



## Association of Bermuda Insurers and Reinsurers

O'Hara House  
One Bermudiana Road  
Hamilton HM 08 Bermuda  
Tel: 441-294-7221  
Fax: 441-296-4207

1445 New York Avenue, N.W.  
7th Floor  
Washington, DC 20005  
Tel: 202-783-2434  
Fax: 202-638-0936

February 6, 2018

Superintendent Maria T. Vullo, Chair (New York)  
Director Chlora Lindley-Myers, Vice Chair (Missouri)  
National Association of Insurance Commissioners, Reinsurance (E) Task Force

Attention: Mr. Jake Stultz, [jstultz@naic.org](mailto:jstultz@naic.org)

RE: NAIC Implementation of reinsurance collateral provisions of the Bilateral Agreement Between the United States of America and the European Union (EU) on Prudential Measures Regarding Insurance and Reinsurance (Covered Agreement)

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

I write on behalf of The Association of Bermuda Insurers and Reinsurers (ABIR<sup>1</sup>), which represents the public policy interests of Bermuda's international insurers and reinsurers that protect consumers around the world.

Thank you for the opportunity to comment on the NAIC Implementation of reinsurance collateral provisions of the Bilateral Agreement Between the United States of America and the European Union (EU) on Prudential Measures Regarding Insurance and Reinsurance (Covered Agreement).

### **NAIC Credit for Reinsurance Reform**

In November 2011, 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 foreign reinsurers to post significantly less than 100% collateral for U.S. claims, 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*

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<sup>1</sup> 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 nearly 35,000 people around the globe including more than 16,000 employees in the US, nearly 1,600 employees in Bermuda, and more than 8,600 in Europe. Over the past twenty years, ABIR members have paid policyholders and ceding companies over \$208 billion in the U.S. and over \$72 billion in the European Union.

*Maintaining the NAIC Lists of Qualified Jurisdictions* was to provide a documented evaluation process for creating and maintaining this NAIC list. The NAIC adopted the *Process* on August 27, 2013, which was further amended on August 19, 2014.

The NAIC has 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 reinsurance collateral reduction. 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 with respect to certification and assignment of collateral levels by the states.

Through a confidential review process, ReFAWG makes a recommendation to NAIC member jurisdictions whether to approve or deny a certified reinsurer's application for passporting. Ultimately, states have the discretion to defer to the certification and collateral reduction of a reinsurer assigned by the lead state. ReFAWG also facilitates ongoing monitoring of certified reinsurers.

### **Bermuda Market**

The NAIC invited the Bermuda Monetary Authority (BMA) to participate in an expedited review under the Qualified Jurisdiction Process by letter dated August 29, 2013, which was immediately accepted by the BMA. The NAIC issued a public notice on its website of the BMA's participation in the evaluation process and requested interested parties to submit public comments with respect to the BMA. The Working Group received one comment letter in support of designating Bermuda as a conditional qualified jurisdiction effective January 1, 2014 and the designation continued for one (1) year.

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 the Bermuda Monetary Authority and recommendation to recognize approving Bermuda as a Qualified Jurisdiction and place it on the *NAIC List of Qualified Jurisdictions*, effective January 1, 2015 for a 5-year period.<sup>2</sup>

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<sup>2</sup> As of January 1, 2017, the NAIC List of Qualified Jurisdictions include Bermuda, France, Germany, Ireland, Japan, Switzerland and the United Kingdom (UK).

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."

As of February 2, 2018, NAIC ReFAWG recommends twenty-six (26), certified reinsurers for passporting by the states. **Eighteen (18) of these certified reinsurers—nearly 70%—have Bermuda as a domiciliary jurisdiction.**<sup>3</sup>

In addition to being a leading qualified jurisdiction in the U.S., in November 2015, the European Commission published a "Delegated Act" which recognized Bermuda's insurance regulatory framework as being fully equivalent to regulatory standards applied to European insurance and reinsurance companies and insurance groups in accordance with the requirements of the Solvency II Directive.<sup>4</sup>

### **Guidance for Implementation of the Covered Agreement**

ABIR member companies offer the following comments as principles for the NAIC to consider as it addresses the Covered Agreement implementation:

#### **I. Recognition of NAIC commitment to conducting its business openly**

ABIR appreciates the NAIC open meeting process<sup>5</sup> and looks forward to a consultative engagement among regulators and interested parties in the NAIC Implementation of the Bilateral Agreement Between the United States of America and the European Union (EU) on Prudential Measures Regarding Insurance and Reinsurance (Covered Agreement). ABIR encourages state regulators and NAIC to continue to advocate for open and transparent discussions at all levels in the implementation of the covered agreement.

#### **II. Amendments to the Credit for Reinsurance Model Law #785 and the Credit for Reinsurance Model Regulation #786 should be as streamlined and as minimal as possible.**

Implementation of the covered agreement is best achieved by building upon the existing credit for reinsurance regulatory framework. Over several years, state regulators and state legislatures have successfully improved reinsurance regulation through the Credit for Reinsurance Model Law #785 and the Credit for Reinsurance Model Regulation #786. Passage of the models in forty-two (42) states is a

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<sup>3</sup> NAIC ReFAWG lists Lloyds of London (UK) entities collectively as one reinsurer.

<sup>4</sup> The Delegated Act extends full equivalence for Bermuda commercial insurers and reinsurers licensed as Class 3A, 3B, 4, C, D and E insurers, and Bermuda insurance groups. Bermuda is considered by all European member states as applying an equivalent statutory insurance regime in accordance with the requirements of the three Solvency II Articles: reinsurance (Article 172), group solvency calculation (Article 227) and group supervision (Article 260).

<sup>5</sup> NAIC Policy Statement on Open Meetings Revised: 4/01/2014

testament to the comprehensive and thoughtful approach of state regulators. Amendments to address the implementation of the covered agreement should be streamlined and minimal to allow for ease in adoption by the state policymakers and implementation by state regulators.

**III. The NAIC should maintain the current qualified jurisdiction and certification process in the model law and regulation**

Modifications to the Credit for Reinsurance Model Law #785 and the Credit for Reinsurance Model Regulation #786 should be primarily additive to include the terms of the covered agreement for the EU. The modifications should maintain the existing qualified jurisdiction process currently providing a structure for full vetting of qualified jurisdictions and subsequent certification of reinsurers. The prospective terms of the covered agreement and collateral requirements will logically be aided by maintaining the current qualified jurisdiction and certified reinsurer process.

The NAIC and state regulators are encouraged to continue their efforts to improve and expedite the passporting process of certified reinsurers to effectuate national implementation of reinsurance modernization.

**IV. The NAIC should amend the Credit for Reinsurance Model Law (#785) and the Credit for Reinsurance Model Regulation (#786) to add an additional category to eliminate reinsurance collateral requirements for EU-based reinsurers AND provide certified reinsurers domiciled in NAIC Qualified Jurisdictions the option to utilize this category with the same reinsurance collateral elimination.**

The terms of the Covered Agreement provide for the financial strength and market conduct requirements of EU reinsurers qualified to be certified and ultimately receive the phasing out of collateral requirements.<sup>6</sup> State regulators will be tasked with reconciling these requirements with existing requirements of the Credit for Reinsurance Model Law (#785) and the Credit for Reinsurance Model Regulation (#786), specifically the terms of the Uniform Application Checklist for Certified Reinsurers. Any requirements from the checklist not provided in the Covered Agreement would not be subject to potential preemption, if the state insurance regulator applies the same requirements in the case of reinsurance agreements with U.S. reinsurers. The process of certifying eligible reinsurers should continue under the modified requirements.

The states now have a four-year experience period of qualified jurisdiction review and designation of certified reinsurers. The elimination of collateral is a logical extension of this experience period of limited collateral requirements. The due

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<sup>6</sup> See ARTICLE 3, Bilateral Agreement between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance

diligence performed by state regulators and the NAIC in the qualified jurisdiction review and importantly, the certification of reinsurers should provide confidence to regulators in the further reduction and ultimate elimination of collateral. The certification of reinsurers continues to be a responsibility of the state regulation and ensures consumer protection.

The tremendous work done by the NAIC and states to evaluate regulatory regimes and qualify jurisdictions should be recognized by extending the same terms for EU-based certified reinsurers to those reinsurers domiciled in qualified jurisdictions and individually certified. The principles of fairness, a level playing field and continuing sound, vetted options for ceding companies and consumers require providing the reinsurers domiciled in NAIC qualified jurisdictions, including Bermuda, with the same reinsurance collateral elimination extended to EU certified reinsurers. These qualified jurisdictions and certified reinsurers have demonstrated their responsiveness to reinsurance coverage and payments and should be entitled to the most favored terms.

Extending covered agreement treatment to NAIC qualified jurisdictions other than the E.U. – including Bermuda – could easily be facilitated by a qualified jurisdiction’s recognition of the U.S. group supervision authority over its domiciled groups, including solvency and capital, governance and reporting requirements in addition to eliminating any local presence or collateral requirements in the qualified jurisdiction. The vehicle for these terms could be through written agreements or Memoranda of Understanding.

**V. Before considering whether additional ‘guardrails’ are needed, NAIC should leverage experience of the 2017 U.S. natural catastrophes to assess whether any regulatory gaps exist**

Preliminary estimates indicate 2017 to be one of the costliest catastrophe loss years ever. Market data suggest 2017 may be the second costliest hurricane season after 2005 with the U.S. hit the hardest with historic losses from hurricanes Harvey, Irma and Maria. This is also the first major natural catastrophe year since the NAIC has reformed its reinsurance collateral regulatory structure.

Anecdotally, the property and casualty market has not reported any significant issues with reinsurance claim adjudication, payments, cash flow or capital. The events of 2017 have been largely reported as earnings events rather than having any significant impact on capital. The Bermuda Monetary Authority estimates the Bermuda market share of these significant U.S. losses will be approximately 30% or over \$31 billion. These amounts are in addition to the \$152.7 billion of claim payments to U.S. policyholders and cedents between 2007 and 2016.<sup>7</sup>

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<sup>7</sup> Bermuda Monetary Authority, November 21, 2017 release

The NAIC should leverage the historical data including the 2017 market performance over the coming months and be cautious in its evaluation of whether any additional 'guardrails' are needed in the elimination of reinsurance collateral in light of the claims payment history and the 2017 claims paying experience.

ABIR appreciates the opportunity to provide these comments and we look forward to the February 20, 2018, hearing in New York to begin the discussion of the NAIC and state regulators implementation of the covered agreement.

Sincerely,

A handwritten signature in blue ink, appearing to read "John M. Huff", written over a light blue rectangular background.

John M. Huff

President & Chief Executive Officer

Cc: Commissioner Julie Mix McPeak (Tennessee), President  
Superintendent Eric Cioppa (Maine), President Elect  
Director Raymond Farmer (South Carolina), Vice President  
Commissioner Gordon Ito (Hawaii), Secretary-Treasurer