Statutory Accounting Principles (E) Working Group
Summer National Meeting
Comment Letters Received

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May 31, 2023

Mr. Dale Bruggeman, Chairman
Statutory Accounting Principles Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
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RE: Interested Parties' Proposal for Statutory Accounting for CAMT

Dear Mr. Bruggeman:

Interested parties would like to thank you for the continued meetings with the Statutory Accounting Principles Working Group (SAPWG) staff to discuss the interested parties' proposal for accounting for the Corporate Alternative Minimum Tax (CAMT). Over the past five months, interested parties has provided materials illustrating its proposal.

Interested parties is now providing a draft of suggested language for a recommended Interpretation addressing the statutory accounting for the CAMT. This draft is intended to aid the SAPWG staff by providing the interested parties' proposal in direct language suitable for an Interpretation. The draft Interpretation is more detailed than the previously provided material and also includes transitional guidance, as well as suggested disclosures. We believe this detailed language should help prevent different interpretations among the industry and the accounting firms.

In drafting this proposal, interested parties followed the guiding principles that you previously communicated. First, given that CAMT only applies to a limited number of large and profitable companies, *SSAP No. 101 – Income Taxes* does not need to, and should not, be opened and rewritten. Although guidance is necessary to address how the consolidated tax should be accounted for under statutory accounting, revising *SAAP No. 101* is not necessary as this draft clarifies the existing guidance in SSAP No. 101. Following this guiding principle, interested parties drafted guidance through an Interpretation, leaving *SSAP No. 101* intact. Next, given that the CAMT is calculated based on consolidated book income and not taxable income, you suggested the use of the tax sharing agreement to bridge the CAMT calculation to the separate company statutory statements. As such, the proposed Interpretation relies on tax sharing agreements to allocate the consolidated CAMT for purposes of the admittance calculation. In addition, all insurance companies will have different organizational structures, various book income starting points (U.S. GAAP, STAT or IFRS), and other facts and circumstances that will lead to unique situations under the CAMT. To avoid situational guidance, you indicated the solution should be principles-based and cover all insurance companies. By using a hierarchy of filers, the proposal covers all insurance companies without the need to address company specific issues. Finally, you suggested the solution should be developed between the working group and the industry, not external audit firms. Utilizing industry and working group representatives to develop the guidance prevents external audit firms from deviating in how they require insurance companies to account for the CAMT.

Thank you for the attention you have given to the impact that CAMT will have on statutory accounting and for considering the interested parties' proposed treatment.

Please feel free to contact either one of us with any questions you may have.

Sincerely,

D. Keith Bell Rose Albrizio

cc: Interested parties
NAIC staff

Interpretation of the
Statutory Accounting Principles (E) Working Group

INT 23-XX: Inflation Reduction Act – Corporate Alternative Minimum Tax

INT 23-XX References

Current:
SSAP No. 3 – Accounting Changes and Corrections of Errors
SSAP No. 9 – Subsequent Events
SSAP No. 101 – Income Taxes

INT 23-XX Issue

Key Provisions of the Inflation Reduction Act

1. The Inflation Reduction Act (Act) was enacted on August 16, 2022 and included a new corporate alternative minimum tax (CAMT). The CAMT is effective for tax years beginning after December 31, 2022. Reporting entities shall refer to the Act and the related regulations and other tax guidance to determine application, but a non-authoritative high-level summary regarding the CAMT is as follows:
    a. The tentative CAMT is 15% of the corporation's "adjusted financial statement income" for the taxable year, reduced by the CAMT foreign tax credit for the taxable year.
    b. The CAMT applies only to corporations (determined on a controlled group basis as defined for Federal income tax purposes) with average annual adjusted financial statement income in excess of $1 billion for three prior taxable years. The threshold is reduced to $100 million in the case of certain foreign-owned corporations. A corporation that meets the applicable threshold is an "applicable corporation." Applicable corporations generally remain applicable corporations for subsequent taxable years, unless certain limited exceptions apply.
    c. A corporation's adjusted financial statement income is the amount of net income or loss the corporation reports on it applicable financial statement, adjusted by various enumerated adjustments.
    d. The Act provides a hierarchy for determining the applicable financial statement. At a high level, the first choice is U.S. generally accepted accounting principles (GAAP) financial statements; the second choice is international financial reporting standards (IFRS) financial statements. If GAAP and IFRS financial statements are not available, the financial statements filed by the taxpayer with any other regulatory or governmental body is acceptable. If the taxpayer is part of a tax-controlled group of corporations, the group's applicable financial statement is the applicable financial statement for each member of the group.

e. To determine its U.S. federal income tax liability, a corporation will need to compute taxes under both systems – the regular tax system and the CAMT system. The CAMT is payable to the extent the tentative CAMT exceeds the sum of the regular corporate income tax plus the base erosion anti-abuse tax (BEAT). Any CAMT paid is available indefinitely as a credit carryover that would reduce regular tax in future years when the regular tax liability is in excess of CAMT tax liability.
f. The Act directs the Treasury to issue regulations and other guidance relating to implementing the CAMT, and many issues are pending detailed clarification, including issues that are unique to the insurance industry.

Interpretation Issues

2. This interpretation addresses statutory accounting and reporting aspects of the CAMT for year-end 2023 and subsequent reporting periods. While most insurers will not be applicable corporations, this interpretation provides comprehensive statutory accounting guidance for all reporting entities with respect to the CAMT. This interpretation incorporates a principles-based approach which progressively categorizes reporting entities for purposes of statutory accounting for the CAMT so that each step in the interpretation is dependent on the prior steps.

3. Although it is likely that most insurers that are applicable corporations will be members of a tax-controlled group of corporations and included in a consolidated Federal income tax return with other members of the group, this interpretation applies to all reporting entities, whether an unaffiliated corporation[1] that files a separate tax return, a member of a tax-controlled group not included in the common parent company's consolidated tax return that files a separate company tax return or a separate consolidated tax return with other members of the group, or as a member of the common parent's consolidated return group. For reporting entities that are included in a consolidated tax return, the fundamental statutory tax accounting issue for the CAMT is how to reflect in the reporting entity's separate company financial statements a portion of what is essentially an add-on tax for a consolidated tax return group that is based on the group's financial statement income. Unlike the alternative minimum tax (AMT) that applied under pre-2018 tax law, the new CAMT does not apply to every corporation and is not based on the corporation's regular taxable income with adjustments for minimum tax purposes. Instead, the determination of whether the CAMT applies is made on a tax-controlled group basis (scope determination), the tentative CAMT is based on the group's adjusted financial statement income (not adjusted regular taxable income), and any tax actually due (liability determination) is based on a comparison of consolidated tentative CAMT to consolidated regular tax. Even if a member of a tax-controlled group of corporations files its own separate Federal income tax return, the tax law does not provide for a separate company scope determination, but rather looks to the tax-controlled group for applicable corporation status and determination of the applicable financial statement.

[1] As used herein, an "unaffiliated" corporation is one that is not a member of a tax-controlled group.

4. As described in the rules below, this interpretation is based on the principle that the statutory tax accounting for the CAMT for reporting entities included in a consolidated tax return should be matched to the CAMT charges and credits that actually are expected to be paid by or to the reporting entity. For such reporting entities, this interpretation applies the provisions of the intercompany tax allocation agreement (also referred to as a tax sharing agreement or TSA) that governs allocation of consolidated taxes to individual members of the group.
    a. Paragraph 16. of *SSAP No. 101* provides that in the case of a reporting entity that files a consolidated income tax return with one or more affiliates, income tax transactions between the affiliated parties shall be recognized if such transactions are economic transactions as defined in *SSAP No. 25;* are pursuant to a written TSA; and income taxes incurred are accounted for in a manner consistent with the principles of FAS 109 (the forerunner of what is now ASC 740), as modified by *SSAP No. 101*.
    b. This interpretation provides the applicable statutory tax accounting rules for the CAMT for a reporting entity that is included in a consolidated tax return and is subject to a TSA. In such case, the rules are applied consistently with the modifications to ASC 740 pursuant to both *SSAP No. 101* and this interpretation, and CAMT expense or benefit is recognized in accordance with the TSA.
    c. Consistent with paragraph 4 of *SSAP No. 3 – Accounting Changes and Corrections of Errors*, application of this interpretation shall not be considered a change in accounting principle.

INT 23-XX Discussion

5. A reporting entity is an "applicable corporation" for purposes of this interpretation if, either as an unaffiliated corporation or as a member of a tax-controlled group of corporations, the reporting entity is an "applicable corporation" as defined for CAMT purposes in the tax code or guidance thereunder. With limited exceptions, once a corporation is an applicable corporation under the tax law, it remains an applicable corporation for subsequent taxable years and for purposes of this interpretation. Applicable corporation status means that CAMT must be tentatively determined and compared to regular tax liability. However, no CAMT is actually payable unless tentative CAMT exceeds regular tax liability. CAMT in excess of regular tax liability gives rise to a credit that is carried forward indefinitely for use when regular tax liability exceeds CAMT.

<u>Categories of Reporting Entities</u>

6. In an annual determination, all reporting entities are separated into one of four categories – the first three of which are not required to account for CAMT in determining current or deferred income taxes under *SSAP No. 101*.
    a. Category a. consists of unaffiliated reporting entities that do not reasonably expect to be an applicable corporation for the taxable year that includes the reporting period. A reporting entity that was an applicable corporation for the preceding taxable year is deemed to reasonably expect to be an applicable corporation for

the current taxable year, unless one of the tax law exceptions to continued applicable corporation status applies. Category a. reporting entities are not required to recognize CAMT in any current or deferred tax computations under *SSAP No. 101*. Accordingly, non-applicable corporation status for the current reporting period applies both for purposes of determination of current taxes and determination of the amount “expected to be realized within the applicable period” in the admitted DTA calculation in paragraph 11.b.i. of *SSAP No. 101.*

b. Category b. includes a reporting entity that is a member of a tax-controlled group of corporations, and the tax-controlled group does not reasonably expect to be an applicable corporation for the taxable year that includes the reporting period. As with category a. reporting entities, a category b. reporting entity that is a member of a tax-controlled group of corporations that was an applicable corporation for the preceding taxable year is deemed to reasonably expect to be an applicable corporation for the current taxable year, unless one of the tax law exceptions to continued applicable corporation status applies. On the other hand, because the tax law does not provide for a separate company scope determination for members of a tax-controlled group, but instead determines applicable corporation status on a tax-controlled group basis, a category b. reporting entity is not required to make a separate company scope determination as if it was an unaffiliated corporation. Like category a. reporting entities, category b. reporting entities are not required to recognize CAMT in any current or deferred tax computations under *SSAP No. 101*, and non-applicable corporation status for the current reporting period applies both for purposes of determination of current taxes and determination of the amount “expected to be realized within the applicable period” in the admitted DTA calculation in paragraph 11.b.i. of *SSAP No. 101.*

c. Category c. includes a reporting entity that is a member of a tax-controlled group of corporations, and the tax-controlled group reasonably expects to be an applicable corporation for the taxable year that includes the reporting period. However, the reporting entity is included in a consolidated Federal income tax return with other members of the tax-controlled group and is a party to a TSA that is in effect for the reporting period and pursuant to the terms of which the category c. reporting entity i) is excluded from charges for any portion of the group’s CAMT, and ii) is not allocated any portion of the group’s utilization of CAMT credit carryover. Paragraph 8.3 of *SSAP No. 101 Exhibit A – Implementation Questions and Answers* (Q&A) is not applicable to Category c. reporting entities with respect to the CAMT. Like category a. and b. reporting entities, category c. reporting entities are not required to recognize CAMT in any current or deferred tax computations under *SSAP No. 101*, and this accounting treatment for the current reporting period applies both for purposes of determination of current taxes and determination of the amount “expected to be realized within the applicable period” in the admitted DTA calculation in paragraph 11.b.i. of *SSAP No. 101.* See *Example 1d* in paragraph 10.b. of this interpretation for an illustration.

d. Category d. includes all other reporting entities. Accordingly, category d. includes a reporting entity that reasonably expects to be an applicable corporation for the taxable year that includes the reporting period, either as an unaffiliated corporation or as a member of a tax-controlled group of corporations if, in the latter case, the reporting entity is not included in category c. A category d. reporting entity may be the common parent company of a consolidated return group. It may also be a member of an affiliated group of corporations (as defined for Federal income tax purposes) but excluded from the consolidated tax return and filing its own separate return (if, for example, the reporting entity is a life insurance company and i) the group has not made a "life-nonlife" consolidated return election, or ii) the reporting entity has been recently-acquired and is excluded from the life-nonlife consolidated return for a period of 5 years). Category d. reporting entities are required to consider CAMT in *SSAP No. 101* current and deferred tax computations in the manner set forth in the following paragraphs. Because CAMT is not payable by an applicable corporation unless it is in excess of regular tax liability, the calculations under category d. may or may not result in different current and deferred income taxes than if the CAMT was not taken into account.

<u>Operational Rules for Category d. Reporting Entities</u>

7. Category d. reporting entities are required to take CAMT into account under *SSAP No. 101* to the extent it is reasonably expected that the tax actually is (for the current period) or could be (for future years in the *SSAP No. 101* paragraph 11.b. applicable period) incurred a) by the reporting entity (if unaffiliated or affiliated but excluded from a consolidated tax return) or b) by the consolidated tax return group of which the reporting entity is a member and the consolidated CAMT is allocable in some part to the reporting entity pursuant to the group's intercompany income tax allocation agreement. Such reporting entities recognize CAMT, if any, as a current tax expense for the taxable year that includes the reporting period and recognize CAMT credit utilization as a current tax benefit for such period. If the reporting entity is a party to a TSA, CAMT expense or CAMT credit utilization is based on the amount determined under the TSA. If the reporting entity pays CAMT or utilizes the CAMT credit to offset regular tax liability, its CAMT expense or CAMT credit utilization is based on the amount of such payments or receipts less allocations to other members of the consolidated tax group pursuant to the TSA.

8. A reporting entity is allowed an accounting policy election to either consider or disregard CAMT when evaluating the need for a valuation allowance for its regular tax DTAs.[2] The accounting policy election applies for valuation allowance purposes only - that is, in the determination of adjusted gross DTAs other than CAMT-related DTAs. This accounting policy election cannot be used to avoid a valuation allowance analysis for CAMT credit carryforward DTAs. The accounting policy election must be disclosed in the notes to the financial statements and applied consistently in subsequent reporting periods.

[2] ASC 740 does not specifically address whether future years' CAMT should be anticipated in a valuation allowance assessment for regular tax DTAs. Accordingly, an accounting policy election is allowed for GAAP purposes as to whether to consider or disregard CAMT when evaluating the need for a valuation allowance for regular tax DTAs.

9. An adjusted gross deferred tax asset (DTA) is recognized for any CAMT credit carryforward that is more likely than not to be recognized (that is, after reduction of the gross DTA by any required valuation allowance) and is admissible under the conditions described in paragraph 10 of this interpretation. The valuation allowance analysis should include, for example, the risk that the reporting entity, or the tax-controlled group of corporations of which the reporting entity is a member, more likely than not may be unable to realize the CAMT credit carryforward. Because the CAMT credit utilization is determined at the consolidated group level for reporting entities that are part of a consolidated group, the reporting entity valuation allowance determination shall be consistent with the consolidated group determination. A valuation allowance analysis for a CAMT credit carryforward is required regardless of the accounting policy election described in paragraph 8.

10. The admissible amount of adjusted gross DTAs for a category d. reporting entity is determined under paragraph 11 of *SSAP No. 101* with the modifications set forth below.

    a. An RBC-reporting entity with an ExDTA Authorized Control Level Risk Based Capital (RBC) percentage – calculated as described in footnote 3 of paragraph 11.b. of *SSAP No. 101* - of greater than [450]% if a life insurance company and [400]% in all other cases is not required to take the CAMT into account in calculating the "with and without" tax liability for purposes of determining the amount expected to be realized under paragraph 11.b.i. of *SSAP No. 101* within the 3-year applicable period determined under paragraph 11.b. **[NOTE TO DRAFT:** An RBC ratio is being proposed for this financial strength test in part because *SSAP No. 101* already includes an RBC threshold in paragraph 11.b. An alternative financial strength test might incorporate an approach similar to that of Section 8.B.(3)(c) of the Credit for Reinsurance Model Regulation relating to certified reinsurers, wherein an assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner. For this purpose, acceptable rating agencies include Standard & Poor's, Moody's Investor Service, Fitch Ratings, A. M. Best Company, or any other nationally recognized statistical rating organization.**]** The post-valuation allowance adjusted gross DTA for any CAMT credit carryforward is admitted by such entities without regard to paragraph 11.b.i. The 15% limitation of capital and surplus limitation of paragraph 11.b.ii. of *SSAP No. 101* continues to apply to admitted adjusted gross DTAs, including the adjusted gross DTA for any CAMT credit carryforward. See *Example 1c*below. A category d. reporting entity that accounts for CAMT pursuant to this paragraph 10.a. shall disclose that fact in the notes to the financial statements.

    b. If this financial strength threshold is not met, the amount expected to be realized under paragraph 11.b.i. of *SSAP No. 101* within the applicable period determined under paragraph 11.b. is based on the reporting entity's "with and without" regular tax liability reduced by CAMT, if any, reasonably expected to be incurred during the paragraph 11.b. applicable period. In the case of a reporting entity included in a consolidated Federal income tax return, the amount expected to be realized is reduced by the portion of the consolidated CAMT, if any, reasonably expected to be allocable to the reporting entity pursuant to the group's TSA. CAMT credit utilization during the applicable period is recognized based on the same principles, with the opposite effect – that is, as an admitted DTA. The purpose of these computations is to account for CAMT in deferred taxes in the same manner as CAMT would be reflected in current taxes. The DTA for any CAMT credit carryforward not admitted under paragraph 11b. of *SSAP No. 101* is available to offset liabilities under paragraph 11c. of *SSAP No. 101* without any other considerations.

c. Paragraph 8.3 of the *SSAP No. 101 Q&A* is not applicable to Category d. reporting entities with respect to the CAMT.

d. Examples

Example 1a: Insurance company IC is a member of a tax-affiliated group of corporations that files consolidated Federal income tax return and that reasonably expects to be an applicable corporation for 20X3. For 20X3, IC falls below the financial strength threshold applicable for category d. but exceeds the RBC threshold in paragraph 11.b. of *SSAP No. 101* for use of a 3-year applicable period. At the end of 20X3, IC has a $50x CAMT credit carryover DTA (pursuant to the consolidated group's TSA, IC was allocated a portion of the group's expected 20X3 current CAMT expense, which IC included in its 20X3 current tax expense). IC also has $200x of regular tax adjusted gross DTAs (i.e., as already reduced by any required valuation allowance), of which $150x reverses over the 3-year applicable period 20X4-20X6 and is expected to be realized in IC's with and without calculation under paragraph 11.b.i. of *SSAP No. 101*. The consolidated group expects to absorb its entire CAMT credit carryover, including the $50x allocated to IC, in 20X4, and expects to incur CAMT in each of 20X5 and 20X6, of which $5x each year is expected to be allocated under the TSA to IC. IC's 15% of surplus limitation under paragraph 11.b.ii. of *SSAP No. 101* is $225x.

Ignoring for purposes of this example any DTA admittance under paragraphs 11.a. and 11.c. of *SSAP No. 101*, IC admits the $50x adjusted gross DTA for the CAMT credit carryover expected to be utilized in 20X4 and reduces its $150x of regular tax admitted DTAs by the $10x CAMT expected to be incurred in 20X5 and 20X6, resulting in $190x of DTA admitted under paragraph 11.b.i., which is less than the $225x paragraph 11.b.ii. limitation. However, if the 15% of capital and surplus limitation was $175x instead of $225x, the $190x would be limited to $175x.

	DTAs	Regular DTAs Admitted Standalone	Impact of Consolidated CAMT	Admitted DTAs under 11.b.i	15% Surplus limitation under 11.b.ii	Non Admitted DTAs
Adjusted gross DTAs reversing in 3 years	200	150	(10)	140		60
CAMT Credit DTA	50		50	50		-
	250	**150**	**40**	**190**	**225**	**60**

Example 1b. The facts are the same as in *Example 1a* except that the consolidated group of which IC is a member expects to absorb in 20X4 only a portion of its CAMT credit carryover, of which $30x would be allocated to IC, and expects to incur CAMT in each of 20X5 and 20X6, of which $5x each year is expected to be allocated under the TSA to IC. The consolidated group also concludes that its remaining consolidated CAMT credit carryforward, of which $20x would be allocated to IC, is not more likely than not to be realized.

In accordance with paragraph 9 of this interpretation, IC establishes a $20x valuation allowance against its $50x AMT credit carryforward DTA, resulting in an adjusted gross DTA of $30x. Under paragraph 8 of this interpretation, IC makes an accounting policy election to disregard CAMT when evaluating the need for a valuation allowance for its regular tax DTAs. IC admits $150x of regular tax adjusted gross DTAs and the $30x adjusted gross DTA for its allocated portion of the CAMT credit carryforward. IC reduces its admitted adjusted gross DTAs by its $10x share of the consolidated CAMT expected to be incurred in 20X5 and 20X6. The result is an admitted DTA of $170x, $20x less than an *Example 1a*, attributable to the $20x valuation allowance against the CAMT credit carryforward.

Example 1c. The facts are the same as in *Example 1a* except that IC exceeds the financial strength threshold applicable for category d. Accordingly, IC would not reduce its admitted regular tax DTA by any CAMT for years after 20X3. However, IC would still have to perform a valuation allowance analysis on its $50x CAMT credit carryforward at the end of 20X3 and reduce the adjusted gross DTA for such credit to the amount more likely than not to be realized. Assume the valuation allowance is $20x and the adjusted gross DTA for the CAMT credit carryover is reduced to $30x. IC's admitted DTA would be $180x. Additionally, if IC's 15% of surplus limitation under paragraph 11.b.ii. was $175x, IC's admitted adjusted gross DTA would be further reduced to $175x.

Example 1d. If, in *Example 1a*, the TSA to which IC is a party excluded IC from any allocation of CAMT or CAMT credit utilization, IC would be a category c. reporting entity for 20X3, CAMT would be excluded from the calculations, and IC's admitted adjusted gross DTA would be $150x.

e. Also recognized are CAMT credit carryovers arising during the applicable period that become utilizable within the applicable period.

Example 2: The facts are the same as *Example 1a* except that the consolidated group (and IC) have no CAMT credit carryovers at the end of 20X3. Furthermore, the consolidated group reasonably expects to incur CAMT liability in each of 20X4 and 20X5 (instead of 20X5 and 20X6) and to utilize in 20X6 a portion of the CAMT credit carryovers generated in 20X4 and 20X5. Of these amounts, IC is expected to be allocated under the TSA $5x of CAMT in each of 20X4 and 20X5, and $6x of

CAMT credit utilization in 20X6. In determining admitted adjusted gross DTAs for the 20X3 reporting period, IC reduces its regular tax admitted adjusted gross DTA by its $10x TSA-allocated portion of the consolidated group's CAMT for 20X4 and 20X5 but increases such admitted amount by its $6x TSA-allocated portion of the consolidated group's CAMT credit utilization for 20X6.

f. Projections of CAMT liability, if any, (and CAMT credit utilization) during the applicable period involve forward-looking data, groupings, estimates and other adjustments for both the reporting entity and the group of which it is a member. The manner in which this is done shall be conducted in a reasonable and consistent manner. A reporting entity shall retain internal documentation to support these computations and the methodologies so employed. Modifications are permitted should events or circumstances change from a previous period – such as a change in materiality or administrative costs associated with the computations, or system changes that affect the level of detail available. Entities that make such modifications should be prepared to rationalize the changes. Disclosure of material modifications, and the general reason for such, should be made in the notes to the financial statements.[3]

g. *SSAP No. 101* provides that tax-planning strategies are required to be considered in the valuation allowance analysis and may be considered in determining the admission of DTAs under *SSAP No. 101* paragraph 11. A reporting entity may consider tax-planning strategies in making the determinations required under this interpretation. Because the CAMT scope and liability determinations are made at a group level, tax-planning strategies may be considered both at a group level and at the reporting entity level. However, tax-planning strategies at the group level shall not conflict with tax-planning strategies at the reporting entity level and vice versa.

h. CAMT arising during the *SSAP No. 101* paragraph 11.b. applicable period that reduces the amount expected to be realized under paragraph 11.b. results in DTAs for CAMT credit carryforwards that may be taken into account in the *SSAP No. 101* paragraph 11.c. calculation.

   Example 3: The facts are the same as in Example 2. The remaining $4x of CAMT credit carryforward arising during the 3-year applicable period is taken into account in IC's 20X3 paragraph 11 calculation as part of the amount of adjusted gross DTAs, after application of paragraphs 11.a. and 11.b., that can be offset against existing gross DTLs.

<u>Disclosures</u>

11. The reporting entity shall disclose whether it is a category a., b., c., or d. reporting entity. Additionally, the following disclosures shall be made in the notes to the financial statements of category d. reporting entities:
    a. The accounting policy election described in paragraph 8. of this interpretation.
    b. Application of the RBC reporting threshold described in paragraph 10.a. of this interpretation

[3] See paragraph 2.9 of the *SSAP No. 101 Q&A* for similar requirements in the context of grouping of assets and liabilities for measurement.

c. Any disclosure required by paragraph 10.f. of this interpretation.
d. In the disclosure required by paragraph 28.b. of *SSAP No. 101,* a statement as to whether the reporting entity may be charged with a portion of CAMT incurred by the consolidated group (or credited with a portion of the consolidated group's CAMT credit utilization).
e. Inclusion of CAMT credit carryforwards, if any, in the disclosure required by paragraph 26.a. of *SSAP No. 101.*
f. The impact of CAMT tax-planning strategies, if any, in the disclosure required by paragraph 22.f. of *SSAP No. 101.*

<u>Transition Guidance</u>

12. Even though the CAMT was enacted in 2022 and generally became effective January 1, 2023, the requirements for statutory tax accounting for the CAMT have effectively been deferred by INT 22-02.[4] It is well understood that reporting entities have been awaiting the guidance provided in this interpretation to file requests for approval of TSA amendments or a new TSA relating to the CAMT. This paragraph 11. provides the applicable transition rules for year-end 2023 statutory accounting for requests for a timely-filed TSA amendment or a new TSA for the 2023 taxable year.
    a. Because the CAMT was newly-enacted effective for 2023, TSAs in effect for periods prior to the 2023 taxable year include no explicit provisions relating to the CAMT.[5] Thus, category c. and category d. reporting entities may need to amend TSAs to deal with the CAMT effective for the entire 2023 taxable year. A reporting entity would file a request for amendment to a TSA or a new TSA on Form D – Prior Notice of a Transaction with its applicable domiciliary regulator(s) and commercial domiciliary regulator(s).
    b. Time is of the essence in both requesting and approving TSA amendments or a new TSA relating to the CAMT for the 2023 taxable year to be applicable to the 2023 reporting period. Accordingly, if, within [45] days after adoption of this interpretation, a reporting entity files the applicable Form D request(s) for TSA amendment or a new TSA to address the CAMT for 2023 and subsequent taxable years,[6] such TSA amendment or new TSA shall be accounted for as applicable for the entire 2023 reporting period, regardless of whether the approved TSA allocates consolidated CAMT (or utilization of consolidated AMT credit carryforwards) to the reporting entity.
        i. If the final approved TSA differs in its treatment of the CAMT allocation from the TSA originally requested on the Form D, the difference shall be recorded as follows:
            1. If Form D approval occurs subsequent to the balance sheet date, but before the issuance of the statutory financial statements and before

[4] INT 22-02: Third Quarter 2022 through Second Quarter 2023 Reporting of the Inflation Reduction Act – Corporate Alternative Minimum Tax (last updated April 12, 2023).
[5] TSAs may include provisions relating to the pre-2018 AMT if not previously amended to remove such provisions.
[6] That is, with an effective date of January 1, 2023, or, if not a calendar year taxpayer, the first day of the 2023 taxable year.

the date the audited financial statements are issued, or available to be issued, such approval shall be considered a Type I subsequent event within the meaning of *SSAP No. 9 – Subsequent Events*.

2. In the extraordinary circumstance that a Form D approval occurs after the period which defines a subsequent event in *SSAP No. 9*, the difference created by such approval shall be recognized and disclosed in the period in which the approval is given.

ii. The transition guidance in this paragraph 12. does not apply to a reporting entity that does not file a Form D request for a CAMT-related TSA amendment or a new TSA within the time period specified in subparagraph b.

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June 9, 2023

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RE: Interested Parties Comments on Exposures with Comments due June 9

Dear Mr. Bruggeman:

Interested parties appreciate the opportunity to comment on the items exposed for comment by the Statutory Accounting Working Group (the Working Group) during its March 22, 2023, meeting with comments due June 9.

Ref #2022-19: Negative IMR

The Working Group directed NAIC staff regarding the consideration of negative interest maintenance reserve (IMR) with an intent to work on both a 2023 solution and a long-term solution as follows:

a. Draft a referral to the Life Actuarial (A) Task Force on further consideration of the asset adequacy implications of negative IMR. Items to include: 1) developing a template for reporting within asset adequacy testing (AAT); 2) considering the actual amount of negative IMR that is admitted to be used in the AAT; 3) better consideration of cash flows within AAT (and documentation), as well as any liquidity stress test (LST) considerations; 4) ensuring that excessive withdrawal considerations are consistent with actual data (sales of bonds because of excess withdrawals should not use the IMR process); and 5) ensuring that any guardrails for assumptions in the AAT are reasonable and consistent with other aspects.

b. Draft a referral to the Capital Adequacy (E) Task Force for the consideration of eliminating any admitted net negative IMR from total adjusted capital (TAC) and the consideration of sensitivity testing with and without negative IMR.

c. Develop guidance for future Working Group consideration that would allow the admission of negative IMR up to 5% of surplus using the type of limitation calculation similar to that used for goodwill admittance. The guidance should also provide for a downward adjustment if RBC ratio is less than 300.

d. Review and provide updates on any annual statement instructions for excess withdraws, related bond gains/losses and non-effective hedge gains/losses to clarify that those related gains/losses are through asset valuation reserve (AVR), not IMR.

e. Develop accounting and reporting guidance to require the use of a special surplus (account or line) for net negative IMR.

f. Develop governance related documentation to ensure sales of bonds are reinvested in other bonds.

g. Develop a footnote disclosure for quarterly and annual reporting.

Please see the comments in the letter submitted by ACLI on May 17th.

Principles-Based Bond Definition

The Working Group exposed changes to several SSAP's that propose statutory accounting changes under the principles-based bond project.

The exposure also proposes changes to Schedule BA to encompass debt securities that do not qualify as bonds and consolidate existing reporting lines.

Interested parties' comments are shown below related to each of the five separate documents exposed for comment.

SSAP No. 26R, SSAP No. 43R, and Other SSAPs

Interested parties have no comments on these exposures and are appreciative of the changes made and the responsiveness to interested parties' previous comments.

Schedule BA

Interested parties will respond to this exposure under separate cover as comments are more involved and not due until June 30, 2023.

SSAP No. 21R

Paragraphs 22 and 29

Interested parties understand that proposed paragraph 22 of SSAP No. 21 requires that the underlying collateral in an asset-backed security that fails the bond definition must qualify as admitted assets for the security to be admitted. Paragraph 22 also proposes to report these bonds at a value that does not exceed the fair value of the collateral with any amount above the fair value of the collateral being non-admitted. Interested parties have concerns with the proposal as this would be operationally very difficult to do since some asset-backed securities can have a large number of assets and the fair value of the underlying collateral in the asset-backed security may not be readily available. This is very different from collateral loans in SSAP No. 21 where there are generally fewer assets that compose the underlying collateral. In addition, this would be costly as currently the servicer/trustee reports do not usually include fair value of the collateral so this would be a new service for which we would have to pay. Interested parties believe that accounting for these securities at the lower of cost or market of the security owned by the insurer will consider the performance of the underlying collateral. The unit of account is the security owned by the insurer and not the underlying collateral for the asset-backed security. The fair value of the bond will consider the fair value of the collateral to a great extent, but it will also take into account other key characteristics of the bond itself that impact the bond's fair value and will better reflect the consideration expected to be received upon maturity or sale of the security. If the collateral is an admitted asset, the entire carrying balance of the security should be admitted without having to quantify collateral fair value given the cost and complexity in doing so. Interested parties propose changes to paragraph 22 as a result of the comments above.

Interested parties also have comments regarding the new paragraph 29 that was added to clarify the accounting for residual tranches. We believe that the intent of paragraph 29 is to require non-admission of a residual tranche only if another tranche from the same securitization owned by the insurer fails the bond definition and the collateral is not an admitted investment. Interested parties propose changes to paragraph 29 to further clarify what we believe to be the intent of the paragraph.

We proposed the following changes to paragraphs 22 and 29 to address the aforementioned comments:

> 22. Debt securities in scope of this standard that do not qualify as bonds under SSAP No. 26R and for which the primary source of repayment is derived through rights to underlying collateral, qualify as admitted assets ~~only to the extent they are secured~~ if the underlying collateral primarily qualify as admitted invested assets. Any residual tranches or first loss positions held from the same securitization that did not qualify as a bond under SSAP No. 26R also only qualify as admitted assets to the extent the underlying collateral primarily qualify as admitted invested assets. ~~Any amounts in excess of the fair value of the underlying admitted invested assets shall be non-admitted.~~
>
> 29. As stated in paragraph 22, ~~R~~residuals are permitted to be admitted if debt securities from the same securitization qualify as bonds under SSAP No. 26R as an issuer credit obligation or an asset backed security. ~~For example, if a debt security from a securitization does not qualify as a bond, and the source of repayment is derived through rights to the underlying collateral, the debt security is only permitted to be admitted if the underlying assets qualify as admitted assets.~~ If the debt security from a securitization is nonadmitted due to the requirements under paragraph 22, then any residual interests or first loss positions held from the same securitization also do not qualify as admitted assets and would be reported as nonadmitted assets.

Paragraph 25

Interested parties also note that the way paragraph 25 below was written implies that the only securities that can fail the definition are asset-backed securities. Since an issuer credit obligation could also fail the bond definition (i.e., does not reflect a creditor relationship in substance), we believe the changes recommended below are needed to reference the appropriate accounting guidance under either SSAP No. 26 for issuer credit obligations or SSAP No. 43R for asset-backed securities.

> 25. Debt securities that do not qualify as bonds are ~~captured~~included in the scope of this statement. Debt securities included in the scope of this statement shall follow the guidance in *SSAP No. 43R—Asset-Backed Securities* or SSAP No. 26R *Bonds*, depending on whether they would have been classified as asset-backed securities or issuer credit obligations, respectively, should they have qualified as bonds. This includes the guidance, for calculating amortized cost, for determining and recognizing other-than-temporary impairments and for allocating unrealized and realized gains and losses between the asset valuation reserve (AVR) and interest maintenance reserve (IMR).

Paragraphs 30 and 31

In paragraph 31 of the exposure, NAIC asks the following question:

> *Exposure Question: Industry is requested to provide information on how residual tranches have been amortized and how they have been assessed for OTTI as there are no contractual principal or interest payments.*

Regarding the calculation of amortized cost and the assessment of OTTI for residuals, it has generally been industry practice to follow the SSAP No. 43R guidance for beneficial interests (i.e., paragraphs 21-25 of the bond definition proposal titled "Accretable Yield and Changes to Effective Yield for Application of Prospective Method"), which requires estimates of cash flows to be calculated quarterly with prospective yield adjustments. If there is an adverse change in estimated cash flows at the reporting date, an OTTI is recorded. Under those circumstances, the residual is written down to the current estimate of cash flows discounted at a rate equal to the current yield used to accrete the residual with the resulting change being recognized as a realized loss. If the cash flows increase from the prior period, the yield is adjusted upward. To require recognition of a loss for the entire amount of the residual would not be a reasonable accounting result. Also, for insurers who are US GAAP filers, they also apply the prospective method discussed above for their US GAAP financial statements, if they have not elected the fair value option. As a result, interested parties propose the edits below to paragraphs 30 and 31, which also include clarification on AVR treatment of residuals:

> 30. Residuals shall be initially reported at cost, or allocated cost (using proportional fair values) if acquired along with debt tranches from the securitization. Subsequent to initial acquisition, residuals shall be reported at the lower of amortized cost or fair value, with changes in fair value (or from amortized cost to fair value) reported as unrealized gains or losses. To determine amortized cost, the reporting entity should apply SSAP No. 43R,

paragraphs 21-25 (i.e., prospective method). Unrealized and realized gains and losses on residuals are reported in the AVR.

31. Residuals shall be assessed for other-than-temporary impairment (OTTI) on an ongoing basis based on SSAP No. 43R. ~~An OTT shall be considered to have occurred if it is probable that the reporting entity will not receive cash flows distributed to the residual tranche to cover the reported amortized cost basis. Upon identification of ta probable OTTI, the reporting entity shall recognize a realized loss equal to the remaining amortized cost basis. Subsequent to the recognition of OTTI, the residual shall be reported with a zero book adjusted carrying value. Any subsequent cash flows received attributed to the residual tranche shall be reported as interest income.~~

Interested parties also note that the recent exposure by the Working Group that intends to expand the scope of what is considered a residual investment may require significant changes to the accounting laid out above. The accounting model for residuals issued in a securitization that we explain above is in line with the accounting for residuals that are more akin to a debt security. If the scope of a residual is expanded to include other types of residuals, this model may not fit those types of investments. Given this linkage, interested parties may have additional recommendations for the accounting discussed above as the residual investment definition is finalized.

Ref #2022-01: Conceptual Framework – Updates

The Working Group exposed additional revisions to *Issue Paper No. 16X—Updates to the Definition of a Liability* related to the definition change of a liability in *SSAP No. 5R—Liabilities, Contingencies and Impairment of Assets*. The revisions to: 1) add an additional footnote to the definition of a liability in SSAP No. 5R which defers to more topic specific contradictory guidance 2) revise the relevant literature section of SSAP No. 5R to note the modification and 3) note the additional exposure action in the Issue Paper paragrpah18.

These clarifications were because of the authoritative treatment that statutory accounting provides to the definition of an asset and a liability in SSAP No. 4 and SSAP No. 5R. For GAAP, the FASB Conceptual statements definitions are not authoritative, but rather are concepts to consider when developing and applying guidance. The FASB basis for conclusions noted that some existing authoritative FASB literature regarding liabilities is inconsistent with the updates to Concepts Statement No. 8. Therefore, a modification regarding topic specific liabilities guidance was incorporated to address variations from the definition of a liability. Examples of existing SAP variations from the definition of a liability include but are not limited to:

a. *SSAP No. 7—Asset Valuation Reserves and Interest Maintenance Reserves* – AVR and IMR establish liabilities for regulatory objectives.

b. *SSAP No. 62R—Property and Casualty Reinsurance* – contains the provision for reinsurance liability guidance which results in a liability that is a regulatory valuation allowance for overdue and slow paying reinsurance and also enforces Credit for Reinsurance (Model No. 785) collateral requirements.

c. *SSAP No. 92—Post Retirement Benefits Other than Pensions*, provides liability recognition, which adopts several GAAP standards with modifications.

The additional exposed revisions to SSAP No. 16X and SSAP No. 5R are reflected in the Issue Paper and also shown below.

- **Exposed revisions – Topic Specific Footnote** - This language is proposed for incorporation as a footnote to the liability definition in SSAP No. 5R and its related and *Issue Paper No. 16X—Updates to the Definition of a Liability*.

  New Footnote to paragraph 3 of SSAP No. 5R:

  The guidance in this Statement regarding the definition of a liability is applicable unless another authoritative statement of statutory accounting principles provides more topic specific contradictory guidance. In such cases the topic specific guidance shall apply.

- Exposed revisions to *SSAP No. 5R—Liabilities, Contingencies and Impairment of Assets* and *Issue Paper No. 16X—Updates to the Definition of a Liability* (New language shaded)*:*

  Relevant Literature

  39. This statement adopts *FASB Statement No. 5, Accounting for Contingencies* (FAS 5), *FASB Statement 114, Accounting by Creditors for Impairment of a Loan* only as it amends in part FAS 5 ~~and paragraphs 35 and 36 of *FASB Statement of Financial Accounting Concepts No. 6 – Elements of Financial Statements*~~. *FASB Interpretation No. 14, Reasonable Estimation of the Amount of a Loss, An Interpretation of FASB Statement No. 5* (FIN No. 14) is adopted with the modification to accrue the loss amount as the midpoint of the range rather than the minimum as discussed in paragraph 3 of FIN No. 14. This statement adopts with modification *ASU 2013-04, Obligations Resulting from Joint and Several Liability Arrangements for Which the Total Amount of the Obligation is Fixed at the Reporting Date* with the same statutory modification adopted for FIN 14. This statement incorporates the definition of a liability from *FASB Statement of Financial Accounting Concepts No. 8, Chapter 4, Elements of Financial Statements,* paragraphs E37 and E38 with modification reflected in this Statement regarding topic specific guidance.

Interested parties believe the proposed changes above are responsive to our previous comments and address the issue of having statutory accounting guidance in other authoritative sources, e.g., the *NAIC Annual Statement Instructions*.

Ref #2022-11: Collateral for Loans

The Working Group exposed revisions to *SSAP No. 21 – Revised—Other Admitted Assets* which clarify that the invested assets pledged as collateral for admitted collateral loans must qualify as admitted invested assets. These revisions clarify that for specific investments, the comparison for admittance is between the net equity audited value of the pledged collateral to the collateral loan balance. In addition, a consistency revision to *SSAP No. 20—Nonadmitted Assets*, paragraph 4.b. was exposed.

Interested parties support the proposed changes.

Ref #2022-12: Review of INT 03-02*: Modification to an Existing Intercompany Pooling Arrangement*

The Working Group re-exposed the intent to nullify INT 03-02, effective December 31, 2023. The nullification is proposed as INT 03-02 is inconsistent with SSAP No. 25 – *Affiliates and Other Related Parties,* guidance regarding economic and non-economic transactions between related parties. The guidance in INT 03-02 can result with, in essence, unrecognized gains (dividends) or losses through the use of statutory book valuation when using assets (bonds) to make payments to affiliates for modifications to existing intercompany reinsurance pooling agreements. Treatment of transfers of assets between affiliates should be consistent for all intercompany transactions and there is not a compelling need to be different when valuing assets for intercompany reinsurance transactions.

Interested parties note that there are several issues associated with nullifying INT 03-02 and transferring the assets that support the insurance liabilities at fair value versus book value as provided in the current guidance in the INT including the following:

- Inconsistent accounting among affiliates for a modification of the intercompany pooling agreement when some of the transfers generate a realized gain and others do not, depending on the assets transferred;
- The transfer of a bond in an intercompany pooling transaction that generates a realized gain would cause the intercompany pooling modification to be accounted for as retroactive reinsurance, which would violate the accounting guidance currently contained in SSAP No. 63;
- The use of retroactive reinsurance contradicts the basis of presentation in Schedule P for business subject to intercompany pooling agreements;
- Inconsistent presentation of underwriting assets and liabilities among participants in the pooling agreement; and
- Inconsistent accounting for intercompany transactions, as some gains would be deferred while other gains will be realized at the parent level, depending on the insurer’s corporate ownership structure.

Depending on market interest rates at the time of a pooling modification, a gain or loss will result from the transfer of bonds at fair value. In times of declining interest rates, the fair value of bonds generally increase. During these times, if a bond with a fair value in excess of book value is transferred as part of a pooling modification and the transfer is accounted for at fair value, the transferor will recognize a gain. This gain will disqualify the transferor and transferee from accounting for the pooling modification as prospective reinsurance based on the accounting guidance in SSAP No. 62R paragraph 36d. However, the same pooling modification can have other participants qualify for prospective reinsurance due to no gain on transfer of the assets.

Prospective reinsurance versus retroactive reinsurance

The transferors, i.e., the ceding pool entities, that qualify for prospective reinsurance will record the premium and loss accounts as prospective reinsurance (i.e., the cedent's participation share of the total intercompany pool written and earned premium, reserves and losses are reported in the cedent's financial statements).

The transferors, i.e., the ceding pool entities, that do not qualify for prospective reinsurance will report written premiums, earned premiums, loss and loss adjustment reserves and losses and loss adjustment expenses without recognition of the retroactive reinsurance. Therefore, insurance accounts subject to pooling will not be reduced for cessions to the lead company of the pool or retrocessions by the lead company to the pool participants. Similarly, any transferees that do not qualify for prospective reinsurance, i.e., the assuming pool entities, will exclude the retroactive reinsurance from loss and loss expense reserves and all schedules and exhibits. SSAP No. 62R requires the following for retroactive reinsurance:

- The ceding entity and the assuming entity shall report by write-in item on the balance sheet, the total amount of all retroactive reinsurance, identified as retroactive reinsurance reserve ceded or assumed, recorded as a contra-liability by the ceding entity and as a liability by the assuming entity;
- The ceding entity shall, by write-in item on the balance sheet, restrict surplus resulting from any retroactive reinsurance as a special surplus fund, designated as special surplus from retroactive reinsurance account;
- The surplus gain from any retroactive reinsurance shall not be classified as unassigned funds (surplus) until the actual retroactive reinsurance recovered exceeds the consideration paid;
- The special surplus from retroactive reinsurance account for each respective retroactive reinsurance agreement shall be reduced at the time the ceding entity begins to recover funds from the assuming entity in amounts exceeding the consideration paid by the ceding entity.

As a result of the inconsistent accounting between pool entities that are required to account for the intercompany pooling as prospective reinsurance and the pool entities that are required to use retroactive reinsurance, the financial statements of the pool will be extremely confusing and lack useful financial information. The stand-alone financial statements of the legal entities of the pool will not be consistent and the combined audited financial statements of the pool will reflect insurance accounts that are accounted for and reported using different accounting methodologies for the same underlying transactions.

As a practical matter, it would be nearly impossible for an insurer to report intercompany pooling results and balances using both prospective and retroactive reinsurance. Premium, claim, and loss systems are not built to handle such inconsistent accounting for the same underlying transactions.

SSAP No. 62R versus SSAP No. 63

The application of retroactive reinsurance as a result of the nullification of INT 03-02 would also result in a conflict with the guidance in SSAP No. 63, *Underwriting Pools*. The highlighted wording in paragraphs 8 and 9 of SSAP No. 63 instructs the preparer to record the premiums and losses based on the legal entity's participation in the pool. The use of retroactive reinsurance would violate that guidance. Regarding the last sentence of paragraph 7, the use of retroactive reinsurance would also result in timing differences between entities in the pool as a result of certain entities deferring gains in surplus.

> 7. Intercompany pooling arrangements involve establishment of a conventional quota share reinsurance agreement under which all of the pooled business is ceded to the lead entity and then retroceded back to the pool participants in accordance with their stipulated shares. Arrangements whereby there is one lead company that retains 100% of the pooled business and all or some of the affiliated companies have a 0% net share of the pool may qualify as intercompany pooling. In these arrangements, only the policy issuing entity has direct liability to its policyholders or claimants; other pool participants are liable as reinsurers for their share of the issuing entity's obligations. Although participants may use different assumptions (e.g., discount rates) in recording transactions, the timing of recording transactions shall be consistently applied by all participants.
>
> 8. Underwriting results relating to voluntary and involuntary pools shall be accounted for on a gross basis whereby the participant's portion of premiums, losses, expenses, and other operations of the pools are recorded separately in the financial statements rather than netted against each other. Premiums and losses shall be recorded as direct, assumed, and/or ceded as applicable. If the reporting entity is a direct writer of the business, premiums shall be recorded as directly written and accounted for in the same manner as other business which is directly written by the entity. To the extent that premium is ceded to a pool, premiums and losses shall be recorded in the same manner as any other reinsurance arrangement. A reporting entity who is a member of a pool shall record its participation in the pool as assumed business as in any other reinsurance arrangement.
>
> 9. Underwriting results relating to intercompany pools shall be accounted for and reported as described in paragraph 8. While it is acceptable that intercompany pooling transactions be settled through intercompany arrangements and accounts, intercompany pooling transactions shall be reported on a gross basis in the appropriate reinsurance accounts consistent with other direct, assumed and ceded business.

Schedule P

Data reported in Schedule P is required to be reported net of intercompany pooling (i.e., only the reporting entity's share of the pool business is reported in Schedule P). This includes data related to premiums, losses and loss adjustment expenses, and claim counts.

Additionally, the *NAIC Annual Statement Instructions* for Schedule P require that when changes to pooling agreements impact prior accident years, historical data values in Schedule P must be restated based on the new pooling percentages. This instruction effectively recognizes that Schedule F only provides useful information related to changes in intercompany pooling agreements if such changes are treated as prospective reinsurance.

Because intercompany pooling data would not be reflected in the Schedule P of the pool entities that are required to use retroactive reinsurance accounting, distorted data would result because only a portion of the intercompany pool's loss, premium, and claim count data would be reported on Schedule P (i.e., the only pooled data reported in Schedule P would be of the pool participants that qualify for using prospective reinsurance). Note that the use of retroactive reinsurance will apply until all of the claims subject to retroactive reinsurance are settled; therefore, the distortion of Schedule P for the pool entities will likely occur for decades depending on the underlying business. As a result, the Schedule P data for the intercompany pool used by actuaries, analysts, regulators, and the NAIC (including analysis used to update RBC factors) will not be useful or meaningful.

Other intercompany pooling issues

Because intercompany pooling agreements subject certain insurance assets (e.g., agents balances) to pooling, a mismatch would occur in the financial statements of pool participants that are required to use retroactive reinsurance accounting versus the participants that are not. For the ceding entities, insurance assets would reflect the reporting entity's share of the pool business, but premiums and losses will reflect the entity's business excluding the pooling. This would occur because insurance assets such as agents balances are not subject to retroactive reinsurance accounting.

Consistency of accounting

The NAIC has noted concerns that the "guidance in INT 03-02 can result with in essence, <u>unrecognized</u> gains (dividends) or losses through the using the statutory book valuation when using assets (bonds) to make payments to affiliates for modifications to existing intercompany reinsurance pooling agreements." The NAIC also notes that the "treatment of transfers of assets between affiliates should be consistent for all intercompany transactions and there is not a compelling need to be different when valuing assets for intercompany reinsurance transactions." Interested parties note the following:

- As our examples illustrate, the transfer of assets using fair value in an intercompany pooling modification can result in reported <u>realized</u> gains reflected in certain pool participants' financial statements, as well as the combined audited statutory financial statements of the intercompany pool even though the assets remain in the pool.

- The transfer of assets at fair value in an intercompany pooling modification can also result in inconsistent accounting for intercompany transactions, as some gains would be deferred while other gains will be realized at the parent level, depending on the ownership structure of the entities in the intercompany pool.

SSAP No. 63

SSAP No. 63 has limited accounting guidance related to intercompany pooling agreements and instead primarily provides a discussion of what an intercompany pooling agreement is and contains a reference to INT 03-02 in paragraph 5. We believe that a more effective approach to addressing the concerns over moving invested assets at book value in a modification of an intercompany agreement would be to incorporate portions of INT 03-02 into SSAP No. 63, require that insurers settle the movement of assets and liabilities on a net basis (i.e., the net of pool assets less pool liabilities) to minimize the movement of assets, require disclosure if assets with fair values that differ from cost or amortized cost are transferred as part of the modification, and include a cross reference in SSAP No. 25 to the updated guidance in SSAP No. 63 for transfers of assets associated with a modification of an intercompany pooling agreement. This approach would also provide guidance on such modification where none would exist in the absence of INT 03-02. Please see recommended changes to SSAP No. 63 in the attached.

Since the guidance regarding the transfers of assets associated with modifications of intercompany agreements would be located in SSAP No. 63, we recommend that SSAP No. 25 include a new paragraph 4 to direct the reader to the guidance in SSAP No. 63 as follows:

> 4. If a company transfers assets or liabilities to effectuate a modification to an existing intercompany pooling arrangement, the transaction, including the transfer of assets, shall be accounted for in accordance with the guidance in SSAP No. 63 – *Underwriting Pools.*

Ref #2023-01: Review Annual Statement Instructions for Accounting Guidance

The Working Group moved this agenda item to the active listing, categorized as a SAP clarification, with a request for regulator and industry viewpoints on situations in which guidance in the annual statement instructions should be captured within a SSAP.

Interested parties are aware of Annual Statement guidance on IMR /AVR and Schedule F penalties that should be considered for inclusion in SSAP's as well as the guidance related to intercompany pooling arrangements discussed above. If additional items come to our attention, we will inform the Working Group.

Ref #2023-02: SSAP No. 43R – CLO Financial Modeling

The Working Group moved this agenda item to the active listing, categorized as a SAP clarification, and exposed revisions to SSAP No. 43R to incorporate changes to add CLOs to the financial modeling guidance and to clarify that CLOs are not captured as legacy securities.

Interested parties have no comments on this item.

Ref #2023-05: *ASU 2022-06, Reference Rate Reform (Topic 848), Deferral of the Sunset Date of Topic 848*

The Working Group moved this agenda item to the active listing, categorized as a SAP clarification, and exposed temporary (optional) expedient and exception interpretative guidance, to revise the expiration date of the guidance in *INT 20-01: 2020-04, 2021-01 & 2022-06 - Reference Rate Reform* to be December 31, 2024, as reflected in INT 20-01.

Interested parties support the extension of the expiration date of *INT 20-01* to December 31, 2024.

Ref #2023-06: Additional Updates on ASU 2021-10, Government Assistance

The Working Group moved this agenda item to the active listing, categorized as a SAP clarification, and exposed revisions to SSAP No. 24 to specify rejection of *ASU 2021-10, Government Assistance* but that the statutory guidance does incorporate general disclosures regarding government assistance for all entity types.

Interested parties agree with the proposed revisions to SSAP No. 24, as exposed in Ref 2023-06**,** subject to the following comments.

Interested parties noted that the Working Group's discussion of Ref #2023-06 in the Spring 2023 Working Group meeting agenda, indicated that use of a grant or contribution model was not intended to be permitted when accounting for government assistance under statutory accounting principles. The discussion did not indicate what accounting model should be applied. Interested parties are not aware of specific statutory guidance addressing the accounting for government assistance transactions, and believe, in the absence of specific guidance, companies may look to industry practice and other nonauthoritative GAAP guidance, which supports the use of a grant or contribution model, to determine appropriate statutory accounting treatment. Additionally, interested parties believe the disclosure requirements in SSAP No. 24 provide sufficient detail to allow a user of the financial statements to adequately understand the impact of any government assistance received by an insurer on its results regardless of the accounting model used to recognize and measure the assistance. Given these considerations and the relative infrequent occurrence of such items, interested parties suggest that the Working Group clarify that the intent of the exposed revisions in Ref #2023-06 are to require disclosure of unusual or infrequent government assistance transactions regardless of how such transactions are accounted for, and are not intended to prohibit entities from accounting for government assistance transactions through the use of a grant or contribution model.

Ref #2023-07: ASU 2019-08, Codification Improvements to Topic 718 and Topic 606

The Working Group moved this agenda item to the active listing, categorized as a SAP clarification, and exposed revisions to SSAP No. 95, SSAP No. 104R, and SSAP No. 47 to adopt, with modification, *ASU 2019-08 Compensation—Stock Compensation (Topic 718) and*

Revenue from Contracts with Customers (Topic 606): Codification Improvements—Share-Based Consideration Payable to a Customer, as illustrated in the exposure draft.

Interested parties have no comments on this item.

Ref #2023-08: ASU 2019-07, Codification Updates to SEC Sections

The Working Group moved this agenda item to the active listing, categorized as a SAP clarification, and exposed revisions to Appendix D to reject *ASU 2019-07—Codification Updates to SEC Sections: Amendments to SEC Paragraphs Pursuant to SEC Final Rule Releases No. 33-10532, Disclosure Update and Simplification, and Nos. 33-10231 and 33-10442, Investment Company Reporting Modernization, and Miscellaneous Updates* as not applicable to statutory accounting.

Interested parties have no comments on this item.

Ref #2023-09: *ASU 2020-09—Amendments to SEC Paragraphs Pursuant to SEC Release No. 33-10762—Debt (Topic 470)*

The Working Group moved this agenda item to the active listing, categorized as a SAP clarification, and exposed revisions to Appendix D to reject *ASU 2020-09, Amendments to SEC Paragraphs Pursuant to SEC Release No. 33-10762—Debt (Topic 470)* as not applicable to statutory accounting.

Interested parties have no comments on this item.

Ref #2023-10: ASU 2022-05, Long-Durations Contracts

The Working Group moved this agenda item to the active listing, categorized as a SAP clarification to reject *ASU 2022-05, Transition for Sold Contracts* in *SSAP No. 50–Classifications of Insurance or Managed Care Contracts; SSAP No. 51R—Life Contracts; SSAP No. 52—Deposit-Type Contracts; SSAP No. 56—Separate Accounts; SSAP No. 71—Policy Acquisition Costs and Commissions* and *SSAP No. 86—Derivatives*, which is consistent with prior agenda items related to this topic.

Interested parties support the conclusion reached for this guidance

* * * *

Thank you again for your consideration of interested parties' comments regarding the exposures discussed above. Please feel free to contact either one of us with any questions you may have.

Sincerely,

D. Keith Bell Rose Albrizio

cc: Interested parties
NAIC staff

Statement of Statutory Accounting Principles No. 63

Underwriting Pools

STATUS

Type of Issue	Common Area
Issued	Initial Draft
Effective Date	January 1, 2001
Affects	No other pronouncements
Affected by	No other pronouncements
Interpreted by	INT 03-02
Relevant Appendix A Guidance	None

SCOPE OF STATEMENT

1. This statement establishes statutory accounting principles for underwriting pools and associations.

SUMMARY CONCLUSION

2. Underwriting pools and associations can be categorized as follows: (a) involuntary, (b) voluntary, and (c) intercompany.

3. Involuntary pools represent a mechanism employed by states to provide insurance coverage to those with higher than average probability of loss who otherwise would be excluded from obtaining coverage. Reporting entities are generally required to participate in the underwriting results, including premiums, losses, expenses, and other operations of involuntary pools, based on their proportionate share of similar business written in the state. Involuntary plans are also referred to as residual market plans, involuntary risk pools, and mandatory pools.

4. Voluntary pools are similar to involuntary pools except they are not state mandated and a reporting entity participates in the pool voluntarily. In addition, voluntary pools are not limited to the provision of insurance coverage to those with higher than average probability of loss, but often are used to provide greater capacity for risks with exceptionally high levels of insurable values (e.g., aircraft, nuclear power plants, refineries, and offshore drilling platforms).

5. Intercompany pooling relates to business which is pooled among affiliated entities who are party to a pooling arrangement.(INT 03-02)

6. Participation in a pool may be on a joint and several basis, i.e., in addition to a proportional share of losses and expenses incurred by the pool, participants will be responsible for their share of any otherwise unrecoverable obligations of other pool participants. In certain instances, one or more entities may be designated as servicing carriers for purposes of policy issuance, claims handling, and general administration of the pooled business, while in other cases a pool manager or administrator performs all of these functions and simply bills pool participants for their respective shares of all losses and expenses incurred by the pool. In either case, liabilities arising from pooled business are generally incurred on a basis similar to those associated with non-pooled business, and should therefore be treated in a manner consistent with the guidelines set forth in *SSAP No. 5R—Liabilities, Contingencies and Impairments of Assets*.

7. Intercompany pooling arrangements involve establishment of a conventional quota share reinsurance agreement under which all of the pooled business is ceded to the lead entity and then retroceded back to the pool participants in accordance with their stipulated shares. Arrangements whereby there is one lead company that retains 100% of the pooled business and all or some of the affiliated companies have a 0% net share of the pool may qualify as intercompany pooling. In these arrangements, only the policy issuing entity has direct liability to its policyholders or claimants; other pool participants are liable as reinsurers for their share of the issuing entity's obligations. Although participants may use different assumptions (e.g., discount rates) in recording transactions, the timing of recording transactions shall be consistently applied by all participants.

8. <u>Insurance groups that utilize intercompany pooling arrangements often modify these arrangements from time to time for various business reasons. These business reasons commonly include mergers, acquisitions, dispositions, or a restructuring of the group's legal entity structure. In order to effectuate a relatively simple modification, such as changing pooling participation percentages without changing the pool participants, companies often simply amend the existing pooling agreement. Alternatively, in order to effectuate a more complex modification, such as changing (by adding or removing) the number of pool participants, a company may commute the existing pooling agreement and execute a new pooling agreement(s). In conjunction with executing the appropriate intercompany pooling agreements, a transfer of assets and liabilities amongst the impacted affiliates may also be required in order implement the new pooling agreement(s). The following subparagraphs provide guidance specific to modifications of intercompany pooling arrangements and shall not be applied to an analogous transaction or event.</u>

a) <u>The appropriate valuation basis to be used for assets and liabilities that are transferred among affiliates in conjunction with the execution of a new intercompany pooling agreement(s) that serves to substantively modify an existing intercompany pooling arrangement is statutory book value for assets and statutory value for liabilities.</u>

b) <u>The net amount of the assets and liabilities being moved among entities as a result of a modification to an intercompany pooling shall be used to settle the intercompany payable/receivable (i.e., the assets that are transferred in conjunction with the modification) to minimize the amount of assets transferred in the modification.</u>

9. Underwriting results relating to voluntary and involuntary pools shall be accounted for on a gross basis whereby the participant's portion of premiums, losses, expenses, and other operations of the pools are recorded separately in the financial statements rather than netted against each other. Premiums and losses

shall be recorded as direct, assumed, and/or ceded as applicable. If the reporting entity is a direct writer of the business, premiums shall be recorded as directly written and accounted for in the same manner as other business which is directly written by the entity. To the extent that premium is ceded to a pool, premiums and losses shall be recorded in the same manner as any other reinsurance arrangement. A reporting entity who is a member of a pool shall record its participation in the pool as assumed business as in any other reinsurance arrangement.

10. Underwriting results relating to intercompany pools shall be accounted for and reported as described in paragraph 8. While it is acceptable that intercompany pooling transactions be settled through intercompany arrangements and accounts, intercompany pooling transactions shall be reported on a gross basis in the appropriate reinsurance accounts consistent with other direct, assumed and ceded business.

11. Equity interests in, or deposits receivable from, a pool represent cash advances to provide funding for operations of the pool. These are admitted assets and shall be recorded separately from receivables and payables related to a pool's underwriting results. Receivables and payables related to underwriting results shall be accounted for in accordance with the guidance in paragraphs 6-8. If it is probable that these receivables are uncollectible, any uncollectible amounts shall be written off against operations in the period such determination is made. If it is reasonably possible a portion of the balance is uncollectible but is not written off, disclosure requirements outlined in SSAP No. 5R shall be followed.

Disclosures

12. If a reporting entity is part of a group of affiliated entities which utilizes a pooling arrangement under which the pool participants cede substantially all of their direct and assumed business to the pool, the financial statements shall include:

a. A description of the basic terms of the arrangement and the related accounting;

b. Identification of the lead entity and of all affiliated entities participating in the intercompany pool (include NAIC Company Codes) and indication of their respective percentage shares of the pooled business;

c. Description of the lines and types of business subject to the pooling agreement;

d. Description of cessions to non-affiliated reinsurers of business subject to the pooling agreement, and indication of whether such cessions were prior to or subsequent to the cession of pooled business from the affiliated pool members to the lead entity;

e. Identification of all pool members which are parties to reinsurance agreements with non-affiliated reinsurers covering business subject to the pooling agreement and which have a contractual right of direct recovery from the non-affiliated reinsurer per the terms of such reinsurance agreements;

f. Explanation of any discrepancies between entries regarding pooled business on the assumed and ceded reinsurance schedules of the lead entity and corresponding entries on the assumed and ceded reinsurance schedules of other pool participants;

g. Description of intercompany sharing, if other than in accordance with the pool participation percentage, of the Aging of Ceded Reinsurance (Schedule F, Part 3) and the write–off of uncollectible reinsurance;

h. Amounts due to/from the lead entity and all affiliated entities participating in the intercompany pool as of the balance sheet date.

i. For modifications to an existing intercompany pooling arrangement that involve the transfer of assets with fair values that differ from cost or amortized cost, the statement value and fair value of assets received or transferred by the reporting entity.

13. Refer to the Preamble for further discussion regarding disclosure requirements.

Effective Date and Transition

14. This statement is effective for years beginning January 1, 2001. A change resulting from the adoption of this statement shall be accounted for as a change in accounting principle in accordance with *SSAP No. 3—Accounting Changes and Corrections of Errors*.

REFERENCES

Relevant Issue Papers

- *Issue Paper No. 97—Underwriting Pools and Associations Including Intercompany Pools*

June 9, 2023

Mr. Dale Bruggeman, Chairman
Statutory Accounting Principles Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

Dear Mr. Bruggeman:

Re: Exposure Reference No. 2022-11 – Collateral for Loans

Security Benefit Life Insurance Company would like to thank the Statutory Accounting Principles Working Group ("SAPWG") for the opportunity to provide comments for consideration on Reference No. 2022-11—Collateral for Loans (the "Exposure")[1], which proposes revisions to Statements of Statutory Accounting principles ("SSAP") No. 21R, *Other Admitted Assets* ("SSAP No. 21R") as follows:

1. A joint venture, partnership, or limited liability company ("JV/LP/LLC") or a subsidiary controlled or affiliated entity ("SCA") that is pledged as collateral to support an outstanding collateral loan balance must each be audited annually to qualify as an admitted investment.
2. The audited net equity of a pledged JV/LP/LLC and/or SCA is the basis of measurement for comparison to an outstanding collateral loan balance. Any portion of the outstanding balance of a collateral loan that is greater than the audited net equity of a pledged JV/LP/LLC and/or SCA must be non-admitted.

Firstly, consistent with the separate and broader Interested Party comment letter dated February 10, 2023, we do not believe an audit is necessary. In addition, we believe considering book value as a measure of the adequacy of collateralization, or ability for a borrower to repay a collateral loan is not supportable. Book value of equity is not acknowledged to reflect the value of what an asset would be bought or sold for (*i.e.*, the ultimate source of repayment for the collateral loan). The concept of fair value (vs. book value) exists precisely to represent the price that would be received for the sale of an asset in an orderly transaction between market participants at the measurement date. This variance between book value and fair value is observed in markets every day, where trading and transaction prices vary significantly from the proportionate book value of equity (hence the concept of "price-to-book multiples"). Book value can be lower than or higher than fair value. Notably, for example, insurers often trade on public markets for less than one times price-to-book value ratio (*i.e.*, book value is greater than fair value).

Using the book value of equity in lieu of fair value when assessing collateralization for the admissibility of collateral loans will all but guarantee the carrying value of the collateral will differ from what it could ultimately be sold for to repay the collateral loan. This will create volatility for insurance companies and may lead borrowers to begin to manage to a metric in the short term that does not ultimately provide the highest proceeds to repay the collateral loan.

Please consider the following example: a borrower borrows $100 on a collateral loan to make a $100 equity investment in an equipment leasing business. The $100 investment equates to 20% of the company upon investment, which implies that the total business is worth $500. The total book value of the business is $250 (equipment leasing businesses, for example, typically trade around 2x price/ book value). This means that, immediately upon making the $100 investment, the borrower's stake would be considered to have a collateral value of only $50 (*i.e.*, 20% of the $250 book value), resulting in an immediate loss of $50 of collateral value. Further, this differs from the statutory accounting that would apply if the insurer had made the investment directly on its balance sheet (equity-method accounting). In accordance with SSAP No. 48, the insurer would record the initial investment in an investee at cost plus subsequent capital contributions to the investee. The carrying amount of the investment would then subsequently be adjusted for the amortization difference (difference between the cost and underlying GAAP equity) over a period of time as well as for the insurer's pro-rata share of GAAP-basis earnings or losses and distributions of the investee. Therefore, under SSAP No. 48, the investment is worth its investment at cost (*i.e.*, $100) on day one and subsequently amortized to the GAAP equity value of the investee over the period that the investing entity benefits economically rather than at a point in time as would occur under the proposed revisions in SSAP No. 21R.

We request consideration for the likely adverse effects to decision-making this exposed revision may cause, in addition to the operational disruptiveness of immediate adoption, as discussed further in this document.

Secondly, we believe the Exposure proposes substantive changes, not clarifications, and as a result, the process for a substantive change is not being followed. The Exposure will impose undue costs and efforts if adopted, as it substantively causes a change

[1] Dated March 22, 2023.

to the application of SSAP No. 48, *Joint Ventures, Partnerships and Limited Liability* Companies ("SSAP No. 48") and SSAP No. 97, *Investments in Subsidiary, Controlled and Affiliated Entities* ("SSAP No. 97"). The Accounting Practices and Procedures Manual provides that "[n]onsubstantive revisions are characterized as language clarifications which do not modify the original intent of a SSAP . . ." Utilization of fair value equity of pledged JV/LP/LLC and/or SCA investments has long been utilized as required by SSAP No. 21R and subject to both independent audits and state insurance department examinations, without this practice being raised as an issue nor requiring adjustments to financial statements. Accordingly, the Exposure modifies the original intent of SSAP Nos. 21R, 48 and 97.[2]

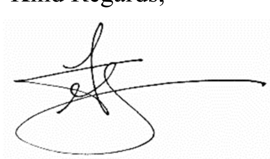
The accelerated approach here is not supported by the analytical rigor that the SAPWG typically applies and denies affected parties the due process otherwise required when substantive changes are made. Should the Exposure be adopted with the proposed revisions to SSAP No. 21R to require audited net equity of pledged JV/LP/LLC and/or SCA investments, it would similarly be a material modification to an acceptable and supportable industry practice. It would also require insurers to disclose a change in accounting policy, which is further evidence that this is a substantive change. Furthermore, we would have to incur considerable cost and effort along with our borrowers (assuming that borrowers are willing to cooperate and, given that loan documentation was drafted prior to the changes being proposed here, there can be no assurance of such cooperation) to accurately determine the collateral value by applying the guidance prescribed in SSAP No. 48 with no assurance that we would be successful given the ability of borrowers to obtain the required information from their investees. Without the additional time typically afforded for a substantive modification, we find ourselves unable to consider effective alternative solutions in a timely manner and unable perform a full risk assessment of adoption impacts for both intended and potentially unintended consequences.

As a standard setting body (not a regulatory body), the NAIC has an obligation to adhere to proper processes and to base decisions on empirical data rather than hypotheses. Providing more process, rather than less, is critically important because decisions that the NAIC make can adversely affect competition in the industry; failing to do so can result in its decisions impermissibly choosing winners and losers in the marketplace. The Company believes that there have been other occasions where a proposed revision has been classified as "non-substantive" or a "SAP clarification," despite the fact that the revisions have modified the intent of applicable SSAPs and thereby caused material changes in acceptable accounting practices.[3]

*   *   *   *   *

We appreciate your attention to the issues raised in this letter and would be pleased to discuss our questions and comments with the SAPWG or its staff at your convenience.

Kind Regards,



Tai D. Giang
Director, Accounting Policy
Security Benefit Life Insurance Company

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[2] The same can be said of the Exposure's requirement to perform audits of JV/LP/LLC and/or SCAs pledged in support of collateral loans. For years insurers have secured collateral loans with these types of interests and have been subject to both independent audit and state insurance department examinations without this practice being raised as an issue nor requiring adjustments to financial statements. We therefore believe requiring audits is a substantive change to SSAP No. 21R.

[3] See, e.g., Exposure Ref No. 2019-24—Levelized and Persistency Commissions and Exposure Ref Nos. 2021-21—Related Party Reporting and 2022-15—Affiliate Reporting Clarification.

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June 30, 2023

Mr. Dale Bruggeman, Chairman
Statutory Accounting Principles Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

RE: Interested Parties Comments on Exposures with Public Comment Period ending June 30

Dear Mr. Bruggeman:

Interested parties appreciate the opportunity to comment on the items exposed for comment by the Statutory Accounting Working Group (the Working Group) on May 16th with the public comment period ending June 30th.

Ref #2022-14: New Market Tax Credits

Interested Parties appreciate the opportunity to comment on the substantive revisions exposed by the Working Group to SSAP No. 93 - *Low Income Housing Tax Credit Property Investments* and SSAP No. 94 *Transferable and Non-Transferable State Tax Credits.* As stated in our prior comment letter on this topic, interested parties agree with having uniformity in accounting and reporting for equity and debt investments for which the return is earned primarily through tax credits. Interested parties also agree that the proportional amortization method is an appropriate method to use for any type of investment (debt or equity) where the return is primarily earned through tax credits. We have a few comments on the exposure to make sure the guidance is clear and insurers know how to apply it.

SSAP No. 93

1) Paragraph 2 and 3– Paragraph 2 includes the criteria for investments in tax credit structures to apply the proportional amortization method. If an investment does not meet the criteria, then paragraph 3 states that the investment should follow the applicable statutory accounting statement. For equity investments, that means that SSAP No. 48 should be followed, which would require the use of equity method of accounting. For bonds in tax credit structures that do not meet the definition, interested parties believe that the bond needs to be analyzed under the new proposed principles-based bond definition to determine if bond reporting or other-invested asset reporting is required. Interested parties recommend clarifying this in the standard if that is the case.

2) Paragraph 14 (a) –This paragraph states that tax credits under the SSAP No. 93 accounting guidance are to be recorded and assessed for admittance in accordance with SSAP No. 94. Interested parties found this confusing and subject to many different interpretations. There is a key difference between SSAP No. 93 and SSAP No. 94 tax credits in that SSAP No. 93 tax credits are only earned as part of the return on the investment so the only asset recorded on the insurer's books is related to the investment itself. The tax credits are only recorded upon becoming available for use on a reporting entity's tax return. Therefore, there is no tax credit to non-admit per se. In the rare case that the tax credit cannot be utilized in the year that it is allowed to be utilized due to the insurer not having enough income from operations in the case of federal tax credits or premium income in the case of state programs, the insurer would record a Deferred Tax Asset (DTA). Any DTA set up would be subject to the admissibility requirements under SSAP No. 101 - *Income Taxes*. For these reasons, interested parties recommend that paragraph 14 (a) be removed.

3) Paragraph 18 (a) and (b) and (c) - These paragraphs are intended to address admissibility considerations. Paragraph (c) states that if the tax credits cannot be utilized in the next three years, they will be non-admitted, while paragraphs (a) and (b) are intended to address instances when the credits cannot be utilized by the insurer, but the insurer has the ability to sell them to third parties or get a refund for the credits. We understand from discussions with the Working Group that the intent of this guidance is for an insurer to first start with the assessment in (c) to determine if it will be able to utilize the tax credits in the next three years. If not, then the insurer can consider whether the tax credits can be sold or whether the insurer can be reimbursed for the credits if unable to utilize them. Under the former, the insurer can admit the credits up to their fair value as the insurer would recover the fair value in a sale. Under the latter, the insurer can admit up to the amount of the expected refund.

Similar to our comments under #1 above, it is not clear to us what exactly we are non-admitting. As explained above, the only item that gets recorded on the balance sheet as an actual asset is the investment itself. The cost of the investment is amortized in proportion to the tax credits earned every year regardless of whether the credits are utilized or not. Admissibility requirements are already addressed for the investment itself in the proposal (i.e., the tax opinion and audited financial statements). As the tax credits are allocated to the insurer, they either reduce federal income taxes, or state/premium taxes. If the tax credits cannot be utilized in a given year, a DTA would be established. Any admissibility rules on the DTA itself are already addressed in SSAP No. 101 - *Income Taxes*.

If the DTA admissibility is what is being addressed in paragraph 18, interested parties recommend that be clarified. We understand that this may have been one of the reasons why the SSAP No. 93 proposal references SSAP No. 94. As stated above, to avoid any confusion regarding the accounting for the tax credits earned in a SSAP No. 93 investment, we suggest including all guidance in SSAP 93 (i.e., no reference to SSAP 94) regarding the credits earned in a SSAP No. 93 investment. Interested parties also have the following suggested edits to make the admissibility rules on the tax credits themselves clear.

Paragraph 18 – If tax credits allocated to the reporting entity cannot be utilized in the year they have been allocated to the entity, a deferred tax asset (DTA) would be established. Under those circumstances, the reporting entity would follow the requirements under SSAP No. 101 *Income Taxes* regarding admissibility rules on DTAs. ~~A reporting entity is required to assess the realization of tax credits against tax liability for both the tax year in which the credit can be initially utilized as well as in accordance with carry-forward and/or carryback periods to determine the extent the investments can be admitted:~~

~~a. Tax credit investments which allocate tax credits which are transferable in accordance with permitted IRS or state tax provisions are admitted up to the lesser of the proportional amortized cost, or fair value of the tax credits.~~

~~b. Tax credit investments which allocate tax credits eligible for direct payment are admitted up to the lesser of the proportional amortized cost, or the estimated proceeds.~~

~~c. For all other tax credits, if a reporting entity does not expect to fully utilize investment tax credits in the upcoming tax year or for a carryback year, the reporting entity shall perform an assessment to determine the extent it will be able to utilize the tax credits over the life of the investment. If assessment projections identify that the tax credits from investments in tax credit programs will exceed what can be utilized under IRS or state tax provisions (current and other applicable tax periods), the reporting entity shall nonadmit investments as necessary so that investments in scope of this statement (in aggregate) are only admitted to the extent tax credits are expected to be utilized. Additionally]. In making this assessment, the reporting entity is not permitted to assume increased operations (e.g., expanded product sales) beyond actual experience to conclude that additional federal or state tax liability will exist that would allow additional utilization of tax credits. A reporting entity can subsequently admit a previously nonadmitted tax credit investment, based on subsequent assessments in which the reporting entity determines that they will be able to utilize the tax credits.~~

4) Paragraph 34 - The SSAP No. 93 exposure states that reporting entities shall prospectively modify the recognition, accounting and reporting of tax credit investment structures to follow the guidance under SSAP No. 3. We believe this means that on day of adoption, the SSAP No. 93 investment's book value is the starting value of the investment and the prospective method will be applied using that book value and amortizing the book value at the date of adoption based on the future tax credits to be earned. If that is the case, some clarification on the application of the prospective method would be helpful. Those companies that are US GAAP reporters are to apply the FASB ASU on a retrospective basis and thus there will continue to be differences between US GAAP and Statutory proportional method results for already existing tax credit investments. We believe further clarification of how the prospective method is to be applied for Statutory reporting should be clarified to avoid inconsistent interpretation of the intent.

SSAP No. 94

1) Paragraph 1 – This paragraph explains the scope of the types of tax credits that fall within the SSAP No. 94 guidance. Interested parties believe that the key difference between SSAP No. 93 and SSAP No. 94 is that SSAP No. 93 relates to tax credits that are earned as a result of being an investor (i.e., an equity investor) in the entity earning the credits and SSAP No. 94 relates to tax credit certificates that are purchased outright without being an investor in the entity. To make sure that is clear, interested parties propose the following changes to paragraph 1

> Paragraph 1 – This statement establishes statutory accounting principles for state and federal tax credit~~s~~ certificates that are purchased by the reporting entity without being an investor in the entity from which the tax credit certificates were purchased. ~~that are consistent with the Statutory Accounting Principles Statement of Concepts and Statutory Hierarchy (Statement of Concepts)~~

2) Paragraph 2 - The last sentence in this paragraph states that the tax credits received from SSAP No. 93 tax credit investments are within the scope of SSAP No. 94. For the reasons stated above in the SSAP No. 93 section of this comment letter, we do not think that SSAP No. 94 and SSAP No. 93 should be linked. As stated above, there are two very different assets that are recorded upon purchasing an investment under SSAP No. 93 versus SSAP No. 94. The only similarity in accounting for the tax credits relates to instances when the credits earned under a SSAP No. 93 investment cannot be utilized in the current year. Under that scenario, a DTA would be recorded, which would be subject to the admissibility rules under SSAP No. 101. For that reason, interested parties recommend removing the last sentence in paragraph 2 as suggested below.

   Paragraph 2 - Investments in tax credits as discussed in SSAP No. 93R - *Investments in Tax Credit Structures*, which involve investments in projects or programs that generate general business federal tax credits or state tax credits, are not within the scope of this statement. ~~However, the tax credits received from tax credit investments are within the scope of this statement.~~

3) Paragraph 9 - This paragraph states that federal and state tax credits that can be utilized in the year allocated or purchased shall be reported in the income statement as an offset to federal taxes in accordance with SSAP No. 101 or state premium tax, respectively. Interested parties note that most tax certificates reduce a reporting entity's tax liability and do not directly impact the income statement at the time they are used. In addition, interested parties believe that upon purchase, the tax credits should be reported as an other-than-invested asset since the asset represents a right to receive future benefits. As the tax credits become available for use, a reduction to the insurer's income tax payable or premium/state taxes payable should take place. Based on that, we propose the following changes:

> Paragraph 9 – Tax credits shall be recognized in the period that they are purchased or allocated to the reporting entity for tax purposes:

a. Federal and state tax credits are recorded as other-than-invested assets upon purchase. As the tax credits are redeemed, the carrying value of the tax credits is reduced dollar for dollar by the amount of tax credits applied toward the reporting entity's federal or state/premium tax liability, as applicable. ~~that can be utilized in the year allocated or purchased shall be reported in the income statement as an offset to federal taxes in accordance with SSAP No. 101 *Income Taxes*. Federal tax credits that cannot be utilized in the year allocated or purchased and are carried forward to a future tax year shall be reported net of deferred tax asset (DTA) in accordance with SSAP No. 101.~~

b. Federal and ~~S~~state tax credits that ~~can be utilized in the year allocated or purchased shall be reported in the income statement as an offset to state premium tax or state income tax, whichever is applicable, in the tax-reporting year in which the credit is utilized. State tax credits that~~ cannot be utilized in the year they are available for use ~~allocated or purchased~~ and are carried forward to a future tax year shall be reported as a deferred tax asset (DTA). ~~gross of any related state tax liabilities and reported in the category of other-than-invested-assets (not reported net).~~

We have updated the illustration that was included in Exhibit B below to reflect this as well.

7) Paragraph 7 - The accounting for purchased tax credits under the SSAP No. 94 exposure is different from the current guidance in that the credits will be recorded at face value instead of at cost. Interested parties do not have an issue with this accounting treatment per se, but we would like to point out that this is not consistent with the accounting treatment for other types of assets that are purchased at a premium or discount such as bonds and mortgage loans.

8) Exhibit B – Accounting for Non-Transferable Tax Credits

Interested parties recommend some edits to the illustration under Exhibit B to reflect the changes described in item 2) above. In addition, the edits below include other edits that we believe are necessary to show the appropriate flow of transactions and to add clarity to the accounting for federal tax credit certificates. These are our suggestions:

On 7/1/X1 LJW Insurance Company purchased non-transferable federal tax credits for a cost of $100,000. The federal tax credits are redeemable for $110,000 and expire on, April 1, 20x2. LJW expects to utilize the tax credits before expiration in the amount of $110,000. The credits are earned pro-rata every quarter from acquisition date to expiration date. Therefore, the credits earned quarterly are about $36,666. The illustration below assumes that LJW Insurance Company's quarterly income tax liability equals the amount of credits that were purchased.

7/1/x1	Federal tax credits	110,000	
	Deferred gains on acquired tax credits		10,000
	Cash		100,000
	To record the purchase of the tax credits		

9/30/x1	Income ~~Premium~~ tax expense	36,666	
	Income ~~Premium~~ taxes payable ~~to~~		36,666
	To record quarterly income tax liability.		
10/1/x1	Income taxes payable	36,666	
	Federal tax credits		36,666
	To record the use of tax credits in the quarter		
12/31/x1	Income tax expense	36,666	
	Income taxes payable		36,666
	To record quarterly income tax liability		
1/1/x2	Income taxes payable	36,666	
	Federal tax credits		36,666
	To record the use of tax credits in the quarter		
3/31/x2	Income tax expense	36,666	
	Income taxes payable		36,666
	To record quarterly income tax liability		
4/1/x2	Income taxes payable	36,666	
	Deferred gains on acquired tax credits	10,000	
	Other Income		10,000
	Federal tax credits		36,666
	To record the use of income tax credits in excess of cost and recognize a gain on premium tax credits in other income.		

4/1/x2

Ref #2019-21e - Principles-Based Bond Definition: Schedule BA

Interested parties have the following observations and suggestions to the proposed changes to the categories within Schedule BA (*Other Invested Assets*):

- Ensure that all reporting categories reflect the related SSAP within the instructions.
- Recommend exposing changes to the columns.

- For investments tagged as 'Debt Securities That Do Not Quality as Bonds' that are transferred from Schedule D, interested parties recommend that the investment will retain its' NAIC Designation and its' FE/ PLR status at the time of transfer.
- We believe the instructions for Tax Credit Investments (e.g., Guaranteed Low Income Housing Tax Credit Investments) are stale as the sentence '*There must be an all-inclusive guarantee from a CRP-rated entity that guarantees the yield on the investment*' is no longer valid.
- The various types of Tax Credit Investments (e.g., Low Income Housing; New Market; Renewable Energy) have different risks and should be evaluated accordingly and be reported according to their risks. Recommend a referral to the RBC Investment Risk & Evaluation Working Group to evaluate the various risk categories such that changes could be implemented for Annual 2025 reporting.
- Based on Ref #2022-14 (*Tax Credits*), interested parties will provide additional comments when this item is adopted by the Statutory Accounting Principles Working Group (SAPWG).
- Based on Ref #2023-12 (*SSAP No. 48 - Residuals*), interested parties will provide comments when this item is adopted by SAPWG.
- Please refer to the attached markup version of the exposure as there are several editorial revisions that we are suggesting that clarify the descriptions within the categories and language within the instructions.

Interested parties have attached a markup version of the exposure with our detailed suggested changes.

Ref #2023-13: PIK Interest Disclosure Clarification

The Working Group moved this agenda item to the active listing, categorized as a SAP clarification, and exposed revisions to SSAP No. 34 and the Annual Statement Instructions to clarify and incorporate a practical expedient to the paid-in-kind (PIK) interest aggregate disclosure. These SSAP No. 34 revisions, when adopted, will also result in editorial changes to the annual statement instructions.

Interested parties have no comment on this item.

Ref #2023-12: Residuals in SSAP No. 48 Investments

The Working Group moved this agenda item to the active listing, categorized as an SAP clarification, and exposed revisions to SSAP No. 48 which clarify that investments structures captured in scope of SSAP No. 48 that represent residual interests or that predominantly hold residual interests, shall be reported on the dedicated residual reporting line on Schedule BA. Corresponding edits to ensure consistent language in SSAP No. 43R and revisions to the Schedule BA Annual Statement Instructions were also exposed.

Interested parties have received comments from NAIC staff that we are currently reviewing and will submit a separate comment letter at a later date.

*　　*　　*　　*

Please feel free to contact either one of us with any questions you may have.

Sincerely,

D. Keith Bell　　　　　　　　Rose Albrizio

cc: Interested parties
NAIC staff

Bond Definition
Proposed Reporting Lines – Schedule BA
2023 Spring NM Exposure

This document proposes annual statement reporting line and descriptions for suggested reporting lines for investments reported as other invested assets on Schedule BA. The main focus is to categorize debt securities that do not qualify as bonds under *SSAP No. 26—Bonds* or *SSAP No. 43R—Asset-Backed Securities* and are captured in scope of *SSAP No. 21R—Other Admitted Assets*. As detailed within, other revisions have also been proposed to update the schedule.

Comments are requested on all aspects of this document – including whether reporting lines should be added or deleted as well as the suggested instructions to clarify what should be captured in each location.

SCHEDULE BA – PARTS 1, 2 AND 3

OTHER LONG-TERM INVESTED ASSETS – GENERAL INSTRUCTIONS

Include only those classes of invested assets not clearly or normally includable in any other invested asset schedule, or that have been specifically identified for reporting on Schedule BA: Other Invested Assets.
For accounting guidance related to foreign currency transactions and translations, refer to *SSAP No. 23—Foreign Currency Transactions and Translations*.

If a reporting entity has any detail lines reported for any of the following required groups, categories, or subcategories, it shall report the subtotal amount of the corresponding group, category, or subcategory, with the specified subtotal line number appearing in the same manner and location as the pre-printed total or grand total line and number:

Group or Category	Line Number
Debt Securities That Do Not Qualify as Bonds	
Debt Securities That Do Not Reflect a Creditor Relationship in Substance	
NAIC Designation Assigned by the Securities Valuation Office (SVO)	
Unaffiliated	
Affiliated	
NAIC Designation Not Assigned by the Securities Valuation Office (SVO)	
Unaffiliated	
Affiliated	
Debt Securities That Lack Substantive Credit Enhancement	
NAIC Designation Assigned by the Securities Valuation Office (SVO)	
Unaffiliated	
Affiliated	
NAIC Designation Not Assigned by the Securities Valuation Office (SVO)	
Unaffiliated	
Affiliated	
Debt Securities That Do Not Qualify as Bonds Solely to a Lack Of Meaningful Cash Flows	
NAIC Designation Assigned by the Securities Valuation Office (SVO)	
Unaffiliated	
Affiliated	
NAIC Designation Not Assigned by the Securities Valuation Office (SVO)	
Unaffiliated	
Affiliated	

Equity Interests in Joint Ventures, Partnerships, Limited Liability Companies or Non-Registered Private Funds with Underlying Assets Having the Characteristics of:

Fixed Income Instruments

NAIC Designation Assigned by the Securities Valuation Office (SVO)

Unaffiliated ....

Affiliated ....

NAIC Designation Not Assigned by the Securities Valuation Office (SVO)

Unaffiliated ....

Affiliated ....

Common Stocks

Unaffiliated ....

Affiliated ....

Real Estate

Unaffiliated ....

Affiliated ....

Mortgage Loans

Unaffiliated ....

Affiliated ....

Other

Unaffiliated ....

Affiliated ....

Surplus Notes

Unaffiliated..

Affiliated ....

Capital Notes

Unaffiliated..

Affiliated ....

Collateral Loans

Unaffiliated..

Affiliated ....

Non-collateral Loans

Unaffiliated..

Affiliated ....

Guaranteed Federal Tax Credit

Unaffiliated..

Affiliated ....

Non-Guaranteed Federal Tax Credit

Unaffiliated..

Affiliated ....

Guaranteed State Tax Credit

Unaffiliated..

Affiliated ....

Non-Guaranteed State Tax Credit

Unaffiliated..

Affiliated ....

All Other Tax Credit

Unaffiliated..

Affiliated ....

NAIC Staff Note: The reporting lines for Low Income Housing Tax Credits are anticipated to be updated as part of the current tax credit investment statutory accounting review.

Working Capital Finance Investment
Unaffiliated...

Residual Tranches or Interests with Underlying Assets Having Characteristics of:

Fixed Income Instruments
Unaffiliated ....
Affiliated...

Common Stock
Unaffiliated ....
Affiliated...

Preferred Stock
Unaffiliated ....
Affiliated...

Real Estate
Unaffiliated ....
Affiliated...

Mortgage Loans
Unaffiliated ....
Affiliated...

Other
Unaffiliated ....
Affiliated...

Any Other Class of Assets
Unaffiliated...
Affiliated ....

Subtotals
Unaffiliated...
Affiliated ....

TOTALS..

The following listing is intended to give examples of investments to be included in each category; however, the list should not be considered all-inclusive:

Debt Securities That Do Not Qualify as Bonds

Include: Debt securities captured in *SSAP No. 21R—Other Admitted Assets*. This is specific to securities, as that term is defined in *SSAP No. 26—Bonds*, whereby there is a fixed schedule for one or more future payments (referred to as debt securities), but for which the security does not qualify for bond reporting under *SSAP No. 26R* as an issuer credit obligation or an asset-backed security.

Investments that have been assigned an NAIC designation by the Securities Valuation Office (SVO) pursuant to the policies in the *Purposes and Procedures Manual of the NAIC Investment Analysis Office* shall be reported on Lines TBD and TBD.

Investments that have not been assigned an NAIC designation by the Securities Valuation Office (SVO) pursuant to the policies in the *Purposes and Procedures Manual of the NAIC Investment Analysis Office* for this category. Designations received from an SEC NRSRO are permitted to be reported but are not required. Report these investments on Lines TBD, TBD, TBD, TBD, TBD and TBD.

Exclude: Any investment that does not qualify as a security. This term is defined in *SSAP No. 26R – Bonds*.

Any investment that is not captured as a debt security that does not qualify as a bond pursuant to *SSAP No. 21R—Other Admitted Assets*.

Equity interests in Joint Ventures, Partnerships or Limited Liability Companies or Non-Registered Private Funds with Underlying Assets Having the Characteristics:

Fixed Income Instruments

Include: Equity interests in joint ventures, partnerships, limited liability companies or non-registered private funds that are engaged in bond or preferred stock fixed income strategies..

Investments on the NAIC List of Schedule BA Non-Registered Private Funds with Underlying Assets Having Characteristics of Bonds or Preferred Stock that has been assigned an NAIC designation by the Securities Valuation Office (SVO) pursuant to the policies in the *Purposes and Procedures Manual of the NAIC Investment Analysis Office*. Report these investments on Lines TBD and TBD.

Investments that have not been assigned an NAIC designation by the Securities Valuation Office (SVO) pursuant to the policies in the *Purposes and Procedures Manual of the NAIC Investment Analysis Office*. Designations received from an SEC NRSRO are permitted to be reported but are not required. Report these investments on Lines TBD and TBD.

Common Stocks

Include: Venture Capital Funds or other underlying equity investments.

Real Estate

Include: Real estate development interest. Reporting should be consistent with the detailed property analysis appropriate for the corresponding risk-based capital factor for this investment category. If the requisite details are not available for reporting, report under "Other" subcategory.

Mortgage Loans

Include: Mortgage obligations. Reporting should be consistent with the detailed property analysis appropriate for the corresponding risk-based capital factor for this investment category. If the requisite details are not available for reporting, report under "Other" subcategory.

Other

Include: Limited partnership interests in oil and gas production.

Forest product partnerships.

Investments within the Joint Venture and Partnership Interests category that do not qualify for inclusion in the "Fixed Income Instruments," "Common Stocks," "Real Estate" or "Mortgage Loans" subcategories.

Surplus Notes

Include: That portion of any subordinated indebtedness, surplus debenture, surplus note, debenture note, premium income note, bond, or other contingent evidence of indebtedness that is reported in the surplus of the issuer.

Capital Notes

Include: The portion of any capital note that is reported on the line for capital notes of the issuing insurance reporting entity.

<u>Collateral Loans</u>

Include: Loans meeting the *SSAP No. 21R—Other Admitted Assets* definition of collateral loans, regardless if the collateral is sufficient to fully cover the loan, shall be captured in this category. Guidance in *SSAP No. 21R* shall be followed to determine nonadmittance.
Refer to *SSAP No. 21R* for a definition of collateral loans.

In the description column, the name of the actual borrower and state if the borrower is a parent, subsidiary, affiliate, officer or director. Also include the type of collateral held.

<u>Non-collateral Loans</u>

Include: Non-collateral loans are considered the unpaid portion of loans previously made to another organization or individual in which the reporting entity has a right to receive money for the loan, but for which the reporting entity has not obtained collateral to secure the loan.

Non-collateral loans shall not include those instruments that meet the definition of a bond, per *SSAP No. 26R—Bonds*, a mortgage loan per *SSAP No. 37—Mortgage Loans*, asset-backed securities per *SSAP No. 43R—Loan-Backed and Structured Securities*, or a policy or contract loan per *SSAP No. 49—Policy Loans*, or a collateral loan in *SSAP No. 21, Other Admitted Assets*.

Non-collateral loans are nonadmitted unless they are to related parties and meet the criteria in *SSAP No. 25—Affiliates and Other Related Parties*. *SSAP No. 20 Nonadmitted Assets* and *SSAP No. 25* should be referred to for accounting guidance for Non-collateral loans

In the description column, provide the name of the actual borrower. For affiliated entities, state if the borrower is a parent, subsidiary, affiliate, officer or director.

Low Income Housing Tax Credit

Note: These instructions will be updated in accordance with the SAPWG tax credit agenda item.

Include: All Low Income Housing Tax Credit Investments (LIHTC or affordable housing) that are in the form of a Limited Partnership or a Limited Liability Company including those investments that have the following risk mitigation factors:

A. Guaranteed Low Income Housing Tax Credit Investments. There must be an all-inclusive guarantee from a CRP-rated entity that guarantees the yield on the investment.

B. Non-guaranteed Low Income Housing Tax Credit Investments.

I. A level of leverage below 50%. For a LIHTC Fund, the level of leverage is measured at the fund level.

II. There is a Tax Credit Guarantee Agreement from General Partner or managing member. This agreement requires the General Partner or managing member to reimburse investors for any shortfalls in tax credits due to errors of compliance, for the life of the partnership. For a LIHTC Fund, a Tax Credit Guarantee is required from the developers of the lower tier LIHTC properties to the upper tier partnership and all other LIHTC investments.

III. There are sufficient operating reserves, capital replacement reserves and/or operating deficit guarantees present to mitigate foreseeable foreclosure risk at the time of the investment.

Non-qualifying LIHTCs should be reported in the “All Other” category

[placeholder for changes resulting from SAPWG 2022-14 (*New Market Tax Credits*)]

Working Capital Finance Investment

Include: Investments in an interest in a Confirmed Supplier Receivables (CSR) under a Working Capital Finance Program (WCFP) that is designated by the SVO as meeting the criteria specified in the *Purposes and Procedures Manual of the NAIC Investment Analysis Office* for an NAIC “1” or “2.”

Working Capital Finance Program (WCFP)

Open account program under which an Investor may purchase interests, or evidence thereof, in commercial non-insurance receivables. A WFCP is created for the benefit of a commercial investment grade obligor and its suppliers of goods or services and facilitated by a financial intermediary.

Confirmed Supplier Receivables (CSR)

A first priority perfected security interest claim or right to payment of a monetary obligation from the Obligor arising from the sale of goods or services from the Supplier to the Obligor the payment of which the Obligor has confirmed by representing and warranting that it will not protest, delay, or deny, nor offer nor assert any defenses against, payment to the supplier or any party taking claim or right to payment from the supplier.

See *SSAP No. 105R—Working Capital Finance Investments* for accounting guidance.

Residual Tranches or Interests with Underlying Assets Having Characteristics of:

Investment in Residual Tranches or Interests should be assigned to the subcategory with the highest underlying asset concentration. There shouldn't be any bifurcation of the underlying assets among the subcategories.

Include: Residual tranches or interests captures securitization tranches and beneficial interests as well as other structures captured in scope of *SSAP No. 43R – Asset-Backed Securities*, that reflect loss layers without any contractual payments, whether interest or principal, or both. Payments to holders of these investments occur after contractual interest and principal payments have been made to other tranches or interests and are based on the remaining available funds. See *SSAP No. 43R* for accounting guidance.

[placeholder for changes resulting from SAPWG 2023-12 (*SSAP No. 48 – Residuals*)]

Fixed Income Instruments

Include: Investments with underlying collateral which, if held individually, would be reported on *Schedule D – Part 1 – Long-Term Bonds*

Common Stocks

Include: Investments with underlying collateral which, if held individually, would be reported on *Schedule D – Part 2 – Section 2 – Common Stocks*

Preferred Stocks

Include: Investments with underlying collateral which, if held individually, would be reported on *Schedule D – Part 2 – Section 1 – Preferred Stocks*

Real Estate

Include: Investments with underlying collateral which, if held individually, would be reported on *Schedule A – Real Estate Owned*

Mortgage Loans

Include: Investments with underlying collateral which, if held individually, would be reported on *Schedule B – Mortgage Loans*

Other

Include: Items that do not qualify for inclusion in the above subcategories.

Any Other Class of Assets

Include: Investments that do not fit into one of the other categories. An example of items that may be included are reverse mortgages.

All structured settlement income streams acquired as investments where the reporting entity acquires the legal right to receive payments. (Valuation and admittance provisions are detailed in *SSAP No. 21R—Other Admitted Assets*.)

This category shall also include oil and gas leases, aircraft owned under leveraged lease arrangements, investments in extractive materials and timber deeds that are not owned within a partnership, LLC or joint venture structure.

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July 14, 2023

Mr. Dale Bruggeman, Chairman
Statutory Accounting Principles Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

RE: Interested Parties Comments on Ref #2023-12, Residuals in SSAP No. 48 Investments

Dear Mr. Bruggeman:

Interested parties appreciate the opportunity to comment on the following item that was exposed for comment by the Statutory Accounting Working Group (the Working Group.

Ref # 2023-12: Residuals in SSAP No. 48 Investments

This agenda item proposes revisions to clarify the scope and reporting for investment structures that represent residual interests or a residual security tranche (collectively referred to as residuals) within statutory accounting principles regardless of the legal form of the residual (e.g., debt, stock, LP/LLC equity ownership, etc.) It proposes guidance to clarify the reporting of in-substance residuals regardless of the structure of the investment vehicle.

Interested parties has been working with NAIC staff to clarify the definition in order to facilitate consistent interpretation by the industry and auditors, to avoid unintended consequences of certain equity investments being scoped into the definition of a residual when they were not intended to be in scope. We appreciate NAIC staff working with us on these clarifications and look forward to reviewing the next exposure. In addition to the redrafted exposure draft, we offer the following comments**.**

In reviewing the exposure, we understand that the residual definition is related to investment structures that issue debt securities created for the primary purpose of raising debt capital backed by collateral assets (ABS issuers as defined in paragraph 8 of the current bond exposure in SSAP Nos. 26R). As a result, interested parties do not believe the intent was to include the following types of investment structures:

- Private Funds (e.g., equity, debt, hedge)- that issued debt for liquidity / operating purposes rather than to raise capital backed by a discrete pool of collateral assets.
- Real Estate Funds (including REITs and JVs) (i.e., considered Issuer Credit Obligations, or "ICOs", in the proposed bond standard)
- Non-US registered Funds (i.e., considered ICOs in the proposed bond standard)
- Other ICOs in the proposed bond definition, such as 40 Act Funds, Business Development Company, Operating Entities, and Holding Companies supported by operating companies.

The exposure currently addresses changes to SSAP No. 48 - Joint Ventures, Partnerships and Limited liability Companies, but we also believe the definition is relevant to SSAP Nos. 26R, 43R, and 21R and should be included in those other SSAPs. Also, consideration should be given to whether the definition should also be added to SSAPs where residuals may currently be in scope, such as SSAP No. 30R (e.g., from securitizations in legal form of a corporation).

Upon adoption of the Form A, interested parties believe the guidance would be effective immediately. Interested parties will need time to consider the guidance, develop accounting policies, and identify the residuals under the new definition. As a result, we recommend an effective date of six months after the adoption by Executive (Ex) Committee.

* * * *

Please feel free to contact either one of us with any questions you may have.

Sincerely,

D. Keith Bell   Rose Albrizio

cc: Interested parties
NAIC staff