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Rachel Hemphill
Chair, NAIC Life Actuarial (A) Task Force (LATF)

Fred Andersen
Chief Life Actuary, Minnesota Department of Commerce

Re: June 20th Exposure of Reinsurance AAT Concepts

Dear Chair Hemphill:

The American Council of Life Insurers (ACLI) appreciates the opportunity to provide feedback on the Reinsurance AAT Concepts presentation which was discussed on the June 20th LATF meeting. ACLI is committed to constructively engaging with the NAIC on the development of tools to assess and mitigate potential risks associated with reinsurance while preserving the sector's ability to employ it as a tool for risk management and enhancing consumer access to essential life insurance and retirement solutions.

After review from our members and ongoing discussions with regulators, ACLI has developed the feedback below on the project as a whole and more specific thoughts on the eight "considerations for consensus" listed in the exposure document. We also continue to stress the importance of NAIC coordination between all ongoing workstreams and initiatives related to reinsurance to ensure they are ultimately effective at addressing the NAIC's objectives and to minimize the potential for unintended consequences.

General Feedback –

ACLI members believe further clarity is needed on the scope of this initiative, and how it aligns with or feeds into other regulatory initiatives the NAIC is pursuing related to structural shifts in the insurance sector. The scope needs to be limited to the specific areas of regulatory concern. In Appendix A, we propose a scope based on our understanding of questions raised in exposures and LATF discussions. We would like to reiterate the need for coordination of NAIC efforts on reinsurance before any significant discussion of framework requirements.

ACLI continues to support a disclosure-based approach as the most appropriate way for addressing the concerns that regulators have voiced. That said, we recognize regulators' desire for a materiality-based approach that entails additional analysis and testing. Any such application of this additional analysis to existing treaties may be infeasible since existing treaties did not contemplate information sharing to support this type of effort; therefore, the application of any changes should be prospective. To the extent that existing treaties are included in this framework, cashflow analysis should not be applicable.

There are several references to "primary security" in the considerations document. These references are problematic, as not all reinsurance transactions are reserve financing transactions and the assets that qualify as primary security are narrower than admitted assets which typically form the basis for collateral investment guidelines. We suggest further exposures move away from this concept.

Lastly, regulators have structured the role of the Appointed Actuary in a manner to comply with the state of domicile regulatory expectations around compliance and operations of a company. Regulators need to have comfort with the accuracy of the opinion of the Appointed Actuary in their assessments, and that treatment should be no different when evaluating reinsurance transactions.

Consideration 1 (Need for reserve adequacy review beyond or as part of collectability review) –

ACLI Position: Any additional review should be limited and proportionate to the underlying risk of the transaction.

- We agree that there are circumstances where companies should look at more than rating agency reviews in determining collectability.
- The Appointed Actuary should consider if the reinsurer is able to fulfill its obligations in a moderately adverse environment consistent with the long-established criteria for asset adequacy.
- There is no requirement within AAT that necessitates fulfillment of reinsurance obligations in an extreme or tail environment, as those risks are already appropriately covered in capital considerations.

Consideration 2 (Materiality threshold for no additional disclosure, attribution analysis, or cash-flow testing) –

ACLI Position: The materiality threshold is a critical item for the framework and it is important that any additional analysis and reporting requirements be proportional to the level of risk a transaction presents. While much of the determination of the level of rigor of analysis should—and appropriately so— be left with the Appointed Actuary, we appreciate the need for some regulatory guidance to provide both uniformity and ensure regulators' concerns are addressed. We suggest such guidance and principles in Appendix A.

- Given the bespoke nature of reinsurance transactions, we believe materiality should be based on sound principles rather than a one-size-fits-all prescriptive approach.
- We agree that the size and impact of a transaction on the company's financials should be a consideration when assessing materiality, but it is appropriate for the assessment to be broader. For example, the credit quality of the reinsurer, existing reporting and tools the cedant's supervisor has access to, and structural protections in place through the treaty (e.g., trusts, agreed upon investment guidelines, etc.) also must be given consideration.

- The applicability of attribution analysis or cashflow analysis should be limited to value-added work to benefit the regulator and the Appointed Actuary. It should also reflect the significant limitations that may exist to provide impacts associated with the assumptions of the reinsurer. Further, we support more robust requirements only for new reinsurance transactions so that the required information sharing can be included in such reinsurance arrangements.

Consideration 3 (More rigorous and/or more frequent analysis to the extent there are significant risks) –

ACLI Position: We agree that the degree of rigor should be proportional with the underlying risks of the transaction. We support a rigorous analysis when deemed appropriate by the Appointed Actuary and consistent with our proposed principles and guidance in the first year, followed by an ongoing and clearly defined monitoring process. We believe this should be sufficient to address many of the reinsurance arrangements on a going forward basis.

- The goal is to help regulators identify situations of risk. Regulators can request additional analysis once a treaty of concern is identified, so the degree of rigor can always be increased based on the domestic regulator's review of the Appointed Actuary's assessment.
- As discussed above, many reinsurance transactions are bespoke arrangements, and the underlying risks will be different. Application of appropriate principles will help provide consistency across state examinations and analyses.
- The framework should not punish jurisdictions because they are different from the US Statutory regime. It is important to encourage coordination and cooperation with non-U.S. regulators, such as through the Supervisory college and information-sharing agreements.

Consideration 4 (Analysis considerations) –

ACLI Position: Consistent with our prior responses, the analysis that is required to be performed should be proportional with the level of risk. The scope should be first addressed before the degree of analysis required is determined by regulators.

- We do not support requiring certification by the Appointed Actuary on the total reserve held, particularly if such certification requirement is imposed retroactively. It is unreasonable and outside actuarial professional requirements and the regulatorily mandated responsibilities of the Appointed Actuary to make a statement about reserves held by another company, including a reinsurer (or subsequent retroceding companies). This does not mitigate the Appointed Actuary's responsibility concerning the direct and assumed reserves of the cedant, only their ability to opine on another company's reserves.
- A reasonable alternative would be to require the Appointed Actuary to have available the analysis that supports their conclusions about the reinsurance reserve credit taken and the collectability of reinsurance cashflows under moderately adverse scenarios.
- The amount of reserves that a reinsurer holds for any one treaty may be misleading:
    - For reinsurers in foreign jurisdictions that have a reserve and capital framework that is different than the reserve and capital structure in the US, it may not be enough to simply look at the reserves held for the treaty. Prudence may be embedded in other elements of the framework, such as required capital.
    - Reinsurers with large blocks of offsetting risks might have benefits of diversification that would not be reflected in a stand-alone or treaty level analysis.

- Attribution analysis should be broadly defined and should be sufficient in most cases. Any cashflow analysis or sensitivities performed should be for disclosure purposes only and only in an aggregated form.
- The Appointed Actuary should not be required to contemplate any additional asset adequacy reserves unless they believe that disruption of the level or timing of reinsurance cashflows is likely under moderately adverse conditions in line with current regulatory requirements. ACLI believes the template for attribution of reserve differences should be optional for companies to complete, particularly if companies have better disclosures and procedures for producing an attribution analysis. We also suggest that counterparty information be removed from the template and be structured to provide more flexibility. We have provided a modified version of the exposed template reflecting this approach as a separate document.

Consideration 5 (Aggregation considerations) –

ACLI Position: We oppose the creation of any new standards on aggregation of reinsured business. Any cashflow analysis conducted should be done on an aggregate basis consistent with how it is currently performed for the cedant, as risk is ultimately managed at the legal entity level as a whole rather than on an individual treaty or transaction level basis. More clearly put, if the reinsurer were to become insolvent and the ceding company were to recapture the ceded business (as is required under the reinsurance agreement), then the ceding company would re-aggregate the recaptured business with the rest of the ceding company's retained business.

- Sufficiency is determined in accordance with existing actuarial guidelines and requirements.
- Fundamental principles of insurance are based on risk aggregation; therefore, aggregation following sound actuarial guidance should be allowed based on the judgment of the Appointed Actuary.
- The aggregation proposed avoids issues of confusion in this framework, including definitions of block (e.g., LOB, treaty, reinsurance) and when aggregation is permissible.

Consideration 6 (Attribution analysis details) –

ACLI Position: Once the scope and materiality are determined by regulators, the NAIC should seek to leverage the existing work companies are performing when engaging in a transaction to help regulators and the Appointed Actuary determine what, if any, additional attribution analysis is appropriate. To the extent that any additional work is required, it should be focused on high-value work that will educate both the domestic regulator and the Appointed Actuary.

- The criteria associated with analysis should be informed by the nature of the transaction and availability of information – e.g., with an affiliate versus a third-party:
  - Differences in regulatory frameworks (i.e., market value/book value differences inclusive of IMR, other elements of conservatism in reserving for one framework versus another such as best estimate versus prescribed approaches, cash surrender value floors, etc.) should be considered.
  - To the extent data is available – impacts from changes in assumptions (insurance, investment, etc.) should be considered.
- This will need to be a best-efforts analysis; companies should use their own assumptions or the reinsurers' assumptions, if available.

Consideration 7 (Use of information already available) –

ACLI Position: Any framework the NAIC develops should leverage information already available before determining what, if any, new requirements should be imposed.

- Insurers and regulators should be able to leverage attribution analysis developed as part of transaction review and approval for purposes of meeting a state regulator request. For example, the Bermuda Monetary Authority already requires such analysis for reinsurance transaction approval. Further, for affiliated transactions, analysis is already part of the domiciliary state regulator's up-front review of a transaction.
- Other existing information that should be leveraged includes:
  - Existing ERM frameworks (e.g., capital and liquidity stress testing and reporting);
  - ORSA filings where appropriate;
  - Cedant counterparty risk management framework/practices (e.g., proactive measures in place and preparedness for what recapture would entail/require if it were needed- i.e., looking beyond collectability of claim reimbursements);
  - Availability to discuss solvency concerns with the reinsurer's regulator and leverage their supervisory tools and filings, particularly if they are a Covered Agreement or Qualified Reciprocal Jurisdiction; and
  - Specific information about transactions and reinsurers, including risk mitigation activities, reinsurance in force, the design of the treaty, reserve credit, regulatory engagement during transaction approval and ongoing monitoring, etc.
- We also note that other jurisdictions require actuarial reports that might provide cedants and regulators with information similar to that which is available in a VM-30 report.
- Many of the questions raised in this exercise have been geared toward non-VM 30 reporting jurisdictions. Since Bermuda and certain other jurisdictions have been through the ReFAWG process to achieve reciprocal jurisdiction status, there should be work that is leverageable to gain comfort with the jurisdictions' reserving methodology and capitalization framework.

Consideration 8 (Timing of development and implementation of requirements) –

ACLI Position: Several items need to be resolved before discussing timing of requirements, including the scope and the degree of effort required by the framework. Regardless of these determinations, we do not think it will be appropriate to impose the same requirements on existing transactions as new ones, given information that may be needed to perform analysis on older transactions will likely be difficult to obtain.

- The process needs to be deliberate and give regulators and companies time to learn before considering new requirements.
- We support the idea of a YE 2024 field test on current year transactions to start the education process.
- We appreciate regulators' willingness to provide flexibility as part of this analysis in the first few years so we can strike the right balance of analysis based on transaction risk.
- We believe implementation of a more permanent solution for transactions on or after 1/1/2026 is feasible. Possible broad application to inforce transactions could create significant implementation challenges for companies.

Thank you once again for the consideration of our feedback and ACLI looks forward to continued work on this project throughout the rest of this year and beyond.

Sincerely,

[illegible] Colin Masterson

cc: Scott O’Neal, NAIC

Appendix A: ACLI Proposal for Guidance and Considerations on Framework Tiers:

Guidance for no additional disclosure beyond existing requirements (including ASOP 11), attribution analysis, cash-flow testing –

- None (no additional disclosure):
    - Reinsurance arrangements where reinsurer submits a VM-30 Report; or
    - Reinsurance arrangements below the minimum materiality threshold determined by the Appointed Actuary; or
    - Reinsurance arrangements where base statutory reserves and collateral held (including those held as funds withheld, ModCo, collateral such as comfort trusts, LLCs, LOCs, reinsurance trusts) are at least as great as the levels required in the US; or
    - Risks transferred are limited to mortality and/or morbidity (such as YRT); or
    - Reinsurance arrangements with limited credit and disintermediation risk as defined in NAIC Model #791 Section 2.F.
- Medium (attribution analysis):
    - Consideration only applies to reinsurance transactions excluded from the "None" category; and
    - "Asset intensive business" (as defined by requirements) with sufficient documentation on Appointed Actuary conclusions about the NAIC risk transfer requirements.
- High (cashflow analysis conducted on an aggregate basis, consistent with how it is currently performed for the cedant, as a disclosure/sensitivity only)
    - Consideration only applies to reinsurance transactions excluded from the "None" category; and either or both of:
    - "Asset intensive business" without sufficient documentation on Appointed Actuary conclusions about the NAIC risk transfer requirements or as determined by domestic regulator after submission; or
    - Reserves held by the reinsurer for a particular transaction are at least 25% lower than the reserve held prior to reinsurance.

Possible Principles/Consideration for Appointed Actuary to Assess Thresholds:

- Collective consideration of:
    - Nature of transaction (affiliate vs. third-party);
    - Jurisdiction of the counterparty (Covered Agreement, Qualified/Reciprocal Jurisdiction); and
    - Domicile regulator engagement during approval and post-approval (including Supervisory college considerations).
- Design of the treaty including:
    - Financial strength provisions;
    - Over collateralization;
    - Strong investment guidelines/strategies; and
    - Other protections: such as retaining assets on balance sheet via modified coinsurance, collateral trusts, letters of credit, or funds withheld.
- For the cedant:
    - Materiality via the size and impact of a transaction;
    - Existing ERM cashflow projections;
    - Reinsurance amount in force to a single counterparty; and
    - Reserve credit taken for a single counterparty

- For the counterparty:
    - Regulatorily required and internal risk mitigation activities (insolvency considerations; disclosure requirements; relationship management; risk diversification; etc.);
    - Credit quality;
    - Risk management framework/practices;
    - Reinsurance collectability (consideration of protections such as trusts, agreed upon investment guidelines, etc.);
    - Lack of data related to the transactions (assumptions, underlying assets, etc.);
    - The availability of a report sent to the reinsurer domestic regulator on the sufficiency of assets/reserves and capital; and
    - The availability of other documentation related to reinsurer that the Appointed Actuary can use in their assessment.