NAIC NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Date: 11/1/22

Virtual Meeting

RESTRUCTURING MECHANISMS (E) SUBGROUP
Wednesday, November 9, 2022
1:00 – 2:30 p.m. ET / 12:00 – 1:30 p.m. CT / 11:00 a.m. – 12:30 p.m. MT / 10:00 – 11:30 a.m. PT

ROLL CALL

Doug Stolte/David Smith, Co-Chairs	Virginia	David Wolf	New Jersey
Jack Broccoli/Jared Kosky, Co-Vice Chairs	Connecticut	Dale Bruggeman	Ohio
Mel Anderson	Arkansas	Andrew Schallhorn	Oklahoma
Judy Mottar	Illinois	Ted Hurley	Rhode Island
Judy Weaver	Michigan	Amy Garcia	Texas
Fred Andersen	Minnesota	Amy Malm	Wisconsin
John Rehagen/James Le	Missouri		

NAIC Support Staff: Dan Daveline/Robin Marcotte

The Subgroup met in regulator-to-regulator session on Oct. 27 pursuant to paragraph 6 (consultations with NAIC staff) of the NAIC Policy Statement on Open Meetings to receive an overview of comments. No action was taken at this meeting.

AGENDA

1. Review the Overview of Comments — Attachment 1
   —Doug Stolte (VA), David Smith (VA) and Jack Broccoli (CT)

2. Review of Selected Comment Topics - General, Independent Expert and some of the Preliminary Guaranty Association Comments
   —Doug Stolte (VA), David Smith (VA) and Jack Broccoli (CT)

   - Comments Sorted by Topic — Attachment 2
   - Comment Letters — Attachment 3

3. Discuss Any Other Matters Brought Before the Subgroup
   —Doug Stolte (VA) and David Smith (VA)

4. Adjournment

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Restructuring Mechanisms (E) Subgroup
Summary of Comments received from 6-20-22 exposure

I. Exposure Drafts – The Subgroup exposed the following drafts:

1. Foundational Principles
2. Best Practices
3. Run off response from Property Casualty Risk Based Capital (E) Working Group

II. Comment Letters -The Subgroup received 11 comment letters (65 pages) (See Attachment 3) from the following:

1. Connecticut Insurance Department,
2. Missouri Department of Commerce and Insurance/John Rehagen
3. American Council of Life Insurers (ACLI)
4. Enstar (US) Inc.
5. Locke Lord LLP
6. Luann Petrellis Consulting
7. National Organization of Life & Health Insurance Guaranty Associations (NOLHGA) and National Conference of Insurance Guaranty Funds (NCIGF)
8. New York Life Insurance Company ,Western & Southern Financial Group and The Northwestern Mutual Life Insurance Company
9. ProTucket Insurance Company
10. Randall & Quilter Investment Holdings Ltd.
11. RiverStone

III. Spreadsheet of comments (See Attachment 2)

Because of the number of letters (11) and volume of comments (65 pages), the comments were given a short topic tag and sorted by the following: Exposure document, Topic, short topic, Company commenting, Comments provided, Name(s) of letter signors, and Section of document if referenced.

There is some judgement involved in the short topic tagging. The comments were sorted by the following primary short topic tags:

1. General
2. Independent Expert
3. No worse off
4. Guaranty Associations
5. Due Process
6. Analysis/ approval
7. Run -off

These 7 short topic tags were sorted and placed into attachment 2 by topic for ease of review. The areas with the most comments have additional subtopic tags. For example analysis notes different areas such as resulting state licensing, financial strength etc.

Restructuring Mechanisms (E) Subgroup
Summary of Comments received from 6-20-22 exposure

IV. Key comment areas:

1. **General –- 7 comments** **(See attachment 2 - pages 1-2)**
    a. Principles and standards should be adopted in a way that they can become an accreditation standard.
    b. More guardrails are needed to protect consumers.
    c. ACLI - commented based on its own guidelines developed by its board. The ACLI suggests a single document rather than two. While the ACLI does not propose that the documents need to match existing laws, it still recommends a close review of such laws
    d. NOLHGA - provided redline edits and are available for continued dialogue and defining terms.
    e. Should be an overall review for duplications.
    f. Combine principles and best practices into one document.

2. **Independent Expert – 12 comments** **(See attachment 2 – pages 3-4)**
    a. Specify requirements for independent expert report
    b. Corporate divisions
        i. Under the CT Corporate Division law, hiring of experts is optional.
        ii. Corporate Division is more like other holding company transactions including Form A that do not mandate the hiring of experts. CT prefers to leave the hiring of independent experts for Corporate Divisions to the discretion of the state.
        iii. CT prefers to use state experts if qualified for review of Corporate Division. The best expert is often the stat DOI staff. Resource savings and should follow existing Form A guidance.
        iv. Eliminate the mandate to use independent experts but require documentation on the appropriateness of DOI expertise.
    c. Robust Regulatory Review coordination with other states and laws – CD and IBT
    d. Legal opinion when necessary to supplement Independent expert review
    e. Support for Independent expert report for all IBT/CD which is publicly available.
    f. DOI and Independent expert reports reviews are complimentary

3. **No worse off – 27 comments** **(See attachment 2- pages 5-9)**
    a. Suggest no material adverse impact standard similar to PRA and FCA
        i. Support for no material adverse because the concept of materiality is known.
        ii. UK court guidance noted on material adverse measurement
        iii. Measurement and definition of NO worse off.
        iv. IBT laws of RI, AR, OK and the NCOIL model require no material adverse impact
        v. UK part VII uses not material adverse impact - the white paper noted that UK part VII process is robust.
        vi. No adverse effect is subjective.
        vii. Prefer trying to match existing state legislation and to NCOIL model legislation.

    b. Support for no worse off for both policyholders and key stakeholders. Change of a consumer's choice of an insure without consent is an extraordinary action

c. Policyholder's best interests should be the review standards -no worse off. – CD
   i. CD new management should have experience etc. that is in the best interests of the policyholders.
d. Measurement of no worse off
   i. Same or better is a higher standard than no worse off.
   ii. Policyholder is Worse off if their state of domicile requires consent under assumption reinsurance and they do not have the opportunity to consent/ reject.
   iii. Policyholder is worse off if the resulting insurer is not licensed in the states when the policies were written by the transferring insurers or where the Policyholders reside.
   iv. CD Financial condition of resulting insurers should not jeopardize stability of resulting insurers.
   v. Offers several proposed review procedures or findings on financial stability, future plans, capital adequacy, etc.
   vi. Motivations of the parties should be a consideration.
   vii. IBT / CD should not eliminate diversification by creating a monoline entity. (IBT and CD)
   viii. Financial strength of the resulting entities should be at least as great as the prior entity. (IBT and CD)
   ix. Operationally equivalent services and capabilities. (IBT and CD)
   x. Successor entities should be licensed in all the same states as the transferring or dividing entities. (IBT and CD)
e. Comments on other standards
   i. Notes that the company licensing handbook uses disfavor or unfair unreasonable or hazardous measures instead of no worse off.
   ii. Extraordinary dividend review standard is lower in that it only requires adequate surplus.
   iii. Same economic protection may be a higher standard that no worse off. Support for no adverse impact on policyholder's ability to receive benefits under the terms of the policy.

4. Guaranty Associations – 13 comments **(See attachment 2 - pages 10-12)**

a. Refer to Guaranty Association instead of funds
b. Guaranty association add more detail by type in best practices
c. Legal
   i. Guaranty association opinions may not be needed for all IBT
   ii. Legal Opinion for on guaranty associations may not be needed - IBT and CD
   iii. Retain same guaranty association coverage/ obtain a legal opinion to confirm.
d. References to guaranty association coverage - maintaining eligibility and inquiries with applicable states/ associations also referencing both life and PC guaranty association coverage
e. All policyholders should be covered by the same state guaranty association both before and after the transaction so that they have the same degree of protection if one of the insurers becomes insolvent. Also concerns about undue strain on individual state guarantee associations.
f. Guaranty association coverage review should make distinctions between direct insurance and reinsurer only transactions

g. Resulting company should be licensed in all relevant states where policies were written to maintain Guaranty association coverage

5. **Due Process – 18 comments (See attachment 2 -pages 13-15, more detail in redline in attachment 3)**
   a. IBT
      i. For insurance business transfer transactions, court approval is required.
      ii. For IBTs, the domestic regulator of the assuming insurer must approve the proposed transaction, and that the domestic regulator of the transferring company must either approve the proposed transaction or provide a nonobjection letter.
      iii. NCOIL model law for IBT does not require policyholder consent . Also comments against cut through provisions.

   b. For corporate division transactions,
      i. Corporate Divisions - Court approval is not required, provided the Principles relating to public hearing, notice, and independent expert report(s) are included in the analysis.-
      ii. For corporate divisions, the domestic regulator of the dividing company must approve the proposed transaction. "
   c. Relating to public hearing, notice, and independent expert report(s) are included in the analysis.
   d. Notice
      i. Notice of the proposed transaction be given to individual policyholders, reinsurers, guaranty associations and applicable state regulators.
   e. Regulators
      i. While regulators should communicate with affected states, non-objection does not need to be obtained.
      ii. Defining affected regulators and not requiring letters of nonobjection from affected states.
      iii. Legal steps in various states must be followed.
      iv. Suggests definitions for affected regulators.
      v. Other regulators in other states, laws/ review
      vi. Due process coordination with other states and laws – CD
      vii. No Worse Off Must Consider State Law Conflicts
      viii. Documentation on coordination with other states and laws – IBT
      ix. We suggest that the words “review by "other states be substituted for “approval or non-objection of” in this sentence.

   f. Key stakeholders
      i. Remote participation in hearings should be an option for key stakeholders.
      ii. Policyholders and other key stakeholder must have access to the public process.
      iii. Due Process Communication of Transaction to policyholders and Key stakeholders for both IBT and CD should be public and include key assumptions. Remote attendance at hearing options should be available.
      iv. Definitions of Policyholder and Key Stakeholder - The term “policyholder” should include all policyholders involved in the IBT/CD proposal regardless of whether they are to be transferred to a new entity or remain with the dividing

or transferring entity. We also recommend that "key stakeholders" include: regulators in all states where any policyholder resides, reinsurers, and the guaranty association system.

v. Reinsurers should be listed as stakeholders.

vi. High degree of transparency and stakeholder engagement with the stakeholders having the opportunity to be heard.

6. **Analysis/ approval – 33 comments** **(See attachment 2 – pages 16-21)**
   a. Actuarial review - More clarity about what is acceptable for actuarial analysis.
   b. Assessment of Capital –
      i. should consider reinsurance
      ii. more detail on capital sufficiency
      iii. needs to be a high level of confidence regarding capital
   c. Cut through provisions (reinsurer involved transactions) pro and con comments on cut through and clarity around.
   d. Financial strength
      i. More specificity on comparing financial strength of the old and new parties.
      ii. Parental guaranties may not be needed if the transaction is properly structured.
      iii. Parental guarantees are not noted in ACLI draft but robust review is needed.
      iv. Notes the best practices of requiring 5 years of pro forma financial statements is a higher standard than existing IBT laws which require 3 or are nonspecific.
      v. RBC requirements
   e. Form A procedures – should be followed for corporate divisions and or IBT but following them is implied.
   f. New procedures are not needed existing laws are enough.
   g. Looking at the licensing of the resulting insurers or reinsurers – it should include all states where the initial insurer wrote policies (including prior and current licenses).
   h. Clarity around who would provide Plan design certifications
   i. Transaction plan should include information on all involved parties
   j. Scope of work for both types of transactions should have more detail
   k. Troubled company situations may require different analysis
7. **Run-off – 9 comments** **(See attachment 2 – pages 22-25)**
   a. Clarify description and of scope of run off procedures.
   b. Run off definition should include cases with contractual renewal rights.
   c. Not all run off is involuntary and run off needs to be more clearly defined.
   d. RBC
      i. Revise RBC formula to address run off companies
      ii. RBC premium charge should not be applied to run off companies.
   e. Run off special procedures should not be needed for entities with healthy balance sheets.
   f. We suggest onerous review restrictions that treat Run off entities as if they were under supervision be eliminated. The Subgroup should also consider deleting Section X in its entirety, as it is mostly duplicative.
   g. Clarification regarding run off procedures when one or both parties are in run off.
   h. Run off general regulatory differences

Restructuring Mechanisms (E) Subgroup
Comments on May Exposures Sorted by Topic

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Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Foundational	Principles and standards should be adopted in a way that they can become accreditation standards	General - Accreditation standard needed	NYL, NWM and W&SF	Because accreditation is such an important tool to promote a consistent level of protection for policyholders and key stakeholders across the states against the potentially significant adverse consequences which could result from these transactions, we want to emphasize the need to ultimately enact these Foundational Principles and Best Practices in a way so that they can become accreditation standards.	Doug Wheeler, Andrew Vedder, Kevin Howard	
Foundational	More Guardrails are needed - IBT and CD	General -Analysis - Guardrails - IBT and CD	ACLI	More generally, ACLI believes that certain guardrails, including important process, review, and consumer and company solvency protections, must be in place before a proposed IBT or corporate division transaction can be approved by a state regulator (and in the case of an IBT, by a court).	Mehlman	
Both	ACLI has it own principles and guidelines adopted by its board	General	ACLI	Accordingly, ACLI's Board of Directors adopted a comprehensive set of Principles and Guidelines on IBT & Corporate Division Legislation that ACLI staff and its member companies would refer to when evaluating potential legislation, regulations and models, as well as regulatory guidance and best practices.	Mehlman	
Both	Provided redline comments, regarding GA and recommend clarity consistency of terms and which sections apply to IBT and CD should be more clear.	General - define terms	NOLHGA & NCIGF	30- pages of Redline comments were provided. Key topics and points are noted below. We have enclosed redlined versions of the Exposure Drafts with our comments. Our substantive comments generally focus on the concept recognized by the Restructuring Mechanisms Working Group's draft White Paper that the policyholder protection of guaranty system coverage should not be reduced, eliminated or otherwise changed as a result of a restructuring transaction. We also highlight some differences in how this standard is satisfied depending on the type of business involved in the restructuring transaction. As a general matter, we note that the Exposure Drafts would benefit from the clear and consistent use of defined terms. The drafts also would benefit from clarity around which sections apply to IBTs, corporate divisions or both types of transactions. We identified a few sections where the intent is ambiguous, but there likely are others that could be clarified. NOLHGA and NCIGF are prepared to continue this dialogue and to work closely with the Subgroup as the Exposure Drafts are revised. In particular, and as noted in our comments, NOLHGA and NCIGF would appreciate the opportunity to discuss with the Subgroup the process by which the expert (and/or the regulator) would analyze and opine as to the guaranty association/fund coverage issues.	Peter Gallanis and Roger Schmelzer	
Both	Combine principles and best practices into a single document	General - Document format	ACLI	ACLI suggests that the Foundational Principles and Best Practices documents be combined into a single document to eliminate confusion about the intended use of each document.	Mehlman	

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Foundational	ED does not align with existing laws regulations. The NAIC product may not align with the existing laws should have a more in-depth review.	General - Review existing laws.	ACLI	In addition, while we do not believe that the exposed documents have to be aligned with existing IBT and corporate division laws, regulations and/or models, we nonetheless ask that this Subgroup review them as it finalizes these documents.	Mehlman	
Best practices	Duplicative review	General review	Locke Lord	Duplicative Provisions. As a general comment, we suggest that the Procedures be edited to reduce duplicative provisions.	Robert Romano	

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Both	Under the CT CD law, **hiring of experts** is optional	Independent experts-CD	CT	CT Corporate Division Law - the Commissioner has the authority to hire experts whose expenses are to be paid by the dividing insurer that filed the plan. **The hiring of such experts is at the discretion of the Commissioner and is not mandatory.**	Belfi	
Both	CD is more like other holding company transactions including Form A that do not mandate the **hiring of experts**. CT prefers to leave the hiring of independent experts for CDs to the discretion of the state.	Independent experts-CD	CT	CT Corporate Division Law - the Commissioner has the authority to hire experts whose expenses are to be paid by the dividing insurer that filed the plan. The hiring of such experts is at the discretion of the Commissioner and is not mandatory.	Belfi	
Both	CT prefers to use state experts if qualified for review of CD. The best expert is often the stat DOI staff. Resource savings and should follow existing Form A guidance.	Independent experts-CD	CT	**For transactions wholly contained within the insurance holding company structure, or for transactions involving domestic insurers, oftentimes the expertise surrounding these companies and their operations resides with the domestic regulator. As such, the requirement to hire and pay for the expenses of such expert would result in a waste of time and resources, such resources being much better dedicated to the policies.** In addition, if the expert were to reach a determination that differs from that of the regulator, this would call into question the ultimate judgment of the Commissioner.	Belfi	
Both	CD eliminate the mandate to use independent experts but require documentation on the appropriateness of DOI expertise.	Independent experts-CD	CT	**Edits** Eliminate all references to the requirement to mandate the use of an independent expert and replace with "although not mandated to use an independent expert, a state is required to document and conclude on the reliance of appropriate in-house expertise".	Belfi	
Foundational	Independent expert standard of review	Independent expert	NYL, NWM and W&SF	We recommend revising subsection (d) to read: "The independent expert evaluation should be undertaken by an expert to establish that policyholders and other key stakeholders will experience no adverse effects even under extreme events. The intention is that the events considered should be those used to evaluate capital sufficiency, and as such, are well beyond the 'moderately adverse' reserve standard. The independent expert must provide a detailed public report, including assumptions utilized, regarding the prospective solvency of the resulting entity using the above standard."	Doug Wheeler, Andrew Vedder, Kevin Howard	F-page 6 and BP-8&12
Foundational	DOI and Independent expert reports	Independent expert	Randall & Quilter	Review by independent experts in addition to expert review within departments of insurance; we see these reviews as complimentary.	Peter Hartt	
Foundational	Robust Regulatory Review coordination with other states and laws - CD	Independent expert - CD	MO	Edits - ii. Corporate Divisions will require review by 3. Report of Independent expert(s), or notice must be provided to other affected regulators as to why a report of an independent expert is not required, etc. and 4. Domestic regulators as the final authority.	Rehagen	
Foundational	Robust Regulatory Review coordination with other states and laws - IBT	Independent expert - IBT	MO	Edits - c. Ultimate authority 3. Report of Independent expert(s), and (Note: yes, independent experts should be used in all circumstances.) 4. Court approval as the final authority only after notice to and confirmation of receipt from other affected regulators has been received).	Rehagen	

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Foundational	Support for Independent expert report for all IBT/CD which is publicly available.	Independent expert - public report especially for long duration	NYL, NWM and W&SF	Pages 4-5: Independent Expert We want to emphasize that the discretion to approve or deny any proposed transaction remains fully with the regulators. We further understand that some insurance departments have internal resources and expertise to perform an expert review and analysis of certain proposed transactions, and we do not question the value of this expertise. However, many insurance departments may not have that expertise and staffing levels and experience within insurance departments will vary over time. Accordingly, an IE expert requirement, paid for by the applying insurer, is a simple way to ensure consistency across states regardless of how staffing changes in the future. If the Subgroup decides to adopt a principles-based approach for whether an IE report is required, we suggest that states demonstrating that they have appropriate internal expertise for the type of business involved in a particular IBT/CD may be permitted to create an expert report for that transaction as part of the approval process. The expert report should contain all of the information and analysis required of the IE report and be made publicly available. This approach would be similar to that taken in the Form A context, where an insurance department documents its findings of fact and overall transaction review in an Order and Decision. We believe that regulators will be able to make this demonstration of internal expertise primarily for IBT/CD transactions involving short-duration products (defined as those that give the insurer the ability to renew or cancel the product at least annually). Because of the market-specific actuarial analysis that will be required for long-duration products, including life, annuity, and long-term care, the use of an independent expert will be necessary in the vast majority of those transactions. Because transactions involving long-duration products have the highest likelihood of failure given the long time horizons, we recommend that the IE report always be required for long-duration products.	Doug Wheeler, Andrew Vedder, Kevin Howard	F- pages 4-5
Foundational	Support for Independent expert report for all IBT/CD which is publicly available.	Independent expert - public report for both	NYL, NWM and W&SF	Pages 4-5: Independent Expert The Subgroup asks about the use of independent expert ("IE") reports for CDs. As we have stated in prior comments, we strongly believe that every IBT/CD should require an IE report, and that the IE report should be publicly available. The IE report will provide a consistent degree of diligence across all states which can then be relied upon by policyholders, key stakeholders, and the regulatory community. The existence of an IE report will become especially important if one of the entities involved in an IBT/CD becomes financially troubled.	Doug Wheeler, Andrew Vedder, Kevin Howard	F- pages 4-5
Best practices	Legal opinion when necessary	Independent expert report	NOLHGA & NCIGF	Where necessary obtain a legal opinion of supplement the expert report	Peter Gallanis and Roger Schmelzer	Section VII, 2 a
Foundational	Requirements for independent expert report	Independent expert report - content	ACLI	Independent Experts Must be Utilized as Part of the Process • An independent expert is required for all transactions and the expert's report must address: o Business purposes of the proposed transaction; o Capital adequacy and risk-based capital (including consideration of the effects of asset quality, non-admitted assets and actuarial stresses to reserve assumptions); o Cash flow and reserve adequacy testing (including consideration of the effects of diversification on policy liabilities); o The impact, if any, of concentration of lines of business following the transaction; o Business plans; and o Management's competence, experience and integrity.	Mehlman	

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Foundational	Suggest no material adverse impact standard similar to PRA and FCA	No worse off - material adverse	Enstar	We agree this phrase is not commonly defined and believe that it would be clearer to readers and more consistent with existing practices and international experience to instead include the standard of "no material adverse impact to policyholders" as included in existing state IBT statutes and the NCOIL IBT Model Act. The section references "Prudential Regulation Authority (PRA)/Financial Conduct Authority (FCA) – UK part 7" as source material, and it is worth noting that these entities utilize the concept of no material adverse effects on the policyholder. PRA "Policy Statement 1/22: Insurance business transfers," issued January 12, 2022, and FCA "FG22/1: The FCA's approach to the review of Part VII insurance business transfers," issued February 15, 2022, both frequently reference the "material adverse impact" standard throughout. The PRA also notes that "it is for the independent expert to assess and define material adverse effect." Although not based on legislation, this standard has existed in UK case law since at least 2001[1] and has been referred to as "material adverse effect" since at least 2008[2], a standard which in 2021 was further described by the Court of Appeal:	James Mills Robert Redpath	
Both	Policyholder's best interests should be the review standards -no worse off. - CD	No worse off - Best interests - CD	CT	When evaluating a Division transaction, it should always be reviewed with the Policyholder's best interests in mind. Unless a regulator can come to that conclusion, the transaction should not be approved. In addition to the Considerations already listed in Paragraph #1, we recommend adding the following regarding Divisions	Belfi	
Foundational	Notes that the company licensing handbook uses disfavor or unfair unreasonable or hazardous measures instead of no worse off.	No worse off - is higher than	Enstar	While we support the premise that restructuring transactions should not cause policyholders harm, we recognize that the formalization of this idea is not drafted into the NAIC guidance for other regulatory review processes that similarly impact policyholders. For example, an acquisition and merger provides in some ways a similar transfer of liabilities to a new insurer as an IBT. The NAIC Company Licensing Best Practices Handbook, in its Form A Review Best Practices, prompts regulators to "[c]consider with disfavor any plans to liquidate the target or sell its assets, consolidate or merge, that may be unfair, unreasonable, or hazardous to policyholders[.]" The standard to "disfavor" an "unfair, unreasonable, or hazardous" plan is significantly different from the guidance in the Foundational Principles that a "transaction should not be approved unless the effect on policyholders and other key stakeholders is neutral or there is some expected policyholder benefit(s)" (Foundational Principle 1).	James Mills Robert Redpath	
Foundational	Extraordinary dividend review standard is lower in that it only requires adequate surplus.	No worse off - is higher than	Enstar	As with the exposure drafts as a whole, clarification here may be helpful to distinguish between transfers of direct insurance policies and those of reinsurance books, where the policyholder is an insurer. Similarly, regulatory approval of an extraordinary dividend leads to a reduction of insurer capital. However, the NAIC Financial Analysis Handbook, in its guidance on the evaluation of Extraordinary Dividend/Distribution requests, promotes the standard that the "insurer have adequate surplus" without inquiry into whether the transaction is adverse to or creates a benefit for policyholders. Policyholders might believe that any reduction of insurer capital would be adverse to their interests, but it is well known to regulators that a framework is in place to monitor the sufficiency of capital, with key benchmarks identifying levels of material concern.	James Mills Robert Redpath	
Foundational	Same economic protection may be a higher standard that no worse off. Support for no adverse impact on policyholder's ability to receive benefits under the terms of the policy.	No worse off - is higher than CD	CT	Edits - Page 10: The terminology "same economic protection" appears to be a higher standard than "no worse off." This could be misinterpreted to mean that the resulting company must be in at least the same or better financial position as the transferring company. The measurement should be that there will be no adverse impact on the policyholder's ability to receive benefits under the terms of the policy.	Belfi	
Foundational	Same or better is a higher standard than no worse off.	No worse off - is higher than CD	CT	Edits - Page 13: Similar to item 1 above, the terminology "Same or better position" appears to be a higher standard that "no worse off." No adverse impact on the policyholder would be better terminology.	Belfi	

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Foundational	CD new management should have experience etc. that is in the best interests of the policyholders.	No worse off - Management -CD	CT	Edits - The competence, experience and integrity of those persons who would control the operations of the resulting insurers are such that it would be in the interest of policyholders of the insurers and of the public to permit the Division transaction and that such persons will operate the insurance company in a manner that is in the interest of the Policy Holder.	Belfi	
Foundational	Supports material adverse standards	No worse off - Material Adverse	Enstar	We believe that the most beneficial guidelines for regulators would be those which use and interpret the language of the underlying legislation enacted by the various states, including the "material adverse" standard, whether in support of insurance business transfers or divisions, rather than creating new, non-statutory language.	James Mills Robert Redpath	
Both	Support for no material adverse, because the concept of materiality is known.	No worse off - material adverse	Petrellis	The concept of materiality is widely used throughout financial, business, and regulatory communities. Accountants, actuaries, and other business professionals rely on the concept of materiality in all their work. The definition of materiality largely depends on the context of use. From the regulatory perspective, the SEC has defined material as follows: "A matter is material if there is a substantial likelihood that a reasonable person would consider it important."3 A standard of review for IBTs and CDs that requires a "material adverse impact" is consistent with how materiality is applied in many contexts and would be more easily understood and implemented by regulators and independent experts. To set a new standard of "adverse impact" will create confusion throughout the industry and is inconsistent with existing state legislation, the NCOIL IBT model law, and the UK Part VII Transfer that the Subgroup itself has acknowledged is a robust process. Furthermore, a new standard of "no adverse impact" subverts the legislative intent in states that have passed IBT and CD laws and will result in inconsistency and a lack of uniformity among the states.	Petrellis	
Foundational	UK court guidance noted on material adverse measurement	No worse off - Material Adverse - UK	Enstar	"An adverse effect will only be material to the court's consideration if it is: (i) a possibility that cannot sensibly be ignored having regard to the nature and gravity of the feared harm in the particular case, (ii) a consequence of the scheme, and (iii) material in the sense that there is the prospect of real or significant, as opposed to fanciful or insignificant, risk to the position of the stakeholder concerned. In some cases, it may also be relevant for the court to consider whether there would be such material adverse effects in the event that the scheme was not sanctioned.	James Mills Robert Redpath	
Both	IBT / CD should not eliminate diversification by creating a monoline entity. (IBT and CD)	No worse off - measure	NYL, NWM and W&SF	• The IBT/CD should not result in any insurer involved in the transaction becoming a monoline carrier. As history has shown, monoline carriers, or what is effectively a monoline carrier, do not benefit from diversification across their businesses, which increases the risk of insolvency.	Doug Wheeler, Andrew Vedder, Kevin Howard	
Both	Financial strength of the resulting entities should be at least as great as the prior entity. (IBT and CD)	No worse off - measure	NYL, NWM and W&SF	• The financial ratings for all companies involved in the IBT/CD should have at least the same financial rating as the company transferring the policy liabilities. This standard applies to the rating for all new companies as well as the ongoing rating for the transferring or dividing company.	Doug Wheeler, Andrew Vedder, Kevin Howard	
Both	Operationally equivalent services and capabilities. (IBT and CD)	No worse off - measure	NYL, NWM and W&SF	• The administration capabilities of all companies involved in the IBT/CD are compliant with all applicable laws and are consistent with, and operationally equivalent to, the capabilities and service standards that existed prior to the transaction.	Doug Wheeler, Andrew Vedder, Kevin Howard	

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Both	Successor entities should be licensed in all the same states as the transferring or dividing entities. (IBT and CD)	No worse off - measure	NYL, NWM and W&SF	• Successor entities should be licensed in all the same states as the transferring or dividing	Doug Wheeler, Andrew Vedder, Kevin Howard	
Best practices	Policyholder is Worse off if their state of domicile requires consent under assumption reinsurance and they do not have the opportunity to consent/ reject.	No worse off - measurement IBT/CD	MO	insurer. The licensure requirements in each state for successor entities should be equivalent to those applied to all new licensees to provide each state regulator with critical regulatory tools for continuing oversight of the resulting insurers and to help ensure ongoing guaranty fund coverage.	Rehagen	
Foundational	Offers several proposed review procedures or findings on financial stability, future plans, capital adequacy, etc.	No worse off - measurement review procedures	Robust regulatory review	The Regulatory Review Process Must Be Robust • The Commissioner's review process must include certain findings, including: o The financial condition of an involved insurer will not jeopardize the financial stability of the insurers, or prejudice the interest of its policyholders or reinsurers; o An involved insurer will not have plans or proposals to liquidate another involved insurer, sell its assets, or consolidate or merge or to make any other material change in its business or corporate structure or management, that are unfair or unreasonable to policyholders, reinsurers or the public; o The involved insurers will be solvent at the time of the transaction; o The assets allocated to the involved insurers will not be, at the time of the transaction, unreasonably small in relation to the business and transaction; o The terms of the transaction will not be unfair or unreasonable to any involved insurer's policyholders or reinsurers; o The competence, experience and integrity of the persons who would control the operation of an involved insurer are such that it would be in the interest of the involved insurers' policyholders and reinsurers and the general public to permit the transfer; o The transaction is not likely to be hazardous or prejudicial to the insurance-buying public; o The interest of the policyholders of an involved insurer that may become policyholders of another insurer will be adequately protected; and o The transaction is not being made for purposes of hindering, delaying or defrauding any policyholders or reinsurers.	Mehlman	
Both	UK part VII uses not material adverse impact - the white paper noted that UK part VII process is robust.	No worse off - no material adverse impact	Petrellis	Furthermore, the standard of review for a UK Part VII transfer, upon which U.S. IBT laws are based, is that there be "no material adverse impact" to policyholders. This legislation has been in place for decades with over 300 successfully completed transfers, none of which have sustained financial difficulties. As stated in the RMWG White Paper "Members of the Subgroup have studied and acknowledge that the UK Part VII procedures set forth robust processes and that similar requirements should be established for IBTs and CDs." The standard of "no material adverse impact" has worked well for the UK for decades and, as the Subgroup previously has acknowledged, should similarly be established for IBTs and CDs.	Petrellis	
Both	No adverse effects is subjective.	No Worse off - No material adverse impact- IBT	Petrellis	The draft of the Foundational Principles and Best Practices both state that reviewing authorities and the independent expert should find that policyholders and other key stakeholders experience "no adverse effects". This standard of review is subjective, undefined, and inconsistent with all currently enacted state IBT laws, the NCOIL IBT model law, and the UK Part VII Transfer. To circumvent these existing state IBT and CD statutes through regulatory guidelines is a disservice to the robust legislative process in place in each state and in NCOIL.	Petrellis	

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Both	IBT laws of RI, AR, OK and the NCOIL model require no material adverse impact	No worse off - No material adverse impact- IBT	Petrellis	The IBT laws of Rhode Island, Arkansas and Oklahoma all require a standard of "no material adverse" impact to policyholders.1 The NCOIL IBT model law2 also sets forth a standard of "no material adverse impact". Prior to being enacted these state laws and the NCOIL model law were reviewed and vetted by legislators, governors, and insurance departments. During the drafting discussions of each states' law as well as the NCOIL IBT and Division model laws, legislators and commissioners heard from a wide array of interested parties including: insurance carriers; reinsurers; the Reinsurance Assoc. of America (RAA); the American Council of Life Insurers (ACLI); certain law firms; the National Organization of Life & Health Insurance Guaranty Associations (NOLGHA); the National Conference of Insurance Guaranty Funds 1 230-RICR-20-45-6.4; AR HCR 1028; OK Title 35 Section 1681 2https.//secureservercdn.net/50.62.194.59/33a.fee mwp.accessdomain.com/wp-content/uploads/2021/04/NCOIL-Insurer-D1v1s1on-Model-Adopted-4-18-21-1.pdf (NIGH); the American Property & Casualty Insurance Association (APIA); and others. Interested parties had the opportunity to be heard and present any concerns they had regarding the proposed laws. After consideration of all comments each state and NCOIL set forth IBT laws that required "no material adverse" impact to policyholders.	Petrellis	
Both	CD standards should mirror the Form A Model.	No worse off- CD-Form A	CT	Recommendation - In addition, we propose that in #1 Policyholders Should Never Be left Worse Off - for Divisions, t**he language should mirror the Form A Model Statute which has several relevant standards that would apply.**	Belfi	
Foundational	No material adverse impact/ review.	No worse off - material adverse	Randall & Quilter	A thorough assessment of the benefits of the proposed transaction to key stakeholders, assuring no material adverse impact and reaching a holistic understanding of the likely outcomes with and without the transfer.	Peter Hartt	
Best practices	Policyholder is worse off if the resulting insurer is not licensed in the states when the policies were written by the transferring insurers or where the Policyholders reside.	No worse off - measurement company licensing IBT/CD	MO	Edits - The IBT or CD transaction would cause policyholders to be worse off if the IBT insurer or CD is not licensed in the states where the policies were written by the transferring insurer or where those policyholders reside.	Rehagen	
Foundational	CD Financial condition of resulting insurers should not jeopardize stability of resulting insurers.	No worse off - measurement Financial stability CD	CT	Edits - The financial condition of the resulting insurers following a Division transaction are such that it will not jeopardize the financial stability of such resulting insurers or prejudice the interests of the policy holders.	Belfi	
Best practices	Suggests no significant adverse impact.	No worse off no material adverse	Locke Lord	Section IV. 2. b. iii. This provision states that: “A conclusion that the transaction does not have any adverse impact on policyholders.” We suggest that the statement would be more accurate with the insertion of the word “significant” after the word “any”. We also suggest that similar changes be made elsewhere in the Procedures where appropriate to eliminate what may appear to be an absolute statement.	Robert Romano	IV. 2. b. iii.

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Foundational	Motivations of the parties should be a consideration.	No worse off -no material adverse Financial strength and motivations	Randall & Quilter	While maintaining the necessary objective that there be no material adverse impact, we believe it is important for regulators and stakeholders to compare the actual “before” and “after” states of a proposed transaction, as opposed to an idealized but possibly nonachievable end state. While one might, for example, wish for financial guarantees around the performance of the transferee, we would submit that a more rational approach might be to compare the likely performance of the transferee to that of the transferor in the particular line of business to be transferred, and to consider this question holistically, assessing not only the relative capitalizations but the business models, business objectives and expertise in the risks to be managed. We would suggest that a transferring insurer’s desire or need to leave a market segment, focusing its capital and operational resources elsewhere, is a consideration in favor of a proposed transaction, as it should serve to strengthen the transferring company and thus bolster capacity and competition within the marketplaces in which that company does business. Similarly, we would suggest that the transferee’s expertise in the risks to be managed, and the transferee’s desire to focus on those kinds of risks, are also considerations in favor of a proposed transaction.	Peter Hartt	
Best Practices	Prefer trying to match existing state legislation and to NCOIL model legislation.	No worse off no material adverse - state laws	Enstar	However, the Best Practice exposure draft differs from existing legislation in several ways.	James Mills Robert Redpath	
Foundational	Support for no worse off for both policyholders and key stakeholders. Change of a consumer's choice of an insure without consent is an extraordinary action	No worse off- support	NYL, NWM and W&SF	We appreciate the thought and time that the Subgroup members have devoted to the exposures and, overall, believe that the documents are excellent initial proposals. Before addressing some of the Subgroup’s specific questions, we have a couple of initial observations: • As the Subgroup notes, the Insurance Business Transfer (“IBT”) and Corporate Division (“CD”) (collectively, “IBT/CD”) laws allow for the transfer of existing insurance products from one company to another without policyholder consent. The change of a consumer’s choice of insurer, without consent, is an extraordinary action that must be done in the best interest of the consumer so that no policyholder or key stakeholder is left worse off. We would like to emphasize that this overriding principle applies both to those policyholders who are transferred to a new insurer and to those that remain in the dividing or transferring insurer which, often, will be less diversified after the transaction (in contrast to Form A mergers which result in a better diversified and, therefore, stronger surviving entity).	Doug Wheeler, Andrew Vedder, Kevin Howard	

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Foundational Principles	Maintain guaranty association coverage.	Guaranty Association	NOLHGA & NCIGF	That guaranty association coverage is not reduced, eliminated, or otherwise changed by the restructuring.	Peter Gallanis and Roger	1.e
Best practices	Guaranty association more detail by type	Guaranty Association	NOLHGA & NCIGF	For restructuring transactions involving life or health insurance, the assuming or resulting insurer(s) should be licensed so that policyholders maintain eligibility for guaranty association coverage from the same guaranty association that would have provided coverage immediately prior to the restructuring transaction. This means that the resulting insurer must be licensed in all states where the transferring insurer was licensed or had ever been licensed with respect to the policies being transferred.	Peter Gallanis and Roger Schmelzer	Section IX, 1
Best practices	Retain same coverage/ obtain a legal opinion to confirm.	Guaranty Association	NYL, NWM and W&SF	b. For restructuring transactions involving property and casualty insurance, need to confirm that any claims of the resulting insurer that were covered claims before the transaction will be covered claims after the transaction. This likely will be a state-by-state inquiry and may depend on whether the guaranty association law has been amended to address restructuring transactions. [Consider a cross-reference to the relevant section of the White Paper.]	Doug Wheeler, Andrew Vedder, Kevin Howard	BP- pages 16, 17 section IX
Best practices	Guaranty association opinions may not be needed for all IBT	Guaranty Association	Petrellis	Section VII paragraph 2 of Best Practices requires that a legal opinion be obtained that policyholders and other key stakeholders of restructured entities will not lose guaranty association coverage as a result of the IBT. Requiring a legal opinion for all IBT (or CD) transactions regarding guaranty association coverage is inconsistent with current industry transaction practices, adds a layer of cost and complexity that may not be relevant or necessary for all transactions, and is counter to the activities-based approach that is the cornerstone for the regulatory review of transactions. Regulators should have the flexibility to evaluate what, if any, external assistance is required for each transaction. Guaranty association coverage is determined if/when the resulting insurer is placed under an order of liquidation with a finding of insolvency. As stated by NOLHGA," if the resulting insurer is a member insurer of the same guaranty associations as the transferring insurer, guaranty association coverage will be preserved and not changed for all policyholders". Thus, the focus is on proper licensing that is an area wholly within the province of regulators to review and evaluate. If the regulator believes it is important to have legal guidance, he or she can engage counsel, but to require a legal opinion for all IBT transactions adds a layer of cost and complexity that may not be relevant or necessary for all transactions.	Petrellis	Section 7 paragraph 2
Both	Resulting company should be licensed in states to maintain Guaranty association coverage	Guaranty Association	ACLI	Policyholders and the State-Based Guaranty Association System Should Be Protected • Involved insurers must be licensed such that policyholders maintain guaranty association coverage in the same state in which they had it immediately prior to the transaction.	Mehlman	

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Foundational	References to guaranty association coverage - maintaining eligibility and inquiries with applicable states/ associations also referencing both life and PC guaranty association coverage	Guaranty Association	NOLHGA & NCIGF	Guaranty association Coverage - No impacted policyholder should lose guaranty association protection as a result of a transaction Association Coverage – Guaranty association coverage should not be reduced, eliminated, or otherwise changed by the restructuring. (Sources: 1, 2) a. For restructuring transactions involving life or health insurance, the assuming or resulting insurer(s) should be licensed so that policyholders maintain eligibility for guaranty association coverage from the same guaranty association that would have provided coverage immediately prior to the restructuring transaction. This means that the resulting insurer must be licensed in all states where the transferring insurer was licensed or had ever been licensed with respect to the policies being transferred. b. For restructuring transactions involving property and casualty insurance, need to confirm that any claims of the resulting insurer that were covered claims before the transaction will be covered claims after the transaction. This likely will be a state-by-state inquiry and may depend on whether the guaranty association law has been amended to address restructuring transactions. [Consider a cross-reference to the relevant section of the White Paper.] c. The National Conference of Insurance Guaranty associations (NCIGF) and National Organization of Life and Health (NOLHGA) are useful resources for any guaranty association coverage issues that arise in evaluating these transactions.	Peter Gallanis and Roger Schmelzer	3
Foundational	Guaranty association coverage	Guaranty Association	NYL, NWM and W&SF	Page 5: Guaranty Fund Coverage We do not have any additional comments on the proposed changes to the PC Insurance Guaranty Association Model Act, but we do want to comment on the licensing requirements under the life and health guaranty associations ("L&H GAs"). As we noted above, all policyholders should be covered by the same state L&H GA both before and after the transaction. For this projection to be achieved, all successor entities must be licensed in all states where the dividing or transferring entity was ever licensed. We do not support any proposal that would automatically provide L&H GA coverage to successor entities in lieu of licensing requirements that are functionally as robust and rigorous as those applied to all new licensees. The normal regulatory and solvency protections provided by the licensing process should apply equally to successor entities.	Doug Wheeler, Andrew Vedder, Kevin Howard	F-page 5
Best practices	Guaranty associations and reinsurer transactions	Guaranty Association - direct versus indirect (reinsurer)	Randall & Quilter	As with the exposure drafts as a whole, clarification here may be helpful to distinguish between transfers of direct insurance policies and those of reinsurance books, where the policyholder is an insurer.	Peter Hartt	Section IX
Foundational	editing general	Guaranty Association - Edits	NOLHGA & NCIGF	Wordsmithing Background, Drafting note section 1, 3, table of sources, #7	Peter Gallanis and Roger	Background Various editing

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Best practices	Minor wordsmithing edits	Guaranty Association - Edits	NOLHGA & NCIGF	Minor edits, primarily around guaranty association coverage; Section, III; Section V; Section VIII, table of sources	Peter Gallanis and Roger	Various editing
Best practices	Legal Opinion for on guaranty associations may not be needed - IBT and CD	Guaranty Associations - Legal opinion	Petrellis	I suggest that Section VII paragraph 2 be revised as follows: 2. Legal opinion a. Consider the need to obtain a legal opinion that policyholders and other key stakeholders of restructured entities will not lose guaranty association coverage as a result of the IBT.	Petrellis	
Both	Refer to Guaranty Association instead of funds	Guaranty Associations -Edits-terminology	NOLHGA & NCIGF	Refer to Guaranty Association instead of Funds	Peter Gallanis and Roger	
Both	All policyholders should be covered by the same state guaranty association both before and after the transaction so that they have the same degree of protection if one of the insurers becomes insolvent. Also concerns about undue strain on individual state guarantee associations.	guaranty association coverage -No worse off - measure	NYL, NWM and W&SF	The Subgroup asks how the term "no worse off" should be defined and measured. In addition to the points the Subgroup lists on page three, we recommend the following as new points or enhancements to those existing points: • All policyholders should be covered by the same state guaranty association both before and after the transaction so that they have the same degree of protection if one of the insurers becomes insolvent. Further, for the health of the guaranty association system, it is critically important to avoid a situation where one state's guaranty association assumes significant additional liabilities as such a situation can place undue strain on a single state's ability to sufficiently assess member companies to timely cover losses, including most importantly policyholder claims. (This situation could foreseeably arise due to the 2% annual premium assessment cap in most states.)	Doug Wheeler, Andrew Vedder, Kevin Howard	F-Page 3

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Foundational	Notice of the proposed transaction be given to individual policyholders, reinsurers, guaranty associations and applicable state regulators.	Due Process - communication stakeholders	ACLI	However, our Principles and Guidelines require that notice of the proposed transaction be given to individual policyholders, reinsurers, guaranty associations and applicable state regulators.	Mehlman	
Foundational	ACLI Principles and Guidelines do not require the approval or non-objection of all affected states. For IBTs, the domestic regulator of the assuming insurer must approve the proposed transaction, and that the domestic regulator of the transferring company must either approve the proposed transaction or provide a nonobjection letter. For corporate divisions, the domestic regulator of the dividing company must approve the proposed transaction.	Due Process - Coordination with other states	ACLI	(3) The process should require approval or non-objection of all affected states (Page 17):Our Principles and Guidelines do not require the approval or non-objection of all affected states. For IBTs, our Principles and Guidelines state that the domestic regulator of the assuming insurer must approve the proposed transaction, and that the domestic regulator of the transferring company must either approve the proposed transaction or provide a nonobjection letter. For corporate divisions, our Principles and Guidelines provide that the domestic regulator of the dividing company must approve the proposed transaction. However, our Principles and Guidelines require that notice of the proposed transaction be given to individual policyholders, reinsurers, guaranty associations and applicable state regulators.	Mehlman	
Both	Defining affected regulators and not requiring letters of nonobjection from affected states.	Due Process - Coordination with other states	Enstar	We recognize that the creation of these exposure drafts has taken significant work, and we believe that this guidance will provide the greatest benefit to all regulators and other stakeholders if the guidance is more closely based on the existing state and model legislation, upon which transactions will be based. We hope that these documents can be a beneficial resource to regulators whose domestic insurers wish to participate in a restructuring transaction, regardless of whether their state has enacted restructuring legislation, and believe that this can best be accomplished by focusing on the existing state of restructuring legislation within the US.	James Mills Robert Redpath	
Foundational	Legal steps in various states must be followed. Remote participation in hearings should be an option for key stakeholders.	Due Process - Coordination with other states	NYL, NWM and W&SF	We recommend that the due process suggestions be expanded to highlight that applicable legal steps required by any state laws, including approval of the transaction, be followed. In addition, we would make clear that remote options must be made available for policyholders and stakeholders who cannot travel to the reviewing state to attend hearings.	Doug Wheeler, Andrew Vedder, Kevin Howard	F- page 6
Best practices	While regulators should communicate with affected states, non objection does not need to be obtained.	Due Process - Coordination with other states	Petrellis	Section 8 of the draft of Best Practices relates to communications for a transaction. Paragraph No. 3 in Section 8 entitled "Notify/coordinate with Affected Regulators" states as follows: The domiciliary regulator should communicate with other affected regulators regarding the transaction. Also, the process should require approval or non- objection of all affected states {emphasis supplied) and the resulting entities should be licensed in all states needed so as not to impair policyholders' access to their state guaranty associations. Currently, state IBT laws require approval by the regulator of the assuming company and approval or nonobjection of the regulator in the transferring company's domicile. State Division laws require approval of the chief regulator in the Dividing Company's state of domicile. For both IBT and Division transactions, approval or nonobjection from the other states is not required as is consistent with our state-based supervision of insurance operating entities. To avoid confusion, I suggest that Paragraph 3 be revised as follows: The domiciliary regulator should communicate and coordinate with other regulators regarding the transaction as needed. The resulting entities should be licensed in all states needed so as not to impair policyholders' access to their state guaranty associations.	Petrellis	Section 8 paragraph 3

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Best practices	Suggests definitions for affected regulators.	Due Process - Coordination with other states	Petrellis	Also, since the term "affected regulators" is used in other places in these documents, I suggest that this term be defined as follows: "Affected Regulators shall mean, for an /BT, the chief regulators in the states of domicile of the transferring and assuming companies, and for a CD the chief regulators in the states of domicile of the dividing company and the resulting companies".	Petrellis	Section 8 paragraph 3
Best practices	Other regulators in other states, laws/ review	Due Process - Coordination with states	NYL, NWM and W&SF	Page 8: Ultimate Reviewing Authority We recommend that the document acknowledge and clarify that regulators in other states where impacted policyholders reside may also be required under that state's law to review (and perhaps approve) the IBT/CD transaction on behalf of their residents.	Doug Wheeler, Andrew Vedder, Kevin Howard	BP- page 8
Foundational	Due process coordination with other states and laws - CD	Due Process - Coordination with States-CD	MO	Edits - ii. Corporate Divisions will require review by 1. Domestic regulator(s), 2. Notice to and confirmation of receipt from other affected regulators, where the policies were initially written or where policyholders currently reside,	Rehagen	
Foundational	No Worse Off Must Consider State Law Conflicts	Due Process - Coordination with states IBT/CD	MO	however, we need to be careful especially when personal lines coverages are considered. These transactions appear to be designed to circumvent state laws, which afford policyholders a choice, and they limit or eliminate the authority of the policyholders' commissioner in regulating insurance and protecting policyholders in their state. I would think a founding principal for any court or regulator to consider before approving an IBT or CD would be to consider conflicts with other states insurance laws before approving such transactions.	Rehagen	
Foundational	Documentation on coordination with other states and laws - IBT	Due Process - Coordination with states-IBT	MO	Edits - c. Ultimate authority i. IBTs will require review by: 1. Domestic regulators of both the assuming company and transferring company, 2. Notice to and confirmation of receipt from other affected regulators where the policies were initially written or where policyholders currently reside,	Rehagen	
Best practices	We suggest that the words "review by "other states be substituted for "approval or non-objection of" in this sentence.	Due Process - Coordination with states-laws	Locke Lord	Section VIII. 3. This provision states that: "the process should require approval or non- objection of all affected states…". **We suggest that the words "review by" be substituted for "approval or non-objection of" in this sentence.** Although in the Enstar Yosemite IBT transaction in Oklahoma efforts were made to seek the input and review of many states, not all states approved (or non-objected) to the transaction. And, although the Pennsylvania Brandywine division was achieved with the approval of many non-domiciliary regulators, approval by all states was not a statutory pre-requisite to the transaction. Indeed, none of the IBT or division statutes requires that non-domiciliary regulators all approve or non-object to the transaction. To require such approvals or non-objections would go beyond the statutes of all states that have enacted IBT or division statutes.	Robert Romano	VIII. 3.
Foundational	Policyholders and other key stakeholder must have access to the public process.	Due Process - Stakeholder access	ACLI	Policyholders and Other Impacted Stakeholders Must Have Access to the Process • All transactions must be subject to a public hearing. • Individual policyholders, reinsurers, applicable state regulators, guaranty associations, and any other persons determined by the regulator must receive notice of the proposed transaction.	Mehlman	

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Best practices	Due Process Communication of Transaction to policyholders and Key stakeholders for both IBT and CD should be public and include key assumptions. Remote attendance at hearing options should be available.	Due Process - Stakeholder and policyholder - communication	NYL, NWM and W&SF	For policyholders and stakeholders to properly evaluate a proposed IBT/CD, we want to emphasize that it is critical that all information relevant to the transaction be made public and be included with the communications. This includes assumptions used in determining reserves, valuations, and stress testing exercises so that policyholders and stakeholders can adequately evaluate the transaction. Further, as mentioned above, we believe that remote options must be provided for those that cannot attend hearings in person.	Doug Wheeler, Andrew Vedder, Kevin Howard	BP-Section VIII
Foundational	Definitions of Policyholder and Key Stakeholder - The term "policyholder" should include all policyholders involved in the IBT/CD proposal regardless of whether they are to be transferred to a new entity or remain with the dividing or transferring entity. We also recommend that "key stakeholders" include: regulators in all states where any policyholder resides, reinsurers, and the guaranty association system.	Due Process - Stakeholder and policyholder - Defining	NYL, NWM and W&SF	Page 3: Definitions of "Policyholder" and "Key Stakeholder" The Subgroup asks for comments on the definition of "policyholder" and "key stakeholders". As the Subgroup notes, the term "policyholder" should include all policyholders involved in the IBT/CD proposal regardless of whether they are to be transferred to a new entity or remain with the dividing or transferring entity. We also recommend that "key stakeholders" include: regulators in all states where any policyholder resides, reinsurers, and the guaranty association system.	Doug Wheeler, Andrew Vedder, Kevin Howard	F-page 3
Both	Policyholder consent may not be needed, but process should public transparency and opportunity to comment and strong policyholder protections.	Due Process - Stakeholder Consent / access	ACLI	(2) Consideration of a mechanism to obtain policyholder consent (Page 16): For IBTs and corporate divisions, our Principles and Guidelines do not require policyholder consent and, therefore, do not envision a mechanism for such consent. They do, however, require notice, public hearing, independent expert review and court approval (in the case of IBTs) to protect policyholders who are not otherwise able to consent to, or opt-out of, a proposed transaction.	Mehlman	
Best practices	Reinsurers should be listed as stakeholders.	Due Process - Stakeholder -Defining reinsurer	Randall & Quilter	(1. d.) For clarity, we suggest specifying reinsurers as one of the categories listed here, as it may not be clear to all readers that reinsurers would be considered among the "other stakeholders."	Peter Hartt	Section II 1.d.
Foundational	NCOIL model law for IBT does not require policyholder consent . Also comments against cut through provisions.	Due Process - Stakeholder Policyholder Consent cut through	Enstar	Similarly, Section VII creates new standards that are unfound in and unrelated to the existing legislative standards. For example, with reference to a 1997 white paper, it is suggested that regulators "[c]consider whether to require that a mechanism be put in place to obtain policyholder consent regarding any novations." This guidance is in direct conflict with Section 2 – "Purpose" of the NCOIL IBT Model Act, which states that "[t]hese purposes are accomplished by providing a basis and procedures for the transfer and statutory novation of policies [. . .] without the affirmative consent of policyholders" and similar provisions of the enacted state laws that exist today. In addition, the suggestion that new policyholder rights should be created, such as "cut through" provisions, is also in conflict with the purpose of the legislation. In the language of the NCOIL IBT Model Act, upon court approval, an order is issued such that the assuming insurer has the rights, obligations, and liabilities of the subject business "as if it were the original insurer of such policies[.]" There is no legislative basis to remove or create additional rights for policyholders or insurers in the modern restructuring frameworks.	James Mills Robert Redpath	VII
Foundational	High degree of transparency and stakeholder engagement with the stakeholders having the opportunity to be heard.	Due Process - Stakeholder transparency	Randall & Quilter	Stakeholder engagement. The approval process should have a high degree of transparency and impacted parties should have the opportunity to be heard.	Peter Hartt	

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Best practices	More clarity about what is acceptable for actuarial analysis.	Analysis - Actuarial review	Randall & Quilter	(1. a.) Clarification may be helpful regarding scenarios in which an independent actuarial analysis has occurred prior to the engagement of the Independent Expert. Can the IE review such analyses to ascertain their comfort level with that work, or is it intended that a separate and additional analysis be mandatory?	Peter Hartt	Section IV, 1.a
Best practices	Assessment of Risk Capital should consider account, reinsurance	Analysis - Assessment of capital	Protucket	4. Assessment of risk capital We observe that for many run-offs, either before or after an IBT or corporate division is effected, a reinsurance cover is purchased to ensure adequate reserves over the life of the run off, often reducing the invested assets available for the run-off in favor of reinsurance with an adverse development cover. Accordingly, we suggest that the consideration of the adequacy of the run-off's capital base should include for that purpose the limits of available reinsurance, including both reinsurance accounted on a prospective basis and reinsurance accounted on a retrospective basis (as is typical of run-off covers).	Marvin D. Mohn	BP-Section IV,4, bi
Best practices	Rewording for clarity	Analysis - Assessment of capital	Locke Lord	Section IV. 4. a. This paragraph is unclear. We suggest that it be re-worded for clarity.	Robert Romano	IV.4.a.
Foundational	Page 3 more detail on review of capital sufficiency under regulatory review.	Analysis - Assessment of Capital	NYL, NWM and W&SF	Page 3: Robust Regulatory Review We recommend revising the beginning of this section to read: "Reviewing authorities should undertake to establish that policyholders and other key stakeholders will experience no adverse effects even under extreme events. The intention is that the events considered should be those used to evaluate capital sufficiency, and as such, are well beyond the 'moderately adverse' reserve standard. At a high level, the following key elements . . . . " We believe this robust standard is appropriate given that regulators have only one opportunity to review the proposed transaction and there is no recourse once a transaction is approved. Policyholders and key stakeholders should be "no worse off" in various future economic scenarios – not just those scenarios that are moderately adverse.	Doug Wheeler, Andrew Vedder, Kevin Howard	F-Page 3
Best practices	High level of confidence	Analysis - Assessment of Capital	NYL, NWM and W&SF	Page 9: High Level of Confidence We recommend revising the beginning of this section to read: "Reviewing authorities should undertake to establish that policyholders and other key stakeholders will experience no adverse effects even under extreme events. The intention is that the events considered should be those used to evaluate capital sufficiency, and as such, are well beyond the 'moderately adverse' reserve standard. At a high level, several key elements . . . . "	Doug Wheeler, Andrew Vedder, Kevin Howard	BP- page 9
Best practices	Cut through clarity.	Analysis - Cut through	Randall & Quilter	(1. a.) Clarification may be helpful regarding how a "cut through" would work in practice in various scenarios, and whether this is being considered in the context of IBTs or only Corporate Divisions.	Peter Hartt	Section VII, 1.a

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Best practices	Cut through and policyholder consent is contrary to the purpose of IBT	Analysis - Cut through and Policyholder - contract clauses	Locke Lord	Section VII. 1. a. and 3. a. These provisions refer to the possible use of "cut through" provisions and possibly obtaining "policyholder consent regarding any novations". While the use of such provisions or consents could be a possibility in transactions structured by the parties for very specific purposes, the use of these terms in the Procedures may imply that these may be expected or usual terms of IBTs or divisions. As the very nature of IBTs and divisions contemplates transfers and legal finality subject to regulatory oversight without policyholder consents, a discussion of these provisions in this context in the Procedures may imply that these provisions are expected in these transactions. Except in extraordinary circumstances, a requirement for a cut through provision or policyholder consent would be contrary to the very purpose of the transaction. **Accordingly, we would suggest that these provisions be deleted from the Procedures or be accompanied by language to make it clear that it is not the intent of the Procedures to recommend that such provisions be required or that they would serve a useful purpose within the context of an IBT or division, except in extraordinary circumstances.**	Robert Romano	VII. 1. a. and 3. a.
Both	Standards should reflect differences when evaluating professional parties versus consumer transactions	Analysis - Differences evaluating professional reinsurers versus Direct (consumer) transactions	Randall & Quilter	The exposure drafts of the Subgroup (and that of the Working Group) understandably focus on transfers of insurance policies held by individual policyholders. We agree that such transfers involve significant consumer-protection-related regulatory policy concerns, including Guaranty Fund protection and stakeholder engagement. However, some transfers will likely continue to occur between reinsurers where the business being transferred is a block of reinsurance, the transferor and transferee are reinsurers, and the transferring policyholders are all insurers or reinsurers. Such transactions involve sophisticated businesses and thus have their own dynamic. We would suggest this difference be reflected in the next iteration of the Subgroup's work.	Peter Hartt	
Foundational	Uniform NAIC standards for evaluation of transferee post transaction	Analysis - Financial strength	Randall & Quilter	Assurance of the financial strength of the transferee post transaction, using uniform NAIC standards.	Peter Hartt	
Foundational	Robust stress testing specific to the proposed transaction.	Analysis - Financial strength	Randall & Quilter	Robust stress testing specific to the proposed transaction.	Peter Hartt	
Foundational	More specificity on comparing financial strength of the old and new parties.	Analysis - Financial strength	Randall & Quilter	Specificity around enhanced financial standards appears to be a key to the success of this endeavor, and in this regard we would emphasize the importance of comparing the financial strength of the transferor and transferee via metrics such as Risk Based Capital. In some of the discussions during the NAIC processes, there appears to have been reference to the relative "size" of the parties to the transaction, when perhaps the more salient metrics would include well-tested regulatory measures such as RBC. Some work to better assure the robustness of stress testing of proposed transactions could also be beneficial.	Peter Hartt	

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Best practices	Parental guaranties may not be needed if the transaction is properly structured.	Analysis - Financial strength	Randall & Quilter	(4. b.) This item contemplates a parental guarantee for transferred business. As articulated in the exposure drafts, and as seconded in our comments above, we believe that a fundamental public policy question around these transactions is whether any key stakeholder would suffer a material adverse impact after a proposed transaction. If the transferor does not have a parental guarantee, it is unclear why the transferee would be required to have such a guarantee. From our perspective, a holistic and favorable view of a proposed transfer is one that finds no material disadvantage to key stakeholders but also marketplace benefits via enhanced capital and operational efficiencies, and expert management of the risks involved on a going forward basis. An actual parental guarantee requirement would not only shift the Subgroup process away from these core principles, it could effectively prevent such transactions from occurring, preventing the realization of economic benefits for significant insurers, which benefits should translate into enhanced capacity and competition in state insurance markets.	Peter Hartt	Section II, 4.b.
Foundational	ED Parental guarantees are not noted in ACLI draft but robust review is needed.	Analysis - Financial strength	ACLI	(1) Parental guarantees (Pages 7 and 15): While our Principles and Guidelines do not specifically address parental guarantees, they do require a robust regulator review of the involved insurers' financial condition and solvency.	Mehlman	
Foundational	ACLI key points from its principles and guidelines adopted by its board	Analysis - Financial strength considerations	ACLI	• In determining whether to approve the transaction, the regulator must consider, among other things, all assets, liabilities, cash flows and the nature and composition of the assets proposed to be transferred including, without limitation: o An assessment of the risks and quality (including liquidity and marketability) of the proposed transfer portfolio, and o Consideration of asset/liability matching and the treatment of the material elements of the portfolio for purposes of statutory accounting.	Mehlman	
Foundational	Notes the best practices 5 years of pro forma is higher than existing IBT laws which require 3 or are nonspecific.	Analysis - Financial strength Proforma	Enstar	For example, Section II(1)(i), which relates to IBT transactions, requests "[f]ive years of pro-forma financial statements" from the assuming insurer. However, the Arkansas and Oklahoma statutes only require three years of pro-forma financial statements, and Rhode Island requires pro-forma financial statements without specifying a number of required years. Likewise, in the NCOIL IBT Model Act only three years of pro-forma financial statements are required. As such, the guidance to regulators is out of conformity with all of the existing and anticipated state statutes for IBT, which will likely only serve to confuse unfamiliar regulators who must determine the reason for the discrepancy between legislative requirements and regulatory guidance.	James Mills Robert Redpath	II(1)(i)
Best practices	No need to note Form A compliance	Analysis - Form A compliance, is implied	Locke Lord	Form A Compliance. Many of the provisions of the Procedures call for compliance with Form A requirements. There is every reason to believe that regulators who encounter change of control issues will require Form A filings as part of their review. Accordingly, we suggest that there is little reason to re-state these requirements in the Procedures.	Robert Romano	

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Both	Uniformity and Consistency are Pillars of the US Insurance Regulatory System - recommends using form A standards for CD and IBT	Analysis - Form A standards should be used for both IBT and CD	Petrellis	The RM Subgroup's draft of Foundational Principles and Best Practices for IBTs and CDs creates new standards and raises the bar for approval that will apply only to IBTs and CDs. This results in inconsistency and a lack of uniformity from what is generally accepted for similar transactions, such as acquisitions. F**orm A requirements for acquisitions have been proven to be robust and sufficiently rigorous to ensure successful transactions. The IBT sale of a block of business is very similar to the sale of a company and should have principles and best practices consistent with Form A requirements.** Rather than injecting this new higher level of review for IBTs and CDs, the RM Subgroup should focus on activities-based approach concepts, specifically those that have been utilized by regulators in connection with Form A applications that are decades old and have worked so well for the industry. **We should view IBTs and CDs through the same prism of the tried and tested processes used in connection with Form A applications, divestitures, re-domestications, and other similar transactions that apply activities-based approach concepts.**	Petrellis	
Best practices	Comments on maintain guaranty association coverage	Analysis - Licensing resulting	NOLHGA & NCIGF	(The licensure status of the entities involved also should be analyzed to ensure that guaranty association coverage is not reduced, eliminated, or otherwise changed. The analysis of licensure status will be different for property and casualty vs. life and health business. See Section IX below.)	Peter Gallanis and Roger Schmelzer	Section II, 5a
Best practices	Identifies that the list of states where currently licensed and previously licensed should both be identified.	Analysis - Licensing resulting	NOLHGA & NCIGF	List of states where currently licensed and list of states where insurer ever was licensed	Peter Gallanis and Roger Schmelzer	Section 1h
Best practices	More detailing about the lines of business and states in volved.	Analysis - Licensing resulting	NOLHGA & NCIGF	If property and casualty insurance is involved, the lines of business, liabilities by state, and guaranty funds that could be affected should the resulting entity be liquidated.) and List of states where assuming company is licensed.	Peter Gallanis and Roger Schmelzer	Section II, 1 f, g, m and Section II, 1, k, vii
Foundational	Corporate Division Resulting insurers should be able to satisfy the requirements for the lines of business involved.	Analysis - Licensing resulting - CD	CT	Edits - After the Division transaction, the resulting insurers will be able to satisfy the requirement for the issuance of a license to write the line or lines of insurance for which such line or lines were previously licensed prior to the transaction.	Belfi	
both	Guaranty association protections should be maintained for all states that insurer wrote business. Also different procedures for reinsurance only transactions.	Analysis - Licensing results Guaranty Association	Randall & Quilter	Specifically regarding Guaranty association protection for individual policyholders, including potential orphan policyholders, we agree that additional measures may be needed to effectuate the essential principle that insurance consumers not be materially disadvantaged by a transfer. In this context we appreciate the discussion among regulators about the potential licensure of a transferee in all states in which a transferor has sold policies to consumers. Alternatively, an example of the different dynamic at play is when the business being transferred is a book of reinsurance, and the policyholder of the transferred business is another insurance company. As with our Note #1 above, we would suggest that this difference be reflected in the next exposure in this process.	Peter Hartt	

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Best practices	Assuming Reinsurer status and collateral	Analysis - Licensing status Reinsurers	Locke Lord	Section II. 5. a. This section refers to regulatory confirmation of the licensed or surplus eligibility of the insurer in relevant jurisdictions. **We suggest that the Procedures also refer to the reinsurance status of the insurer(s) - whether licensed, accredited or with some other status that may affect collateral required by cedents. In connection with this discussion, some analysis should be made of the collateral requirements that may become effective or be affected by the restructuring.**	Robert Romano	II. 5.a
Both	2 IBTs and 1 CD has been successfully executed in the U.S.	Analysis - New standards not needed	Petrellis	In the U.S. two IBT transactions and one CD transaction have been successfully executed. Rather than breaking new ground for how these transactions should be executed, we should be building upon these transactions. The Allstate Division transaction demonstrates that the industry already has in place the tools and experience necessary to evaluate these restructuring mechanism transactions. I do not believe anything in the requirements set forth in the draft RM Subgroup Foundational Principles and Best Practices would have improved the Allstate transaction.	Petrellis	
Best practices	Who has to make certifications in the transactional design plans?	Analysis - Plan - Design certifications	Randall & Quilter	(1. i.) Clarification regarding the reference to "…certification that all financial regulatory requirements will be met after the transaction." It could be helpful to understand the form of such a certification, and who would be responsible for making it.	Peter Hartt	Section II, 1.i
Best practices	Plan - Updates to ORSA	Analysis - Plan -ORSA	NYL, NWM and W&SF	We recommend that this list include a requirement to submit an update to the Own Risk and Solvency Assessment reports ("ORSA") demonstrating how the proposed transaction would impact the ORSA analysis for the dividing or transferring insurer as well as for any insurer that will be assuming policy liabilities if the proposed transaction is approved.	Doug Wheeler, Andrew Vedder, Kevin Howard	BP page 6
Best practices	More detail on all parties.	Analysis - Plan Review all insurers	NOLHGA & NCIGF	Several notes sections c and d should be considered with respect to all insurers involved in the transaction.	Peter Gallanis and Roger Schmelzer	Section II, 1 c and d
Foundational	IBT general comments - standards and RBC formula	Analysis - RBC formula	Randall & Quilter	Support IBTs and considerations to RBC formula. We share regulators' desire for a framework that protects consumers and other key stakeholders while enabling solutions that make transferring insurers stronger and more focused, and thus better able to meet the needs of state insurance markets.	Peter Hartt	
Best practices	Comment on overlapping	Analysis - Scope	NOLHGA & NCIGF	section refers only to IBT. Does apply to CD too? If it only applies to IBT, should it be incorporated in Section II.1 above? (Some items appear to overlap with items listed in Section II.1.)	Peter Gallanis and Roger Schmelzer	Section II, 3

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Best practices	Initial assessment by regulatory review does not seem to contemplate trouble company transfers.	Analysis - Troubled company	Randall & Quilter	1. c.) We agree with the importance of this objective, but note that it does not appear to contemplate the possibility of the transferor already being a troubled company. Indeed, one of the positive potential functions of these mechanisms is to remove solvency pressure from a troubled company, shifting some of its burdens to an insurer that is better capitalized and more expert in managing the kinds of risks to be transferred. This scenario is perhaps emblematic of the larger point we are making about the value of a holistic analysis. At the end of the day, what seems to us to be most important from a public policy perspective is that conditions will be better on balance if the transaction is approved instead of disapproved. It might be regrettable if the result of these efforts at the NAIC is to prevent insurers from even considering transfers that would provide a benefit to them and to the marketplaces in which they do business.	Peter Hartt	Section IV, 1.c
Foundational	For insurance business transfer transactions, court approval is required.	Approval - Court IBT	ACLI	Court Approval is Required for Insurance Business Transfer Transactions, but Not Necessarily for Corporate Division Transactions • For insurance business transfer transactions, court approval is required.	Mehlman	
Foundational	For corporate division transactions, court approval is not required, provided the Principles relating to public hearing, notice, and independent expert report(s) are included in the analysis.-	Approval - Regulatory approval and independent expert - CD	ACLI	Court Approval is Required for Insurance Business Transfer Transactions, but Not Necessarily for Corporate Division Transactions • For corporate division transactions, court approval is not required, provided the Principles relating to public hearing, notice, and independent expert report(s) are included in the analysis.	Mehlman	
Foundational	relating to public hearing, notice, and independent expert report(s) are included in the analysis.	Approval -Court -IBT	Randall & Quilter	A judicial process to help assure legal finality and additional stakeholder engagement, as well as another independent check in the approval process.	Peter Hartt	
Best practices	Same or similar economic protectiosn that exsited previously.	Analysis Financial standards IBT and CD	Locke Lord	Section IV. 3. b. This provision states that: “Policyholders and other key stakeholders should have the same economic protections which existed prior to the IBT or corporate division.” We suggest that the statement would be more accurate with the insertion of the words “effectively the same or similar” instead of the after the words “the same”. We also suggest that similar changes be made elsewhere in the Procedures where appropriate to eliminate what may appear to be an absolute statement.	Robert Romano	IV. 3. b

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Best practices	Run off special procedures should not be needed for entities with healthy balance sheets.	Run off - capital procedures	Protucket	ProTucket notes that a basic premise standing behind any Company Division ("CD") or IBT Transaction is that the transferor company should not become financially impaired because of the CD or IBT transaction. ProTucket agrees with the drafting note that the run-off procedures should be addressed in a different location than the pre-transaction best practices section, or perhaps in a separate document. With respect to the proposals in the draft, many appear to address concerns over impaired companies, for which enhanced ongoing regulatory scrutiny would be appropriate and expected. However, if the run-off meets the capital requirements being considered elsewhere in the document, then the run-off's balance sheet would not be impaired, and the level of scrutiny required would be minimal. For example, to have regulators sign off all commutations for a run-off with a healthy balance sheet is both unnecessary to the management of the run-off and a waste of scarce regulatory resources.	Marvin D. Mohn	BP Section X
Foundational	Run off should include contractual renewal rights.	Run off - define	Riverstone	The fourth paragraph of the Letter enumerates three characteristics identified by the ad hoc group related to runoff companies. As stated, those characteristics are: 1) no renewing of policies for at least 12 months; 2) no new direct or new assumed business; and 3) no additional runoff blocks of business. RiverStone generally agrees with the first two characteristics. Based on our experience in the acquisition and assumption of runoff business, however, RiverStone respectfully submits that the Subgroup should modify the first factor to recognize that some policies may include contractual renewal rights that must be respected even if a portfolio is placed into runoff status. It is possible that the "In addition" sentence is intended to incorporate this idea, but we urge the Subgroup to make the connection more explicit. We respectfully suggest that the first characteristic be modified to read, "no renewing of policies for at least 12 months except for cases where the amount of renewal premium is de minimis or the policy is subject to contractual renewal rights."	John W. Bauer	Run off definition

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Best practices	We suggest onerous review restrictions that treat Run off entities as if they were under supervision be eliminated. The Subgroup should also consider deleting Section X in its entirety, as it is mostly duplicative.	Run off - move procedures	Locke Lord	Section X. 1. b. (second & third). The paragraph "b" appears three times in subsection 1. The second and third times refer to requirements or suggestions for pre - approvals of various actions as part of a run-off plan, including for any new reinsurance agreement, any change in daily operations, any dividends and any transfer of property. These are very broad and onerous restrictions that would effectively treat run-off companies as if they were under regulatory supervision. Run-off insurers are not by definition insolvent or financially unstable. There is little justification to impose such restrictions on financially sound insurers in run-off. We suggest that these restrictions be eliminated. The Subgroup should also consider deleting Section X in its entirety, as it is mostly duplicative.	Robert Romano	X. 1. b. (second & third).
Foundational	Run off general regulatory differences	Run off - RBC	Riverstone	As runoff specialists, we are pleased to see the Subgroup considering issues related to the regulation of runoff companies and whether the existing suite of regulatory tools should be modified or tailored differently to accommodate certain characteristics that distinguish runoff companies from actively writing companies. The majority of our comments relate specifically to the October 25, 2021 letter from Mr. Tom Botsko, Chair of the Property and Casualty Risk-Based Capital (E) Working Group ("the Letter"), regarding risk-based capital issues related to runoff companies. We are very interested in the Subgroup's discussion of these issues and would like to provide a few observations and comments regarding the Letter.	John W. Bauer	RBC comment letter

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Best practices	Clarify description and of scope of run off procedures.	Run off -edits	Riverstone	Section X – Run-off Procedures" on page 18 of the Best Practices document. The opening paragraph notes several circumstances through which runoff can occur, including IBTs and CDs. We are specifically concerned about the sentence that states, "In all these situations the run-off is occurring on an involuntary basis and should be subject to the following regulatory guidance . . . ." (emphasis added). We respectfully submit that this statement is incorrect in its use of the term "all." There are many situations, including IBTs, CDs, and other existing vehicles for restructuring transactions, that involve voluntary runoff. We suggest that the Subgroup modify this sentence in order to make clear that the guidance that follows should be limited to involuntary runoff situations or to clarify otherwise that it does not apply to voluntary runoff. This may be accomplished simply by changing "all these" to "some" or "certain."	John W. Bauer	Section X Run off
Best practices	Clarification regarding run off procedures when one or both parties are in run off.	Run off -parties already in run off	Randall & Quilter	Clarification may be helpful regarding the applicability of this section to scenarios where either the transferor or transferee are already in runoff. From our perspective, some of the greatest market utility of IBTs and similar mechanisms involves companies in runoff and transferees who are runoff consolidators.	Peter Hartt	Section X
Best practices	Not all run off is involuntary and run off needs to be more clearly defined.	Run off -types	Enstar	We are providing these comments based on our perspective and experience performing runoff transactions, which we believe is the market sector that has been in most need of alternatives to the traditional restructuring frameworks. Section X – "Run-off Procedures" appears to state that all run-off is occurring on an involuntary basis, including run off acquired by IBT, and should be subject to specific regulatory monitoring and requirements. As noted in the referral response from the Property and Casualty Risk-Based Capital Working Group, run-off is not clearly defined for regulatory purposes, whether voluntary or involuntary, and we look forward to further efforts to address a common understanding of the varying types of run-off business insurers hold, and how that business is integrated into their business models. As the Enstar business model is focused on the acquisition and management of run-off liabilities, it is unclear how the acquisition of run-off through an IBT would be considered involuntary run-off.	James Mills Robert Redpath	X

Doc Best or Foundational	Topic	short topic	Company	Comment	Name	Section
Best practices	Revise RBC formula to address run off companies	Run-off - RBC formula	Locke Lord	Section IV. 3. b. This provision refers to RBC ratios. As suggested in prior comments which we have made to the draft White Paper exposed for comment by the Restructuring Mechanisms Working Group, **we suggest that RBC formulae be revised to more accurately evaluate the financial condition of run-off insurers. We repeat our comments in that regard, including in respect of how to define run-off insurers. We suggest that consideration be given to this issue elsewhere in the Procedures wherever appropriate.**	Robert Romano	IV. 3. b
Foundational	RBC premium charge should not be applied to run off companies.	Run-off - RBC formula updates post transaction	Riverstone	For RiverStone, it is important to get right the characteristics of runoff companies because the ad hoc group's recommendations concerning the RBC instructions should apply to runoff companies regardless of whether they acquire other runoff business. That is, application of the Trend Test places runoff companies at a disadvantage when our premium profile is considerably different from actively writing companies. Similarly, we submit that a premium growth charge should not be applied to runoff companies. As noted above, RiverStone obtains new premium only through acquisitions of other runoff portfolios and where renewal rights may be a factor. The collection of premium is not a primary function of the runoff business. Further, RiverStone is part of the Fairfax insurance group and, while most of our affiliate insurers are indeed active writers, the decentralized nature of the Fairfax group means that RiverStone plays no role in the underwriting activities of those affiliates. As stated previously, RiverStone operates primarily through TIG Insurance Company, which has not actively written new business in 20 years. However, because it is part of a group of active writing companies, TIG has been required to take RBC charges due to premium growth from our affiliates. The RBC Instructions have thus operated to TIG's disadvantage. Therefore, whether applied on an individual or group basis, RiverStone strongly supports the removal of premium charges for runoff companies.	John W. Bauer	RBC run off

Restructuring Mechanisms (E) Subgroup
Comment Letters Received on May Exposures

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June 21, 2022

Attn: Doug Stolte and David Smith
Co-Chairs of the Restructuring Mechanism (E) Subgroup

Re: Connecticut Insurance Department Comments to the Restructuring Mechanisms Foundational Principles and Best Practices Draft Documents

The following comments submitted by the Connecticut Insurance Department (CID) are specific to the restructuring mechanism of corporate divisions and not to insurance business transfers (IBTs).

Relating to Foundational Principles:

Connecticut is one of seven states that have passed legislation allowing for insurance company corporate divisions. In general, Connecticut's Insurance Divisions Act seeks to provide legal and economic finality to the reorganization and transfer of insurance risks in order to benefit insurers, reinsurers, and most importantly policyholders (the primary charge of CID is consumer protection). The Act does this by authorizing an insurer to divide into two or more insurers in a corporate-level transaction that is the reverse of a merger. Instead of two or more insurers being merged into one insurer, as happens in a merger; in a corporate division one existing domestic insurer is divided into two or more resulting insurers. As part of the division, the assets and obligations, including insurance policies, of the dividing insurer are allocated to the resulting insurers as provided in the plan of division. The resulting insurers are deemed legal successors to the dividing insurer and the assets and obligations are allocated to them as a result of succession and not by direct or indirect transfer. As part of the review of a plan of division, the Commissioner has the authority to hire experts whose expenses are to be paid by the dividing insurer that filed the plan. The hiring of such experts is at the discretion of the Commissioner and is not mandatory.

A corporate division, more so than an IBT, is a corporate level transaction very much analogous to other transactions routinely reviewed and regulated by insurance departments throughout the nation. These include, insurance company acquisitions subject to the Form A filing and process, insurance company mergers, demutualization of an insurer, and bulk reinsurance transfers. None of these transactions in any jurisdiction that we are aware of mandates the review of an independent expert but instead leaves such decision to hire an expert at the discretion of the Commissioner.

For transactions wholly contained within the insurance holding company structure, or for transactions involving domestic insurers, oftentimes the expertise surrounding these companies and their operations resides with the domestic regulator. As such, the requirement to hire and pay for the expenses of such expert would result in a waste of

time and resources, such resources being much better dedicated to the policies. In addition, if the expert were to reach a determination that differs from that of the regulator, this would call into question the ultimate judgment of the Commissioner.

In addition, we propose that in #1 Policyholders Should Never Be left Worse Off - for Divisions, the language should mirror the Form A Model Statute which has several relevant standards that would apply. These standards have been tested in practice and have worked well for State Departments for decades.

In conclusion, as it relates to the Division's proposal, we suggest the following edits:

1. Eliminate all references to the requirement to mandate the use of an independent expert and replace with "although not mandated to use an independent expert, a state is required to document and conclude on the reliance of appropriate in-house expertise".

2. In the paragraph mentioned above "Policy Holders Should Never Be left Worse Off", we recommend it be simplified. When evaluating a Division transaction, it should always be reviewed with the Policyholder's best interests in mind. Unless a regulator can come to that conclusion, the transaction should not be approved. In addition to the Considerations already listed in Paragraph #1, we recommend adding the following regarding Divisions:

    - After the Division transaction, the resulting insurers will be able to satisfy the requirement for the issuance of a license to write the line or lines of insurance for which such line or lines were previously licensed prior to the transaction.

    - The financial condition of the resulting insurers following a Division transaction are such that it will not jeopardize the financial stability of such resulting insurers or prejudice the interests of the policy holders.

    - The competence, experience and integrity of those persons who would control the operations of the resulting insurers are such that it would be in the interest of policyholders of the insurers and of the public to permit the Division transaction and that such persons will operate the insurance company in a manner that is in the interest of the Policy Holder.

Relating to the Best Practices:

1. Page 10: The terminology "same economic protection" appears to be a higher standard than "no worse off." This could be misinterpreted to mean that the resulting company must be in at least the same or better financial position as the transferring company. The measurement should be that there will be no adverse impact on the policyholder's ability to receive benefits under the terms of the policy.

2. Page 13: Similar to item 1 above, the terminology “Same or better position” appears to be a higher standard that “no worse off.” No adverse impact on the policyholder would be better terminology.

We appreciate your time and consideration of our comments.

Sincerely,

Kathy Belfi, CPA
Special Advisor to the Commissioner

cc: Robin Marcotte, Dan Daveline
NAIC Staff Support

Comments on the Foundational Principles from select sections from John Rehagen, Missouri

In general, I understand the business purpose behind IBT's and CD's; however, we need to be careful especially when personal lines coverages are considered. These transactions appear to be designed to circumvent state laws, which afford policyholders a choice, and they limit or eliminate the authority of the policyholders' commissioner in regulating insurance and protecting policyholders in their state. I would think a founding principal for any court or regulator to consider before approving an IBT or CD would be to consider conflicts with other states insurance laws before approving such transactions. See my comments and suggestions below.

John

1. Policyholders and Other Key Stakeholders Should Never Be Left Worse Off - Policyholders should be left in the same or a better position after completion of the transaction. The transaction should not be approved unless the effect on policyholders and other key stakeholders is neutral or there is some expected policyholder benefit(s). It is preferrable that they are left in better position, but at a minimum the policyholders should be in a neutral position. Policyholders and other key stakeholders include those related to both the transferred policies and the remaining policies which are not transferred.

(add these sentences.) Policyholders are considered worse off if they would lose the opportunity to affirmatively consent to their policy being transferred as is provided to them under assumption reinsurance or novation laws in their state of domicile.

The IBT or CD transaction would cause policyholders to be worse off if the IBT insurer or CD is not licensed in the states where the policies were written by the transferring insurer or where those policyholders reside.

2. Robust Regulatory Review Process

c. Ultimate authority

i. IBTs will require review by:

1. Domestic regulators of both the assuming company and transferring company,

2. Notice to and confirmation of receipt from other affected regulators where the policies were initially written or where policyholders currently reside,

3. Report of Independent expert(s), and *(Note: yes, independent experts should be used in all circumstances.)*

4. Court approval as the final authority only after notice to and confirmation of receipt from other affected regulators has been received).

ii. Corporate Divisions will require review by

1. Domestic regulator(s),

2. Notice to and confirmation of receipt from other affected regulators, where the policies were initially written or where policyholders currently reside,

3. Report of Independent expert(s), or notice must be provided to other affected regulators as to why a report of an independent expert is not required, etc. and

4. Domestic regulators as the final authority.

ACLI
Financial Security for Life

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June 21, 2022

Doug Stolte, Co-Chair
David Smith, Co-Chair
Restructuring Mechanisms Subgroup
National Association of Insurance Commissioners
2301 McGee Street, Suite 800
Kansas City, MO 64108

RE: Draft *Foundational Principles* and *Best Practices Procedures for IBTs and Corporate Divisions*

Dear Co-Chairs Stolte and Smith:

The American Council of Life Insurers (ACLI) would like to thank you for this opportunity to comment on the Restructuring Mechanisms Subgroup's draft *Foundational Principles* and *Best Practices Procedures for Insurance Business Transfers (IBTs) and Corporate Divisions*.

ACLI suggests that the *Foundational Principles and Best Practices* documents be combined into a single document to eliminate confusion about the intended use of each document. As currently drafted, most of the *Foundational Principles* are also contained in the *Best Practices* document.

More generally, ACLI believes that certain guardrails, including important process, review, and consumer and company solvency protections, must be in place before a proposed IBT or corporate division transaction can be approved by a state regulator (and in the case of an IBT, by a court).

Accordingly, ACLI's Board of Directors adopted a comprehensive set of *Principles and Guidelines on IBT & Corporate Division Legislation* that ACLI staff and its member companies would refer to when evaluating potential legislation, regulations and models, as well as regulatory guidance and best practices.

Although the exposed documents are substantially more detailed than our *Principles and Guidelines*, they appear to be in substantial compliance with them. There are, however, several topics in the *Best Practices Procedures* document that our *Principles and Guidelines* address differently, particularly:

(1) Parental guarantees (Pages 7 and 15): While our *Principles and Guidelines* do not specifically address parental guarantees, they do require a robust regulator review of the involved insurers' financial condition and solvency.

(2) Consideration of a mechanism to obtain policyholder consent (Page 16): For IBTs and corporate divisions, our *Principles and Guidelines* do not require policyholder consent and, therefore, do not envision a mechanism for such consent. They do, however, require notice, public hearing, independent expert review and court approval (in the case of IBTs) to protect policyholders who are not otherwise able to consent to, or opt-out of, a proposed transaction.

(3) The process should require approval or non-objection of all affected states (Page 17): Our *Principles and Guidelines* do not require the approval or non-objection of all affected states. For IBTs, our *Principles and Guidelines* state that the domestic regulator of the assuming insurer must approve the proposed transaction, and that the domestic regulator of the transferring company must either approve the proposed transaction or provide a non-objection letter. For corporate divisions, our *Principles and Guidelines* provide that the domestic regulator of the dividing company must approve the proposed transaction. However, our *Principles and Guidelines* require that notice of the proposed transaction be given to individual policyholders, reinsurers, guaranty associations and applicable state regulators.

In addition, while we do not believe that the exposed documents have to be aligned with existing IBT and corporate division laws, regulations and/or models, we nonetheless ask that this Subgroup review them as it finalizes these documents.

Below is an overview of our *Principles and Guidelines*:

Policyholders and Other Impacted Stakeholders Must Have Access to the Process

- All transactions must be subject to a public hearing.
- Individual policyholders, reinsurers, applicable state regulators, guaranty associations, and any other persons determined by the regulator must receive notice of the proposed transaction.

The Regulatory Review Process Must Be Robust

- The Commissioner's review process must include certain findings, including:
  - The financial condition of an involved insurer will not jeopardize the financial stability of the insurers, or prejudice the interest of its policyholders or reinsurers;
  - An involved insurer will not have plans or proposals to liquidate another involved insurer, sell its assets, or consolidate or merge or to make any other material change in its business or corporate structure or management, that are unfair or unreasonable to policyholders, reinsurers or the public;
  - The involved insurers will be solvent at the time of the transaction;
  - The assets allocated to the involved insurers will not be, at the time of the transaction, unreasonably small in relation to the business and transaction;
  - The terms of the transaction will not be unfair or unreasonable to any involved insurer's policyholders or reinsurers;
  - The competence, experience and integrity of the persons who would control the operation of an involved insurer are such that it would be in the interest of the involved insurers' policyholders and reinsurers and the general public to permit the transfer;
  - The transaction is not likely to be hazardous or prejudicial to the insurance-buying public;
  - The interest of the policyholders of an involved insurer that may become policyholders of another insurer will be adequately protected; and
  - The transaction is not being made for purposes of hindering, delaying or defrauding any policyholders or reinsurers.

- In determining whether to approve the transaction, the regulator must consider, among other things, all assets, liabilities, cash flows and the nature and composition of the assets proposed to be transferred including, without limitation:
  - An assessment of the risks and quality (including liquidity and marketability) of the proposed transfer portfolio, and
  - Consideration of asset/liability matching and the treatment of the material elements of the portfolio for purposes of statutory accounting.

Independent Experts Must be Utilized as Part of the Process

- An independent expert is required for all transactions and the expert's report must address:
  - Business purposes of the proposed transaction;
  - Capital adequacy and risk-based capital (including consideration of the effects of asset quality, non-admitted assets and actuarial stresses to reserve assumptions);
  - Cash flow and reserve adequacy testing (including consideration of the effects of diversification on policy liabilities);
  - The impact, if any, of concentration of lines of business following the transaction;
  - Business plans; and
  - Management's competence, experience and integrity.

Court Approval is Required for Insurance Business Transfer Transactions, but Not Necessarily for Corporate Division Transactions

- For insurance business transfer transactions, court approval is required.
- For corporate division transactions, court approval is not required, provided the Principles relating to public hearing, notice, and independent expert report(s) are included in the analysis.

Policyholders and the State-Based Guaranty Association System Should Be Protected

- Involved insurers must be licensed such that policyholders maintain guaranty association coverage in the same state in which they had it immediately prior to the transaction.

Thanks again for this opportunity to provide comments. If you have any questions, feel free to contact me at waynemehlman@acli.com or 202-624-2135.

Sincerely,

Wayne A. Mehlman

Wayne Mehlman
Senior Counsel, Insurance Regulation

Comments to Restructuring Mechanisms (E) Subgroup Exposure Drafts

Dear Chairs Smith and Stolte:

Thank you to the subgroup members and NAIC staff for the time and effort directed into the development of the Foundational Principles and Best Practices/Procedures for IBT/Corporate Divisions draft papers.

Enstar is a publicly traded global insurance group and market leader in the active run-off management industry. We recognize that it is often difficult to quantify and differentiate between active run-off management insurers, active insurers that also hold business in run-off, and companies that have transitioned from active insuring to managing their own run-off. We appreciate the work done by the Property and Casualty Risk-Based Capital Working Group considering their referral and look forward to further discussion of these distinctions once the remaining referral responses are exposed.

We appreciate the opportunity to provide comments on the exposure drafts. We recognize that the breadth of possible transactions that can be performed under these restructuring mechanisms creates challenges in providing guidance that will cover all possibilities. We are providing these comments based on our perspective and experience performing run-off transactions, which we believe is the market sector that has been in most need of alternatives to the traditional restructuring frameworks.

Foundational Principals

The Drafting Note for Foundational Principle #1 – "Policyholders and Other Key Stakeholders Should Never Be Left Worse Off" raises the question of how the term "worse off" is defined and measured. We agree this phrase is not commonly defined and believe that it would be clearer to readers and more consistent with existing practices and international experience to instead include the standard of "no material adverse impact to policyholders" as included in existing state IBT statutes and the NCOIL IBT Model Act. The section references "*Prudential Regulation Authority (PRA)/Financial Conduct Authority (FCA) – UK part 7"* as source material, and it is worth noting that these entities utilize the

concept of no material adverse effects on the policyholder. PRA "Policy Statement 1/22: Insurance business transfers," issued January 12, 2022, and FCA "FG22/1: The FCA's approach to the review of Part VII insurance business transfers," issued February 15, 2022, both frequently reference the "material adverse impact" standard throughout. The PRA also notes that "it is for the independent expert to assess and define material adverse effect." Although not based on legislation, this standard has existed in UK case law since at least 2001[1] and has been referred to as "material adverse effect" since at least 2008[2], a standard which in 2021 was further described by the Court of Appeal:

> "An adverse effect will only be material to the court's consideration if it is: (i) a possibility that cannot sensibly be ignored having regard to the nature and gravity of the feared harm in the particular case, (ii) a consequence of the scheme, and (iii) material in the sense that there is the prospect of real or significant, as opposed to fanciful or insignificant, risk to the position of the stakeholder concerned. In some cases, it may also be relevant for the court to consider whether there would be such material adverse effects in the event that the scheme was not sanctioned."[3]

While we support the premise that restructuring transactions should not cause policyholders harm, we recognize that the formalization of this idea is not drafted into the NAIC guidance for other regulatory review processes that similarly impact policyholders. For example, an acquisition and merger provides in some ways a similar transfer of liabilities to a new insurer as an IBT. The NAIC Company Licensing Best Practices Handbook, in its Form A Review Best Practices, prompts regulators to "[c]onsider with disfavor any plans to liquidate the target or sell its assets, consolidate or merge, that may be unfair, unreasonable, or hazardous to policyholders[.]" The standard to "disfavor" an "unfair, unreasonable, or hazardous" plan is significantly different from the guidance in the Foundational Principles that a "transaction should not be approved unless the effect on policyholders and other key stakeholders is neutral or there is some expected policyholder benefit(s)" (Foundational Principle 1).

Similarly, regulatory approval of an extraordinary dividend leads to a reduction of insurer capital. However, the NAIC Financial Analysis Handbook, in its guidance on the evaluation of Extraordinary Dividend/Distribution requests, promotes the standard that the "insurer have adequate surplus" without inquiry into whether the transaction is adverse to or creates a benefit for policyholders. Policyholders might believe that any reduction of insurer capital would be adverse to their interests, but it is well known to regulators that a

[1] *Re Axa Equity & Law Life Assurance Society plc and Axa Sun Life plc* [2001]
[2] *Re Royal Sun Alliance Insurance plc* [2008] EWHC 3436 (Ch)
[3] *Re Prudential Assurance Company Ltd and another* [2021] EWHC 3152 [83]

framework is in place to monitor the sufficiency of capital, with key benchmarks identifying levels of material concern.

Without employing a materiality standard, this significant divergence from existing NAIC guidance risks creating more confusion than clarity for regulators, as well as the Independent Experts and courts that are also participants in the IBT process. We believe that the most beneficial guidelines for regulators would be those which use and interpret the language of the underlying legislation enacted by the various states, including the "material adverse" standard, whether in support of insurance business transfers or divisions, rather than creating new, non-statutory language.

Best Practices

The Best Practices exposure draft states that it is not a model law or regulation, and we understand that the NAIC has not initiated the development of a model on this subject. Several states have already enacted legislation enabling IBT and division plans, and NCOIL has developed and approved model legislation for both insurance business transfers and insurance divisions. As such, we believe that regulatory best practices should follow the standards set out by either existing or model legislation whenever possible, including the use of the "material adverse effect" standard. However, the Best Practice exposure draft differs from existing legislation in several ways.

For example, Section II(1)(i), which relates to IBT transactions, requests "[f]ive years of pro-forma financial statements" from the assuming insurer. However, the Arkansas and Oklahoma statutes only require three years of pro-forma financial statements, and Rhode Island requires pro-forma financial statements without specifying a number of required years. Likewise, in the NCOIL IBT Model Act only three years of pro-forma financial statements are required. As such, the guidance to regulators is out of conformity with all of the existing and anticipated state statutes for IBT, which will likely only serve to confuse unfamiliar regulators who must determine the reason for the discrepancy between legislative requirements and regulatory guidance.

Similarly, Section VII creates new standards that are unfound in and unrelated to the existing legislative standards. For example, with reference to a 1997 white paper, it is suggested that regulators "[c]onsider whether to require that a mechanism be put in place to obtain policyholder consent regarding any novations." This guidance is in direct conflict with Section 2 – "Purpose" of the NCOIL IBT Model Act, which states that "[t]hese purposes are accomplished by providing a basis and procedures for the transfer and statutory novation of policies [. . .] without the affirmative consent of policyholders" and similar provisions of the enacted state laws that exist today. In addition, the suggestion that new

policyholder rights should be created, such as "cut through" provisions, is also in conflict with the purpose of the legislation. In the language of the NCOIL IBT Model Act, upon court approval, an order is issued such that the assuming insurer has the rights, obligations, and liabilities of the subject business "as if it were the original insurer of such policies[.]" There is no legislative basis to remove or create additional rights for policyholders or insurers in the modern restructuring frameworks.

Section X – "Run-off Procedures" appears to state that all run-off is occurring on an involuntary basis, including run off acquired by IBT, and should be subject to specific regulatory monitoring and requirements. As noted in the referral response from the Property and Casualty Risk-Based Capital Working Group, run-off is not clearly defined for regulatory purposes, whether voluntary or involuntary, and we look forward to further efforts to address a common understanding of the varying types of run-off business insurers hold, and how that business is integrated into their business models. As the Enstar business model is focused on the acquisition and management of run-off liabilities, it is unclear how the acquisition of run-off through an IBT would be considered involuntary run-off.

Conclusion

We recognize that the creation of these exposure drafts has taken significant work, and we believe that this guidance will provide the greatest benefit to all regulators and other stakeholders if the guidance is more closely based on the existing state and model legislation, upon which transactions will be based. We hope that these documents can be a beneficial resource to regulators whose domestic insurers wish to participate in a restructuring transaction, regardless of whether their state has enacted restructuring legislation, and believe that this can best be accomplished by focusing on the existing state of restructuring legislation within the US.

Sincerely,

Robert Redpath
US Legal Director

James Mills
Vice President

June 21, 2022

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Re: Comments to Exposure Draft of Best Practices Procedures for IBT/Corporate Divisions

Dear Sirs:

Thank you for the opportunity to comment upon the items exposed for comment by the Restructuring Mechanisms SubGroup. We have limited our suggestions to the Best Practices Procedures for IBT/Corporate Divisions, May 4, 2022 exposure draft (the "Procedures").

Set forth below are our comments:

- **Section II. 5. a.** This section refers to regulatory confirmation of the licensed or surplus eligibility of the insurer in relevant jurisdictions.

  We suggest that the Procedures also refer to the reinsurance status of the insurer(s) - whether licensed, accredited or with some other status that may affect collateral required by cedents. In connection with this discussion, some analysis should be made of the collateral requirements that may become effective or be affected by the restructuring.

- **Section IV. 2. b. iii.** This provision states that: "A conclusion that the transaction does not have any adverse impact on policyholders." We suggest that the statement would be more accurate with the insertion of the word "significant" after the word "any".

  We also suggest that similar changes be made elsewhere in the Procedures where appropriate to eliminate what may appear to be an absolute statement.

- **Section IV. 3. b.** This provision refers to RBC ratios. As suggested in prior comments which we have made to the draft White Paper exposed for comment by the Restructuring Mechanisms Working Group, we suggest that RBC formulae be revised to more accurately evaluate the financial condition of run-off insurers. We repeat our comments in that regard, including in respect of how to define run-off insurers.

  We suggest that consideration be given to this issue elsewhere in the Procedures wherever appropriate.

- **Section IV. 3. b.** This provision states that: "Policyholders and other key stakeholders should have the same economic protections which existed prior to the IBT or corporate division." We suggest that the statement would be more accurate with the insertion of the words "effectively the same or similar" instead of the after the words "the same".

  We also suggest that similar changes be made elsewhere in the Procedures where appropriate to eliminate what may appear to be an absolute statement.

- **Section IV. 4. a.** This paragraph is unclear. We suggest that it be re-worded for clarity.

- **Section VII. 1. a. and 3. a.** These provisions refer to the possible use of "cut through" provisions and possibly obtaining "policyholder consent regarding any novations".

  While the use of such provisions or consents could be a possibility in transactions structured by the parties for very specific purposes, the use of these terms in the Procedures may imply that these may be expected or usual terms of IBTs or divisions. As the very nature of IBTs and divisions contemplates transfers and legal finality subject to regulatory oversight without policyholder consents, a discussion of these provisions in this context in the Procedures may imply that these provisions are expected in these transactions. Except in extraordinary circumstances, a requirement for a cut through provision or policyholder consent would be contrary to the very purpose of the transaction.

  Accordingly, we would suggest that these provisions be deleted from the Procedures or be accompanied by language to make it clear that it is not the intent of the Procedures to recommend that such provisions be required or that they would serve a useful purpose within the context of an IBT or division, except in extraordinary circumstances.

- **Section VIII. 3.** This provision states that: "the process should require approval or non- objection of all affected states…". We suggest that the words "review by" be substituted for "approval or non-objection of" in this sentence.

Although in the Enstar Yosemite IBT transaction in Oklahoma efforts were made to seek the input and review of many states, not all states approved (or non-objected) to the transaction. And, although the Pennsylvania Brandywine division was achieved with the approval of many non-domiciliary regulators, approval by all states was not a statutory pre-requisite to the transaction. Indeed, none of the IBT or division statutes requires that non-domiciliary regulators all approve or non-object to the transaction. To require such approvals or non-objections would go beyond the statutes of all states that have enacted IBT or division statutes.

- **Section X. 1. b. (second & third).** The paragraph "b" appears three times in subsection 1. The second and third times refer to requirements or suggestions for pre-approvals of various actions as part of a run-off plan, including for any new reinsurance agreement, any change in daily operations, any dividends and any transfer of property.

  These are very broad and onerous restrictions that would effectively treat run-off companies as if they were under regulatory supervision. Run-off insurers are not by definition insolvent or financially unstable. There is little justification to impose such restrictions on financially sound insurers in run-off.

  We suggest that these restrictions be eliminated. The SubGroup should also consider deleting Section X in its entirety, as it is mostly duplicative.

- **Duplicative Provisions.** As a general comment, we suggest that the Procedures be edited to reduce duplicative provisions.

- **Form A Compliance.** Many of the provisions of the Procedures call for compliance with Form A requirements. There is every reason to believe that regulators who encounter change of control issues will require Form A filings as part of their review. Accordingly, we suggest that there is little reason to re-state these requirements in the Procedures.

We thank the SubGroup for considering these suggestions and are available to answer questions or to supplement this submission at your convenience.

Sincerely,

Robert A. Romano

cc: Robin Marcotte, NAIC, Senior Manager II, Accounting Policy
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June 15, 2022

Jack Broccoli, Associate Director – Financial Regulation
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Co-Chairs, NAIC Restructuring Mechanisms (E) Subgroup

Attn: Robin Marcotte RMarcotte@naic.org

RE: RM Subgroup's Draft of Foundational Principles and Best Practices for IBTs and CDs

Dear Mr. Broccoli and Mr. Stolte:

Thank you for this opportunity to provide comments to the Restructuring Mechanisms (E) Subgroup draft of the Foundational Principles and Best Practices for IBTs and CDs.

Uniformity and consistency are pillars of the US insurance regulatory system

During the June 4th Restructuring Mechanisms Subgroup (RM Subgroup) Webex meeting several commenters wisely stressed the importance of consistency and uniformity in drafting the RM Subgroup's Foundational Principles and Best Practices. One of the strengths of the U.S. insurance industry is uniformity in application of existing statutes and regulations, evidenced by a general understanding of the requirements and minimal litigation associated with transactions over the years. Maintaining consistent and uniform standards and guidelines for similar transactions of all types should be one of the RM Subgroup's primary goals.

The RM Subgroup's draft of Foundational Principles and Best Practices for IBTs and CDs creates new standards and raises the bar for approval that will apply only to IBTs and CDs. This results in inconsistency and a lack of uniformity from what is generally accepted for similar transactions, such as acquisitions. Form A requirements for acquisitions have been proven to be robust and sufficiently rigorous to ensure successful transactions. The IBT sale of a block of business is very similar to the sale of a company and should have principles and best practices consistent with Form A requirements.

Rather than injecting this new higher level of review for IBTs and CDs, the RM Subgroup should focus on activities-based approach concepts, specifically those that have been utilized by regulators in connection with Form A applications that are decades old and have worked so well for the industry. We should view IBTs and CDs through the same prism of the tried and tested processes used in connection with Form A applications, divestitures, re-domestications, and other similar transactions that apply activities-based approach concepts.

IBTs and CDs have been successfully executed in the U.S.

In previous comment letters to the Restructuring Mechanisms Working Group (RMWG) I recommended that the RMWG and RM Subgroup look to restructuring transactions that have been executed in the U.S. to guide them in their work. In the U.S. two IBT transactions and one CD transaction have been successfully executed. Rather than breaking new ground for how these transactions should be executed, we should be building upon these transactions.

On behalf of the Illinois DOI, I served as project manager for the Allstate Division transaction. The Illinois Division statute provided the needed flexibility for the Director of Insurance to address the key issues and engage consultants as deemed necessary to ensure that the Allstate transaction met and/or exceeded the necessary regulatory requirements. The Illinois DOI and Allstate diligently addressed all major concerns, including those that have been raised by RMWG and RM Subgroup interested parties in a rational and prudent manner resulting in an exemplary transaction that safeguarded the interests of policyholders and allowed Allstate to achieve its corporate objectives.

The Allstate Division transaction demonstrates that the industry already has in place the tools and experience necessary to evaluate these restructuring mechanism transactions. I do not believe anything in the requirements set forth in the draft RM Subgroup Foundational Principles and Best Practices would have improved the Allstate transaction.

No material adverse impact is the universally accepted standard of review

The draft of the Foundational Principles and Best Practices both state that reviewing authorities and the independent expert should find that policyholders and other key stakeholders experience "no adverse effects". This standard of review is subjective, undefined, and inconsistent with all currently enacted state IBT laws, the NCOIL IBT model law, and the UK Part VII Transfer. To circumvent these existing state IBT and CD statutes through regulatory guidelines is a disservice to the robust legislative process in place in each state and in NCOIL.

The IBT laws of Rhode Island, Arkansas and Oklahoma all require a standard of "no material adverse" impact to policyholders.[1] The NCOIL IBT model law[2] also sets forth a standard of "no material adverse impact". Prior to being enacted these state laws and the NCOIL model law were reviewed and vetted by legislators, governors, and insurance departments. During the drafting discussions of each states' law as well as the NCOIL IBT and Division model laws, legislators and commissioners heard from a wide array of interested parties including: insurance carriers; reinsurers; the Reinsurance Assoc. of America (RAA); the American Council of Life Insurers (ACLI); certain law firms; the National Organization of Life & Health Insurance Guaranty Associations (NOLGHA); the National Conference of Insurance Guaranty Funds

[1] 230-RICR-20-45-6.4; AR HCR 1028; OK Title 35 Section 1681

[2] https://secureservercdn.net/50.62.194.59/33a.fce.mwp.accessdomain.com/wp-content/uploads/2021/04/NCOIL-Insurer-Division-Model-Adopted-4-18-21-1.pdf

(NCIGF); the American Property & Casualty Insurance Association (APCIA); and others. Interested parties had the opportunity to be heard and present any concerns they had regarding the proposed laws. After consideration of all comments each state and NCOIL set forth IBT laws that required "no material adverse" impact to policyholders.

Furthermore, the standard of review for a UK Part VII transfer, upon which U.S. IBT laws are based, is that there be "no material adverse impact" to policyholders. This legislation has been in place for decades with over 300 successfully completed transfers, none of which have sustained financial difficulties. As stated in the RMWG White Paper "Members of the Subgroup have studied and acknowledge that the UK Part VII procedures set forth robust processes and that similar requirements should be established for IBTs and CDs." The standard of "no material adverse impact" has worked well for the UK for decades and, as the Subgroup previously has acknowledged, should similarly be established for IBTs and CDs.

The concept of materiality is widely used throughout financial, business, and regulatory communities. Accountants, actuaries, and other business professionals rely on the concept of materiality in all their work. The definition of materiality largely depends on the context of use. From the regulatory perspective, the SEC has defined material as follows: "A matter is material if there is a substantial likelihood that a reasonable person would consider it important."[3] A standard of review for IBTs and CDs that requires a "material adverse impact" is consistent with how materiality is applied in many contexts and would be more easily understood and implemented by regulators and independent experts.

To set a new standard of "adverse impact" will create confusion throughout the industry and is inconsistent with existing state legislation, the NCOIL IBT model law, and the UK Part VII Transfer that the Subgroup itself has acknowledged is a robust process. Furthermore, a new standard of "no adverse impact" subverts the legislative intent in states that have passed IBT and CD laws and will result in inconsistency and a lack of uniformity among the states.

Coordination with other states

Section 8 of the draft of Best Practices relates to communications for a transaction. Paragraph No. 3 in Section 8 entitled "Notify/coordinate with Affected Regulators" states as follows:

> *The domiciliary regulator should communicate with other affected regulators regarding the transaction. Also, the process should require approval or non- objection of all affected states (emphasis supplied) and the resulting entities should be licensed in all states needed so as not to impair policyholders' access to their state guaranty associations.*

Currently, state IBT laws require approval by the regulator of the assuming company and approval or nonobjection of the regulator in the transferring company's domicile. State Division

[3] SEC Staff Accounting Bulletin No. 99: Materiality

laws require approval of the chief regulator in the Dividing Company's state of domicile. For both IBT and Division transactions, approval or nonobjection from the other states is not required as is consistent with our state-based supervision of insurance operating entities.

To avoid confusion, I suggest that Paragraph 3 be revised as follows:

> *The domiciliary regulator should communicate and coordinate with other regulators regarding the transaction as needed. The resulting entities should be licensed in all states needed so as not to impair policyholders' access to their state guaranty associations.*

Also, since the term "affected regulators" is used in other places in these documents, I suggest that this term be defined as follows:

> *"Affected Regulators shall mean, for an IBT, the chief regulators in the states of domicile of the transferring and assuming companies, and for a CD the chief regulators in the states of domicile of the dividing company and the resulting companies".*

Legal Opinion for IBT and CD

Section VII paragraph 2 of Best Practices requires that a legal opinion be obtained that policyholders and other key stakeholders of restructured entities will not lose guaranty fund coverage as a result of the IBT. Requiring a legal opinion for all IBT (or CD) transactions regarding guaranty fund coverage is inconsistent with current industry transaction practices, adds a layer of cost and complexity that may not be relevant or necessary for all transactions, and is counter to the activities-based approach that is the cornerstone for the regulatory review of transactions. Regulators should have the flexibility to evaluate what, if any, external assistance is required for each transaction.

Guaranty association coverage is determined if/when the resulting insurer is placed under an order of liquidation with a finding of insolvency. As stated by NOLHGA," if the resulting insurer is a member insurer of the same guaranty associations as the transferring insurer, guaranty association coverage will be preserved and not changed for all policyholders". Thus, the focus is on proper licensing that is an area wholly within the province of regulators to review and evaluate. If the regulator believes it is important to have legal guidance, he or she can engage counsel, but to require a legal opinion for all IBT transactions adds a layer of cost and complexity that may not be relevant or necessary for all transactions.

I suggest that Section VII paragraph 2 be revised as follows:

> 2. Legal opinion
> a. Consider the need to obtain a legal opinion that policyholders and other key stakeholders of restructured entities will not lose guaranty fund coverage as a result of the IBT.

Thank you for your consideration.

Respectfully submitted,

Luann Petrellis

National Organization of Life & Health Insurance Guaranty Associations

National Conference of Insurance Guaranty Funds

JOINT SUBMISSION OF NOLHGA AND NCIGF
TO NAIC'S RESTRUCTURING MECHANISMS SUBGROUP
REGARDING THE RESTRUCTURING MECHANISMS EXPOSURE DRAFTS

June 21, 2022

The National Organization of Life & Health Insurance Guaranty Associations ("NOLHGA") and the National Conference of Insurance Guaranty Funds ("NCIGF") are writing to comment on the Restructuring Mechanisms Subgroup's (the "Subgroup") draft Restructuring Mechanisms Foundational Principles and Best Practices Procedures for IBT/Corporate Divisions exposure drafts (the "Exposure Drafts"). NOLHGA and NCIGF appreciate the Subgroup's recognition of the importance of ensuring that the guaranty association/fund protection a policyholder would have had prior to a restructuring transaction is preserved when a restructuring transaction is consummated.

We have enclosed redlined versions of the Exposure Drafts with our comments. Our substantive comments generally focus on the concept recognized by the Restructuring Mechanisms Working Group's draft White Paper that the policyholder protection of guaranty system coverage should not be reduced, eliminated or otherwise changed as a result of a restructuring transaction. We also highlight some differences in how this standard is satisfied depending on the type of business involved in the restructuring transaction.

As a general matter, we note that the Exposure Drafts would benefit from the clear and consistent use of defined terms. The drafts also would benefit from clarity around which sections apply to IBTs, corporate divisions or both types of transactions. We identified a few sections where the intent is ambiguous, but there likely are others that could be clarified.

NOLHGA and NCIGF are prepared to continue this dialogue and to work closely with the Subgroup as the Exposure Drafts are revised. In particular, and as noted in our comments, NOLHGA and NCIGF would appreciate the opportunity to discuss with the Subgroup the process by which the expert (and/or the regulator) would analyze and opine as to the guaranty association/fund coverage issues.

Thank you for the opportunity to share our perspective on the Exposure Drafts, and we look forward to working with you as this important project moves forward.

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Foundational Principles

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Background

An **insurance business transfer** (IBT) represents a transaction designed to transfer existing insurance obligations of one insurer (transferor) to a second insurer (transferee) without policyholder consent, subject to regulatory approval and, subject to court approval. While policyholder consent is not required, notice to policyholders and to the general public is required, and concerns regarding the transaction will be considered in the regulatory and/or court approval process. Pursuant to an IBT, the transferee becomes directly liable to policyholders and the transferring insurer's obligations under the contracts are extinguished thereby achieving legal finality for the transferring insurer.

A corporate division is a division of one insurer into two or more resulting insurers. The dividing insurer's assets and liabilities are allocated between or among the resulting insurers without requiring policyholder consent.

This document ~~is~~outlines foundational principles for state insurance regulators to use in reviewing IBT and corporate division transactions. While this guidance recommends minimum review standards, it does not rise to the level of a model law or regulation.

The exact laws under which both transactions are implemented can differ from one jurisdiction to the next and are not detailed herein. This guidance is not intended to address the legality of these transaction in various states but rather to provide a baseline of foundational principles to be used by all jurisdictions to address the primary risks associated with such transactions. Note that some jurisdictions have noted concerns that their laws do not permit nondomiciliary jurisdictions to sever policyholder rights without policyholder consent.

Foundational Principles to Guide in Reviewing IBT and Corporate Divisions

1. **Policyholders and Other Key Stakeholders Should Never Be Left Worse Off** - Policyholders should be left in the same or a better position after completion of the transaction. The transaction should not be approved unless the effect on policyholders and other key stakeholders is neutral or there is some expected policyholder benefit(s). It is preferrable that they are left in better position, but at a minimum the policyholders should be in a neutral position. Policyholders and other key stakeholders include those related to both the transferred policies and the remaining policies which are not transferred. Consideration should include the following: (Sources: 1, 3)

    a. How the security of policyholders' and claimants' (who include persons with certain rights and contingent rights under the policies) contractual rights are affected.

    b. How policyholders' rights and reasonable expectations appear to be affected.

    c. The compensation offered to policyholders for any loss of rights or expectations.

    d. That policyholders will receive the same or better level of service regarding claims settlement, and access to support and capital as they received prior to the IBT or corporate division.

    ~~d.~~e. That guaranty association coverage is not reduced, eliminated, or otherwise changed by the restructuring.

    ~~e.~~f. Continuity of ~~guaranty fund coverage and other~~ secondary market coverage.

> ***Drafting Note:***
>
> Comments are requested on both the term no worse off and how it is measured. The terms of the insurance policy or reinsurance contract do not typically change. Does the term no worse off include more measures than financial strength / financial ability and operational measures such as service to policyholders?
>
> Comments are requested on the definition of policyholders and key stakeholders: regulators noted that policyholders on both sides of the transaction (those transferred and those not transferred) should both be protected. However, in cases of secondary transfers of assumed reinsurance obligations, more input is requested.

2. **Robust Regulatory Review Process -** Reviewing authorities should undertake efforts to establish, at a high level of confidence, that policyholders and other key stakeholders will experience no adverse effects. At a high level, the following key elements need to be embedded in law (along with existing *Insurance Holding Company System Regulatory Act* (#440) Form A requirements):

    a. The regulatory review must be robust, including evaluations of legal implications such as anti-novation laws for policyholders in other states, financial projections, actuarial analysis and capital projections. The review should identify key risks to the transaction, and should, at a minimum, include the following: (Sources: 1)

        i. A prospective solvency assessment. (Source: 4)

        ii. A finding that the assets to be transferred to insurers (or surviving entities) involved in the transaction are adequate to cover the insurer's liabilities being transferred.

iii. A conclusion that the transaction does not have any adverse impact on policyholders and other key stakeholders, including services~~,~~ and benefits from reinsurers, guaranty associations or other secondary market mechanisms.

iv. A consideration of the plans of any insurer involved in the transaction to liquidate another involved insurer, sell or dividend assets, consolidate, merge, or make other changes, and the resulting impact on capital, policyholders, reinsurers, and guaranty associations.

v. An analysis of any relevant contracts, including claims management and reinsurance and recordkeeping. (Source: 4)

b. Require Strong Financial Standards and Stress Testing

i. Prescribed conservative assumptions should be included in capital calculations to avoid the manipulation of capital thresholds.

ii. Actuarial reserve and capital calculations should be performed by an expert that is independent of the insurance companies involved. (Source: 1, 7) Resulting projected RBC ratios and projected capital ratings should be reviewed. Policyholders and other key stakeholders should have the same economic protections which existed prior to the IBT or corporate division.

iii. The final decision should outline the purpose of the transaction and impacts to policyholders and other key stakeholders and the opinion of the independent expert(s), and reviewing regulators, including other impacted regulators, and the input from policyholders and other key stakeholders.

c. Ultimate authority

i. IBTs will require review by:

1. Domestic regulators of both the assuming company and transferring company,
2. Notice to other affected regulators,
3. Report of Independent expert(s), and
4. Court approval as the final authority

ii. Corporate Divisions will require review by

1. Domestic regulator(s),
2. Notice to other affected regulators,
3. Report of Independent expert(s),etc. and
4. Domestic regulators as the final authority.

Drafting Note:

Comments are requested on the use of an independent expert for corporate divisions. If commenters believe that an independent expert is not needed for a corporate division; should the department be required to show that they have adequate resources and expertise such as, actuarial experienced in the book of business being transferred, examiners with appropriate credentials and experience, etc. to review and approve a corporate division?

3. Guaranty ~~Fund Coverage – No impacted policyholder should lose guaranty fund protection as a result of a transaction~~ Association Coverage – Guaranty association coverage should not be reduced, eliminated, or otherwise changed by the restructuring. (Sources: 1, 2)

a. For restructuring transactions involving life or health insurance, the assuming or resulting insurer(s) should be licensed so that policyholders maintain eligibility for guaranty association coverage from the same guaranty association that would have provided coverage immediately prior to the restructuring transaction. This means that the resulting insurer must be licensed in all states where the transferring insurer was licensed or had ever been licensed with respect to the policies being transferred.

b. For restructuring transactions involving property and casualty insurance, need to confirm that any claims of the resulting insurer that were covered claims before the transaction will be covered claims after the transaction. This likely will be a state-by-state inquiry and may depend on whether the guaranty fund law has been amended to address restructuring transactions. [Consider a cross-reference to the relevant section of the White Paper.]

~~a.~~c. ~~If there was guaranty fund coverage before the division or IBT, state regulators should ensure that there is coverage after the division or IBT. A division or IBT should not reduce, eliminate or in any way impact guaranty fund coverage. Guaranty fund representatives,~~The National Conference of Insurance Guaranty Funds (NCIGF) and National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) are useful resources for any guaranty ~~fund~~ association coverage issues that arise in evaluating these transactions.

Drafting Note:

National Conference of Insurance Guaranty Funds (NCIGF) commented that changes to existing Property and Casualty Guaranty Fund models may be needed and will appoint a subcommittee to assist. The Restructuring Mechanisms (E)Working Group has made a referral to the Receivership and Insolvency (E)

4. Secondary Market Mechanisms (Source: 6)

a. If there were any secondary market or similar mechanisms which benefited the policyholders and other key stakeholders or otherwise accrued to the claims of policies, before the division or IBT, state regulators should ensure that the benefits remain after the division or IBT. A division or IBT should not reduce, eliminate or in any way impact coverage benefits.

b. Other organizations such as the National Workers Compensation Reinsurance Association should be contacted, when relevant.

5. Use Uniform NAIC Valuation and Accounting Standards (Source: 7)

a. When evaluating the solvency impact of a proposed transaction, the accounting utilized should be in conformance with the NAIC's uniform statutory accounting principles valuation and accounting rules in the Accounting Practices and Procedures Manual (AP&P Manual). Regulators are discouraged from allowing any permitted practices. If permitted practices are utilized, the impact of the deviations from the AP&P Manual at the time of the transaction, and in any subsequent projections, should be thoroughly analyzed and quantified and should be disclosed as part of the information shared with other affected regulators. In addition, statutory filings shall continue to provide disclosures of the impacts of prescribed and permitted practices in accordance with the Accounting Practices and Procedures Manual.

6. Independent Expert (Sources: 1, 3, 7, 8)

b. The ability of a Commissioner to hire independent experts for specialized transaction review and financial testing, to be paid for by the applicant is essential;

c. The regulatory review process for IBTs and corporate divisions will utilize an independent expert to advise and assist the ultimate reviewing authority (regulator and or the court) in reviewing proposed transactions (including advising on any adverse impact on policyholders, reinsurers, or guaranty associations) and to provide any other assistance or advice the regulator may require.

Drafting Note: See request for comments on independent expert for corporate divisions.

d. The independent expert evaluation should be undertaken by an expert to establish, at a high level of confidence, that policyholders and other key stakeholders will experience no adverse effects. The independent expert must provide a detailed report regarding the prospective solvency of the resulting entity.

e. Other independent experts will also provide reports to be reviewed by the regulator and the ultimate approving authority. This will include an independent actuarial review of the reserves and capital (e.g. RBC and financial strength) before and after the transaction. The review is to ensure that all of the policyholders and other key stakeholders are a neutral or better condition after the proposed transaction. Note that the actuarial review is one of several experts that will likely be included and taken into consideration. While the independent expert can provide comments and evaluation of the reports of the other experts, the overall expert cannot change the reports of the other employed experts. For example, the reviewing expert cannot change the consulting actuarial opinion**.**

f. The experts should be independent of any influence from the companies involved and subject to the approval of the domestic regulators.

7. Due Process (Sources: 1,3)

a. Robust due process must be afforded to stakeholders (policyholders, claimants, reinsurers, guaranty associations ~~including~~, other regulators, etc.) impacted by a transaction in advance of any public hearing along with access to information concerning the transaction. This should include:

i. Notice to stakeholders in a form to be approved by the regulator;

ii. Public hearing;

iii. Adequate time to assess the impact as determined by the domestic regulator, but no less than 30 days; and

iv. Opportunity to submit written comments and or attend public hearings.

Table of Sources

Reference	Source
1	American Property Casualty Insurance Association (APCIA) suggested concepts
2	National Conference of Insurance Guaranty Funds (NCIGF) and National Organization of Life and Health Insurance Guaranty Associations (NOLHGA)
3	Prudential Regulation Authority (PRA)/Financial Conduct Authority (FCA) – UK part 7
4	Laws or procedures in Rhode Island
5	Corporate Division comment letter 7-24-29, (Athene, John Hancock TransAmerica Venerable) referencing Michigan Corporate Division law
6	Illinois Corporate Division example
7	Comment letter New York Life and Northwestern Mutual on restructuring charges
8	IBT Coalition comment letter

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Insurance Business Transfer (IBT) Transactions / Corporate Divisions Transactions

Background

An **insurance business transfer** (IBT) represents a transaction designed to transfer existing insurance obligations of one insurer (transferor) to a second insurer (transferee) without policyholder consent, subject to regulatory approval and, subject to court approval. While policyholder consent is not required, notice to policyholders and to the general public is required, and concerns regarding the transaction will be considered in the regulatory and/or court approval process. Pursuant to an IBT, the transferee becomes directly liable to policyholders and the transferring insurer's obligations under the contracts are extinguished thereby achieving legal finality for the transferring insurer.

A corporate division is a division of one insurer into two or more resulting insurers. The dividing insurer's assets and liabilities are allocated between or among the resulting insurers without requiring policyholder consent.

The procedures in this section are best practices for state insurance regulators to use in reviewing IBT and corporate division transactions. While this guidance recommends minimum review standards, it does not rise to the level of a model law or regulation.

Section I - Company information

The filer requesting the transaction must provide the following minimum documentation for review by the regulatory authorities:

1. **Entity Contact Information**
   a. Below information for 1) applicant: 2) Corporate Division Resulting Entities; 3) IBT – assuming entities (Source - IL law -10)
   b. Company Names Applicant (Source - Form A User Guide)
   c. DBA/AKA (If Applicable)
   d. NAIC Company Code
   e. NAIC Group Code Prior to Transaction (If Applicable)
   f. State of Domicile
   g. Lead States (If Applicable)
   h. ~~Number and identity of Licensed States~~ List of states where currently licensed and list of states where insurer ever was licensed
   i. Comments (Regarding Surplus Lines, etc.)
   j. Contact Person (Required Information)

Commented [A1]: The document would benefit from consistent terminology being used throughout. For example, this section uses the terms company, filer and applicant. Based on the information being requested, it seems like those terms are referring to the transferring entity. However, the Glossary defines "applicant" as the acquiring company. Does that mean the applicant is the resulting/assuming entity?

k. Address (Required Information)

l. Phone Number (Required Information)

m. Email Address

2. **Affiliates of the Applicants**
   a. Organizational chart pre-transaction (Source - Form A User Guide)
   b. Ultimate controlling party pre-transaction
   c. Organizational chart post-transaction
   d. Ultimate controlling owner post-transaction
   e. Corporate Division - For each new company that will be created by the proposed division, a copy of its:
      i. proposed articles of incorporation
      ii. proposed bylaws and
      iii. the kinds of insurance business that the new company would be authorized to conduct (Source - 10- IL CD Code)
   f. IBT - respective controlling parties of transferring and assuming companies

3. **Management of Applicants**
   a. Officer and director information for involved entities (Source - Form A User Guide)
   b. Individual's First and Last Name
   c. Position Title
   d. Known regulatory Actions

Section II - Transactional Design

The following procedure is intended to mitigate the risk of approving a proposed IBT/corporate division transaction that may not be well designed based upon the effects of the transaction.

1. **IBT Narrative of the proposed IBT, explaining:**
   a. Reasons for undertaking the IBT (Source-1997 R-WP, App. 2)
   b. All steps necessary to accomplish the IBT, including legal and regulatory requirements and the timetable for completing such requirements
   c. The effect of the IBT on the insurer's financial condition
   d. The effect of the IBT on the insurer's policyholders, claimants and other stakeholders

Commented [A2]: Subsections c and d should be considered with respect to both/all insurers involved in the transaction.

e. Summary of the IBT plan including any agreements (Source - 4- RI IBT Reg)

f. Identification and description of the business to be transferred (If property and casualty insurance is involved, the lines of business, liabilities by state, and guaranty funds that could be affected should the resulting entity be liquidated.)

g. Most recent audited financial statements and annual reports of the Transferring Company and the Assuming Company filed with its domiciliary regulator

h. The most recent actuarial report and opinion that quantifies the liabilities in the business to be transferred to the Assuming Company under the policies or reinsurance agreements

i. Five years of pro-forma financial statements demonstrating the projected solvency of the Assuming Company and explanation of assumptions used and certification that all financial regulatory requirements will be met after the transaction

j. Officers' certificates of the Transferring Company and the Assuming Company attesting that each has obtained all required internal approvals and authorizations regarding the Insurance Business Transfer Plan and completed all necessary and appropriate actions relating thereto

k. Description of any guarantees or additional reinsurance that will cover the transferred business

l. A statement describing the Assuming Company's proposed investment policies and any contemplated third-party claims management and administration arrangements

~~l.~~m. List of states where the Assuming Company is licensed

2. **Corporate Division - Narrative - A general written summary of the proposed corporate division:**

a. The manner of allocating between or among the resulting companies including: (Source -10-IL CD Code)

i. the assets of the domestic stock company that will not be owned by all of the resulting companies as tenants in common.

ii. The liabilities of the domestic stock company, including policy liabilities, to which not all of the resulting companies will become jointly and severally liable.

b. The manner of distributing shares in the new companies to the dividing company or its shareholders

c. A reasonable description of the liabilities, including policy liabilities, and items of capital, surplus, or other assets, in each case, that the domestic stock company proposes to allocate to each resulting company, including specifying the reinsurance contract, reinsurance coverage obligations, and related claims that are applicable to those policies.

d. All terms and conditions required by the laws of the jurisdiction or the articles of incorporation and bylaws of the domestic stock company

e. Evidence demonstrating that the interest of all classes of policyholders, claimants and other stakeholders of the dividing company will be properly protected; and all other terms and conditions of the division.

f. Nothing in this shall expand or reduce the allocation and assignment of reinsurance as stated in the reinsurance contract.

g. If the domestic stock company survives the division, the plan of division shall include:

i. All proposed amendments to the dividing company's articles of incorporation and bylaws if any

ii. If the dividing company desires to cancel some, but less than all, shares in the dividing company, the manner in which it will cancel such shares and

iii. If the dividing company desires to convert some, but less than all, shares in the dividing company into shares, securities, obligations, money, other property, rights to acquire shares or securities, or any combination thereof, a statement disclosing the manner in which it will convert the shares

h. If the domestic stock company does not survive the proposed division, the plan of division shall contain the manner in which the dividing company will cancel or convert shares in the dividing company into shares, securities, obligations, money, other property, rights to acquire shares or securities, or any combination thereof.

i. Terms of a plan of division may be made dependent on facts objectively ascertainable outside of the plan of division.

j. Business Plan

k. Ongoing Operations (Source - 1997 R-WP, App. 2)

Commented [A3]: Are these questions about the resulting insurer(s) or the dividing insurer – or both/all?

i. A listing of the insurer's major markets/products

ii. A description of the insurer's strategy covering major markets/products and customers and the critical success factors for achieving these strategies

iii. A description of the insurer's competitive positioning for each of its major markets/products and a discussion of growth potential, profit potential and trends for each

iv. Identification and a discussion of the significant trends in the insurer's major markets/products, e.g., demographic changes, alternative markets, distribution methods, etc.

v. Identification of the largest risk exposures of the insurer, e.g., financial market volatility, environmental exposures, geographic distribution, etc.

vi. A description of the major business risks of the insurer, e.g., sales practices, data integrity, service delivery, technology, customer satisfaction, etc.

~~vi.~~vii. List of states where the resulting company(ies) is/are licensed

l. Run off Operations

i. A description of all plans regarding any run-off operations.

3. **Financial Information**

   a. Historical financial statements, including the most recently filed annual and quarterly statutory statements. (Source - 1997 R-WP, App. 2)

   b. Financial statements (in a spreadsheet format) detailing the accounting of the proposed IBT including:

      i. Schedules detailing assets and liabilities to be reallocated as part of the IBT

      ii. An accounting of any special charges, reevaluations, or write downs to be made as part of the IBT

   c. Pro forma financial statements of the insurer(s) as if the IBT were approved including an explanation of the underlying assumptions

   d. Financial projections for five years (assuming the IBT is approved) for both the run-off and ongoing entities and an explanation of the assumptions upon which the projections are based

   e. A description of any tax consequences of the IBT

4. **Financial Support**

   a. If the plan provides for the provision of financial and managerial support by the parent company to all entities, such support needs to be legally enforceable before such support is given consideration in review of the transaction. (Source - 1997 R-WP, App. 2)

   b. The plan should provide for a commitment of parental and other legally enforceable plans for financial support to run off operations in the event of:

      i. Inadequacy of reserves

      ii. Asset deterioration

      iii. Deterioration in the collectibility of reinsurance recoverables

5. **Organizational Impact**

   a. The plan should affirm that the restructured entity was either licensed or an approved surplus lines carrier in all jurisdictions in which it wrote business, and will be licensed in all jurisdictions where it takes on business as a result of the restructuring/ IBT. (Source - 1997 R-WP, App. 2) (The licensure status of the entities involved also should be analyzed to ensure that guaranty association coverage is not reduced, eliminated, or otherwise changed. The analysis of licensure status will be different for property and casualty vs. life and health business. See Section IX below.)

   b. Analysis of the change in organizational structure resulting from the transaction. Areas to emphasize include:

      i. Ownership of the resulting corporate structures

      ii. Relationship between management of the resulting entities

      iii. Substantial reinsurance arrangements between resulting entities

Commented [A4]: This section refers only to IBT. Does it apply to CD too? If it only applies to IBT, should it be incorporated in Section II.1 above? (Some items seem to overlap with items listed in Section II.1.)

iv. Other ongoing business ties between the resulting entities

Section III – Ultimate Reviewing Authority

1. **IBTs will require ~~review by~~:**
   a. Review by ~~D~~domestic regulators of both the assuming company and transferring company
   b. Notice to other affected regulators
   c. Report of Independent expert(s) and
   d. Court approval as the final authority
2. **Corporate Divisions will require ~~review by~~:**
   a. Review by ~~D~~domestic regulator(s)
   b. Notice to other affected regulators
   c. Report of Independent expert(s),etc. and
   d. Domestic regulator~~s~~y approval as the final authority

Drafting Note:

Comments are requested on the use of an independent expert for corporate divisions. If commenters believe that an independent expert is not needed for a corporate division; should the department be required to show that they have adequate resources and expertise such as, actuarial experienced in the book of business being transferred, examiners with appropriate credentials and experience, etc. to review and approve a corporate division?

Section IV – Robust Regulatory Review

1. **Initial Review of the Transaction**

The Domestic Regulator should conduct an initial review the proposal prepared by the insurer (transferor or transferee) to determine if all of the information required by Section I and II has been provided and the transaction has been properly designed. Some domestic regulators may choose to call a limited scope financial examination as part of conducting their review. The Domestic Regulator should ensure:
(Source - 1997 R-WP, App. 2)

a. The documented reasons for the proposed transaction are reasonable and appropriate based upon the Domestic Regulator's existing knowledge of the insurer/group.
b. The steps necessary to accomplish the plan, including legal and regulatory expectations and a timeline, are reasonable and appropriate.

c. The projected impact of the transaction (proforma financial statements and RBC before and after) on the financial condition of the transferor insurer and the transferee insurer will not render either company in a troubled company state.

d. The proforma business plan for the transferor and the transferee including major business risks, products and etc. of the insurer (e.g. sales practices, data integrity, service delivery, technology, customer satisfaction, etc.) as described in Section II is reasonable and appropriate.

2. **High Level of Confidence**

Reviewing authorities should undertake efforts to establish, at a high level of confidence, that policyholders and other key stakeholders will experience no adverse effects. At a high level, several key elements need to be embedded in law (along with existing *Insurance Holding Company System Regulatory Act* (#440) Form A requirements).

a. The regulatory review must be robust, including evaluations of financial projections, actuarial analysis and capital projections. In addition, the review should also include a confirmation that the insurer(s) have performed a due diligence of the legal implications in other jurisdictions, specifically those that have anti-novation laws. Correspondingly, all affected regulators should conduct a review of their own laws to ensure there is no potential legal conflict on the how policyholders are treated by the transaction compared to the requirements in their respective states.

b. The review should be conducted by qualified independent experts and should identify key risks to the transaction. The expert should not be a department of insurance employee and should be able to assert independence from the reporting entities under discussion. The expert review should, at a minimum, include the following: (Sources: 1)

i. A prospective solvency assessment (Source: 4)

ii. A finding that the assets to be transferred to insurers (or surviving entities) involved in the transaction are adequate to cover the insurer's liabilities being transferred

iii. A conclusion that the transaction does not have any adverse impact on policyholders, including services, benefits from reinsurers, guaranty associations or other secondary market mechanisms

iv. A consideration of the plans of any insurer involved in the transaction to liquidate another involved insurer, sell or dividend assets, consolidate, merge, or make other changes, and the resulting impact on capital, policyholders, reinsurers, and guaranty associations

v. An analysis of any relevant contracts, including claims management and reinsurance and recordkeeping (Source: 4)

3. **Require Strong Financial Standards and Stress Testing**

a. Prescribed conservative assumptions should be included in capital calculations to avoid the manipulation of capital thresholds. (See additional information in the section on assessment of capital risk.)

b. Actuarial reserve and capital calculations should be performed by an expert that is independent of the insurance companies involved. (Source: 1, 7) Resulting projected RBC ratios and projected capital ratings should be reviewed. Policyholders and other key stakeholders should have the

same economic protections which existed prior to the IBT or corporate division, including but not limited to guaranty association protection.

c. The final decision should outline the purpose of the transaction and impacts to policyholders and other and other key stakeholders and the opinion of the independent expert(s), and reviewing regulators, including other impacted regulators, and the input from policyholders.

d. Use Uniform NAIC Valuation and Accounting Standards (Source: 7)

i. When evaluating the solvency impact of a proposed transaction, the accounting utilized should be in conformance with the NAIC's uniform statutory accounting principles valuation and accounting rules in the Accounting Practices and Procedures Manual (AP&P Manual). Regulators are discouraged from allowing any permitted practices. If permitted practices are utilized, the impact of the deviations from the AP&P Manual at the time of the transaction, and in any subsequent projections, should be thoroughly analyzed and quantified and should be disclosed as part of the information shared with other affected regulators. In addition, statutory filings shall continue to provide disclosures of the impacts of prescribed and permitted practices in accordance with the Accounting Practices and Procedures Manual.

4. **Assessment of risk capital**

a. One way that IBT laws can differ from corporate division laws is that some states' and jurisdictions' IBT laws, the liabilities of the transferee are segregated from the other liabilities not associated with such a transfer and under laws can be expected to be both self-sustaining (e.g. no more monies may be transferred to fund such liabilities under the terms of the transfer) and self-containing (e.g. cannot be used to cover liabilities not associated with the transfer).

b. For IBTs or other transactions which will not have access to additional capital, an actuarial report of the adequacy of run-off reserves (gross and net) being transferred should include an analysis of:

i. A comparison of the existing reserves to a Value at Risk (Var) of 99.5% for a 1-year period (non-life business), 97.% for a 5-year period (non-life business) or conditional tail expectation (CTE) of 90 or some other higher level that are necessary to mitigate the risks

ii. A comparison to stressed reserves under reasonable deterministic criteria/scenarios provided by the state of domicile

iii. Comparison of the proposed claim staff expertise and levels compared to estimate of previous claims staff expertise and levels. (Source- State survey comments and 1997 Restructure White Paper)

iv. If the reviewing authority requires additional capital, which is higher than the required reserve, the additional amount should be reported in special surplus.

c. Management assessment and corporate governance assessment

d. Capital reviews of the transaction should consider the following (if relevant) to the transaction:

i. Capital and/or reinsurance limits assessments should include quantitative analysis

ii. Risk exposure modeling

iii. Horizon and Confidence Levels to address: Short term (1 year); Mid-term (5 to 10 years); Long term (relatively consistent with liability horizon)

iv. Stress scenarios and their relationship to capital adequacy

v. Discuss impact on capital needs attributable to: Any diversification in liabilities (different types of exposures); Asset mix; Amount and quality of "outside" existing inuring reinsurance (applies to portfolio before any reinsurance acquired subsequent to the transaction) and internal hedging

e. Upon request, the State should provide access to information to other licensed states including the established amount of assets to be transferred to compensate for the uncertainty associated with the business and that the remaining assets need to be self-sustaining for the obligations transferred to it.

5. **State imposed restrictions**

a. If necessary, consider issuing state-imposed restrictions to apply to the company after the transaction, such as:

i. Dividend restrictions

ii. Notice to state of major changes

iii. Planned targeted examinations

iv. Special surplus restricted capital

Section V – Review of the Transaction by an Expert

1. **Use of an Independent Expert** (Source - Foundational concepts: 1, 3, 7, 8)

a. The ability of a Commissioner to hire independent experts for specialized transaction review and financial testing, to be paid for by the applicant, is essential.

b. The regulatory review process for insurance business transfers and corporate divisions will utilize an independent expert to advise and assist the ultimate reviewing authority (regulator and or the court) in reviewing proposed transactions (including advising on any material adverse impact on policyholders, reinsurers, or guaranty associations) and to provide any other assistance or advice the regulator may require.

***Drafting Note**: See request for comments on independent expert for corporate divisions.*

c. The independent expert evaluation should be undertaken by an expert to establish at a high level of confidence that policyholders and other key stakeholders experience no adverse effects, including but not limited to the availability of guaranty association coverage. The independent expert must provide a detailed report regarding the prospective solvency of the resulting entity or entities or the assuming entity in the event of an IBT.

d. Other independent experts will also provide reports to be reviewed by the regulator and the ultimate approving authority. This will include an independent actuarial review of the reserves

and capital (e.g. RBC and financial strength) before and after the transaction. The review is to ensure that all of the policyholders and other key stakeholders are a neutral or better condition after the proposed transaction. Note that the actuarial review is one of several experts that will likely be included and taken into consideration. While the independent expert can provide comments and evaluation of the reports of the other experts, the overall expert cannot change the reports of the other employed experts. For example, the reviewing expert cannot change the consulting actuarial opinion.

e. The experts should be independent of any influence from the companies involved and subject to the approval of the domestic regulators. (Source-UK Part VII PRA practices)

2. Determine scope of each of the expert(s) report(s) (Source - UK Part VII PRA practices)
   a. How the expert report will be issued to the ultimate approving authority.
   b. What parts of the report will be public?
   c. Verifying that the expert is independent.
   d. Who appointed the expert and how the requesting entity will pay the costs?
   e. What are the expert's qualifications and experience?
   f. Does the expert have any conflicts of interest?
   g. Are the procedures to be performed by the expert documented in a manner that are understandable?
   h. Opinion of the expert on the likely effects of the plan?
   i. Opinion of the expert on whether there were alternatives.
   j. Opinion of the expert on whether different groups of policyholders, claimants and other stakeholders are likely to be impacted differently by the plan?
   k. Opinion of the expert on the likely effects of the transaction on any reinsurer of the transferor or dividing parties.
   ~~k.~~l. Opinion that the transaction does not reduce, eliminate, or otherwise change guaranty association coverage.

Commented [A5]: NCIGF and NOLHGA would like to discuss this opinion with the Subgroup as this draft moves forward.

Section VI - Reserves and Capital

Proposed corporate divisions and IBT transactions require by their nature that the independent experts and reviewing regulators must certify that the reserves and the capital position (e.g. RBC) that will apply to the insurer before and after the transaction will put the policyholders and other key stakeholders in the same or better position. The following procedures are intended to assist in evaluating this risk.

1. **Retain qualified independent actuarial experts** (Source - 1997 R-WP, App. 2)
   a. The actuarial expert should perform a "ground up" actuarial review of case and incurred but not

reported reserves with particular focus on any long tail claims. The actuarial expert should also opine on:

i. Methodologies used by the insurer to estimate reserves

ii. The adequacy of reserves on a gross and net of reinsurance basis

iii. The insurer's economic approach to funding the run-off liabilities, including cash flow model stress tests

b. If reserve discounting is permitted, funding of the discount and the adequacy of reserves net of discount

i. The adequacy of the expertise of the insurer's claims unit.

c. Ascertain that the initial plan allows sufficient capacity for material adverse reserve development.

2. **Determine impact based on an independent actuarial and capital review:**

a. Based on review of the reserves and capital (e.g. RBC) before and after the transaction, are all the policyholders, claimants and other stakeholders in the same or better condition after the proposed transaction? (Sources UK Part VII PRA practice concept and Foundational principles)

3. **Analysis of Reinsurance - independent reinsurance experts**

a. An analysis of reinsurance recoverables by a qualified expert including: (Source - 1997 R-WP, App. 2)

i. A review of the process used to monitor, collect and settle outstanding reinsurance recoverables

ii. An analysis of existing and projected reinsurance balances including the expected timing of cash flows

iii. An analysis of the quality and financial condition of the reinsurers and prospects for recovery

iv. A detailed description of write offs or required reserves based on the independent analysis taken as a whole

v. Disclosure of material disputes related to reinsurance balances and the potential impact of resolving those disputes

vi. A discussion of the impact of the IBT or Corporate Division on the collectibility of reinsurance balances

b. A legal analysis of the effect that a rehabilitation or liquidation proceeding involving the restructured entity would have on the timing and amounts of reinsurance recoverables and on the legal rights of the reinsurers to claim setoffs against such recoveries.

c. If reinsurance stop loss or excess of loss coverage is an integral part of the transaction, a copy of such agreement(s) and a written opinion from a qualified expert as to:

i. The adequacy of coverage

ii. The ability of the treaty to perform as anticipated and be unaffected by delinquency proceedings

iii. The practical operation of the treaty

iv. The timing and method of payment of reinsurance premium

v. The financial condition of reinsurers

vi. The sufficiency of coverage and other resources.

d. A discussion of existing or proposed reinsurance programs, whether with affiliates or other reinsurers, to assist the regulatory authority in determining that provisions are consistent with other information provided and that adequate coverage exists for both on going and run-off operations.

e. Any proposed amended, cancelled, or new pooling agreements, including explanations of significant differences before and after the restructuring or transfer, flowcharts to demonstrate the proposed movement of business, and the anticipated financial impact upon the affected companies.

4. **Analysis of Liabilities other than Reserves** (Source - 1997 Restructure White Paper Appendix 2)

The regulator or its independent experts should conduct an analysis of material liabilities other than reserves, including a discussion about any reallocations or dispositions as part of the IBT or Corporate Division, especially as they relate to reinsurance agreements and inter-company cost and tax-sharing agreements. The analysis should include all non-reserve related accruals and outstanding debt line items found on the Statutory Annual Statement (page 3) for liabilities, including write-ins.

a. Identification of any key concerns about potential legal decisions and/or pending verdicts that would substantially increase the expected aggregate liabilities (Source - RI Procedures)

i. Potential political or currency risks

ii. Potential "Black Swan" events (unusual and or infrequent)

iii. Potential sources of "hidden" or unknown liabilities – for example, unintended latent liability coverage, unintended extra-contractual obligations, unidentified or reinstated policies, quality of policy record keeping

iv. Risks related to the use of, or changes to the use of, outsourcing for claims management, asset management, or other administrative functions

v. Reliance on legal advice concerning claim liabilities

5. **Analysis of Assets**

The regulator or its independent experts should conduct an analysis of assets to determine if existing assets and future cash flows are sufficient to fund liabilities. This analysis should include:
(Source - 1997 R-WP, App. 2)

a. Disclosure of assumptions regarding the assets of the insurer(s) involved in the IBT or corporate division, especially those assets with high volatility, liquidity uncertainties, material valuation

issues, or representing a material percentage of the invested asset portfolio.

b. Current appraisals of any material real estate or mortgage holdings, independent valuation of limited partnerships, certain privately traded investments, highly volatile collateralized mortgage obligations, structured securities, and any other assets of concern.

c. A list of assumptions used by the insurer(s) as to investment yield, and disclosure of the effect that the reallocation of assets will have on historical investment yields.

d. If the asset analysis performed of the insurer indicates a potential asset/liability matching problem, documentation that the insurer plans to act such as:

   i. Reallocation of problem assets to other parts of the organizational structure that are financially capable of absorbing the additional risk

   ii. Securing a parental guarantee of investment yield

   iii. Securing a parental guarantee of asset valuation or a parental agreement to substitute the insurer's assets

   iv. Disposing of assets and replacement of better-quality assets or cash prior to approval of the IBT

Section VII – Analysis of Issues Affecting Policyholders, Claimants and other Stakeholders

1. **Legal clauses**
   a. Consider whether to require that "cut through" provisions be put in place for policyholders of the weaker entity. (Source - 1997 R-WP, App. 2)
2. **Legal opinion**
   a. Where necessary, ~~O~~obtain a legal opinion ~~that policyholders and other key stakeholders of restructured entities willnot lose guaranty fund coverage as a result of the IBT~~ to supplement the expert report.
3. **Consideration of rights of policyholders and other key stakeholders in other jurisdictions**
   a. Consider whether to require that a mechanism be put in place to obtain policyholder consent regarding any novations.
   b. Preserve rights of policyholders and other key stakeholders regarding secondary market mechanisms protections.

Section VIII – Due Process Communication of Transaction

Robust due process must be afforded to stakeholders (policyholders, claimants, reinsurers, guaranty associations, ~~including~~ other regulators, etc.) impacted by a transaction in advance of any public hearing along with access to information concerning the transaction. The following procedures are intended to address the risk of inadequate communication to various Stakeholders.

1. **Review proposed communication plan**

   The Regulator will review the proposed communication plan to ensure that the transaction is described in enough detail and provides enough time for a person to determine if they will be adversely impacted (Source - 1,3, UK Part VII PRA practices)

2. **Communication to Policyholders, claimants and other stakeholders**

   For the state of domicile of the transferor, or the entity requesting the corporate division, develop and document a plan and corresponding communication to various impacted stakeholders regarding a review of the proposed transaction by an independent external expert. Policyholders, claimants and other affected Stakeholders should always be given notice, access to all information needed to meaningfully review a proposed transaction, and an opportunity to be heard in court (IBT) or at the public hearing for a corporate division. (Source - UK Part VII PRA practices)

   a. Notice to stakeholders in a form to be approved by the regulator including**:**

      i. Policyholders

      ii. Claimants and their counsel of record

      iii. Reinsurers

      ~~iii.~~iv. NOLHGA/NCIGF/all affected state insurance guaranty associations

      ~~iv.~~v. Other Stakeholders

      ~~v.~~vi. Adequate time to assess the impact as determined by the domestic regulator, but no less than 30 days and

      ~~vi.~~vii. Opportunity to submit written comments and or attend public hearings

      ~~vii.~~viii. Public hearing

3. **Notify/Coordinate with Affected Regulators**

The domiciliary regulator should communicate with other affected regulators regarding the transaction. Also, the process should require approval or non- objection of all affected states and the resulting entities should be licensed in all states needed so as not to impair policyholders' access to their state guaranty associations.

   a. Adequate time to assess the impact; and

   b. Opportunity to submit written comments and or attend public hearings.

Section IX - Guaranty ~~Fund~~Association and Other secondary Market Considerations

1. **Guaranty ~~Fund~~Association Coverage**

   ~~No impacted policyholder should lose guaranty fund protection as a result of a transaction~~ Guaranty association coverage should not be reduced, eliminated, or otherwise changed by the restructuring.. (Sources:1, 2)

a. For restructuring transactions involving life or health insurance, the assuming or resulting insurer(s) should be licensed so that policyholders maintain eligibility for guaranty association coverage from the same guaranty association that would have provided coverage immediately prior to the restructuring transaction. This means that the resulting insurer must be licensed in all states where the transferring insurer was licensed or had ever been licensed with respect to the policies being transferred.

b. For restructuring transactions involving property and casualty insurance, need to confirm that any claims of the resulting insurer that were covered claims before the transaction will be covered claims after the transaction. This likely will be a state-by-state inquiry and may depend on whether the guaranty fund law has been amended to address restructuring transactions. [Consider a cross-reference to the relevant section of the White Paper.]

~~a.~~c. ~~Where there was guaranty fund coverage before the division or IBT, state regulators should ensure that there is coverage after the division or IBT. A division or IBT should not reduce, eliminate or in any way impact guaranty fund coverage.~~ Guaranty ~~fund~~ association representatives, NationalConference of Insurance Guaranty Funds (NCIGF) and National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) are useful resources for any guaranty ~~fund~~association coverage issues that arise in evaluating these transactions.

Drafting Note:

National Conference of Insurance Guaranty Funds (NCIGF) commented that changes to existing Property and Casualty Guaranty Fund models maybe needed and will appoint a subcommittee to assist. The Restructuring Mechanisms (E)Working Group has made a referral to the Receivership and Insolvency (E)

2. **Secondary Market Mechanisms** (Source: 6)

a. Where there was secondary market or similar mechanisms which benefited the policyholders or otherwise accrued to the claims of policies, before the division or IBT, state regulators should ensure that the benefits remain after the division or IBT. A division or IBT should not reduce, eliminate or in any way impact coverage benefits.

b. Other organizations such as the National Workers Compensation Reinsurance Association should be contacted, when relevant. (Source 11)

Section X - Run-off Procedures

Drafting Note:

Section X is on procedures for those entities that are in run-off. It is not presumed that all IBT or all corporate divisions will result in run-off entities. Many of these procedures would likely to be conducted post transaction approval. Therefore, the final location of the run-off procedures may be different than the other pre-transaction best practices sections.

Most insurers have some amount of business that was written in prior years which is no longer being sold. To the extent the amount of such business is material for an insurer, it's not uncommon for the domestic state to perform separate procedures on such business. Such separate procedures are very common to the extent the insurer was performing so poorly that the company was put into supervisory control by the state of domicile, in which case it would be applied to the entire insurer. For other insurers, it may only apply to certain aspects of the company's operations. Run-off can also occur as a result of an IBT which

transfers part of the business of one insurer (transferor) to a second another (transferee) or a corporate division transaction where one insurer divides into two or more resulting insurers. In all these situations the run-off is occurring on an involuntary basis and should be subject to the following regulatory guidance as a baseline of guidance to be used by all states. States can perform additional procedures beyond those listed, but these would be considered appropriate for all IBT, corporate division transactions, and other transactions where run-off is involuntary.

1. **Review the required documented run-off plan**: (Source - 1997 Restructure White Paper)
   a. Review the monthly financial reporting of the run-off (claims development on a direct, ceded and net basis), actual vs projected results and the following related information:
      i. Assumptions or material changes in assumptions regarding the assets included in the plan including specifically those that are subject to greater volatility, liquidity uncertainty, valuation issues, appraisals on material real estate and mortgage holdings
      ii. Material disputes with reinsurers or other third parties
   b. Reinsurance stop-loss plan and written opinion from qualified expert as to:
      i. Adequacy of the coverages
      ii. Ability of the plan to perform as anticipated
      iii. Practical operation of the plan
      iv. Timing and method of payment of the reinsurance premiums
      v. Financial condition of the reinsurers
   b. **Require as part of the approval of the run-off plan the following:**
      i. Pre-approval of any new reinsurance agreements or change in existing reinsurance agreements
      ii. Pre-approval of any change in the daily operations of the company's existing practices including claims paying, investments practices and collections (e.g. reinsurance processes)
      iii. Pre-approval of any affiliated transactions
      iv. Pre-approval of any commutation of liabilities (inward or outward)

b. For Run off plans Consider Subjecting to pre-approval all the following other items:
   i. Dividends (including ordinary)
   ii. Disposal or encumbrances of assets
   iii. Withdrawal of bank accounts
   iv. Lending of any funds
   v. Transfer of property

vi. Incurring any debt, obligation or liability

vii. Terminate, surrender, forfeit, convert, or lapse any insurance policy, certificate or contract

viii. Reserves to be held lower than 99.5% for a 1-year period (non-life) or conditional tail expectation (CTE) of 90 (Source - 1997 Restructure White Paper)

a. Reinsurance stop-loss plan and written opinion from qualified expert as to:

i. Adequacy of the coverages

ii. Ability of the plan to perform as anticipated

iii. Practical operation of the plan

iv. Timing and method of payment of the reinsurance premiums

v. Financial condition of the reinsurers (Source -1997 Restructure White Paper)

Table of Sources

Reference	Source
1	American Property Casualty Insurance Association (APCIA) suggested concepts
2	National Conference of Insurance Guaranty Funds (NCIGF) and National Organization of Life and Health Insurance Guaranty Associations (NOLHGA)
3	Prudential Regulation Authority (PRA)/Financial Conduct Authority (FCA) – UK part 7
4	Laws or procedures in Rhode Island
5	Corporate Division comment letter 7-24-29, (Athene, John Hancock TransAmerica Venerable) referencing Michigan Corporate Division law
6	Illinois Corporate Division example
7	Comment letter New York Life and Northwestern Mutual on restructuring charges
8	IBT Coalition comment letter
9	NAIC Form A User's guide
10	IL Code (215 ILCS 5/Art. IIB heading) Article IIB. Domestic Stock Company Division
11	National Workers Compensation Reinsurance Association comment letter to SG

GLOSSARY OF TERMS

(Related to the Form A System)

Term	Description
Affiliate	An "affiliate" of, or person "affiliated" with, a specific person is a person who directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.
Applicant (Information)	The applicant is the company or individual wishing to acquire a domestic insurer. When entering applicant information, one or the other may be entered but not both a company name and individual name.
Application Status	The application status may be any one of the following: Approved, Approved with Stipulation, Transaction Closed, Transaction Not Closed, Denied or Withdrawn. Submitted, Under Review, and Withdrawn.
CoCode	CoCode is the company code number assigned to the insurer by the NAIC.
Comments	Comments are a list of statements regarding the filing.
Company	A company is an applicant or entity that is other than an individual.
Contact Name	The contact name is the initial contact person at the state of domicile. The state contact person is the department staff, usually an analyst, serving as the primary liaison between the applicant, domestic insurer and
Directors	Directors are the individuals who sit on the board of directors governing the applicant (company).
Domestic Insurer	The domestic insurer is the company being acquired or merged. The term insurer shall have the same meaning as set for within each state's insurance code. Domestic insurer means an insurer domiciled in the respective state (e.g., a TX domestic insurer is licensed and domiciled in the state of Texas).
Domicile State Information	Domicile state information is information regarding the initial contact person at the state of domicile.
Entity	An entity is any person, company or organization related to the filing or having an interest in the filing. Entity types are as follows: applicant, affiliate, company, director, key party, officer and shareholder.
Filing Number	The filing number is a tracking number assigned a Form A filing only after the filing is saved by the Form A system.
Group Code	The group code is a unique three- to five-digit number assigned by the NAIC to identify those companies that are part of a larger group of insurance
"Independent Consultant" (Source: 4- RI Law IBT)	An impartial person who has no financial interest in either the Assuming Company or Transferring Company, has not been employed by or acted as a consultant or other independent contractor for either the Assuming Company or Transferring Company within the past twenty-four (24) months and is receiving no compensation in connection with the transaction governed by this regulation other than a fee premised on a fixed or hourly basis.

Key Party	This category is included to allow a state to provide information on any "other parties" outside of those listed herein with a significant stake or involvement in the merger or acquisition. Such parties might include CPA firms, actuarial firms, law firms, other consultants, etc.
Lead State	The lead state is the state that may be coordinating a multi-state filing or consolidated hearing process. It may not necessarily be the lead state of a group, if that lead state is not party of the acquisition.
Officers	Officers are individuals who serve as an executive officer for the applicant (e.g., CEO, CFO, COO, etc.).
Shareholder	A shareholder is an individual who owns voting securities of the applicant. Generally speaking, the Form A requests information on only those owners/shareholders of 10% or more of the voting securities of the applicant.
State of Domicile	The state of domicile is the state where a company's domiciliary regulator is. Typically the state of incorporation.
Transferring Company (Source: 4- RI Law IBT)	A company that transfers a part or all of its commercial insurance or reinsurance business to an Assuming Company pursuant to an Insurance Business Transfer Plan.

BY E-MAIL

June 20, 2022

Doug Stolte
David Smith
Co-Chairs, NAIC Restructuring Mechanisms (E) Subgroup ("Subgroup")

Attention: Dan Daveline (ddaveline@naic.org)

Re: Comments on Subgroup's Exposure of Foundational Principles and Best Practices

The undersigned companies welcome the opportunity to comment on the Foundational Principles and Best Practices Procedures documents exposed by the Subgroup. We appreciate the thought and time that the Subgroup members have devoted to the exposures and, overall, believe that the documents are excellent initial proposals. Before addressing some of the Subgroup's specific questions, we have a couple of initial observations:

- As the Subgroup notes, the Insurance Business Transfer ("IBT") and Corporate Division ("CD") (collectively, "IBT/CD") laws allow for the transfer of existing insurance products from one company to another without policyholder consent. The change of a consumer's choice of insurer, without consent, is an extraordinary action that must be done in the best interest of the consumer so that no policyholder or key stakeholder is left worse off. We would like to emphasize that this overriding principle applies both to those policyholders who are transferred to a new insurer and to those that remain in the dividing or transferring insurer which, often, will be less diversified after the transaction (in contrast to Form A mergers which result in a better diversified and, therefore, stronger surviving entity).

- Because accreditation is such an important tool to promote a consistent level of protection for policyholders and key stakeholders across the states against the potentially significant adverse consequences which could result from these transactions, we want to emphasize the need to ultimately enact these Foundational Principles and Best Practices in a way so that they can become accreditation standards.

Foundational Principles

Page 3: No Worse Off

The Subgroup asks how the term "no worse off" should be defined and measured. In addition to the points the Subgroup lists on page three, we recommend the following as new points or enhancements to those existing points:

- All policyholders should be covered by the same state guaranty association both before and after the transaction so that they have the same degree of protection if one of the

insurers becomes insolvent. Further, for the health of the guaranty association system, it is critically important to avoid a situation where one state's guaranty association assumes significant additional liabilities as such a situation can place undue strain on a single state's ability to sufficiently assess member companies to timely cover losses, including most importantly policyholder claims. (This situation could foreseeably arise due to the 2% annual premium assessment cap in most states.)

- The IBT/CD should not result in any insurer involved in the transaction becoming a monoline carrier. As history has shown, monoline carriers, or what is effectively a monoline carrier, do not benefit from diversification across their businesses, which increases the risk of insolvency.

- The financial ratings for all companies involved in the IBT/CD should have at least the same financial rating as the company transferring the policy liabilities. This standard applies to the rating for all new companies as well as the ongoing rating for the transferring or dividing company.

- The administration capabilities of all companies involved in the IBT/CD are compliant with all applicable laws and are consistent with, and operationally equivalent to, the capabilities and service standards that existed prior to the transaction.

- Successor entities should be licensed in all the same states as the transferring or dividing insurer. The licensure requirements in each state for successor entities should be equivalent to those applied to all new licensees to provide each state regulator with critical regulatory tools for continuing oversight of the resulting insurers and to help ensure ongoing guaranty fund coverage.

Page 3: Definitions of "Policyholder" and "Key Stakeholder"

The Subgroup asks for comments on the definition of "policyholder" and "key stakeholders". As the Subgroup notes, the term "policyholder" should include all policyholders involved in the IBT/CD proposal regardless of whether they are to be transferred to a new entity or remain with the dividing or transferring entity. We also recommend that "key stakeholders" include: regulators in all states where any policyholder resides, reinsurers, and the guaranty association system.

Page 3: Robust Regulatory Review

We recommend revising the beginning of this section to read: "Reviewing authorities should undertake to establish that policyholders and other key stakeholders will experience no adverse effects even under extreme events. The intention is that the events considered should be those used to evaluate capital sufficiency, and as such, are well beyond the 'moderately adverse' reserve standard. At a high level, the following key elements . . . . "

We believe this robust standard is appropriate given that regulators have only one opportunity to review the proposed transaction and there is no recourse once a transaction is approved.

Policyholders and key stakeholders should be "no worse off" in various future economic scenarios – not just those scenarios that are moderately adverse.

Pages 4-5: Independent Expert

The Subgroup asks about the use of independent expert ("IE") reports for CDs. As we have stated in prior comments, we strongly believe that every IBT/CD should require an IE report, and that the IE report should be publicly available. The IE report will provide a consistent degree of diligence across all states which can then be relied upon by policyholders, key stakeholders, and the regulatory community. The existence of an IE report will become especially important if one of the entities involved in an IBT/CD becomes financially troubled.

We want to emphasize that the discretion to approve or deny any proposed transaction remains fully with the regulators. We further understand that some insurance departments have internal resources and expertise to perform an expert review and analysis of certain proposed transactions, and we do not question the value of this expertise. However, many insurance departments may not have that expertise and staffing levels and experience within insurance departments will vary over time. Accordingly, an IE expert requirement, paid for by the applying insurer, is a simple way to ensure consistency across states regardless of how staffing changes in the future.

If the Subgroup decides to adopt a principles-based approach for whether an IE report is required, we suggest that states demonstrating that they have appropriate internal expertise for the type of business involved in a particular IBT/CD may be permitted to create an expert report for that transaction as part of the approval process. The expert report should contain all of the information and analysis required of the IE report and be made publicly available. This approach would be similar to that taken in the Form A context, where an insurance department documents its findings of fact and overall transaction review in an Order and Decision. We believe that regulators will be able to make this demonstration of internal expertise primarily for IBT/CD transactions involving short-duration products (defined as those that give the insurer the ability to renew or cancel the product at least annually). Because of the market-specific actuarial analysis that will be required for long-duration products, including life, annuity, and long-term care, the use of an independent expert will be necessary in the vast majority of those transactions. Because transactions involving long-duration products have the highest likelihood of failure given the long time horizons, we recommend that the IE report always be required for long-duration products.

Page 5: Guaranty Fund Coverage

We do not have any additional comments on the proposed changes to the P&C Insurance Guaranty Association Model Act, but we do want to comment on the licensing requirements under the life and health guaranty associations ("L&H GAs").

As we noted above, all policyholders should be covered by the same state L&H GA both before and after the transaction. For this projection to be achieved, all successor entities must be

licensed in all states where the dividing or transferring entity was ever licensed. We do not support any proposal that would automatically provide L&H GA coverage to successor entities in lieu of licensing requirements that are functionally as robust and rigorous as those applied to all new licensees. The normal regulatory and solvency protections provided by the licensing process should apply equally to successor entities.

Page 6: IE Standard of Review

We recommend revising subsection (d) to read: "The independent expert evaluation should be undertaken by an expert to establish that policyholders and other key stakeholders will experience no adverse effects even under extreme events. The intention is that the events considered should be those used to evaluate capital sufficiency, and as such, are well beyond the 'moderately adverse' reserve standard. The independent expert must provide a detailed public report, including assumptions utilized, regarding the prospective solvency of the resulting entity using the above standard."

Page 6: Due Process

We recommend that the due process suggestions be expanded to highlight that applicable legal steps required by any state laws, including approval of the transaction, be followed. In addition, we would make clear that remote options must be made available for policyholders and stakeholders who cannot travel to the reviewing state to attend hearings.

Best Practices Procedures IBT/Corporate Divisions

Page 6: Ongoing Operations

We recommend that this list include a requirement to submit an update to the Own Risk and Solvency Assessment reports ("ORSA") demonstrating how the proposed transaction would impact the ORSA analysis for the dividing or transferring insurer as well as for any insurer that will be assuming policy liabilities if the proposed transaction is approved.

Pages 8 and 12: IE Report

Please see our comments above regarding independent experts.

Page 8: Ultimate Reviewing Authority

We recommend that the document acknowledge and clarify that regulators in other states where impacted policyholders reside may also be required under that state's law to review (and perhaps approve) the IBT/CD transaction on behalf of their residents.

Page 9: High Level of Confidence

We recommend revising the beginning of this section to read: "Reviewing authorities should undertake to establish that policyholders and other key stakeholders will experience no adverse

effects even under extreme events. The intention is that the events considered should be those used to evaluate capital sufficiency, and as such, are well beyond the 'moderately adverse' reserve standard. At a high level, several key elements . . . . "

Pages 16, 17 and Section IX: Guaranty Fund Coverage

As noted above, policyholders should retain the same state guaranty association coverage after the IBT/CD transaction is approved. The legal opinion should confirm this outcome.

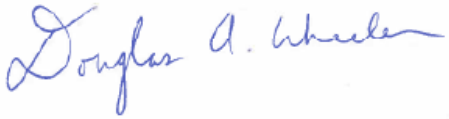
Section VIII: Due Process Communication of Transaction

For policyholders and stakeholders to properly evaluate a proposed IBT/CD, we want to emphasize that it is critical that all information relevant to the transaction be made public and be included with the communications. This includes assumptions used in determining reserves, valuations, and stress testing exercises so that policyholders and stakeholders can adequately evaluate the transaction. Further, as mentioned above, we believe that remote options must be provided for those that cannot attend hearings in person.

***

We appreciate the efforts of the Subgroup, and we urge the Subgroup to continue to work at a rapid pace given that IBT/CD transactions have been approved in some states. This work will help ensure that these transactions are reviewed in a consistent manner across all states.

Sincerely,



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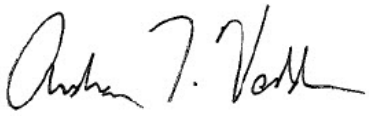

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June 21, 2022

VIA E-MAIL ONLY

Mr. Doug Stolte
Mr. David Smith
Co-Chairs, NAIC Restructuring Mechanisms (E) Subgroup

Attn: Dan Daveline (ddaveline@naic.org)
Robin Marcotte (rmarcotte@naic.org)

Messrs Stolte and Smith:

ProTucket Insurance Company ("ProTucket") is grateful for the opportunity to comment on the draft Best Practices Procedures for IBT/Corporate Divisions document. ProTucket respectfully offers the following comments:

Section IV – Robust Regulatory Review

4. ***Assessment of risk capital***

b. For IBTs or other transactions which will not have access to additional capital, an actuarial report of the adequacy of run-off reserves (gross and net) being transferred should include an analysis of:

i. A comparison of the existing reserves to a Value at Risk (Var) of 99.5% for a 1-year period (non-life business), 97.% for a 5-year period (non-life business) or conditional tail expectation (CTE) of 90 or some other higher level that are necessary to mitigate the risks.

We observe that for many run-offs, either before or after an IBT or corporate division is effected, a reinsurance cover is purchased to ensure adequate reserves over the life of the run off, often reducing the invested assets available for the run-off in favor of reinsurance with an adverse development cover. Accordingly, we suggest that the consideration of the adequacy of the run-off's capital base should include for

that purpose the limits of available reinsurance, including both reinsurance accounted on a prospective basis and reinsurance accounted on a retrospective basis (as is typical of run-off covers).

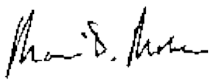
Section X, Run-off procedures,

DRAFTING NOTE:
Section X is on procedures for those entities that are in run-off. It is not presumed that all IBT or all corporate divisions will result in run-off entities. Many of these procedures would likely to be conducted post transaction approval. Therefore, the final location of the run-off procedures may be different than the other pre-transaction best practices sections.

ProTucket notes that a basic premise standing behind any Company Division ("CD") or IBT Transaction is that the transferor company should not become financially impaired because of the CD or IBT transaction. ProTucket agrees with the drafting note that the run-off procedures should be addressed in a different location than the pre-transaction best practices section, or perhaps in a separate document. With respect to the proposals in the draft, many appear to address concerns over impaired companies, for which enhanced ongoing regulatory scrutiny would be appropriate and expected. However, if the run-off meets the capital requirements being considered elsewhere in the document, then the run-off's balance sheet would not be impaired, and the level of scrutiny required would be minimal. For example, to have regulators sign off all commutations for a run-off with a healthy balance sheet is both unnecessary to the management of the run-off and a waste of scarce regulatory resources.

ProTucket appreciates the opportunity to provide these comments and please do not hesitate to contact us if there any questions.

Sincerely,



Marvin D. Mohn
President & CEO
ProTucket Insurance Company

cc:
Jack Broccoli, Ass't Deputy Director of Financial Analysis, CT Insurance Department
Elizabeth Dwyer, Superintendent of Insurance, RI Department of Business Regulation

Randall & Quilter Investment Holdings Ltd.

VIA EMAIL

June 21, 2022

Messrs. Doug Stolte and David Smith
Co-Chairs, NAIC Restructuring Mechanisms (E) Subgroup

Attention: Robin Marcotte rmarcotte@naic.org
Dan Daveline ddaveline@naic.org

Re: Request for Comments – Exposure Drafts on Foundational Principles, Best Practices and PRBCWG Response

Dear Messrs. Stolte and Smith:

Randall & Quilter Investment Holdings, Ltd. ("R&Q") supports the missions of the Restructuring Mechanisms (E) Subgroup and Restructuring Mechanisms (E) Working Group, and we share the view that state insurance markets would benefit from greater uniformity and more robust regulatory standards for Insurance Business Transfers (IBTs) and similar mechanisms.

While we believe that IBTs are an inherently positive tool for insurance markets – promoting capital and operational efficiencies, and strengthening the management of complex risks – the actual outcomes for stakeholders depend on the regulatory standards imposed and the rigor with which regulators and other market participants examine each proposed transfer. We therefore believe that the industry, insurance consumers and the public at large would be best served by the positive completion of this initiative at the National Association of Insurance Commissioners, and with that completion both greater certainty and broader confidence in the regulatory framework for such transactions. With IBTs still relatively new in the United States, now is a good time to assure that these mechanisms will serve an important public purpose going forward.

R&Q thus commends the Subgroup for the principles it has articulated in its exposure drafts of

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May 4, 2022, as well as its efforts to consider possible changes to the RBC formula to assess minimum surplus requirements for companies in runoff. We understand that detailed work will be needed to put some of these principles into action, and thus significant decisions have yet to be made, but we want to be clear in our support for the directionality of the effort. We also wish to be a constructive participant in this ongoing process.

Aligned with the Subgroup's Foundational Principles, the following are aspects of the IBT regulatory process that we would highlight as particularly crucial:

1. Review by independent experts in addition to expert review within departments of insurance; we see these reviews as complimentary.
2. Stakeholder engagement. The approval process should have a high degree of transparency and impacted parties should have the opportunity to be heard.
3. A thorough assessment of the benefits of the proposed transaction to key stakeholders, assuring no material adverse impact and reaching a holistic understanding of the likely outcomes with and without the transfer.
4. A judicial process to help assure legal finality and additional stakeholder engagement, as well as another independent check in the approval process.
5. Assurance of the financial strength of the transferee post transaction, using uniform NAIC standards.
6. Robust stress testing specific to the proposed transaction.

With respect to some of the areas requiring detailed development and upcoming decisions by the Subgroup and other regulators, we note the following:

1. The exposure drafts of the Subgroup (and that of the Working Group) understandably focus on transfers of insurance policies held by individual policyholders. We agree that such transfers involve significant consumer-protection-related regulatory policy concerns, including Guaranty Fund protection and stakeholder engagement. However, some transfers will likely continue to occur between reinsurers where the business being transferred is a block of reinsurance, the transferor and transferee are reinsurers, and the transferring policyholders are all insurers or reinsurers. Such transactions involve sophisticated businesses and thus have their own dynamic. We would suggest this difference be reflected in the next iteration of the Subgroup's work.
2. Specifically regarding Guaranty Fund protection for individual policyholders, including potential orphan policyholders, we agree that additional measures may be needed to effectuate the essential principle that insurance consumers not be materially disadvantaged by a transfer. In this context we appreciate the discussion among regulators about the potential licensure of a transferee in all states in which a transferor has sold policies to consumers. Alternatively, an example of the different dynamic at play is when the business being transferred is a book of reinsurance, and the policyholder of the transferred business is another insurance company. As with our Note #1 above, we would suggest that this difference be reflected in the next exposure in this process.

3. Specificity around enhanced financial standards appears to be a key to the success of this endeavor, and in this regard we would emphasize the importance of comparing the financial strength of the transferor and transferee via metrics such as Risk Based Capital. In some of the discussions during the NAIC processes, there appears to have been reference to the relative "size" of the parties to the transaction, when perhaps the more salient metrics would include well-tested regulatory measures such as RBC. Some work to better assure the robustness of stress testing of proposed transactions could also be beneficial.
4. While maintaining the necessary objective that there be no material adverse impact, we believe it is important for regulators and stakeholders to compare the actual "before" and "after" states of a proposed transaction, as opposed to an idealized but possibly non-achievable end state. While one might, for example, wish for financial guarantees around the performance of the transferee, we would submit that a more rational approach might be to compare the likely performance of the transferee to that of the transferor in the particular line of business to be transferred, and to consider this question holistically, assessing not only the relative capitalizations but the business models, business objectives and expertise in the risks to be managed. We would suggest that a transferring insurer's desire or need to leave a market segment, focusing its capital and operational resources elsewhere, is a consideration in favor of a proposed transaction, as it should serve to strengthen the transferring company and thus bolster capacity and competition within the marketplaces in which that company does business. Similarly, we would suggest that the transferee's expertise in the risks to be managed, and the transferee's desire to focus on those kinds of risks, are also considerations in favor of a proposed transaction.

In addition to the above comments, we note the following specific sections in the Best Practices exposure where clarifications or added detail might be helpful.

Section II

(1. d.) For clarity, we suggest specifying reinsurers as one of the categories listed here, as it may not be clear to all readers that reinsurers would be considered among the "other stakeholders."

(1. i.) Clarification regarding the reference to "…certification that all financial regulatory requirements will be met after the transaction." It could be helpful to understand the form of such a certification, and who would be responsible for making it.

(4. b.) This item contemplates a parental guarantee for transferred business. As articulated in the exposure drafts, and as seconded in our comments above, we believe that a fundamental public policy question around these transactions is whether any key stakeholder would suffer a material adverse impact after a proposed transaction. If the transferor does not have a parental guarantee, it is unclear why the transferee would be required to have such a guarantee. From our perspective, a holistic and favorable view of a proposed transfer is one that finds no material disadvantage to key stakeholders but also marketplace benefits via enhanced capital and operational efficiencies, and expert

management of the risks involved on a going forward basis. An actual parental guarantee requirement would not only shift the Subgroup process away from these core principles, it could effectively prevent such transactions from occurring, preventing the realization of economic benefits for significant insurers, which benefits should translate into enhanced capacity and competition in state insurance markets.

Section IV

(1. c.) We agree with the importance of this objective, but note that it does not appear to contemplate the possibility of the transferor already being a troubled company. Indeed, one of the positive potential functions of these mechanisms is to remove solvency pressure from a troubled company, shifting some of its burdens to an insurer that is better capitalized and more expert in managing the kinds of risks to be transferred. This scenario is perhaps emblematic of the larger point we are making about the value of a holistic analysis. At the end of the day, what seems to us to be most important from a public policy perspective is that conditions will be better on balance if the transaction is approved instead of disapproved. It might be regrettable if the result of these efforts at the NAIC is to prevent insurers from even considering transfers that would provide a benefit to them and to the marketplaces in which they do business.

Section VI

(1. a.) Clarification may be helpful regarding scenarios in which an independent actuarial analysis has occurred prior to the engagement of the Independent Expert. Can the IE review such analyses to ascertain their comfort level with that work, or is it intended that a separate and additional analysis be mandatory?

Section VII

(1. a.) Clarification may be helpful regarding how a “cut through” would work in practice in various scenarios, and whether this is being considered in the context of IBTs or only Corporate Divisions.

Section IX

As with the exposure drafts as a whole, clarification here may be helpful to distinguish between transfers of direct insurance policies and those of reinsurance books, where the policyholder is an insurer.

Section X

Clarification may be helpful regarding the applicability of this section to scenarios where either the transferor or transferee are already in runoff. From our perspective, some of the greatest market utility of IBTs and similar mechanisms involves companies in runoff and transferees who are runoff consolidators.

In summary, R&Q is grateful for the opportunity to comment on this important workstream at NAIC, is supportive of more uniform and robust regulatory standards around IBTs and similar mechanisms, and stands ready to contribute to this work as the process moves forward. We share regulators' desire for a framework that protects consumers and other key stakeholders while enabling solutions that make transferring insurers stronger and more focused, and thus better able to meet the needs of state insurance markets.

Respectfully,

Peter L. Hartt
US Head of Compliance and Regulatory Affairs
Randall and Quilter Investment Holdings Ltd.

Randall & Quilter Investment Holdings Ltd. ('R&Q'), headquartered and operating in Bermuda with extensive operations in the US and Europe, is a leading provider of finality solutions for run-off portfolios and global program capacity for MGAs and their reinsurers. R&Q has a proven track record over three decades of acquiring discontinued books of non-life business and non-life (re)insurance companies and captives in run-off. We have completed numerous Part VII transfers in the UK and equivalent European Directive transfers across continental Europe, many of them cross border. In 2021 R&Q used this experience to help complete the first Oklahoma IBT between unrelated parties, and additional transactions of this kind are anticipated. We have access to capital and the experience of managing run-off which enables us to free management and shareholders from the cost and constraints of handling discontinued business.

By e-mail

June 21, 2022

Mr. Doug Stolte and Mr. David Smith, co-chairs, Restructuring Mechanisms (E) Subgroup
via Ms. Robin Marcotte, NAIC

Re: Request for interested party comments regarding items exposed during May 4, 2022 conference call of the Subgroup

Dear Messrs. Stolte and Smith,

I am writing on behalf of RiverStone, a group of insurance, reinsurance, and service companies within the Fairfax insurance group that specializes in the management of legacy and runoff insurance businesses and portfolios. RiverStone is headquartered in Manchester, New Hampshire, and has over 350 employees operating in multiple locations with expertise in claims resolution, reinsurance recoveries, and dispute resolution. In the U.S., we operate primarily through TIG Insurance Company, a California-domiciled property and casualty insurer in run-off since 2002, and its affiliated management and services company, RiverStone Resources LLC.

RiverStone appreciates the opportunity to provide comments to the Subgroup with regard to the materials exposed during the Subgroup's May 4, 2022 conference call. We welcome a dialogue with the Subgroup and other regulators on issues related to runoff insurance. As runoff specialists, we are pleased to see the Subgroup considering issues related to the regulation of runoff companies and whether the existing suite of regulatory tools should be modified or tailored differently to accommodate certain characteristics that distinguish runoff companies from actively writing companies.

The majority of our comments relate specifically to the October 25, 2021 letter from Mr. Tom Botsko, Chair of the Property and Casualty Risk-Based Capital (E) Working Group ("the Letter"), regarding risk-based capital issues related to runoff companies. We are very interested in the Subgroup's discussion of these issues and would like to provide a few observations and comments regarding the Letter.

The fourth paragraph of the Letter enumerates three characteristics identified by the ad hoc group related to runoff companies. As stated, those characteristics are: 1) no renewing of policies for at least 12 months; 2) no new direct or new assumed business; and 3) no additional runoff blocks of business. RiverStone generally agrees with the first two characteristics. Based on our experience in the acquisition and assumption of runoff business, however, RiverStone respectfully submits that the Subgroup should modify the first factor to recognize that some policies may include contractual renewal rights that must be respected even if a portfolio is placed into runoff status. It is possible that the "In addition" sentence is intended to incorporate this idea, but we urge the Subgroup to make the connection more explicit. We respectfully suggest that the first characteristic be modified to read, "no renewing of policies for at least 12 months except for cases where the amount of renewal premium is de minimis or the policy is subject to contractual renewal rights."

As for the third characteristic, we are concerned that this factor may exclude from the scope of "runoff company" those insurance groups that actively engage in the acquisition of runoff business. Although RiverStone is not currently an active writer of new direct or assumed business, we have acquired runoff companies or loss portfolios as part of our business. RiverStone believes that the acquisition of runoff blocks of business does not change the runoff nature of our business model. In fact, we believe RiverStone can be viewed as a "safe pair of hands" to regulators, policyholders, and claimants through our acquisition of blocks of business that no longer fit the business profile of the original writing company. Accordingly, we respectfully suggest that the final factor either be deleted or, in the alternative, modified to read, "no additional runoff blocks of business unless such business has been in runoff for at least [12] months."

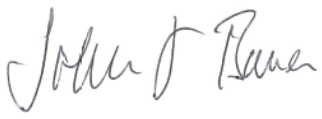
For RiverStone, it is important to get right the characteristics of runoff companies because the ad hoc group's recommendations concerning the RBC instructions should apply to runoff companies regardless of whether they acquire other runoff business. That is, application of the Trend Test places runoff companies at a disadvantage when our premium profile is considerably different from actively writing companies. Similarly, we submit that a premium growth charge should not be applied to runoff companies. As noted above, RiverStone obtains new premium only through acquisitions of other runoff portfolios and where renewal rights may be a factor. The collection of premium is not a primary function of the runoff business. Further, RiverStone is part of the Fairfax insurance group and, while most of our affiliate insurers are indeed active writers, the decentralized nature of the Fairfax group means that RiverStone plays no role in the underwriting activities of those affiliates. As stated previously, RiverStone operates primarily through TIG Insurance Company, which has not actively written new business in 20 years. However, because it is part of a group of active writing companies, TIG has been required to take RBC charges due to premium growth from our affiliates. The RBC Instructions have thus operated to TIG's disadvantage. Therefore, whether applied on an individual or group basis, RiverStone strongly supports the removal of premium charges for runoff companies.

With respect to the Foundational Principles and Best Practices materials for insurance business transfers ("IBTs") and corporate divisions ("CDs"), RiverStone recognizes the diligence and thoughtfulness that have gone into the drafting of these documents. Although RiverStone has yet to engage in an IBT or CD transaction in the U.S., we are very interested in regulatory developments in this area. Based on our experience with Part VII transfers through our former UK affiliate, we believe these transactions offer promising opportunities to the benefit of policyholders, regulators, and insurers.

For purposes of today's comment letter, we offer the following observations about "Section X – Run-off Procedures" on page 18 of the Best Practices document. The opening paragraph notes several circumstances through which runoff can occur, including IBTs and CDs. We are specifically concerned about the sentence that states, "In ***all these situations*** the run-off is occurring on an involuntary basis and should be subject to the following regulatory guidance . . . ." (emphasis added). We respectfully submit that this statement is incorrect in its use of the term "all." There are many situations, including IBTs, CDs, and other existing vehicles for restructuring transactions, that involve voluntary runoff. We suggest that the Subgroup modify this sentence in order to make clear that the guidance that follows should be limited to involuntary runoff situations or to clarify otherwise that it does not apply to voluntary runoff. This may be accomplished simply by changing "all these" to "some" or "certain."

RiverStone appreciates this opportunity to provide comments to the Subgroup, and we welcome any questions or comments about regulatory issues affecting runoff companies.

Very truly yours,



John W. Bauer
Vice President and General Counsel