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February 6, 2018

Reinsurance Task Force Chair Maria T. Vullo
National Association of Insurance Commissioners
VIA Email Transmission: Jake Stultz (jstultz@naic.org),

RE: NAMIC Comments – Bilateral Agreement Between the United States of America and the European Union (EU) on Prudential Measures Regarding Insurance and Reinsurance (Covered Agreement)

Dear Ms. Vullo:

The following comments are submitted on behalf of the member companies of the National Association of Mutual Insurance Companies regarding the NAIC implementation of the EU-U.S. Covered Agreement. Thank you for your interest in NAMIC members' thoughts on this issue. We will be present at the hearing and look forward to the opportunity to share our thoughts and comments.

NAMIC is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies representing 39 percent of the total market. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC member companies serve more than 170 million policyholders and write more than $230 billion in annual premiums. Our members account for 54 percent of homeowners, 43 percent of automobile, and 32 percent of the business insurance markets. Through our advocacy programs we promote public policy solutions that benefit NAMIC member companies and the policyholders they serve and foster greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.

In the request for comment for the February 20 hearing you seek responses to possible approaches to the implementation of the Reinsurance Section of the Covered Agreement. In addition, you requested other ideas that may be useful in arriving at a solution to the issues. NAMIC's general thoughts include the following:

- The Covered Agreement has been signed by both the U.S. and the EU and is in effect for insurance regulatory authorities only in the U.S. and the EU. It is not in effect for any other jurisdiction. Any approach to include other jurisdictions should include a commitment to mutual recognition of the U.S. group supervision and group capital regime.
- Both parties to the Covered Agreement have obligations that must be met in by September 2022. The time for implementing the Covered Agreement in all states began to run in September 2017 and revision

of the collateral requirements of European Union reinsurers meeting the Covered Agreement criteria must be completed in all states by September 2022. This time frame is more aggressive than a typical accreditation standard at the NAIC.[1]

- NAMIC is adamantly opposed to federal pre-emption of state law to implement the Covered Agreement.
- The U.S. obligations under the Covered Agreement are significantly more challenging to implement by the end of the five-year period and significantly more difficult to undo if there are compliance issues with the EU. EIOPA has already shown little support for mutual recognition of the U.S. group supervision and group capital approach at the IAIS. Any revisions to collateral requirements should include a provision for immediate reciprocal action on the part of the states if the EU breaches the agreement at some point in the future.

The NAMIC response to the questions posed includes suggestions and options for discussion and consideration. Each option may require further revision or improvement. Ultimately, we are all striving to address an issue of "first impression" – one that we have not addressed in other regulatory endeavors. We hope these ideas can help the debate and further the path to implementation. Our responses to the proposals set forth in the materials provided for the meetings are as follows:

1. **Amending the *Credit for Reinsurance Model Law* (#785) and the *Credit for Reinsurance Model Regulation* (#786) to eliminate reinsurance collateral requirements for EU-based reinsurers meeting the conditions of the Covered Agreement.**
   NAMIC favors an approach amending the model law and regulation to create a provision for specific treatment of EU-based reinsurers consistent with the terms of the Covered Agreement. We also agree with the concept advanced by CNA that the language added to the Credit for Reinsurance Model Law and Regulation should include automatic reversion to the standard collateral approach in the event there is any EU or EU member state breach of the Covered Agreement.

   Changing the model law and regulation will take a significant amount of time and enacting the new models in all states will likely require more time than the 60 months provided in the Covered Agreement. In the interest of avoiding possible pre-emption actions at the federal level, we suggest that the NAIC explore possible regulatory means to expedite the elimination of collateral requirements to avoid future pre-emption of state law. NAMIC offers optional language for a regulation or bulletin (see Attachment) that could be shared with states to address the implementation of the Covered Agreement prior to the adoption of a formal model law and regulation by the NAIC.

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[1] Even if 1) the language is agreed upon for changes to the model law and the model regulation; 2) all required NAIC committee approvals and Executive/Plenary adoption occurs; and 3) all significant elements are exposed and completed in 2018, the Financial Regulation Standards and Accreditation(F) Committee requires a 30-day comment period in the first year after approval (2019), a one-year comment period during the second year after approval (2020), discussion and adoption during the third year after approval (2021) and two years thereafter for the states to pass in their legislatures the revisions to the model law and regulation (2023).

2. **Extending similar treatment to reinsurers from other jurisdictions covered by potential future covered agreement(s) that might be negotiated pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.**
   NAMIC would not support the pursuit of additional Covered Agreements with other jurisdictions. Any additional international negotiations conducted at the Federal level would continue to erode the primacy of state regulation of insurance. There are other means to achieve the same goals without engaging in protracted negotiations and building joint committee structures that will attempt to leverage their position over U.S. state regulation of insurance. If there is a need to extend the exemption from collateral requirements beyond the reinsurers in the EU, we prefer an approach that is incorporated within the model law and regulation as set forth in question 3.

3. **Providing reinsurers domiciled in NAIC Qualified Jurisdictions with similar reinsurance collateral requirements.**
   NAMIC could support extension of the elimination of collateral requirements to other Qualified Jurisdictions, but only if the jurisdiction meets all requirements for qualified jurisdictions as well as agreeing to all of the other terms and conditions that the EU agreed upon under the Covered Agreement as interpreted by the U.S. Treasury Policy Statement. Importantly, this includes mutual recognition of the U.S. group supervision and group capital regime.

   There are several interesting ways to achieve this goal including the creation of a separate and distinct group of Qualified Jurisdictions that have agreed to the terms of the Covered Agreement including the policy statement interpreting the agreement from the U.S. Treasury.

   Another option is to revise the definition of a qualified jurisdiction to include one that has mutually recognized and agreed that the U.S. approach to group supervision and group capital is acceptable. By clearly revising the definition of Qualified Jurisdiction, the U.S. could then accomplish the goal of expanding mutual recognition of the U.S. group capital and supervision regime while also simplifying the collateral system.

   Revised language to the qualified jurisdiction definition could include something like the following:

   "Section 2 (E)(3)(a) In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming reinsurer 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 on-going basis, and consider the rights benefits and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to (re)insurers licensed and domiciled in the U.S. including but not limited to mutually recognizing the U.S. insurance group supervision and group capital system as compliant with international standards and as the only group supervision and capital system applicable to

insurance groups with an ultimate controlling parent domiciled in the United States. A qualified jurisdiction must agree to share information and cooperate with the commissioner . . ."

Nonetheless, an extension of the elimination of collateral requirements for jurisdictions not included in the Covered Agreement should not be effective until a revised model law including the critical mutual recognition conditions for Qualified Jurisdictions could be adopted in all states.

4. **Considering changes to the criteria for evaluating whether a jurisdiction should be a Qualified Jurisdiction.**
   See proposal set forth in section 3.

5. **Considering additional "guardrails" relative to U.S. ceding companies, such as changes to the risk-based capital (RBC) formula or new regulatory approaches to help address the increased financial solvency risks caused by the elimination of reinsurance collateral.**
   NAMIC does not support the automatic addition of new capital requirements for U.S. ceding companies using an EU-based reinsurer. In fact, NAMIC argues that such action would run afoul of the Covered Agreement prohibition against other, "new requirements with substantially the same regulatory impact . . .or any reporting requirement attributable to such removed collateral." Covered Agreement Article 3(2)(b).

   In addition, the only thing that will be accomplished by the changes in the model law and regulation will be elimination of "required" collateral. Ceding companies will still negotiate for collateral when it is in their best interest, especially with companies that have less than "aa" credit ratings. The consideration of collateral can still be weighed to assess whether any changes need to be made. We do not support an automatic shift of the collateral requirement over to a ceding company capital requirement until a proper assessment of the practices following the implementation of the Covered Agreement have been assessed.

6. **Any other considerations to weigh as part of the states' implementation of the Covered Agreement.**
   Nothing further to add.

Thank you for your consideration of these comments on this matter of importance to NAMIC, its member companies and their policyholders. If there are any questions, please feel free to contact me at 317-876-4270.

Sincerely,

Michelle Rogers

Michelle Rogers
Assistant Vice President, International and Regulatory Affairs
National Association of Mutual Insurance Companies

[Attachment]

ATTACHMENT: MODEL REGULATION OR BULLETIN

The United States and the European Union have entered into a Bilateral Agreement Between the United States of America and the European Union (EU) on Prudential Measures Regarding Insurance and Reinsurance (the "Covered Agreement") that dictates changes in U.S. state law and regulation concerning the treatment of reinsurers from the EU. In the event that states fail to enact the changes described in Article 3 of the Covered Agreement by September 23, 2022, the federal government has agreed to take action to pre-empt state law.

The development of revisions to the Credit for Reinsurance Law [state statutory citation] and Credit for Reinsurance Regulation [insurance regulatory citation] are currently underway for enactment by all states on a uniform basis. As an interim measure, until the uniform language for the Credit for Reinsurance Law and Regulation has been finalized, in order to comply with the terms of the Covered Agreement promptly, and avoid federal pre-emption of [state] law and regulation, the following will apply to the [state] department of insurance efforts to implement the Credit for Reinsurance regulation [citation] pertaining to reinsurers domiciled in a member state of the EU:

In implementing the [state] Credit for Reinsurance regulation [citation] until an NAIC Credit for Reinsurance model law and regulation are available for adoption, all EU reinsurers meeting the conditions set forth in the Covered Agreement, Article 3 Paragraph 4[2] shall be deemed compliant with the requirements of the security rating under section [section 8 of the model regulation] of Secure-1 resulting in 0% security or collateral required.

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[2] Covered Agreement Conditions for EU Reinsurers to be Entitled to No Required Collateral

"4(a) the assuming reinsurer has and maintains on an ongoing basis,

(i) at least 226 million Euro, where the ceding insurer has its head office in the EU, or 250 million U.S. dollars, where the ceding insurer is domiciled in the United States, of own funds or capital and surplus, calculated according to the methodology of its home jurisdiction; or

(ii) if the assuming reinsurer is an association including incorporated and individual unincorporated underwriters:

(A) minimum capital and surplus equivalents (net of liabilities) or own funds, calculated according to the methodology applicable in its home jurisdiction, of at least 226 million Euro, where the ceding insurer has its head office in the EU, or 250 million U.S. dollars, where the ceding insurer is domiciled in the United States; and

(B) a central fund containing a balance of at least 226 million Euro, where the ceding insurer has its head office in the EU, or 250 million U.S. dollars, where the ceding insurer is domiciled in the United States;

(b) the assuming reinsurer has and maintains on an ongoing basis:

(i) a solvency ratio of 100 percent SCR under Solvency II or an RBC of 300 percent Authorized Control Level, as applicable in the territory in which the assuming reinsurer has its head office or is domiciled; or

(ii) if the assuming reinsurer is an association including incorporated and individual unincorporated underwriters, a solvency ratio of 100 percent SCR under Solvency II or an RBC of 300 percent Authorized Control Level, as applicable in the territory in which the assuming reinsurer has its head office or is domiciled;

(c) the assuming reinsurer agrees to provide prompt written notice and explanation to the supervisory authority in the territory of the ceding insurer if:

(i) it falls below the minimum capital and surplus or own funds, as applicable, specified in subparagraph (a), or the solvency or capital ratio, as applicable, specified in subparagraph (b); or

(ii) any regulatory action is taken against it for serious noncompliance with applicable law;

(d) the assuming reinsurer provides written confirmation to the Host supervisory authority of consent to the jurisdiction of the courts of the territory in which the ceding insurer has its head office or is domiciled, in accordance with applicable requirements of that territory for providing such consent. Nothing in this Agreement shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms;

(e) where applicable for "service of process" purposes, the assuming reinsurer provides written confirmation to the Host supervisory authority of consent to the appointment of that supervisory authority as agent for service of process. The Host supervisory authority may require that such consent be provided to it and included in each reinsurance agreement under its jurisdiction;

(f) the assuming reinsurer consents in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained;

(g) the assuming reinsurer agrees in each reinsurance agreement subject to this Agreement that it will provide collateral for 100 percent of the assuming reinsurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming reinsurer resists enforcement of a final judgment that is enforceable under the law of the territory in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its resolution estate, if applicable;

(h) The assuming reinsurer or its legal predecessor or successor, where applicable, provides the following documentation to the Host supervisory authority, if requested by that supervisory authority:

(i) with respect to the two years preceding entry into the reinsurance agreement and on an annual basis thereafter, its annual audited financial statements, in accordance with the applicable law of the territory of its head office, including the external audit report

(ii) with respect to the two years preceding entry into the reinsurance agreement, solvency and financial condition report or actuarial opinion, if filed with the assuming reinsurer's supervisor;

(iii) prior to entry into the reinsurance agreement and not more than semiannually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for 90 days or more, regarding reinsurance assumed from ceding insurers of the jurisdiction of the ceding insurer; and

(iv) prior to entry into the reinsurance agreement and not more than semiannually thereafter, information regarding the assuming reinsurer's assumed reinsurance by ceding company, ceded reinsurance by the assuming reinsurer, and reinsurance recoverable on paid and unpaid losses by the assuming reinsurer, to allow for the evaluation of the criteria set forth in subparagraph (i) of paragraph 4;

(i) the assuming reinsurer maintains a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:

(i) more than 15 percent of the reinsurance recoverables are overdue and in dispute as reported to the supervisor;

(ii) more than 15 percent of the reinsurer's ceding insurers or reinsurers have overdue reinsurance recoverables on paid losses of 90 days or more which are not in dispute and which exceed for each ceding insurer 90,400 Euro, where the assuming reinsurer has its head office in the EU, or 100,000 U.S. dollars, where the assuming reinsurer is domiciled in the United States; or

(iii) the aggregate amount of reinsurance recoverables on paid losses which are not in dispute, but are overdue by 90 days or more, exceeds 45,200,000 Euro, where the assuming reinsurer has its head office in the EU, or 50,000,000 U.S. dollars, where the assuming reinsurer is domiciled in the United States;

(j) the assuming reinsurer confirms that it is not presently participating in any solvent scheme of arrangement, which involves Host Party Ceding Insurers, and agrees to notify the ceding insurer and its supervisory authority and to provide 100 percent collateral to the ceding insurer consistent with the terms of the scheme should the assuming reinsurer enter into such an arrangement;

(k) if subject to a legal process of resolution, receivership, or winding-up proceedings as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the resolution, receivership, or winding-up proceedings is pending, may obtain an order requiring that the assuming reinsurer post collateral for all outstanding ceded liabilities; and

(l) the assuming reinsurer's Home supervisory authority confirms to the Host Party supervisory authority on an annual basis that the assuming reinsurer complies with subparagraph (b)."