reinsurance
advisory board

To: Superintendent Maria T. Vullo
Chair, Reinsurance (E) Task Force
National Association of Insurance Commissioners
Reinsurance Task Force

Our reference: RAB-18

Subject: Proposed revisions to the Credit for Reinsurance Model Law (#785) and the Credit for Reinsurance Model Regulation (#786)

Hannover, 16 October 2018

Dear Superintendent Vullo,

I am writing to you on behalf of Insurance Europe's Reinsurance Advisory Board (RAB), a specialist representative body for the European reinsurance industry. It is represented at CEO level by seven major reinsurers: Gen Re, Hannover Re, Lloyd's of London, Munich Re, Partner Re, Scor and Swiss Re, with Insurance Europe providing the secretariat. Together, the RAB member companies account for approximately 60% of worldwide reinsurance business.

The RAB has been supportive of the "Bilateral Agreement between the European Union and the United States of America on Prudential Measurers Regarding Insurance and Reinsurance" (also referred to as the "Covered Agreement") from the start of its negotiation. As such, the RAB highly appreciates the NAIC's commitments towards the agreement's implementation. It was encouraging to see that many stakeholder comments made in response to the first exposure drafts were taken on board. In particular, the 25 September exposure draft eliminates the requirement in the Credit for Reinsurance Model Regulation to provide a U.S. GAAP reconciliation for equity and net income which the RAB is in support of.

The RAB further appreciates this opportunity to provide comments on the proposed revisions to the Credit for Reinsurance Model Law (the "Model Law") and Credit for Reinsurance Model Regulation (the "Model Regulation") released on 25 September 2018. Overall, some of the new language in the exposure drafts deviates significantly from the language of the bilateral agreement and thereby provides extensive discretion to state regulators in their compliance with the terms of the bilateral agreement. This leads to legal uncertainty and potential inefficiencies from the perspective of European reinsurers.

As an initial matter, the RAB would urge the NAIC to eliminate the newly proposed amendments to the Model Law **Section 2(F)(7)**, addressing the agreements which are subject to the new rules. The proposed revisions, excluding all *"reinsurance agreements entered into before the subsection's application, or to losses incurred or to liabilities ceded before the subsection's application"* are inconsistent with the provisions of the bilateral agreement and are contrary to established regulatory rules in the US.

The impact these proposed changes would have is clearly not intended by the bilateral agreement which sets the scope for its reinsurance-specific provisions in Article 3(8) as *"[…] reinsurance agreements entered into, amended, or renewed on or after the date on which a measure that reduces collateral pursuant to this Article takes effect, and only with respect to losses incurred and reserves reported from and after the later of (i) the date of the measure, or (ii) the effective date of such new reinsurance agreement, amendment, or renewal".*

Insurance Europe's Reinsurance Advisory Board
Secretariat • rue Montoyer 51, B-1000 Brussels
Tel: +32 2 894 30 00
E-mail: international@insuranceeurope.eu
Transparency register ID number: 341051518380-63

reinsurance advisory board

In the RAB's view it is important for the Model Law and the Model Regulation to reflect the fundamental policy decision that has been made, ie that going forward, companies reinsuring with reinsurers in reciprocal jurisdictions do not need collateral protection for reinsurance agreements entered into (meaning negotiated, amended or renewed) after the effective date of the new rules.

Beyond this significant issue, the RAB would like to share the additional more detailed comments on the proposals, in the Annex.

Finally, the RAB strongly urges that the Reinsurance Task Force and individual states take steps to implement the provisions of the bilateral agreement prior to its implementation deadline, as per Article 9(2) of the bilateral agreement. While the NAIC finalises its amendments to the Model Law and Model Regulation, the RAB would encourage the Reinsurance Task Force to take any practical immediate steps necessary to harmonise the treatment of reinsurers from EU countries in line with the terms of the bilateral agreement. Most notably, this includes ensuring that reinsurers only have to comply with the filing requirements set forth in the bilateral agreement and that the 20% phased-in reduction of collateral set forth in Article 9(3)(a) is implemented.

The RAB highly appreciates the open and transparent manner in which the NAIC is involving stakeholders in this review and remains available to discuss any questions or comments you may have on the above.

Yours sincerely,

Ulrich Wallin
Chairman of the Executive Board, Hannover Rück SE
Chair, Insurance Europe's Reinsurance Advisory Board

Members of the Reinsurance Advisory Board

Gen Re	hannover re®	LLOYD'S	Munich RE
Dr Winfried Heinen	Ulrich Wallin	John Neal	Dr. Torsten Jeworrek
Deputy spokesperson	Chairman of the Board	CEO	CEO of Reinsurance

PartnerRe	SCOR	Swiss Re
Emmanuel Clarke	Denis Kessler	Christian Mumenthaler
President & CEO	Chairman & CEO	CEO

reinsurance advisory board

ANNEX

Additional comments on the proposed revisions to the Credit for Reinsurance Model Law (#785) and the Credit for Reinsurance Model Regulation (#786)

Comments on the Model Law

- The RAB cannot support the language added in **Section 2(F)(1)(a)(i)** where for the purpose of defining "reciprocal jurisdiction", the Commissioner determines an EU member states compliance with all material terms of the bilateral agreement. This should not be in the discretion of the Commissioner. As an alternative, the NAIC should consider a more objective wording, such as *"a non-U.S. jurisdiction that has entered into and is in compliance with an international agreement with the United States relating to the business of reinsurance"*.
- Deleting "under the commissioner's jurisdiction" in **Section 2(F)(1)(d)(ii)** extends the scope of this requirement too broadly, ie to all reinsurance agreements.
- There is a risk that **Section 2(F)(1)(h)** in its current form could be misread in providing the opportunity to request information from reinsurers in scope of the bilateral agreement that would go beyond what is agreed therein. The RAB would suggest clarifying this Section.
- The RAB would suggest adding "timely" to **Section (F)(2)**, to ensure alignment with other changes proposed.
- Please refer to the RAB's views on the proposals for **Section (F)(7)** in the letter above.

Comments on the Model Regulation

- The definition for "head office or domicile" put forward in **Section 9(A)(1)** is unclear, neither is the objective for including it.
- As per Section 2(F)(1)(A)(i) of the Model Law (see above) the discretion granted to the commissioner in **Section 9(B)(1)** of the Model Regulation is too broad.
- It is unclear how the "recognition of the U.S. state regulatory system" (**Section 9(B)(2)(c)**) will be achieved or measured in practice.
- In light of the increased discretion for the Commissioner overall, the provisions and changes in **Section 9(C)(1)** should be reconsidered.
- **Section 9(C)(2)(a)** provides a USD amount for the minimum capital and surplus for qualifying reinsurers from Reciprocal Jurisdictions. The bilateral agreement provides a Euro amount for EU based reinsurers (EUR 226m) which should be added to this Section. The same change is required in **Section 9(C)(2)(b)(i)&(ii)**. Similarly, **Sections 9(C)(6)(b)&(c)** provide USD amounts for overdue recoverables. The bilateral agreement provides for EUR equivalents that should be referenced.
- **Section 9(C)(5)(c)** requires reinsurers to provide not more than semi-annually a "list of all disputed and overdue reinsurance claims outstanding for 90 days or more." This will take a substantial effort to report and it seems inconsistent with the goals of the bilateral agreement (to reduce regulatory burdens on cross-border reinsurance). The NAIC should adopt the language of the bilateral agreement that reinsurers are only required to provide these reports if requested by the Commissioner (supervisory authority). This decision should be made in the first instance by the lead state regulator for the qualifying reinsurer.