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
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American Insurance Association

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