To: John Finston, Chair of the Reinsurance (E) Task Force

From: Brett Barratt, Chair of the Qualified Jurisdiction (E) Working Group

Date: December 6, 2016

Re: Effect of Solvency II on Qualified Jurisdiction Status

I. EXECUTIVE SUMMARY

The European Union's Directive 2009/138/EC ("Solvency II Directive") provides for the European Commission (EC) to make "equivalence" determinations for third countries (non-EU jurisdictions) in the areas of reinsurance (Article 172), group solvency (i.e., group capital) (Article 227), and group supervision (Article 260). The NAIC has received reports that Solvency II implementation has imposed restrictions on U.S. insurance companies doing business in certain countries in the EU. For example, in 2016 the German Federal Financial Supervisory Authority (BaFin) began restricting third-country insurance undertakings, so that U.S. reinsurers can no longer operate on a cross-border basis without forming and capitalizing a branch or subsidiary in Germany. In 2015, the Prudential Regulation Authority (PRA) of the United Kingdom (UK) began requiring U.S. groups to apply for a waiver of the requirement that group capital information adhere to Solvency II requirements.

In 2011, the NAIC reduced reinsurance collateral requirements for non-U.S. reinsurers that are licensed and domiciled in "qualified jurisdictions." In 2014, the Qualified Jurisdiction (E) Working Group completed reviews of Germany and the UK, as well as France and Ireland, and approved all four EU countries as Qualified Jurisdictions, effective January 1, 2015. At the Reinsurance (E) Task Force meeting on August 27, 2016, the Working Group was directed to "study and report on EU member state implementation of Solvency II and the potential impact on Qualified Jurisdiction status."

The *Credit for Reinsurance Model Law* (#785), *Credit for Reinsurance Model Regulation* (#786), and the *Process for Developing and Maintaining the NAIC List of Qualified Jurisdictions* ("Qualified Jurisdiction Process") contain the relevant standards and procedures for the potential re-evaluation of a Qualified Jurisdiction if there is a material change in circumstances. Of the several factors to be considered, the two most applicable presently are: 1) the domiciliary regulator's willingness to share information and cooperate with U.S. regulators in general; and 2) the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers domiciled in the U.S.

The Working Group makes the following preliminary report with respect to: 1) the standard of review and process under which a Qualified Jurisdiction may be re-evaluated; 2) changes in the supervisory systems of the EU Qualified Jurisdictions with respect to U.S.-domiciled insurers and reinsurers; and 3) potential consequences if a jurisdiction is found to be out of compliance with the requirements to be a Qualified Jurisdiction. **The Working Group has not been asked to make a recommendation on the status of any Qualified Jurisdiction, and this memorandum is not intended to provide any recommendation in this regard.**

II. Standard of Review—Material Change in Circumstances

Before considering whether it is necessary to re-evaluate a Qualified Jurisdiction, the initial issue is whether any action taken by a Qualified Jurisdiction constitutes a material change in circumstances (i.e., "any material change in the supervisory system that may affect the status of a Qualified Jurisdiction"), in the context of the full, outcomes-based evaluation procedure. Any material change should be communicated as part of the ongoing dialogue with the applicable supervisory authority. In determining whether a change is material, consideration should be given to the actions of each supervisory authority in comparison to the information that was reviewed when the jurisdiction was initially evaluated. The Working Group determined that it should also issue a survey to interested parties on the effect of the Qualified Jurisdictions' implementation of Solvency II on U.S. (re)insurers.

III. Principles and Procedure for Re-Evaluation of a Qualified Jurisdiction

The *Summary of Findings and Determination* issued by the NAIC with respect to Germany, the UK, France and Ireland provided that the NAIC recognized them as Qualified Jurisdictions effective January 1, 2015, and that this designation is valid for five years, "absent a material change in circumstances." Section III.12 of the Qualified Jurisdiction Process provides the following guidance with respect to a "material change" in circumstances:

> Qualified Jurisdictions must provide the Qualified Jurisdiction Working Group with notice of any material change in the applicable reinsurance supervisory system that may affect the status of the Qualified Jurisdiction. A U.S. jurisdiction should also notify the Qualified Jurisdiction Working Group if it receives notice of any material change in the applicable reinsurance supervisory system, or any adverse developments with respect to enforcement of final U.S. judgments, that may affect the status of the Qualified Jurisdiction. Upon receipt of any such notice, the Qualified Jurisdiction Working Group will consider whether it is necessary to re-evaluate the status of the Qualified Jurisdiction…. If the Qualified Jurisdiction Working Group finds the jurisdiction to be out of compliance at any time with the requirements to be a Qualified Jurisdiction, the specific reasons will be documented in a report to the jurisdiction under review, and the status as a Qualified Jurisdiction may be placed on probation, suspended or revoked.

The *Process for Periodic Evaluation*, as further outlined in Section III.12, provides that the evaluation is ongoing and the status of a Qualified Jurisdiction is subject to periodic review, with a re-evaluation at least every five years. This periodic evaluation may follow a process similar to what was followed when the Qualified Jurisdiction was originally approved or it can follow an abbreviated process as the Working Group deems appropriate. Based on the effective date of the current designations, a full or abbreviated re-evaluation should be completed on each Qualified Jurisdiction by the end of 2019, with a new effective date of January 1, 2020.

In determining whether any change in the supervisory system is material, the Working Group should consider the actions of each supervisory authority in comparison to the information that was reviewed when the jurisdiction was initially evaluated, particularly with respect to the issues of reciprocal recognition and regulatory cooperation. Under Section 8C(2) of Model #786 and Section II.4 of the Qualified Jurisdiction Process, the states shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system within the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the jurisdiction to reinsurers licensed and domiciled in the U.S. Section 8C(2) of Model #786 and Section II.6 of the Qualified Jurisdiction Process further require that a Qualified Jurisdiction must agree to share information and cooperate with the state with respect to all certified reinsurers domiciled within that jurisdiction.

The *Evaluation Methodology* under Section IV of the Qualified Jurisdiction Process is intended to provide an outcomes-based comparison to financial solvency regulation under the NAIC Accreditation Program, adherence to international supervisory standards and relevant international guidance for recognition of reinsurance supervision, and requires the evaluation of the history of performance by assuming insurers in the applicant jurisdiction. Section 8C(2) of Model #786 lists several "additional factors" to be considered in determining whether to recognize a qualified jurisdiction; however, the extent of reciprocal recognition and the requirement to agree to share information and cooperate with the commissioner are specified as two initial factors to evaluate in order to determine whether a jurisdiction is eligible to be recognized as a qualified jurisdiction.

The commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified under Section 8C(1) of Model #786. No formal report to the jurisdiction under review is necessary unless and until the Working Group actually makes a finding that the jurisdiction is out of compliance with the requirements to be a Qualified Jurisdiction. At that time, the specific reasons will need to be well documented and the status may be placed on probation, suspended or revoked. If a certified reinsurer's domiciliary jurisdiction ceases to be a Qualified Jurisdiction, the commissioner may revoke the reinsurer's certification or has the discretion, under Section 2E(3)(d) of Model #785, to suspend the reinsurer's certification indefinitely in lieu of revocation. Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer shall be required to post the full 100% security in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer under Section 8B(8)(d) of Model #786.

IV. CHANGES IN THE SUPERVISORY SYSTEMS OF QUALIFIED JURISDICTIONS

Following the implementation of the Solvency II Directive, which became effective on Jan. 1, 2016, the NAIC has received reports from industry representatives that U.S. reinsurance companies are experiencing restrictions on doing business in certain EU jurisdictions. Germany has implemented a commercial presence requirement, and several U.S. reinsurers have received letters stating that they are no longer authorized to conduct business in Germany unless they establish a branch location, with a limited exception for insurance by "correspondence" through a broker if initiated by a German ceding company. Public reports suggest that Ireland has taken a similar position with respect to branch requirements, and France has reportedly implemented a policy that discourages the purchase of reinsurance from non-equivalent markets by refusing to give French companies credit for reinsurance purchased from companies in jurisdictions whose systems are not deemed equivalent. There is no indication that U.S. insurers have received any formal notice from France or Ireland regarding these requirements or any change in policy. The UK has implemented an in-depth waiver process related to group solvency requirements, which allows companies to continue operations on a temporary basis but can be revoked at any time.

Since the Working Group was asked to study the impact of Solvency II, its discussions should remain limited to actions taken by the Qualified Jurisdictions that are EU member states: Germany, the UK, Ireland and France. It is worth noting, however, that several other EU member states may have taken actions that would restrict access or otherwise negatively impact U.S. reinsurers' ability to do business in the European Economic Area (EEA). Industry representatives have reported that the following EU member states have implemented (but may not be actively enforcing) laws similar to Germany: Austria (possible exemption for brokers if contract executed outside Austria); Belgium (no broker exemption; no guidance as to what constitutes "pursuing reinsurance business"); Croatia (no broker exemption); Denmark (authority to issue rules regarding the provision of services in Denmark by a third country (re)insurer, which has not been done yet; conducting reinsurance business through brokers is permitted if requested by cedent); Luxembourg (no broker exemption); Poland (unclear if business can be done through brokers); Spain (broker exemption exists); and Sweden (unclear if business can be done through brokers).

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A. German Federal Financial Supervisory Authority (BaFin)

1. Summary of Actions Taken / Current Requirements Applicable to U.S.-Domiciled Reinsurers

In June 2016, BaFin sent letters to several U.S. reinsurers stating that they are no longer authorized to conduct business in Germany unless they establish a branch location. These letters state that "insurance and reinsurance undertakings domiciled in non-EU/EEA member states will need a licence from BaFin to conduct insurance or reinsurance business in Germany. These undertakings have to establish a branch in Germany." If a company "intends to conduct reinsurance business by underwriting new reinsurance contracts, [it] has to apply for a licence and to establish a branch in Germany. Only the administration of the existing portfolio in order to terminate the activities in Germany does not require a licence." The Solvency II Directive does not appear to contain any provisions expressly requiring third-country reinsurers to establish a branch, and BaFin has not cited any specific basis outside of German law, for its requirement; however, the Solvency II Directive does contain provisions regarding branches established within an EU member state (Article 162), which may allow for this interpretation.

On August 31, 2016, BaFin issued an interpretative decision, *Conduct of Reinsurance Business in Germany by Insurance Undertakings Situated in a Third Country*, which confirmed that "insurance undertakings (primary insurers and reinsurers) from third countries, i.e. countries that are not member states of the European Union or signatories to the Agreement on the European Economic Area, are subject to authorisation and must establish a German branch office if they wish to carry on primary insurance or reinsurance business in Germany." It clarified that reinsurance contracts entered into on or before December 31, 2015, can be executed and run off without authorization; however, if the renewal of a reinsurance contract between a German insurer and a third-country insurer requires a contractual agreement between the parties (in particular regarding key elements such as the scope of cover or premiums), reinsurance contracts concluded on or after January 1, 2016, including annual renewals of reinsurance contracts, are subject to the authorization requirement.

The only exemptions to the branch requirement are as follows: 1) primary insurers or reinsurers from third countries that carry on solely reinsurance business in Germany through provision of cross-border services, and the solvency regimes for reinsurance activities carried out by undertakings in the relevant country are equivalent to the regime described in the Solvency II Directive; or 2) if reinsurance contracts are concluded by "correspondence." However, the EC has not made an equivalence determination for the U.S. with respect to Reinsurance, so the first exemption does not apply. The second exemption, insurance by correspondence, is quite limited. The interpretive decision provides the following guidance with respect to conducting insurance by "correspondence" through a professional intermediary (i.e., broker):

> Insurance by correspondence (Korrespondenzversicherung), which is not subject to authorisation, applies to reinsurance business if, at the instigation of an insurance undertaking situated in Germany, a reinsurance contract is concluded by correspondence with an insurer situated abroad without one of the parties being assisted by a professional intermediary in Germany or a professional intermediary situated abroad but acting as intermediary in Germany. The crucial element here is that the initiative to conclude the reinsurance contract must come from the German insurer. This is not the case, however, if the initiative of the German insurer is based on activities carried out by a third-country insurance undertaking which constitute the conduct of business in Germany. Another important requirement is that the reinsurance contract must be concluded by way of correspondence. This is assumed to be the case if the contracting parties make use of the usual methods of communication such as telephone, fax, e-mail or post.

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According to the Global Reinsurance Forum (GRF), which publishes a periodic list of *Reinsurance Trade Barriers and Market Access Issues Worldwide*, Germany permits cross-border reinsurance on a "restricted" basis. The August 2016 report notes that third country reinsurers who want to conduct business in Germany are required to have permission from BaFin and are required to establish a branch in Germany; however, cross-border reinsurance in the form of "insurance by correspondence" continues to be allowed and is not subject to authorization.

2. Summary of Findings and Determination from Initial Review

The Working Group completed its initial review of BaFin in July 2014. At that time, there was no indication that BaFin would require U.S. (re)insurers to establish a branch location in order to conduct reinsurance business in Germany. The Working Group reached the conclusion that BaFin's reinsurance supervisory system achieves a level of effectiveness in financial solvency regulation that is acceptable for purposes of reinsurance collateral reduction, that BaFin's demonstrated practices and procedures with respect to reinsurance supervision are consistent with its reinsurance supervisory system, and that its laws and practices satisfy the criteria required of Qualified Jurisdictions as set forth in the Credit for Reinsurance Models. Therefore, the Working Group recommended that the NAIC recognize BaFin as a Qualified Jurisdiction and place it on the *NAIC List of Qualified Jurisdictions*, to be effective as of January 1, 2015. This designation as a Qualified Jurisdiction is valid for five years (absent a material change in circumstances), after which BaFin will be re-evaluated under the provisions of the Qualified Jurisdiction Process.

B. Bank of England Prudential Regulation Authority (PRA)

1. Summary of Actions Taken / Current Requirements Applicable to U.S.-Domiciled Reinsurers

The UK has implemented an in-depth waiver process related to group solvency requirements, which allows companies to continue operations on a temporary basis but can be revoked at any time. This process does not relate specifically to reinsurance, but U.S. insurers have expressed concerns that it creates regulatory uncertainty. In March 2015, the PRA issued *Supervisory Statement SS9/15, Solvency II: group supervision*, which is addressed to UK Solvency II firms that are part of a group holding company, and sets out the PRA's expectations with respect to the Solvency II group provisions. "Firms should note that if the group supervisor is a supervisory authority other than the PRA, the PRA still requires the UK insurers to comply with the groups provisions set out in the Solvency II Directive." The supervisory statement further provides:

> In the absence of equivalent group supervision, in accordance with Article 262 of the Directive, the PRA may decide to apply to the group either the relevant Solvency II requirements to the worldwide group as if it were based in the European Economic Area (EEA), or it may use 'other methods' specified by the Directive pursuant to the objectives of group supervision. … Firms may apply to the PRA for a waiver from the requirement to apply the relevant Solvency II requirements to the worldwide group as if it were a group based in the EEA. … The PRA will assess such applications on a case-by-case basis, taking into account the objectives of group supervision as specified by the Directive.

In December 2015, the PRA issued Directions ("waivers") to several U.S. insurance firms that are part of a group holding company. According to each waiver, the PRA has directed that the rules related to group supervision apply to each firm with modifications as shown on the waiver. The waivers took effect on January 1, 2016, and

end on the earlier of: 1) "the date the relevant rule is revoked or no longer applies to the firm (in whole or part)"; or 2) a date certain that is specified on the waiver—as early as November 30, 2016, and as late as January 1, 2019.

The PRA advised the NAIC that the waiver process was the "lightest touch" possible, but it was required to take action under Solvency II since the U.S. is not an equivalent jurisdiction and failure to do so would result in sanctions from the EC. The PRA also advised that after the UK withdraws from the EU, the process commonly known as Brexit, it intends to maintain a framework similar to Solvency II with minor modifications.

According to the GRF list of *Reinsurance Trade Barriers and Market Access Issues Worldwide*, the UK permits cross-border reinsurance without any discriminatory requirements for collateralization or localization. However, the August 2016 report notes that that "some non-EU reinsurers have been encouraged to convert their branches into subsidiaries to ensure adequate local capital for the benefit of UK (re) insureds."

2. Summary of Findings and Determination from Initial Review

The Working Group completed its initial review of the PRA in July 2014. At that time, there was no indication that the PRA would require U.S. (re)insurers to apply for a waiver or comply with the group solvency provisions set out in the Solvency II Directive. The Working Group reached the conclusion that the PRA's reinsurance supervisory system achieves a level of effectiveness in financial solvency regulation that is acceptable for purposes of reinsurance collateral reduction, that the PRA's demonstrated practices and procedures with respect to reinsurance supervision are consistent with its reinsurance supervisory system, and that its laws and practices satisfy the criteria required of Qualified Jurisdictions as set forth in the Credit for Reinsurance Models. Therefore, the Working Group recommended that the NAIC recognize the PRA as a Qualified Jurisdiction and place it on the *NAIC List of Qualified Jurisdictions*, to be effective as of January 1, 2015. This designation as a Qualified Jurisdiction is valid for five years (absent a material change in circumstances), after which the PRA will be re-evaluated under the provisions of the Qualified Jurisdiction Process.

C. Central Bank of Ireland

1. Summary of Actions Taken / Current Requirements Applicable to U.S.-Domiciled Reinsurers

Ireland appears to have taken a position that is similar to Germany with respect to branch requirements, but there is no indication that the Central Bank of Ireland has provided any formal notice or communications to any U.S. insurers regarding this requirement.

According to a Briefing prepared by the Irish law firm of McCann FitzGerald: "Generally, a (re)insurance undertaking needs to be authorised in an EEA member state in order to carry on the business of insurance in Ireland. A non-EEA authorised insurance undertaking must establish an Irish authorised branch in order to carry on business in Ireland or acquire an existing Irish authorised (re)insurance undertaking."

"If a non-EEA member state ("a Third Country") has a supervisory regime which is considered to ensure a similar level of policyholder and beneficiary protection as Solvency II, that Third Country will be treated in many respects as if it were an EEA member state. While this does not permit an undertaking established in that Third Country to passport into the EEA, it does deal with the treatment of reinsurance, recognition of group treatment, financial reporting and sharing of information between regulators." For more information see McCann FitzGerald, *Ireland as a Location for Insurance Undertakings* (July 2016).

2. Summary Findings and Determination from Initial Review

The Working Group completed its initial review of the Central Bank in July 2014. At that time, there was no indication that the Central Bank would require U.S. (re)insurers to establish a branch location in order to conduct reinsurance business in Ireland. The Working Group reached the conclusion that the Central Bank's reinsurance supervisory system achieves a level of effectiveness in financial solvency regulation that is acceptable for purposes of reinsurance collateral reduction, that the Central Bank's demonstrated practices and procedures with respect to reinsurance supervision are consistent with its reinsurance supervisory system, and that its laws and practices satisfy the criteria required of Qualified Jurisdictions as set forth in the Credit for Reinsurance Models. Therefore, the Working Group recommended that the NAIC recognize the Central Bank as a Qualified Jurisdiction and place it on the *NAIC List of Qualified Jurisdictions*, to be effective as of January 1, 2015. This designation as a Qualified Jurisdiction is be valid for five years (absent a material change in circumstances), after which the Central Bank will be re-evaluated under the provisions of the Qualified Jurisdiction Process.

D. French Autorité de Contrôle Prudentiel et de Résolution (ACPR)

1. Summary of Actions Taken / Current Requirements Applicable to U.S.-Domiciled Reinsurers

According to public reports, France has implemented a policy that discourages the purchase of reinsurance from non-equivalent markets by not allowing French companies to take credit for reinsurance purchased from companies domiciled in jurisdictions whose system are not deemed equivalent. However, there has been no indication that the ACPR has provided any formal notice or communications to any U.S. insurers regarding any change in policy as a result of the implementation of Solvency II.

According to the most recent GRF list of *Reinsurance Trade Barriers and Market Access Issues Worldwide*, France permits reinsurance on a cross-border basis with no discriminatory requirements on cross-border foreign reinsurers for collateralization or localization of assets. The August 2016 list reports that "the previous requirement for third country reinsurers from non-equivalent regimes to have guaranteed local assets was removed from January 2016 onwards."

2. Summary of Findings and Determination from Initial Review

The Working Group completed its initial review of the ACPR in August 2014. At that time, there was no indication that the ACPR would not allow French companies to take credit for reinsurance ceded to U.S. reinsurers in the ordinary course of business. The Working Group reached the conclusion that the ACPR's reinsurance supervisory system achieves a level of effectiveness in financial solvency regulation that is acceptable for purposes of reinsurance collateral reduction, that the ACPR's demonstrated practices and procedures with respect to reinsurance supervision are consistent with its reinsurance supervisory system, and that its laws and practices satisfy the criteria required of Qualified Jurisdictions as set forth in the Credit for Reinsurance Models. Therefore, the Working Group recommended that the NAIC recognize the ACPR as a Qualified Jurisdiction and place it on the *NAIC List of Qualified Jurisdictions*, to be effective as of January 1, 2015. This designation as a Qualified Jurisdiction is valid for five years (absent a material change in circumstances), after which the ACPR will be re-evaluated under the provisions of the Qualified Jurisdiction Process.

V. SURVEY OF INDUSTRY

The Qualified Jurisdiction Working Group has been directed to "study and report on EU member state implementation of Solvency II and the potential impact on Qualified Jurisdiction status." In determining whether any changes are material and to gain a better understanding of the effect such actions have on U.S. reinsurers, the Working Group has determined that it should reach out to interested parties for further public comment that is specifically related to the issue of how any particular actions of EU insurance supervisors under Solvency II have affected or will affect U.S. reinsurers.

The survey was made available for a public comment period beginning on November 2, 2016, and ending on November 23, 2016, followed by a discussion of the survey results by the Working Group on an open call on December 1, 2016. Any company-specific responses are treated as confidential regulator-only information; the NAIC may disclose company-specific or other confidential information to state insurance regulators or state and federal regulatory bodies only if necessary and preserved as confidential. A supplemental memorandum accompanying this report contains results from the survey and a summary of the responses.

VI. SCOPE OF BUSINESS AFFECTED

To provide the Qualified Jurisdiction Working Group and the Reinsurance Task Force with additional context regarding the materiality of any changes in circumstances, NAIC Financial Regulatory Services staff has evaluated financial filings and other company-specific data to determine: 1) the volume of assumptions by U.S. reinsurers that are potentially affected by actions related to the implementation of Solvency II by France, Germany, Ireland, and the UK; and 2) the volume of cessions from U.S. reinsurers that potentially would be affected if the Qualified Jurisdiction status would change for France, Germany, Ireland, or the UK.

A supplemental memorandum accompanying this report contains a summary of the data, which is derived from the 2015 annual statements filed by all multi-state insurance companies, as reported through the NAIC Financial Data Repository (FDR), including Property and Casualty Schedule F, Part 1 and 3, and Schedule S, Part 1 and 3.

VII. POTENTIAL CONSEQUENCES

The Working Group is not undergoing any formal re-evaluation of any Qualified Jurisdiction at this point, and it has not been asked to make any recommendations in that regard. Instead, it has been asked to study and report on any activities that may be considered a material change in circumstance, and wait for further direction from the Task Force if a formal re-evaluation is warranted. Any re-evaluation would involve extensive consultation with the applicable supervisory authority. Although it is too early to consider disqualifying any Qualified Jurisdiction, it is important to understand the potential consequences to avoid any unintended outcomes.

A. Probation, Suspension or Revocation of Qualified Jurisdiction Status and Suspension of Certification

Pursuant to the *Process for Periodic Evaluation* in Section III.12 of the Qualified Jurisdiction Process, if the Working Group finds a jurisdiction to be out of compliance at any time with the requirements to be a Qualified Jurisdiction, the specific reasons will be documented in a report to the jurisdiction under review, and the status as a Qualified Jurisdiction may be placed on probation, suspended or revoked. Likewise, the commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified under Section 8C(1) of Model #786.

Since a certified reinsurer must be domiciled and licensed in a Qualified Jurisdiction, the status of a certified reinsurer is dependent on the status of its domiciliary country as a Qualified Jurisdiction. A certified reinsurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined under Section 2E(1)(a) of Model #785 and Section 8B(3)(a) of Model #786. 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, under Section 2E(3)(d) of Model #785. If a reinsurer's certification is revoked, however, the assuming insurer would have to post security, held in the U.S. in accordance with Section 10 of Model #786, in order for the ceding insurer to continue to take credit for that reinsurance.

The potential impact of terminating the status of one or more of the Qualified Jurisdictions may be most felt by U.S. ceding insurers. First, any certified reinsurers that are domiciled in one of these Qualified Jurisdictions would no longer be permitted to reduce reinsurance collateral on assumed business, with the costs for the resultant increase in the amount of reinsurance collateral to be borne by U.S. ceding companies. Second, while each commissioner will have discretion in making the determination as to whether the status of the certified reinsurer is considered to be terminated or merely suspended, the revocation of the status of a Qualified Jurisdiction may result in certified reinsurers being required to post 100% reinsurance collateral retroactively with respect to in-force business. In addition, if individual state determinations on the potential retroactive effect of reinsurance collateral are not done in a uniform manner across the states, this could result in potential regulatory arbitrage between the states.

B. Covered Agreement

A "covered agreement" is a mechanism established by Title V of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), under which Treasury's Federal Insurance Office (FIO) and the United States Trade Representative (USTR) have the authority to enter into agreements with foreign governments or regulators that could supersede conflicting state law. In order to preempt U.S. state insurance laws or regulations, a covered agreement must relate to prudential measures for the business of insurance and must achieve consumer protection "that is substantially equivalent to the level of protection achieved under State insurance or reinsurance regulation." FIO and the USTR are now trying to negotiate a covered agreement with the EU, because the Solvency II Directive requires U.S. insurance regulations to be equivalent to the EU's prudential requirements in order for U.S. companies to continue operating in the EU on the same terms as they are currently authorized, and the European Commission has not made equivalence determinations for the U.S. with respect to reinsurance or group supervision. The NAIC has called on the federal government to enhance the transparency of the process, and to take preemption of state laws and empowerment of the federal government off the table.

VIII. Conclusion

If, after considering the actions taken to implement Solvency II, it is determined that there has been a material change in circumstances in Germany, the UK, Ireland or France, the Task Force should consider whether it is necessary to re-evaluate the status of any such Qualified Jurisdiction. If a re-evaluation is conducted, the Working Group should determine whether it is appropriate to follow a process similar to the original full review or an abbreviated process. If the Working Group finds the jurisdiction to be out of compliance at any time with the requirements to be a Qualified Jurisdiction, the specific reasons should be documented in a report to the jurisdiction, and its status as a Qualified Jurisdiction may be placed on probation, suspended or revoked.

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APPENDIX: LIST OF MATERIALS REFERENCED

1. *Credit for Reinsurance Model Law* (#785), available at http://www.naic.org/store/free/MDL-785.pdf.
2. *Credit for Reinsurance Model Regulation* (#786), available at http://www.naic.org/store/free/MDL-786.pdf.
3. *Process for Developing and Maintaining the NAIC List of Qualified Jurisdictions* (Revised Aug. 17, 2014), available at http://www.naic.org/documents/committees_e_reinsurance_related_qualified_jurisdictions_final_130827.pdf.
4. *Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)* (recast) (effective Mar. 31, 2015), available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02009L0138-20150331&from=EN.
5. BaFin, *Conduct of reinsurance business in Germany by insurance undertakings situated in a third country* (Aug. 31, 2016), available at https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Auslegungsentscheidung/VA/ae_160901_rueckversicherung_drittstaaten_va_en.html.
6. [CONFIDENTIAL] BaFin letter to U.S. reinsurer (dated June 13, 2016).
7. PRA *Supervisory Statement SS9/15, Solvency II: group supervision* (March 2015), available at http://www.bankofengland.co.uk/pra/Documents/publications/ss/2015/ss915.pdf.
8. PRA Directions ("Waivers") issued to U.S. insurance companies, along with waivers issued to other non-EEA companies, are available at https://register.fca.org.uk/ (search by company name, scroll down to section titled "Waivers / Discretions").
9. McCann FitzGerald, *Ireland as a Location for Insurance Undertakings* (July 2016), available at http://www.mccannfitzgerald.com/knowledge/client-briefings/item/6540/ireland-as-a-location-for-insurance-undertaki.aspx.
10. Global Reinsurance Forum (GRF), *Reinsurance Trade Barriers and Market Access Issues Worldwide* (Aug. 12, 2016), available at http://www.grf.info/images/Publications/TradeBarriers/160812_GRF-Reinsurance-Trade-Barriers.pdf.
11. [CONFIDENTIAL] Section C of *United Kingdom (UK): Prudential Regulation Authority of the Bank of England (PRA) Initial Review 07-22-2014*.
12. [CONFIDENTIAL] Section C of *Germany: Federal Financial Supervisory Authority (BaFin) Initial Review: 07/23/2014*
13. [CONFIDENTIAL] Section C of *Central Bank of Ireland Initial Review and Findings Prepared by NAIC Staff 07-25-2014*.
14. [CONFIDENTIAL] Section C of *French Autorité de Contrôle Prudentiel et de Résolution (ACPR) Initial Review 08/07/2014*.

To: John Finston, Chair of the Reinsurance (E) Task Force

From: Brett Barratt, Chair of the Qualified Jurisdiction (E) Working Group

Re: Responses to Survey on the Effect of Qualified Jurisdictions' Implementation of Solvency II

Date: December 6, 2016

On August 27, 2016, the Reinsurance (E) Task Force directed the Qualified Jurisdiction (E) Working Group to "study and report on EU member state implementation of Solvency II and the potential impact on Qualified Jurisdiction status." To assist with the determination of whether any action taken by a Qualified Jurisdiction qualifies as a material change in circumstances, in the context of the full outcomes-based evaluation procedure, the Working Group determined that it should reach out to interested parties for further public comment that is specifically related to the issue of how any particular actions of EU insurance supervisors under Solvency II may affect U.S. (re)insurers.

On November 2, 2016, the NAIC Qualified Jurisdiction (E) Working Group released the *Survey on the Effect of Qualified Jurisdictions' Implementation of Solvency II* ("Survey") to regulators (state, federal, and international) and interested parties in order to obtain a better understanding of the effect of Solvency II implementation on U.S. (re)insurers. On Thursday, December 1, 2016, the Working Group held a public call to discuss the Survey responses and consider additional related public comment.

The NAIC received twenty-one (21) responses to the Survey from a wide variety of respondents based on their category of interest (e.g., state insurance regulator, U.S. ceding insurance company), and the results identify the category of each respondent. However, any identifying information provided by a respondent was disaggregated by NAIC staff from the individual responses, and that identifying information will not be released, shared, or published. The Survey yielded several interesting results, including the following:

- Several respondents, including U.S. reinsurance companies, responded that the actions of one or more of these four jurisdictions have already had a quantifiable negative impact on the capacity to do business in the EU; however, many of these same respondents also responded that the termination of the qualified jurisdiction status may also have a negative impact on reinsurance capacity in the U.S. marketplace.

- Several trade association members requested an extension to complete a more thorough review of the situation with their reinsurance brokers, and have suggested that the working group consider leaving the survey open at least till the end of the year to enable a more complete response.

- Multiple respondents stated that the issues arising out of the implementation of Solvency II, and the impact on U.S. companies, are not limited to actions taken by these four Qualified Jurisdictions.

- Multiple respondents stated that the actions taken by these four jurisdictions constitute a material change in circumstances, and recommended that the Qualified Jurisdiction status should be terminated.

- Multiple respondents noted the complexity of the issue and encouraged the NAIC to proceed with caution and avoid taking any action that might disrupt the market or otherwise negatively affect U.S. (re)insurers.

Question 1: For U.S. (Re)insurance Companies: Please specify whether you are a U.S. licensed and domiciled (re)insurance company that is currently doing (re)insurance business, or intending to pursue such business in the future, in the EU, and specifically France, Germany, Ireland or the United Kingdom (or with companies domiciled in these jurisdictions).

U.S. Ceding Insurance Company	• One of three companies reported that it is currently doing business in the EU, with a subsidiary domiciled in Ireland. • None reported intending to pursue business in the EU.
U.S. Reinsurance Company	• Five of six companies reported that they are currently doing business in the EU. • Reinsurance business in the EU is transacted by affiliated companies, branches and subsidiaries. • One company reported that it is not currently doing business and not intending to pursue business in the EU.

Question 2: For U.S. (Re)insurance Companies: Has your company received any notification or other communication from any EU-based insurance supervisor restricting your ability to do any (re)insurance business in the EU? Please provide the NAIC with a copy of such notification/communication, which will be kept confidential.

U.S. Ceding Insurance Company	• One of three companies reported that the Central Bank of Ireland is seeking group supervision over it as the U.S. parent, and provided a copy of correspondence from the Central Bank.
U.S. Reinsurance Company	• Three of the five companies doing business in the EU reported receiving notification from an EU-based insurance supervisor. • One company provided a copy of a letter from BaFin.

Question 3: For U.S. (Re)insurance Companies: Does your company have any concerns that Qualified Jurisdictions' implementation of Solvency II, or any related regulatory action, will negatively affect your ability to pursue (re)insurance business in the EU? Please provide the NAIC with any comments specifically related to these concerns.

U.S. Ceding Insurance Company	• Yes – our [EU] subsidiary is formed as a captive to insure the risks of one commercial insured in the EU. The additional cost and burden to comply with group supervision may make it prohibitive to continue to do business there. Our insured would be left to find an alternate insuring mechanism that would be more costly and would offer less customized service.
U.S. Reinsurance Company	• Yes, [this company] is very concerned that Qualified Jurisdictions' implementation of Solvency II will negatively affect our ability to pursue reinsurance business in the EU, and specifically refer to Germany as an example. [The company] is also aware of other EU member countries (including Ireland) which have enacted laws similar to Germany's, which would, if enforced, operate to completely prohibit [the company] from doing business in these other EU countries. • It is already impacting our capacity to do business in the EU. [This company] has estimated 2016 assumed premium [in excess of $100m, almost 40% of which] originates from EU countries. A significant portion of our portfolio is jeopardized due to this action. • Yes, the UK, Germany, Austria, Belgium and Poland have all announced interpretations of the directive that limit the ability of reinsurers from non-equivalent jurisdictions to act as reinsurers on a cross-border basis. Fortunately, [this company] has branches ... and Subsidiaries in [several EU jurisdictions] and so currently have work-arounds. However, as the situation in the EU is fluid and developing, there is much uncertainty as to whether we will continue to have these options.

<u>Question 4</u>: For U.S. Ceding Insurance Companies: Does your company have any concerns that a termination of the qualified jurisdiction status of France, Germany, Ireland or the United Kingdom will negatively affect your ability to conduct business with reinsurance companies in any of these jurisdictions? Please provide the NAIC with any comments specifically related to these concerns.

U.S. Ceding Insurance Company	• Requiring qualified European Union reinsurers to post 100% collateral without regard for financial or capitalization standards would have the likely impact of unnecessarily increasing reinsurance premiums paid by U.S. ceding insurance companies. This would adversely impact U.S. insurance customers. • No concerns at the present time because we are able to find coverage in other markets, however, if this issue snowballs and more countries become involved it could restrict our ability to obtain reinsurance at competitive terms. • Almost 15% of our current program is with participants in these jurisdictions. The loss of this capacity would force us to find new markets, which may reduce overall available capacity.
U.S. Reinsurance Company	• The referenced termination of the qualified jurisdiction status would have a significant impact on [this company] as we retrocede much business to our affiliated companies in these countries. These retrocessions take advantage of the geographic and business diversification and ultimately result in a lower cost for the insurance products that we support through our reinsurance. • The majority of [this company's] competitors have a certified reinsurer within their global group. If [the certified reinsurer within its global group] loses its certified reinsurer status because Germany is no longer a qualified jurisdiction, [the company] will be negatively impacted from a competitive perspective. • If [a certified reinsurer within a global group] is required to post an additional 90% in collateral, then the [company] group's costs of doing business in the US increase even though the risks remain unchanged. This additional burden and frictional cost of increased collateral is unnecessary as [the company] pays its claims and does so in a timely manner. • To manage our risk and our capital within our group, we cede substantially all of our assumed reinsurance risks to our parent. Our parent is a certified reinsurer in several US states. If the qualified jurisdiction status of Germany is terminated, our ability to manage our risk and our capital within our group could be negatively affected. • [This company] is also a buyer of reinsurance, and reinsurers from Germany and the United Kingdom currently support [this company's catastrophe business]. The termination of this status may have a negative impact on reinsurance capacity in the U.S. marketplace.

<u>Question 5</u>: For All Responders: Please provide any other comments you have with respect to (a) the effect of Qualified Jurisdictions' implementation of Solvency II on U.S. (re)insurance business in the EU or (b) the effect of the termination of the qualified jurisdiction status of France, Germany, Ireland or the United Kingdom on U.S. (re)insurance companies.

State Insurance Regulator	• This state has no domestic insurers with any significant business in the EU. • The effect of the termination of the qualified jurisdiction status of France, Germany, Ireland or the United Kingdom on the domestic insurers of this state would likely be minimal with only one certified reinsurer from those four jurisdictions. • The Department is aware of a major domestic insurer that does reinsurer business in the EU that received a letter from the German Regulator "BaFin" notifying the company that their ability to conduct business in Germany would be restricted as a result of Solvency II implementation. The EU is an important place of business for this reinsurer as nearly 40% of its total premium originates from reinsurance contracts with companies domiciled there. Restrictions placed on their ability to do business in the EU will have a significant impact on their operations. The potential loss of business based on BaFin's action alone is significant as 15% of their EU premiums originate from German insurers. Significant premiums are also assumed from three of the four qualified jurisdictions. The restrictions imposed by the BaFin upon this large, well-capitalized and highly rated insurer will not only have an impact on its business

	operation but will have an impact on the [state] economy and its ability to create jobs as well. • The Department of Insurance is not aware of any domestic insurers who have been significantly impacted by the implementation, although some have had to spend resources with these EU jurisdictions to ensure they are able to continue business. [The Department] does have ongoing concerns regarding the effect on the US industry, particularly given the US progress towards leveling the playing field for non-US insurers through the adoption of the certified reinsurer process. • If Germany is no longer considered a Qualified Jurisdiction, the reinsurers would lose their certification and be required to post 100% collateral within three months pursuant to [state] credit for reinsurance regulations. This could potentially have a negative impact on our [domestic] cedents if collateral is not posted and they are no longer allowed to take credit for reinsurance; however generally the reinsurance agreements include terms to allow for recapture if credit for reinsurance is no longer allowed. • One of our [domestic] Companies with a British subsidiary is concerned but hasn't said anything specific. • [One state] believes that this is a material change in the full-outcomes-based evaluation of a qualified jurisdiction. Therefore, the qualified jurisdiction status of France, Germany, Ireland and the U.K. should be terminated due to the lack of reciprocity.
U.S. Ceding Insurance Company	• The failure of the EU to recognize the US insurance regulatory system as equivalent to Solvency II amounts to a restraint of trade. If gives a clear advantage to EU companies/parent companies while having the effect of forcing US companies (or companies with US parents) out of the marketplace by establishing costly additional burdens on US companies that are already complying with solvency requirements set up by US state regulators.
U.S. Reinsurance Company	• The revisions to the Credit for Reinsurance Model Law and Credit for Reinsurance Model Regulation, adopted by the NAIC in November, 2011, recognize that reinsurance is a global market and that to require 100% collateral of credit-worthy, well-regulated reinsurers that routinely fulfill their promises is not necessary for the protection of U.S. policyholders. Unfortunately, adoption has been slow and therefore, I appreciate the decision of the NAIC to make this law and regulation an accreditation standard. This is a positive step forward in EU/US relations. I therefore ask the NAIC to proceed with caution in regards of potential reconsiderations of Qualified Jurisdiction status and – in any case – to allow for sufficient time before decisions are made. • I encourage the NAIC to take up and/or continue an exchange of views with the supervisory authorities from the concerned jurisdictions aimed at finding solutions for any outstanding concerns. With this approach, the NAIC will solidify its leadership position in the effort to protect, maintain and enhance open markets and high standards of insurance regulation to benefit consumers around the world. • Current treaties were priced based on use of the certified reinsurer construct and ceding companies that are currently afforded high quality and reasonably priced reinsurance are being forced to face a change in the regulatory landscape that has the potential to negatively impact the reinsurance coverage they purchased. Regulatory uncertainty causes difficulties for the insurance industry and results in concern regarding planning for appropriate reinsurance support and risk diversification. • While we recognize that Solvency II has presented implementation challenges for EU reinsurers, we hope that US regulators will endeavor to address the challenges presented to US companies without employing retaliatory measures that will negatively impact the global reinsurance marketplace. • We are a licensed US reinsurer that is part of a large [EU-based] insurance group. We have seen firsthand the regulatory challenges (i.e., collateral requirements and related filing requirements, uneven adoption of related laws and regulations by US states, uneven licensing requirements and exemptions for non-US reinsurers) that our parent faces when providing reinsurance to US ceding companies. We also have seen the uneven and confusing regulatory challenges (i.e., restricted access to various EU markets) that other US reinsurers are facing in the EU due to the implementation of Solvency II. • We are optimistic that the US state-based insurance regulatory and EU Solvency II regimes can work through their current differences and display to the rest of the global reinsurance community that the 2 largest insurance markets in the world can settle their differences and allow for the global transfer and spread of risk that is based on a level playing field without retaliatory measures or

	protectionism. • Obviously, the implementation of Solvency II in the manner Germany, Ireland and many other EU countries have done not only disadvantages [this company], it completely prevents [this company] from doing any business with that country's cedents. There is no similar outcome even remotely possible for EU reinsurers doing business in the US; at most they will have to return to posting 100% collateral, but they can still do business in the same manner as they have in the past, without restriction. • Suspending the Qualified Jurisdiction status of Germany, and any other Qualified Jurisdiction that seeks to enforce a law similar to Section 67 of Germany's VAG, is required by the Credit For Reinsurance law and regulation, as well as the Qualified Jurisdiction Working Group's own rules. While doing so won't prevent reinsurers from the suspended country from doing reinsurance business in the US, it will remove any special benefit accorded to them, and is the best way the NAIC has to get the attention of the country that is not treating US reinsurers fairly. The NAIC will then be positioned to quickly reinstate Germany's (and any other Qualified Jurisdiction that has been suspended) once the offending country returns to treating US reinsurers fairly. • As a consequence of the implementation of Solvency II, our ability to conduct reinsurance business in the EU has been placed into uncertainty. Supervisory determinations in several EU Member States will act to limit the ability of many U.S. companies to conduct business in the EU. • Market uncertainties, Changes in Parliament, Brexit and an exit from the EU Common Market may prompt a different outcome. This uncertainty of outcomes is of concern to [this company] and the potential revocation of waivers issued to [this company] and other US firms should prompt ongoing review of the Qualified Status of the UK. • The issues arising out of the implementation of Solvency II, and the impact on U.S. based companies, are not limited to actions taken by those states that have been designated as Qualified Jurisdictions. As the implementation of Solvency II continues, we anticipate that U.S. reinsurers will continue to face restrictions with respect to cross-border business in EU jurisdictions. This regulatory uncertainty is unfair, unacceptable and destabilizing.
Non-U.S. Domiciled Reinsurance Company	• Terminating the qualified jurisdiction status for any of the currently approved jurisdictions would have an adverse impact on reinsurance markets and the US ceding insurers who rely on them. German reinsurers in particular have long supported the US insurance market. US cedents have benefited from – and come to support — the revised collateral rules. These rules have provided cost savings and a regulatory framework which gives cedents a sense of security that collateral alone does not provide. • Revoking the Qualified Jurisdiction status of a country or countries would mean a step back for all. Reinsurers domiciled in the affected country(ies) would cease to make the regulatory filings which are part of the Certified Reinsurer process, their domiciliary regulators would cease to be bound by formal and de facto levels of cooperation with US regulators, the imposition of retroactive and prospective 100% collateral requirements could lead to an increase of costs for every one – especially policyholders, insurers and reinsurers – and would likely constrict capacity from some of the leading reinsurers in the world – the type of reinsurers US regulators should want to encourage their cedents to trade with. • We therefore ask the NAIC to proceed with caution in regards of potential reconsiderations of Qualified Jurisdiction status and – in any case – to allow for sufficient time before decisions are made. In this context, we would like to encourage the NAIC to take up and/or continue an exchange of views with the supervisory authorities from the concerned jurisdictions aimed at finding solutions for any outstanding concerns. • Prior to the uncertainty surrounding Germany's qualified jurisdiction status, [this company] had plans to expand its certification to several other states through the NAIC passporting process. In addition, [this company] and its US subsidiaries and clients are considering the impact to existing reinsurance transactions if the NAIC terminates Germany's qualified jurisdiction status. • Since becoming certified, [this company] has provided significant reserve credit to US life and property and casualty insurers. • [This company] and its US subsidiaries and clients relied on this level of collateral when these deals were negotiated. If [this company] can no longer be a certified reinsurer because the NAIC terminates Germany's qualified jurisdiction status, approximately, $1 billion in

	additional collateral will be required to support these existing reinsurance obligations. In some cases, [this company] must pay for the increased cost of collateral, and in other cases, [this company's] US clients must pay for the increased costs of collateral. • [This company] clearly meets and exceeds the financial requirements to be a certified reinsurer, and the fact that [this company] could lose its status as a certified reinsurer because Germany is no longer a qualified jurisdiction seems like an arbitrary and unreasonable outcome. The only way that [this company] can operate competitively in the US is if it enjoys the same collateral reduction that its competitors enjoy. We would, therefore, urge you to focus more on the financial stability of the foreign reinsurer, rather than the country in which it is located. • While we understand that the Working Group is assessing the burdens associated on US reinsurers reinsuring risks in Europe, it is important to recognize that US reinsurers operating in Europe do not face the same restrictions that EU reinsurers face when reinsuring US risks. For example, in most EU countries, US reinsurers are able to reinsure EU ceding companies without having to take action to get licensed, accredited, approved, or certified. The EU does not require the approval of the domiciliary regulator of the US reinsurer and there are no collateral requirements imposed on the US reinsurers.
Trade Association	• We urge thoughtful and considered discussion with supervisors in other jurisdictions in lieu of questioning the qualified jurisdiction status of such countries. Reinsurance spreads risk globally. Prudential supervision should recognize that function and its importance to the global economy. Moreover, there is no evidence that life (re)insurers domiciled in the subject jurisdictions have failed to timely deliver on their promises to U.S. ceding insurers. • The potential of having to post 100% collateral retroactively increases uncertainty in the U.S. life reinsurance market, limits risk diversification, emphasizes the lack of predictability in U.S. insurance supervision, and exposes our members doing business in EU member states to retaliatory actions. • In summary, we believe that a continued rational consideration of how the U.S. and EU can work together to overcome any current differences is the best approach. We continue to support the negotiations of a covered agreement with the European Union, with the involvement of state insurance regulators. • First, the rules were adopted because of legislation that was passed, when it was never contemplated that the US would not be deemed equivalent. We do not believe there is any evidence the law and the rules were or are not targeted at the US or US reinsurers. Secondly, the new rules do not impact all transactions and we understand the BaFin is working with companies to minimize the unintended consequences of these new requirements in the run up to this year's renewals. To date, we are not aware of any significant impact on the business opportunities of US reinsurers, although clearly the new rules are not ideal. • We believe that the termination of qualified jurisdiction status for any of the currently approved jurisdictions would be detrimental to the EU/US regulatory relationship and would have adverse consequences on all market participants – US and EU, regulatory and private sector. • Several [trade association] members have asked for an extension to complete a more thorough review of the situation with their reinsurance brokers. We suggest that the working group consider leaving the survey open at least till the end of the year to enable a more complete response. • Of course, for most companies operating only in the U.S. and purchasing reinsurance from a European reinsurer the revocation of qualified jurisdiction status for the countries of domicile will mean the return of 100% collateral which provides a higher level of protection. • Companies are considering the balance of higher collateral requirements with potentially higher pricing than would have been possible without the higher collateral. • With the current excess capital in the global reinsurance market, reinsurance protection pricing is coming down. In such a situation, concerns about a lesser reduction in pricing are not indicating a major concern for surveyed companies. This may only indicate no concern in the short term.

	• Companies have expressed concern about the added complexity of doing business with reinsurers from other countries. • A requirement to subject an entire US group to SII regulation, effects capital levels, financial reporting, ORSA filings. These obligations come at a great cost and result in significant duplication. • For some, European lead regulators have indicated an intent to take over as the groupwide supervisor to control the European reporting and capital requirements – this can mean demanding concentration and control of European insurance operations out of the European holdco; requirements that more senior management/board representation be domiciled in the EU and movement of U.S. jobs to Europe. • U.S. domiciled groups do occasionally operate European reinsurance affiliates and if the domiciliary country of those affiliates is no longer a qualified jurisdiction then they are impacted just as any European reinsurer would be impacted. It might be helpful to identify how often the decision to revoke status would ultimately affect a U.S. domiciled insurance group before acting. • For U.S. based (re)insurers they are expressing concerns about EU restrictions in communications with business partners, restrictions on the use of intermediaries and restrictions on the type of communications that can be used in the solicitation and placement of reinsurance business in the EU. • For U.S. based (re)insurers they report losing business in Netherlands, Poland, Germany and some in the UK. • The extraterritorial imposition of group standards is inconsistent with a global framework. • Unless the issue is resolved, US companies may be faced with a choice between abandoning EU markets or bearing the costs of establishing a branch in the EU. Some of our reinsurer members have said those costs are prohibitive and that, in some cases, the punitive actions taken by EU member countries jeopardize significant amounts of business they write in the EU. At the same time, because the EU is a significant source of reinsurance capacity for the US market, ceding companies are concerned that changes in Qualified Jurisdiction status could constrict reinsurance capacity available to the US marketplace. • The most effective way to resolve the issue would be for the EU to provide for mutual recognition of the US and EU insurance regulatory regimes. We urge regulators and the NAIC to remain in close touch with US negotiators and seek to find ways to avoid taking actions that will exacerbate tensions between the US and the EU if at all possible. At the same time, regulators must be prepared to enforce the requirements of the NAIC Credit for Reinsurance models as they pertain to Qualified Jurisdiction status. • As part of the implementation of Solvency II, U.S. based companies' ability to conduct (re)insurance business in the EU has been negatively impacted. • Unfortunately, BaFin's guidance regarding the limited correspondence insurance exemption was not completely clear, and many German insurers are uninterested or unwilling to satisfy the correspondence insurance requirements in order to do business with U.S. reinsurers. • The issues arising out of the implementation of Solvency II, and the impact on U.S. based companies, are not limited to actions taken by those states that have been designated as Qualified Jurisdictions. • These parent companies and affiliates are professional reinsurers and many have gone to great lengths to become certified in multiple states. They now rely on the reduced collateral requirements afforded by their certified reinsurers in conducting their U.S. business. Some of these companies have ceded substantial business to their certified reinsurer parents and affiliates, and termination of the qualified jurisdiction status of their EU jurisdictions creates regulatory uncertainty, increases the costs of doing business and has the potential to cause considerable disruption to the marketplace. • We also note that the certified reinsurers affiliated with our U.S. member companies are necessarily highly capitalized reinsurers with strong financial ratings. These reinsurers provide capacity for several difficult/volatile risks, such as natural catastrophes. Regulations should encourage their participation in the U.S. market rather than discouraging it by increasing the costs of doing business for them and their U.S. subsidiaries.

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To: John Finston, Chair of the Reinsurance (E) Task Force

From: Brett Barratt, Chair of the Qualified Jurisdiction (E) Working Group

Re: Scope of Business Affected by Changes in Circumstances of Qualified Jurisdictions

Date: December 6, 2016

To provide the Qualified Jurisdiction Working Group and the Reinsurance Task Force with additional context regarding the materiality of any changes in circumstances, NAIC Financial Regulatory Services staff has evaluated financial filings and other company specific information to determine: 1) the amount of assumptions by U.S. reinsurers that are potentially affected by actions related to the implementation of Solvency II by France, Germany, Ireland, and the UK; and 2) the amount of cessions from U.S. reinsurers that potentially would be affected if the Qualified Jurisdiction status would change for France, Germany, Ireland, or the UK.

The information in the tables below is derived from the 2015 annual statements filed by all multi-state insurance companies, as reported through the NAIC Financial Data Repository (FDR), including Property and Casualty Schedule F, Part 1 and 3, and Schedule S, Part 1 and 3.

Table 1 – 2015 U.S. Assumed Premiums from France, Germany, Ireland, and the UK (in $000)	
Germany	$383,750
UK	$4,918,005
Ireland	$542,844
France	$463,469
Total	*$6,308,068*

Table 1 shows the total amount of 2015 written premiums assumed by U.S. reinsurers from insurers domiciled in the UK, Ireland, France, and Germany.

Table 2 – 2015 U.S. Ceded Premiums to France, Germany, Ireland, and the UK (in $000)	
Germany	$8,503,683
UK	$6,429,345
Ireland	$5,930,474
France	$1,423,760
Total	*$22,287,263*

Table 2 shows the total amount of 2015 written premiums ceded from U.S. insurers to reinsurers domiciled in Germany, the UK, Ireland, and France.

Table 3 – 2015 Total U.S. Premiums Ceded to Certified Reinsurers in France, Germany, Ireland, and the UK (in $000)					
	Premium	P/C Reserves	Life Amount In-Force at Year End	Life Reserve Credit Taken Current Year	A&H Reserve Credit Taken Other than for Unearned Premiums
Germany	$7,847,710	$9,178,981	$617,688,872	$456,065	$2,043,722
UK	$4,764,750	$3,059,387	$349,437,979	$2,282,056	$4,293
Ireland	$980,336	$0	$370,851,576	$1,981,440	$0
France*	$0	$0	$0	$0	$0
Total	*$13,592,796*	*$12,238,368*	*$1,337,978,427*	*$4,719,561*	*$2,048,016*

Table 3 shows the total amount of 2015 written premiums, P/C reserves, Life amount in-force at year end, and reserve credit taken for reinsurance ceded from U.S. insurers to all certified reinsurers domiciled in Germany, the UK, Ireland, and France*. The certified reinsurers included in this data are:

- Hannover Rück SE (Germany)
- Munich Reinsurance Company (Germany)
- Legal & General Assurance Society, Ltd. (UK)
- Lloyd's Syndicates (UK)
- Trans Re London (UK)
- Scor Re (Ireland)

*There are currently no certified reinsurers in France

Table 4 – 2015 U.S. Premiums Ceded to Certified Reinsurers in France, Germany, Ireland, and the UK (in $000)					
	Premium	P/C Reserves	Life Amount In-Force at Year End	Life Reserve Credit Taken Current Year	A&H Reserve Credit Taken Other than for Unearned Premiums
Munich Reinsurance Company (Germany)	$5,867,600	$6,359,596	$576,138,794	$263,739	$1,934,683
Hannover Rück SE (Germany)	$1,980,110	$2,819,385	$41,550,078	$192,327	$109,039
Lloyd's Syndicates (UK)	$4,043,859	$3,056,523	$104,499	$424	$4,293
Legal & General Assurance Society, Ltd. (UK)	$717,572	$0	$349,333,479	$2,281,631	$0
Trans Re London (UK)	$3,319	$2,864	$0	$0	$0
Scor Re (Ireland)	$980,336	$0	$370,851,576	$1,981,440	$0
Total	*$13,592,796*	*$12,238,368*	*$1,337,978,427*	*$4,719,561*	*$2,048,016*

Table 4 shows the total amount of 2015 written premiums, P/C reserves, Life amount in-force at year end, and reserve credit taken for reinsurance ceded from U.S. insurers to each of the certified reinsurers in Germany, the UK, and Ireland.