TO:	Reinsurance (E) Task Force Members, Interested Regulators and Interested Parties
FROM:	Ryan Couch, NAIC
DATE:	September 12, 2008
SUBJECT:	Reinsurance (E) Task Force Activities

1.

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Purpose and Structure

2. U.S. insurance regulators have developed a framework that would allow for a state with the appropriate regulatory

b. As a POE reinsurer;

c. Under Section 2 of the current NAIC Model Credit for Reinsurance Law, as an assuming reinsurer that is licensed, accredited, or otherwise meets the requirements within Section 2 of the current NAIC Model; or

d. Under Section 3 of the current NAIC Model Credit for Reinsurance Law, as an assuming reinsurer (U.S. or non-U.S.) that does not meet the requirements within Section 2 of the current NAIC Model, by posting the required collateral.

8. The proposed reinsurance regulatory modernization initiative, including changes to collateral requirements and any amendments to current credit for reinsurance rules, will apply only to reinsurance contracts entered into or renewed on or after the effective date of this proposal**.** An appropriate implementation period will be developed.

Role, Structure and Requirements of the RSRD

9. The supervisory board of the RSRD will consist of state insurance regulators and will:

a. facilitate communication and dispute resolution among home state, host state, POE, and other supervisors;

b. maintain, revise and update collateral reduction eligibility criteria; and

c. establish uniform standards for home state and POE supervisors.

10. The functions and requirements of the RSRD will include but not be limited to the following:

a. The RSRD will be the repository for relevant data concerning reinsurers (U.S. and non-U.S) and the reinsurance markets;

b. The RSRD will evaluate the supervisory regimes of non-U.S. jurisdictions, both initially and on an ongoing basis, consider the rights, benefits and the extent of reciprocal recognition afforded by non-U.S. jurisdictions to reinsurers licensed and domiciled in the U.S., determine the appropriate supervisory recognition approach for such jurisdictions, and create a list of jurisdictions eligible to be recognized by POE states. The IAIS Guidance Paper on Mutual Recognition should serve as a reference document for this purpose;

c. The RSRD will develop a sample supervisory recognition agreement and a protocol for recognition;

d. The RSRD will develop a sample information sharing and regulatory cooperation agreement between the non-U.S. jurisdiction and the POE supervisor;

e. The RSRD will develop the criteria for a state to qualify as a home state or POE supervisor which will include but not be limited to the following:

i. Appropriate staff expertise (reinsurance contract law, international accounting, reinsurance industry, etc.);
ii. Accreditation through the NAIC's Financial Regulation Standards and Accreditation Program or financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation;
iii.

g. The following contractual clauses shall be mandatory for both ceding insurers and reinsurers:

i. **Parties to the Agreement Clause** - would stipulate that the policyholder is not ordinarily a party to the reinsurance contract, and does not have direct rights against the reinsurer.

ii. **Net Retained Lines Clause –** would clarify which portion of the company's business will be subject to the agreement and states the uncollectibility of other reinsurance.

iii. **Premium Clause –** would state the method of calculating premiums and the schedule of payments.

iv. **Reinsurance Intermediary Clause –** would stipulate that the credit risk for the intermediary is on the reinsurer. In other words, payment from the ceding company to the broker is deemed paid to the reinsurer. However, payment to the broker from the reinsurer does not relieve the obligations of the reinsurer to the ceding company.

v. Service of Suit Clause – National reinsurers and POE reinsurers must designate their home state or POE state Insurance Commissioner as their legal agent for the service of process.

vi. **Insolvency Clause –** Reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company.

vii. **Credit for Reinsurance Clause –** This clause would read as follows:

> "If, at any time, the reinsurance provided by a Reinsurer participating in this Contract does not qualify for full statutory accounting credit for reinsurance such that a financial statement penalty to the Company would result on any statutory statement or report the Company is required to make or file with insurance regulatory authorities (or a court of law in the event of insolvency), the Reinsurer shall secure the Reinsurer's share of Obligations by the posting of such collateral as may be required to avoid the imposition of the aforementioned financial statement penalty by those authorities in a manner, form, and

f. initiating enforcement actions against its national reinsurers and notifying all host state supervisors immediately of any enforcement action, formal or informal, taken; and

g. receiving an annual fee from each national reinsurer it supervises.

Role of the Port of Entry Supervisor

12. The POE supervisor shall be responsible for:

a. entering into a supervisory recognition framework with

e. At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers; and

f. Any other information that the POE supervisor may reasonably require.

Role of Host State Supervisors

14. In addition to the normal regulatory duties, the host state supervisor shall:

a. have the right to request specific analysis and/or examination procedures performed by the home state supervisor and the right to receive completed financial analysis

16. Because of the prudential U.S. reinsurance regulatory requirements designed to protect policyholders and to ensure the integrity and stability of the U.S. financial system, national reinsurers would not have to post any collateral for those rated by their home state supervisors in the Secure - 3 tier or above. For those national reinsurers rated in the Secure - 4 tier, 75% collateral would be required and for those in the Vulnerable – 5 tier, 100% collateral would be required. A significant basis for this determination is that U.S. domiciled reinsurers are required to maintain capital in the U.S. well in excess of 100% of their reinsurance liabilities in order to meet U.S. licensing standards and U.S. Risk Based Capital requirements. In addition, U.S. domiciled reinsurers are currently subject to a number of regulatory rules developed by the states through the NAIC's Model Law process, all of which have been deemed necessary to adequately regulate and monitor the financial condition of reinsurers. These include on-site financial examinations, analysis of financial statements, application of the NAIC's Insurance Regulatory Information System, limitations on dividends, review of inter-company transactions, investment diversification and limitation rules, annual audited statutory financial statements, and many other regulatory rules.

17. Within two years after the first full year of operations under the new collateral requirements, the RSRD will be required to undertake a re-examination of the collateral requirements and make recommendations with respect to the appropriate collateral amounts for national and POE reinsurers including, with regard to POE reinsurers, due consideration of the level of equivalence of prudential regulation and effective market access in the POE reinsurer's jurisdiction.

18. With respect to reinsurance contracts entered into or renewed on or after the effective date of this proposal, a ceding insurer may elect to take credit, in accordance with the provisions of this proposal, for reinsurance ceded to a national or POE reinsurer which maintains a financial strength rating from at least two of the rating agencies listed below:

a. Standard & Poor's;
b. Moody's Investors Service;
c. Fitch Ratings;
d. A.M. Best Company; or
e. any other rating agency approved by the U.S. Securities and Exchange Commission (SEC).

19. As part of the evaluation process, factors to be considered by the home state or POE supervisor in determining the appropriate rating of a reinsurer shall include but not be limited to the following:

a. The reinsurer's financial strength rating from an SEC-approved rating agency. The maximum rating that a reinsurer may be assigned will correspond to the reinsurer's financial strength rating as outlined in the table below. The POE or home state supervisor shall use the lowest financial strength rating received from an SEC-approved rating agency in establishing the maxie.

[Note: The NAIC Statutory Accounting Principles Working Group shall establish an audited footnote for the respective NAIC annual filing blank.]

21. The home state or POE supervisor will require all reinsurers to post 100% collateral upon the entry of an order of