves reported from and after the later of (i) the date of the measure, or (ii) the effective date of such new reinsurance agreement, amendment, or renewal"*.

The inclusion of "liabilities ceded before the subsection's application" changes significantly the scope of application of the Agreement as in effect would not allow for reduction of collateral for all the range of contracts falling within the scope of the Agreement.

The proposed wording of Section 2(F)(7) is inconsistent with article 3(8) of the Agreement.

<u>Comments on the Credit for Reinsurance Model Regulation:</u>

6. Section 8(B)7(h) states that *"Upon the initial application for certification, the commissioner will consider audited financial statements for the last three (3) years filed with its non-U.S. jurisdiction supervisor".*

   Article 3(4)h of the Agreement, which specifies that *"with respect to the* ***two years*** *preceding entry into the reinsurance agreement and on an annual basis thereafter, its annual audited financial statements, in accordance with the applicable law of the territory of its head office, including the external audit report*".

   Therefore, the proposed drafting of Section 8(B)7(h) appears inconsistent with Article 3(4)h of the Agreement.

7. Section 9(B)(1) stipulates: "(…) *in the case of an international reinsurance agreement between the United States and the European Union, is a member state of the European Union, and has been determined by the commissioner to be in compliance with all material terms of the agreement"*, and section 9(C)(1) stipulates "*(...) and have its head office or domicile in, a jurisdiction that has been recognized as a Reciprocal Jurisdiction by the commissioner"*.

   The above mentioned section provides the commissioner with power to determine if each individual EU member state complies or not with the terms of the agreement.

   We note that the Agreement provides the benefit of reciprocal jurisdiction to the EU, as party to the Agreement. The Agreement has been concluded between the European Union and the United States and it does not provide for the possibility to treat individual member states differently. The determination of EU member states compliance should not be at the discretion of the commissioner. This would be inconsistent with the provisions of the Agreement.

8. Section 9(C)2(c) and 9(C)6 read as *"In determining whether the amount of foreign denominated capital and surplus is equivalent, the commissioner may rely upon foreign currency exchange rates acceptable to the commissioner*". Therefore it provides some discretion to the commissioner in the currency exchange rate used when determining the amount of foreign denominated capital and surplus.

   The current drafting of the regulation does not reflect the fact that the conversion of foreign denominated capital and surplus are referenced in the Agreement. Article 3(4) of the Agreement provides the euro equivalent to dollars amounts.

Therefore the regulation should add in Sections 9(C)2(c) and 9(C)6: *"if the converted amount is not already specified in an international agreement"*.

9. Section 9(C)(4) (b*)* specifically excludes "*insolvency or delinquency proceedings"* to agree on alternative dispute mechanism.

   The above mentioned exclusion does not fully reflect Article 3(4) of the Agreement which provides that: *"Nothing in this Agreement shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms*".

   Could you please provide explanation about the need to add the above mentioned exclusion and its consequence ?

10. Section 9(C)(5)(c) indicates that *"the assuming insurer or its legal successor, must provide, on behalf of itself and any legal predecessors, the following documentation to the commissioner"*

    Article 3(4)h of the Agreement states that such documents should be provided "***if requested by that supervisory authority***".

    The regulation should use language that appears in the Agreement as its aim is to reduce administrative burden.

11. Section 9(C)8 specifies that "*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 in (...)".*

    The above section expands the requirements that the commissioner can requests from the assuming insurer, beyond what has been stipulated in the Agreement. The list of conditions and requirements has been clearly limited to those that feature in Article 3(4). As such, the proposed drafting of Section 2F(1)(h) appears inconsistent with Article 3(4) of the Agreement.

    As noted, I appreciate the opportunity to offer comments on the model law and regulation. It is important that the model law and regulation reflect the provisions of the Agreement faithfully. I stand ready to continue working with you in close cooperation.

    I remain available for any questions you may have on the above comments.

Yours sincerely,

Martin MERLIN

THE GENERAL INSURANCE ASSOCIATION OF JAPAN
9 Kanda Awajicho 2-Chome, Chiyoda-Ku Tokyo 101-8335, Japan
Tel:+81-3-3255-1703 E-mail:kokusai@sonpo.or.jp

Oct 16, 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 another 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 revisions, which enhance clarity and remove some of the ambiguity of the previous draft. Having said that, in order to further improve clarity, we wish to comment on the remaining ambiguous parts.

Our comments on individual points are as follows:

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

In the previous public comment, the GIAJ made the point that "(f)rom 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". We also suggested revising the first sentence of the Credit for Reinsurance Model Regulation 9.B.(2)(c) to read "Provide through statute, regulation or the equivalent in such qualified jurisdiction, to the effect that...".

While we note that the proposed revision was not made to the given part of the sentence, we wish to have clarification on whether use of the word "equivalent" includes an explanation by the host supervisor of the qualified jurisdiction that it would not impose duplicative worldwide prudential insurance group supervision on U.S. insurance groups.

[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.

In order to clarify this point, we would once again like to suggest revising 9.B.(2)(c) as follows: "by providing through statute, regulation or the equivalent in such qualified jurisdiction, to the effect that…".

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

We encourage each state to honor the spirit of this regulation as closely as possible and avoid introducing additional requirements.

With regards the discretion of the commissioner in considering the additional factors described in 9.B.(2)(e), while we understand that it is the authority of the commissioner to designate a reciprocal jurisdiction, we suggest adding "as necessary, in light of the spirit of this regulation" at the end of the sentence to mitigate concerns over uniformity and consistency of implementation. Otherwise, we request that the NAIC address implementation by each state, including introduction of additional factors, through its accreditation process.

Model Regulation 9.D.Drafting Note

The 9.D. Drafting Note states that the NAIC will develop criteria and a process with respect to Reciprocal Jurisdictions. With regard to such criteria and the processes to which QJ and RJ are to be subjected, to the extent possible we strongly encourage the NAIC to introduce an abbreviated process from the standpoint of supervision efficiency.

Sincerely,

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

FROM THE CHIEF EXECUTIVE

IUA OF LONDON

INTERNATIONAL UNDERWRITING ASSOCIATION

15 October 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 September 25, 2018.

As noted in our July 10, 2018 comment letter on the June 21 exposure drafts of the Model Law and Model Regulation revisions, the IUA commends the Reinsurance Task Force on the prompt and positive steps it has taken to implement the provisions of the Bilateral Agreement Between the European Union and the United States of America on Prudential Measures Regarding Insurance and Reinsurance" (the "Covered Agreement").

THE WORLD OF INSURANCE

The September 25, 2018 exposure draft makes several additional positive changes, including the elimination of the requirement for Certified Reinsurers to provide a U.S. GAAP reconciliation for equity and net income, which we support. This exposure draft, however, contains one amendment which is inconsistent with long established reinsurance regulatory rules established by this Task Force and which is inconsistent with commitments made by the U.S. in the Covered Agreement. More specifically, section 2(F)(7) of the Model Law has been amended as follows:

"(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.~~ This subsection shall not apply to reinsurance agreements entered into before the subsection's application, or to losses incurred or to liabilities ceded before the subsection's application."

International Underwriting Association of London Limited

London Underwriting Centre
8th Floor, 1 Minster Court
Mincing Lane
London EC3R 7AA
Telephone +44 (0)20 7617 4444
Facsimile +44 (0)20 7929 2928
Email info@iua.co.uk
Website www.iua.co.uk

The language that has been struck tracked Article 3(8) of the Covered Agreement which provides:

"8. This Agreement shall apply 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, and only with respect to losses incurred and reserves reported from and after the later of (i) the date of the measure, or (ii) the effective date of such new reinsurance agreement, amendment, or renewal. Nothing in this Agreement shall limit or in any way alter the capacity of parties to any reinsurance agreement to renegotiate such reinsurance agreement. (Emphasis added.)"

The elimination of the words "entered into, amended or renewed" inappropriately restricts the applicability of the new rules. It not only eliminates material provisions of the Covered Agreement, but it also contradicts a consensus decision made by the Reinsurance Task Force when it adopted the Certified Reinsurer provisions of the Model Law and Model Regulation in 2011. At that time, after intense debate, it was agreed by the regulators and industry representatives working with the Task Force to amend section 8(A)(5) of the Model Regulation to provide:

"(A) 5) Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract. (Emphasis added)"

This language has governed changes in collateral rules since 2011. It has worked well. It is why it was not surprising to see it added to the Covered Agreement.

The language adopted by the Reinsurance Task Force in 2011 and embedded in the Covered Agreement also reflects sound regulatory policy. It is consistent with the philosophy of prospective application of new rules and giving reinsurers and cedents the ability to negotiate additional collateral protections, if they wish to. As a result, policies that have been written and are in place remain untouched. Policies that are written, amended or renewed after the effective date are free of the collateral requirements, unless the parties to the agreement agree otherwise.

The Reinsurance Task Force has noted over the past couple of years that a system that focuses on good regulation and vetting of reinsurers, rather than relying on collateral, has worked well for the US. An effort to capture under antiquated rules a class of agreements that are negotiated after the effective date of the new rules does not make sense.

Finally, it should be noted that both the Model Law and Model Regulation have, since 1989, provided that they apply, as amended, to all "reinsurance agreements that have an inception, anniversary or renewal date not less than six (6) months after the effective date of this Act." (See, Model Law, Section 6 and similar language in the Model Regulation in Section 15). This is even more expansive than the compromise language that was agreed in connection with the Certified Reinsurer provisions.

We urge the Reinsurance Task Force not to make the changes proposed in Section 2(F)(7) of the Model Law, but instead keep the language that was in the June 21st exposure draft of the Model Law, which is consistent with the Covered Agreement.

We also have a few additional points we would like to raise for your consideration. These include:

1. In the Model Law, Section 2 (F)(1)(a)(i), the reference to "a treaty or international agreement" has been changed to a "treaty or international reinsurance agreement." The term "international reinsurance agreement" may be confusing and limiting. The confusion could come from the fact that there are indeed many international reinsurance agreements – which are between reinsurers and cedent. In connection with government or regulatory agreements, reinsurance regulation agreements could also be part of broader regulatory cooperation agreements and so not be just "international reinsurance agreements." We would suggest keeping the original language of "a treaty or international agreement" or perhaps "treaty or international regulatory agreement."

2. Section (9)(C)(5)(c) of the Model Regulation requires that "Prior to entry into the reinsurance agreement and not more than semi-annually thereafter" the reinsurer must provide reports on all disputed and overdue reinsurance claims outstanding for more than 30 days. This is a significant, unnecessary administrative burden. These reports should only be required when requested by the Commissioner – presumably for good reason. This is what the Covered Agreement provides.

3. In several sections of the Model Regulation there are specific requirements, such as minimum capital requirements, which are expressed in U.S dollars. The Covered Agreement provides euro amounts for reinsurers domiciled in the EU. We urge you to add these, to avoid future conflicts between the Covered Agreement and the Model Regulation, because of currency fluctuations.

4. We renew our request that you make all reasonable efforts to advance the goals of Article 9 of the 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).

We appreciate the opportunity to comment on these important revisions.

Yours sincerely,

Dave Matcham
Chief Executive

cc: J Stultz

IUA OF LONDON
INTERNATIONAL UNDERWRITING ASSOCIATION

KBRA KROLL BOND RATING AGENCY

805 Third Avenue 29th Floor | New York, NY 10022 | 212 702 0707 | www.kbra.com

October 16, 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, Inc. ("KBRA"), Approved Nationally Recognized Statistical Rating Organization ("NRSRO") for Certified Reinsurer Purposes

Dear Chair Vullo and Members:

Thank you for the opportunity to comment on Model Law 785 and Model Regulation 786, as posted for public comment on September 25, 2018 (the "Law" and the "Regulation," respectively).

The principal reason KBRA is submitting this comment to the Task Force is KBRA's concern that the proposed wording of Section 8(B)(3)(c)(v) of the Regulation as it is currently proposed introduces an inconsistency with recent actions taken by the Task Force to clarify in other documents the meaning of what an "acceptable rating agency" is for certified reinsurers. Not all NRSROs have been granted the authority to rate insurance companies, and KBRA believes there are significant reasons that the Law and the Regulation should reflect that fact. The language in the note at the end of the box called "**Financial Strength Ratings (Stand-Alone or Group)**" on page 6 of in the Uniform Application Checklist for Certified Reinsurers, as modified by the Task Force in December 2017, has taken this into account; it states that:

> Acceptable rating agencies include ... any other [NRSRO] *recognized by the SEC to provide financial strength ratings on insurance companies.* (emphasis added).

As drafted, the proposed Section 8(B)(3)(c)(v) of the Regulation fails to incorporate any language of limitation--such as the highlighted text quoted above--concerning which NRSROs are acceptable rating agencies on whom certified reinsurers may rely. The omission of the limiting language raises the possibility that a certified reinsurer reading the Regulation may be misled into relying on an NRSRO that is *not* certified by the SEC to provide ratings on insurance companies pursuant to Section 15E(a)(1) of the U.S. Securities Exchange Act of 1934, as amended, notwithstanding what the Uniform Application Checklist for Certified Reinsurers says. Because the Task Force approved changes to the Uniform Application Checklist for Certified Reinsurers in December 2017, it cannot have been the intention of the Task Force to introduce this inconsistency in the Regulation. In an effort to maintain consistency KBRA respectfully proposes that this inconsistency could be mitigated by revising Section 8(B) of the Regulation in the following manner:

(1) Deletion of the word "or" from Section 8(B)(3)(c)(iv);

(2) Addition of the following language as a new Section 8(B)(3)(c)(v): "Kroll Bond Rating Agency, Inc.; or"; and

(3) Renumbering of existing Section 8(B)(3)(c)(v) as Section 8(B)(3)(c)(vi);

(4) Addition of the following language to the newly renumbered Section 8(B)(3)(c)(vi) between the word "Organization" and the period at the end of the sentence: "certified by the SEC to provide ratings on insurance companies"; and

(4) Revision of Section 8(B)(4)(a) to include the following language as the new last column in the table:

Kroll
AAA
AA+, AA, AA-
A+, A
A-
BBB+, BBB, BBB-
BB+, BB, BB-, B+, B, B-, CCC, CC, C, D

KBRA believes that the changes requested in this letter are vital. In addition to resolving the ambiguity described above, the revisions proposed by KBRA introduce consistency with the Task Force's December 2017 revisions to the Uniform Application Checklist for Certified Reinsurers and the matrix of ratings and collateral levels on the NAIC's website, which was revised to include KBRA by name. The failure to modify the Regulation to reflect KBRA's status as an acceptable rating agency for certified reinsurers in a way that is consistent with the Task

Force's December 2017 modifications will confuse readers about KBRA's status, particularly if reinsurers rely only on the language in the Regulation, which identifies four other NRSROs--but not KBRA--by name as being acceptable rating agencies on which certified reinsurers may rely. (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 KBRA being named as an acceptable rating agency for certified reinsurers. KBRA also appreciates the Task Force's decision to include KBRA in the Uniform Application Checklist for Certified Reinsurers and in the related matrix. KBRA believes the changes to the Regulation it has proposed in this letter will aid in NAIC's effort to maintain consistency and accuracy in all 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)

Appendix

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

October 11, 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") implementing the covered agreement. We appreciate the opportunity to provide these comments. Lloyd's would like to thank the Reinsurance Task Force ("RTF") for its extraordinary efforts on this issue. We very much appreciate the diligent work of regulators and NAIC staff and your commitment to get the implementation done in 2018 to allow time for state level adoption.

The latest draft of the Proposed Revisions addresses the one substantive issue we raised in our comment letter in July. We are comfortable with all of the other changes proposed in the latest draft and believe that the framework overall will work well.

We look forward to continuing to work with the RTF and individual state regulators to ensure these reforms are adopted.

Regards,

LLOYD'S AMERICA, INC. The Museum Office Building 42 West 54th Street 14th Floor New York NY 10019 www.Lloyds.com/America
Telephone +1 212 382 4081 Fax +1 212 382 4070 Email: Sabrina.Miesowitz@lloyds.com

reinsurance
advisory board

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

Our reference: RAB-18

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

Hannover, 16 October 2018

Dear Superintendent Vullo,

I am writing to you on behalf of Insurance Europe's Reinsurance Advisory Board (RAB), a specialist representative body for the European reinsurance industry. It is represented at CEO level by seven major reinsurers: Gen Re, Hannover Re, Lloyd's of London, Munich Re, Partner Re, Scor and Swiss Re, with Insurance Europe providing the secretariat. Together, the RAB member companies account for approximately 60% of worldwide reinsurance business.

The RAB has been supportive of the "Bilateral Agreement between the European Union and the United States of America on Prudential Measurers Regarding Insurance and Reinsurance" (also referred to as the "Covered Agreement") from the start of its negotiation. As such, the RAB highly appreciates the NAIC's commitments towards the agreement's implementation. It was encouraging to see that many stakeholder comments made in response to the first exposure drafts were taken on board. In particular, the 25 September exposure draft eliminates the requirement in the Credit for Reinsurance Model Regulation to provide a U.S. GAAP reconciliation for equity and net income which the RAB is in support of.

The RAB further appreciates this opportunity to provide comments on the proposed revisions to the Credit for Reinsurance Model Law (the "Model Law") and Credit for Reinsurance Model Regulation (the "Model Regulation") released on 25 September 2018. Overall, some of the new language in the exposure drafts deviates significantly from the language of the bilateral agreement and thereby provides extensive discretion to state regulators in their compliance with the terms of the bilateral agreement. This leads to legal uncertainty and potential inefficiencies from the perspective of European reinsurers.

As an initial matter, the RAB would urge the NAIC to eliminate the newly proposed amendments to the Model Law **Section 2(F)(7)**, addressing the agreements which are subject to the new rules. The proposed revisions, excluding all *"reinsurance agreements entered into before the subsection's application, or to losses incurred or to liabilities ceded before the subsection's application"* are inconsistent with the provisions of the bilateral agreement and are contrary to established regulatory rules in the US.

The impact these proposed changes would have is clearly not intended by the bilateral agreement which sets the scope for its reinsurance-specific provisions in Article 3(8) as *"[...] 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, and only with respect to losses incurred and reserves reported from and after the later of (i) the date of the measure, or (ii) the effective date of such new reinsurance agreement, amendment, or renewal".*

Insurance Europe's Reinsurance Advisory Board
Secretariat • rue Montoyer 51, B-1000 Brussels
Tel: +32 2 894 30 00
E-mail: international@insuranceeurope.eu
Transparency register ID number: 341051518380-63

reinsurance
advisory board

In the RAB's view it is important for the Model Law and the Model Regulation to reflect the fundamental policy decision that has been made, ie that going forward, companies reinsuring with reinsurers in reciprocal jurisdictions do not need collateral protection for reinsurance agreements entered into (meaning negotiated, amended or renewed) after the effective date of the new rules.

Beyond this significant issue, the RAB would like to share the additional more detailed comments on the proposals, in the Annex.

Finally, the RAB strongly urges that the Reinsurance Task Force and individual states take steps to implement the provisions of the bilateral agreement prior to its implementation deadline, as per Article 9(2) of the bilateral agreement. While the NAIC finalises its amendments to the Model Law and Model Regulation, the RAB would encourage the Reinsurance Task Force to take any practical immediate steps necessary to harmonise the treatment of reinsurers from EU countries in line with the terms of the bilateral agreement. Most notably, this includes ensuring that reinsurers only have to comply with the filing requirements set forth in the bilateral agreement and that the 20% phased-in reduction of collateral set forth in Article 9(3)(a) is implemented.

The RAB highly appreciates the open and transparent manner in which the NAIC is involving stakeholders in this review and remains available to discuss any questions or comments you may have on the above.

Yours sincerely,

Ulrich Wallin
Chairman of the Executive Board, Hannover Rück SE
Chair, Insurance Europe's Reinsurance Advisory Board

Members of the Reinsurance Advisory Board

Gen Re	hannover re	LLOYD'S	Munich RE
Dr Winfried Heinen Deputy spokesperson	Ulrich Wallin Chairman of the Board	John Neal CEO	Dr. Torsten Jeworrek CEO of Reinsurance

PartnerRe	SCOR	Swiss Re
Emmanuel Clarke President & CEO	Denis Kessler Chairman & CEO	Christian Mumenthaler CEO

reinsurance
advisory board

ANNEX

Additional comments on the proposed revisions to the Credit for Reinsurance Model Law (#785) and the Credit for Reinsurance Model Regulation (#786)

Comments on the Model Law

- The RAB cannot support the language added in **Section 2(F)(1)(a)(i)** where for the purpose of defining "reciprocal jurisdiction", the Commissioner determines an EU member states compliance with all material terms of the bilateral agreement. This should not be in the discretion of the Commissioner. As an alternative, the NAIC should consider a more objective wording, such as *"a non-U.S. jurisdiction that has entered into and is in compliance with an international agreement with the United States relating to the business of reinsurance"*.
- Deleting "under the commissioner's jurisdiction" in **Section 2(F)(1)(d)(ii)** extends the scope of this requirement too broadly, ie to all reinsurance agreements.
- There is a risk that **Section 2(F)(1)(h)** in its current form could be misread in providing the opportunity to request information from reinsurers in scope of the bilateral agreement that would go beyond what is agreed therein. The RAB would suggest clarifying this Section.
- The RAB would suggest adding "timely" to **Section (F)(2)**, to ensure alignment with other changes proposed.
- Please refer to the RAB's views on the proposals for **Section (F)(7)** in the letter above.

Comments on the Model Regulation

- The definition for "head office or domicile" put forward in **Section 9(A)(1)** is unclear, neither is the objective for including it.
- As per Section 2(F)(1)(A)(i) of the Model Law (see above) the discretion granted to the commissioner in **Section 9(B)(1)** of the Model Regulation is too broad.
- It is unclear how the "recognition of the U.S. state regulatory system" (**Section 9(B)(2)(c)**) will be achieved or measured in practice.
- In light of the increased discretion for the Commissioner overall, the provisions and changes in **Section 9(C)(1)** should be reconsidered.
- **Section 9(C)(2)(a)** provides a USD amount for the minimum capital and surplus for qualifying reinsurers from Reciprocal Jurisdictions. The bilateral agreement provides a Euro amount for EU based reinsurers (EUR 226m) which should be added to this Section. The same change is required in **Section 9(C)(2)(b)(i)&(ii)**. Similarly, **Sections 9(C)(6)(b)&(c)** provide USD amounts for overdue recoverables. The bilateral agreement provides for EUR equivalents that should be referenced.
- **Section 9(C)(5)(c)** requires reinsurers to provide not more than semi-annually a "list of all disputed and overdue reinsurance claims outstanding for 90 days or more." This will take a substantial effort to report and it seems inconsistent with the goals of the bilateral agreement (to reduce regulatory burdens on cross-border reinsurance). The NAIC should adopt the language of the bilateral agreement that reinsurers are only required to provide these reports if requested by the Commissioner (supervisory authority). This decision should be made in the first instance by the lead state regulator for the qualifying reinsurer.

October 16, 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 Bilateral Agreement

Dear Superintendent Vullo:

The undersigned trade associations appreciate the opportunity to submit comments on the second draft of 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* ("Bilateral Agreement"), which was signed September 22, 2017.[1]

---

[1] The American Council of Life Insurers (ACLI) is a Washington, D.C.-based trade association with approximately 290 member companies operating in the United States and abroad. ACLI advocates in state, federal, and international forums for public policy that supports the industry marketplace and the policyholders that rely on life insurers' products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing 95 percent of industry assets, 93 percent of life insurance premiums, and 98 percent of annuity considerations in the United States.

The American Insurance Association (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 Association of Bermuda Insurers and Reinsurers (ABIR), represents the public policy interests of Bermuda's international insurers and reinsurers that protect consumers around the world. 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.

The General Insurance Association of Japan (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.

The National Association of Mutual Insurance Companies' more than 1,400 member companies represent 40 percent of the total property/casualty insurance market and serve more than 170 million policyholders. NAMIC members write more than $253 billion in premiums, accounting for 54 percent of homeowners, 43 percent of the automobile, and 35 percent of the business insurance markets.

The Property Casualty Insurers Association of America (PCI) promotes and protects the viability of a competitive private insurance market for the benefit of consumers and insurers. 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. PCI members represent all sizes, structures, and regions, which protect families, communities, and businesses in the U.S. and across the globe. PCI members write $245 billion in annual premium, which is 38 percent of the nation's property casualty insurance marketplace.

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 also has life reinsurance affiliates.

The undersigned trades appreciate the tremendous and timely progress made by the NAIC with respect to implementation of the Bilateral Agreement. While the trades continue to support the overall approach achieved by the proposed revisions to the model law and regulation, we continue to have significant concerns regarding some portions of the draft exposure documents and respectfully submit these additional comments for your consideration. In general, our comments focus on two goals: (1) ensuring that the proposed changes to the model law and regulation do not conflict with the language of the Bilateral Agreement; and (2) ensuring that the requirements for Reciprocal Jurisdictions are jurisdictionally agnostic and do not impose additional requirements on non-EU jurisdictions than those contained in the Bilateral Agreement.

Commissioner Discretion

The NAIC draft model law and regulation continue to make repeated reference to 'Commissioner Discretion.' We acknowledge that the original Credit for Reinsurance texts allow for some discretion; however, not to the extent envisaged by the draft texts impacting Reciprocal Jurisdictions. The possibility for a Commissioner to have such scope to deviate from the model law and regulation creates a great level of uncertainty in the process as a whole. At the very least, where there is reference to Commissioner Discretion, the draft model regulation should further outline a list of factors to be considered, as is currently included in the model regulation.

We welcome the NAIC's efforts to establish criteria and a process with respect to revocation or suspension of a Reciprocal Jurisdiction. Given the gravity surrounding the eventual consequence, however, we would expect to see reference to this criteria and process in the Model Law, with the specificities of the process being outlined in the model regulation. That criteria and process should also be linked in to the NAIC accreditation program. Without such formal safeguards in place, there is room for discretion to be used in an arbitrary way, thus undermining any meaningful outcome for jurisdictions that would be assessed for Reciprocal Jurisdiction status.

Reciprocal Jurisdiction Requirements

In the model law, Section 2.F(1)(a)(i.) defines "Reciprocal Jurisdiction" to include "[a] non-U.S. jurisdiction that has entered into an international reinsurance agreement with the United States, each within its legal authority or, in the case of an international reinsurance agreement between the United States and European Union, is a member state of the European Union, *and has been determined by the Commissioner to be in compliance with all material terms of the agreement, including the reciprocal treatment of United States insurers and reinsurers*." (emphasis added). As drafted, this language appears to conflict with the requirements of the Bilateral Agreement, in that it provides that the Commissioner solely makes the determination as to compliance. While we agree that compliance should be a condition, to more accurately comply with the requirements of the Bilateral Agreement, we suggest the following alternative language:

> "[a] non-U.S. jurisdiction that has either (1) legally entered *into, and is in compliance with, an international agreement with the United States relating to the business of reinsurance* ~~in a reinsurance agreement~~ or, (2), is a member state of the European Union and all members states of the European Union are in compliance with the terms of the international agreement between the United States and the European Union. Under both scenarios, compliance shall include the requisite reciprocal treatment of United States insurers and reinsurers."

In addition, model regulation Section 9(B)(2)(c) specifies that a Reciprocal 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 reporting, 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." (emphasis added). Making this requirement subject to inclusion in a statute, regulation or the equivalent may pose challenges for some Reciprocal Jurisdictions from an implementation standpoint. We recommend including explicit text allowing for flexibility as to how this recognition could be achieved, including the potential for a 'regulatory process' to meet the requirement.

We note that the draft model law and regulation are silent on the issue of mutual recognition. This is a point of concern, given the updated drafting of the model regulation in Section 9.B.(2)(c). As emphasized below, the drafting no longer mirrors that of the Bilateral Agreement text and introduces additional requirements that would apply only to non-treaty Reciprocal Jurisdictions. If the concept of 'recognition' is to be explored, it should be done in good faith whereby the 'recognition' is reciprocal, as is implied by the language in the exposure drafts.

Further, we continue to be concerned with the inclusion of several provisions in both the model law and regulation that 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 compared to those contained in the Bilateral 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 companies from these Reciprocal Jurisdictions. We recommend deleting these phrases or modifying the language to provide certainty that companies from all Reciprocal Jurisdictions will be treated similarly.

<u>Consistency with Bilateral Agreement Language</u>

In addition to the reference noted above, there remain a few sections where the language in the proposed model law and regulation are inconsistent with the language of the Bilateral Agreement. For example:

- In model law Section (F)(5), the language should more closely track the language contained in the Bilateral Agreement. The model law states that "[u]pon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer, the supervising court

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." The Bilateral Agreement in Article 3, Section 4(k) states that "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 reinsurer post collateral for all outstanding ceding liabilities." The language in the draft model law is broader than that contained in the Bilateral Agreement, which requires court approval. Revising this language to conform to the Bilateral Agreement language avoids any conflicts or confusion.

- In model law Section 9.C., there are several references to reliance on foreign currency exchange rates "acceptable to the commissioner." These provisions would conflict with the language of the Bilateral Agreement and we recommend removing them or providing for an exception relating to the Bilateral Agreement.

- As mentioned previously, Section 9.B.(2)(c) of the model regulation now deviates from the language of the Bilateral Agreement by introducing much broader language with respect to recognition, encompassing the wider US state regulatory system in addition to group supervision and group capital.

Conclusion

The undersigned trades appreciate the opportunity to offer comments and work with the NAIC to effectively implement the Bilateral Agreement. We welcome the opportunity to work with the NAIC to reach a conclusion acceptable to all parties on the revisions to both the model law and regulation. Please do not hesitate to contact us with any questions or concerns.

Sincerely,

American Insurance Association
American Council of Life Insurers
Association of Bermuda Insurers and Reinsurers
Bermuda International Long Term Insurers and Reinsurers
National Association of Mutual Insurance Companies
The General Insurance Association of Japan
Property Casualty Insurers Association of America
Reinsurance Association of America

October 16, 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 Bilateral Agreement

Dear Superintendent Vullo:

In addition to the joint comments separately submitted, the Reinsurance Association of America (RAA) and the Property Casualty Insurers Association of America (PCI) would like to submit additional comments on the second draft of 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* ("Bilateral Agreement"), which was signed September 22, 2017.[1]

Equal Treatment for U.S.-Accredited Jurisdictions

The NAIC should also address, and level the playing field, for 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 Bilateral 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):

---

[1] The Property Casualty Insurers Association of America (PCI) promotes and protects the viability of a competitive private insurance market for the benefit of consumers and insurers. 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. PCI members represent all sizes, structures, and regions, which protect families, communities, and businesses in the U.S. and across the globe. PCI members write $245 billion in annual premium, which is 38 percent of the nation's property casualty insurance marketplace.

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 also has life reinsurance affiliates.

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

Although the exposure draft of the model regulation proposes revisions to the definition of "head office or domicile" that may partially address this issue, these changes may not fully address the problem.

Conclusion

We appreciate the opportunity to offer comments and work with the NAIC to effectively implement the Bilateral Agreement. We welcome the opportunity to work with the NAIC to reach a conclusion acceptable to all parties on the revisions to both the model law and regulation. Please do not hesitate to contact us with any questions or concerns.

Sincerely,

Reinsurance Association of America
Property Casualty Insurers Association of America

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Swiss Confederation

Federal Department of Finance FDF

State Secretariat for International Finance SIF
Policy Coordination

CH-3003

By e-mail
Maria T. Vullo, *Superintendent, Chairwoman*
NAIC Reinsurance Task Force
Jake Stultz, *Senior Accounting Policy Advisor*
Dan Schelp, *Managing Counsel*
National Association of Insurance
Commissioners
1100 Walnut Street
Kansas City, MO 64016-2197

Document ID: 42-35.1-15
Your reference:
Our reference: lud
Bern, 16 October 2018

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

Dear Superintendent Vullo,
Dear Mr. Stultz and Mr. Schelp

On behalf of the Swiss State Secretariat for International Finance, I thank you for the opportunity to submit comments on the Reinsurance Task Force's proposed amendments to the Credit for Reinsurance Model Law (#785) and the Credit for Reinsurance Model Regulation (#786).

A number of years ago, the NAIC assigned Switzerland the status of a Qualified Jurisdiction. We are confident that we will keep that status under the new Model Law and Model Regulation. Retaining that status would efficiently resolve the issue of potential discrimination in the treatment of Swiss reinsurance companies assuming business from US insurance firms relative to reinsurers domiciled in the EU. Since the existing Covered Agreement between the USA and the EU might jeopardize equality of treatment, we are supportive of the proposed Model Law and Model Regulation.

In Section 9.B(2), the Model Regulation contains a number of requirements to be fulfilled by a Qualified Jurisdiction. In fact, we firmly believe to be in line with those standards. Firstly, Swiss regulation does not distinguish between reinsurers from Switzerland and other jurisdiction in terms of the credit for reinsurance for capital requirements of ceding Swiss insurance firms ((2)(a)). Secondly, foreign reinsurers are not obliged to have a local presence in Switzerland when entering into an insurance agreement with a Swiss ceding insurer

((2)(b)). Thirdly, Swiss regulation provides for group supervision of insurance groups (and conglomerates) domiciled in Switzerland. There is no legal basis for putting either a group that is headofficed in the U.S. or its worldwide parent undertaking under Swiss group insurance supervision ((2)(c)). Finally, the Swiss insurance supervisor, FINMA, has joined the IAIS Multilateral Memorandum of Understanding and has a proven history for cooperating within supervisory colleges together with information exchanges with their US counterparts.

In terms of the recognition of US group supervision and the information exchange, paragraphs (c) and (d) require a "statute, regulation or the equivalent" basis. We assume the wording "*the equivalent*" includes a confirmation by a competent regulatory authority and we would want this to be stated more clearly. Otherwise, we suggest 9.B(2)(c) and (d) be amended with the following wording:

> *… through statute, regulation, ~~or~~ the equivalent or confirmation by a competent regulatory authority in such qualified jurisdiction…*

While there is no legal basis in Swiss law or regulation for Swiss authorities to derecognize or to alienate group supervision from US state supervisors, Swiss law and regulation do not explicitly recognize the insurance group supervision of the US or any other country. However, Switzerland presumes that foreign insurance groups are group regulated and supervised by the respective home jurisdiction. Therefore, without the possibility of providing confirmation by a competent authority as an alternative, Switzerland might fail the conditions for retaining the status of a qualified jurisdiction. It is in our interest to avoid such an outcome and any related unintended consequences.

We thank you for the opportunity to offer this comment on the proposed credit for reinsurance model regulation and are happy to address any questions you may have.

Kind regards

René Weber
Head of Division Policy Coordination