



October 16, 2018

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

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

Dear Superintendent Vullo:

The undersigned trade associations appreciate the opportunity to submit comments on the second draft of 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* (“Bilateral Agreement”), which was signed September 22, 2017.¹

¹ The American Council of Life Insurers (ACLI) is a Washington, D.C.-based trade association with approximately 290 member companies operating in the United States and abroad. ACLI advocates in state, federal, and international forums for public policy that supports the industry marketplace and the policyholders that rely on life insurers’ products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing 95 percent of industry assets, 93 percent of life insurance premiums, and 98 percent of annuity considerations in the United States.

The American Insurance Association (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.

The Association of Bermuda Insurers and Reinsurers (ABIR), represents the public policy interests of Bermuda’s international insurers and reinsurers that protect consumers around the world. ABIR members have headquarters and operations in Bermuda with operating subsidiaries in the United States and Europe and do business in more than 150 countries. Members employ nearly 35,000 people around the globe including more than 16,000 employees in the US, nearly 1,600 employees in Bermuda, and more than 8,600 in Europe.

The General Insurance Association of Japan (GiAJ) is an industry organization whose 26 member companies account for about 95 percent of the total general insurance premiums in Japan which is one of seven jurisdictions listed in the NAIC List of Qualified Jurisdictions. Some of our members or their affiliates are certified reinsurers.

The National Association of Mutual Insurance Companies’ more than 1,400 member companies represent 40 percent of the total property/casualty insurance market and serve more than 170 million policyholders. NAMIC members write more than \$253 billion in premiums, accounting for 54 percent of homeowners, 43 percent of the automobile, and 35 percent of the business insurance markets.

The Property Casualty Insurers Association of America (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.

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 also has life reinsurance affiliates.

The undersigned trades appreciate the tremendous and timely progress made by the NAIC with respect to implementation of the Bilateral Agreement. While the trades continue to support the overall approach achieved by the proposed revisions to the model law and regulation, we continue to have significant concerns regarding some portions of the draft exposure documents and respectfully submit these additional comments for your consideration. In general, our comments focus on two goals: (1) ensuring that the proposed changes to the model law and regulation do not conflict with the language of the Bilateral Agreement; and (2) ensuring that the requirements for Reciprocal Jurisdictions are jurisdictionally agnostic and do not impose additional requirements on non-EU jurisdictions than those contained in the Bilateral Agreement.

Commissioner Discretion

The NAIC draft model law and regulation continue to make repeated reference to ‘Commissioner Discretion.’ We acknowledge that the original Credit for Reinsurance texts allow for some discretion; however, not to the extent envisaged by the draft texts impacting Reciprocal Jurisdictions. The possibility for a Commissioner to have such scope to deviate from the model law and regulation creates a great level of uncertainty in the process as a whole. At the very least, where there is reference to Commissioner Discretion, the draft model regulation should further outline a list of factors to be considered, as is currently included in the model regulation.

We welcome the NAIC’s efforts to establish criteria and a process with respect to revocation or suspension of a Reciprocal Jurisdiction. Given the gravity surrounding the eventual consequence, however, we would expect to see reference to this criteria and process in the Model Law, with the specificities of the process being outlined in the model regulation. That criteria and process should also be linked in to the NAIC accreditation program. Without such formal safeguards in place, there is room for discretion to be used in an arbitrary way, thus undermining any meaningful outcome for jurisdictions that would be assessed for Reciprocal Jurisdiction status.

Reciprocal Jurisdiction Requirements

In the model law, Section 2.F(1)(a)(i.) defines “Reciprocal Jurisdiction” to include “[a] non-U.S. jurisdiction that has entered into an international reinsurance agreement with the United States, each within its legal authority or, 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, including the reciprocal treatment of United States insurers and reinsurers.*” (emphasis added). As drafted, this language appears to conflict with the requirements of the Bilateral Agreement, in that it provides that the Commissioner solely makes the determination as to compliance. While we agree that compliance should be a condition, to more accurately comply with the requirements of the Bilateral Agreement, we suggest the following alternative language:

“[a] non-U.S. jurisdiction that has either (1) legally entered into, and is in compliance with, an international agreement with the United States relating to the business of reinsurance in a reinsurance agreement or, (2), is a member state of the European Union and all members states of the European Union are in compliance with the terms of the international agreement between the United States and the European Union. Under both scenarios, compliance shall include the requisite reciprocal treatment of United States insurers and reinsurers.”

In addition, model regulation Section 9(B)(2)(c) specifies that a Reciprocal Jurisdiction must provide, “*through statute, regulation or the equivalent*” in such qualified jurisdiction, “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 reporting, 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.” (emphasis added). Making this requirement subject to inclusion in a statute, regulation or the equivalent may pose challenges for some Reciprocal Jurisdictions from an implementation standpoint. We recommend including explicit text allowing for flexibility as to how this recognition could be achieved, including the potential for a ‘regulatory process’ to meet the requirement.

We note that the draft model law and regulation are silent on the issue of mutual recognition. This is a point of concern, given the updated drafting of the model regulation in Section 9.B.(2)(c). As emphasized below, the drafting no longer mirrors that of the Bilateral Agreement text and introduces additional requirements that would apply only to non-treaty Reciprocal Jurisdictions. If the concept of ‘recognition’ is to be explored, it should be done in good faith whereby the ‘recognition’ is reciprocal, as is implied by the language in the exposure drafts.

Further, we continue to be concerned with the inclusion of several provisions in both the model law and regulation that 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 compared to those contained in the Bilateral 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 companies from these Reciprocal Jurisdictions. We recommend deleting these phrases or modifying the language to provide certainty that companies from all Reciprocal Jurisdictions will be treated similarly.

Consistency with Bilateral Agreement Language

In addition to the reference noted above, there remain a few sections where the language in the proposed model law and regulation are inconsistent with the language of the Bilateral Agreement. For example:

- In model law Section (F)(5), the language should more closely track the language contained in the Bilateral Agreement. The model law states that “[u]pon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer, the supervising court

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.” The Bilateral Agreement in Article 3, Section 4(k) states that “if 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 Bilateral Agreement, which requires court approval. Revising this language to conform to the Bilateral Agreement language avoids any conflicts or confusion.

- In model law Section 9.C., there are several references to reliance on foreign currency exchange rates “acceptable to the commissioner.” These provisions would conflict with the language of the Bilateral Agreement and we recommend removing them or providing for an exception relating to the Bilateral Agreement.
- As mentioned previously, Section 9.B.(2)(c) of the model regulation now deviates from the language of the Bilateral Agreement by introducing much broader language with respect to recognition, encompassing the wider US state regulatory system in addition to group supervision and group capital.

Conclusion

The undersigned trades appreciate the opportunity to offer comments and work with the NAIC to effectively implement the Bilateral Agreement. We welcome the opportunity to work with the NAIC to reach a conclusion acceptable to all parties on the revisions to both the model law and regulation. Please do not hesitate to contact us with any questions or concerns.

Sincerely,

American Insurance Association
American Council of Life Insurers
Association of Bermuda Insurers and Reinsurers
Bermuda International Long Term Insurers and Reinsurers
National Association of Mutual Insurance Companies
The General Insurance Association of Japan
Property Casualty Insurers Association of America
Reinsurance Association of America