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

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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 ~~domiciliary~~ 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