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February 6, 2018

VIA Email

Superintendent Maria Vullo
New York Department of Financial Services
Chair, NAIC Reinsurance Task Force

Re: Request for Comments Regarding Implementation of the Covered Agreement

Dear Superintendent Vullo,

This comment letter is submitted on behalf of Underwriters at Lloyd's, London ("Lloyd's") in response to the above referenced request for comments. Lloyd's also plans to attend the Reinsurance Task Force's ("RTF") hearing on this issue on February 20. We appreciate the attention the RTF is giving to this issue. Lloyd's believes that implementation of the covered agreement will be the final step in fully modernizing credit for reinsurance in the US.

Lloyd's is one of the largest providers of reinsurance capacity to the US. In 2017, Lloyd's assumed \$5.5 billion in premium from US ceding insurers.

There are a number of ways that the RTF could approach implementation of the covered agreement. Lloyd's believes that the best option would be to revise the requirements of the certified reinsurer regime to align with the covered agreement provisions. This will produce the clearest outcome: one standard that applies to all reinsurers that meet the qualifications.

As Lloyd's has stated in comments to the RTF over its last several meetings, we believe that the reinsurance collateral-related provisions of the covered agreement should be applied to all Qualified Jurisdictions. The Qualified Jurisdictions Working Group put significant effort into developing its framework and conducting reviews. The results of that work evidenced that the jurisdictions which have been qualified have robust regulatory systems and have established good working relationships with US state insurance regulators. Thus, Lloyd's believes that reinsurers from Qualified Jurisdictions should be on the same footing as reinsurers from jurisdictions that have secured a covered agreement. Such equitable treatment will avoid an un-level playing field in the reinsurance arena. The simplest way to recognize this equal standing would be for jurisdictions that maintain a covered agreement with the US to simply be deemed to be Qualified Jurisdictions.

Lloyd's has prepared the attached mark-up's of the NAIC Model Credit for Reinsurance Law and Regulation which show the changes that would need to be made to: (i) deem jurisdictions with a covered agreement to be Qualified Jurisdictions, and (ii) amend the requirements of the certified reinsurer regime to align with the covered agreement.

We look forward to discussing this proposal with RTF members in more detail at the hearing.

Regards,



Model 785 Section 2 - Credit allowed a domestic ceding insurer

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E. Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the commissioner as a reinsurer in this state ~~and secures its obligations in accordance with the requirements of this subsection.~~

(1) In order to be eligible for certification, the assuming insurer shall meet the following requirements:

(a) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to Paragraph (3) of this subsection;

(b) The assuming insurer must maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the commissioner pursuant to regulation;

~~(c) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner pursuant to regulation;~~

~~(c)~~ (d) The assuming insurer must agree to submit to the jurisdiction of this state, appoint the commissioner as its agent for service of process in this state, and agree to provide security for 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment;

~~(d)~~ (e) The assuming insurer must agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis; ~~and~~

~~(f) The assuming insurer must satisfy any other requirements for certification deemed relevant by the commissioner.~~

(2) An association including incorporated and individual unincorporated underwriters may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying requirements of Paragraph (1):

(a) The association shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents (net of liabilities) of the association and its members, which shall include a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members, in an amount determined by the commissioner to provide adequate protection;

(b) The incorporated members of the association shall not be engaged in any business other than underwriting as a member of the association and shall be subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members; and

(c) Within ninety (90) days after its financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the commissioner an annual certification by the association's domiciliary regulator of the solvency of each underwriter member; or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association.

(3) The commissioner shall create and publish a list of qualified jurisdictions, under which an assuming insurer licensed and domiciled in such jurisdiction is eligible to be considered for certification by the commissioner as a certified reinsurer.

(a) In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the commissioner has determined that the jurisdiction does not adequately and promptly enforce final U.S. judgments and arbitration awards. Additional factors may be considered in the discretion of the commissioner.

(b) A list of qualified jurisdictions shall be published through the NAIC Committee Process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification in accordance with criteria to be developed under regulations.

(c) U.S. jurisdictions that meet the requirement for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

(d) Non-U.S. jurisdictions maintaining in-force binding bilateral agreements regarding reinsurance collateral with the United States shall be recognized as qualified jurisdictions.

~~(e)~~ If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner has the discretion to suspend the reinsurer's certification indefinitely, in lieu of revocation.

~~(4) The commissioner shall assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies deemed acceptable to the commissioner pursuant to regulation. The commissioner shall publish a list of all certified reinsurers and their ratings.~~

~~(5) A certified reinsurer shall secure obligations assumed from U.S. ceding insurers under this subsection at a level consistent with its rating, as specified in regulations promulgated by the commissioner.~~

~~(a) In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the commissioner and consistent with the provisions of Section 3, or in a multibeneficiary trust in accordance with Subsection D of this section, except as otherwise provided in this subsection.~~

~~(b) If a certified reinsurer maintains a trust to fully secure its obligations subject to Subsection D of this section, and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this subsection or comparable laws of other U.S. jurisdictions and for its obligations subject to Subsection D of this section. It shall be a condition to the grant of certification under Subsection E of this section that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the commissioner with principal regulatory oversight of each such trust~~

~~account, to fund, upon termination of any such trust account, out of the remaining surplus of such trust any deficiency of any other such trust account.~~

~~(c) The minimum trustee surplus requirements provided in Subsection D are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this subsection, except that such trust shall maintain a minimum trustee surplus of \$10,000,000.~~

~~(d) With respect to obligations incurred by a certified reinsurer under this subsection, if the security is insufficient, the commissioner shall reduce the allowable credit by an amount proportionate to the deficiency, and has the discretion to impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.~~

~~(5e) For purposes of this subsection, a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure 100 percent of its obligations.~~

(i) As used in this subsection, the term "terminated" refers to revocation, suspension, voluntary surrender and inactive status.

~~(ii) If the commissioner continues to assign a higher rating as permitted by other provisions of this section, this requirement does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.~~

(6) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, ~~and has the discretion to defer to the rating assigned by that jurisdiction,~~ and such assuming insurer shall be considered to be a certified reinsurer in this state.

(7) A certified reinsurer that ceases to assume new business in this state may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this subsection, ~~and the commissioner shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.~~

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H. If the assuming insurer does not meet the requirements of Subsections A, B or C, the credit permitted by Subsection D ~~or E~~ of this section shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

(1) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by Subsection D(3) of this section, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust fund.

(2) The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies.

(3) If the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the U.S. ceding insurers of the grantor of the trust, the assets or part thereof shall be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement.

(4) The grantor shall waive any right otherwise available to it under U.S. law that is inconsistent with this provision.

I. If an accredited ~~or certified~~ reinsurer ceases to meet the requirements for accreditation ~~or certification~~, the commissioner may suspend or revoke the reinsurer's accreditation ~~or certification~~.

(1) The commissioner must give the reinsurer notice and opportunity for hearing. The suspension or revocation may not take effect until after the commissioner's order on hearing, unless:

(a) The reinsurer waives its right to hearing;

(b) The commissioner's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction ~~or in the primary certifying state of the reinsurer under Subparagraph E(6) of this section~~; or

(c) The commissioner finds that an emergency requires immediate action and a court of competent jurisdiction has not stayed the commissioner's action.

(2) While a reinsurer's accreditation ~~or certification~~ is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with Section 3. If a reinsurer's accreditation ~~or certification~~ is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with ~~Subsection E(5) or~~ Section 3.

J. If a certified reinsurer ceases to meet the requirements for certification, the commissioner may suspend or revoke the reinsurer's accreditation. The commissioner must provide written notice of the suspension or revocation and the reasons for it to the certified reinsurer and its domiciliary regulator.

(1) Prior to suspension or revocation, the commissioner shall communicate with the certified reinsurer and, except for exceptional circumstances in which a shorter period is necessary for policyholder or other consumer protection, provide the certified reinsurer with 30 days from the initial communication to submit a plan to remedy the defect. The certified reinsurer must remedy the defect within 90 days from the initial communication.

(2) While a reinsurer's certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with Section 3. If a reinsurer's certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with Section 3.

JK. Concentration Risk.

Model 786 Section 8

Credit for reinsurance—certified reinsurers

A. Pursuant to [cite state law equivalent of Section 2E of the Credit for Reinsurance Model Law], the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this section. ~~The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commissioner. The security shall be in a form consistent with the provisions of [cite state law equivalent of Section 2E and Section 3 of the Credit for Reinsurance Model Law] and 11, 12 or 13 of this Regulation. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:~~

(1) Ratings	Security Required
Secure—1	0%
Secure—2	10%
Secure—3	20%
Secure—4	50%
Secure—5	75%
Vulnerable—6	100%

(2) ~~Affiliated reinsurance transactions shall~~ **be treated the same** ~~receive the same opportunity for reduced security requirements~~ as all other reinsurance transactions.

(3) ~~The commissioner shall require the certified reinsurer to post one hundred percent (100%), for the benefit of the ceding insurer or its estate, security upon the entry of~~ **If** ~~an order of rehabilitation, liquidation or conservation~~ **is entered** ~~against the ceding insurer,~~ **the ceding insurer, or its representative, may seek a court order requiring that the assuming reinsurer post one hundred percent collateral for all outstanding ceded liabilities.**

(4) In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the commissioner. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

Line 1: Fire

(a) Line 2: Allied Lines

(b) Line 3: Farmowners multiple peril

(c) Line 4: Homeowners multiple peril

(d) Line 5: Commercial multiple peril

(e) Line 9: Inland Marine

(f) Line 12: Earthquake

(g) Line 21: Auto physical damage

(5) Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

(6) Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.

B. Certification Procedure.

(1) The commissioner shall post notice on the insurance department's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The commissioner may not take final action on the application until at least thirty (30) days after posting the notice required by this paragraph.

Drafting Note: States that do not wish to make the internet the required mechanism for providing public notice should modify this provision accordingly. This provision was intended to provide a less formal notice requirement than is typically called for under state Administrative Procedure Acts.

(2) The commissioner shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. ~~Included in such notice shall be the rating assigned the certified reinsurer in accordance with Subsection A of this section.~~ The commissioner shall publish a list of all certified reinsurers and their ratings.

(3) In order to be eligible for certification, the assuming insurer shall meet the following requirements:

(a) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a Qualified Jurisdiction, as determined by the commissioner pursuant to Subsection C of this section.

(b) The assuming insurer must maintain capital and surplus, or its equivalent, of no less than \$250,000,000 calculated in accordance with **the methodology applicable in its jurisdiction of domicile** ~~Subparagraph (4)(h) of this subsection.~~ 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 \$250,000,000 and a central fund containing a balance of at least \$250,000,000.

(c) **The assuming insurer must maintain on an ongoing basis a solvency ratio of: (i) 100% SCR under Solvency II if domiciled in the EU, or (ii) an RBC of 300% Authorized Control Level if domiciled in the US, or (iii) a level determined by the Commissioner to be equivalent under the measure of solvency applied in the assuming insurer's jurisdiction of domicile. This requirement may be satisfied by an association including incorporated and individual unincorporated underwriters maintaining a solvency ratio of 100% SCR under Solvency II.**

~~(c) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the commissioner in~~

determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

(i) Standard & Poor's;

(ii) Moody's Investors Service;

(iii) Fitch Ratings;

(iv) A.M. Best Company; or

(v) Any other Nationally Recognized Statistical Rating Organization.

(d) The certified reinsurer must comply with any other requirements reasonably imposed by the commissioner.

(4) Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:

(a) The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification:

<u>Ratings</u>	<u>Best</u>	<u>S&P</u>	<u>Moody's</u>	<u>Fitch</u>
Secure - 1	A++	AAA	Aaa	AAA
Secure - 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure - 3	A	A+, A	A1, A2	A+, A
Secure - 4	A-	A-	A3	A-
Secure - 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable - 6	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) The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

(c) For certified reinsurers domiciled in the U.S., 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);

(d) For certified reinsurers not domiciled in the U.S., a review annually of Form CR-F (for property/casualty reinsurers) or Form CR-S (for life and health reinsurers) (attached as exhibits to this regulation);

(e) The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements. **Lack of prompt payment will be evidenced by the criteria set forth in Subparagraph (5) below**, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than ninety (90) days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

(f) Regulatory actions **taken** against the certified reinsurer **for serious noncompliance**;

~~(g) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in paragraph (h) below;~~

(h) For certified reinsurers not domiciled in the U.S., audited financial statements (**in accordance with the applicable law of its domiciliary jurisdiction** audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and **solvency or financial condition report or** actuarial opinion (as if filed with the non-U.S. jurisdiction supervisor). Upon the initial application for certification, the commissioner will consider audited financial statements for the last **two three (23)** years filed with its non-U.S. jurisdiction supervisor;

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

(j) A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The **certified reinsurer shall agree to notify the commissioner and all impacted ceding insurers and to provide 100 percent collateral to ceding insurers consistent with the terms of the scheme should the certified reinsurer enter into** ~~shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement.~~; and

(k) Any other information deemed relevant by the commissioner.

(5) ~~Based on the analysis conducted under Subparagraph (4)(e) of certified reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided that the commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under Subparagraph (4)(a) if the commissioner finds that~~ **An assuming reinsurer will not be eligible to be a certified reinsurer if it does not maintain prompt payment of claims under reinsurance contracts. The lack of prompt payment will be evidenced if any of the following criteria is met:**

(a) **More than fifteen percent (15%) of the certified reinsurer's reinsurance recoverables are overdue and in dispute as reported to its domiciliary supervisor;**

(b) **More than fifteen percent (15%) of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety (90) days or more which are not in dispute and which exceed \$100,000 for each cedent (or 90,400 Euro where the certified reinsurer has its head office in the EU); or**

(b) **(c) The aggregate amount of reinsurance recoverables on paid losses which are not in dispute, but that are overdue by ninety (90) days or more exceeds \$50,000,000 (or 45,200,00 Euro where the certified reinsurer has its head office in the EU).**

(6) The assuming insurer must submit a properly executed Form CR-1 (attached as an exhibit to this regulation) as evidence of: (i) its submission to the jurisdiction of this state, (ii) appointment of the commissioner as an agent for service of process in this state, (iii) **agreement to pay all final judgments obtained by a ceding insurer**, and agreement to provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment **or a properly enforceable arbitration award**. The commissioner shall not certify any assuming insurer that is domiciled in a jurisdiction that the commissioner has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.

(7) The certified reinsurer must agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under [cite state law equivalent of Freedom of Information Act] and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:

(a) Notification within ten (10) days: (i) **if the certified reinsurer falls below the minimum capital and surplus specified in Subparagraph 3(b) or the solvency ratio specified in Subparagraph 3(c)**; (ii) of any regulatory actions taken against the certified reinsurer **for serious noncompliance** ~~any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore;~~

(b) Annually, Form CR-F or CR-S, as applicable [per the instructions to be developed as an exhibit to this model];

~~(c) Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in Subsection (d) below;~~

~~(cd) Annually, audited financial statements (in accordance with the applicable law of its domiciliary jurisdiction audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and solvency or financial condition report or actuarial opinion (as if filed with the certified reinsurer's supervisor). Upon the initial certification, audited financial statements for the last two three (23) years filed with the certified reinsurer's supervisor;~~

~~(de) At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers;~~

~~(ef) A certification from the certified reinsurer's domestic regulator that the certified reinsurer **meets the requirements of Subparagraphs (3)(b) and (3)(c)**. is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and~~

~~(g) Any other information that the commissioner may reasonably require.~~

(8) ~~Change in Rating or Revocation of Certification.~~

~~(a) In the case of a downgrade by a rating agency or other disqualifying circumstance, the commissioner shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of Subparagraph (4)(a).~~

~~(b)~~ The commissioner shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations ~~or security requirements~~ under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations. **The commissioner must provide written notice of the suspension or revocation and the reasons for it to the certified reinsurer and its domiciliary regulator.**

(b) Prior to suspension or revocation, the commissioner shall communicate with the certified reinsurer and, except for exceptional circumstances in which a shorter period is necessary for policyholder or other consumer protection, provide the certified reinsurer with 30 days from the initial communication to submit a plan to remedy the defect. The certified reinsurer must remedy the defect within 90 days from the initial communication.

~~(c) If the rating of a certified reinsurer is upgraded by the commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commissioner shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the commissioner, the commissioner shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.~~

~~(cd)~~ Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer shall be required to post security in accordance with Section 10 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. ~~If funds continue to be held in trust in accordance with Section 7, the commissioner may allow additional credit equal to the ceding insurer's *pro rata* share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration.~~ Notwithstanding the change of a certified reinsurer's rating or revocation of **the reinsurer's** its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three (3) months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectibility.

C. Qualified Jurisdictions.

(1) If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the commissioner shall publish notice and evidence of such recognition in an appropriate manner. The commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

(2) In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the reinsurance supervisory system of the non-U.S. jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. The commissioner shall determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the commissioner as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the commissioner, include but are not limited to the following:

(a) The framework under which the assuming insurer is regulated.

(b) The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.

(c) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.

(d) The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.

(e) The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the commissioner in particular.

(f) The history of performance by assuming insurers in the domiciliary jurisdiction.

(g) Any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the commissioner has determined that it does not adequately and promptly enforce final U.S. judgments or arbitration awards.

(h) Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.

(i) Any other matters deemed relevant by the commissioner.

(3) A list of qualified jurisdictions shall be published through the NAIC Committee Process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification with respect to the criteria provided under Subsections 8.C(2)(a) to (i).

(4) U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

(5) Non-U.S. jurisdictions maintaining in-force binding bilateral agreements regarding reinsurance collateral with the United States shall be recognized as qualified jurisdictions.

D. Recognition of Certification Issued by an NAIC Accredited Jurisdiction.

(1) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Form CR-1 and such additional information as the commissioner requires. The assuming insurer shall be considered to be a certified reinsurer in this state.

(2) Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this state as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the commissioner of any change in its status or rating within 10 days after receiving notice of the change.

~~(3) The commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with Subsection B(8) of this section.~~

(4) The commissioner may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the commissioner suspends or revokes the certified reinsurer's certification in accordance with Subsection B(8) of this section, the certified reinsurer's certification shall remain in good standing in this state for a period of three (3) months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

E. ~~Mandatory Funding~~ **Clases**. In addition to the clauses required under Section 14, reinsurance contracts entered into or renewed under this section shall include: (i) a clause appointing the commissioner as an agent for service of process in this state; and (ii) a clause stating that the assuming insurer will provide security for one hundred percent (100%) of its liabilities under the reinsurance contract if it resists enforcement of a final U.S. judgment or a properly enforceable arbitration award ~~a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.~~

F. The commissioner shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.