

REINSURANCE (E) TASK FORCE

Reinsurance (E) Task Force Sept. 24, 2009, Minutes

Reinsurance Regulatory Modernization Act of 2009 Submitted to the Government Relations Leadership Council, Adopted Sept. 15, 2009 (Attachment One)

Reinsurance (E) Task Force Interim Meeting Minutes, Sept. 15, 2009 (Attachment Two)

Reinsurance Legislation Redlined Draft, Sept. 3, 2009, Reinsurance Regulatory Modernization Act of 2009 (Attachment Two-A)

Reinsurance Legislation Redlined Draft, July 27, 2009, Reinsurance Regulatory Modernization Act of 2009 (Attachment Two-B)

Letter from Marike F. Brady, American Council of Life Insurers, to Ryan Couch, NAIC, Dated August 17, 2009, Regarding Reinsurance Legislation Draft, July 27, 2009, Reinsurance Regulatory Modernization Act of 2009 (Attachment Two-C)

Letter from Steven A. Bennett, Assistant General Counsel, American Insurance Association, to The Honorable Nonnie Burnes, Vice Chair, Reinsurance (E) Task Force, Dated August 17, 2009, Regarding Draft Reinsurance Regulatory Modernization Act of 2009 (Attachment Two-D)

Letter from Martin F. Carus, State Relations Officer, American International Group, Inc, to Ryan Couch, NAIC, Dated August 13, 2009, Regarding Reinsurance Legislation Draft, July 27, 2009, Reinsurance Regulatory Modernization Act of 2009 (Attachment Two-E)

Letter from John R. Mathews, Counsel, Law and Regulation, Allstate Insurance Company, to The Honorable Nonnie Burnes, Vice Chair, Reinsurance (E) Task Force, Dated August 13, 2009, Regarding Reinsurance Legislation Draft, July 27, 2009, Reinsurance Regulatory Modernization Act of 2009 (Attachment Two-F)

Reinsurance Legislation Draft, Allstate Insurance Company Redlined Draft, August 13, 2009, Reinsurance Regulatory Modernization Act of 2009 (Attachment Two-G)

Letter from Alberto Corinti, Director of Economics Finance, CEA Insurers of Europe, to Ryan Couch, NAIC, Dated August 17, 2009, Regarding Comments to Revised NAIC Exposure Draft of the Reinsurance Regulatory Modernization Act of 2009 (Attachment Two-H)

Letter from The General Insurance Association of Japan to Members of the Reinsurance Task Force, Dated August 17, 2009, Regarding Draft Reinsurance Regulatory Act of 2009 (Attachment Two-I)

Letter from Hiklehard Stuke, Associate Director, Hannover Re to The Honorable Nonnie Burnes, Vice Chair, Reinsurance (E) Task Force, Dated August 17, 2009, Regarding the July 27, 2009, Draft of the Reinsurance Regulatory Modernization Act of 2009 (Attachment Two-J)

Letter from Dave Matcham, Chief Executive, International Underwriting Association of London, to The Honorable Nonnie Burnes, Vice Chair, Reinsurance (E) Task Force, Dated August 14, 2009, Regarding the July 27, 2009, Draft of the Reinsurance Regulatory Modernization Act of 2009 (Attachment Two-K)

Letter from Joseph P. Gunset, General Counsel, Lloyd's America, Inc., to The Honorable Nonnie Burnes, Vice Chair, Reinsurance (E) Task Force, Dated August 14, 2009, Regarding the Reinsurance Regulatory Modernization Act of 2009 (Attachment Two-L)

Letter from Stephen W. Broadie, Vice President, Financial Policy, Property Casualty Insurers Association of America, to Ryan Couch, NAIC, Dated August 17, 2009, Regarding Draft Reinsurance Regulatory Modernization Act (Attachment Two-M)

Letter from Tracey Laws, Reinsurance Association of America, to Ryan Couch and Dan Schelp, NAIC, Dated August 17, 2009, Regarding the July 27, 2009, Draft of the Reinsurance Regulatory Modernization Act of 2009 (Attachment Two-N)

Reinsurance (E) Task Force 2010 Proposed Charges, Dated Sept. 24, 2009 (Attachment Three)

Reinsurance (E) Task Force
Washington, DC
September 24, 2009

The Reinsurance (E) Task Force met in Washington, DC, Sept. 24, 2009. The following Task Force members participated: Scott H. Richardson, Chair (SC); Jim L. Ridling represented by Richard Ford (AL); Jay Bradford represented by Mel Anderson (AR); Christina Urias and Steve Ferguson (AZ); Steve Poizner represented by Kim Hudson and Woody Girion (CA); Thomas R. Sullivan represented by Kathy Belfi and Richard Mareks (CT); Gennet Purcell represented by Philip Barlow (DC); Karen Weldin-Stewart and Linda Sizemore (DE); Kevin McCarty represented by Belinda Miller (FL); John Oxendine represented by Justin Durrance (GA); Michael T. McRaith represented by Jack Messmore (IL); Carol Cutter represented by Connie Ridinger (IN); James J. Donelon represented by Stewart Guerin (LA); Joseph G. Murphy represented by Elizabeth Brodeur (MA); Mila Kofman represented by Robert Wake (ME); John Huff (MO); Ann Frohman represented by Christy Neighbors (NE); Roger A. Sevigny represented by Paul Kropp (NH); Neil N. Jasey represented by Robert Kasinow (NJ); Scott J. Kipper represented by Brett Barratt (NV); James J. Wrynn represented by Joseph Fritsch (NY); Kent Michie represented by Neal Gooch (UT); Alfred W. Gross represented by Doug Stolte (VA); Paulette Thabault represented by Herbert Olson (VT); Mike Kreidler represented by Patrick McNaughton (WA); Sean Dilweg represented by Roger Peterson (WI); and Jane L. Cline represented by Leah Cooper (WV).

1. Update on Reinsurance-Related Issues in Congress

Amanda Yanek (NAIC) noted that H.R. 2571—The Nonadmitted and Reinsurance Reform Act was passed in the U.S. House of Representatives Sept. 9. This is the third time that the bill has passed in the House. The Senate version of this bill, S. 1363, was introduced June 25; however, no hearing has been scheduled for this bill. Ms. Yanek noted that NAIC staff continue to work with the sponsors of these bills to discuss the provisions related to reinsurance.

Ms. Yanek noted that an additional bill related to reinsurance, H.R. 3434, was introduced in the House July 30. This bill aims to amend the Internal Revenue Code of 1986 to disallow the deduction for excess non-taxed reinsurance premiums with respect to U.S. risks paid to affiliates. There is currently no corresponding legislation in the Senate. Ms. Yanek noted that the NAIC has not taken a position on this bill.

2. Sept. 15 Interim Meeting

Director Richardson said the Task Force adopted the Reinsurance Regulatory Modernization Act of 2009 during an interim meeting Sept. 15, and subsequently submitted the legislation to the Government Relations Leadership Council (GRLC) for its immediate review and consideration (Attachment One). He noted that GRLC approved this legislation during its Sept. 23 meeting, and the next step is to seek congressional sponsorship for the bill. Upon a motion by Mr. Fritsch and second by Mr. Stolte, the Task Force adopted the minutes of the Sept. 15 interim meeting (Attachment Two).

3. Consider Proposed 2010 Charges

Director Richardson referred the Task Force to the proposed 2010 charges and explained two minor changes from the 2009 charges. First, with respect to charge number one, the mission statement of the Task Force has been included as a charge within the list. This is only a change in presentation, as the statement itself did not change.

With respect to charge number five, the charge has been expanded to include monitoring the development of international reinsurance standards, as opposed to specifically referencing only the development of standards within the European Union.

With respect to charge number three, Director Huff recommended that the term “consider” be replaced. Following discussion, it was agreed to reword charge number three as follows: “Promote and facilitate the implementation of the adopted reinsurance regulatory modernization framework.” Upon a motion by Director Huff and second by Mr. Peterson, the Task Force adopted its 2010 charges (Attachment Three).

4. Update from the IAIS

Robert Meindl (BaFin), acting chair of the Reinsurance and Other Forms of Risk Transfer Subcommittee of the International Association of Insurance Supervisors (IAIS), summarized the current work of the IAIS with respect to reinsurance. He noted

that this subcommittee consists of members from 24 jurisdictions, and is currently working to develop an insurance core principle, standard and guidance paper on reinsurance and other forms of risk transfer.

Mr. Meindl said two subgroups also work under this subcommittee: the Mutual Recognition Subgroup and the Reinsurance Transparency Group. He said that in 2008, the Mutual Recognition Subgroup completed the Guidance Paper on the Mutual Recognition of Reinsurance Supervision, and recently distributed a survey on market access requirements for reinsurers. In 2009, the Reinsurance Transparency Group is publishing two editions of the Global Reinsurance Market Report (GRMR). A mid-year GRMR with a focus on securitization was released in August. The traditional end-of-year GRMR is scheduled for release in December.

5. Any Other Matters

Mr. Fritsch noted that the Property and Casualty Reinsurance Study Group held an interim meeting Sept. 15 to discuss a referral from the Statutory Accounting Principles Working Group, *Issue Paper No. 137—Transfer of Property and Casualty Reinsurance Agreements in Run-Off*. He noted that this guidance would provide an alternative to retroactive accounting treatment for property and casualty reinsurance agreements meeting certain requirements. On Sept. 15, following discussion, the Study Group referred the item back to the Statutory Accounting Principles Working Group with a recommendation that Issue Paper No. 137 and the related changes to *SSAP No. 62—Property and Casualty Reinsurance* be adopted with minor technical clarifications.

Having no further business, the Reinsurance (E) Task Force adjourned.

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Adopted by the Reinsurance (E) Task Force 9-15-09

A BILL

To enact the Reinsurance Regulatory Modernization Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Reinsurance Regulatory Modernization Act of 2009.”

SEC. 2. REINSURANCE SUPERVISION REVIEW BOARD.

(a) There is hereby established the Reinsurance Supervision Review Board as an instrumentality of the United States with the powers and authorities herein provided.

(b) Two types of reinsurers are hereby established in the United States, National Reinsurers and Port of Entry Reinsurers. In order to provide effective regulation by the States of these types of reinsurers, the Reinsurance Supervision Review Board is hereby given authority to:

(1) evaluate the reinsurance supervisory systems of the States to determine whether such jurisdictions qualify as Home State Supervisors or Port of Entry Supervisors under standards recommended by the NAIC and adopted by the Board;

(2) evaluate the reinsurance supervisory systems of non-U.S. Jurisdictions to determine whether they are eligible for recognition by the Board as Qualified Non-U.S. Jurisdictions under standards recommended by the NAIC and adopted by the Board;

(3) develop sample supervisory recognition agreements and information sharing and regulatory cooperation agreements, to be entered into uniformly by Port of Entry Supervisors with Qualified Non-U.S. Jurisdictions under standards recommended by the NAIC and adopted by the Board; and

(4) preserve the confidentiality of supervisory information within the Board’s control, and enter into agreements with State, federal, and non-U.S. financial supervisory and law enforcement officials and agencies for sharing supervisory information on a confidential basis.

(c) The Reinsurance Supervision Review Board shall be an “agency” of the United States for purposes of subchapter II of chapter 5 and chapter 7 of Title 5.

SEC. 3. MEMBERSHIP.

(a) The Board. The Board shall consist of representatives of State insurance regulatory



authorities, the Department of the Treasury, the Department of Commerce, and the Office of the United States Trade Representative.

(b) Composition. The Board shall consist of 15 directors appointed by the President by and with the advice and consent of the Senate as follows:

(1) Ten directors from the State insurance regulatory authorities in their respective States. Nominees for these 10 directorships shall be submitted to the President by the NAIC.

(2) Five directors from the Department of Treasury, from the Department of Commerce, and from the Office of the United States Trade Representative, as the President may appoint.

(c) Chairperson and vice-chairperson. The President shall designate 1 director as chairperson and 1 director as vice-chairperson of the Board. The chairperson shall be selected from among the 10 directors appointed pursuant to Section 3(b)(1). The chairperson and vice-chairperson shall serve in such capacity for the term of their appointment as directors.

(d) Terms.

(1) Initial terms. In appointing the initial Board, the President shall designate 5 of the appointed directors for initial terms of 3 years, 5 of the appointed directors for initial terms of 2 years, and 5 of the appointed directors for initial terms of 1 year.

(2) Thereafter. After the initial term, all directors shall be appointed for terms of 3 years.

(3) Succession and termination. The successor of any director appointed pursuant to Section 3(b)(1) shall likewise be appointed pursuant to Section 3(b)(1). The successor of any director appointed pursuant to Section 3(b)(2) shall likewise be appointed pursuant to Section 3(b)(2). A director may be appointed to succeed himself or herself. If any director shall cease employment in the State or Federal agency from which he or she was appointed pursuant to Section 3(b)(1) or 3(b)(2), the director's membership on the Board shall terminate and a successor shall be appointed in the manner set forth in this subsection for the remainder of the director's term.

(4) End of service. A director may continue to serve on the Board until his or her successor is appointed.

SEC. 4. EVALUATION AND CERTIFICATION BY BOARD.

(a) Home State and Port of Entry State Standards. The reinsurance activities of each type of reinsurer shall be supervised by a single State, the Home State or Port of Entry State, under model laws established by the NAIC and adopted uniformly by the individual States seeking certification as Home State or Port of Entry Supervisors. The NAIC shall recommend uniform standards, subject to review and adoption by the Board, for reinsurance supervisory systems of Home States and Port of Entry States that ensure that any such system that complies with such standards provides an acceptable level of prudential supervision over reinsurers regulated by such Home State or Port of Entry Supervisor. Any standards relating to ceded premium volume shall



not unfairly discriminate against otherwise qualified States with respect to approval as a Home State or Port of Entry Supervisor.

(b) Evaluation of Home State and Port of Entry Supervisors. The Board shall certify which jurisdictions qualify as a Home State Supervisor or Port of Entry Supervisor.

(c) Evaluation of Non-U.S. Jurisdictions. The Board shall evaluate the reinsurance supervisory systems of non-U.S. jurisdictions, both initially and on an ongoing basis, consider the rights, benefits and the extent of reciprocal recognition afforded by non-U.S. jurisdictions to reinsurers licensed and domiciled in the U.S., determine the appropriate supervisory recognition approach for such jurisdictions, and create and publish a list of jurisdictions eligible to be recognized as Qualified Non-U.S. Jurisdictions.

(d) Fees. The Board shall establish a fee for conducting evaluations under this Section in the amount such that the aggregate of fees collected covers all costs of conducting evaluations under this Section and all other costs of the establishment and operation of the Board.

(e) Certification and Decertification of Home State and Port of Entry Supervisors. If, upon conducting an evaluation under this Section with respect to the reinsurance supervisory system of any State, the Board determines that the State qualifies to be a Home State or Port of Entry Supervisor, the Board shall certify such qualification and publish notice and evidence of such certification in an appropriate manner. The Board may establish a procedure to decertify those Home State and Port of Entry Supervisors that no longer meet the applicable standards for certification.

(f) Certification and Decertification of Qualified Non-U.S. Jurisdictions. If, upon conducting an evaluation under this Section with respect to the reinsurance supervisory system of any non-U.S. Jurisdiction, the Board determines that the jurisdiction qualifies to be recognized as a Qualified Non-U.S. Jurisdiction, the Board shall certify such qualification and publish notice and evidence of such certification in an appropriate manner. The Board may establish a procedure to decertify those Qualified Non-U.S. Jurisdictions that no longer meet the qualifications for certification.

(g) Public Notice and Comment. In developing standards, procedures, and fee levels, both the Board and the NAIC shall provide appropriate advance public notice and opportunity for public comment.

(h) Authority to Enter Agreements with Qualified Non-U.S. Jurisdiction Supervisors. A Port of Entry State is hereby authorized to enter into a supervisory recognition framework with a Qualified Non-U.S. Jurisdiction Supervisor, and enter into regulatory cooperation and information sharing agreements with Qualified Non-U.S. Jurisdictions, in accordance with standards and procedures recommended by the NAIC and adopted by the Board. This supervisory recognition framework may include the concepts of unilateral recognition of the Qualified Non-U.S. Jurisdiction by the Port of Entry State, mutual recognition between the Port of Entry State and the Qualified Non-U.S. Jurisdiction, or reciprocal treatment of reinsurers domiciled in the applicable jurisdictions.

(i) Confidentiality. All annual statement or other financial documents, materials, or information submitted by reinsurers pursuant to this Act which are not otherwise public information subject to



disclosure shall be exempted from disclosure under Title 5 Section 552(a) and shall be withheld from the public.

SEC. 5. REQUIREMENTS FOR NATIONAL AND PORT OF ENTRY REINSURERS.

A reinsurer shall be subject to the following requirements in order to be certified as a National Reinsurer by a Home State, or to be certified as a Port of Entry Reinsurer by a Port of Entry State:

(a) Reinsurers shall have a minimum capital and surplus requirement of \$ 250 million to be eligible to be a National Reinsurer or a Port of Entry Reinsurer. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least \$ 250 million and a central fund containing a balance of at least \$ 250 million. The capital and surplus requirement of \$ 250 million set forth in this subsection shall be subject to periodic review by the Board, and may be periodically adjusted by the Board if it is determined that such other capital and surplus requirement is appropriate and necessary.

(b) Pursuant to Section 6(a), credit for reinsurance ceded by a domestic ceding insurer to a National or Port of Entry Reinsurer shall not be denied if collateral provided by the National or Port of Entry Reinsurer is held in the United States in accordance with the following requirements-

(1) The Port of Entry or Home State Supervisor shall assign a reinsurer one of five ratings (Secure-1, Secure-2, Secure-3, Secure-4 or Vulnerable-5). National Reinsurers and Port of Entry Reinsurers shall be evaluated on a legal entity basis, with due consideration being given to the group rating where appropriate, for purposes of establishing their collateral requirements.

(2) For Port of Entry Reinsurers, the Port of Entry Supervisor's rating and corresponding collateral calculation as a percentage of the reinsurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers under this Act shall be as follows:

<u>Ratings</u>	<u>Collateral Required</u>
Secure – 1	0%
Secure – 2	10%
Secure – 3	20%
Secure – 4	75%
Vulnerable – 5	100%

(3) National Reinsurers rated by their Home State Supervisors in the Secure - 3 tier or above shall not be required to post any collateral for reinsurance assumed under this Act. For those National Reinsurers rated in the Secure - 4 tier, the Home State Supervisor shall require that 75% collateral be posted pursuant to Section 5(b)(5) and regulations promulgated thereunder. For those in the Vulnerable – 5 tier, the Home State Supervisor



shall require that 100% collateral be posted pursuant to Section 5(b)(5) and regulations promulgated thereunder. The requirements of this paragraph shall be in force during the first two years of this Act, after which time the Board shall periodically determine new uniform and appropriate collateral amounts for National and Port of Entry Reinsurers including, with regard to Port of Entry Reinsurers, due consideration of the level of equivalence of prudential regulation and effective market access in the Port of Entry Reinsurer's jurisdiction.

(4) As part of the evaluation process, standards shall be recommended by the NAIC and adopted by the Board to be considered by the Home State or Port of Entry Supervisor in determining the appropriate rating of a reinsurer, and shall include but not be limited to the following:

- (A) The reinsurer's financial strength rating from two or more rating agencies approved by the U.S. Securities and Exchange Commission or other successor regulatory agency, which shall correspond to the maximum rating that a reinsurer may be assigned, as determined by the Board under its practices and procedures.
- (B) Compliance with reinsurance contractual terms and obligations, including contractual clauses deemed mandatory by the Board;
- (C) The business practices of the reinsurer in dealing with its ceding insurers;
- (D) For National Reinsurers, a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers);
- (E) For Port of Entry Reinsurers, a review of a report filed annually in the form of the applicable NAIC Annual Statement Blank, in accordance with standards and procedures recommended by the NAIC and adopted by the Board;
- (F) The reinsurer's reputation for prompt payment of claims under reinsurance agreements, including the proportion of the reinsurer's obligations that are more than 90 days past due or are in dispute, with particular attention to receivables payable to companies that are in administrative supervision or receivership;
- (G) Regulatory actions against the reinsurer;
- (H) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subsection (I) below;
- (I) For Port of Entry Reinsurers, audited financial statements, regulatory filings, and actuarial opinions in accordance with standards and procedures recommended by the NAIC and adopted by the Board. Upon the initial certification, audited financial statements for the last 3 years filed with its non-U.S. Jurisdiction Supervisor;



(J) The liquidation priority of obligations to a ceding insurer in the reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

(K) A reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The Port of Entry Supervisor shall receive prior notice from a reinsurer that proposes participation by the reinsurer in a solvent scheme of arrangement; and

(L) Any other information deemed relevant by the Home State or Port of Entry Supervisor.

(5) Security provided under this Section ("collateral") shall be held under standards and procedures recommended by the NAIC and adopted by the Board.

(6) In order to facilitate the prompt payment of claims, a Home State or Port of Entry Supervisor shall not require a National Reinsurer or a Port of Entry Reinsurer to post collateral for catastrophe recoverables for a period of 1 year from the date of the first instance of a reserve entry by the ceding insurer as a result of a loss from a defined catastrophic occurrence as recognized by the Home State or Port of Entry Supervisor. The one year deferral period is applicable only with respect to lines of property and casualty insurance and is contingent upon the respective National or Port of Entry Reinsurer continuing to pay claims in a timely manner.

(7) The Home State or Port of Entry Supervisor shall require National and Port of Entry Reinsurers to post 100% collateral upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.

(8) Affiliated reinsurance transactions shall receive the same opportunity for reduced collateral requirements pursuant to this Act as all other reinsurance transactions.

(9) Change in Rating or Revocation of Certification. The Port of Entry or Home State Supervisor shall not have discretion to waive additional collateral required in the case of a downgrade by a rating agency or other disqualifying circumstance.

(A) The Port of Entry Supervisor or Home State Supervisor shall have the authority to suspend, amend or withdraw a Port of Entry or National Reinsurer's certification at any time if the Port of Entry or National Reinsurer fails to meet its obligations or collateral requirements under this Act, or if other financial or operating results of the Port of Entry or National Reinsurer, or documented significant delays in payment by the Port of Entry or National Reinsurer, lead the Port of Entry or National Reinsurer's supervisor to reconsider the Port of Entry or National Reinsurer's ability or willingness to meet its contractual obligations.

(B) If the Home State Supervisor's or Port of Entry Supervisor's rating of a Port of Entry or National Reinsurer improves, the Port of Entry or National Reinsurer may meet the collateral requirements applicable to its new rating on a prospective basis, but the Home State or Port of Entry Supervisor shall require the Port of Entry or National Reinsurer to post collateral under the previously applicable



collateral requirements as to all contracts in force on or before the effective date of the improved rating. If the Home State Supervisor's or Port of Entry Supervisor's rating of a Port of Entry or National Reinsurer declines, the Port of Entry or Home State Supervisor shall require the Port of Entry or National Reinsurer to meet the collateral requirements applicable to its new rating for all business subject to this Act.

(C) Notwithstanding the change of a Port of Entry or National Reinsurer's rating or withdrawal of its certification, U.S. ceding insurers that have ceded reinsurance to such Port of Entry or National Reinsurer may not be denied credit for reinsurance under Section 6(a)(3) for a period of 3 months for all reinsurance ceded to that Port of Entry or National Reinsurer, unless the reinsurance ceded to such Port of Entry or National Reinsurer is deemed by the respective Port of Entry or Home State Supervisor to be uncollectible.

(c) This Act confers no private right of action in any federal court for any Port of Entry Reinsurer rated by a Port of Entry Supervisor or any National Reinsurer rated by a Home State Supervisor to seek review of the Port of Entry Supervisor's or Home State Supervisor's rating decision. Nor shall any such Port of Entry Reinsurer or National Reinsurer be permitted to seek review of such a rating decision under Title 42, Section 1983. Nothing in this subparagraph precludes review of such a rating decision pursuant to the laws and regulations of the Port of Entry State or Home State.

(d) This Act shall not prohibit the parties to a reinsurance agreement from agreeing to provisions establishing collateral requirements that exceed the collateral requirements for National and Port of Entry Reinsurers under this Act.

SEC. 6. PREEMPTION OF INCONSISTENT STATE LAWS AND ACTIONS.

All laws, regulations, provisions, or other actions of a State are preempted to the extent that they are inconsistent with this Act.

(a) With respect to reinsurance ceded to a National or Port of Entry Reinsurer, if a State in which the ceding insurer is transacting insurance business regulates credit for reinsurance, the State may not directly or indirectly:

- (1) impose collateral requirements that differ from those required by the Home State or Port of Entry Supervisor in accordance with this Act;
- (2) regulate the financial condition of the National or Port of Entry Reinsurer, unless it is the Home State or Port of Entry Supervisor; or
- (3) deny or limit credit for reinsurance except to the extent expressly permitted in accordance with this Act.

(b) This Section does not preempt the insurance regulatory authority of a Host State to determine whether a ceding insurer's reinsurance contracts transfer sufficient risk to qualify for reinsurance accounting treatment, to determine the amount of the ceding insurer's incurred loss



reserves, or to exercise other prudential regulatory powers over the ceding insurer, as long as those powers are not exercised in a manner that has the effect of frustrating or circumventing the purposes of this Act.

(c) This Section does not preempt the insurance regulatory authority of a Host State to determine the existence and adequacy of collateral held by, or under the control of, the ceding insurer consistent with Section 5(b)(5) and regulations promulgated thereunder.

(d) This Section does not preempt or affect any State law, rule, or regulation that regulates credit for reinsurance ceded to reinsurers that are not National or Port of Entry Reinsurers, as defined under this Act, at the time the reinsurance is ceded, or that regulates credit for reinsurance with respect to lines of insurance that are excluded from the scope of this Act at the time the reinsurance is ceded.

(e) This Act shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the Act. This Act shall not be applicable to life reinsurance contracts until the earlier of 24 months from the effective date of the Act, or the implementation of U.S. principles based reserving standards for life insurance by the NAIC.

SEC. 7. RIGHT OF REVIEW.

(a) A ceding insurer adversely affected or aggrieved by any action that is inconsistent with Section 6(a) of this Act by any State that regulates credit for reinsurance, or by the officer of any such State, shall be permitted to seek review by the Board of the action of the State or State officer, pursuant to rules and procedures to be established by the Board after notice and comment. In adjudicating any such claim, the Board is hereby authorized to order such relief as is necessary to ensure that any State or State officer that regulates credit for reinsurance acts in compliance with Section 6(a) of this Act.

(b) No action may be commenced in any Federal court by any ceding insurer challenging the action of any State or State officer as inconsistent with Section 6(a) of this Act, unless the ceding insurer shall have first presented the claim to the Board and its claim shall have been finally denied by the Board in writing. The failure of the Board to make final disposition of a claim within 6 months after it is filed shall, at the option of the ceding insurer any time thereafter, be deemed a final denial of the claim for purposes of this Section.

(c) No action may be brought under Title 42, Section 1983 against any State, any subdivision of any State, or any State officer alleging that the State, subdivision, or officer has violated this Act.

(d) Any State for which the Board denies certification or which the Board decertifies pursuant to Section 4(e) shall be entitled to judicial review of the Board's order.

SEC. 8. CONSULTATION WITH FEDERAL AND STATE AGENCIES.

The Board shall coordinate with Federal and State agencies, and the NAIC, as necessary to assist and advise the Board in performing its duties under this Act. The Board shall be responsible for receiving, analyzing, collecting and disseminating publicly available data and information and for issuing reports regarding reinsurance.



SEC. 9. DUTIES OF BOARD.

(a) In addition to any other authority granted to the Board in this Act, the Board shall have the power—

- (1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, with the approval of the President, in any Federal, State, or other court;
- (2) to conduct its operations and maintain offices, and to exercise all other rights and powers authorized by this Act, in any State, without regard to any qualification, licensing, or other provision of law in effect in such State (or a political subdivision thereof);
- (3) to lease, purchase, accept gifts or donations of or otherwise acquire, improve, use, sell, exchange, or convey, all of or an interest in any property, wherever situated;
- (4) to hire employees, professionals, and specialists, and elect or appoint officers, and to fix their compensation, define their duties, determine their qualification, and give them appropriate authority to carry out the purposes of the Act; and to establish the personnel policies and programs for the Board relating to conflicts of interest, rates of compensation, and such other matters as the Board considers appropriate;
- (5) to allocate, assess, and collect fees established pursuant to Section 4(d); and
- (6) to enter into agreements, incur liabilities, and do any and all other acts and things necessary, appropriate, or incidental to the conduct of its operations and the exercise of its obligations, rights, and powers imposed or granted by this Act.

(b) There is authorized to be appropriated not more than \$ _____ to supplement the amounts received under Section 4(d) for the costs of the establishment and operation of the Board.

SEC. 10. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

- (1) Board. The term “Board” means the Reinsurance Supervision Review Board authorized by Section 2.
- (2) Ceding insurer. The term “ceding insurer” means an insurer that is licensed and domiciled in a State and purchases reinsurance.
- (3) Domiciled or Domiciliary. The terms “domiciled” or “domiciliary” mean, with respect to an insurer or reinsurer, to be incorporated or organized, and licensed.
- (4) Insurance. The term “insurance” means any product, defined or regulated as insurance by the applicable State insurance regulatory authority.



- (5) Reinsurance. The term “reinsurance” means the assumption by an insurer of all or part of a risk undertaken by a ceding insurer.
- (6) Reinsurance supervisory system. The term “reinsurance supervisory system” means, with respect to a State or non-U.S. jurisdiction, any officer, agency, board, commission, or other entity that has primary regulatory authority over the business of reinsurance for the State or non-U.S. jurisdiction, and the legal and operational framework under which that authority is exercised.
- (7) State. The term “State” means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and any other territory or possession of the United States.
- (8) State insurance regulatory authority. The term “State insurance regulatory authority” means, with respect to a State, the officer, agency, board, commission, or other entity of a State that has primary regulatory authority over the business of insurance for the State.
- (9) Domiciliary Jurisdiction. The term “Domiciliary Jurisdiction” means the State in which the ceding insurer is domiciled.
- (10) Home State. The term “Home State” means the qualifying State where the National Reinsurer is licensed and domiciled.
- (11) Home State Supervisor. The term “Home State Supervisor” means the State insurance regulatory authority of a National Reinsurer.
- (12) Host State. The term “Host State” means the domicile of the ceding insurer.
- (13) Host State Supervisor. The term “Host State Supervisor” means the ceding insurer’s domiciliary State insurance regulatory authority.
- (14) National Association of Insurance Commissioners or NAIC. The terms “National Association of Insurance Commissioners” or “NAIC” means the organization of State insurance regulatory authorities from the States.
- (15) National Reinsurer. The term “National Reinsurer” means a reinsurer that is licensed and domiciled in a home state and certified by such state to transact assumed reinsurance business across the United States while submitting solely to the regulatory authority of the home state supervisor for purposes of its reinsurance business.
- (16) Non-U.S. Jurisdiction Supervisor. The term “Non-U.S. Jurisdiction Supervisor” means the domiciliary insurance regulatory authority of an assuming reinsurer from a non-U.S. jurisdiction.
- (17) Port of Entry Reinsurer. The term “Port of Entry Reinsurer” means a non-U.S. assuming reinsurer that is organized in and licensed by a Qualified Non-U.S. Jurisdiction, certified in a Port of Entry State, and approved by such State to provide creditable



reinsurance to ceding insurers. Certification by a Port of Entry State does not provide independent authority for a Port of Entry Reinsurer to transact the business of insurance in a State.

(18) Port of Entry State. The term “Port of Entry State” means the State where a non-U.S. assuming reinsurer is certified in order to provide creditable reinsurance to ceding insurers.

(19) Port of Entry Supervisor. The term “Port of Entry Supervisor” means the State insurance regulatory authority of the Port of Entry State.

(20) Qualified Non-U.S. Jurisdiction. The term “Qualified Non-U.S. Jurisdiction” means a non-U.S. jurisdiction which has been approved by the Board as qualified to enter into regulatory cooperation and information agreements with Port of Entry Supervisors.

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Draft: 9/18/09

Reinsurance (E) Task Force
Conference Call
September 15, 2009

The Reinsurance (E) Task Force met via conference call Sept. 15, 2009. The following Task Force members participated: Nonnie S. Burnes, Chair (MA); Jim L. Ridling represented by Richard Ford (AL); Christina Urias and Steve Ferguson (AZ); Jay Bradford represented by Mel Anderson (AR); Steve Poizner represented by Kim Hudson (CA); Thomas R. Sullivan represented by Kathy Belfi (CT); Karen Weldin-Stewart represented by Linda Sizemore and Ed Ianni (DE); Gennet Purcell represented by Philip Barlow (DC); Kevin McCarty represented by Ray Spudeck and Belinda Miller (FL); Carol Cutter represented by Connie Ridinger (IN); James J. Donelon and Stewart Guerin (LA); Mila Kofman represented by Robert Wake (ME); John Huff and Laurie Pleus (MO); Ann Frohman and Jim Nixon (NE); Neil N. Jasey represented by Robert Kasinow (NJ); Scott J. Kipper represented by Brett Barratt (NV); James J. Wrynn represented by Joe Fritsch (NY); Scott H. Richardson (SC); Paulette Thabault and David Provost (VT); Alfred W. Gross represented by Doug Stolte (VA); Mike Kreidler represented by James Odiorne (WA); Jane L. Cline represented by Leah Cooper and Greg Elam (WV); and Sean Dilweg represented by Peter Medley (WI).

1. Consider Sept. 3 Draft Reinsurance Regulatory Modernization Act of 2009

Commissioner Burnes directed the Task Force to the Sept. 3 draft Reinsurance Regulatory Modernization Act of 2009 (Attachment Two-A). She stated that the purpose of the meeting was to discuss the constitutional aspects of the legislation, hear comments and questions from regulators and interested parties, and consider the legislation for adoption. She noted that upon adoption, it is intended that the legislation would be forwarded to the Government Relations Leadership Council for its immediate review and consideration of the next steps, including the direct submission of the draft legislation to Congress.

Commissioner Burnes introduced Peter Keisler (Sidley Austin, LLP), outside legal counsel retained by the NAIC for the Task Force, to lead the discussion on the constitutional aspects of the legislation. Mr. Keisler stated that the Sept. 3 draft represents a substantial evolution from the initial exposure draft released by the Task Force on March 24. He referred to the number of significant changes to the legislation since the initial draft, and noted that this reflects the seriousness with which the Task Force has taken the drafting process, as well as the care and attention taken to consider the written comments received. He noted that the Task Force's instructions to counsel have always been very clear. The instructions have not been to find a legal argument to support what the Task Force wants to do, but to provide the Task Force with the best view of the law and how, in light of that, the strongest and most effective piece of legislation can be written that respects all of the applicable constitutional principles. Four basic constitutional issues were most prominent within the comments submitted by interested parties throughout the drafting process: the relationship of the Reinsurance Supervision Review Board (RSRB) to the federal government; whether the method of appointing the members of the RSRB complies with the requirements of the Appointments Clause; the issue of due process and whether there will be sufficient, constitutionally acceptable opportunities for those who are regulated by the RSRB to obtain judicial review of the RSRB's decisions; and whether it is constitutionally appropriate for individual states to be able to enter into the kind of cooperation and information-sharing agreements with foreign jurisdictions that the statute contemplates.

Mr. Keisler said the RSRB would be an agency of the federal government. He said there is no constitutional requirement that an agency of the government exist within a larger cabinet department, and noted that such a decision would be a policy consideration for Congress. Federal oversight of the RSRB would exist, as the members would be appointed by the President, subject to the Senate's confirmation process, with the only authority being that which would be given to the RSRB by federal statute, and with such authority being subject to review and correction by the federal courts. In response to concerns regarding the provision that the NAIC would submit recommendations to the RSRB, Mr. Keisler noted that federal oversight would not be undermined, as these recommendations would be non-binding.

With respect to the appointments process, and specifically to the issue of the NAIC submitting recommendations to the President, Mr. Keisler noted that the Task Force followed an approach that is reflected in existing federal law related to the Uniform Carrier Registration Board. In addition, the draft legislation does not purport to make the nominations submitted by the NAIC binding on the President. Mr. Keisler clarified that the President's authority would not, and could not, be reduced to simply rubber stamping the nominations submitted by the NAIC. With respect to the removal of a board member, the general rule is that the President has the authority to remove the people he has appointed, subject to any constitutionally permissible restrictions that the particular statute might include. He noted that this statute does not include any such restrictions on the President's authority to remove a member of the RSRB.

Mr. Keisler said that as a federal agency, the RSRB would be subject to the judicial review of procedures and standards, as well as the rule-making requirements regarding notice and public comment, established by the Administrative Procedures Act (APA). In addition, three other specific provisions within the statute address the scope and nature of judicial review in three specific circumstances.

Mr. Keisler noted that the legislation itself constitutes congressional consent for individual states to enter into agreements with foreign nations that involve the subject matter of the issues in the legislation. The agreements contemplated within the statute would not require or call upon other states to abide by such an agreement.

Tracey Laws (Reinsurance Association of America—RAA) inquired as to whether the constitution prohibits an employee of a state agency from serving on a federal agency. Mr. Keisler said any such restriction would be a matter of state law rather than federal law, and noted that such prohibitions do in fact exist in some individual states. Anyone in such a position would be required to adhere to those restrictions. Ms. Laws also inquired about the model laws referenced within the federal legislation. Dan Schelp (NAIC) noted that the model laws specifically referenced within the federal statute would only be required for those states choosing to seek certification as home state or port of entry state supervisors. Commissioner Burnes noted that NAIC staff has begun drafting a proposal for model law development and that the Task Force needed to have further discussion on the development process.

Steve Broadie (Property Casualty Insurers Association of America—PCI) suggested that the Task Force postpone taking a vote on the legislation until the interested parties had an opportunity to review Mr. Keisler's discussion with respect to the constitutional aspects and consider whether additional comments would be appropriate, noting that there was not a formal written comment period for the Sept. 3 draft. Commissioner Burnes summarized the drafting process undertaken by the Task Force in developing the federal legislation and noted that the substantive issues raised, including those raised in the comment letters submitted with respect to the July 27 draft (Attachment Two-B through Two-N), had been a matter of discussion over the last several months. She emphasized that all comments received had been considered, and as a result, the Task Force substantially revised several aspects of the legislation throughout the drafting process. Commissioner Burnes noted that the Sept. 3 draft reflects only non-substantive revisions to the July 27 draft, which was exposed for a reasonable comment period. Therefore, it was determined that an additional written comment period for the Sept. 3 draft was not necessary; however, the Task Force would be glad to consider any additional comments during this meeting. She reiterated that a vote would be appropriate at this point, and noted that after adoption by the Task Force, interested parties would have additional opportunities to comment if and when the draft legislation is introduced in Congress.

Marty Carus (American International Group—AIG) asked if the federal statute was intended to establish minimum or maximum standards for collateral. He suggested that an individual state with more stringent standards for collateral than those required in the federal statute should be able to apply those standards. Mr. Schelp noted that the statute intends for the collateral levels established under the act, and as determined for a particular reinsurer by its home state or port of entry supervisor, to preempt requirements provided within individual state laws. Mr. Schelp noted that this intention could be further clarified within Section 6, paragraph (a)(1) by changing the word "exceed" to "differ from," with respect to the collateral amounts. Mr. Wake agreed with Mr. Schelp's recommendation and noted that Mr. Carus' suggestion would be inconsistent with the intent of the framework. Commissioner Burnes agreed, and noted that this non-substantive clarification should be included when the legislation is considered for adoption.

Ms. Belfi made a motion to adopt the Sept. 3 draft Reinsurance Regulatory Modernization Act of 2009, as revised during the meeting to include the non-substantive clarification to Section 6, paragraph (a)(1), and to forward the legislation to the Government Relations Leadership Council for its immediate review and consideration of the next steps, including the direct submission of the draft legislation to Congress for further action. Director Richardson seconded the motion. Commissioner Thabault said Vermont supports the legislation, but reiterated the need for the NAIC to maintain its commitment to follow the principles adopted along with the framework in December 2008, by not discriminating against small states that are otherwise qualified with the appropriate expertise to serve as home state or port of entry state supervisors or as members of the RSRB. Director Frohman and Mr. Wake noted that Nebraska and Maine concur with Commissioner Thabault's comments, respectively. Commissioner Burnes noted that Plenary overwhelmingly supported the implementation principles when adopted, and said she would again emphasize to NAIC leadership that regulatory expertise should be the focus when considering jurisdictions to serve in these roles, regardless of the size of the jurisdiction. Ms. Sizemore noted that Commissioner Weldin-Stewart was not in favor of the federal implementation approach, and for that reason Delaware would cast a "no" vote. The motion passed, with Delaware opposed and Wisconsin voting "present."

Having no further business, the Reinsurance (E) Task Force adjourned.

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A BILL

To enact the Reinsurance Regulatory Modernization Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Reinsurance Regulatory Modernization Act of 2009.”

SEC. 2. REINSURANCE SUPERVISION REVIEW BOARD.

~~Two types of reinsurers are hereby established in the United States, National Reinsurers and Port of Entry Reinsurers:~~

~~(a) There is hereby established the Reinsurance Supervision Review Board as an instrumentality of the United States with the powers and authorities herein provided.~~

~~(b) Two types of reinsurers are hereby established in the United States, National Reinsurers and Port of Entry Reinsurers.~~ In order to provide effective regulation by the States of these types of reinsurers, the Reinsurance Supervision Review Board is hereby given authority to:

~~(a1)~~ evaluate the reinsurance supervisory systems of the States to determine whether such jurisdictions qualify as Home State Supervisors or Port of Entry Supervisors under standards recommended by the NAIC and adopted by the Board;

~~(b2)~~ evaluate the reinsurance supervisory systems of non-U.S. Jurisdictions to determine whether they are eligible for recognition by the Board as Qualified Non-U.S. Jurisdictions under standards recommended by the NAIC and adopted by the Board;

~~(e3)~~ develop sample supervisory recognition agreements and information sharing and regulatory cooperation agreements, to be entered into uniformly by Port of Entry Supervisors with Qualified Non-U.S. Jurisdictions under standards recommended by the NAIC and adopted by the Board; and

~~(d4)~~ preserve the confidentiality of supervisory information within the Board’s control, and enter into agreements with State, federal, and non-U.S. financial supervisory and law enforcement officials and agencies for sharing supervisory information on a confidential basis.

~~(c) The Reinsurance Supervision Review Board shall be an “agency” of the United States for purposes of subchapter II of chapter 5 and chapter 7 of Title 5.~~



SEC. 3. MEMBERSHIP.

(a) The Board. ~~The Board shall be created by passage of this Act.~~ The Board shall consist of representatives of State insurance regulatory authorities, the Department of the Treasury, the Department of Commerce, and the Office of the United States Trade Representative.

(b) Composition. The Board shall consist of 15 directors appointed by the President by and with the advice and consent of the Senate as follows:

(1) Ten directors from the State insurance regulatory authorities in their respective States. Nominees for these 10 directorships shall be submitted to the President by the NAIC.

(2) Five directors from the Department of Treasury, from the Department of Commerce, and from the Office of the United States Trade Representative, as the President may appoint.

(c) Chairperson and vice-chairperson. The President shall designate 1 director as chairperson and 1 director as vice-chairperson of the Board. The chairperson shall be selected from among the 10 directors appointed pursuant to Section 3(b)(1). The chairperson and vice-chairperson shall serve in such capacity for the term of their appointment as directors.

(d) Terms.

(1) Initial terms. In appointing the initial Board, the President shall designate 5 of the appointed directors for initial terms of 3 years, 5 of the appointed directors for initial terms of 2 years, and 5 of the appointed directors for initial terms of 1 year.

(2) Thereafter. After the initial term, all directors shall be appointed for terms of 3 years.

(3) Succession and termination. The successor of any director appointed pursuant to Section 3(b)(1) shall likewise be appointed pursuant to Section 3(b)(1). The successor of any director appointed pursuant to Section 3(b)(2) shall likewise be appointed pursuant to Section 3(b)(2). A director may be appointed to succeed himself or herself. If any director shall cease employment in the State or Federal agency from which he or she was appointed pursuant to Section 3(b)(1) or 3(b)(2), the director's membership on the Board shall terminate and a successor shall be appointed in the manner set forth in this subsection for the remainder of the director's term.

(4) End of service. A director may continue to serve on the Board until his or her successor is appointed.

SEC. 4. EVALUATION AND CERTIFICATION BY BOARD.

(a) Home State and Port of Entry State Standards. The reinsurance activities of each type of reinsurer shall be supervised by a single State, the Home State or Port of Entry State, under model laws established by the NAIC and adopted uniformly by the individual States seeking certification as Home State or Port of Entry Supervisors. The NAIC shall recommend uniform standards, subject to review and adoption by the Board, for reinsurance supervisory systems of

Home States and Port of Entry States that ensure that any such system that complies with such standards provides an acceptable level of prudential supervision over reinsurers regulated by such Home State or Port of Entry Supervisor. Any standards relating to ceded premium volume shall not unfairly discriminate against otherwise qualified States with respect to approval as a Home State or Port of Entry Supervisor.

(b) Evaluation of Home State and Port of Entry Supervisors. The Board shall certify which jurisdictions qualify as a Home State Supervisor or Port of Entry Supervisor.

(c) Evaluation of Non-U.S. Jurisdictions. The Board shall evaluate the reinsurance supervisory systems of non-U.S. jurisdictions, both initially and on an ongoing basis, consider the rights, benefits and the extent of reciprocal recognition afforded by non-U.S. jurisdictions to reinsurers licensed and domiciled in the U.S., determine the appropriate supervisory recognition approach for such jurisdictions, and create and publish a list of jurisdictions eligible to be recognized as Qualified Non-U.S. Jurisdictions.

(d) Fees. The Board shall establish a fee for conducting evaluations under this Section in the amount such that the aggregate of fees collected covers all costs of conducting evaluations under this Section and all other costs of the establishment and operation of the Board.

(e) Certification and Decertification of Home State and Port of Entry Supervisors. If, upon conducting an evaluation under this Section with respect to the reinsurance supervisory system of any State, the Board determines that the State qualifies to be a Home State or Port of Entry Supervisor, the Board shall certify such qualification and publish notice and evidence of such certification in an appropriate manner. The Board may establish a procedure to decertify those Home State and Port of Entry Supervisors that no longer meet the applicable standards for certification.

(f) Certification and Decertification of Qualified Non-U.S. Jurisdictions. If, upon conducting an evaluation under this Section with respect to the reinsurance supervisory system of any non-U.S. Jurisdiction, the Board determines that the jurisdiction qualifies to be recognized as a Qualified Non-U.S. Jurisdiction, the Board shall certify such qualification and publish notice and evidence of such certification in an appropriate manner. The Board may establish a procedure to decertify those Qualified Non-U.S. Jurisdictions that no longer meet the qualifications for certification.

(g) Public Notice and Comment. In developing standards, procedures, and fee levels, both the Board and the NAIC shall provide appropriate advance public notice and opportunity for public comment.

(h) Authority to Enter Agreements with Qualified Non-U.S. Jurisdiction Supervisors. A Port of Entry State is hereby authorized to enter into a supervisory recognition framework with a Qualified Non-U.S. Jurisdiction Supervisor, and enter into regulatory cooperation and information sharing agreements with Qualified Non-U.S. Jurisdictions, in accordance with standards and procedures recommended by the NAIC and adopted by the Board. This supervisory recognition framework may include the concepts of unilateral recognition of the Qualified Non-U.S. Jurisdiction by the Port of Entry State, mutual recognition between the Port of Entry State and the Qualified Non-U.S. Jurisdiction, or reciprocal treatment of reinsurers domiciled in the applicable jurisdictions.

(i) Confidentiality. All annual statement or other financial documents, materials, or information submitted by reinsurers pursuant to this Act which are not otherwise public information subject to disclosure shall be exempted from disclosure under Title 5 Section 552(a) and shall be withheld from the public.

SEC. 5. REQUIREMENTS FOR NATIONAL AND PORT OF ENTRY REINSURERS.

A reinsurer shall be subject to the following requirements in order to be ~~approved for~~ licensure certified as a National Reinsurer by a Home State, or to be certified as a Port of Entry Reinsurer by a Port of Entry State:

(a) Reinsurers shall have a minimum capital and surplus requirement of \$ 250 million to be eligible to be a National Reinsurer or a Port of Entry Reinsurer. This requirement may also be satisfied by an group association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least \$ 250 million and a central fund containing a balance of at least \$ 250 million. The capital and surplus requirement of \$ 250 million set forth in this subsection shall be subject to periodic review by the Board, and may be periodically adjusted by the Board if it is determined that such other capital and surplus requirement is appropriate and necessary.

(b) Pursuant to Section 6(a), credit for reinsurance ceded by a domestic ceding insurer to a National or Port of Entry Reinsurer shall not be denied if collateral provided by the National or Port of Entry Reinsurer is held in the United States in accordance with the following requirements-

(1) The Port of Entry or Home State Supervisor shall assign a reinsurer one of five ratings (Secure-1, Secure-2, Secure-3, Secure-4 or Vulnerable-5). National Reinsurers and Port of Entry Reinsurers shall be evaluated on a legal entity basis, with due consideration being given to the group rating where appropriate, for purposes of establishing their collateral requirements.

(2) For Port of Entry Reinsurers, the Port of Entry Supervisor's rating and corresponding collateral calculation as a percentage of the reinsurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers under this Act shall be as follows:

<u>Ratings</u>	<u>Collateral Required</u>
Secure – 1	0%
Secure – 2	10%
Secure – 3	20%
Secure – 4	75%
Vulnerable – 5	100%

(3) National Reinsurers rated by their Home State Supervisors in the Secure - 3 tier or above shall not be required to post any collateral for reinsurance assumed under this Act. For those National Reinsurers rated in the Secure - 4 tier, the Home State Supervisor shall require that 75% collateral be posted pursuant to Section 5(b)(5) and regulations promulgated thereunder. For those in the Vulnerable – 5 tier, the Home State Supervisor shall require that 100% collateral be posted pursuant to Section 5(b)(5) and regulations promulgated thereunder. The requirements of this paragraph shall be in force during the first two years of this Act, after which time the Board shall periodically determine new uniform and appropriate collateral amounts for National and Port of Entry Reinsurers including, with regard to Port of Entry Reinsurers, due consideration of the level of equivalence of prudential regulation and effective market access in the Port of Entry Reinsurer’s jurisdiction.

(4) As part of the evaluation process, standards shall be recommended by the NAIC and adopted by the Board to be considered by the Home State or Port of Entry Supervisor in determining the appropriate rating of a reinsurer, and shall include but not be limited to the following:

(A) The reinsurer’s financial strength rating from two or more rating agencies approved by the U.S. Securities and Exchange Commission or other successor regulatory agency, which shall correspond to the maximum rating that a reinsurer may be assigned, as determined by the Board under its practices and procedures.

(B) Compliance with reinsurance contractual terms and obligations, including contractual clauses deemed mandatory by the Board;

(C) The business practices of the reinsurer in dealing with its ceding insurers;

(D) For National Reinsurers, a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers);

(E) For Port of Entry Reinsurers, a review of a report filed annually in the form of the applicable NAIC Annual Statement Blank, in accordance with standards and procedures recommended by the NAIC and adopted by the Board;

(F) The reinsurer’s reputation for prompt payment of claims under reinsurance agreements, including the proportion of the reinsurer’s obligations that are more than 90 days past due or are in dispute, with particular attention to receivables payable to companies that are in administrative supervision or receivership;

(G) Regulatory actions against the reinsurer;

(H) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subsection (I) below;

(I) For Port of Entry Reinsurers, audited financial statements, regulatory filings, and actuarial opinions in accordance with standards and procedures

recommended by the NAIC and adopted by the Board. Upon the initial certification, audited financial statements for the last 3 years filed with its non-U.S. Jurisdiction Supervisor;

(J) The liquidation priority of obligations to a ceding insurer in the reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

(K) A reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The Port of Entry Supervisor shall receive prior notice from a reinsurer that proposes participation by the reinsurer in a solvent scheme of arrangement; and

(L) Any other information deemed relevant by the Home State or Port of Entry Supervisor.

(5) Security provided under this Section ("collateral") shall be held under standards and procedures recommended by the NAIC and adopted by the Board.

(6) In order to facilitate the prompt payment of claims, a Home State or Port of Entry Supervisor shall not require a National Reinsurer or a Port of Entry Reinsurer to post collateral for catastrophe recoverables for a period of 1 year from the date of the first instance of a reserve entry by the ceding insurer as a result of a loss from a defined catastrophic occurrence as recognized by the Home State or Port of Entry Supervisor. The one year deferral period is applicable only with respect to lines of property and casualty insurance and is contingent upon the respective National or Port of Entry Reinsurer continuing to pay claims in a timely manner.

(7) The Home State or Port of Entry Supervisor shall require National and Port of Entry Reinsurers to post 100% collateral upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.

(8) Affiliated reinsurance transactions shall receive the same opportunity for reduced collateral requirements pursuant to this Act as all other reinsurance transactions.

(9) Change in Rating or Revocation of Certification. The Port of Entry or Home State Supervisor shall not have discretion to waive additional collateral required in the case of a downgrade by a rating agency or other disqualifying circumstance.

(A) The Port of Entry Supervisor or Home State Supervisor shall have the authority to suspend, amend or withdraw a Port of Entry or National Reinsurer's certification at any time if the Port of Entry or National Reinsurer fails to meet its obligations or collateral requirements under this Act, or if other financial or operating results of the Port of Entry or National Reinsurer, or documented significant delays in payment by the Port of Entry or National Reinsurer, lead the Port of Entry or National Reinsurer's supervisor to reconsider the Port of Entry or National Reinsurer's ability or willingness to meet its contractual obligations.



National Association of Insurance Commissioners

(B) If the Home State Supervisor's or Port of Entry Supervisor's rating of a Port of Entry or National Reinsurer improves, the Port of Entry or National Reinsurer may meet the collateral requirements applicable to its new rating on a prospective basis, but the Home State or Port of Entry Supervisor shall require the Port of Entry or National Reinsurer to post collateral under the previously applicable collateral requirements as to all contracts in force on or before the effective date of the improved rating. If the Home State Supervisor's or Port of Entry Supervisor's rating of a Port of Entry or National Reinsurer declines, the Port of Entry or Home State Supervisor shall require the Port of Entry or National Reinsurer to meet the collateral requirements applicable to its new rating for all business subject to this Act.

(C) Notwithstanding the change ~~or withdrawal~~ of a Port of Entry or National Reinsurer's rating, or withdrawal of its certification, U.S. ceding insurers that have ceded reinsurance to such Port of Entry or National Reinsurer may not be denied credit for reinsurance under Section 6(a)(3) for a period of 3 months for all reinsurance ceded to that Port of Entry or National Reinsurer, unless the reinsurance ceded to such Port of Entry or National Reinsurer is deemed by the respective Port of Entry or Home State Supervisor to be uncollectible.

(c) This Act confers no private right of action in any federal court for any Port of Entry Reinsurer rated by a Port of Entry Supervisor or any National Reinsurer rated by a Home State Supervisor to seek review of the Port of Entry Supervisor's or Home State Supervisor's rating decision. Nor shall any such Port of Entry Reinsurer or National Reinsurer be permitted to seek review of such a rating decision under Title 42, Section 1983. Nothing in this subparagraph precludes review of such a rating decision pursuant to the laws and regulations of the Port of Entry State or Home State.

(d) This Act shall not prohibit the parties to a reinsurance agreement from agreeing to provisions establishing collateral requirements that exceed the collateral requirements for National and Port of Entry Reinsurers under this Act.

SEC. 6. PREEMPTION OF INCONSISTENT STATE LAWS AND ACTIONS.

All laws, regulations, provisions, or other actions of a State are preempted to the extent that they are inconsistent with this Act.

(a) With respect to reinsurance ceded to a National or Port of Entry Reinsurer, if a State in which the ceding insurer is transacting insurance business regulates credit for reinsurance, the State may not directly or indirectly:

- (1) impose collateral requirements that exceed those required by the Home State or Port of Entry Supervisor in accordance with this Act;
- (2) regulate the financial condition of the National or Port of Entry Reinsurer, unless it is the Home State or Port of Entry Supervisor; or
- (3) deny or limit credit for reinsurance except to the extent expressly permitted in

accordance with this Act.

(b) This Section does not preempt the insurance regulatory authority of a Host State to determine whether a ceding insurer's reinsurance contracts transfer sufficient risk to qualify for reinsurance accounting treatment, to determine the amount of the ceding insurer's incurred loss reserves, or to exercise other prudential regulatory powers over the ceding insurer, as long as those powers are not exercised in a manner that has the effect of frustrating or circumventing the purposes of this Act.

(c) This Section does not preempt the insurance regulatory authority of a Host State to determine the existence and adequacy of collateral held by, or under the control of, the ceding insurer consistent with Section 5(b)(5) and regulations promulgated thereunder.

(d) This Section does not preempt or affect any State law, rule, or regulation that regulates credit for reinsurance ceded to reinsurers that are not National or Port of Entry Reinsurers, as defined under this Act, at the time the reinsurance is ceded, or that regulates credit for reinsurance with respect to lines of insurance that are excluded from the scope of this Act at the time the reinsurance is ceded.

(e) This Act shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the Act. This Act shall not be applicable to life reinsurance contracts until the earlier of 24 months from the effective date of the Act, or the implementation of U.S. principles based reserving standards for life insurance by the NAIC.

SEC. 7. RIGHT OF REVIEW.

(a) A ceding insurer adversely affected or aggrieved by any action that is inconsistent with Section 6(a) of this Act by any State that regulates credit for reinsurance, or by the officer of any such State, shall be permitted to seek review by the Board of the action of the State or State officer, pursuant to rules and procedures to be established by the Board after notice and comment. In adjudicating any such claim, the Board is hereby authorized to order such relief as is necessary to ensure that any State or State officer that regulates credit for reinsurance acts in compliance with Section 6(a) of this Act.

(b) No action may be commenced in any Federal court by any ceding insurer challenging the action of any State or State officer as inconsistent with Section 6(a) of this Act, unless the ceding insurer shall have first presented the claim to the Board and its claim shall have been finally denied by the Board in writing. The failure of the Board to make final disposition of a claim within 6 months after it is filed shall, at the option of the ceding insurer any time thereafter, be deemed a final denial of the claim for purposes of this Section.

(c) No action may be brought under Title 42, Section 1983 against any State, any subdivision of any State, or any State officer alleging that the State, subdivision, or officer has violated this Act.

(d) Any State for which the Board denies certification or which the Board decertifies pursuant to Section 4(e) shall be entitled to judicial review of the Board's order.

SEC. 8. CONSULTATION WITH FEDERAL AND STATE AGENCIES.



The Board shall coordinate with Federal and State agencies, and the NAIC, as necessary to assist and advise the Board in performing its duties under this Act. The Board shall be responsible for receiving, analyzing, collecting and disseminating publicly available data and information and for issuing reports regarding reinsurance.

SEC. 9. DUTIES OF BOARD.

(a) In addition to any other authority granted to the Board in this Act, the Board shall have the power—

_____ (a1) to sue and be sued, complain and defend, in its corporate name and through its own _____ counsel, with the approval of the President, in any Federal, State, or other court;

_____ (a2) to conduct its operations and maintain offices, and to exercise all other rights and _____ powers authorized by this Act, in any State, without regard to any qualification, licensing, _____ or other provision of law in effect in such State (or a political subdivision thereof);

_____ (a3) to lease, purchase, accept gifts or donations of or otherwise acquire, improve, use, _____ sell, exchange, or convey, all of or an interest in any property, wherever situated;

_____ (a4) to hire employees, professionals, and specialists, and elect or appoint officers, and to _____ fix their compensation, define their duties, determine their qualification, and give them _____ appropriate authority to carry out the purposes of the Act; and to establish the personnel _____ policies and programs for the Board relating to conflicts of interest, rates of _____ compensation, and such other matters as the Board considers appropriate;

_____ (a5) to allocate, assess, and collect fees established pursuant to Section 4(d); and

_____ (a6) to enter into agreements, incur liabilities, and do any and all other acts and things _____ necessary, appropriate, or incidental to the conduct of its operations and the exercise of _____ its obligations, rights, and powers imposed or granted by this Act.

(b) There is authorized to be appropriated not more than \$ _____ to supplement the amounts received under Section 4(d) for the costs of the establishment and operation of the Board.

SEC. 10. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

- (1) Board. The term “Board” means the Reinsurance Supervision Review Board authorized by Section 2.
- (2) Ceding insurer. The term “ceding insurer” means an insurer that is licensed and domiciled in a State and purchases reinsurance.
- (3) Domiciled or Domiciliary. The terms “domiciled” or “domiciliary” mean, with

respect to an insurer or reinsurer, to be incorporated or organized, and licensed.

(4) Insurance. The term “insurance” means any product, defined or regulated as insurance by the applicable State insurance regulatory authority.

(5) Reinsurance. The term “reinsurance” means the assumption by an insurer of all or part of a risk undertaken by a ceding insurer.

(6) Reinsurance supervisory system. The term “reinsurance supervisory system” means, with respect to a State or non-U.S. jurisdiction, any officer, agency, board, commission, or other entity that has primary regulatory authority over the business of reinsurance for the State or non-U.S. jurisdiction, and the legal and operational framework under which that authority is exercised.

(7) State. The term “State” means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and any other territory or possession of the United States.

(8) State insurance regulatory authority. The term “State insurance regulatory authority” means, with respect to a State, the officer, agency, board, commission, or other entity of a State that has primary regulatory authority over the business of insurance for the State.

(9) Domiciliary Jurisdiction. The term “Domiciliary Jurisdiction” means the State in which the ceding insurer is domiciled.

(10) Home State. The term “Home State” means the qualifying State where the National Reinsurer is licensed and domiciled.

(11) Home State Supervisor. The term “Home State Supervisor” means the State insurance regulatory authority of a National Reinsurer.

(12) Host State. The term “Host State” means the domicile of the ceding insurer.

(13) Host State Supervisor. The term “Host State Supervisor” means the ceding insurer’s domiciliary State insurance regulatory authority.

(14) National Association of Insurance Commissioners or NAIC. The terms “National Association of Insurance Commissioners” or “NAIC” means the organization of State insurance regulatory authorities from the States.

(15) National Reinsurer. The term “National Reinsurer” means a reinsurer that is licensed and domiciled in a home state and ~~approved~~certified by such state to transact assumed reinsurance business across the United States while submitting solely to the regulatory authority of the home state supervisor for purposes of its reinsurance business.



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(16) Non-U.S. Jurisdiction Supervisor. The term “Non-U.S. Jurisdiction Supervisor” means the domiciliary insurance regulatory authority of an assuming reinsurer from a non-U.S. jurisdiction.

(17) Port of Entry Reinsurer. The term “Port of Entry Reinsurer” means a non-U.S. assuming reinsurer that is organized in and licensed by a Qualified Non-U.S. Jurisdiction, certified in a Port of Entry State, and approved by such State to provide creditable reinsurance to ceding insurers. Certification by a Port of Entry State does not provide independent authority for a Port of Entry Reinsurer to transact the business of insurance in a State.

(18) Port of Entry State. The term “Port of Entry State” means the State where a non-U.S. assuming reinsurer is certified in order to provide creditable reinsurance to ceding insurers.

(19) Port of Entry Supervisor. The term “Port of Entry Supervisor” means the State insurance regulatory authority of the Port of Entry State.

(20) Qualified Non-U.S. Jurisdiction. The term “Qualified Non-U.S. Jurisdiction” means a non-U.S. jurisdiction which has been approved by the Board as qualified to enter into regulatory cooperation and information agreements with Port of Entry Supervisors.

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A BILL

To enact the Reinsurance Regulatory Modernization Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Reinsurance Regulatory Modernization Act of 2009.”

SEC. 2. ~~NAIC~~ REINSURANCE SUPERVISION REVIEW BOARD.

Two ~~classetypes~~ of reinsurers are hereby established in the United States, National Reinsurers and Port of Entry Reinsurers. In order to provide effective regulation by the States of these ~~new classetypes~~ of reinsurers, the ~~National Association of Insurance Commissioners (NAIC)~~ Reinsurance Supervision Review Board is hereby given authority to:

(a) evaluate the reinsurance supervisory systems of the States to determine whether such jurisdictions qualify as Home State Supervisors or Port of Entry Supervisors under standards recommended by the ~~National Association of Insurance Commissioners NAIC~~ and adopted by the Board; ~~and~~

(b) evaluate the reinsurance supervisory ~~regimes-systems~~ of non-U.S. Jurisdictions to determine whether they are eligible for recognition by the Board as Qualified Non-U.S. Jurisdictions under standards recommended by the NAIC and adopted by the Board;

(c) develop sample supervisory recognition agreements and information sharing and regulatory cooperation agreements, to be entered into uniformly by Port of Entry Supervisors with Qualified Non-U.S. Jurisdictions under standards recommended by the NAIC and adopted by the Board; and

(d) preserve the confidentiality of supervisory information within the Board’s control, and enter into agreements with State, federal, and non-U.S. financial supervisory and law enforcement officials and agencies for sharing supervisory information on a confidential basis.

SEC. 3. ~~CORPORATE STATUS.~~

~~The Board shall~~

~~(a) be a nonprofit corporation owned by or affiliated with the NAIC;~~

~~(b) have succession until dissolved by the NAIC;~~



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~~—(e) not be an agency or establishment of the United States or any State Government; and~~

~~—(d) except as otherwise provided in this Act, be subject to, and have all the powers conferred upon a nonprofit corporation by the laws of its state of incorporation.~~

SEC. 4. MEMBERSHIP.

(a) The Board. The Board shall be created by passage of this Act. The Board shall consist of representatives of State insurance regulatory authorities, the Department of the Treasury, the Department of Commerce, and the Office of the United States Trade Representative.

(b) Composition. The Board shall consist of 15 directors appointed by the President by and with the advice and consent of the Senate as follows:

(1) Ten directors from the State insurance regulatory authorities in their respective States. Nominees for these 10 directorships shall be submitted to the President by the NAIC.

(2) Five directors from the Department of Treasury, from the Department of Commerce, and from the Office of the United States Trade Representative, as the President may appoint.

(c) Chairperson and vice-chairperson. The President shall designate 1 director as chairperson and 1 director as vice-chairperson of the Board. The chairperson shall be selected from among the 10 directors appointed pursuant to Section 3(b)(1). The chairperson and vice-chairperson shall serve in such capacity for the term of their appointment as directors.

(d) Terms.

(1) Initial terms. In appointing the initial Board, the President shall designate 5 of the appointed directors for initial terms of 3 years, 5 of the appointed directors for initial terms of 2 years, and 5 of the appointed directors for initial terms of 1 year.

(#2) Thereafter. After the initial term, all directors shall be appointed for terms of 3 years.

(##3) Succession and termination. The successor of any director appointed pursuant to Section 3(b)(1) shall likewise be appointed pursuant to Section 3(b)(1). The successor of any director appointed pursuant to Section 3(b)(#2) shall likewise be appointed pursuant to Section 43(b)(#2). A director may be appointed to succeed himself or herself. If any director shall cease employment in the State or Federal agency from which he or she was appointed pursuant to Section 3(b)(1) or 3(b)(2), the director's membership on the Board shall terminate and a successor shall be appointed in the manner set forth in this subsection for the remainder of the director's term.

(#4) End of service. A director may continue to serve on the Board until his or her successor is appointed.

~~be administered by the NAIC as a transparent, publicly accountable entity composed of State insurance regulators, with director eligibility open to all State insurance commissioners, directors~~

and superintendents for appointment to the Board.

SEC. 5. PURPOSE OF ACT.

The purpose of the Act is as follows-

~~-(a) Two classes of reinsurers in the United States are hereby created under a framework that allows for a State with the appropriate regulatory capacity to be the sole U.S. regulator of a reinsurer assuming business from a United States ceding insurer: National Reinsurers and Port of Entry Reinsurers. Each shall be supervised by a single State, the Home State or Port of Entry State, under model laws established by the NAIC and adopted uniformly by the individual States. National Reinsurers shall be licensed by the Home State and Port of Entry Reinsurers shall be certified by the Port of Entry State.~~

~~-(b) A certification mechanism is hereby authorized so that those States that have the resources, expertise and experience to regulate reinsurance on a cross-border basis can do so as a Home State or Port of Entry Supervisor, which shall have exclusive jurisdiction over its reinsurers' reinsurance business.~~

~~(1) The NAIC shall develop and recommend criteria, subject to approval by the Board, for a State to qualify as a Home State or Port of Entry Supervisor. Any such criteria relating to ceded premium volume shall not unfairly discriminate against otherwise qualified small States from approval as a Home State or Port of Entry Supervisor.~~

~~(2) The Board shall evaluate the reinsurance supervisory systems of the States to determine whether such jurisdictions qualify as a Home State Supervisor or Port of Entry Supervisor.~~

~~(3) The Board shall further evaluate the reinsurance supervisory systems of non-U.S. Jurisdiction Supervisors to determine the appropriate supervisory recognition approach for such jurisdictions, and create a list of jurisdictions eligible to be recognized as Qualified Non-U.S. Jurisdictions. The Board shall consider the rights, benefits and the extent of reciprocal recognition afforded by non-U.S. Jurisdiction Supervisors to reinsurers licensed and domiciled in the United States.~~

~~-(c) Reinsurers shall have a minimum capital and surplus requirement of \$ 250 million to be eligible to be a National Reinsurer or a Port of Entry Reinsurer. This requirement may also be satisfied by a group including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least \$ 250 million and a central fund containing a balance of at least \$ 250 million. The capital and surplus requirement of \$ 250 million set forth in this subsection shall be subject to periodic review by the Board, and may be periodically adjusted by the Board if it is determined that such other capital and surplus requirement is appropriate and necessary.~~

~~-(d) A Host State shall grant credit for reinsurance ceded by one of its domiciled insurers to a National Reinsurer or Port of Entry Reinsurer, and the Host State Supervisor shall retain the same authority it has under existing State law to determine whether the reinsurance agreement transfers risk.~~

~~-(e) In addition to the powers and responsibilities of the Board specifically set forth under the provisions of this Act, the Board shall have all powers necessary and appropriate to carry out the duties of the Board that are consistent with this Act.~~

SEC. 64. EVALUATION AND CERTIFICATION BY BOARD.

(a) Home State and Port of Entry State Standards. ~~The reinsurance activities of each classtype of reinsurer shall be supervised by a single State, the Home State or Port of Entry State, under model laws established by the NAIC and adopted uniformly by the individual States seeking certification as Home State or Port of Entry Supervisors.~~ The NAIC shall recommend uniform standards, subject to ~~approval-review and adoption~~ by the Board, for reinsurance supervisory systems of Home States and Port of Entry States that ensure that any such system that complies with such standards provides an acceptable level of prudential supervision over reinsurers regulated by such Home State or Port of Entry ~~State~~ Supervisor. ~~Any such criteria standards relating to ceded premium volume shall not unfairly discriminate against otherwise qualified States from~~ with respect to approval as a Home State or Port of Entry Supervisor.

(b) Evaluation of Home State and Port of Entry Supervisors. The Board shall certify which jurisdictions qualify as a Home State Supervisor or Port of Entry Supervisor.

(c) Evaluation of Non-U.S. Jurisdictions. The Board shall evaluate the reinsurance supervisory systems of non-U.S. jurisdictions, both initially and on an ongoing basis, consider the rights, benefits and the extent of reciprocal recognition afforded by non-U.S. jurisdictions to reinsurers licensed and domiciled in the U.S., determine the appropriate supervisory recognition approach for such jurisdictions, and create and publish a list of jurisdictions eligible to be recognized as Qualified Non-U.S. Jurisdictions.

(d) Fees. The Board shall establish a fee for conducting evaluations under this ~~s~~Section in the amount such that the aggregate of fees collected covers all costs of conducting evaluations under this ~~s~~Section and all other costs of the establishment and operation of the Board.

(e) Certification ~~and Decertification~~ of Home State and Port of Entry Supervisors. If, upon conducting ~~of~~ an evaluation under this ~~s~~Section with respect to the reinsurance supervisory system of any State, the Board determines that the ~~system~~State qualifies to be a Home State or Port of Entry Supervisor, the Board shall certify such qualification and publish notice and evidence of such certification in an appropriate manner. The Board may establish a procedure to decertify those Home State and Port of Entry Supervisors that no longer meet the applicable standards for certification.

(f) Certification ~~and Decertification~~ of Qualified Non-U.S. Jurisdictions. If, upon conducting ~~of~~ an evaluation under this ~~s~~Section with respect to the reinsurance supervisory system of any non-U.S. Jurisdiction, the Board determines that the ~~system~~jurisdiction qualifies to be recognized as a Qualified Non-U.S. Jurisdiction, the Board shall certify such qualification and publish notice and evidence of such certification in an appropriate manner. The Board may establish a procedure to decertify those Qualified Non-U.S. Jurisdictions that no longer meet the qualifications for certification.



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(g) Public Notice and Comment. In developing standards, procedures, and fee levels, both the Board and the ~~National Association of Insurance Commissioners~~ NAIC shall provide appropriate advance public notice and opportunity for public comment.

(h) Authority to Enter Agreements with Qualified Non-U.S. Jurisdiction Supervisors. A Port of Entry State is hereby authorized to enter into a supervisory recognition framework with a Qualified Non-U.S. Jurisdiction Supervisor, and enter into regulatory cooperation and information sharing agreements with Qualified Non-U.S. Jurisdictions, in accordance with standards and procedures recommended by the NAIC and adopted by the Board. This supervisory recognition framework may include the concepts of unilateral recognition of the Qualified Non-U.S. Jurisdiction by the Port of Entry State, mutual recognition between the Port of Entry State and the Qualified Non-U.S. Jurisdiction, or reciprocal treatment of reinsurers domiciled in the applicable jurisdictions.

(i) Confidentiality. All annual statement or other financial documents, materials, or information submitted by reinsurers to Home or Port of Entry Supervisors pursuant to this Section Act which are not otherwise public information subject to disclosure shall be exempted from disclosure under Title 5 Section 552(a) and shall be withheld from the public. All documents, materials or other information in the possession or control of the Board held in connection with this Act shall be confidential by law and privileged, shall not be subject to open records, freedom of information, sunshine or other applicable rules or regulations, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action, except as provided under Section _____ of this Act.

SEC. 75. CREDIT FOR REINSURANCE AND COLLATERAL REQUIREMENTS FOR NATIONAL AND PORT OF ENTRY REINSURERS.

A reinsurer shall be subject to the following requirements in order to be approved for licensure as a National Reinsurer by a Home State, or to be certified as a Port of Entry Reinsurer by a Port of Entry State:

(a) Reinsurers shall have a minimum capital and surplus requirement of \$ 250 million to be eligible to be a National Reinsurer or a Port of Entry Reinsurer. This requirement may also be satisfied by a group including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least \$ 250 million and a central fund containing a balance of at least \$ 250 million. The capital and surplus requirement of \$ 250 million set forth in this subsection shall be subject to periodic review by the Board, and may be periodically adjusted by the Board if it is determined that such other capital and surplus requirement is appropriate and necessary.

(b) Pursuant to Section 6(a), ~~C~~credit for reinsurance ceded by a domestic ceding insurer to a National or Port of Entry Reinsurer ~~reinsurer~~ shall not be allowed with respect to National and Port of Entry Reinsurers ~~denied if and only to the extent that security collateral provided by the National or Port of Entry Reinsurer~~ is held in the United States in accordance with the following requirements-

- (1)- The Port of Entry or Home State Supervisor shall assign a reinsurer one of five ratings (Secure-1, Secure-2, Secure-3, Secure-4 or Vulnerable-5). National Reinsurers



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and Port of Entry Reinsurers shall be evaluated on a legal entity basis, with due consideration being given to the group rating where appropriate, for purposes of establishing their collateral requirements.

(2) For Port of Entry Reinsurers, the Port of Entry Supervisor's The rating and corresponding collateral calculation as a percentage of the reinsurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers under this Act shall be as follows:

<u>Ratings</u>	<u>Collateral Required</u>
Secure – 1	0%
Secure – 2	10%
Secure – 3	20%
Secure – 4	75%
Vulnerable – 5	100%

(3) National Reinsurers rated by their Home State Supervisors in the Secure - 3 tier or above shall not be required to post any collateral for reinsurance assumed under this Act. For those National Reinsurers rated in the Secure - 4 tier, the Home State Supervisor shall require that 75% collateral ~~shall be required be posted pursuant to Section 5(b)(5) and regulations promulgated thereunder.~~ For and for those in the Vulnerable – 5 tier, the Home State Supervisor shall require that 100% collateral ~~shall be required be posted pursuant to Section 5(b)(5) and regulations promulgated thereunder.~~ The requirements of this paragraph shall be in force during the first two years of this Act, after which time the Board shall periodically determine new uniform and appropriate collateral amounts for National and Port of Entry Reinsurers including, with regard to Port of Entry Reinsurers, due consideration of the level of equivalence of prudential regulation and effective market access in the Port of Entry Reinsurer's jurisdiction.

(4) As part of the evaluation process, standards shall be recommended by the NAIC and adopted by the Board to be considered by the Home State or Port of Entry Supervisor in determining the appropriate rating of a reinsurer, and shall include but not be limited to the following:

- (A) The reinsurer's financial strength rating from two or more rating agencies approved by the U.S. Securities and Exchange Commission or other successor regulatory agency, which shall correspond to the maximum rating that a reinsurer may be assigned, as determined by the Board under its practices and procedures.
- (B) Compliance with reinsurance contractual terms and obligations, including contractual clauses deemed mandatory by the Board;
- (C) The business practices of the reinsurer in dealing with its ceding insurers;

(D) For National Reinsurers, a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers);

(E) For Port of Entry Reinsurers, a review of a report filed annually in the form of the applicable NAIC Annual Statement Blank, in accordance with standards and procedures recommended by the NAIC and adopted by the Board;

(F) The reinsurer's reputation for prompt payment of claims under reinsurance agreements, including the proportion of the reinsurer's obligations that are more than 90 days past due or are in dispute, with particular attention to receivables payable to companies that are in administrative supervision or receivership;

(G) Regulatory actions against the reinsurer;

(H) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in ~~paragraph (9)~~ subsection (I) below;

(I) For Port of Entry Reinsurers, audited financial statements, regulatory filings, and actuarial opinions in accordance with standards and procedures recommended by the NAIC and adopted by the Board. Upon the initial certification, audited financial statements for the last 3 years filed with its non-U.S. Jurisdiction Supervisor;

(J) The liquidation ~~preference~~ priority of obligations to a ceding insurer in the reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

(K) A reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. ~~Entrance into such an arrangement or procedure that involves one or more U.S. ceding insurers shall result in an assignment of a Vulnerable 5 rating. The Port of Entry Supervisor shall receive prior notice from a reinsurer that is directly at risk for business that the reinsurer is considering commutating proposes participation by the reinsurer in a solvent scheme of arrangement. A Vulnerable 5 rating shall be assigned to such reinsurer unless the Port of Entry Supervisor determines in his discretion that facts and circumstances warrant a different rating; and~~

(L) Any other information deemed relevant by the Home State or Port of Entry Supervisor.

(5) Security provided under this Section ("collateral") shall be held under standards and procedures recommended by the NAIC and ~~approved~~ adopted by the Board.

(6) In order to facilitate the prompt payment of claims, a Home State or Port of Entry Supervisor shall not require a National Reinsurer or a Port of Entry Reinsurer ~~would not be required~~ to post collateral for catastrophe recoverables for a period of ~~one~~ 1 year from the date of the first instance of a ~~liability~~ reserve entry by the ceding ~~company~~ insurer as a result of a loss from a defined catastrophic occurrence as recognized by the Home State

or Port of Entry Supervisor. The one year deferral period is ~~only~~ applicable only with respect to lines of property and casualty insurance, and is contingent upon the respective National or Port of Entry Reinsurer continuing to pay claims in a timely manner.

(7) The Home State or Port of Entry Supervisor shall require ~~all reinsurers~~ National and Port of Entry Reinsurers to post 100% collateral upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.

(8) Affiliated reinsurance transactions shall receive the same opportunity for reduced collateral requirements pursuant to this Act as all other reinsurance transactions.

(9) Change in Rating or Revocation of Rating Certification. The Port of Entry or Home State Supervisor shall not have discretion to waive additional collateral required in the case of a downgrade by a rating agency or other disqualifying circumstance.

(A) The Port of Entry Supervisor or Home State Supervisor shall have the authority to suspend, amend or withdraw a ~~reinsurer's~~ Port of Entry or National Reinsurer's rating certification at any time if ~~a reinsurer~~ the Port of Entry or National Reinsurer fails to meet its obligations or collateral requirements under this ~~proposal~~ Act, or if other financial or operating results of the ~~reinsurer~~ Port of Entry or National Reinsurer, or documented significant delays in payment by the ~~reinsurer~~ Port of Entry or National Reinsurer, lead the Port of Entry or National Reinsurer's supervisor to reconsider the ~~reinsurer's~~ Port of Entry or National Reinsurer's ability or willingness to meet its contractual obligations.

(B) If the Home State Supervisor's or Port of Entry Supervisor's rating of a Port of Entry or National Reinsurer improves, the ~~Port of Entry or National Reinsurer~~ reinsurer may meet the collateral requirements applicable to its new rating on a prospective basis, but the Home State or Port of Entry Supervisor shall require the Port of Entry or National Reinsurer to post collateral under the previously applicable collateral requirements as to all contracts in force on or before the effective date of the improved rating ~~shall remain subject to the previously applicable collateral requirements~~. If the Home State Supervisor's or Port of Entry Supervisor's rating of a Port of Entry or National Reinsurer declines, the Port of Entry or Home State Supervisor shall require the Port of Entry or National Reinsurer ~~shall be required~~ to meet the collateral requirements applicable to its new rating for all business subject to this Act.

(C) Notwithstanding the change or withdrawal of a ~~reinsurer's~~ Port of Entry or National Reinsurer's rating, U.S. ceding insurers that have ceded reinsurance to such Port of Entry or National Reinsurer may not be denied credit for reinsurance under Section 6(a)(3) ~~continue to take financial statement credit~~ for a period of ~~three~~ 3 months for all reinsurance ceded to that Port of Entry or National Reinsurer ~~for which they were previously allowed credit~~, unless the reinsurance ceded to such Port of Entry or National Reinsurer is deemed by the respective Port of Entry or Home State Supervisor to be ~~is deemed~~ uncollectible.

(c) This Act confers no private right of action in any federal court for any Port of Entry Reinsurer rated by a Port of Entry Supervisor or any National Reinsurer rated by a Home State Supervisor to seek review of the Port of Entry Supervisor's or Home State Supervisor's rating decision. Nor shall any such Port of Entry Reinsurer or National Reinsurer be permitted to seek review of such a rating decision under Title 42, Section 1983. Nothing in this subparagraph precludes review of such a rating decision pursuant to the laws and regulations of the Port of Entry State or Home State.

SEC. 68. PREEMPTION OF INCONSISTENT STATE LAWS AND ACTIONS.

~~—Preemption of Inconsistent State Laws. All laws, regulations, provisions, or other actions of a State are preempted to the extent that they are inconsistent with this Act. This Act shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the Act. This section may not be construed to preempt any State law, rule, or regulation that regulates credit for reinsurance for reinsurers other than National Reinsurers or Port of Entry Reinsurers, as defined under this Act. All laws, regulations, provisions, or other actions of a State are preempted to the extent that they are inconsistent with this Act.~~

(a) With respect to reinsurance ceded to a National or Port of Entry Reinsurer, if a State in which the ceding insurer is transacting insurance business ~~other than the Home State or Port of Entry State of the ceding insurer~~ regulates credit for reinsurance, the State may not directly or indirectly:

(1) impose collateral requirements that exceed those required by the Home State or Port of Entry Supervisor in accordance with this Act;

(2) regulate the financial condition of the National or Port of Entry Reinsurer, unless it is the Home State or Port of Entry Supervisor; or

(3) deny or limit credit for reinsurance except to the extent expressly permitted in accordance with this Act.

(b) This Section does not preempt the insurance regulatory authority of a Host State to determine whether a ceding insurer's reinsurance contracts transfer sufficient risk to qualify for reinsurance accounting treatment, to determine the amount of the ceding insurer's incurred loss reserves, or to exercise other prudential regulatory powers over the ceding insurer, as long as those powers are not exercised in a manner that has the effect of frustrating or circumventing the purposes of this Act.

(c) This Section does not preempt the insurance regulatory authority of a Host State to determine the existence and adequacy of collateral held by, or under the control of, the ceding insurer consistent with Section 5(b)(5) and regulations promulgated thereunder.

(d) This Section does not preempt or affect any State law, rule, or regulation that regulates credit for reinsurance ceded to reinsurers that are not National or Port of Entry Reinsurers, as defined under this Act, at the time the reinsurance is ceded, or that regulates credit for reinsurance with respect to lines of insurance that are excluded from the scope of this Act at the time the reinsurance is ceded.

(e) This Act shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the Act. This Act shall not be applicable to life reinsurance contracts until the earlier of 24 months from the effective date of the Act, or the implementation of U.S. principles based reserving standards for life insurance by the NAIC.

SEC. 7. RIGHT OF REVIEW.

(a) A ceding insurer adversely affected or aggrieved by any action that is inconsistent with Section 6(a) of this Act by any State that regulates credit for reinsurance, or by the officer of any such State, shall be permitted to seek review by the Board of the action of the State or State officer, pursuant to rules and procedures to be established by the Board after notice and comment. In adjudicating any such claim, the Board is hereby authorized to order such relief as is necessary to ensure that any State or State officer that regulates credit for reinsurance acts in compliance with Section 6(a) of this Act.

(b) No action may be commenced in any Federal court by any ceding insurer challenging the action of any State or State officer as inconsistent with Section 6(a) of this Act, unless the ceding insurer shall have first presented the claim to the Board and its claim shall have been finally denied by the Board in writing. The failure of the Board to make final disposition of a claim within six months after it is filed shall, at the option of the ceding insurer any time thereafter, be deemed a final denial of the claim for purposes of this Section.

(c) No action may be brought under Title 42, Section 1983 against any State, any subdivision of any State, or any State officer alleging that the State, subdivision, or officer has violated this Act.

(d) Any State for which the Board denies certification or which the Board decertifies pursuant to Section 4(e) shall be entitled to judicial review of the Board's order.

SEC. 98. CONSULTATION WITH FEDERAL AND STATE AGENCIES.

The Board shall coordinate with Federal and State agencies, and the NAIC, as necessary to assist and advise the Board in performing its duties under this Act. The Board shall be responsible for receiving, analyzing, collecting and disseminating publicly available data and information and for issuing reports regarding reinsurance.

SEC. 9. DUTIES OF BOARD.

In addition to any other authority granted to the Board in this Act, the Board shall have the power—

(a) to sue and be sued, complain and defend, in its corporate name and through its own counsel, with the approval of the President, in any Federal, State, or other court;

(b) to conduct its operations and maintain offices, and to exercise all other rights and powers authorized by this Act, in any State, without regard to any qualification, licensing, or other provision of law in effect in such State (or a political subdivision thereof);



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(c) to lease, purchase, accept gifts or donations of or otherwise acquire, improve, use, sell, exchange, or convey, all of or an interest in any property, wherever situated;

(d) to hire employees, professionals, and specialists, and elect or appoint officers, and to fix their compensation, define their duties, determine their qualification, and give them appropriate authority to carry out the purposes of the Act; and to establish the personnel policies and programs for the Board relating to conflicts of interest, rates of compensation, and such other matters as the Board considers appropriate;

(e) to allocate, assess, and collect fees established pursuant to Section 4(d); and

(f) to enter into agreements, incur liabilities, and do any and all other acts and things necessary, appropriate, or incidental to the conduct of its operations and the exercise of its obligations, rights, and powers imposed or granted by this Act.

SEC. 10. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) Board. The term “Board” means the ~~NAIC~~-Reinsurance Supervision Review Board authorized by ~~s~~Section 2.

(2) Ceding insurer. The term “ceding insurer” means an insurer that is licensed and domiciled in a State and purchases reinsurance.

(3) Domiciled or Domiciliary. The terms “domiciled” or “domiciliary” means, with respect to an insurer or reinsurer, to be incorporated or organized entered through, and licensed.

(4) Insurance. The term “insurance” means any product, ~~other than title insurance~~, defined or regulated as insurance by the applicable appropriate-State insurance regulatory authority.

(5) Reinsurance. The term “reinsurance” means the assumption by an insurer of all or part of a risk undertaken by a ceding another insurer ~~that is licensed to transact insurance or reinsurance in a jurisdiction. This Act shall not be applicable to life reinsurance contracts until the earlier of 24 months from the effective date of the Act, or the implementation of U.S. principles based reserving standards for life insurance by the NAIC.~~

(6) Reinsurance supervisory system. The term “reinsurance supervisory system” means, with respect to a State or non-U.S. jurisdiction, any officer, agency, board, commission, or other ~~body~~-entity that has primary regulatory authority over the business of reinsurance for the State or non-U.S. jurisdiction, and the legal and operational framework under which that authority is exercised.

(7) State. The term “State” means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern



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Mariana Islands, Guam, the Virgin Islands, American Samoa, and any other territory or possession of the United States.

(8) State insurance regulatory authority. The term “State insurance regulatory authority” means, with respect to a State, the officer, agency, board, commission, or other entity of a State that has primary regulatory authority over the business of insurance for the State.

(9) Domiciliary Jurisdiction. The term “Domiciliary Jurisdiction” means the jurisdiction State in which the ceding insurer is incorporated or organized domiciled.

(10) Home State. The term “Home State” means the qualifying state State where the national National reinsurer Reinsurer is licensed and domiciled.

(11) Home State Supervisor. The term “Home State Supervisor” means the sState insurance regulatory authority of a national National reinsurer Reinsurer.

(12) Host State. The term “Host State” means the domicile of the ceding company insurer.

(13) Host State Supervisor. The term “Host State Supervisor” means the ceding company’s insurer’s domestic domiciliary state State insurance regulatory authority.

(14) National Association of Insurance Commissioners or NAIC. The terms “National Association of Insurance Commissioners” or “NAIC” means the organization of State insurance regulatory regulatory ors authorities from the 50 sStates, the District of Columbia and the five U.S. territories.

(15) National Reinsurer. The term “National Reinsurer” means a reinsurer that is licensed and domiciled in a home state and approved by such state to transact assumed reinsurance business across the United States while submitting solely to the regulatory authority of the home state supervisor for purposes of its reinsurance business.

(16) Non-U.S. Jurisdiction Supervisor. The term “Non-U.S. Jurisdiction Supervisor” means the domiciliary insurance regulatory authority of an assuming reinsurer from a non-U.S. jurisdiction.

(17) Port of Entry Reinsurer. The term “Port of Entry Reinsurer” means a non-U.S. assuming reinsurer that is organized in and licensed by a Qualified Non-U.S. Jurisdiction, certified in a pPort of eEntry sState, and approved by such sState to provide creditable reinsurance to the U.S. market ceding insurers. Certification by a pPort of eEntry sState does not provide independent authority for a Port of Entry Reinsurer to transact the business of insurance in the United States.

(18) Port of Entry State. The term “Port of Entry State” means the sState where a non-U.S. assuming reinsurer is certified in order to provide creditable reinsurance to the U.S. market ceding insurers.

(19) Port of Entry Supervisor. The term “Port of Entry Supervisor” means the sState insurance regulatory authority of the pPort of eEntry sState.



National Association of Insurance Commissioners

(20) Qualified Non-U.S. Jurisdiction. The term “Qualified Non-U.S. Jurisdiction” means a non-U.S. jurisdiction which has been approved by the Board as qualified to enter into regulatory cooperation and information agreements with Port of Entry Supervisors.

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Marika Brady
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August 17, 2009

Mr. Ryan Couch
Accounting Policy Advisor
NAIC Central Office
2301 McGee Street, Suite 800
Kansas City, MO 64108-2662
rcouch@naic.org

Re: Reinsurance Legislation Draft: 7-27-09, A Bill to enact the Reinsurance Regulatory Modernization Act of 2009

Dear Mr. Couch:

The American Council of Life Insurers (ACLI) is the principal trade association of the United States life insurance industry, representing the overwhelming majority of U.S. purchasers and sellers of life reinsurance. Our members help individuals, families and businesses protect their assets, accumulate long-term savings, and guarantee a secure retirement. We appreciate the opportunity to comment on this draft.

As we have advised in our letter to Mr. Dan Schelp dated 4/22/09, our membership wants and needs comprehensive reform of reinsurance regulation. Reinsurance is a fundamental and important risk spreading mechanism that life insurers depend upon and that is global in nature. A dynamic regulatory regime for the mechanism is equally fundamental and necessary. We continue to believe it is neither desirable nor feasible to address reinsurance collateral—a single, narrow piece of the current reinsurance regulatory regime—in isolation, as this revised draft proposal still does.

ACLI policy is to continue to urge reinsurance regulatory reforms that—

- Foster competition by treating U.S. and non-U.S. insurers equally without discrimination;
- Establish the domestic regulator (i.e., state, federal or foreign) of a ceding or assuming insurer as the sole regulator of its reinsurance;
- Modernize risk transfer statutory accounting for life reinsurance;
- Focus on the capital adequacy of the counterparties to a reinsurance agreement; and
- Do not impose contract clauses on reinsurance agreements.

We hope that, as Congress continues its work to reform the regulatory framework for the entire U.S. financial services sector, NAIC will continue to build upon its recognition of the necessity of federal pre-emption to reform U.S. reinsurance regulation.

Very truly yours,

A handwritten signature in black ink, appearing to read 'M. Brady', with a long horizontal flourish extending to the right.

Marika F. Brady

Copies to Commissioner Nonnie Burns and Mr. Dan Schelp

American Council of Life Insurers
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American Insurance Association

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August 17, 2009

The Honorable Nonnie Burnes
Vice Chair, NAIC Reinsurance Task Force
Commissioner, Commonwealth of Massachusetts

Re: Draft Reinsurance Regulatory Modernization Act of 2009

Dear Commissioner Burnes and Members of the Reinsurance Task Force:

The American Insurance Association thanks you for the opportunity to comment on the most recent draft of the proposed reinsurance regulatory modernization act.

The proposed federal legislation would eliminate or sharply reduce collateral requirements for reinsurers who are not licensed in the U.S. and who may not maintain any assets in the U.S. AIA has consistently communicated to the task force its strong support for retention of the current collateral regulations. Rather than repeating those arguments in full, AIA refers the task force to its prior comment letters and testimony and incorporates by reference the statements contained in those prior communications.

In addition to the arguments set forth in AIA's prior communications, AIA refers the task force to information recently released by the NAIC's Receivership and Insolvency (E) Task Force. The NAIC staff conducted a survey of all states regarding the status of reinsurance recoverables held by insurers in receivership. Thirty-seven states responded to the survey and the state receivers' responses indicated that of the 4,579 reinsurance agreements of open receiverships, there was \$2,610,983,167 of reinsurance recoverables, of which \$2,236,592,566 was over 90 days past due. In other words, 86% of recoverables were more than 90 days past due. Moreover, the *average number of days outstanding* for reinsurance recoverables was 1,812 days, or an average of *five years*.

While there may be various reasons put forth for the survey results, it seems inappropriate, if not reckless, to eliminate or severely reduce collateral requirements upon a finding that 86% of reinsurance recoverables to insurers in receivership are more than 90 days past due and the average number of days outstanding on the more than \$2.2 billion overdue is five years. Based on the survey information, the

task force should more properly be looking for ways to better secure timely payments of reinsurance recoverables rather than proposing to eliminate the most effective method of securing such payments.

The Receivership and Insolvency Task Force requested comments by state receivers and other stakeholders on possible solutions to address reinsurance collection concerns. The conclusion by the receiver of the Reliance proceedings is particularly significant:

“Finally, *increasing or enhancing collateral requirements would virtually end payment delays*. It is important to note that delay tactics are also successfully deployed by accredited reinsurers who do not post collateral or markets such as Lloyds, whose trust fund can only be accessed after obtaining a non-appealable final judgment, which is a lengthy and expensive process. *The effectiveness of this potential solution is obvious and proven in the real world: reinsurers that are required to provide collateral to the cedant have the best payment records because collateral is immediately available to draw upon when disputes reach the appropriate stage. When collateral is available, inordinate delays are minimized and usually only realistic, supportable objection positions are taken by reinsurers.*”

Reliance comment letter to the Receivership and Insolvency Task Force, p.5 (emphasis supplied). The Reliance comment letter as well as the comment letters of all the other stakeholders are available from the NAIC’s Receivership and Insolvency Task Force’s webpage:

http://www.naic.org/committees_e_receivership.htm .

The direct link is:

http://www.naic.org/documents/committees_e_receivership_doc_reinsurance_comments_reliance.pdf .

See *also* the Comment Letter of the Office of the Special Deputy Receiver for Illinois (“Unresponsive foreign reinsurers who arguably use distance and/or difficulties in communicating as a means to delay payment and protect themselves from further action”); the Comment Letter of the Conservation and Liquidation Office of California (“Foreign reinsurers may ignore demands for payment anticipating that the costs of collection outweigh the amounts owing and that the liquidator will have little appetite to pursue collections in a foreign jurisdiction”); and the Comment Letter of Paragon (“The lack of service is even more apparent when consolidations have happened in the UK or Europe”).

It is instructive to remember that the current collateral rules were enacted in response to several highly publicized U.S. insurer insolvencies in the early 1980s. The Oversight and Investigations Subcommittee of the United States House Energy and Commerce Committee conducted a three year investigation into the failure of the state regulatory system to adequately safeguard the solvency of U.S. insurers.

The federal investigation *identified the inability of the U.S. insurers to collect reinsurance payments from alien reinsurers* as a critical factor in the insolvencies. The federal investigation's conclusions were reaffirmed in an AM Best 2004 study. The AM Best study, cited by this task force's December 2005 Reinsurance Collateral White Paper, concluded that *reinsurance failure "emerged as one of the leading causes of [U.S. insurer insolvencies] in the mid-1980s."* NAIC Reinsurance Task Force White Paper, p.10.

In response to the several insolvencies and the U.S. congressional investigation's determination that the inability to collect payments from alien reinsurers was a critical factor in the insolvencies, state legislatures enacted credit for reinsurance laws, which contain the current collateral requirements for foreign reinsurers.

Collateralization has worked. Since collateral requirements were put into place, failure to collect reinsurance recoverables has not been a critical factor in any U.S. insurer insolvencies. NAIC Reinsurance Task Force White Paper, p.11. It would be financially imprudent to now eliminate these proven effective insurer solvency protections.

AIA thanks you for your consideration of these issues.

Sincerely,

/s/ Steven A. Bennett

Steven A. Bennett
Assistant General Counsel
American Insurance Association

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August 13, 2009

Mr. Ryan Couch
Accounting Policy Advisor
NAIC Central Office
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Kansas City, MO 64108-2662
rcouch@naic.org

Re: Reinsurance Legislation Draft: 7-27-09, A Bill to enact the
Reinsurance Regulatory Modernization Act of 2009

Dear Mr. Couch:

AIG has reviewed the revised version of the Reinsurance Task Force's (RTF) Reinsurance Regulatory Modernization Act of 2009 (the "Act"), dated July 27, 2009, and the RTF's responses to comments on the prior (March 24, 2009) draft. We offer the following comments:

Sec. 2(c): This section provides the Board with authority to develop "sample" supervisory recognition agreements and information sharing and regulatory cooperation agreements to be entered into "uniformly" by Port of Entry Supervisors with Qualified Non-U.S. Jurisdictions. Is the reference to "uniformly" intended to require that all such supervisory recognition agreements and cooperation agreements be identical, or that Port of Entry Supervisors will have discretion as to the *content* of such agreements?

Sec. 4(d): Because status as a National or Port of Entry Reinsurer will be optional, only those companies seeking licensure as such should be responsible for fees charged by the Board.

Sec. 5: Must a U.S. reinsurer that seeks to be licensed as a National Reinsurer make its application to its state of domicile? What will be the procedure if the reinsurer's state of domicile does not qualify as a Home State, or is subsequently decertified?

Sec. 5(b): While it is recognized that the percentage collateral requirements have been the subject of substantial discussion previously, there is a significant gap in collateral required for reinsurers rated "Secure-3" (20% for Port of Entry Reinsurers and 0% for National Reinsurers) and those rated "Secure-4" (75% for Port of Entry and National Reinsurers). Thus, greater amounts of collateral should be required of "Secure-2" and "Secure-3" rated reinsurers, perhaps [25]% and [40]%, respectively.

Sec. 5(b)(4)(B): Is "terms" intended to refer to anything other than "obligations"? If not, "terms" should be deleted from this sentence. Relative to "contractual clauses deemed mandatory by the

Mr. Ryan Couch
August 13, 2009
Page Two of Two

Board” will same be among those standards and procedures of which the NAIC will provide advance notice and opportunity for public comment pursuant to Section 4(g).

Sec. 5(b)(4)(K): The original language in this section should be restored. It is unclear how simply requiring a reinsurer to notify the Port of Entry Supervisor that it is proposing participation in a solvent scheme of arrangement serves the purpose intended. More specifically, prior notice of proposed participation in a solvent scheme in and of itself will not typically allow the Port of Entry Supervisor to determine whether the scheme would be detrimental to any U.S. ceding insurers. The proliferation of solvent schemes in recent years has effectively resulted in forcing U.S. ceding insurers into commutations with healthy, solvent reinsurers. Accordingly, a reinsurer entering into a solvent scheme should be assigned a “5” rating unless the Port of Entry Supervisor in its discretion determines otherwise, as provided in the original language.

Sec. 5(b)(5): This section, when read together with Sections 6(b) and 6(c), can result in the adoption of collateral standards that are less stringent than those required by current state regulations (e.g., N.Y. Reg. 114 for trust agreements and N.Y. Reg. 133 for letters of credit). That would be harmful to U.S. ceding insurers and their policyholders.

Sec. 5(b)(8): Affiliated reinsurance transactions should not be included within the scope of the proposed legislation since such transactions that are material are prior approved by regulators.

Sec. 6: there should be added language specifically confirming that nothing in the Act shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing collateral requirements for reasons unrelated to credit for reinsurance.

Sec. 7(b): The six month period given to the Board to reach a final disposition of a claim should be reduced to three months. Considering that actions brought pursuant to this section may be time-sensitive, an expert Board should be able to resolve such issues on a timelier basis e.g., three months.

We are available to discuss these comments at your convenience.

Very truly yours

Martin F. Carus
Senior State Relations Officer



John R. Mathews
Counsel
Law & Regulation

August 13, 2009

The Honorable Nonnie Burnes
Commissioner, Commonwealth of Massachusetts
Vice Chair, Reinsurance (E) Task Force
National Association of Insurance Commissioners
Attn: Ryan Couch

**Re: Reinsurance Regulatory Modernization Framework Act ("Act") Revised
Exposure Draft – Federal Legislation dated 7-27-09 ("Revised Draft")**

Dear Vice Chair Burnes and members of the Reinsurance (E) Task Force:

I am writing on behalf of Allstate Insurance Company ("Allstate") in response to the Task Force's request for written Comments regarding the NAIC's recent Revised Draft. Allstate thanks the Task Force for the opportunity to submit this letter.

GENERAL OBSERVATIONS

Allstate still believes that revisions to the current reinsurance collateral requirements are not necessary. The system works as it was intended: it requires financial security of foreign reinsurers that are unlicensed, unauthorized and unregulated by U.S. law or the laws of the various states. Provisions in the Revised Draft have been diluted in many key areas to the benefit of foreign reinsurers, and to the detriment of U.S. policyholders and cedents. These provisions should be returned to their original content to ensure that U.S. policyholders and cedents are protected.

The Revised Draft also remains overbroad and vague, and contains many undefined terms. It concentrates too much power in the Reinsurance Supervision Review Board ("Board") with respect to the rules it will adopt and their scope. The Revised Draft does not identify the federal department or agency in which the Board will reside. Further, the Board will be subject to federal rule making and appropriations requirements. There does not appear to be any initial appropriation to permit the Board to begin operations before the fees proposed in the Revised Draft are collected. Finally, there are no provisions in the Revised Draft that will permit the Board to operate if insufficient fees are collected to fund its operations

Allstate Insurance Company

2775 Sanders Road, Ste. A5, Northbrook, IL 60062 Tel: 847-402-2627 Fax: 847-402-9757 jmathews@allstate.com

COMMENTS

SEC. 2. - As noted above, no provision has been made for the federal department or agency under which the Board will operate, nor for federal rulemaking in general. In addition, there are no appropriations to provide initial funding for the operation of the Board.

SEC. 3. - Allstate recommends that there be term limits for Board members and has revised subparagraph (d)(2) to provide that no Board member may serve for more than six consecutive years.

SEC. 4. - One of the undefined terms in the Revised Draft is the term "prudential" as it is used to modify the word "supervision" in subparagraph (a).¹ Although we understand the dictionary meaning of this word, we question whether it should be used in lieu of words such as "reasonable and businesslike," which have already been subjected to court review in the area of regulatory oversight.

In addition, subparagraphs (e) and (f) should be revised to strike the word "may" and substitute the words "also shall" so that the Board is required to establish decertification procedures for Home State and Port of Entry ("POE") Supervisors and for Qualified Non-U.S. Jurisdictions, respectively. Such procedures must be in place before the Board deems it necessary to take action with respect to such states or jurisdictions.

Subparagraph (h) appears to be an unconstitutional delegation to states of the authority to enter into recognition frameworks and agreements with foreign countries. This provision must be revised to provide that it is the Board, rather than any state, that enters into such agreements. Allowing individual states to do so will result in differing frameworks/agreements with various jurisdictions. Reinsurers then will almost assuredly seek entry to the U.S. market through a POE State that will provide favorable oversight. In addition, the language regarding unilateral recognition of Qualified Non U.S. Jurisdictions by POE States should be stricken. When foreign reinsurers first lobbied for collateral reduction, it was repeatedly stated that foreign reinsurers wanted a "level playing field" (even though foreign reinsurers already have the advantage over U.S. reinsurers, as the majority of reinsurance premium for U.S. risks is paid to foreign reinsurers). Unilateral recognition by the U.S. will allow foreign reinsurers to operate more freely in the U.S. than U.S. reinsurers are allowed to operate in foreign countries. We also note that the reinsurance playing field has been made "level" in Europe, *but only for European Union reinsurance companies.*

Subparagraph (i) regarding confidentiality of annual statement and financial information submitted by reinsurers also requires revision. As it now stands, it is unclear whether U.S. standards will be used to determine the confidentiality of materials submitted to the Board by all reinsurers, both U.S. and foreign. It is patently inequitable to have such information of U.S. reinsurers be considered public information and subject to disclosure under U.S. law, while foreign reinsurers' information is not subject to such disclosure because it has been declared "privileged" or "proprietary" because of secrecy laws in foreign jurisdictions.

¹ See also Sec. 5(b)(3) and Sec. 6(b).

SEC. 5. - Language formerly in subparagraph (b)(4)(A) regarding ratings by ratings agencies was removed from the prior draft. Those provisions need to be reinserted in the Revised Draft. Objective standards for rating reinsurers are essential, and must be included as one of the many standards to be considered when rating reinsurers. Otherwise, reinsurer ratings are left to the absolute discretion and whim of Home States or POE Supervisors, and could be made for other, subjective reasons rather than the level of financial security provided to U.S. cedents.

Further, language regarding participation in a foreign insolvent scheme of arrangement ("scheme") that had been in subparagraph (b)(4)(K) has now been stricken. It is absolutely imperative this language be reinserted in the Revised Draft, so that adequate protections for U.S. cedents, their policyholders and guaranty associations remain.

Foreign reinsurers and agencies have commented that schemes are approved by UK courts and reviewed by the FSA, and are frequently used in conjunction with mergers, acquisitions and reorganizations that are "beneficial to many interested parties, including ceding insurers." What has become quite evident over the years with respect to the scores of schemes implemented in the UK, however, is that schemes are beneficial to the reinsurers and to their efforts to rid their books of "bad" business (e.g., asbestos, environmental and other mass tort claims) to the detriment of U.S. cedents. Once a scheme has been implemented, it acts as a forced commutation. Cedents lose their reinsurer of long-tail reinsurance by means of a one-time-only payment from that reinsurer, based on current losses and present valuing of future claims, with no resort for the cedent if, or when, future claims arise that surpass the payment it has received. After a company has been put into a scheme, it is too late to order it to increase its collateral. Indeed, in conjunction with their adoption, schemes generally seek and obtain injunctions in the U.S. pursuant to Title 15 of the U.S. Bankruptcy Code to prohibit any efforts to affect their assets, including efforts to require that collateral be posted. Reinsurance collateral serves to "level the playing field" for U.S. cedents with respect to interaction and negotiation with schemes.

With respect to subparagraph (b)(6), we agree with PCI's previous comments that the one-year deferral period should be reduced to six months. Further, we fully support the NAIC's continued inclusion of subparagraphs (b)(7) and (b)(9) in the Revised Draft.

Allstate questions the language added in subparagraph (c) restricting access to federal courts when it is the Act, a federal law, that will be impacting cedents and reinsurers. We agree, however, in limiting causes of action available to aggrieved parties.

SEC. 6. - Allstate still recommends that the Act's application to reinsurance contracts should be set out in a separate provision and not included in subparagraph (e) of this section.

SEC. 7. - Subparagraphs (c) and (d) require revisions to ensure adequate protection for the members of the Board and court access for aggrieved parties, respectively.

CONCLUSION

We have incorporated our proposed changes to the Revised Draft and have attached them for your review. We have also restructured the Revised Draft so that the Sections fall into a more logical order for this Act.

Allstate still believes that a revision of the reinsurance collateral requirements is unnecessary as the current system works as it was intended: it requires financial security of foreign reinsurers which are unlicensed, unauthorized and unregulated by U.S. law or the laws of the various states. This is a solvency issue, not a trade issue. Reinsurance collections are often a difficult and lengthy process. Without collateral securing foreign reinsurer obligations to U.S. cedents, U.S. cedents will be faced with payment delays. U.S. cedents, their policyholders and guaranty associations ultimately will pay the price when under-collateralized foreign reinsurers do not meet their obligations under their reinsurance contracts.

Sincerely,


John R. Mathews

A BILL

To enact the Reinsurance Regulatory Modernization Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. SHORT TITLE.

This Act may be cited as the “Reinsurance Regulatory Modernization Act of 2009.”

SEC. 2. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) Board. The term “Board” means the Reinsurance Supervision Review Board authorized by Section 23.

(2) Ceding insurer. The term “ceding insurer” means an insurer that is licensed and domiciled in a State and purchases reinsurance.

(3) Domiciled or Domiciliary. The terms “domiciled” or “domiciliary” mean, with respect to an insurer or reinsurer, to be incorporated or organized, and licensed.

(4) Insurance. The term “insurance” means any product, defined or regulated as insurance by the applicable State insurance regulatory authority.

(5) Reinsurance. The term “reinsurance” means the assumption by an insurer of all or part of a risk undertaken by a ceding insurer.

(6) Reinsurance supervisory system. The term “reinsurance supervisory system” means, with respect to a State or non-U.S. jurisdiction, any officer, agency, board, commission, or other entity that has primary regulatory authority over the business of reinsurance for the State or non-U.S. jurisdiction, and the legal and operational framework under which that authority is exercised.

(7) State. The term “State” means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and any other territory or possession of the United States.

(8) State insurance regulatory authority. The term “State insurance regulatory authority” means, with respect to a State, the officer, agency, board, commission, or other entity of a State that has primary regulatory authority over the business of insurance for the State.

(9) Domiciliary Jurisdiction. The term “Domiciliary Jurisdiction” means the State in which the ceding insurer is domiciled.

(10) Home State. The term “Home State” means the qualifying State where the National Reinsurer is licensed and domiciled.

(11) Home State Supervisor. The term “Home State Supervisor” means the State insurance regulatory authority of a National Reinsurer.

(12) Host State. The term “Host State” means the domicile of the ceding insurer.

(13) Host State Supervisor. The term “Host State Supervisor” means the ceding insurer’s domiciliary State insurance regulatory authority.

(14) National Association of Insurance Commissioners or NAIC. The terms “National Association of Insurance Commissioners” or “NAIC” means the organization of State insurance regulatory authorities from the States.

(15) National Reinsurer. The term “National Reinsurer” means a reinsurer that is licensed and domiciled in a home state and approved by such state to transact assumed reinsurance business across the United States while submitting solely to the regulatory authority of the home state supervisor for purposes of its reinsurance business.

(16) Non-U.S. Jurisdiction Supervisor. The term “Non-U.S. Jurisdiction Supervisor” means the domiciliary insurance regulatory authority of an assuming reinsurer from a non-U.S. jurisdiction.

(17) Port of Entry Reinsurer. The term “Port of Entry Reinsurer” means a non-U.S. assuming reinsurer that is organized in and licensed by a Qualified Non-U.S. Jurisdiction, certified in a Port of Entry State, and approved by such State to provide creditable reinsurance to ceding insurers. Certification by a Port of Entry State does not provide independent authority for a Port of Entry Reinsurer to transact the business of insurance in a State.

(18) Port of Entry State. The term “Port of Entry State” means the State where a non-U.S. assuming reinsurer is certified in order to provide creditable reinsurance to ceding insurers.

(19) Port of Entry Supervisor. The term “Port of Entry Supervisor” means the State insurance regulatory authority of the Port of Entry State.

(20) Qualified Non-U.S. Jurisdiction. The term “Qualified Non-U.S. Jurisdiction” means a non-U.S. jurisdiction which has been approved by the Board as qualified to enter into regulatory cooperation and information agreements with Port of Entry Supervisors.

SEC. 23. REINSURANCE SUPERVISION REVIEW BOARD.



Two types of reinsurers are hereby established in the United States, National Reinsurers and Port of Entry Reinsurers. In order to provide effective regulation by the States of these types of reinsurers, the Reinsurance Supervision Review Board is hereby given authority to:

(a) evaluate the reinsurance supervisory systems of the States to determine whether such jurisdictions qualify as Home State Supervisors or Port of Entry Supervisors under standards recommended by the NAIC and adopted by the Board;

(b) evaluate the reinsurance supervisory systems of non-U.S. Jurisdictions to determine whether they are eligible for recognition by the Board as Qualified Non-U.S. Jurisdictions under standards recommended by the NAIC and adopted by the Board;

(c) develop sample supervisory recognition agreements and information sharing and regulatory cooperation agreements, to be entered into uniformly by Port of Entry Supervisors with Qualified Non-U.S. Jurisdictions under standards recommended by the NAIC and adopted by the Board; and

(d) preserve the confidentiality of supervisory information within the Board's control, and enter into agreements with State, federal, and non-U.S. financial supervisory and law enforcement officials and agencies for sharing supervisory information on a confidential basis.

SEC. 34. MEMBERSHIP.

(a) The Board. The Board shall be created by passage of this Act. The Board shall consist of representatives of State insurance regulatory authorities, the Department of the Treasury, the Department of Commerce, and the Office of the United States Trade Representative.

(b) Composition. The Board shall consist of 15 directors appointed by the President by and with the advice and consent of the Senate as follows:

(1) Ten directors from the State insurance regulatory authorities in their respective States. Nominees for these 10 directorships shall be submitted to the President by the NAIC.

(2) Five directors from the Department of Treasury, from the Department of Commerce, and from the Office of the United States Trade Representative, as the President may appoint.

(c) Chairperson and vice-chairperson. The President shall designate 1 director as chairperson and 1 director as vice-chairperson of the Board. The chairperson shall be selected from among the 10 directors appointed pursuant to Section 34(b)(1). The chairperson and vice-chairperson shall serve in such capacity for the term of their appointment as directors.

(d) Terms.

(1) Initial terms. In appointing the initial Board, the President shall designate 5 of the appointed directors for initial terms of 3 years, 5 of the appointed directors for initial terms of 2 years, and 5 of the appointed directors for initial terms of 1 year.

(2) Thereafter. After the initial term, all directors shall be appointed for terms of 3 years. No director may serve more than 6 consecutive years.

(3) Succession and termination. The successor of any director appointed pursuant to Section 34(b)(1) shall likewise be appointed pursuant to Section 34(b)(1). The successor of any director appointed pursuant to Section 34(b)(2) shall likewise be appointed pursuant to Section 34(b)(2). A director may be appointed to succeed himself or herself. If any director shall cease employment in the State or Federal agency from which he or she was appointed pursuant to Section 34(b)(1) or 34(b)(2), the director's membership on the Board shall terminate and a successor shall be appointed in the manner set forth in this subsection for the remainder of the director's term.

(4) End of service. A director may continue to serve on the Board until his or her successor is appointed.

SEC. 5. DUTIES OF BOARD.

In addition to any other authority granted to the Board in this Act, the Board shall have the power—

(a) to sue and be sued, complain and defend, in its corporate name and through its own counsel, with the approval of the President, in any Federal, State, or other court;

(b) to conduct its operations and maintain offices, and to exercise all other rights and powers authorized by this Act, in any State, without regard to any qualification, licensing, or other provision of law in effect in such State (or a political subdivision thereof);

(c) to lease, purchase, accept gifts or donations of or otherwise acquire, improve, use, sell, exchange, or convey, all of or an interest in any property, wherever situated;

(d) to hire employees, professionals, and specialists, and elect or appoint officers, and to fix their compensation, define their duties, determine their qualification, and give them appropriate authority to carry out the purposes of the Act; and to establish the personnel policies and programs for the Board relating to conflicts of interest, rates of compensation, and such other matters as the Board considers appropriate;

(e) to allocate, assess, and collect fees established pursuant to Section 46(d); and

(f) to enter into agreements, incur liabilities, and do any and all other acts and things necessary, appropriate, or incidental to the conduct of its operations and the exercise of its obligations, rights, and powers imposed or granted by this Act.

SEC. 56. EVALUATION AND CERTIFICATION BY BOARD.

(a) Home State and Port of Entry State Standards. The reinsurance activities of each type of reinsurer shall be supervised by a single State, the Home State or Port of Entry State, under model laws established by the NAIC and adopted uniformly by the individual States seeking certification as Home State or Port of Entry Supervisors. The NAIC shall recommend uniform

standards, subject to review and adoption by the Board, for reinsurance supervisory systems of Home States and Port of Entry States that ensure that any such system that complies with such standards provides an acceptable level of prudential supervision over reinsurers regulated by such Home State or Port of Entry Supervisor. Any standards relating to ceded premium volume shall not unfairly discriminate against otherwise qualified States with respect to approval as a Home State or Port of Entry Supervisor.

(b) Evaluation of Home State and Port of Entry Supervisors. The Board shall certify which jurisdictions qualify as a Home State Supervisor or Port of Entry Supervisor.

(c) Evaluation of Non-U.S. Jurisdictions. The Board shall evaluate the reinsurance supervisory systems of non-U.S. jurisdictions, both initially and on an ongoing basis, consider the rights, benefits and the extent of reciprocal recognition afforded by non-U.S. jurisdictions to reinsurers licensed and domiciled in the U.S., determine the appropriate supervisory recognition approach for such jurisdictions, and create and publish a list of jurisdictions eligible to be recognized as Qualified Non-U.S. Jurisdictions.

(d) Fees. The Board shall establish a fee for conducting evaluations under this Section in the amount such that the aggregate of fees collected covers all costs of conducting evaluations under this Section and all other costs of the establishment and operation of the Board.

(e) Certification and Decertification of Home State and Port of Entry Supervisors. If, upon conducting an evaluation under this Section with respect to the reinsurance supervisory system of any State, the Board determines that the State qualifies to be a Home State or Port of Entry Supervisor, the Board shall certify such qualification and publish notice and evidence of such certification in an appropriate manner. The Board ~~may also shall~~ establish a procedure to decertify those Home State and Port of Entry Supervisors that no longer meet the applicable standards for certification.

(f) Certification and Decertification of Qualified Non-U.S. Jurisdictions. If, upon conducting an evaluation under this Section with respect to the reinsurance supervisory system of any non-U.S. Jurisdiction, the Board determines that the jurisdiction qualifies to be recognized as a Qualified Non-U.S. Jurisdiction, the Board shall certify such qualification and publish notice and evidence of such certification in an appropriate manner. The Board ~~may also shall~~ establish a procedure to decertify those Qualified Non-U.S. Jurisdictions that no longer meet the qualifications for certification.

(g) Public Notice and Comment. In developing standards, procedures, and fee levels, both the Board and the NAIC shall provide appropriate advance public notice and opportunity for public comment.

(h) Authority to Enter Agreements with Qualified Non-U.S. Jurisdiction Supervisors. ~~A Port of Entry State~~ **The Board** is hereby authorized to enter into a supervisory recognition framework with a Qualified Non-U.S. Jurisdiction Supervisor, and enter into regulatory cooperation and information sharing agreements with Qualified Non-U.S. Jurisdictions, in accordance with standards and procedures recommended by the NAIC and adopted by the Board. This supervisory recognition framework may include the concepts of ~~unilateral recognition of the Qualified Non-U.S. Jurisdiction by the Port of Entry State~~, mutual recognition between the Port

of Entry State and the Qualified Non-U.S. Jurisdiction, or reciprocal treatment of reinsurers domiciled in the applicable jurisdictions; however, unilateral recognition of the Qualified Non-U.S. Jurisdiction by the Board shall not be permitted.

(i) Confidentiality. All annual statement or other financial documents, materials, or information submitted by U.S. reinsurers pursuant to this Act which are not otherwise public information subject to disclosure shall be exempted from disclosure under Title 5, Section 552(a) and shall be withheld from the public. All annual statement or other financial documents, materials, or information submitted by a non-U.S. assuming reinsurer or a Port of Entry Reinsurer pursuant to this Act which are not otherwise public information in the domicile of such non-U.S. assuming reinsurer or Port of Entry Reinsurer, but would be public information subject to disclosure under U.S. law by U.S. reinsurers, shall not be exempted from disclosure under Title 5, Section 552(a) and shall not be withheld from the public.

SEC. 57. REQUIREMENTS FOR NATIONAL AND PORT OF ENTRY REINSURERS.

A reinsurer shall be subject to the following requirements in order to be approved for licensure as a National Reinsurer by a Home State, or to be certified as a Port of Entry Reinsurer by a Port of Entry State:

(a) Reinsurers shall have a minimum capital and surplus requirement of \$-250 million to be eligible to be a National Reinsurer or a Port of Entry Reinsurer. This requirement may also be satisfied by a group including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least \$-250 million and a central fund containing a balance of at least \$-250 million. The capital and surplus requirement of \$-250 million set forth in this subsection shall be subject to periodic review by the Board, and may be periodically adjusted by the Board if it is determined that such other capital and surplus requirement is appropriate and necessary.

(b) Pursuant to Section 68(a), credit for reinsurance ceded by a domestic ceding insurer to a National or Port of Entry Reinsurer shall not be denied if collateral provided by the National or Port of Entry Reinsurer is held in the United States in accordance with the following requirements-

(1) The Port of Entry or Home State Supervisor shall assign a reinsurer one of five ratings (Secure-1, Secure-2, Secure-3, Secure-4 or Vulnerable-5). National Reinsurers and Port of Entry Reinsurers shall be evaluated on a legal entity basis, with due consideration being given to the group rating where appropriate, for purposes of establishing their collateral requirements.

(2) For Port of Entry Reinsurers, the Port of Entry Supervisor's rating and corresponding collateral calculation as a percentage of the reinsurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers under this Act shall be as follows:

<u>Ratings</u>	<u>Collateral Required</u>
Secure – 1	0%
Secure – 2	10%

Secure – 3	20%
Secure – 4	75%
Vulnerable – 5	100%

(3) National Reinsurers rated by their Home State Supervisors in the Secure - 3 tier or above shall not be required to post any collateral for reinsurance assumed under this Act. For those National Reinsurers rated in the Secure - 4 tier, the Home State Supervisor shall require that 75% collateral be posted pursuant to Section 57(b)(5) and regulations promulgated thereunder. For those in the Vulnerable – 5 tier, the Home State Supervisor shall require that 100% collateral be posted pursuant to Section 57(b)(5) and regulations promulgated thereunder. The requirements of this paragraph shall be in force during the first two years of this Act, after which time the Board shall periodically determine new uniform and appropriate collateral amounts for National and Port of Entry Reinsurers including, with regard to Port of Entry Reinsurers, due consideration of the level of equivalence of prudential regulation and effective market access in the Port of Entry Reinsurer’s jurisdiction.

(4) As part of the evaluation process, standards shall be recommended by the NAIC and adopted by the Board to be considered by the Home State or Port of Entry Supervisor in determining the appropriate rating of a reinsurer, and shall include but not be limited to the following:

(A) The reinsurer’s financial strength rating from two or more rating agencies approved by the U.S. Securities and Exchange Commission (“SEC”) or other successor regulatory agency, ~~which shall correspond to the~~ The maximum rating that a reinsurer may be assigned, as determined by the Board under its practices and procedures will correspond to the reinsurer’s financial strength rating as outlined in the table below. The lowest financial strength rating received from an SEC-approved rating agency shall be used in establishing the maximum rating of a reinsurer. A failure to maintain at least two financial strength ratings from SEC-approved rating agencies shall result in an assignment of a Vulnerable – 5 rating.

<u>Ratings</u>	<u>Best</u>	<u>S&P</u>	<u>Moody’s</u>	<u>Fitch</u>
<u>Secure - 1</u>	A++	AAA	Aaa	AAA
<u>Secure - 2</u>	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
<u>Secure - 3</u>	A, A-	A+, A, A-	A1, A2, A3	A+, A, A-
<u>Secure - 4</u>	B+, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
<u>Vulnerable - 5</u>	B, B-C+, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

(B) Compliance with reinsurance contractual terms and obligations, including contractual clauses deemed mandatory by the Board;

- (C) The business practices of the reinsurer in dealing with its ceding insurers;
- (D) For National Reinsurers, a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers);
- (E) For Port of Entry Reinsurers, a review of a report filed annually in the form of the applicable NAIC Annual Statement Blank, in accordance with standards and procedures recommended by the NAIC and adopted by the Board;
- (F) The reinsurer's reputation for prompt payment of claims under reinsurance agreements, including the proportion of the reinsurer's obligations that are more than 90 days past due or are in dispute, with particular attention to receivables payable to companies that are in administrative supervision or receivership;
- (G) Regulatory actions against the reinsurer;
- (H) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subsection (I) below;
- (I) For Port of Entry Reinsurers, audited financial statements, regulatory filings, and actuarial opinions in accordance with standards and procedures recommended by the NAIC and adopted by the Board. Upon the initial certification, audited financial statements for the last 3 years filed with its non-U.S. Jurisdiction Supervisor;
- (J) The liquidation priority of obligations to a ceding insurer in the reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;
- (K) A reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. Entrance Notice of an intent to enter into such an arrangement or procedure that involves one or more U.S. ceding insurers shall result in an immediate assignment of a Vulnerable-5 rating. The Port of Entry Supervisor shall receive prior notice from a reinsurer that proposes participation by the reinsurer in a solvent scheme of arrangement, such notice to be provided in writing to the Port of Entry Supervisor not less than 90 days before such reinsurer submits its application for a scheme of arrangement to the court and/or regulatory authority, whichever application is earlier, in the appropriate jurisdiction(s). A Vulnerable – 5 rating shall be assigned to such reinsurer unless the Port of Entry Supervisor determines in his discretion that facts and circumstances warrant a different rating; and
- (L) Any other information deemed relevant by the Home State or Port of Entry Supervisor.
- (5) Security provided under this Section ("collateral") shall be held under standards and procedures recommended by the NAIC and adopted by the Board.

(6) In order to facilitate the prompt payment of claims, a Home State or Port of Entry Supervisor shall not require a National Reinsurer or a Port of Entry Reinsurer to post collateral for catastrophe recoverables for a period of ~~1 year~~ 6 months from the date of the first instance of a reserve entry by the ceding insurer as a result of a loss from a defined catastrophic occurrence as recognized by the Home State or Port of Entry Supervisor. The ~~one-year~~ 6-month deferral period is applicable only with respect to lines of property and casualty insurance and is contingent upon the respective National or Port of Entry Reinsurer continuing to pay claims in a timely manner.

(7) The Home State or Port of Entry Supervisor shall require National and Port of Entry Reinsurers to post 100% collateral upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.

(8) Affiliated reinsurance transactions shall receive the same opportunity for reduced collateral requirements pursuant to this Act as all other reinsurance transactions.

(9) Change in Rating or Revocation of Certification. The Port of Entry or Home State Supervisor shall not have discretion to waive additional collateral required in the case of a downgrade by a rating agency or other disqualifying circumstance.

(A) The Port of Entry Supervisor or Home State Supervisor shall have the authority to suspend, amend or withdraw a Port of Entry or National Reinsurer's certification at any time if the Port of Entry or National Reinsurer fails to meet its obligations or collateral requirements under this Act, or if other financial or operating results of the Port of Entry or National Reinsurer, or documented significant delays in payment by the Port of Entry or National Reinsurer, lead the Port of Entry or National Reinsurer's supervisor to reconsider the Port of Entry or National Reinsurer's ability or willingness to meet its contractual obligations.

(B) If the Home State Supervisor's or Port of Entry Supervisor's rating of a Port of Entry or National Reinsurer improves, the Port of Entry or National Reinsurer may meet the collateral requirements applicable to its new rating on a prospective basis, but the Home State or Port of Entry Supervisor shall require the Port of Entry or National Reinsurer to post collateral under the previously applicable collateral requirements as to all contracts in force on or before the effective date of the improved rating. If the Home State Supervisor's or Port of Entry Supervisor's rating of a Port of Entry or National Reinsurer declines, the Port of Entry or Home State Supervisor shall require the Port of Entry or National Reinsurer to meet the collateral requirements applicable to its new rating for all business subject to this Act.

(C) Notwithstanding the change or withdrawal of a Port of Entry or National Reinsurer's rating, U.S. ceding insurers that have ceded reinsurance to such Port of Entry or National Reinsurer may not be denied credit for reinsurance under Section ~~68~~(a)(3) for a period of 3 months for all reinsurance ceded to that Port of Entry or National Reinsurer, unless the reinsurance ceded to such Port of Entry or National Reinsurer is deemed by the respective Port of Entry or Home State Supervisor to be uncollectible.

~~(c) This Act confers no private right of action in any federal court for any Port of Entry Reinsurer rated by a Port of Entry Supervisor or any National Reinsurer rated by a Home State Supervisor to seek review of the Port of Entry Supervisor's or Home State Supervisor's rating decision. Nor shall any such Port of Entry Reinsurer or National Reinsurer shall be permitted to seek review of such a rating decision under Title 42, Section 1983 of the Port of Entry Supervisor's or Home State Supervisor's rating decision. Nothing in this subparagraph precludes review of such a rating decision pursuant to the laws and regulations of the Port of Entry State or Home State.~~

SEC. 68. PREEMPTION OF INCONSISTENT STATE LAWS AND ACTIONS.

All laws, regulations, provisions, or other actions of a State are preempted to the extent that they are inconsistent with this Act.

(a) With respect to reinsurance ceded to a National or Port of Entry Reinsurer, if a State in which the ceding insurer is transacting insurance business regulates credit for reinsurance, the State may not directly or indirectly:

- (1) impose collateral requirements that exceed those required by the Home State or Port of Entry Supervisor in accordance with this Act;
- (2) regulate the financial condition of the National or Port of Entry Reinsurer, unless it is the Home State or Port of Entry Supervisor; or
- (3) deny or limit credit for reinsurance except to the extent expressly permitted in accordance with this Act.

(b) This Section does not preempt the insurance regulatory authority of a Host State to determine whether a ceding insurer's reinsurance contracts transfer sufficient risk to qualify for reinsurance accounting treatment, to determine the amount of the ceding insurer's incurred loss reserves, or to exercise other prudential regulatory powers over the ceding insurer, as long as those powers are not exercised in a manner that has the effect of frustrating or circumventing the purposes of this Act.

(c) This Section does not preempt the insurance regulatory authority of a Host State to determine the existence and adequacy of collateral held by, or under the control of, the ceding insurer consistent with Section 57(b)(5) and regulations promulgated thereunder.

(d) This Section does not preempt or affect any State law, rule, or regulation that regulates credit for reinsurance ceded to reinsurers that are not National or Port of Entry Reinsurers, as defined under this Act, at the time the reinsurance is ceded, or that regulates credit for reinsurance with respect to lines of insurance that are excluded from the scope of this Act at the time the reinsurance is ceded.

~~(e) This Act shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the Act. This Act shall not be applicable to life reinsurance contracts until the earlier of 24 months from the effective date of the Act, or the implementation of U.S. principles~~



~~based reserving standards for life insurance by the NAIC.~~

SEC. 79. RIGHT OF REVIEW.

(a) A ceding insurer adversely affected or aggrieved by any action that is inconsistent with Section 6(a) of this Act by any State that regulates credit for reinsurance, or by the officer of any such State, shall be permitted to seek review by the Board of the action of the State or State officer, pursuant to rules and procedures to be established by the Board after notice and comment. In adjudicating any such claim, the Board is hereby authorized to order such relief as is necessary to ensure that any State or State officer that regulates credit for reinsurance acts in compliance with Section ~~68~~(a) of this Act.

(b) No action may be commenced in any Federal court by any ceding insurer challenging the action of any State or State officer as inconsistent with Section ~~68~~(a) of this Act, unless the ceding insurer shall have first presented the claim to the Board and its claim shall have been finally denied by the Board in writing. The failure of the Board to make final disposition of a claim within 6 months after it is filed shall, at the option of the ceding insurer any time thereafter, be deemed a final denial of the claim for purposes of this Section.

(c) No action may be brought under Title 42, Section 1983 against the Board, any State, any subdivision of any State, or any State officer alleging that the State, subdivision, or officer has violated this Act.

(d) Any State for which the Board denies certification or which the Board decertifies pursuant to Section ~~46~~(e) shall be entitled to judicial review of the Board's order solely in federal court.

SEC. 810. CONSULTATION WITH FEDERAL AND STATE AGENCIES.

The Board shall coordinate with Federal and State agencies, and the NAIC, as necessary to assist and advise the Board in performing its duties under this Act. The Board shall be responsible for receiving, analyzing, collecting and disseminating publicly available data and information and for issuing reports regarding reinsurance.

SEC. 11. EFFECTIVE DATE.

This Act shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the Act. This Act shall not be applicable to life reinsurance contracts until the earlier of 24 months from the effective date of the Act, or the implementation of U.S. principles based reserving standards for life insurance by the NAIC.

~~**SEC. 9. DUTIES OF BOARD.**~~

~~In addition to any other authority granted to the Board in this Act, the Board shall have the power—~~

~~(a) to sue and be sued, complain and defend, in its corporate name and through its own counsel, with the approval of the President, in any Federal, State, or other court;~~

~~-(b) to conduct its operations and maintain offices, and to exercise all other rights and powers authorized by this Act, in any State, without regard to any qualification, licensing, or other provision of law in effect in such State (or a political subdivision thereof);~~

~~-(c) to lease, purchase, accept gifts or donations of or otherwise acquire, improve, use, sell, exchange, or convey, all of or an interest in any property, wherever situated;~~

~~-(d) to hire employees, professionals, and specialists, and elect or appoint officers, and to fix their compensation, define their duties, determine their qualification, and give them appropriate authority to carry out the purposes of the Act; and to establish the personnel policies and programs for the Board relating to conflicts of interest, rates of compensation, and such other matters as the Board considers appropriate;~~

~~-(e) to allocate, assess, and collect fees established pursuant to Section 4(d); and~~

~~-(f) to enter into agreements, incur liabilities, and do any and all other acts and things necessary, appropriate, or incidental to the conduct of its operations and the exercise of its obligations, rights, and powers imposed or granted by this Act.~~

SEC. 10. DEFINITIONS.

~~For purposes of this Act, the following definitions shall apply:~~

~~(1) Board. The term “Board” means the Reinsurance Supervision Review Board authorized by Section 2.~~

~~(2) Ceding insurer. The term “ceding insurer” means an insurer that is licensed and domiciled in a State and purchases reinsurance.~~

~~(3) Domiciled or Domiciliary. The terms “domiciled” or “domiciliary” mean, with respect to an insurer or reinsurer, to be incorporated or organized, and licensed.~~

~~(4) Insurance. The term “insurance” means any product, defined or regulated as insurance by the applicable State insurance regulatory authority.~~

~~(5) Reinsurance. The term “reinsurance” means the assumption by an insurer of all or part of a risk undertaken by a ceding insurer.~~

~~(6) Reinsurance supervisory system. The term “reinsurance supervisory system” means, with respect to a State or non-U.S. jurisdiction, any officer, agency, board, commission, or other entity that has primary regulatory authority over the business of reinsurance for the State or non-U.S. jurisdiction, and the legal and operational framework under which that authority is exercised.~~

~~(7) State. The term “State” means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and any other territory or possession of the United States.~~

~~(8) State insurance regulatory authority. The term “State insurance regulatory authority” means, with respect to a State, the officer, agency, board, commission, or other entity of a State that has primary regulatory authority over the business of insurance for the State.~~

~~(9) Domiciliary Jurisdiction. The term “Domiciliary Jurisdiction” means the State in which the ceding insurer is domiciled.~~

~~(10) Home State. The term “Home State” means the qualifying State where the National Reinsurer is licensed and domiciled.~~

~~(11) Home State Supervisor. The term “Home State Supervisor” means the State insurance regulatory authority of a National Reinsurer.~~

~~(12) Host State. The term “Host State” means the domicile of the ceding insurer.~~

~~(13) Host State Supervisor. The term “Host State Supervisor” means the ceding insurer’s domiciliary State insurance regulatory authority.~~

~~(14) National Association of Insurance Commissioners or NAIC. The terms “National Association of Insurance Commissioners” or “NAIC” means the organization of State insurance regulatory authorities from the States.~~

~~(15) National Reinsurer. The term “National Reinsurer” means a reinsurer that is licensed and domiciled in a home state and approved by such state to transact assumed reinsurance business across the United States while submitting solely to the regulatory authority of the home state supervisor for purposes of its reinsurance business.~~

~~(16) Non-U.S. Jurisdiction Supervisor. The term “Non-U.S. Jurisdiction Supervisor” means the domiciliary insurance regulatory authority of an assuming reinsurer from a non-U.S. jurisdiction.~~

~~(17) Port of Entry Reinsurer. The term “Port of Entry Reinsurer” means a non-U.S. assuming reinsurer that is organized in and licensed by a Qualified Non-U.S. Jurisdiction, certified in a Port of Entry State, and approved by such State to provide creditable reinsurance to ceding insurers. Certification by a Port of Entry State does not provide independent authority for a Port of Entry Reinsurer to transact the business of insurance in a State.~~



National Association of Insurance Commissioners

~~(18) Port of Entry State. The term “Port of Entry State” means the State where a non-U.S. assuming reinsurer is certified in order to provide creditable reinsurance to ceding insurers.~~

~~(19) Port of Entry Supervisor. The term “Port of Entry Supervisor” means the State insurance regulatory authority of the Port of Entry State.~~

~~(20) Qualified Non-U.S. Jurisdiction. The term “Qualified Non-U.S. Jurisdiction” means a non-U.S. jurisdiction which has been approved by the Board as qualified to enter into regulatory cooperation and information agreements with Port of Entry Supervisors.~~



To: Mr. Ryan Couch
NAIC
2301 McGee, Suite 800
Kansas City, MO 64108-2662

Your reference: -
Our reference: (AC) 09-003

Subject: **Comments to revised NAIC exposure draft of the Reinsurance Modernisation Act of 2009**

Brussels, 17 August 2009

Dear Mr. Couch,

You have recently circulated for comment an updated version of the proposed bill to enact the Reinsurance Regulatory Modernisation Act (dated 27 July 2009).

As you know, the CEA has advocated changes for many years to the current NAIC credit for reinsurance laws. We are therefore pleased that the NAIC has re-stated its position that "the reinsurance regulatory modernisation effort is necessary for the prudent regulation of reinsurance in the US" and has developed a reform proposal which it wishes to promote for action by Congress.

We note that the latest text takes on board some of the comments we made on the previous draft, for which we are grateful, but we would also take the opportunity to reiterate the other comments outlined in our letter of 23rd April 2009 to the NAIC which have not been taken into account in the latest draft.

Without prejudice to the above, we repeat our view that the current proposal, whilst imperfect for the reasons we have previously signalled, is a helpful and significant step towards the creation of a more level playing field between US and non-US reinsurers. We would therefore urge the NAIC to address the outstanding issues to allow Congress to consider the proposal.

The above comments should not of course be interpreted as a CEA position with regard to any other initiatives proposed to improve the US (re)insurance supervisory landscape nor the respective merits or demerits of such initiatives in comparison with the NAIC modernisation framework.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Alberto Corinti", is written over a light blue horizontal line.

Alberto Corinti
Director Economics and Finance

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17 August 2009

Dear Members of the Reinsurance Task Force
The National Association of Insurance Commissioners (NAIC),

GIAJ Comments on the "Draft Reinsurance Regulatory Modernization Act of 2009"
released on July 27, 2009 by the NAIC Reinsurance Task Force

First of all, we, the General Insurance Association of Japan (GIAJ), are grateful for this opportunity to comment on the "Draft Reinsurance Regulatory Modernization Act of 2009". On behalf of the member companies, we would like to submit our comments on the draft.

The General Insurance Association of Japan is an industry organization whose 27 member companies account for around 95 percent of the total general insurance premiums in Japan.

General

We take up the position that the collateral requirements on reinsurance transactions should be ever abolished completely. However, as a positive step toward this, we welcome the continuous progress of discussions in the NAIC to reform the reinsurance regulation in the United States.

We recognize that the U.S. Department of the Treasury proposed the bill to establish the Office of National Insurance (ONI) as part of its reform of the financial regulatory/supervisory system in the U.S. We strongly expect that the NAIC's Reinsurance Regulatory Modernization Act will be treated in a manner consistent with the Treasury's reform policies on the insurance regulation/supervision and the Constitution of the United States, and that reinsurance regulatory reforms will proceed in an efficient and effective manner.

In addition, we strongly hope that the Reinsurance Regulatory Modernization Act will be introduced in line with the international (re)insurance regulatory/supervisory trends discussed in the IAIS, as well as the efforts by G20 nations to resist protectionism.

Sec.3

We appreciate the proposed inclusion of members of the Treasury and other federal agencies on the Reinsurance Supervision Review Board (RSRB). It is essential to involve the federal agencies on the RSRB to ensure the effectiveness of integral efforts by the states, which are necessary to fully implement reinsurance regulatory reforms.

We also welcome the involvement of members of the United States Trade Representative (USTR) on the RSRB, for its capability to address the issue of level playing field between National Reinsurer and Port of Entry Reinsurer, as preferential treatment for former has remained in the revised draft.

Sec.5(B)(3)

We have serious concerns that the draft still contains preferential treatment for those National Reinsurers rated as "Secure-2" and "Secure-3", in other words, discriminatory treatment for Port of Entry Reinsurers falling into these categories.

It is likely that quite a few insurers will be classified as Secure-2 and Secure-3. Considering the significant impact of the discriminatory treatment, we cannot overlook this issue, even though the draft describes that the texts shall be reviewed in two years.

Regarding this matter, the "Eighth Report to the Leaders on the U.S.-Japan Regulatory Reform and Competition Policy Initiative" describes that "The Government of the United States will continue to ensure that its reinsurance collateral requirements and potential amendments are consistent with its WTO commitments." However, we have doubts that the relevant provision in this section is actually consistent with the WTO commitments. In accordance with the foregoing assertion by your federal government, we truly hope that the NAIC will give careful consideration to ensure a level playing field and modify the draft provision accordingly.

Sec.5(b)(4)(E) and (I)

The proposed requirements of submitted financial statements and reports substantially exceed what is supposed to be needed in the context of reinsurance regulation/supervision. The requirements will place a large burden especially on non-U.S. insurers due to differences in languages and forms. Moreover, once a non-U.S. jurisdiction is evaluated and recognized as a qualified jurisdiction by RSRB, the supervisory tools used by the qualified jurisdiction should be automatically recognized as eligible to be filed in the U.S. Therefore, we believe that this part needs reconsideration.

Especially on the submission of financial statements, the Japanese Generally Accepted Accounting Principles (GAAP) is acknowledged by the European Union as equivalent to the International Financial Reporting Standards (IFRS) and also authorized by the Financial Services Agency of Japan (FSA). With the extent of recognition across nations, Japanese financial statements based on the Japanese GAAP should be approved to be used in the evaluation process of Port of Entry Reinsurers.

(END)



Division of Insurance
The Honourable Nonnie Burnes
Commissioner and Chair of NAIC Reinsurance Task Force
One South Station, 5th Floor
Boston, MA 02210-2208
U.S.A.

Hannover, August 17, 2009

Dear Commissioner Burnes,

We have received a copy of the July 27, 2009 draft of the "Reinsurance Regulatory Modernization Act (the "Act"). We are pleased to see that the Reinsurance Task Force has continued to move promptly in preparing this legislation. We urge the Task Force to complete its work as soon as practical.

Hannover Re provided comments on the March 24, 2009 draft of the Act (see our letter dated April 21st, 2009). We appreciate the fact that you have considered our point and have accepted some of them. In particular, we believe that your treatment of solvent schemes of arrangement and related proceedings is proper. We are also pleased to see the development of an appropriate appeal and review process for actions taken by the RSRD.

As you finalise the Act, we would urge you to consider further the financial information that a Port of Entry Reinsurer will be required to file with a Port of Entry State. We believe that the new rules should rely on financial statements and reports currently prepared by international reinsurers. Changes in reporting requirements and format can impose significant costs on reinsurers. Accordingly, Hannover Re would strongly urge you that accounting statements prepared according to IFRS will be acceptable for international reinsurers. Moreover, we would recommend that for reinsurers such as Hannover Re, who already prepare a financial statement concerning its US multi-beneficiary reinsurance trust, according to an NAIC reporting blank, that this will be accepted.

Finally, with regard to financial strength ratings, we believe that regulators should put a greater emphasis on interactive ratings, rather than ratings which are issued only based upon public information. Accordingly, perhaps section 5 (b) (4) (A) can note that where there are both public information and interactive ratings, that the latter will take precedent.

Hannover
Rückversicherung AG

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Supervisory Council
Herbert K. Haas,
Chairman

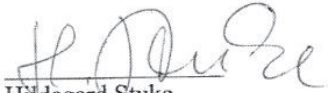
Executive Board
Ulrich Wallin, *Chairman*
André Arrago, Dr. Wolf Becke
Jürgen Gräber, Dr. Michael Pickel
Roland Vogel, *Deputy Member*

Registered Office
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Thank you again for your consideration of our comments. We hope that the Task Force can complete its work on the Act at the September NAIC Meeting and that it can be introduced for consideration by the US Congress soon.

Sincerely yours,



Hildegard Stuke
Associate Director
Hannover Re



INTERNATIONAL
UNDERWRITING ASSOCIATION
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FROM THE CHIEF EXECUTIVE

14 August 2009

The Honourable Nonnie Burnes
Chair, NAIC Reinsurance Task Force
Insurance Commissioner of Massachusetts
Commonwealth of Massachusetts
Division of Insurance
One South Station, 5th Floor
Boston
MA 02110-2208

Dear Commissioner Burnes,

We have received a copy of the 27 July 2009 draft of the "Reinsurance Regulatory Modernization Act of 2009" (the "Act"). We appreciate the opportunity to comment on this draft of the Act.

The International Underwriting Association of London (the "IUA") is a trade association representing 41 international companies who operate mainly from the London Insurance Market (see www.iaa.co.uk). The IUA has been closely involved in the NAIC's efforts to enhance and modernize US reinsurance regulations.

THE WORLD
OF INSURANCE

We are pleased to see that the current draft of the Act is a further improvement on the 24 March draft. We appreciate the fact that the Reinsurance Task Force has taken into account many of the comments that were made by the IUA, and others. There are, of course, some provisions of the Act which the IUA would still change, but we acknowledge that the Reinsurance Task Force has considered all of the issues we have raised in the past and we will not repeat those here. We believe that you now have a proposal which is ready for consideration by the US Congress. We urge the Reinsurance Task Force to conclude its work on the Act as soon as possible and to move to the next stage of this process, which will be consideration and hopefully passage of the Act by the US Congress.

We realise that the Reinsurance Task Force will have additional work to do in considering possible implementing regulations, guidelines and perhaps model laws. The IUA looks forward to working with the Reinsurance Task Force in connection with these. In this regard, we would note that we are uncertain of the need for new model laws, but we will discuss this issue further with the Reinsurance Task Force at the September meeting.

Thank you again for your consideration of the points we have raised.

Yours sincerely


P.P. Dave Matcham
Chief Executive

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JOSEPH P. GUNSET
General Counsel

August 14, 2009

Honorable Nonnie S. Burnes
Commissioner of Insurance
Commonwealth of Massachusetts
Division of Insurance
One South Station, Fifth Floor
Boston, MA 02210-2208

Re: Reinsurance Regulatory Modernization Act of 2009 (the "Act")

Dear Commissioner Burnes:

The following comments are submitted on behalf of Lloyd's of London ("Lloyd's") in response to the newly revised draft legislation, the "Reinsurance Regulatory Modernization Act of 2009."

Lloyd's strongly supports reinsurance regulatory modernization in the United States and welcomes the leadership of the NAIC in its advocacy of the adoption of the "Reinsurance Framework" ("Framework") in its various components. Importantly, the NAIC's actions to streamline the supervision of cross-border reinsurance transactions recognize the evolution of how reinsurance is transacted, as well as regulated.

Lloyd's will not repeat its earlier comments, including those set forth in our most recent letter dated April 23, 2009. We see much in the draft that we are pleased to support and we continue to believe that uniform national adoption of the framework would represent a significant improvement over current law. We would note, however, that some of the comments offered with respect to prior drafts continue to be applicable to the current draft.

- (1) The proposed legislation continues to require non-US reinsurers, such as Lloyd's, to have a "port of entry state" ("POE") supervisor. Given that the legislation provides that a non-US reinsurer may not seek POE reinsurer status unless and until the Reinsurance Supervision Review Board ("RSSB") is satisfied based on a thorough examination as to the strength and effectiveness of the reinsurer's domestic regulator, the requirement for an additional POE supervisor seems duplicative and unnecessary. Moreover, as the individual POE states will be required to create a regulatory regime outlining any individual state POE requirements, this will only serve to delay the overall implementation of the Framework, which was agreed by the Task Force at the end of 2008.
- (2) We continue to believe that the Framework, as well as the Act, should not impose a different collateral requirement structure upon POE reinsurers than upon similarly situated "national reinsurers" for the reasons we have previously articulated.
- (3) Lloyd's recognizes the flexibility now contained within the Act in respect to schemes of arrangement, allowing that participation in such a scheme of arrangement is a factor

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Lloyd's is authorized under the Financial Services and Markets Act 2000



for consideration by the Board. We would note that similar flexibility has also been appropriately applied to certain other provisions. We think this is the appropriate approach. We request the NAIC to consider whether the reference to "a report filed annually in the form of the applicable NAIC Annual Statement Blank, in accordance with standards and procedures recommended by the NAIC and adopted by the Board" is too limiting, particularly in light of the increased convergence of standards for accounting and reporting.

- (4) We note with interest the changes to Section 5 (a) concerning minimum capital and surplus requirements applicable to a "group including incorporated and individual unincorporated underwriters..." We appreciate the effort to include Lloyd's within these provisions although we note that Lloyd's is actually an association rather than a group and so a change in technical terminology would be appropriate. We will be separately addressing this and certain other technical suggestions with the Task Force, and therefore will reserve our comments at this time.

Finally, Lloyd's recalls from statements made at the last session of the Task Force at the NAIC meeting in Minneapolis, that it was the Task Force's intention to seek advice from a constitutional law expert concerning the Act's efficacy as a Federal statute. We assume that some of the changes in the proposed legislation are reflective of this advice. We have not seen the advice but would welcome a recitation of this issue.

In conclusion, Lloyd's appreciates that the Act recognizes that the current structure for supervision of cross-border reinsurance transactions is duplicative, inefficient, and requires Federal legislation to insure that the system can be effectively streamlined on a uniform national basis which we view to be essential. The creation of an evaluation board to examine the supervisory systems of non-U.S. jurisdictions is a positive step towards the goal of equivalent treatment for reinsurers whose home state supervision meets the appropriate standards. Indeed, the proposed legislation permits the Board to thoroughly examine the supervisory systems of foreign jurisdictions, to gain a sophisticated understanding of that system's quality.

Again, we appreciate the consideration of Lloyd's comments on the draft legislation, and we look forward to continuing to work with the Task Force toward the ultimate goal: a modern system of reinsurance supervision that provides true equivalence for cross-border transactions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joseph P. Gunset".

cc: Ryan Couch



Stephen W. Broadie
Vice President, Financial Policy

August 17, 2009

Mr. Ryan Couch
Accounting Policy Advisor
National Association of Insurance Commissioners
2300 McGee Street, Suite 800
Kansas City, MO 64108-2662

Re: Draft Reinsurance Regulatory Modernization Act

Dear Mr. Couch:

The Property Casualty Insurers Association of America (PCI) appreciates the opportunity to comment to the Reinsurance (E) Task Force on the NAIC's redraft of its proposed federal Reinsurance Regulatory Modernization Act. Unfortunately, the current draft contains the same major flaws as the previous draft, and accomplishes the goals of neither the U.S. ceding companies nor the professional reinsurers that PCI represents. Because it would provide less accountability and due process than the current system, we also do not believe it achieves the goals of U.S. state insurance regulators. Unless these flaws are eliminated, PCI will oppose this legislation if the NAIC seeks its enactment by the Congress.

1. Reinsurance Supervision Review Board's lack of accountability and due process – In an apparent attempt to solve the major constitutional issues raised by the earlier draft, the current draft creates a set of new ones:

- The Board's uncertain status and lack of accountability – The new draft is extremely unclear as to exactly what type of entity the Board is and to whom it is accountable. Although the president of the United States would appoint the Board's directors and the Senate would confirm them, the bill does not state whether the Board is a federal governmental entity. The Board has no reporting responsibility, and appears to be accountable to no one. The legislation provides no due process protections for the insurers, reinsurers and insurance regulators affected by the Board's decisions, except for a vague statement that the Board and the NAIC "shall provide adequate public notice and opportunity for public comment". No provision is made for review of the Board's decisions. We believe this is unacceptable when the potential effect of those decisions on the U.S. insurance market and all of its participants is considered.
- Improper delegation of authority and NAIC control – While it remains unclear whether the Board would be a federal or state entity, it is quite clear that the NAIC wishes to retain maximum control. The NAIC would nominate ten of the Board's fifteen directors, and it appears that if the president decided not to appoint some or all of the nominees the NAIC would then propose another slate. The NAIC would also have sole authority to recommend standards for Home State and Port of Entry State status to the Board. In essence, this draft continues to delegate federal legislative authority to the NAIC, a private trade association. We continue to believe that this raises significant federal constitutional questions. More to the point, however, we believe this broad delegation of federal power to the NAIC is inappropriate, and when combined with the bill's lack of accountability and due process will adversely affect the interests of all of the parties – state regulators, reinsurers, ceding companies and, most important, policyholders – involved in the U.S. insurance market.

2. Inadequate collateral requirements – PCI commented earlier that the NAIC's proposed reductions in the collateral that protects U.S. cedents' recoverables from non-U.S. reinsurers "will inhibit US cedents' ability to collect reinsurance recoverables from non-U.S. reinsurers". We also pointed out that, while the NAIC

proposal rests on the presumption that reinsurers with declining credit quality can post additional collateral, recent events have shown us how difficult that can be in the real world. We suggested that higher collateral charges should be assigned to the second and third rating bands in particular, “so reinsurers whose quality is declining are required to post more collateral while they still can.” Those comments were ignored in the NAIC’s most recent draft. We continue to urge the NAIC to increase the collateral charge for the Secure – 2 category to 20%, the charge for the Secure – 3 category to 40%, and the charge for the Secure – 4 category to 80%.

3. Inadequate collateral protection for participation in solvent schemes of arrangement – The NAIC took a significant backward step in this draft by eliminating an earlier provision that would have required a “Vulnerable-5” rating for reinsurers that participate in solvent schemes of arrangement or similar procedures involving U.S. ceding companies. Because of the significant possibility of prejudice to U.S. ceding insurers in those proceedings (and to the U.S. policyholders whose claims they pay), the legislation should continue to require participating reinsurers to fully collateralize their U.S. liabilities. We strongly urge the NAIC to reinstate this provision.

This legislation is not nearly ready for Capitol Hill. We have chosen in this letter to focus only on the most important issues that it raises, and note that many of the more technical issues we raised in our earlier comment letter remain unaddressed. If the NAIC is serious about achieving industry support, we suggest that the drafters meet with PCI and other interested parties and address the industry’s concerns in detail. Unless those issues are satisfactorily resolved, PCI will have to oppose this legislation if it is taken to the Congress.

I would be happy to discuss these comments with you or any member of the Task Force. You may contact me at 847.553.3606 or by email at steve.broadie@pciaa.net.

Sincerely,



Stephen W. Broadie

PCI is composed of more than 1,000 member companies, representing the broadest cross-section of insurers of any national property/casualty insurance trade association. PCI members write over \$176 billion in annual premium, 35.9 percent of the nation’s property casualty insurance. While PCI primarily represents ceding companies, eleven professional reinsurers are also PCI members.



REINSURANCE ASSOCIATION OF AMERICA

1301 Pennsylvania Avenue, N.W., Suite 900, Washington, D.C. 20004-1701

Attachment Two-N
Reinsurance (E) Task Force
9/24/09

Telephone: (202) 638-3690
Facsimile: (202) 638-0936
<http://www.reinsurance.org>

August 17, 2009

Via E-mail

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**Re: RAA Comments to July 27, 2009 Reinsurance Task Force Draft Reinsurance
Regulatory Modernization Act**

Dear Dan and Ryan:

The RAA appreciates the opportunity to comment on the NAIC's July 27, 2009 draft Reinsurance Regulatory Modernization Act ("Draft Legislation"). We commend the NAIC for reconfirming Plenary's December 2008 statement that "It is the position of the NAIC that the reinsurance regulatory modernization effort is necessary for the prudential regulation of reinsurance in the U.S.", and continue to support the NAIC's efforts to pursue comprehensive reinsurance regulatory reform. We similarly applaud the NAIC's acknowledgement that federal tools are necessary to implement the modernization proposal. However, to provide comprehensive, meaningful reform of reinsurance regulation, any proposal must ensure uniformity and address all international issues. We remain concerned that the Draft Legislation falls short of this goal in several respects.

The NAIC Framework Memorandum approved by Plenary sets forth a three prong approach for modernizing reinsurance regulation: (1) Mutual recognition, to determine which non-U.S. jurisdictions are entitled to enter into mutual recognition agreements; (2) Single state U.S. regulator for U.S. licensed reinsurers, to avoid inappropriate extraterritorial regulation; and (3) Single state U.S. regulator for non-U.S. licensed reinsurers, to allow them to access the U.S. market through one approved jurisdiction. The RAA agrees that these areas are critical components of reform. The Draft Legislation inadequately addresses all three of these

components. Notably, the Draft Legislation grants the Reinsurance Supervision Review Board (“RSRB”), and the NAIC, national regulatory powers without federal oversight, raising significant constitutional concerns. Further, the Draft Legislation approaches the international aspects of regulation in a manner inconsistent with current congressional thinking. The Draft Legislation also requires the enactment of NAIC model laws, through the onerous NAIC model law process, by Home State and Port of Entry (“POE”) Supervisors. Requiring states to adopt model laws to implement the objective of the proposal – single state regulation of reinsurers – is unnecessarily cumbersome and problematic. If these fundamental constitutional and organizational issues are not dealt with, the Draft Legislation does not, and cannot, accomplish the NAIC’s goal of reinsurance regulatory modernization.

1. Constitutional Concerns

The Draft Legislation continues to improperly delegate both legislative and executive authority in violation of the U.S. Constitution. The standard setting and decision making authority under the Draft Legislation is the RSRB. The RSRB is not accountable to or subject to the oversight of the Executive branch. The RSRB is a private entity essentially accountable to the NAIC, a private, non-governmental body. Ten of the 15 members of the RSRB are state insurance regulatory authorities recommended by the NAIC and both the chair and vice-chair of the RSRB are required to be state insurance regulatory authorities. In addition, the RSRB only has authority to act “under standards recommended by the NAIC and adopted by the Board.” After appointment by the President, the members of the RSRB have no further nexus to the federal government or accountability to any governmental body, yet the RSRB is empowered to exercise both executive and congressional authority. Without proper executive branch oversight, a grant of authority by Congress to the RSRB to exercise governmental authority is likely to be deemed unconstitutional.

2. Political Concerns

This lack of governmental oversight also gives rise to political considerations. The events of the financial crisis have strengthened the desire for more centralized regulation. A large portion of the recent financial distress is being attributed to the fragmented, patchwork system of regulation in the U.S. Congress may be able to delegate the authority to enter into international agreements to the states, but the RAA believes that under the current political environment, Congress is unlikely to perpetuate such a system by giving authority in the international insurance arena to multiple, independent regulatory authorities in the states, particularly where there is no ongoing federal oversight. Moreover, globally the (re)insurance industry is trending towards more centralization, harmonization and cross-border recognition in the regulatory arena. The U.S. is consistently criticized for its lack of a single authoritative regulatory voice in the area of reinsurance. The Draft Legislation may be seen as out of sync with this direction by not creating a single, national point for addressing international issues.

3. NAIC Model Law Process Concerns

Section 4(a) provides that Home or POE states uniformly adopt model laws “established” by the NAIC. It is unclear how many model laws will be necessary. If amendments to model laws are necessary, or new model laws need to be created, the NAIC must follow its model law process. The NAIC model law process is onerous and requires the parent committee and the Executive Committee to approve the development of a model law before drafting begins. To be approved, the model law must involve a national standard that requires uniformity amongst all states and receive the commitment of significant regulator and association resources to educate, communicate and support its state implementation. Then, a drafting group must develop the model law. Finally, a model law requires a minimum two-thirds majority vote of both the parent committee and the NAIC Executive/Plenary for approval. NAIC members are instructed to vote based on whether they will make a commitment to support the model law in their state. It is very difficult to imagine how any model law changes contemplated by the Draft Legislation will meet the approval requirements in the model law process. Similarly, it does not seem likely such a model law would receive the commitment of support from a two-thirds majority of the NAIC if only a handful of states are needed as Home or POE states to effectively implement the proposal.

The requirement for Home and POE states to engage in the NAIC model law process will replicate the current issues in the state-based system. The recognition by the Reinsurance Task Force that federal implementing legislation was the most effective and efficient way to implement the modernization proposal was a significant step for the NAIC; inserting a model law requirement into the federal legislation is a step backwards. Instead, the legislation should be drafted in a way that obviates the need for the NAIC model law process.

4. Preemption Concerns

Carefully crafted preemption is critical. The Draft Legislation begins with a very broad statement of preemption. However, the Draft Legislation then provides an exception which appears to swallow the rule. Section 6(c) provides that the Section does not preempt a Host state from determining the existence and adequacy of collateral. Even with the subsections cross-reference to Section 5(b)(5), and any regulations promulgated thereunder, the RAA is concerned that this exception to the preemption authority gives the Host state a great deal of power to circumvent the decisions of a Home or Port of Entry Supervisor. If the NAIC’s intent is to give the Host state authority to confirm the adequacy of collateral as determined by the Home or POE state and consistent with Section 5(b)(5), the Section should be clarified to limit the Host state’s authority to that and to avoid potential conflict with or circumvention of Section 6(a)(1).

5. Supervisory Recognition Concerns

In addition to the political concerns raised by the Draft Legislation’s treatment of supervisory recognition, the process fails to achieve true supervisory authority recognition for qualified regimes. Reinsurers from qualified non-U.S. jurisdictions are subject to additional U.S. regulation by the Port of Entry regulator – including the imposition of varying collateral requirements, mandatory contract terms, financial reporting and a 100% collateralization requirement upon an order of rehabilitation, liquidation or conservation against the reinsurer’s

ceding insurer. The dual regulation resulting from the Port of Entry Supervisor's authority greatly diminishes the value of cross-border supervisory recognition.

6. Unaddressed Concerns from the Prior Draft

1. There are many technical issues, particularly in Section 5, that are included in the legislation, which should more properly be dealt with via regulation. Section 5 defines specific criteria related to credit for reinsurance, collateral requirements and the assignment of ratings. To the extent these technical issues need to be revised as the regulatory system evolves over time, they should not be imbedded in federal law, but rather left to the regulations that the RSRB is required to develop.
2. The list of factors to be considered by Home and POE state supervisors in Section 5(b)(4) are factors more properly considered during the process of evaluating a jurisdiction rather than during the determination of a rating. Consideration of these factors in determining the appropriate rating appears to be very vague and subjective. The RAA recommends that the NAIC remove Section 5(b)(4)(A) – (L) from the Draft Legislation.
3. The RAA continues to object to Section 5(b)(7), which requires all reinsurers to post 100% collateral upon the entry of an order of rehabilitation, liquidation or conservation against the cedent. There is no direct correlation between ceding company insolvency and reinsurer financial difficulties. A highly-rated reinsurer that is meeting its obligations should not be required to collateralize its liabilities in this scenario because there is no increased credit risk. Also, the possibility that a reinsurer might have to post collateral in the event of the cedent's insolvency is not currently contemplated in the reinsurance negotiating process. The NAIC should consider the ramifications of introducing this factor into the negotiation of reinsurance agreements. Moreover, no state currently requires 100% collateralization by a reinsurer under these circumstances. For these reasons, the RAA recommends that the NAIC remove Section 5(b)(7) from the Draft Legislation.
4. Section 5(b)(4)(B) provides the RSRB with unfettered discretion to mandate reinsurance contract clauses. This is a departure from the current NAIC model laws and accounting guidance, which require only a few specific contract clauses and do not dictate specific language. International regulatory practice follows the same approach. The departure from this custom puts the proposed legislation at odds with the way reinsurance is commonly transacted on a national and global basis. Reinsurance involves contracts between sophisticated entities and therefore the terms and conditions of reinsurance agreements should be left to the marketplace. The RAA strongly supports freedom to contract in a competitive market with respect to terms and conditions, other than those uniformly required by accounting guidance. Section 5(b)(4)(B) also is inconsistent with the NAIC's stated interest in modernizing the U.S. reinsurance regulatory system and making it more consistent with the global effort to harmonize international reinsurance regulation. Historically, the U.S. has not regulated the terms and conditions of reinsurance contracts and to do so would be inconsistent with reinsurance regulatory practices worldwide. In addition, it is unclear how a Home or Port of Entry Supervisory

would assess “compliance with reinsurance contractual terms and obligations” under the first clause of the provision. The RAA recommends that Section 5(b)(4)(B) be removed from the Draft Legislation.

5. Section 5(b)(4)(C) requires the Home or Port of Entry Supervisor to assess the “business practices of the reinsurer in dealing with its ceding insurers.” The phrase “business practices” is vague and overly subjective and therefore this requirement should be removed.
6. Section 5(b)(4)(F) requires the Home or Port of Entry Supervisor to assess the “reinsurer’s reputation for prompt payment of claims under reinsurance agreements.” The phrase “reputation for prompt payment of claims” is vague and overly subjective. Further, there is no regulatory reason to separately address receivables payable to companies that are in administrative supervision or receivership. For these reasons, the RAA recommends that the NAIC remove Section 5(b)(4)(F).
7. Section 5(b)(8) places affiliate transactions on the same footing as other reinsurance transactions. As we have stated before, affiliate transactions are subject to direct regulatory review under state holding company laws. This review subjects them not only to the typical risk transfer and other requirements imposed on unaffiliated reinsurance transactions but also provides a higher standard of regulatory scrutiny by requiring the transaction to be fair and reasonable and to result in surplus that is reasonable to liabilities. The holding company laws also require submission of information about the entire holding company system and the controlling entity. Moreover, the non-U.S. affiliated entity has demonstrated a significant capital commitment to the U.S. Finally, all material affiliate reinsurance contracts must be submitted to the U.S. licensee’s domestic regulator for prior approval, which approval can be subject to regulatory conditions including the establishment of security sufficient to satisfy any regulatory concerns. Reduced collateral for these transactions is warranted. In the alternative, the Task Force should consider no collateral requirements where the subsidiary has been designated by the rating agencies as a core subsidiary.

While the RAA was encouraged by the NAIC’s passage of the reinsurance regulatory modernization framework memorandum and acknowledgement that “federal tools” legislation was the most productive method for achieving a streamlined and modernized state-based system of reinsurance regulation, the Draft Legislation in its current form unfortunately does not meet its own objectives.

Sincerely yours,



Tracey Laws

cc: Bob Kasinow

2010 PROPOSED CHARGES

As of: 9/24/09

REINSURANCE (E) TASK FORCE

The mission of the Reinsurance (E) Task Force is to monitor and coordinate activities and areas of interest that overlap to some extent with the charges of other NAIC groups, specifically the International Insurance Relations (G) Committee.

Ongoing Support of NAIC Programs, Products or Services:

1. Monitor and coordinate activities and areas of interest that overlap to some extent with the charges of other NAIC groups, specifically the International Insurance Relations (G) Committee.—*Essential*
2. Provide a forum for the consideration of reinsurance-related issues of public policy.—*Essential*
3. Promote and facilitate the implementation of the adopted reinsurance regulatory modernization framework.—*Essential*
4. Monitor the activities of the Property and Casualty Reinsurance (E) Study Group for matters that should be considered by the Task Force.—*Important*
5. Monitor the development of international reinsurance standards.—*Important*

Staff Support: Dan Schelp/Ryan Couch

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