July 26, 2023

**Via Email**

Ms. Katie Johnson  
Virginia Bureau of Insurance  
Chair, NAIC Privacy Protections (H) Working Group (PPWG)

Re: Revised Exposure Draft of the Insurance Consumer Privacy Protection Model Law (the “ICPP Model”) Issued July 11, 2023 (the “July Exposure Draft”)

Dear Ms. Johnson:

This comment letter is submitted on behalf of Underwriters at Lloyd's, London (“Lloyd's”) in response to the July Exposure Draft. The Lloyd’s market is the largest writer of surplus lines insurance in the United States writing business in all 50 states via the 81 syndicates that appear on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC. Lloyd's appreciates the huge amount of work the PPWG has done in its efforts to develop a privacy framework for the insurance sector. However, at the outset we must note disappointment with the accelerated process and timing for consideration of the July Exposure Draft. We appreciate that the PPWG provided significant time for public comment and feedback on the first draft. However, given the breadth of the subject matter the ICPP Model is attempting to address, it must be expected that multiple drafts and minimum 30-day comment periods will be needed in order for all drafting issues to be properly considered and addressed. Endeavoring to meet an artificial deadline for completion of this project will result in a flawed work product which is not fit for purpose. We urge the PPWG to adjust its workplan expectations to allow for a full and transparent public comment process as has always been standard procedure in regard to the drafting of NAIC Model Laws.

**Licensee Definition & Treatment of the Surplus Lines Market**

As Lloyd's noted in our March comment letter, the ICPP Model deviates from the typical definition of “licensee” used in most NAIC models by adding an additional sentence which incorporates unauthorized insurers into the definition of licensee. As we explain further below, Lloyd’s believes that the inclusion of unauthorized insurers in the definition of licensee creates fundamental problems in regard to how the ICPP Model will apply in the surplus lines market. We note that historically unauthorized insurers have not been considered licensees because the licensee in a surplus lines transaction is the surplus lines broker which must be licensed in the home state of the transaction.

Lloyd's has no objection to privacy regulation – we comply with GDPR in our home jurisdiction of the UK – however, if the ICPP Model is to be applied to the surplus lines market it must be done in a way that recognizes the differences in the way surplus lines business is placed and regulated as compared with the admitted market.
The surplus lines market provides coverage for complex risks and is an important source of capacity in US geographies that have significant exposure to natural disasters. It is a secondary market to be accessed when coverage cannot be purchased in the admitted market. As a result, consumers do not deal directly with surplus lines insurers. Rather it is surplus lines brokers that gather the information needed to determine the right placement option for a consumer. With this background of how surplus lines transactions are conducted in mind, Lloyd's suggests that unauthorized insurers should be removed from the definition of licensee. A surplus lines insurer that obtains consumer personal information from a surplus lines broker would then be considered a third party service provider under the ICPP Model. This is appropriate since surplus lines insurers only obtain consumer information through the brokers that place business with them who are themselves licensees under the ICPP Model.

**Insurer Definition**

We believe it is the intention of the PPWG to exclude reinsurance from the ICPP Model. This is logical since the purpose of the ICPP Model is to protect consumer information and reinsurance transactions do not involve such information. However, the definition of insurer as currently drafted excludes only “foreign-domiciled reinsurers.” Lloyd's recommends that the definition of insurer in Section 2(W)(4) be revised to also exclude “alien-domiciled reinsurers” to make clear that reinsurers domiciled outside the United States are not subject to the insurer definition, just as is the case with foreign reinsurers, i.e. US reinsurers domiciled outside the adopting state.

**Adverse Underwriting Decision**

Lloyd's respectfully suggested that the inclusion of Section 14 Adverse Underwriting Decisions in a Model designed and intended to address privacy of consumer information is inappropriate. Consumer privacy is a broad and complex topic as the PPWG knows. It is not practical to attempt to cover another topic as challenging and detailed as providing transparency in underwriting decisions within the same Model Law and during the same drafting and comment process. These topics both deserve the full attention and careful consideration of interested parties. Yet it is clear that Section 14 has received little attention thus far. To be clear, Lloyd’s believes that Section 14 should be removed from the ICPP Model. We reiterate below comments we made in our March comment letter to highlight the problems that exist with Section 14 as currently drafted.

As previously mentioned, the ICPP Model deviates from the typical NAIC definition of a licensee by including unauthorized insurers, also known as nonadmitted insurers, in the definition of licensee. At the same time, the definition of “adverse underwriting decision” in Section (B)(1)(d)(i) says that an adverse underwriting decision includes, “Placement by an insurer or producer of a risk with a…non-admitted insurer, or an insurer that specializes in substandard risks.” In this framework, with unauthorized/nonadmitted insurers both a licensee and within the adverse underwriting regime, if a state were to adopt Section 14, then surplus lines carriers, such as Lloyd’s, would be obligated to notify their clients that by virtue of having Lloyd’s coverage they have been subject to an adverse underwriting decision. This would be a perverse and punitive requirement, which is not supported in fact. Additionally, nonadmitted insurers are already required to provide notices that highlight for consumers the differences between admitted and nonadmitted coverage.

The obvious way to fix this problem is to remove unauthorized/nonadmitted insurers from the definition of licensee. However, even if this change is made, Lloyd’s believes the PPWG must reconsider the proposed definition of “adverse underwriting decision” as it does not reflect the commercial realities of insurance markets in certain geographies within the US. Lloyd’s rejects the suggestion that coverage provided by a nonadmitted insurer is in any way “adverse.” Indeed, many consumers, regulators, and
legislators would also not consider coverage with a nonadmitted insurer to be adverse, harmful, or a negative outcome. Securing coverage from a nonadmitted insurer is often the difference between a consumer either going without coverage entirely or procuring coverage from a state-backed residual market. In areas subject to hurricanes and wildfires, nonadmitted insurers, such as Lloyd’s, provide an important source of capacity where admitted markets have pulled back. These nonadmitted carriers are providing a valuable service by providing insurance where others will not, and in so doing are helping to close the protection gap – something the NAIC has spent years trying to achieve and is one of its 2023 objectives. These nonadmitted insurers should not at the same time be subject to the pejorative label of an “adverse underwriting decision.”

Lloyd’s appreciates the opportunity to offer these comments and would be glad to discuss them further with the Working Group.

Very truly yours,

Sabrina Miesowitz
General Counsel

Timothy W. Grant
Associate General Counsel