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July 23, 2018

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

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

Dear Superintendent Vullo:

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

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

**Reciprocal Jurisdiction Requirements**

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

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

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

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

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

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

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

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

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

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

### Equal Treatment for U.S.-Accredited Jurisdictions

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

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

### Reciprocal Jurisdictions: Enforcement and Resulting Benefits

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

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

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

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

### Insolvency Language

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

### Other Considerations for States' Implementation of Covered Agreement

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

### Technical Edits

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

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

#6 (first line): “Agrees that it-in each reinsurance agreement...”

#6 (second line): “...if the assuming **reinsurer** resists enforcement of a final...”

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

Sincerely,



Frank Nutter  
President



Karalee Morell  
Senior Vice President & General Counsel