

Director General

**To:** Commissioner Steven M. Goldman  
New Jersey Department of Banking and Insurance  
20 West State Street  
P.O. Box 325  
Trenton, NJ 08625-0325

**Your reference:** -

**Our reference:** AI 8027 (09/08)

**Subject:** NAIC Reinsurance Modernisation Framework Proposal (Revised Memorandum of 20 August 2008)

Brussels, 5 September 2008

Dear Commissioner Goldman,

The CEA has commented on previous NAIC reinsurance reform proposals, including most recently a letter dated 17th July 2008 on the NAIC's draft framework proposal of 3rd July 2008. We are pleased to have the opportunity to comment on the revised NAIC reinsurance modernisation framework ("the Memorandum") of the Reinsurance Task Force dated 20th August 2008.

First of all, we would like to underline that we appreciate the work of the NAIC in this field and the continued progress made on the Memorandum. While we welcome the fact that the revised version addresses some of the concerns raised by the CEA on the NAIC's previous proposal, we continue to have a number of concerns about the Memorandum.

### **1. Collateral Requirements**

We are pleased that the Memorandum recognises the principle of equal treatment for US and non-US reinsurers.

It remains our view that this equal treatment principle should be applied so that well regulated PoE reinsurers (which are domiciled in jurisdictions that are recognised as equivalent by the RSRD) and national reinsurers are not statutorily required to put up any collateral in respect of the reinsurance they write. In the meantime, we welcome the reductions in collateral requirements foreseen for non-US reinsurers by the Memorandum as a significant step in the right direction towards the total abolition of collateral requirements which we favour.

## 2. Reinsurance only Provision

We are pleased that the Memorandum has been revised so that direct insurers which write reinsurance will also be eligible to benefit from the proposed regime. We would like to thank the NAIC for making this sensible change.

## 3. Port of Entry State

In our letter of 17th July we made the point that we did not see any need or justification for a non-US reinsurer to be subject to the additional oversight of a Port of Entry (PoE) State where the non-US jurisdiction is found to be equivalent to the US regulatory system.

Such a requirement does not take into account the fact that, for example, EU firms writing reinsurance are already subject to stringent Home State supervisory rules in respect of the totality of their business, including that written on a cross-border basis. The requirement is also unnecessary in those circumstances in which equivalence of regulation has been found to exist by the RSRD. EU Member States do not themselves maintain a PoE requirement for third country reinsurers based in an equivalent regulatory jurisdiction and who seek to write EU business from outside the EU on a cross-border basis. Nor do we see the need for such a PoE State arising from, or being compatible with the spirit of, the IAIS's draft Paper on Mutual Recognition of Reinsurance Supervision.

We would therefore invite the NAIC to reconsider and remove the PoE requirement.

## 4. Port of Entry Reporting Requirements

By way of general introductory comment, we would make the point that, where these requirements only apply to PoE reinsurers, they constitute an additional and unnecessary burden from which US reinsurers are exempt. Such discriminatory provisions should be removed in our view.

If, which we hope is not the case, the NAIC retains the Port of Entry concept in the final framework, we believe that the reporting obligations proposed should be reformed as follows.

(i) *Paragraph 13e*

This sub-paragraph requires PoE reinsurers to file at least annually with their PoE supervisors "*an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from US domestic ceding insurers*".

As currently worded, this is an excessive requirement. The memorandum should at least specify an amount in excess of which such claims have to be reported and should define more clearly the scope of the term "disputed claims".

(ii) *Paragraph 17e*

As stated in our letter of 17th July, we do not believe that PoE reinsurers should be required to file Schedule F or S forms annually.

(iii) *Paragraph 17i*

This sub-paragraph requires PoE reinsurers to file audited financial statements in US GAAP or IFRS provided that in the case of the latter equity and income are reconciled to US GAAP. We repeat our view that there should be no requirement for IFRS statements to be reconciled to US GAAP. Not only is such a reconciliation requirement unnecessary and costly but it is also out of line with the view of the SEC which announced proposed rule changes last year to allow IFRS financial statements to be filed without *any* reconciliation to US GAAP. We recommend that the NAIC follows the SEC approach.

(iv) *Paragraph 17k*

This subparagraph automatically imposes the most vulnerable rating on a reinsurer as a sanction for entering into a solvent scheme, regardless of circumstances. It assumes that there is no set of facts in which entering into a solvent scheme is prudent and proper. We think this premise is false. Properly used in an appropriate case, such schemes can be effective in promoting the interests of all concerned parties, including ceding insurers. We are concerned that this factor, as written, would create a disincentive for a reinsurer to enter into a solvent scheme in circumstances in where doing so is clearly the proper and prudent thing to do for all concerned.

If the Task Force is concerned about the possible abusive use of a solvent scheme, that concern could be addressed by the following revision:

*"A reinsurer's participation in any solvent scheme of arrangement or similar procedure. Entrance into such an arrangement or procedure in a circumstance where the home state or PoE supervisor finds that doing so has unfairly prejudiced the legitimate rights of one or more US ceding insurers will result in an assignment of a Vulnerable- 5 rating".*

(v) *Paragraph 17l*

This subparagraph provides the home state or PoE supervisor with the possibility to require "*any other information deemed relevant*" in addition to the already extensive and burdensome requirements outlined in this paragraph.

We believe that including such rather open-ended discretionary powers to the home state or PoE supervisor will inevitably result in significant differences in the factors considered by the different state supervisors and therefore cause an unequal application of the evaluation process.

We would be pleased to respond to any questions or comments you or the other Task Force members might have regarding the contents of this letter.

Yours sincerely,



Michaela Koller  
Director General