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LLOYD'S

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Via Email

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

Re: Proposed Revisions to Models 785 & 786

Dear Superintendent Vullo,

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

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

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

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

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

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

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

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

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

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

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

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

Regards,

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