



December 7, 2007

Mr. Bob Prentiss
Assistant General Counsel
Office of Insurance Regulation
Florida Department of Financial Services
Bob.Prentiss@fldfs.com
Tallahassee, Florida

Subject: Rule Draft 690-144.007, Reinsurance Collateral Reduction Proposal

Dear Mr. Prentiss:

On behalf of the 23 members of the Association of Bermuda Insurers and Reinsurers (ABIR), we file these comments for your consideration on the proposed collateral reduction regime. We commend the Office for acting to implement the new provisions of the Florida law enacted earlier this year. We look forward to working with you to perfect the provisions of this regulation and to win approval for ABIR members as being eligible reinsurers from an eligible jurisdiction. As you know, Bermuda's reinsurers supply about 50% of the property catastrophe reinsurance to Florida's domestic property insurers. We are an important market supporting Florida's growing domestic insurance industry. Our members have an excellent claims payment and financial strength track record -- having been tested by the worst that man and Mother Nature has thrown against us in catastrophic losses in the last six years. No catastrophic reinsurance claim owed by a Bermuda Class 4 reinsurer has gone unpaid due to insolvency despite the record setting catastrophic losses of the last six years. In spite of record losses, the Bermuda reinsurers have increased their capacity to meet Florida's hurricane insurance needs.

We support the implementation of the Florida statute, but we urge your consideration of specific amendments to these provisions prior to adoption of the proposal. We focus our comments on several specific provisions and provide you with alternative language in some cases and further questions for clarification in other cases. We'd look forward to either an in person meeting or a conference call to further discuss these matters.

Section 4, unnumbered paragraph, deferral. We'd recommend that the short tailed business deferral apply for a two year period. As reported in the RAA's 2006 catastrophic loss development study, 90% of hurricane reinsurance claims are paid within nine quarters of the loss occurrence. To maximize any market benefit that may arise from this short tail funding deferral, the deferral period should match the claims payment pattern and a two year deferral would eliminate nearly any double funding that we encounter today. The costs of collateral today contain two elements: 1) the frictional cost of providing the security, the letter of credit or trust; and 2) the funding of collateral even though the claim has been paid. This latter point results

from claims that are paid near the time of the ceding insurer's quarterly or annual financial statement preparation where the ceding insurer is looking for collateral to be provided so that it can take appropriate credit on the financial statement. In constrained market situations, there likely will be an incremental gain in reinsurance capacity due to collateral funding relief. According to public statements, the Office's goal is to maximize that gain and that most likely can be achieved by the two year deferral since that will match the claim payment pattern.

Section 5, paragraph (c), contract provisions. We recommend that this section be rethought and largely eliminated. Reinsurers' freedom to contract is recognized in Florida law and in NAIC model codes. Today Florida law requires reinsurance agreements to have an insolvency clause (3) and a service of suit clause (4). Other contract provisions are not mandated. Those legal requirements already apply to reinsurance agreements and do not need to be separately stated in this regulation. By separately stating them here, it increases the likelihood of confusion over whether these are additional requirements; and raises the possibility of contradictory or inconsistent requirements. This regulation should instead simply cite back to compliance with the requirements of existing law.

We would argue that items 1 and 2 be deleted since they can be dealt with in regulatory filings with the department and should not be a part of a reinsurance contract. In fact Section 6 (e) already deals with these matters. These provisions are not appropriate parts of a reinsurance contract. As you know, many reinsurance agreements are syndicated with multiple reinsurers from multiple jurisdictions. It is not necessary to complicate the reinsurance contract with a clause which becomes problematic when considering that not all reinsurers may be eligible or from eligible jurisdictions; or that not all reinsurers will be subject to any collateral requirements. The issue is appropriately dealt with under the reinsurer eligibility section.

Next, we look at paragraph 3. Reprinted below is the existing statutory insolvency clause.
624.610 (8)

(8) Credit must be allowed to any ceding insurer for reinsurance otherwise complying with this section only when the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contract or contracts reinsured without diminution because of the insolvency of the ceding insurer. Such credit must be allowed to the ceding insurer for reinsurance otherwise complying with this section only when the reinsurance agreement provides that payments by the assuming insurer will be made directly to the ceding insurer or its receiver, except when:

(a) The reinsurance contract specifically provides payment to the named insured, assignee, or named beneficiary of the policy issued by the ceding insurer in the event of the insolvency of the ceding insurer; or

(b) The assuming insurer, with the consent of the named insured, has assumed the policy obligations of the ceding insurer as direct obligations of the assuming insurer in substitution for the obligations of the ceding insurer to the named insured.

The reinsurance agreement is required by Florida law to contain an insolvency clause. It does not need to be separately stated in this regulation. Section 5 should simply reference the requirement of 624.610(8), above.

That leaves only two remaining provisions: 5 (a) and (b). These paragraphs impose service of suit and jurisdictional requirements. Current Florida law, 624.610 (3) (f) already covers these requirements and is restated here:

624.610 (3) (f)

(f) If the assuming insurer is not authorized or accredited to transact insurance or reinsurance in this state pursuant to paragraph (a) or paragraph (b), the credit permitted by paragraph (c) or paragraph (d) must not be allowed unless the assuming insurer agrees in the reinsurance agreements:

1. a. That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or of any appellate court in the event of an appeal; and

b. To designate the Chief Financial Officer, pursuant to s. 48.151, or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

Section (c) 5 (a) and (b) should simply reference 624.610 (3) (f).

Furthermore, as drafted this Section (c), paragraph 5 (a) is not meant to exclude arbitrations, but the reference to “resolved in the courts” of the US conflicts with this goal. Florida law specifically notes that service of suit clauses do not preempt utilization of arbitrations (see 624.610 (3) (f) 2). Again, this provision is needed at all, since existing Florida law governs this area.

Finally, we recommend deletion of Section 5, paragraph (c), paragraph 5 (b). Reinsurance contracts may contain choice of law provisions. We do not believe that the existing statute allows the state to impose a Florida specific choice of law agreement. (See the above statutory reference 624.610 (3) (f)). Specifically dictating a choice of law provision is a restraint on the reinsurance market and runs counter to your goals of expanding capacity. When contracts specify a governing law, they do so because the parties to the contract recognize the benefits of citing to a specific legal framework. Mandating adherence to Florida law prevents the contracting parties from receiving the benefits of associating with a known, tested legal standard.

Section 6, paragraph (a), 1, financial statements. We have several recommendations for your review with regard to the financial statement filing requirement. Pursuant to Bermuda law, an insurer’s Bermuda’s statutory financial return is audited but is a confidential filing with the regulator. The statements can be filed with the Office, but they would need to be kept confidential. We’d recommend a reference be added to this section to ensure that such financial statements are kept confidential by the regulator; they are often today shared with the ceding insurer via a confidentiality agreement. Second, we would recommend deletion of the reconciliation to US GAAP or US SAP for prior year financial statements. We’d propose instead, that GAAP financial statements filed with the US Securities and Exchange Commission, be deemed acceptable for prior year financial statements. Third, a prospective reconciliation to US GAAP or a US GAAP statement for financial statements for the years following enactment

of this provision seems appropriate and efficient. Proposed language on both points is as follows:

“Audited financial statements from inception or for the last 3 years, whichever is less, filed with its domiciliary regulator by the reinsurer or, in the case of a rated group, by the group, pursuant to or including a reconciliation to US GAAP or US Statutory Accounting Principles. Regulatory financial statements shall be kept confidential, if so required by the domiciliary jurisdiction of the reinsurer. During the implementation transition period, for year’s prior to the enactment of this provision, US GAAP financial statements filed with the US Securities and Exchange Commission shall be deemed to meet the requirements of this section when filed in conjunction with the eligible reinsurer’s domestic jurisdiction audited financial filings.”

Section 6, paragraph (a) 3 NAIC Schedule F. We recommend modification of the filing requirement for NAIC Schedule F. NAIC Schedule F is an eight part comprehensive document governing cessions and assumptions, premiums and liabilities. and nothing like it exists outside of the US. Non-US reinsurers do not collect, nor report this data and it is not audited as part of a financial statement. For example Schedule F requires the disclosure of the reinsurer’s client list. This is proprietary and confidential information quite valuable to the reinsurer, (even more valuable to its competitors) it does not need to be disclosed in this context of assessing the financial standing of the reinsurer. The regulator has access through the financial statements of Florida domestic insurers reinsurance information and thus can assess the reinsurance utilization of its domestic insurers for solvency regulation purposes. We recommend only specific provisions of Schedule F be required to be filed. For example, the Office is most interested in information relevant to assess the financial standing of the reinsurer. Portions of the data reported in Schedule F, Parts 3, 4 and 8 seem relevant to this analysis. Thus if the regulator is looking for a list of the eligible reinsurer’s retrocessions, a separate filing of that information could appropriately be required. Also the regulator is interested in the reinsurer’s claims payment patterns. Thus information on overdue payments or amounts in dispute may be relevant in assessing the reinsurer’s financial standing. Other provisions of this section already require filing of disputes and recoverable amounts overdue, so there is no need to require a Schedule F filing to receive this information. We recommend that this section be revised to specify the filing of specific information and not make a contextual analogy to a record keeping, filing and auditing provision wholly unique to the US NAIC financial statement.

Section 6, paragraph (d) collateral reduction. We’re not sure what this sentence means. We have concluded that it allows the regulator to make a determination that an eligible reinsurer can operate with less collateral than the amounts actually required by the schedule. Is that a correct interpretation?

Section 6, paragraph (f), filings. We’d recommend deletion of the requirement for immediate notification of all changes in directors or officers. Changes in officers and directors can be appropriately noticed by providing with the financial statements an updated list of directors and officers.

Section 9, paragraph (b), solvency regulation. We respectfully request a change in this section to accurately describe the Florida statutes to which the eligible reinsurer is subject. The eligible reinsurer is not subject to the solvency requirements under the laws of the state of Florida. The

reinsurance agreement, and in some cases the reinsurer, is subject to the provisions of this regulation and Section 624.610, the Florida credit for reinsurance law. The language as written is incorrectly broad. The following amendment would be appropriate:

“That there is any indication or evidence that any eligible reinsurer, with whom the ceding insurer has a contract, fails to substantially comply with this regulation, the [solvency] requirements under Section 624.610 of the laws of Florida or its domiciliary jurisdiction.”

Thank you for consideration of our views. Please let me know if I can address any questions that arise from these comments.

Sincerely,

A handwritten signature in cursive script that reads "Bradley L. Kading".

Bradley L. Kading
President and Executive Director

Cc: Mr. Ray Spudeck, Ms. Belinda Miller; Leila Madeiros