

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](mailto:jstultz@naic.org) and [dschelp@naic.org](mailto: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.

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- 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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