

Ongoing Developments in Reinsurance Modernization

The Reinsurance Task Force of the National Association of Insurance Commissioners met on March 15, 2009, at the NAIC Spring 2009 National Meeting. During the meeting, the Task Force discussed the implementation of the Reinsurance Regulatory Modernization Framework, including requisite federal and state legislation, and adopted motions to expose for comment a proposed amendment to the NAIC Credit for Reinsurance Model Law and Guidance Regarding Reinsurance Collateral Requirements (Guidance Memorandum). The proposed legislation, amendment to the model law and the Guidance Memorandum are now available for public comment.

As we have previously reported, in December 2008 the NAIC adopted the Reinsurance Regulatory Modernization Framework to modernize current state-based regulation of reinsurance (see our Reinsurance Alert dated December 2008, available at www.drinkerbiddle.com). Following the adoption of the Framework, the Task Force began drafting federal legislation necessary for its implementation and discussed this effort at the Spring Meeting. On March 24, 2009, the Task Force exposed for public comment draft legislation entitled the "Reinsurance Regulatory Modernization Act of 2009." After an abbreviated comment period, the NAIC plans to submit the draft for consideration by Congress during the current session. The draft is available at www.naic.org/committees_e_reinsurance.htm, and comments are due by April 23, 2009.

The draft legislation would enact the Reinsurance Regulatory Modernization Framework adopted by the NAIC into federal law. Among other things, the draft would:

- > Establish two classes of reinsurers in the United States: National Reinsurers and Port of Entry Reinsurers;
- > Authorize a certification mechanism allowing states demonstrating the requisite resources, expertise and experience to serve as "Home State" and "Port of Entry" supervisors;
- > Permit states acting as "Port of Entry" supervisors to enter into reciprocal recognition agreements, thereby eliminating constitutional concerns based on the Compact Clause, which prohibits states from entering into "any Agreement or Compact with another State, or with a foreign Power," without the consent of Congress;

- > Require reinsurers to have minimum capital and surplus of \$250 million to be eligible as a National or Port of Entry Reinsurer, which can be satisfied on a group basis; and
- > Establish National and Port of Entry Reinsurer collateral requirements for domestic ceding insurers to take credit for reinsurance, and require a “Host State” (the state in which a cedent is domiciled) to grant credit for reinsurance ceded to a National or Port of Entry Reinsurer.

The draft legislation also would authorize the creation of the NAIC Reinsurance Supervision and Review Board to oversee the new regulatory regime. The Board would be a nonprofit corporation owned by or affiliated with the NAIC, and administered by the NAIC. The Board, among other things, would evaluate supervisory systems of the states and non-U.S. jurisdictions and develop sample reciprocal recognition agreements to be entered into with qualified non-U.S. jurisdictions. To achieve timely and uniform adoption of the Framework by the states, the legislation would preempt all inconsistent state laws, regulations, provisions and actions.

The Task Force also discussed other aspects of the implementation process, including the need to draft model state legislation for adoption by those states that wish to act as supervisors under the Framework. During the Spring Meeting, the Task Force requested input from regulators and interested parties on the standards that will be required for such supervisors and included in the state legislation.

Apart from developments related to the Framework, the Task Force adopted motions to expose for comment a proposed amendment to the NAIC Credit for Reinsurance Model Law and the Guidance Memorandum. The amendment and Guidance Memorandum are available at www.naic.org/committees_e_reinsurance.htm.

- > The proposed amendment to the Credit for Reinsurance Model Law would authorize the reduction of the minimum trustee surplus requirement applicable to a multiple-beneficiary trust maintained by an assuming insurer in a run-off. The minimum required trustee surplus, however, may not be reduced to an amount less than 50 percent of the assuming insurer’s liabilities attributable to reinsurance ceded by U.S. ceding insurers.
- > In the exposure draft of the Guidance Memorandum, the Task Force sought to clarify the authority granted to state Insurance Commissioners under the NAIC Credit for Reinsurance Model Law and the Credit for Reinsurance Model Regulation to accept “any other form of security acceptable to the commissioner,” and to determine that a financial institution meets the criteria to be considered a “Qualified U.S. Financial Institution” for the purposes of issuing or confirming letters of credit or for holding assets in trust on behalf of a U.S. ceding company.

Comments to each of the exposure drafts discussed in this memorandum are due to the Task Force by April 23, 2009. The Task Force will hold an interim meeting in early May, primarily to discuss comments to the draft Reinsurance Regulatory Modernization Act, and will likely schedule another meeting to discuss comments to the other exposure drafts for a later date. We will be following developments on these fronts and would be

happy to discuss with you how the proposed legislation, proposed amendment to the Credit for Reinsurance Model Law or collateral guidance may impact your operations.

For more information about the recent developments in reinsurance, please contact Daniel W. Krane at (215) 988-2488 or Daniel.Krane@dbr.com, or your regular Drinker Biddle contact. Drinker Biddle, a national law firm with nearly 700 lawyers in 12 offices nationwide, concentrates on providing clients with the best possible service in areas such as insurance and reinsurance, including corporate, transactional and regulatory matters for insurers and reinsurers.

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