February 23, 2015

The Honorable Julie Mix McPeak
Commissioner
State of Tennessee Department of Commerce and Insurance
Davy Crockett Tower
500 James Robertson Parkway
Nashville, TN  37243-1220

The Honorable Joseph Torti, III
Superintendent
State of Rhode Island Department of Business Regulation
1511 Pontiac Avenue, Building 69-2
Cranston, RI  02920-4407

Via email: kdefrain@naic.org

RE:  2015 SUPPLEMENTAL XXX/AXXX REINSURANCE EXHIBITS

Dear Commissioner McPeak and Superintendent Torti:

The ACLI\(^1\) appreciates the opportunity to comment on the 2015 Supplemental XXX/AXXX Reinsurance Exhibits relating to the XXX/AXXX Reinsurance Framework recently adopted by the NAIC. Our comments and questions are in order of the parts of the exhibits.

**PART 1 – ALL XXX AND AXXX CESSIONS**

Included in Part 1 is a list of definitions that are applicable to the entire supplement; however, these definitions are not used in Part 1 disclosures. These definitions are referenced by subsequent sections. For clarity and consistency we would suggest changing the introductory statement to the definitions section to be the following:

“This terms below shall have the following definitions for the purposes of Parts 1-4 of this Supplemental XXX/AXXX Reinsurance Exhibit this Part 1.”

\(^1\) The American Council of Life Insurers (ACLI) is a Washington, D.C.-based trade association with approximately 300 member companies operating in the United States and abroad. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers’ products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing more than 90 percent of industry assets and premiums. Learn more at [www.acli.com](http://www.acli.com).
PART 2 – TRANSACTIONS SUBJECT TO PART 2A OR PART 2B DISCLOSURE

In the General Instructions to Parts 2 and 3, the following statement is present:

“For purposes of Part 2 [Part 3], the word “collateral” shall mean assets retained by the ceding company through a modified coinsurance or funds withheld basis and assets held in trust by the assuming insurer for the benefit of the ceding company, or, if the case of a letter of credit, in the possession of the ceding company or held in trust for the benefit of the ceding company. Collateral also includes parental guarantees made payable to the ceding company.”

We have member companies that are not entirely clear on the meaning of the bolded sentence. For clarification purposes, it would be helpful if examples were added to the instructions of what would be considered “a parental guarantee made payable to the ceding company”. These examples would be helpful for the persons completing this exhibit.

For Part 2A and Part 2B, we expect that it is the intent that XXX/AXXX “reserve financing” transactions are to be disclosed, while “normal course” reinsurance transactions do not require additional disclosure beyond that already contained in Part 1 of the Exhibit, Schedule S, etc. “Normal course” transactions include cessions to reinsurers, transactions between affiliated non-captive companies, transfers through coinsurance of a block of business to an unaffiliated insurer, and other transactions of this nature. If the assuming party in a “normal course” transaction has a permitted or prescribed practice that increases its surplus (even for reasons entirely unrelated to the assumed business), neither Column 4 or 5 of Part 1 can be checked “yes”, and the “normal course” transaction would need to be shown in the ceding company’s Part 2. It should be noted that “Economic Reserves”, “Primary Security”, and other AG 48 parameters are undefined for a “normal course” transaction, so any disclosure of a “normal course” transaction in Part 2 will not yield useful information. We further note that a ceding company is permitted under AG 48 to receive a Special Exemption from AG 48, after it demonstrates to its domestic commissioner that the treaty in question should not be subjected to AG 48; however, checking “yes” in Column 10 in Part 1 for a particular treaty does not exempt that treaty from disclosure in Part 2A or Part 2B. We suggest that (a) checking “yes” in Column 10 should exempt a particular treaty from disclosure in Part 2A and Part 2B, and (b) a ceding company should be allowed to request a Special Exemption for any treaty of XXX/AXXX reinsurance, rather than just those that are effective 1/1/2015 and later.

PART 2A – TRANSACTIONS SUBJECT TO PART 2 DISCLOSURE

As we stated during the development of the 2014 year end reporting for XXX/AXXX reinsurance transactions, requiring entities to report amounts as defined by new terms (“Primary Security” et al) within AG 48 for grandfathered transactions can result in potentially misleading analysis and unwarranted questions because those terms did not exist when these transactions were developed. The purpose of these exhibits should be to provide transparent and understandable results for regulators and the public. As currently drafted, we do not believe that these questions accomplish that implied intent. For instance, there are numerous assets that are normally admitted on the balance sheet of an insurance company that do not fall within the definition of Primary Security.
It also may be misleading to incorporate concepts of collateral\(^2\) in the context of a previously approved reserve financing transaction where such collateral wasn’t required. If a ceding company were to report “0”, “N/A” or something similar, a reader could erroneously reach the conclusion that the captive entity doesn’t have sufficient assets to back its obligations to the ceding company. We suggest that a code established for the reporting of such captives, with a reference to Part 4 to show the reviewer the assets backing the transaction. Along these lines, we would suggest the deletion of Columns 8-11, and suggest development of columns that disclose the assets (traditional and non-traditional) in a manner that does not lend itself to potential misleading results.

**PART 2B – TRANSACTIONS SUBJECT TO PART 2 DISCLOSURE**

We have no additional comments for Part 2B. Please see our overall comments on Part 2 for recommended instruction changes impacting Part 2B.

**PART 3 – COLLATERAL FOR ALL XXX/AXXX REINSURANCE TRANSACTIONS REPORTED ON PART 2A OR PART 2B**

We have no comments for Part 3.

**PART 4 – NON-COLLATERAL ASSETS SUPPORTING RESERVES FOR ALL AFFILIATE XXX/AXXX REINSURANCE TRANSACTIONS REPORTED ON PART 2A OR PART 2B**

Non-Collateral Assets – There is confusion among our members on this Part. It would be helpful if the Task Force would clarify if these assets are those held by the captive outside of funds withheld trusts (those not utilized for collateral) or if this includes all assets held by the captive. It does not appear that there should be duplication between assets reported in Part 3 and Part 4.

**PART 5 – SUPPLEMENTAL XXX/AXXX REINSURANCE EXHIBIT INTERROGATORIES**

Due to many of the interrogatories asking for detailed information, some of which could be deemed confidential, we suggest separating this exhibit as confidential to regulators only. In addition to that overall comment, we have a couple of comments on several of the interrogatories.

Part 5 Question 1.1. While we understand the intent of the question, we do not believe that this question will provide useful information, and actually believe that this is a question that has no logical answer. It seems to presume that the transactions reported in Parts 2A and 2B just ‘disappear’, with a reduction to Total Adjusted Capital of all reserve credit on treaties reported in Parts 2A and 2B. It ignores the fact that a ceding company would have acted differently if such transactions had not been available to them. For example, if the reporting entity did not receive reserve credit it might not have sold the original policy, or it might have offered the policy on different terms. It almost certainly would not have offered the terms that were provided on the policy, and assumed no reserve credit was available. We also note that unconditional, evergreen

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\(^2\) Instructions of Part 2 read: For purposes of Part 2, the word “collateral” shall mean assets retained by the ceding company through a modified coinsurance or funds withheld basis and assets held in trust by the assuming insurer for the benefit of the ceding company, or, if the case of a letter of credit, in the possession of the ceding company or held in trust for the benefit of the ceding company. Collateral also includes parental guarantees made payable to the ceding company.
letters of credit are considered Other Security within the new XXX/AXXX Reinsurance Framework, whereas the Credit for Reinsurance Model Law specifically allows credit for such collateral, and no other security is required. Under this interrogatory, it would be assumed that all reinsurance credit would be disallowed for a reinsurance transaction collateralized in such a fashion. At best, we do not believe that this disclosure adds value, and at worst, it leads to incorrect conclusions about the financial condition of the ceding company. As such, we recommend deleting this interrogatory.

Part 5 Question 4.1. We suggest that Task Force refine this question to determine “roll risk”, where the duration of the collateral is less than 3 years and is different than the duration of the liabilities.

ACLI appreciates the opportunity to comment on the exposed 2015 Supplemental XXX/AXXX Reinsurance Exhibits. Our recommendations are meant to ensure that regulators receive the most useful, and least misleading, information from the exhibits and interrogatories. We welcome any questions that you may have on our recommendations.

Sincerely,

Paul S. Graham, III, FSA, MAAA

cc: Neil Rector, Rector & Associates
    PBR Implementation (EX) Task Force