

July 1, 2011

RE: NAIC Reinsurance Task Force, July 11 Interim Meeting – Credit for Reinsurance

Dear NAIC Reinsurance Task Force Committee Member:

In advance of the July 11th interim meeting of the Task Force, the undersigned wish to again express support for the Reinsurance (E) Task Force's (Task Force) proposed amendments to Model #785, the Credit for Reinsurance Model Law, and Model #786, the Credit for Reinsurance Model Regulation, both dated 2/22/2011 (the Model Law and Regulation).

As the Task Force completes its work on these important reforms we would like to reiterate a few key points concerning the proposed amendments to the Model Law and Regulation.

Although opponents are calling for significant changes and asking that the Task Force produce a "compromise" model, it is important to remember that the Model Law and Regulation already represent a significant compromise. If the discussion were re-opened, it would be our strong preference that the NAIC and the state system of regulation adopt a true mutual recognition system with no collateral for financially strong companies from qualifying jurisdictions. We also understand that many of these issues have been debated for nearly a decade. We have been persuaded, therefore, that the Model Law and Regulation, modeled from the previously adopted NAIC framework document, is an acceptable first step. Further amendments, however, could alter this view. Further compromise on the Model Law and Regulation would derail the significant progress this Task Force has made in recent months, and run against recent state activity recognizing the need for collateral reduction. As recognized in the current Model Law and Regulation, financially sound, stable and well-regulated foreign reinsurers should not have to post significant collateral to bring much-needed capital and resources to the market.

The proposed amendments to the Model Law and Regulation reflect an acknowledgment of: (a) the interrelated nature of the global insurance and reinsurance markets; (b) the need to coordinate with non-U.S. regulators in the global market; (c) the evolution of U.S. and international

accounting; and (d) the concessions made from U.S. trading partners who do not require collateral from U.S. reinsurers conducting a trans-border reinsurance business. As currently drafted, the amendments correctly focus regulatory collateral requirements on the reinsurer's ability and willingness to pay covered losses, as well as the adequacy and degree of cooperation of the domiciliary regulator with U.S. regulators. Such a regulatory structure is pragmatic and reflects appropriate sensitivity to the global recognition of greater communication and coordination amongst regulators.

This letter will address items that should remain unchanged in the current draft and items that would benefit from further amendment, while directly responding to arguments raised by opponents of the proposed changes. The attachment contains a list of key provisions and issues the Task Force should consider along with details regarding concerns and suggested resolutions. Amongst the items that should remain unchanged are the Model Law and Regulation's "sliding scale" and treatment of affiliate transactions and life reinsurance. The current rating scale is the product of considerable debate and compromise and is already in place in Florida, New York and Indiana. Affiliate transactions are already subject to review and regulation under the holding company laws and, despite claims to the contrary, are not restricted under UK, Canadian or EU law.

The Model Law and Regulation should apply equally to life reinsurance. There is no demonstrated reason for differential treatment of collateral related to life reinsurance cessions.

Additionally, the Task Force should remember that the models still allow insurers to negotiate the terms of their reinsurance contracts, including collateral, with their reinsurers.

Importance of Finalizing Reform

The proposed amendments will effectively modernize, through recognition of the global insurance marketplace, U.S. credit for reinsurance regulation. This modernization will benefit the U.S. insurance market. It is broadly supported by U.S. regulators and their international counterparts. It is also long overdue and should be accomplished promptly. The new Model

Law and Regulation will increase U.S. regulatory authority over non-U.S. reinsurers and will apply reinsurance collateral pursuant to an assessment of credit risk, rather than applying a one size fits all approach. Providing U.S. regulators with the discretion to allow domestic insurers to take credit for reinsurance from quality reinsurers, who have been vetted and have agreed to the model requirements, in lieu of posting 100% collateral as required under current law, will ensure the U.S. remains an attractive market for global reinsurers. Current collateral requirements force non-U.S. reinsurers to use their capital inefficiently. This balkanization of capital limits the ability of reinsurers to fully realize the benefits of insurance diversification. Reduced collateral requirements, on the other hand, enable a freer deployment of capital, enabling reinsurers to write more business. Reinsurers, like other businesses, are attracted to those markets where they can use their capital most productively. The proposed amendments are also a significant step towards leveling the playing field between non-U.S. reinsurers and their U.S. counterparts in those jurisdictions that do not require U.S. reinsurers to post collateral for reinsurance written on a cross-border basis. The proposed amendments to the models are a significant and much needed update to credit for reinsurance law and provide incentives to financially sound reinsurers to do more business in the U.S.

It is also vital that the NAIC continue the effort to change the Model Law and Regulation so as to modernize the reinsurance regulatory structure in the United States on a uniform basis and to bring it in line with the evolution of international regulation.

The NAIC model laws (and their application) will be evaluated as part of the next Financial Sector Assessment Program (FSAP) review of the U.S. regulatory system. This review involves comparing U.S. laws to IAIS standards. The U.S. will need to make sure that its laws and regulations, including those related to collateral, are in accord with these international standards. Without reinsurance regulatory reform, U.S. companies could be significantly disadvantaged in their ability to do business in the global market. The collateral issue has been specifically identified as an impediment to U.S. equivalence under Solvency II. Taking the necessary steps for the U.S. to achieve equivalence will be important for all U.S. companies doing business in the European Union.

In order to address these market and regulatory equivalence factors, the Task Force is urged to complete its work on the model credit for reinsurance law and regulation so the states may begin the implementation process without further delay.

Sincerely,

The Association of Bermuda Insurers and Reinsurers (ABIR)

ACE Group

European Insurance and Reinsurance Federation (CEA)

German Insurance Association (GDV)

Hannover Re

International Underwriting Association of London (IUA)

Lloyd's

Munich Re

The Reinsurance Association of America (RAA)

Swiss Reinsurance Company

Zurich American Insurance Company

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Key Provisions and Issues

1. CFR Model Regulation §8(A)(4) – Sliding Scale

Issue: Opponents recommend adjusting the sliding scale of ratings based collateral requirements from its current iteration to require more collateral from nearly all reinsurers and inserting the sliding scale from the regulation into the model law.

Resolution: No changes should be made to the sliding scale and it should remain in the model regulation.

First, all reinsurers in the A range (A+, A, and A-) are demonstrably strong, credit worthy reinsurers. The current sliding scale provisions appropriately acknowledge this fact. Other factors, including Commissioner discretion and the right of cedents to contractually request additional collateral can address unusual, infrequent, or aberrational circumstances that may present themselves.

Second, the rating scale currently in the NAIC model regulation is the result of years of debate and compromise and is already in place and operative in Indiana, Florida and New York. A change to the current scale could result in disparate collateral rules across the states. Such a disparity should be avoided when possible.

When there is rating movement between A+, A and A- ratings (either up or down) for a reinsurer, varying collateral requirements among these ratings could result in unintended consequences. Particularly with respect to A- companies, an increase in required collateral would be counterproductive and could reduce capacity and discourage new company formation. (Most new reinsurers begin with an A- rating.)

If any changes are appropriate, reinsurers in good standing from a qualified jurisdiction that have a Secure-3 rating (i.e., A-/A3 or above) or better in the proposed amended Model Regulation should not be required to post any collateral. Companies below this designation likely are not writing new business, and if they are, regulating collateral seems more appropriate.

Incorporating the sliding scale ratings into legislation seems ill. advised. The sliding scale details are best left to regulation because regulators will have greater flexibility to adjust the scale if necessary, and without undue political influence, than requiring an act of the legislature.

2. CFR Model Regulation § 8(E) – “Mandatory Contract Clauses” Should Be Deleted

Issue: The Section provides for numerous mandatory contract clauses in reinsurance agreements.

Resolution: Section 8(E) should be deleted in its entirety.

Regulatory guidance already exists (see SSAP No. 62R) for review of reinsurance contracts to determine if they meet statutory requirements for credit for reinsurance. The Financial Condition Examiners Handbook also addresses the role examiners play in reviewing reinsurance contract language. Both the accounting manual and examiners handbook require only a few contract clauses (e.g., both call for an insolvency clause and the Handbook contains a service of suit clause requirement) and do not dictate specific language. Such NAIC guidance appropriately applies to cedents' credit for reinsurance with respect to both authorized and unauthorized reinsurers, and financial examiners would continue to evaluate reinsurance contracts involving certified reinsurers pursuant to that regulatory guidance. No justification has been provided as to why the current system is not adequate.

International regulatory practice follows a similar approach to the current U.S. system. The departure from this custom puts the amendments at odds with the way reinsurance is commonly transacted on a national and global basis. Reinsurance transactions are between sophisticated entities with relatively equivalent bargaining power, and therefore the terms and conditions of reinsurance agreements should be left to the marketplace. For example, a "parties to the agreement clause" (discussed in more detail below), a "net retained lines clause", or a "premium clause" should be freely negotiated by the parties. Moreover, the various clauses go beyond what is necessary to ensure an entity's solvency. Mandating additional contract clauses only for reinsurance agreements with certified reinsurers conflicts with the goal of establishing a true system of recognition of substantially equivalent regulatory jurisdictions.

In addition to these arguments, below are specific additional comments with respect to the following mandated clauses:

Section 8(E)(1) Parties to the Agreement Clause: The standard in the industry (reinforced by current case law) is that, absent a specific cut-through clause, the policyholder does not have any rights under a reinsurance agreement. There is standard "no third party rights" language that has been developed and used in the industry to reinforce this point. It also would be a substantial departure from current law to require commissioner approval of "cut-through" clauses, which also would require resources at the state insurance department to handle such requests on a timely basis and potentially provide cut-through guidelines.

Section 8(E)(4) Reinsurance Intermediary Clause: The proposal should not mandate inclusion of a reinsurance intermediary clause. Whether to include this type of clause is better left to the negotiation between the parties.

Section 8(E)(5) Service of Suit Clause: As noted above, the Financial Condition Examiners Handbook already requires a service of suit clause. A separate contract clause requirement for contracts with certified reinsurers also is unnecessary as Section 2(E) of the Model Law would require a reinsurer would to appoint the commissioner as its agent for service of process in the state in order to be eligible for certification.

Section 8(E)(6) Insolvency Clause: Section 14 of the Model Regulation already contains an insolvency clause requirement and thus Section 8(E)(6) will result in confusion and inconsistency. In addition, the Financial Condition Examiners Handbook already requires a reinsurance contract to contain an insolvency clause. Thus, additional specific insolvency language is unnecessary as there is no regulatory need for contracts with certified reinsurers to be treated differently than other reinsurance contracts.

Section 8(E)(7) Credit for Reinsurance Clause: We strongly object to the inclusion of the credit for reinsurance clause requiring a reinsurer to provide the necessary amount of collateral to enable the cedent to take “full statutory accounting credit.” There should not be any obligation to post collateral for a reinsurer that is licensed or accredited in a state or that is a certified reinsurer. Mandating inclusion of such a clause does not encourage the proper type of risk management where parties appropriately identify and capitalize risk. Notwithstanding the above, current credit for reinsurance laws recognize situations where the cedent may take credit only for the amount of collateral provided (i.e., less than 100%). Among other reasons, this is needed to accommodate timing and reporting issues between the cedent and the reinsurer. We suggest that at a minimum this provision be appropriately modified to continue to permit partial credit to be taken.

Also, the term “Obligations” needs to be defined as it is unclear what is included (i.e., is IBNR included? Cedents and reinsurers sometimes disagree on the valuation of liabilities. Under the proposal who decides what the reinsurer’s share of Obligations will be?)

3. **CFR Model Regulation §§ 8(b)(4)(h) and 8(b)(6)(d)**

Both sections pertain to financial statements and provide that financial statements may be prepared using IFRS, but “must include and audited footnote reconciling equity and net income to a U.S. GAAP basis.”

Issue: Reconciliation to U.S. GAAP is unnecessary since IFRS is an equally reliable standard. Regulatory advances and cooperation enable U.S. regulators to understand international financial statements. In fact, U.S. regulators are accustomed to looking at financial statements from other countries. Under current state credit for reinsurance laws, in order for non-U.S. reinsurers to become “accredited,” such reinsurers must submit to the Commissioner, on an annual basis, statutory financial statements in their own format. Thus, current law does not require that such financial statements be conformed to the NAIC annual statement format or U.S. GAAP. Further, International accounting convergence efforts are moving toward one global standard. In addition, it is very costly for non U.S. companies that have never accounted on a U.S. GAAP basis before to provide a respective U.S. GAAP footnote reconciliation regarding equity and net income and may prevent companies from applying for collateral reduction.

Resolution: Delete all reference to U.S. GAAP reconciliation.

4. **CFR Model Regulation § 8(A)(2) – Affiliate Transactions Should Receive Equal Treatment.**

Issue: Some Opponents support exempting affiliated transactions (transactions between related companies) from the Model Law and Regulation and the regulators' discretionary ability to reduce reinsurance collateral.

Resolution: No change in the treatment of affiliated transactions is necessary.

The focus of the new credit for reinsurance rules is placed appropriately on the ability and willingness of a reinsurer to pay its obligations when due. The status of being an affiliate is largely irrelevant to that determination. In fact, the premise that an affiliated company is less likely to pay is illogical and, if anything, the opposite is true. Affiliated reinsurance transactions are a critical element of global risk management and diversification that provide capacity and diversification to the market, are highly regulated transactions and are a source of stability, not instability, to cedents.

Further, transactions between affiliated companies are subject to heightened regulatory scrutiny and approval under the insurance holding company laws. Additional special treatment is unnecessary. Domestic insurers and reinsurers use affiliate transactions without the need for collateral, recognizing them as effective capital management tools; globally active non-U.S. based carriers should be able to use them as well.

Effective source of Risk Management and Diversification:

- Excluding affiliated transactions would limit capacity and diversification in the market.
 - As noted, U.S. insurers cede reinsurance to their U.S. affiliated reinsurers to effectively manage their group capital, which also provides an added incentive for the insurance companies to carefully underwrite the business they transfer to their affiliates. This in turn benefits consumers in that it helps to insure the financial health of both insurers and the affiliates.
 - These same incentives and consumer benefits apply to transactions between U.S. insurers and their foreign reinsurance affiliates and should be encouraged.

Highly Regulated Transactions:

- Treatment under the Model Law and Regulation actually results in additional regulatory oversight of transactions involving non-U.S. affiliates. Affiliated transactions are central to the business models of internationally active insurance groups, including U.S. groups which operate abroad. European regulators treat affiliated transactions no differently than reinsurance transactions with any third party. There is no hard and fast limit in the EU on the amount which can be placed with any one reinsurer and it could be argued any such limit would go against the

“economic framework” of Solvency II. Letters to this effect have been submitted to the Task Force from both European trade associations and law firms.

- Transactions between affiliated companies are already, and will continue to be, subject to review and approval by the regulators under laws governing holding company transactions. In fact, the NAIC has amended the Insurance Holding Company System Model Regulations to provide state insurance regulators with even more access to holding company information. Given this, regulators have sufficient tools to prevent abuse of these transactions. Hence, there is no basis for excluding affiliated reinsurance from the Model Law and Regulation (in fact, there is a strong argument in support of these transactions due to the increased regulatory scrutiny at both the state and federal levels).
- Under current law a financially weak U.S. insurer can reinsure business with a lower rated U.S. affiliate without collateral while reinsurance between a financially strong U.S. insurer and its financially strong foreign reinsurer domiciled in country with a highly respected financial regulator requires collateral. This makes no sense and simply adds to the cost that U.S. consumers have to pay for coverage from the higher rated company.
- The Model Law and Regulation creates additional regulatory oversight of transactions involving non-U.S. affiliates and contains numerous safeguards designed to ensure collectability of reinsurance recoverables.
 - When read in conjunction with the existing Insurance Holding Company Act and regulations in state law (including the recent NAIC changes), State insurance regulators not only have the ability to disapprove transactions between a domestic and its affiliate(s), but, if such transactions were to be approved, to require collateral as warranted. Simply because a reinsurer, including an affiliated reinsurer, meets the requirements for a reduction in collateral under the Model Law and Regulation, does not mean that the regulator is required to reduce the collateral required of such affiliate.

Despite Opponents Arguments, Affiliate Reinsurance Transactions Are a Source of Stability to the Market:

- Notwithstanding the foregoing, opponents suggest regulators will allow domestics to cede 100% of their risks to offshore affiliates (either existing or newly formed with “thin” capital) thereby (1) creating an uneven playing field for other U.S. insurers that do not have the ability to enter into such reinsurance transactions and free up capital to issue more policies; and (2) allowing the offshore affiliated reinsurer to invest its assets in high risk investments (opponents argue that offshore companies are not subject to strict investment laws like U.S. companies – this has been termed “regulatory arbitrage” by the opponents) rendering it insolvent, unable to reimburse its U.S. domestic for losses under the reinsurance arrangement and with no recourse to retrieve such assets. In the worst case scenario painted by the opponents, the insolvency of the offshore affiliated reinsurer

would lead to the insolvency of the U.S. domestic thereby creating a drag on state guaranty funds and leaving all other domestics to pay for such insolvency.

- Forming “thinly capitalized” offshore affiliate reinsurers. Under the Model Law and Regulation, all reinsurers seeking to be “certified” in order to provide reduced collateral, must have a minimum of \$250M of capital and surplus and must be rated by at least two recognized rating agencies. Under many states’ current credit for reinsurance laws, such a reinsurer need only have \$20M in capital and surplus to be deemed “accredited.” Thus, the Model law and Regulation increase the amount of capital and surplus that a reinsurer must have by more than 10 times the level it must have today. Given this, the opponents’ argument that international holding companies will form thinly capitalized offshore reinsurers simply does not hold up under the provisions of the Model Law and Regulation. Moreover, such “thinly capitalized” reinsurer must be rated and rated at a level that allows a collateral reduction under the Model Law and Regulation – a difficult feat to achieve for a newly formed entity.
- Insolvent offshore reinsurer; no ability to obtain assets. Current state credit for reinsurance law requires that all non-U.S. reinsurers submit to the jurisdiction of a court in the U.S. The Model Law and Regulation continues this requirement. Moreover, in assessing whether a reinsurer, affiliated or third party, meets the new criteria under the models in order to qualify for a collateral reduction, the regulator must review the regulatory scheme of the domicile of such reinsurer, including its insolvency/liquidation scheme. The regulator must be assured that the rules of the foreign jurisdiction provide adequate protection to U.S. ceding companies. In addition, most, if not all of the non-U.S. jurisdictions the regulators would deem “equivalent” for purposes of the models, have adopted the New York Convention, or similar law, that requires such jurisdiction to recognize a judgment received in another jurisdiction. Thus, the picture painted by the opposition is not one based in reality.
- Creating an uneven playing field. Absent a pooling arrangement in which an U.S. domestic participates, which has been pre-approved by the regulator, it is highly unlikely that any regulator would permit a U.S. domestic to cede 100% of its risks to an offshore reinsurer. Any such transaction would need to be pre-approved by the regulator under the state’s Insurance Holding Company Act. In seeking such approval, the domestic would need to show that the transaction is fair and reasonable to the domestic and meets the criteria for an arm’s length transaction. The “arm’s length transaction” criteria is typically gauged against market (i.e., third party) transactions. There are virtually no third party reinsurer transactions where a domestic insurance company cedes 100% of all of its risks to a third party reinsurer. Thus, the 100% cession to the affiliate would very likely fail as it would not meet the arm’s length transaction standard. Such cession also would be scrutinized by the IRS.

- High risk investments. It is not in any insurance holding company system’s best interests to allow any rated affiliate to invest its assets in high risk investments - whether or not same is proscribed by statute. Rating agencies, as part of their review of a company, look at the investment portfolio of such company. In addition, companies subject to Solvency II or seeking equivalency under Solvency II, will incur a “risk charge” (a charge against capital) for investing in high risk investments.

Additional Issues and Suggested Changes

5. CFR Model Law § 2(E)(1)(d)

- a. Requires an assuming insurer to submit to the “jurisdiction of this state.”

Issue: Submission to the “jurisdiction” of “this state” is broad and could mean for all regulatory purposes.

Resolution: We believe the intent of this provision is for the foreign reinsurer to agree to submit to the courts of any particular state, which is consistent with Section 2(G)(1). The provision should be amended as follows:

“The assuming insurer must agree to submit to ~~the jurisdiction of this state~~ any court of competent jurisdiction in an individual state of the United States, ...”

- b. Requires assuming insurers to provide 100% collateral on all business from U.S. ceding insurers if an assuming insurer “resists enforcement of a final U.S. judgment.”

Issue: The provision could inappropriately curtail a reinsurers legal right to question/appeal a judgment and puts the reinsurer on the hook for 100% collateral on all business written based on a dispute related to a single transaction. The provision is overbroad since there are cases where a “final” judgment is obtained, but not appropriately so – for example, the court may not have had valid jurisdiction over the dispute. Both U.S. and non-U.S. reinsurers have limited, but important, rights to challenge a judgment which they believe is invalid.

Resolution: The Model Law and Regulation already provides regulators with the necessary tools to evaluate proper enforcement of judgments in §E(3)(a) and the provision related to enforcement of judgments in E(1)(d) should be deleted as follows:

~~... , and agree to provide security for 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment;~~

6. CFR Model Law § 2(E)(3)(a) and Model Regulation § 8(C)(2)

Requires U.S. regulators to consider the “rights, benefits and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S.

Issue: The term “reciprocal recognition” may denote a more formal equivalence requirement than the Task Force contemplated or is appropriate under a State credit for reinsurance law.

Resolution: In order to best ensure equal treatment of non-U.S. and U.S. reinsurers under the provisions of the Model Law and Regulation, we recommend amending §2(E)(3)(a) of the Model Law and §8(C)(2) of the Model Regulation as follows:

~~... , and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers~~ whether the jurisdiction imposes credit for reinsurance requirements on reinsurers licensed and domiciled in the U.S that are at least as favorable as those provided by the provisions of this section.

7. CFR Model Law § 2(E)(5)(b)

Requires certified reinsurers maintaining trust funds to have separate trusts for reduced collateral purposes which are “secondarily obligated to secure all obligations secured by the other account...”

Issue: The provision’s cross-liability requirement could affect the segregation of the trusts and could create confusion among cedents and regulators as to the collateral ultimately available to U.S. ceding companies. The provision also raises operation concerns related to how and when a trustee would distribute assets pursuant to a demand.

Resolution: The last sentence of §E(5)(b) should be deleted.

8. CFR Model Regulation § 8(B)(4)(d)

Requires non-U.S. reinsurers to file a report regarding their assumed/ceded business.

Issue: Requiring this new, substantial reporting requirement for non-U.S. reinsurers, for all business, is an unnecessary burden.

Resolution: We urge the Task Force to obtain information concerning assumed business from the Schedules F&S filed by U.S. ceding insurers. With regard to a certified reinsurers’

retrocessions, we recommend that non-U.S. reinsurers be required to simply provide baseline information, and agree to provide additional information as needed. An example of such baseline information could be a schedule showing:

- a. The aggregate amount of premiums ceded by the certified reinsurer to all of its reinsurers.
- b. The identity, rating, and amount ceded to each of its top 10 reinsurers (or to establish some similar threshold for determining “material” cessions).

This basic information would provide regulators with the facts needed to assess how reliant the reinsurer is on its own outwards reinsurance and would identify the applicant’s major reinsurers. In most cases, we expect that this information will satisfy regulators and no further inquiry would be required. Where this initial information raises questions regarding the quantity or quality of the reinsurer’s protection, regulators would and should have the right to request additional details.

9. CFR Model Regulation § 8(B)(5)

Issue: Enforcement of U.S. judgments – See 1(b) of this list.

Resolution: Although evidence that a reinsurer frequently resists enforcement of a final U.S. judgment should raise credit concerns, and it is a practice that be discouraged, requiring collateral for all reinsurance ceded by U.S. ceding insurers because a reinsurer disputes one judgment, rather than for the specific transaction at issue, seems overly punitive. There are certainly limited cases, for example where a U.S. judgment is issued by a court that did not have proper jurisdiction over the parties or where the reinsurer never received valid notice of the proceeding, where a challenge is proper and is allowed by both U.S. law and international protocols.

10. CFR Model Regulation § 8(B)(6)

Requires the reinsurer to file an annual list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers.

Issue: This information is subjective and it is already available from ceding insurers.

Resolution: Only a change in information materially relevant to a reinsurer’s individual financial situation should be required.

11. CFR Model Regulation § 8(B)(7)(c)

Provides that if the certified reinsurer’s rating is upgraded, the new rating applies only to prospective business but if the rating is downgraded, the reinsurer has to post additional security on a retroactive basis.

Issue: The downgrade clause can only equitably apply the increased funding provision to business written prospectively. It would be punitive to impose the provision on a retroactive basis.

Resolution: We oppose retroactive application of this “downgrade” clause and suggest that any such retroactive application should be left to the parties to negotiate.

The Task Force also should ensure that the “Tawa proposal” in Section 2(D)(3) of the Model Law and Section 7(B)(2) of the Model Regulation do not place reinsurers in run-off in a better position than active reinsurers who are downgraded. It appears that run-off reinsurers may have an ability to reduce their collateral requirements under Section 7(B)(2) of the Model Regulation, whereas a reinsurer who is downgraded but still writing business would have to increase its collateral pursuant to Section 8(B)(7)(c) of the Model Regulation.

12. Impact on Jobs

Some opponents claim that this legislation will have a negative impact on jobs.

- Opponents making this claim have not presented a coherent supporting argument.
- This legislation is a pro-free market, pro-consumer measure designed to increase reinsurance capacity and drive unnecessary costs from the regulatory system.
- Legislation that improves regulatory efficiency has always been considered pro-job growth legislation.

13. Impact on Credit for Reinsurance Accounting

Interested parties have been discussing the impact of reduced collateral on the Schedule F accounting for cedents.

With respect to non-U.S. trustee reinsurers maintaining a multibeneficiary master reinsurance trust (“MRT”) which additionally set up a supplemental multibeneficiary reinsurance trust (“SRT”) for reduced collateral cessions, we strongly urge the Reinsurance Task Force not to change the accounting practice for cedents. Both MRT and SRT liabilities should be reported under Schedule F – Part 3 “authorized non-US insurers.” There should be a accounting uniform treatment of all trusts with automatic full financial statement credit according to the very concept and continuing practice of trustee reinsurers.

We assume that the Reinsurance Task Force does not intent to negatively affect the status of a non-U.S. trustee reinsurer when becoming an eligible reinsurer for reduced collateral.

14. Moving Elements from the Model Regulation to the Model Law

Opponents suggest moving many elements of the NAIC Model Regulation into the Model Law.

- Proponents believe the issues addressed in the NAIC Model Regulation are more properly left to rulemaking.
- The issues addressed by regulation are areas state legislators should not want to hardwire into statute.
 - Many provisions address current, specific issues that may change in the long term. Addressing such issues via regulation is the most proper manner to ensure that state regulatory regimes remain timely.