SEAN MCGOVERN
Director, Risk Management & North America
General Counsel

LLOYD'S

To: EUUSProjectReport@eiopa.europa.eu

Dear Sirs

Public comment on the Technical Committee Reports published by the EU-US Dialogue Project

Lloyd's is making this submission in response to the request by the Steering Committee of the EU-US Dialogue Project for public input regarding its Technical Committee Reports, published on 27 September, 2012.

Lloyd's takes great interest in regulatory developments in the European and US insurance and reinsurance market and welcomed the opportunities to present at the Steering Committee's hearings in Washington DC on 12 October and Brussels on 16 October. Lloyd's greatly appreciates the significant amount of work and effort which has gone into preparing the seven Technical Committee Reports. We welcome the Steering Committee's consideration of these comments and hope they will assist in considering how the EU and US insurance and reinsurance supervisory regimes can move towards greater convergence to help further transatlantic trade and interests.

Our detailed comments are attached.

Yours faithfully

Sean McGovern

Lloyd's One Lime Street London EC3M 7HA www.lloyds.com
Telephone +44 (0)20 7327 6142 Mobile +44 (0)7710 393203 Email sean.mcgovern@lloyds.com

1. Introductory remarks

Lloyd's greatly appreciates the thorough and detailed work undertaken by the Steering Committee in preparing the Technical Committee Reports on Comparing Certain Aspects of the Insurance Supervisory and Regulatory Regimes in the European Union and the United States, as part of the EU-US Dialogue Project (the 'Project') launched in early 2012. Lloyd's welcomes the opportunity to comment on the Project's preliminary findings, both through the presentations we gave at the Steering Committee's hearings in Washington DC on 12 October and Brussels on 16 October, and this written submission which builds upon our thinking further. We particularly welcome the Project's commitment to a transparent and open consultation process with key interested parties and hope that this model continues moving forward.

Lloyd's is strongly supportive of the Project's stated aims to increase *'mutual understanding and enhanced cooperation between the EU and US to promote business opportunity, consumer protection and effective supervision.'* [1]

The seven Reports are valuable in documenting the principal commonalities and differences between the EU and US regulatory regimes. It is clear from the Reports that the EU and US have broadly similar objectives in what insurance and reinsurance regulation and supervision should aim to achieve, even when the detail differs between the two regimes. The Reports also provide a solid basis for discussing how progress might be taken forward in the areas covered.

As with our oral presentations at the hearings, we will focus our comments here on the Technical Committee Report on Reinsurance and Collateral Requirements. Lloyd's believes that this issue deserves to be front and centre of those outstanding issues to be resolved given the ongoing costs that the current rules generate for non-US licensed reinsurers and length of time this issue has already been discussed without resolution.

Solvency II and Solvency Modernization Initiative

This Project is particularly timely and appropriate as both the EU and US are engaged in major revisions of their regulatory frameworks and supervisory regimes through the EU's Solvency II Directive (2009/138/EC) and the associated rules and legislation. In the US, the National Association of Insurance Commissioners (NAIC) is working to enhance the US solvency framework through its Solvency Modernisation Initiative (SMI).

[1] Page 1of Request for the EU-US Dialogue Project

Desirability of convergence in regulatory approaches

Lloyd's believes that it is highly desirable and mutually beneficial that the EU and US economies should seek greater convergence in their regulatory approaches and supervisory regimes for reinsurance in order to remove barriers to trade and commerce. Transatlantic trade and investment constitutes the largest economic relationship in the world. The insurance and reinsurance sector plays a vital role in this economic relationship, with combined EU and US insurance and reinsurance markets representing over two-thirds of current global premium income. In order to fulfil its economic risk-spreading role, reinsurance must be able to operate freely across international borders. The global nature of the reinsurance industry highlights the need for the international regulatory and supervisory community to move towards a common approach in the treatment of reinsurance transactions. As part of this move, we see particular significance in the EU and US developing a combined voice to shape broader international debates on supervisory and trade issues.

2. Reinsurance and Collateral Requirements

Lloyd's shares and endorses the broad summary of key commonalities and differences between the approaches of the US and EU regulatory and supervisory regimes on reinsurance and collateral requirements set out in Technical Committee Report 4 ('TC4'). Notwithstanding some additional comments below, we accept the accuracy of the main topics analysed in comparing the two regimes.

We do, however, believe that simply contrasting the two regimes is not enough and that we must not lose sight of the stark difference and continuing discriminatory treatment of alien reinsurers in the US. The US credit for reinsurance framework has been debated for at least 12 years and has continued to be a major concern for non-US reinsurers. In almost every US state, non-US reinsurers are still required to post 100% statutory collateral. Whilst the steps taken by the National Association of Insurance Commissioners ('NAIC') and some individual States are to be welcomed as important first steps, we believe there are some fundamental flaws with the Model Credit for Reinsurance Law and regulation (the 'Revised Model') and its implementation.

We believe that the goal of the Project should be to achieve full parity of treatment for reinsurers across the EU and US, where there are no statutory collateral requirements for approved reinsurers under either supervisory regime when trading into the other's jurisdictions.

NAIC Model Law

Lloyd's welcomed the recognition several years ago by the NAIC of the need to modernise its credit for reinsurance rules in the US. In November 2011, after over a decade of debate, the NAIC adopted the Revised Model. However, Lloyd's has detailed a number of concerns with the Revised Model in submissions to the NAIC. At the most basic level, the Revised Model perpetuates the discriminatory treatment of non-US reinsurers because it continues to require foreign reinsurers with very strong financial strength ratings to post some percentage of statutory collateral. The Revised Model reduces but does not eliminate statutory collateral requirements for non-US licensed insurers.

In stark contrast, as the report notes, 25 of the 27 EU Member States do not apply statutory collateral requirements to cross-border US reinsurers. Furthermore, Solvency II will prohibit all Member States from requiring statutory collateral in reinsurance arrangements with companies located in equivalent third countries. Such decisions in the EU on third country equivalence will be taken by the European Commission and will be binding across all Member States while in the US collateral reduction is optional on the part of individual States. This has created inequitable treatment of foreign reinsurers in the US compared to their counterpart US reinsurers acting on a cross-border basis into the EU. Lloyd's has long advocated that no statutory collateral should be required of financially strong foreign reinsurers.

Another major problem with the Revised Model is that its implementation is voluntary, as acknowledged by TC4. The NAIC has not made adoption of the Revised Model a condition of NAIC accreditation.

Even for States that intend to implement the Revised Model there is no timeframe within which they must do so. As a result, it will likely be years before a majority of States adopt the Revised Model.

State implementation of revised NAIC Model Law

Already, implementation efforts have borne out many of these concerns. Although TC4 states that 11 States have enacted reduced collateral provisions, it is our understanding that only four – Florida, New Jersey, New York and Virginia – have enacted all the necessary implementing measures to give practical effect to reform. We congratulate those States which have enacted necessary legislation but there is a long way to go with the majority of States yet to initiate any type of collateral reform.

There are significant variations in implementation among the States which have enacted collateral reform and Lloyd's believes that it may result in greater reinsurance regulatory inconsistency among the States. The arduous struggle for consensus meant that the international reinsurance industry was hopeful that the Revised Model would be a solution to the collateral problem. However, the actions some States have taken when implementing the Revised Model suggest that a uniform result will not be reached. For example, some States have limited collateral reform to certain lines of business and each State Commissioner is able to make an assessment in respect of cedants in their State alone, often on subjective grounds.

In maintaining a competitive disadvantage for non-US reinsurers, and leaving Commissioners substantial discretion in whether and how they apply the Model, the outcome will not be an equitable, uniform or universally applied regulatory environment for EU reinsurers.

The way forward: Covered agreement on prudential issues

We note that TC4 references, on page 80, the powers conferred on the US Secretary of the Treasury and the US Trade Representative to negotiate and enter into bilateral or multilateral agreements regarding prudential matters with respect to reinsurance. We welcome continuing reforms at State level but we believe that the conclusion of a "covered agreement" on prudential issues between the US and the EU, as provided for under the Dodd-Frank Act, appears to be the only realistic route by which this issue can ultimately be satisfactorily and uniformly resolved.

We were surprised that TC4 made no references to the US Federal Insurance Office's statutory powers to pre-empt provisions at State level which treat non-US reinsurers less favourably. This power could be used as a means of promoting mutual recognition in reinsurance regulation. Congress indeed intended this authority to be used to deal with reinsurance collateral, as demonstrated in the explanatory statement of the Dodd-Frank Act Conference Report, which stated:

> *The Federal Insurance Office Act of 2010 expressly provides the Secretary of the Treasury, jointly with the USTR, the authority to negotiate and enter into international insurance agreements. To assure uniform, national application of prudential measures* ***such as reinsurance collateral requirements****, the Federal Insurance Office Act provides the Director with the authority to identify and narrowly preempt state insurance measures inconsistent with a defined category of international insurance agreements.*[2] (emphasis added)

[2] H.R. Rep. No. 111-517, at 867-868 (2010) (Conf. Rep.).

Concluding remarks

Lloyd's would like to thank the Steering Committee for its commitment to engaging in open and constructive dialogue with interested parties on the insurance and reinsurance supervisory regimes in the EU and US. We acknowledge that the issues raised are challenging but welcome the Steering Committee's consideration of these comments. We look forward to continuing dialogue with the Steering Committee as we move towards the second phase of the Project and discuss how greater harmonization in regulation and supervision can be achieved across the two regimes.