BY E-MAIL

October 7, 2019

Todd E. Kiser
Chair, NAIC Financial Regulation Standards and Accreditation (F) Committee
Attention: Becky Meyer (bmeyer@naic.org)

Chlora Lindley-Myers
Chair, NAIC Reinsurance (E) Task Force
Attention: Jake Stultz (jstultz@naic.org)
Dan Schelp (dschelp@naic.org)

Re: Credit for Reinsurance Model Accreditation Decisions

Dear Commissioner Kiser and Director Lindley-Myers:

New York Life and Northwestern Mutual are writing in response to the current exposure by the Reinsurance (E) Task Force of draft revisions to the NAIC *Accreditation Program Manual* intended to incorporate the 2019 revisions to the *Credit for Reinsurance Model Law* (#785) and *Credit for Reinsurance Model Regulation* (#786) to implement the US-EU Covered Agreement.

Our comments are not with respect to those revisions, but rather to urge that the NAIC follow through on prior recommendations and set the *Term and Universal Life Insurance Reserve Financing Model Regulation* (#787) as an accreditation standard in parallel with the Covered Agreement revisions. Our companies have long advocated that Model #787 should be an accreditation requirement, which is consistent with the prior recommendation by the Reinsurance Task Force.

By way of background, the NAIC adopted Model #787 in 2016 as the permanent method to implement the NAIC's XXX/AXXX Reinsurance Framework that it spent years developing. Model #787 establishes the credit for reinsurance that a ceding company may be allowed for a subject captive reinsurance transaction. The requirements for Primary Security and Other Security in Model #787 are substantively the same as those in Actuarial Guideline 48, the NAIC's interim tool to implement its XXX/AXXX Reinsurance Framework. However, whereas Model #787 binds the ceding company's allowed credit for reinsurance, AG 48 can only impose requirements on the ceding company's appointed actuary.

On March 20, 2017, the Reinsurance Task Force recommended to the F Committee that Model #787 be made an accreditation standard on an expedited basis, so that it would become an accreditation requirement by January 1, 2020. This was consistent with the NAIC's recognition that (1) uniformity in implementation of the XXX/AXXX Reinsurance Framework is critical to its success; and (2) AG 48 was intended from the start as only an interim solution until the ultimate credit for reinsurance mechanism could be implemented. On August 24, 2017, the Reinsurance Task Force recommended the elements of Model #787 to be included in the accreditation standard.

However, as progress was being made toward an expedited accreditation action for Model #787, the need arose to amend Models #785 and #786 to address the Covered Agreement. Not wanting states to face multiple rulemaking processes, the F Committee decided at the 2017 Fall National Meeting to defer adoption of Model #787 as an accreditation requirement until the changes to Models #785 and #786 to implement the Covered Agreement had been completed. Our companies agreed that the NAIC's announced process made sense.

Now that the Covered Agreement changes to Models #785 and #786 have been adopted and are being considered for accreditation on an expedited basis, we strongly urge that the F Committee move forward as originally contemplated and complete the accreditation decisions on Model #787 in synch with the Model #785 and #786 changes. Doing so will make state implementation of the credit for reinsurance changes more efficient. Moreover, since the Reinsurance Task Force has already done the work to identify the accreditation elements for Model #787, moving in parallel should not delay the NAIC's efforts on Models #785 and #786.

It is important to remember that the NAIC has already made compliance with its XXX/AXXX Reinsurance Framework an accreditation requirement. That was decided in 2015, when the NAIC revised the Part A Preamble to the 2016 *Accreditation Program Manual* to subject the regulation of XXX/AXXX captives to the Part A accreditation requirements, and deemed regulation according to the NAIC's XXX/AXXX Reinsurance Framework to meet those requirements. What remains to be done is to solidify that earlier conclusion by making Model #787 itself an accreditation requirement.

While AG 48 has served as a critical interim measure to implement the XXX/AXXX Reinsurance Framework, it was never intended to be nor is it an adequate permanent substitute for Model #787. Only Model #787 embeds the Primary Security and Other Security requirements directly into the determination of reinsurance credit. AG 48, by contrast, relies upon an indirect enforcement approach: requiring a ceding company's appointed actuary to perform an analysis and, in the event the Primary Security or Other Security requirements are not met, deliver a qualified actuarial opinion. The allowance, or not, of reinsurance credit as a matter of law under Model #787 serves as a more direct and consequential incentive for compliance and uniformity than can the actuarial opinion requirements of AG 48. While some may question the need to make Model #787 an accreditation standard in light of the existence of AG 48, we would note that the intent of the accreditation program is to ensure uniformity among accredited jurisdictions with respect to solvency regulation. That uniformity can be best achieved by making Model #787 an accreditation standard, thereby ensuring uniform consequences and enforcement with respect to this aspect of the XXX/AXXX Reinsurance Framework. Moreover, it was recognized from the beginning that utilizing an actuarial opinion requirement as a tool for enforcement of the NAIC's XXX/AXXX Reinsurance Framework puts the actuarial opinion requirement to a novel use going beyond what is ordinarily contemplated as the purpose of the Actuarial Opinion and Memorandum Regulation.

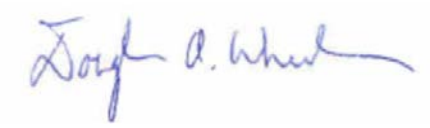
For these reasons, the NAIC has always described AG 48 as the interim method to implement its XXX/AXXX Reinsurance Framework, and the credit for reinsurance changes set forth in

Model #787 as the permanent implementation method. This is also reflected in the fact that AG 48 itself includes sunset provisions to apply in individual states as they adopt Model #787.

There is no longer any reason for delay in the NAIC's action to make Model #787 an accreditation requirement. We again urge that the F Committee take this up and move forward in parallel with the Covered Agreement changes to Models #785 and #786. Doing so will allow the NAIC to finally complete the important work of uniformly implementing its XXX/AXXX Reinsurance Framework.

We appreciate the opportunity to comment on this important topic. Please let us know if you need any additional information or would like to discuss our comments.

Sincerely,



Douglas A. Wheeler
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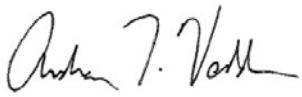

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