



April 1, 2019

Director Chlora Lindley-Myers, Chair (Missouri)
Director Ray Farmer, Vice Chair (South Carolina)
National Association of Insurance Commissioners, Reinsurance (E) Task Force

Attention: Mr. Jake Stultz, jstultz@naic.org

RE: NAIC Implementation of the Bilateral Agreements Between the United States of America and the European Union (EU) and United Kingdom (UK) on Prudential Measures Regarding Insurance and Reinsurance (Covered Agreements)

Dear Director Lindley-Myers, Director Farmer, Members of the Task Force & Interested Regulators,

Thank you for the opportunity to comment on the March 7, 2019, Reinsurance (E) Task Force exposed proposed revisions to the *Credit for Reinsurance Model Law* (#785) and the *Credit for Reinsurance Model Regulation* (#786), which are intended to incorporate relevant provisions of Covered Agreements.

We write on behalf of the Association of Bermuda Insurers & Reinsurers (ABIR)¹; General Insurance Association of Japan (GiAJ)²; and the Swiss Insurance Association³. Collectively, we represent the remaining three NAIC qualified jurisdictions, currently providing reinsurance coverage and protection to U.S. ceding companies and policyholders, which have not

¹ ABIR members have headquarters and operations in Bermuda with operating subsidiaries in the United States and Europe and do business in more than 150 countries. Members employ over 117,000 people around the globe including more than 47,500 employees in the US, nearly 1,500 employees in Bermuda, and more than 16,800 in Europe. Over the past twenty years, ABIR members have paid policyholders and ceding companies in the United States and EU over a quarter of a trillion (USD) in claims.

² GiAJ is an industry organization whose 27 member companies account for about 95 percent of the total general insurance premiums in Japan which is one of seven jurisdictions listed in the NAIC List of Qualified Jurisdictions. Some of its members or their affiliates are certified reinsurers.

³ The Swiss Insurance Association SIA is the umbrella organization that represents the private insurance industry. The SIA's membership consists of over 80 small and large, national and international primary insurers and reinsurers with over 46,000 employees in Switzerland. SIA member companies account for over 90% of private insurance premiums generated in the Swiss market.

proceeded with negotiating a covered agreement with the U.S. Department of Treasury and U.S. Trade Representative under the authority of The Dodd–Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111–203, H.R. 4173, commonly referred to as Dodd–Frank).

NAIC Credit for Reinsurance Reform

Over six years ago, the NAIC passed amendments to its *Credit for Reinsurance Model Law* (#785) and its *Credit for Reinsurance Model Regulation* (#786) that, once implemented by a state, allow non-U.S. reinsurers to post significantly less than 100% collateral for U.S. business, provided the reinsurer is evaluated and certified. The NAIC developed a process to evaluate the reinsurance supervisory systems of non-U.S. jurisdictions, for purposes of developing and maintaining a list of jurisdictions recommended for recognition by the states as Qualified Jurisdictions. The purpose of the *Process for Developing and Maintaining the NAIC Lists of Qualified Jurisdictions* was to provide a documented evaluation process for creating and maintaining this NAIC list.

The NAIC also established the Reinsurance Financial Analysis Working Group (ReFAWG). Its purpose is to provide advisory support and assistance to states in the review of applications for certified reinsurers. ReFAWG makes available to the states a uniform application for certification of reinsurers based upon the requirements of the NAIC *Credit for Reinsurance Model Law* (Model #785) and *Credit for Reinsurance Model Regulation* (Model #786).

Assuming insurers (reinsurers) are encouraged to submit initial applications to a single state to allow the application to be considered through the ReFAWG process and in an effort to facilitate multi-state recognition of a certification, known as passporting. If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, other states have the discretion to defer to that jurisdiction's certification, and to defer to the collateral level assigned by that jurisdiction. ReFAWG helps facilitate passporting of certified reinsurers and address issues of uniformity among the states. ReFAWG also facilitates ongoing monitoring of certified reinsurers.

Ultimately, states have the discretion to defer to the certification and collateral reduction of a reinsurer assigned by the lead state.

As of March, 25 2019, NAIC ReFAWG recommends twenty-nine (29), certified reinsurers for passporting by the states. **Twenty-five (25) of these certified reinsurers—over 86%—have Bermuda, Japan or Switzerland as a domiciliary jurisdiction.**⁴

Bermuda, Japan and Swiss Markets

On December 16, 2014, the NAIC Executive (EX) Committee and Plenary approved the NAIC Qualified Jurisdiction Working Group's Summary of Findings and Determination of Bermuda: Bermuda Monetary Authority (BMA), Japan: Financial Services Agency (FSA), and Switzerland: Financial Market Supervisory Authority (FINMA), to recognize approving these jurisdictions as

⁴ NAIC ReFAWG lists Lloyds of London (UK) entities collectively as one reinsurer.

Qualified Jurisdictions and place these jurisdictions on the *NAIC List of Qualified Jurisdictions*, effective January 1, 2015 for a 5-year period.⁵

Individual reinsurers have been analyzed and certified by regulators based on specific criteria including financial strength, timely claims payment history, and the requirement that a reinsurer be domiciled and licensed in a "qualified jurisdiction."

Reinsurers in Bermuda, Japan and Switzerland have worked collaboratively with the NAIC and state insurance regulators to implement the original reforms envisioned for cross-border reinsurance including the original 2011 *Credit for Reinsurance Model Law* (#785) and the *Credit for Reinsurance Model Regulation* (#786).

We appreciate the ability to build upon these successful relationships to offer suggestions in support of advancing Credit for Reinsurance in a manner that continues to protect U.S. ceding companies and policyholders and maintains a competitive, level playing field for certified reinsurers.

SUGGESTIONS TO PROPOSED MODELS and NAIC PRACTICES:

I. The NAIC Models should create a level playing field for all reciprocal jurisdictions in a manner that is jurisdictionally agnostic

We urge the Task Force, as the NAIC Committee Process formalizes the standards and processes for implementing the application of 'commissioner discretion' described in the amendments, to conform them as closely as possible to the analogous provisions in the covered agreements. Doing so would promote sound competition among reinsurers from qualified jurisdictions that have not yet signed a covered agreement with the United States. We ask that those standards and processes be exposed in draft form, with opportunity for comment.

II. The NAIC *Credit for Reinsurance Model Law* (#785) imposes uncertainty and ambiguity in Reciprocal Jurisdictions without a Covered Agreement

Of the three paths to establish a reciprocal jurisdiction, this third draft of the *Credit for Reinsurance Model Law* (#785) gives certainty to the assuming insurers domiciled in jurisdictions that have entered into an international reinsurance covered agreement or are from a U.S. jurisdiction in good standing with the NAIC financial standards and accreditation program. While the proposed, Model Law (#785) gives the commissioner the ability to use the rigor and discipline of individual state formal rule making process to add commissioner discretion for qualified jurisdictions, this commissioner discretion is only reserved for qualified jurisdictions not recognized by a covered agreement or from a U.S. jurisdiction. To become qualified, jurisdictions are already required to go through substantial rigorous review and a

⁵ As of January 1, 2017, the NAIC List of Qualified Jurisdictions include Bermuda, France, Germany, Ireland, Japan, Switzerland and the United Kingdom (UK).

thorough application process with the applicant state and NAIC ReFAWG and in the case of Bermuda, Japan and Switzerland qualifications have demonstrated in practice their qualifications since being fully approved in 2015.

We respectfully request that the any ‘certain additional requirements’ language in 2(F)(a)(iii) be revised as follows to reflect an intent to maintain a level playing field among the categories of reciprocal jurisdictions and apply any additional requirements consistent with the terms of existing international covered agreements:

Section 2.F. (1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer meeting each of the conditions set forth below.

(a) The assuming insurer must have its head office or be domiciled in, as applicable, and be licensed in a Reciprocal Jurisdiction. A “Reciprocal Jurisdiction” is a jurisdiction that meets one of the following:

(i) ...

(ii) ...; or

(iii) A qualified jurisdiction, as determined by the commissioner pursuant to [Subsection 2E(3) of Credit for Reinsurance Model Law], which is not otherwise described in subparagraph (i) or (ii) above and which meets certain additional requirements, **consistent with the terms and conditions of in-force covered agreements**, as specified by the commissioner in regulation.

III. A provision in the Proposed Model Regulation (#786) is inconsistent with the reference to regulation in Model Law (#785), and inserts additional uncertainty and ambiguity for non- Covered Agreement jurisdictions

Credit for Reinsurance Model Regulation (#786) Section 9, subparagraph (B)(3)(e) is now unnecessary given the discretion granted in the model law and presents opportunity for potentially arbitrary application of commissioner discretion outside of formal rulemaking with its due process considerations. Any additional factors for consideration should be delineated in regulation or can be addressed in the NAIC ReFAWG and Reciprocal Jurisdiction processes. We believe amending 9(B)(3)(e) as follows is consistent with the intent of the NAIC with respect to identifying reciprocal jurisdictions.

(B) (3) A qualified jurisdiction, as determined by the commissioner pursuant to [cite state law equivalent of Section 2E(3) of the Credit for Reinsurance Model Law and Section 8C of the Credit for Reinsurance Model Regulation], which is not otherwise described in paragraph (1) or (2) above and which the commissioner determines meets all of the following additional requirements:

(a) ...

~~(e) Such additional factors as may be considered in the discretion of the Commissioner~~

We appreciate the opportunity to provide these comments and look forward to continuing to work with the NAIC and state insurance regulators to assure smooth implementation of the credit for reinsurance revisions. We would appreciate the opportunity to discuss these reforms with you at the NAIC Spring National Meeting in Orlando, Florida.

Sincerely,



John Huff
President and CEO
Association of Bermuda Insurers and Reinsurers



Makoto Kawagoe
General Manager, International Business Planning Department
The General Insurance Association of Japan



Urs Arbter
Division Head of Insurance Strategy
Swiss Insurance Association

This page intentionally left blank.