

August 24, 2011

VIA EMAIL

Mr. Ryan Couch
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RE: Comments to July 26, 2011 exposure drafts amendments to the NAIC Credit for Reinsurance Model Law (#785) and Regulation (#786) (“collectively, the Drafts”)

Gentlemen:

This letter is sent on behalf of 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, The Reinsurance Association of America (RAA), Swiss Reinsurance Company, and Zurich American Insurance Company (“Reinsurers”) regarding the July 26, 2011 Drafts.

As an initial matter, we commend the Reinsurance Task Force for its perseverance on the collateral issue and for making these first steps towards a regulatory system that can effectively and efficiently recognize other strong regulatory jurisdictions. We are disappointed, however, that the most recent version of the Drafts represents a substantive step backward from the reinsurance regulatory modernization framework adopted by the NAIC in 2008.

Reinsurers continue to have the following significant concerns with the Drafts.

1. Sliding Scale - Creation of a Separate A- Category

The ratings scale in the Drafts was amended after the July 11 meeting to change the funding requirement for A- rated companies from 20% to 50% minimum collateral requirement. This was a substantive change from the heavily negotiated compromise reflected in the 2008 Framework in which Reinsurers had pressed for no collateral for strong reinsurers from qualified

jurisdictions. We believe this recent is unnecessary from a financial solvency standpoint and represents a step backward in the effort toward global regulatory recognition. Reinsurers in the A range (A+, A, and A-) are demonstrably strong and creditworthy. We believe that experience will prove that the reduced collateral available in the revised Model Law and Regulation will not result in solvency concerns for U.S. insurers or negatively impact U.S. policyholders and that requiring A- companies to post 50% (as opposed to 20%) collateral was not warranted. More importantly, the Drafts already provide for Commissioner discretion to address unusual, infrequent and/or deteriorating circumstances as well as explicitly state that cedents continue to have the right to contractually request (additional) collateral.

2. Mandatory Increased Funding for Ratings Downgrades

The Drafts provide that if the certified reinsurer's rating is upgraded, the new rating applies only to prospective business, however if the rating is downgraded, the reinsurer has to post additional security on a retroactive basis. The Reinsurers oppose retroactive application of this "downgrade" clause unless specifically negotiated for in the agreement by the parties. At a minimum, we strongly urge the Task Force to consider a one-year deferral for posting retroactively to determine whether it is factually warranted (i.e., a downward trend where non-payment is a possibility versus a temporary bump downwards due to a catastrophe). The recent downgrade of the U.S.'s sovereign credit rating and its effect on company credit ratings is an example of why retroactive funding can be unnecessary and counterproductive.

3. Financial Reporting

We strongly urge the RTF to allow commissioner discretion rather than mandatory reconciliation to U.S. GAAP. Financial reporting is in a state of flux and regulators need flexibility. Moreover, pursuant to the current Draft, U.S. regulators have already examined the supervisory regimes of the certified reinsurers and determined that their capitalization and reporting requirements are sufficient. Furthermore, the current Drafts also require ratings which are determined, in part, based upon the rating agency's evaluation of a company's capital.

4. Multibeneficiary Trusts – Technical Change

The current Drafts requires that upon termination of a trust, the remaining surplus in that trust must be used to fund any deficiency in the other trust. This language needs to be explicitly contained in both the wording of the trust and the agreement with the commissioner. For those with existing trusts, the proposed change avoids the highly burdensome process of obtaining approvals in states to amend these trusts. The proposed change will not adversely affect the security in the existing Section 2E(5)(b):

If a certified reinsurer maintains a trust to fully secure its obligations subject to Subsection D of this section, and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issues or renewed as a certified reinsurer with reduced security as permitted by this subsection or comparable laws of other U.S. jurisdictions and for its obligations subject to Subsection D of this section. It shall be a condition to the grant of certification under Subsection E of this section that the certified reinsurer shall have bound itself, by the language of the trust and **or (change "and" to "or")** agreement with the commissioner with principle oversight of each trust account, to fund, upon termination of any such trust account, out of the remaining surplus of such trust any deficiency of any other such trust account.

5. Reciprocal Recognition Language – Technical Change

The Model Law and Regulation 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. 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.

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.

6. Enforcement of Judgments Language –Technical Change

The Drafts require non-U.S. 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.” The provision could inappropriately curtail a non-U.S. reinsurer’s legal right to question/appeal a judgment. Further, it requires 100% collateral on all business written because of a dispute related to a single transaction. The provision is excessive, as there are cases where a “final” judgment is obtained, but not appropriately so, e.g., 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 believed to be invalid.

Section 8(B)(5) of the Model Regulation should be amended to read as follows:

"(5) . . . to provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurer if it resists enforcement of a final U.S. judgment. Provided, however, that this requirement will not apply to a certified reinsurer when it has asked a court of competent jurisdiction to review the validity of any such judgment. The Commissioner shall not certify . . ."

Thank you again for the opportunity to provide comments. We look forward to working with the NAIC as it adopts and implements credit for reinsurance reform.

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

The Reinsurance Association of America (RAA)

Swiss Reinsurance Company

Zurich American Insurance Company

Cc: Commissioner Thomas Consendine
NAIC Leadership
NAIC Reinsurance Task Force