EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL MARKETS UNION

REGULATION AND PRUDENTIAL SUPERVISION OF FINANCIAL INSTITUTIONS
The Director

Brussels, 16 November 2018
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Superintendent Maria T. Vullo,
Chair of Reinsurance (E) Task Force
National association of Insurance Commissioner
c/o Mr. Jake Stultz: jstultz@naic.org

Subject: Comments on the Proposed Revisions to the Credit for Reinsurance Model Law and Regulation (version published on the 9th of November)

Dear Superintendent Vullo,

I write to you regarding the latest version of the Credit for reinsurance models 785 and 786, published on the 9th November 2018.

The Credit for reinsurance models represent an important step in the implementation of the Bilateral Agreement between the European Union and United States of America on prudential measures regarding insurance and reinsurance ("the Agreement"[1]).

The Agreement provides legal certainty for insurers and reinsurers in the application of the EU and US prudential frameworks and it is of utmost importance that both parties implement its provisions faithfully.

As you know, the European Commission's Directorate General for Financial Services, Financial Stability and Capital Markets Union (DG FISMA) provided you with comments on the earlier version of the Credit for reinsurance models on 16 October and NAIC and DG FISMA staff discussed these comments on a conference call.

I note that a number of our comments have been taken on board in the version of 9 November and I would like to express my appreciation for that.

Nevertheless, some sections of the model law and model regulation on which we commented, still depart from the provisions of the Agreement, as they either remained unchanged or the drafting change has not ensured alignment with the provisions of the Agreement.

Notably, the model law and regulation give discretion to state commissioners to determine compliance of each EU member state with the agreement. I believe that this does not correspond with the provisions of the Agreement. Further, the section related to service of process obliges assuming reinsurers to submit the confirmation of consent to each state in which the reinsurer intends to operate. This changes significantly the language agreed by the

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1539695686400&uri=CELEX:22017A1006(01)

negotiating parties, who intended to provide only for a possibility to require such confirmation of consent, but not a firm obligation, valid in each state. The model law also gives the possibility to state commissioners to demand from assuming reinsurers to satisfy requirements other than those stipulated in the Agreement. Where in fact, the Agreement contains a closed list of requirements that can be asked of assuming reinsurers and does not allow to expand on that list.

Therefore I would like to reiterate our comments ahead of the adoption of the draft by the Reinsurance Task Force and Financial Condition (E) Committee.

Please see following more detailed reasoning of the above mentioned comments and few other inconsistencies that appear in the model law and regulation:

Section 2(F)(1)(a)(i) of the model law, which states *"in the case of an international reinsurance agreement between the United States and European Union, is a member state of the European Union, and has been determined by the Commissioner to be in compliance with all material terms of the agreement"*. The same language appears in Section 9(B)(1) of the model regulation.

The above mentioned section provides the commissioner with power to determine if each individual EU member state complies or not with the terms of the agreement.

We note that the Agreement provides the benefit of reciprocal jurisdiction to the EU, as party to the Agreement. The Agreement has been concluded between the European Union and the United States and it does not provide for the possibility to treat individual member states differently. The determination of EU member states compliance should not be at the discretion of the commissioner. In our view, this would be inconsistent with the provisions of the Agreement.

Section 2(F)(1)(d)(ii) of the model law relates to the consent to the appointment of the commissioner as agent for service of process.

It appears that the wording of section 2(F)(1)(d)(ii) would mean that confirmation of consent must be submitted to each state in which the assuming insurer intends to operate.

Article 3(4)(e) of the Agreement stipulates that "*where applicable for "service of process" purposes, the assuming reinsurer provides written confirmation to the Host supervisory authority of consent to the appointment of that supervisory authority as agent for service of process. The Host supervisory authority* ***may*** *require that such consent be provided to it and included in each reinsurance agreement under its jurisdiction*".

The wording of Article 3(4)e of the Agreement does not contain an obligation to provide confirmation of consent to the Host supervisory authority. It provides for the possibility that such confirmations may be required.

The chosen wording of the Section 2(F)(1)(d)(ii) appears inconsistent with Article 3(4)e of the Agreement.

Section 2(F)(1)(h) reads as follows: *"The assuming insurer must satisfy any other requirements deemed relevant by the commissioner. To the extent that information or agreement is not by required international reinsurance agreement (...) the failure to satisfy such other requirements will not alter the ability of the ceding insurer to take credit for such reinsurance"*.

Despite minor drafting change in the 9 November version, the above mentioned section still expands the requirements that the commissioner can request from the assuming insurer, beyond what is stipulated in the Agreement. The list of conditions and requirements has been clearly limited to those that feature in Article 3(4) of the Agreement.

The proposed drafting of Section 2F(1)(h) appears inconsistent with Article 3(4) of the Agreement. The fact that the failure to satisfy commissioner's demands that are not required by an international reinsurance agreement will not alter the ability of the ceding insurer to take credit for reinsurance, does not mitigate it.

Section 9(C)2(c) of the model regulation read: *"In determining whether the amount of foreign denominated capital and surplus is equivalent, the commissioner shall rely upon foreign currency exchange rates published by the U.S. Secretary of the Treasury (...).* References to the rates published by the US Secretary of the Treasury then also appear in Section 9(C)6.

The version of 9 November removed the discretion of the commissioner to choose the currency exchange rate used when determining the amount of foreign denominated capital and surplus and replaced it with the reference to the rates published by the Treasury Secretary.

However, the current drafting of the regulation still does not reflect the fact that the conversion of foreign denominated capital and surplus are actually referenced in the Agreement. Article 3(4) of the Agreement provides the euro equivalent to dollar amounts and does not provide for any other system of conversions, either at the discretion of the commissioner or through reference to rates published either by the U.S. or in the EU.

Therefore the regulation should add in Sections 9(C)2(c) and 9(C)6: *"if the converted amount is not already specified in an international agreement"*.

Alternatively, if one or the other party to the Agreement wished to add reference to currency exchange rates, this could only be done by agreement in the joint committee that has been established by the Agreement.

Section 9(C)(5)(c) stipulates that *"the assuming insurer or its legal successor, must provide, on behalf of itself and any legal predecessors, the following documentation to the commissioner"*

Article 3(4)h of the Agreement states that such documents should be provided "***if requested by that supervisory authority***". It leaves the submission of documents as an option that may or may not be requested by the commissioner.

The proposed wording Section 9(C)(5)(c) departs from the Agreement, in which the negotiators intended to reduce the administrative burden. The model regulation should add the sentence that appears in the Agreement.

Section 9(C)(4)(e) on solvent scheme of arrangement removed the reference to the consistency of such scheme with international agreement, such as the Agreement between the EU and US. The current version now refers to various sections of the model law and regulation instead. We understand that the said sections implement the provision of the Agreement. Please do confirm that our understanding is correct. In any event, we would like to point out that the earlier version of the model regulation, which did contain direct reference

to international agreements provided, in our view, better legal certainty for the assuming reinsurers.

As noted, I appreciate the opportunity to offer comments on the model law and regulation. I stand ready to continue working with you in close cooperation. I remain available for any questions you may have on the above comments.

Yours sincerely,

Martin MERLIN