Statutory Accounting Principles (E) Working Group
Hearing Agenda
August 26, 2021
1:00 p.m. – 3:00 p.m. CT

ROLL CALL

Dale Bruggeman, Chair	Ohio	Judy Weaver	Michigan
Carrie Mears/Kevin Clark, Co-Vice Chairs	Iowa	Doug Bartlett	New Hampshire
Richard Ford	Alabama	Bob Kasinow	New York
Kim Hudson	California	Kimberly Rankin/Melissa Greiner	Pennsylvania
Kathy Belfi/William Arfanis	Connecticut	Jamie Walker	Texas
Rylynn Brown	Delaware	Doug Stolte/David Smith	Virginia
Eric Moser	Illinois	Amy Malm	Wisconsin
Stewart Guerin/Melissa Gibson	Louisiana		

NAIC Support Staff: Julie Gann, Robin Marcotte, Jim Pinegar, Fatima Sediqzad, Jake Stultz

REVIEW AND DISCUSSION - PROPOSED BOND DEFINITION

Ref #	Title	Attachment #	Agreement with Exposed Document?	Comment Letter Page Number
2019-24 SSAP No. 26R & 43R (Julie)	**Proposed Bond Definition**	**1 – Agenda Item**	**Comments Received**	**IP – 1 LBSWG – 5 Pinnacol - 7**

Summary:
Pursuant to the direction from the Statutory Accounting Principles (E) Working Group in October 2020, a small group of regulators and industry met regularly to draft a bond definition for consideration. The intent of this project is to clarify what should be considered a bond (whether captured in *SSAP No. 26R—Bonds* or *SSAP No. 43R—Loan-Backed and Structured Securities*) and reported on Schedule D-1: Long-Term Bonds.

On May 20, 2021, the Working Group exposed a principles-based bond definition, along with a glossary and appendices with examples for application purposes. The exposure requested comments on the proposed bond definition but identified that comments on future developments (such as reporting changes, accounting and reporting guidance for items that do not qualify as bonds, transition guidance, etc.) could be submitted to assist in the development of those items.

In response to the May 20 exposure, the Working Group received three comment letters (interested parties, Industry Lease-Backed Securities Working Group and Pinnacol Assurance) as detailed within. <u>The purpose of the August 26 public discussion is to consider those comments, but to also consider the future development of this project and whether the principles-based bond proposal provides the general framework that should be used to proceed with development of an issue paper and SSAP revisions.</u> If electing to make this direction, it should be highlighted that all elements in the bond proposal are subject to continuous discussion and revision throughout the process but providing direction that the exposure reflects the intent of principle-based concepts that should be used as the basis for determining whether an investment is a bond, then NAIC staff will begin the next steps to incorporate these concepts into statutory accounting guidance. If the Working Group is not prepared to make that direction, consideration should occur for how to go forward with the overall project. (For example, should more exposure/review occur or should a different approach be considered.)

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Expected Next Steps:
If the Working Group affirms the overall intent of the principles-based bond proposal, the next steps are expected to occur:

- Development of an issue paper and proposed SSAP revisions to incorporate the bond concepts.

- Development of SAP guidance that specifically details accounting and reporting for items that may fall out of Schedule D-1 reporting. (For example, this would specifically address equity tranches that are part of securitizations that should not be reported on Schedule D-1. This would also address structures that may in legal form appear to be bonds, but not in substance, and the SSAP that would capture these structures.)

- Development of reporting revisions to incorporate more granularity in Schedule D-1 reporting. This is expected to be a significant change to the existing Schedule D-1 reporting categories, as well as encompass a reconsideration of certain reporting fields (such as the code columns).

In terms of timeline, it is projected that the **earliest** that the entire package could be effective is January 1, 2024. (This would require adoption in May 2023 of the reporting changes through the Blanks (E) Working Group.) An earlier effective date (of Jan. 1, 2023) would require adoption in May 2022 (next year) of reporting changes, and that timeline is not viewed to be realistic due to the extent of revisions needed and discussions expected to occur.

Comment Letters Received:

Interested Parties' Comments:
Overall, interested parties are supportive of the proposed principles-based Proposed Bond Definition. We believe it is flexible enough to accommodate the continued evolution of the bond market, while having safeguards that help prevent potential regulatory abuses. The Proposed Bond Definition does come with a cost to industry though, which is primarily driven by the requirement to analyze and document that certain bonds meet specific thresholds ("meaningful" and "sufficient"). It may be necessary to have practical accommodations upon adoption (i.e., transition requirements for existing investments in an insurer's investment portfolio) as it is our understanding the Proposed Bond Definition will require such analysis and documentation "as if" it was done when the bonds were issued. It may be difficult to do this "as if" analysis and documentation with bonds that were issued many years previously and/or where documentation is not available to perform such an analysis.

Interested parties would also like to address several areas of the Proposed Bond Definition where greater clarity may be needed and/or where we believe the requirements are too stringent. Interested parties will limit our comments to those we believe are substantive and will address several editorial comments directly with the SAPWG Working Group.

One item that may have escaped our full attention during the development of the Proposed Bond Definition relates to interest only and principal only strips. While we believe such investments generally qualify under the Proposed Bond Definition, it is unclear if such investments are an Issuer Credit Obligation (US Treasury Strips?) or Asset Backed Security (Mortgage Backed Security Strips?) as well as how the sufficiency criteria would apply to the latter when there are, or are not, agency guarantees. We intend to work with the SAPWG Working Group to get proper clarity on such investments.

The interested parties believe the examples in the Proposed Bond Definition are integral to applying it as well as providing a principles-based way of preventing perceived regulatory abuses such as ensuring legal form bonds, with in-substance equity-like characteristics, are not reported as bonds. Interested parties would like to provide three comments on these examples.

1) Example 1 of Appendix I prevents a legal form debt investment, that is required to be purchased with a pro rata share of an equity interest, from being a bond where there is a restriction on selling, assigning or

transferring the debt investment without also selling, assigning, or transferring the pro rata equity interest to the same party. While the debt investment would have legal priority of payment over the equity interest, both interests are contractually required to be held in the same proportion by the reporting entity and cannot be independently sold, assigned or transferred, which only gives the reporting entity priority of payment over itself. The structure does not alter the risk profile in a way that results in different performance relative to if an investor were to just directly invest in the underlying assets. Therefore, the debt investment does not represent a creditor relationship in substance. Interested parties agree with this assessment but would like to emphasize that such investments will need to find a reporting home, other than Schedule D, Bonds, where the proper accounting of both the debt and equity interest is addressed. For such a situation where the underlying fund predominantly holds debt securities, it may also be appropriate that such investment, in total, be applied a bond-like risk-based capital charge.

Similarly, accounting and reporting will need to be addressed for any and all debt investments that do not meet the Proposed Bond Definition, but that are recognized as bonds in the financial markets. For example, 1) debt instruments issued by funds, that are treated as bonds in the capital markets, but would be excluded from the Proposed Bond Definition under Example III of Appendix I or 2) non-agency mortgage-backed securities that are treated as bonds in the capital markets but would be excluded from the Proposed Bond Definition under Example I of Appendix II, and therefore would not be reported as bonds on Schedule D. We understand the SAPWG Working Group intends to address the accounting and reporting, and potentially an appropriate risk-based capital charge for these investments, and any other bonds that do not meet the Proposed Bond Definition. Interested parties would like to emphasize the importance of addressing them appropriately and reaffirm that we stand ready to offer our assistance.

2) As mentioned previously, interested parties believe the examples in the Proposed Bond Definition are integral to applying the new proposed definition and generally find them helpful. However, the sufficiency examples in Appendix II do not include an example for a more traditional ABS, such as a collateralized loan obligation (CLO). Interested parties believe such an example would be beneficial to the Proposed Bond Definition and are currently working on developing one. We plan to share this with the SAPWG Working Group and are hopeful it can be added to the Proposed Bond Definition.

3) Interested parties believe Examples I and II of Appendix I do a good job of delineating a principle-based solution for preventing in-substance equity-like investments from being reported as bonds on Schedule D. Example III, however, we believe needs to be amended to ensure that it does not affect well-structured debt investments from being reported on Schedule D as bonds.

First, real world collateralized fund obligation debt instruments (CFO Debt Instruments), that are treated as bonds in the marketplace, are much more complicated and nuanced than the simplified example and interested parties have been challenged in applying the example to investments they own. For example, many CFO Debt Instruments are self-amortizing (in full or in part) and it is unclear if the following provision applies to the anticipated bullet maturity or total principal balance.

> "*Additionally, a debt instrument for which repayment relies significantly upon the ability to refinance or sell the underlying equity interests at maturity subjects to a point-in-time equity valuation risk that is characteristic of the substance of the equity holder relationship rather than a creditor relationship. Therefore, such reliance would preclude the rebuttable presumption from being overcome*"

Notwithstanding this lack of perceived clarity, many may interpret the phrase "relies significantly", that limits refinancing or underlying assets sales for repayment, to mean only approximately 10 – 20% of such repayment is allowed from these sources. We do not believe this is appropriate nor that it makes the CFO Debt Instruments equity-like. We note that this is apparently independent of overcollateralization and would treat CFO Debt Instruments the same whether they are 10x overcollateralized or 1x

overcollateralized. It also seems to contradict the factors on the previous page where it says a reporting entity should consider the overcollateralization. We believe overcollateralization (and the other factors listed) should be evaluated collectively when making an equity-like determination rather than the seemingly hard and fast rule noted above.

This hard and fast rule also makes it equity-like if repayment substantially relies on refinancing. Interested parties agree that refinancing risk is an important consideration, but it typically is a determining factor in assessing credit quality as opposed to a factor in determining whether it is a debt security or an equity-like one. Interested parties believe that the credit quality of an investment will decline as the refinancing risk increases, but also believe that it should be eligible for Schedule D treatment, assuming the refinancing risk is commensurate with that of other debt securities.

The vast majority of debt in the private and public capital markets is structured as bullet maturities and it is universally accepted that the source of repayment typically is going to be from a refinancing event occurring at or near the time of the debt maturity. For CFO Debt Instruments, interested parties believe that it can also be acceptable to expect to be refinanced at maturity, but only if the expectation that the level of overcollateralization will remain at prudent levels such that a reasonable investor would be willing to refinance the maturity with replacement debt. The assessment of the debt's ability to be refinanced needs to take into account the expectation for the initial, ongoing and "at maturity" overcollateralization, as well as the other structural enhancements that are likely to benefit the investor refinancing the debt. There is further little substantive difference between refinancing risk for debt issued by a CFO when compared to debt issued by an SEC '40 Act Fund.

Lastly, interested parties have also noted investments where the debt is issued from a feeder fund, which in turn invests in another fund, that invests directly in debt securities. While we do not believe Example III is intended to prohibit such investments, interested parties believe further clarity on these arrangements is warranted as they could be construed to be debt backed by equity interests.

Interested parties are hopeful we can re-assess Example III of Appendix I with the SAPWG working group to provide both greater clarity as well as additional flexibility on whether debt backed by equity should be eligible for reporting on Schedule D as bonds.

Industry Lease-Backed Securities Working Group

Our group, the *Lease-Backed Securities Working Group*, would like to thank the Statutory Accounting Principles Working Group (SAPWG) for the opportunity to comment on the proposed bond definition in Reference #2019-21 – SSAP No. 43R, Proposed Bond Definition (the "Proposed Bond Definition" or "Exposure").

As you know, our group has been working closely for over a year now with members of SAPWG as well as the Valuation of Securities Task Force (VOSTF) and the Securities Valuation Office (SVO) to clarify the appropriate accounting and reporting treatment for the class of investments we are most concerned with: Lease-Backed Securities, Credit-Tenant Loans and Ground Lease Financings. We believe that together we have arrived at the correct outcome for these securities, and we are deeply appreciative of the consideration we received from all the regulators, as well as the time and effort that was put in by all parties to achieve that goal.

With regard to the broader effort to update the definition and classification of bonds and asset-backed securities which is the subject of the current exposure, we agree with many of the comments which have been submitted by other interested parties. However, we would like to offer the following additional comments:

1.) As a specific matter, paragraph 2 of the exposure lists various securities which would fall into the category of "issuer credit obligations". Among others, these include:

g. ETCs, EETCs, and CTLs *for which repayment is fully supported by a lease to an operating entity* (emphasis added).

With regard to CTLs, although it is not explicitly stated here, we assume that the phrase "fully-supported" would extend to CTLs which meet the newly-revised definition in the P&P Manual: that is "Credit Tenant Loans" with a residual balance no greater than 5%.

2.) From a broader perspective, the current language in SSAP 43R, "Loan-Backed and Structured Securities", draws a clear distinction between "structured securities" and "loan-backed securities" --which are "not included in structured securities" -- and "for which the payment of interest and/or principal is directly proportional to the payments received by the issuer from the underlying assets".

These loan-and-lease-backed "pass-through securities" have long been accepted insurance company investments, as codified in SSAP 43R for many years. We believe that it is important not to lose this distinction between "pass-through" and "structured" securities, and we worry that the division of the universe of bonds neatly into "issuer credit obligations" and "asset-backed securities" (a phrase which does not seem to appear at all in the current version of 43R) may be confusing to the market.

This is especially true, as the phrase "Asset-Backed Security" is commonly used to refer to pools of assets which have been carved-up, or "tranched" into multiple securities, and for which the cash flows received by investors are not "directly proportional" to the payments flowing from the underlying assets.

This confusion is made worse by the requirement in Paragraph 3.b of the Exposure that in order to qualify as an "asset-backed security" an investment must include *"sufficient credit enhancement through guarantees (or other similar forms of recourse) subordination and/or overcollateralization"* [Paragraph 3.b].

The examples in Appendix II of the exposure seek to clarify the "sufficiency criteria" for credit enhancement for various types of bonds. The principal used is that credit enhancement needs to be "*sufficient to absorb losses similar to other debt instruments of similar quality*".

We believe that when this language is exposed, it will be both very confusing to market participants and difficult to implement in practice. This is because it conflates two concepts: credit quality and accounting classification. Who would bear the responsibility for determining: a) which debt instruments were of "similar quality", and b) the amount of credit enhancement "sufficient" to achieve a certain credit quality? These are highly subjective judgments for which the answers could vary from deal to deal based on the specific characteristics of each individual transaction. How would disagreements be resolved?

This language also runs the risk of making it appear that all "asset-backed securities" must be "structured securities" with an equity tranche, or "first-loss" piece – or otherwise, they would not qualify as "bonds".

While this may not have been the intent of the regulators, the current language seems to point in that direction. We would hope that as the process moves forward these important issues could be further clarified. In order for markets to function in an orderly manner, there need to be clear "guardrails" for both regulators and investors, and a clear distinction between accounting rules and standards, and credit quality.

We look forward to continuing the dialog we have established over the past year with the regulator community in clarifying the treatment of "CTLs", Lease-backed Securities, and Ground-Lease Securities, and we are grateful for the opportunity to comment on the current exposure.

Pinnacol Assurance
I serve as Vice President and Chief Investment Officer of Pinnacol Assurance ("Pinnacol"), Colorado's state workers' compensation insurance fund. This advice represents Pinnacol's Comment to the Proposed Bond Definition (the "Definition") issued by the Statutory Accounting Principles (E) Working Group on May 20, 2021.

As you know, many insurers have statutory limits on the amount of "other invested assets" they can own— Colorado limits an insurer's "other invested assets" to 5% of the portfolio. Any "other invested assets" in excess of the 5% limitation cannot be considered "admitted assets" comprising part of the insurer's surplus but instead, will reduce that surplus dollar for dollar.

The reason all this is important is that Pinnacol has invested around $85 million in five separate rated note structures which are comprised of two parts. The first part represents loans made by the manager of the investment to various borrowers (which would seem to be characterizable as a Bond and not an equity interest). The second part represents an equity interest in the vehicle issuing the notes. The ultimate underlying investments in these strategies are comprised of private debt, which generates the cash flows to pay Pinnacol's returns on both the notes and the equity components.

According to the examples set forth in the proposed definition of "Bond," it appears that the existence of the equity interest (which cannot be traded separately from the notes) in the rated notes programs in which Pinnacol has invested would disqualify these investments as "Bonds." This would mean that Pinnacol would suffer a reduction in its surplus by at least $85 million.

The proposed definition of "Bond" suggests that whether an investment qualifies as a "Bond" is an all or nothing proposition-- if a structured rated note investment contains certain equity like characteristics, it will not be characterizable as a Bond, even though a significant portion of the investment represents a creditor relationship which otherwise would qualify as a Bond. Pinnacol believes a more reasonable approach (and one which better reflects economic reality) would be to allow insurers to characterize that portion of their investment which represents a creditor relationship as a Bond (and therefore, categorizable as an admitted asset constituting part of the insurer's surplus) with only the equity portion of the investment not being characterized as a Bond (and if in excess of 5% of the portfolio, not qualifying as an admitted asset). In other words, we suggest that the definition of a Bond recognize that portions of an investment may be characterized as a Bond while other portions may not. This bifurcation will better reflect the economic reality of each investment and protect insurer surplus from the dramatic dilution that otherwise will be experienced by adopting an "all or nothing" definition of Bond.

In conclusion, we contend that the Working Group's "all or nothing" approach to characterization of an investment as a "Bond" poses great harm to the industry and is not reflective of the fact that a significant portion of rated note structured investments are creditor relationships properly characterized as Bonds. Instead, we urge the Working Group to adopt a definition of Bond which at the very least, permits those portions of an investment which truly reflect a creditor relationship to be treated as a Bond.

Recommended Action:

NAIC staff recommends that the Working Group explicitly affirm the direction of the exposed principle-based bond concepts and direct NAIC staff to utilize those concepts to develop an issue paper and proposed SSAP revisions.

With this direction, it is recommended that the Working Group repurpose the "43R small group" as a "43R study group" and request that additional regulators volunteer to participate as regular members. This group is anticipated to continue discussions and proposed guidance within the issue paper and SSAP. (If considering participation, this group is anticipated to likely meet for one hour on a weekly basis to discuss overall concepts, review proposed language and consider investment designs.)

With this explicit direction, it is noted that all elements of the principles-based bond proposal, and the reflection of those concepts in statutory accounting guidance, is subject to continued discussion and deliberation. Revised guidance for Schedule D-1 investment classification will not be considered authoritative statutory guidance until the specific effective date detailed in adopted authoritative SSAPs.

To address reporting entity questions on the classification of investments, the following is recommended:

- Until revised guidance is adopted and effective, reporting entities can continue reporting as they have been for items currently in scope of SSAP No. 26R or SSAP No. 43R.

- With regards to equity tranches of securitizations: If reporting on Schedule D, unrated equity tranches should be self-reported as NAIC 6 with a measurement method of lower of cost or fair value. If an entity prefers, can move the equity tranches to Schedule BA as an "Any Other Class of Asset" and report at fair value. Tranches from securitization structures are considered in scope of SSAP No. 43R, therefore qualify as admitted assets. It is anticipated that these equity tranches will not be eligible to be reported as bonds on Schedule D-1 under the bond project, and entities that have previously reported as bonds may wish to proceed with reporting on Schedule BA.

The comment letters are included in Attachment 2 (8 pages).

https://naiconline.sharepoint.com/teams/frsstatutoryaccounting/national meetings/a. national meeting materials/2021/9. august 26/0 - 8-26-21 - sapwg hearing - 43r .docx

Statutory Accounting Principles (E) Working Group
Proposed Bond Definition
May 20, 2021

Introduction: Pursuant to the direction from the Statutory Accounting Principles (E) Working Group in October 2020, a small group of regulators and industry have been meeting regularly to draft a bond definition for consideration. The intent of this project is to clarify what should be considered a bond (whether captured in *SSAP No. 26R—Bonds* or *SSAP No. 43R—Loan-Backed and Structured Securities*) and reported on Schedule D-1: Long-Term Bonds. **This exposure is specific to the proposed bond definition below, along with the glossary (page 5) and appendices (pages 6-12)**, but comments on future developments (such as reporting changes, accounting and reporting guidance for items that do not qualify as bonds, transition guidance, etc.) may also be submitted to assist in the development of these items.

Below is the proposed principles-based definition of a bond eligible for reporting on Schedule D, Part 1.

1. A bond shall be defined as any security[1] representing a creditor relationship, whereby there is a fixed schedule for one or more future payments, and which qualifies as either an issuer credit obligation or an asset backed security**.**

   [Need to incorporate concepts of paragraph 2 of current SSAP No. 26R but not recast here for brevity]

   Determining whether a security represents a creditor relationship should consider its substance, rather than solely the legal form of the instrument. The analysis of whether a security represents a creditor relationship should consider all other investments the reporting entity owns in the investee as well as any other contractual arrangements. A security that in substance possesses equity-like characteristics or represents an ownership interest in the issuer does not represent a creditor relationship. See Appendix I for examples of securities that, despite their legal form, do not represent a creditor relationship in substance.

2. An issuer credit obligation is a bond, the repayment of which is supported primarily by the general creditworthiness of an operating entity or entities. Support consists of direct or indirect recourse to an operating entity or entities, which includes holding companies with operating entity subsidiaries where the holding company has the ability to access the operating subsidiaries' cash flows through its ownership rights. An operating entity may be any sort of business entity, not-for-profit organization, governmental unit, or other provider of goods or services, but not a natural person or ABS Issuer (defined below). Examples of issuer credit obligations include, but are not limited to:

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[1] This statement adopts the GAAP definition of a security as it is used in FASB Accounting Standards Codification Topics 320 and 860. Evaluation of an investment under this definition should consider the substance of the instrument rather than solely its legal form.

Security: A share, participation, or other interest in property or in an entity of the issuer or an obligation of the issuer that has all of the following characteristics:

a. It is either represented by an instrument issued in bearer or registered form or, if not represented by an instrument, is registered in books maintained to record transfers by or on behalf of the issuer.
b. It is of a type commonly dealt in on securities exchanges or markets or, when represented by an instrument, is commonly recognized in any area in which it is issued or dealt in as a medium for investment.
c. It is either one of a class or series or by its terms is divisible into a class or series of shares, participations, interests or obligations.

a. U.S. Treasury securities;(INT 01-25)
b. U.S. government agency securities;
c. Municipal securities issued by the municipality or supported by cash flows generated by a municipally-owned asset or entity that provides goods or services (e.g., airport, toll roads etc.);
d. Corporate bonds issued by operating entities, including Yankee bonds and zero-coupon bonds;
e. Corporate bonds issued by holding companies that own operating entities;
f. Project finance bonds issued by operating entities;
g. ETCs, EETCs, and CTLs for which repayment is fully supported by a lease to an operating entity;
h. Bonds issued by REITS or similar property trusts;
i. Bonds issued by business development corporations, closed-end funds, or similar operating entities, in each case registered under the 1940 Act;
j. Convertible bonds issued by operating entities, including mandatory convertible bonds as defined in paragraph 11.b;
k. Fixed-income instruments specifically identified:
    i. Certifications of deposit that have a fixed schedule of payments and a maturity date in excess of one year from the date of acquisition;
    ii. Bank loans that are obligations of operating entities, issued directly by a reporting entity or acquired through a participation, syndication or assignment;
    iii. Hybrid securities issued by operating entities, excluding surplus notes, subordinated debt issues which have no coupon deferral features, and traditional preferred stocks;
    iv. Debt instruments in a certified capital company (CAPCO).(INT 06-02)

[Need to incorporate concepts in paragraph 4 of SSAP No. 26R but not recast here for brevity.]

3. An asset[2] backed security is a bond issued by an entity (an "ABS Issuer") created for the primary purpose of raising debt capital backed by financial assets[3] or cash generating non-financial assets owned by the ABS Issuer, whereby repayment is primarily derived from the cash flows associated with the underlying defined collateral rather than the cash flows of an operating entity[4]. In most instances, the ABS Issuer is not expected to continue functioning beyond the final maturity of the debt initially raised by the ABS Issuer. Also, many ABS Issuers are in the form of a trust or special purpose vehicle

[2] The underlying collateral supporting an asset backed security shall meet the definition of an asset by the ABS Issuer. Certain forms of collateral, such as rights to future cash flows, may not be recognized as assets by the selling entity but may be recognized as assets when sold to an ABS Issuer. These assets are permitted as the collateral supporting an asset backed security, although they may not represent an asset that can be liquidated to provide payment toward the issued debt obligations (i.e., if the future cash flows do not materialize). The limited ability to liquidate the underlying collateral supporting an asset backed security does not impact the structural determination of whether an issued security meets the definition of an asset backed security but may impact the recoverability of the investment, as well as the consideration of whether there is sufficient credit enhancement.

[3] SSAP No. 103R defines a financial asset as cash, evidence of an ownership interest in an entity, or a contract that conveys to one entity a right (a) to receive cash or another financial instrument from a second entity or (b) to exchange other financial instruments on potentially favorable terms with the second entity. As a point of clarity, for the purposes of this standard, financial assets do not include assets for which the realization of the benefits conveyed by the above rights depends on the completion of a performance obligation (e.g., leases, mortgage servicing rights, royalty rights, etc.). These assets represent non-financial assets, or a means through which non-financial assets produce cash flows, until the performance obligation has been satisfied.

[4] Dedicated cash flows from an operating entity can form the underlying defined collateral in an asset backed security. This dynamic, perhaps noted in a whole-business securitization, still reflects an asset backed security and not an issuer credit obligation.

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("SPV"), though the presence or lack of a trust or SPV is not a definitive criterion for determining that a security meets the definition of an asset backed security.

There are two defining characteristics that must be present for a security to meet the definition of an asset backed security:

a. The assets owned by the ABS Issuer are either financial assets or cash-generating non-financial assets. Cash-generating non-financial assets are defined as assets that are expected to generate a meaningful[5] level of cash flows toward repayment of the bond through use, licensing, leasing, servicing or management fees, or other similar cash flow generation (for the avoidance of doubt, there must be a meaningful level of cash flows to service the debt, other than through the sale or refinancing of the assets). Reliance on cash flows from the sale or refinancing of cash generating non-financial assets does not preclude a bond from being classified as an asset backed security so long as the condition in the preceding sentence is met. See Appendix II for examples (2, 3 and 4) illustrating the evaluation of the meaningful criteria.

b. The holder of a debt instrument issued by an ABS Issuer is in a different economic position than if the holder owned the ABS Issuer's assets directly. The holder of the debt instrument is in a different economic position if such debt instrument benefits from sufficient[6] credit enhancement through guarantees (or other similar forms of recourse), subordination and/or overcollateralization. In instances where the assets owned by the ABS Issuer are equity interests, the debt instrument must have pre-determined principal and interest payments (whether fixed interest or variable interest) with contractual amounts that do not vary based on the appreciation or depreciation of the equity interests. See Appendix II for examples illustrating the evaluation of the sufficient criteria.

4. Whether an issuer of debt represents an operating entity or ABS Issuer is unambiguous in most instances, but certain instances may be less clear. For example, an entity may operate a single asset such as a toll road or power generation facility (e.g., project finance) which serves to collateralize a debt issuance, and the cash flows produced by the operation of the assets are pledged to service the debt. In many such instances, the entity is structured as a bankruptcy-remote entity that is separate from the municipality or project sponsor. Such entities have characteristics of operating entities as the operation of the asset constitutes a stand-alone business. They also have many common characteristics of ABS Issuers as they are formed for the purpose of raising debt capital backed by the cash flows from collateral held by a bankruptcy-remote entity. When viewed more holistically, these issuing entities are typically being used to facilitate the financing of an operating component of a project sponsor or municipality. The use of a bankruptcy-remote entity facilitates the efficient raising of debt to finance the operating project, but the primary purpose is to finance an operating project. Therefore, structures in which the issuing entity represents a stand-alone business producing its own operating revenues and expenses, where the primary purpose is to finance an operating project, shall be considered operating entities despite certain characteristics they may share with ABS Issuers.

[5] The term "meaningful" is defined in the Glossary.
[6] The term "sufficient" is defined in the Glossary.

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Note: The elements captured below are not components of the core bond definition. However, comments are requested on the proposal to separately identify on Schedule D-1 or a subschedule of D-1, those ABS that qualify as bonds under the definition and have certain characteristics noted below. The purpose of separate identification would be to improve transparency and provide more specific disclosures applicable to bonds with such characteristics.

A separate reporting section on Schedule D, Bonds is being contemplated, for the purpose of capturing additional disclosures for regulators, for the following:

Any asset backed securities where:

1) the underlying collateral comprises cash generating non-financial assets and does not meet the practical expedient for evaluating the meaningful criteria defined in paragraph 3a and the glossary, or

2) the underlying collateral comprises financial assets that are not self-liquidating.

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Glossary

Meaningful – What constitutes a "meaningful" level of cash flows generated to service the debt from sources other than the sale or refinancing of the underlying collateral is specific to each transaction, determined at origination, and should consider the following factors:

1. The price volatility in the principal market for the underlying collateral;
2. The liquidity in the principal market for the underlying collateral;
3. The diversification characteristics of the underlying collateral (i.e., types of collateral, geographic location(s), source(s) of cash flows within the structure, etc.);
4. The overcollateralization of the underlying collateral relative to the debt obligation; and
5. The variability of cash flows, from sources other than sale or refinancing, expected to be generated from the underlying collateral.

Factors #1 and #5 are directly related to the "meaningful" requirement. That is, as price volatility or variability of cash flows increase, the required percentage of cash flows generated to service the debt from sources other than the sale or refinancing of the underlying collateral must also increase. Factors #2, #3 and #4 are inversely related to the "meaningful" concept. That is, as liquidity, diversification or overcollateralization increase, the required percentage of cash flows generated to service the debt from sources other than the sale or refinancing of the underlying collateral may decrease.

As a practical expedient to determining whether a cash generating non-financial asset is expected to produce meaningful cash flows, a reporting entity may consider an asset for which less than 50% of the original principal relies on sale or refinancing to meet the meaningful criteria. In applying this practical expedient, only contractual cash flows of the non-financial asset may be considered. This practical expedient should not be construed to mean that assets cannot meet the meaningful criteria if they rely on sale or refinancing to service greater than 50% of the original principal or if they rely on cash flows that are not contracted at origination. Rather, such instances would require a complete analysis of the considerations described above.

Sufficient – The "sufficient" threshold is specific to each transaction; determined at origination; and refers to the level of credit enhancement a market participant (i.e., reasonable investor) would conclude is expected to absorb losses (or decreases in cash flows) to the same degree as other debt instruments of similar quality, under a range of stress scenarios (i.e., scenarios are similar to stress scenarios performed for other debt instruments of the same quality). Losses are those a market participant would estimate and considers historical losses (including loss recoveries) on similar collateral, current market conditions, reasonable and supportable forecasts, and prepayment assumptions associated with the collateral. Excluded from the estimate of expected losses are historical gains on similar collateral and expected market appreciation on the collateral.

The first loss tranche (or tranches if the first tranche is not itself sufficient) may be issued as part of the securitization in the form of a debt or equity interest, or it may be retained by the sponsor and not issued as part of the securitization. If the first loss tranche is issued as part of the securitization, and held by a reporting entity, the accounting should follow the guidance applicable to the type of instrument (i.e., debt vs. equity); however, regardless of the type of instrument, it does not qualify as a Schedule D bond and should be reported on Schedule BA.

Appendix I

<u>Examples of securities that, despite their legal form, do not represent creditor relationships in substance:</u>

Example I:

A reporting entity invests in a private equity fund, whereby each investor is required to make 75% of its investment in the form of an unsecured debt investment and 25% in the form of an equity interest. Additionally, each investor owns a pro rata share of the unsecured debt investments and equity interests outstanding, and is restricted from selling, assigning or transferring the unsecured debt investment without also selling, assigning, or transferring the equity interest to the same party.

Rationale:

Although the unsecured debt investment appears to represent a creditor relationship in legal form, consideration of the substance of its terms in conjunction with the reporting entity's other interests in the fund, reflects that of an equity investment in substance. While the unsecured debt investment would have legal priority of payment over the equity interest, both interests are contractually required to be held in the same proportion by the reporting entity and cannot be independently sold, assigned, or transferred, which only gives the reporting entity priority of payment over itself. As such, the reporting entity is in the same economic position as if it held its entire investment in the form of an equity interest in the fund. Therefore, the unsecured debt investment does not represent a creditor relationship in substance. It would also be inappropriate to conclude that a component of a similar investment, but not exact replica of this transaction, represents a creditor relationship if it in substance does not put the holder collectively in a materially different economic position than holding an equity interest (e.g., the required equity interest was not exactly pro-rata). However, requirements to hold both debt and equity interests as a result of regulatory restrictions, such as regulatory risk retention rules, should not influence the conclusion that a debt investment represents a creditor relationship in substance.

Example 2:

A reporting entity invests in a debt instrument issued by a SPV that holds a large number of diversified equity interests with characteristics that support the production of predictable cash flows. The structure contains sufficient overcollateralization and liquidity provisions to ensure the production of adequate cash flows to service both principal and interest payments without significant reliance on refinancing or sale of the underlying equity investments. The debt instrument's periodic principal or interest payments, or both, contractually vary based on the appreciation or depreciation of the equity interests held in the SPV.

Rationale:

Because the instrument's principal or interest payments, or both, contractually vary with the appreciation or depreciation of the underlying equity interests, it contains an equity-like characteristic that is not representative of a creditor relationship. It would be inappropriate to conclude that a security with any

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variation in principal or interest payments, or both, due to underlying equity appreciation or depreciation, or an equity-based derivative, is a bond under this standard as such security would contain equity-like characteristics. A bond under this standard is required to have pre-determined principal and interest payments (whether fixed interest or variable interest) and comply with the structured note guidance within paragraph XXX.

Example 3:

A reporting entity invests in a debt instrument issued from a SPV that owns one or few equity interests, and the debt instrument does not meet the definition of an issuer credit obligation. The debt instrument benefits from sufficient credit enhancement as defined in paragraph 3b, but the timing, amount and likelihood of cash distributions from the underlying equity interests is highly uncertain. Additionally, the capital structure of the SPV does not contain adequate diversification or liquidity provisions to ensure the production of adequate cash flows to service the contractual principal and interest payments, and repayment relies primarily on the ability to refinance or sell the underlying equity interests at maturity.

Rationale:

The debt instrument does not qualify as a bond because the timing, amount, and likelihood of cash distributions from the underlying equity interests is highly uncertain, and because the capital structure of the SPV does not contain adequate diversification or liquidity provisions to ensure the production of adequate cash flows to service both principal and interest payments. Furthermore, the anticipated repayment significantly relies on the ability to refinance or sell the underlying equity interests at maturity.

Determining of whether a debt instrument represents a creditor relationship in substance when the source of cash flows for repayment is derived from underlying equity interests inherently requires significant judgment and analysis. Unlike a debt instrument collateralized by assets with contractual cash flows, debt instruments collateralized by equity interests are dependent on cash flow distributions that are not contractually required to be made and are not controlled by the issuer of the debt. As a result, there is a rebuttable presumption that a debt instrument collateralized by equity interests does not represent a creditor relationship in substance. Notwithstanding this rebuttable presumption, it is possible for such a debt instrument to represent a creditor relationship if the characteristics of the underlying equity interests lend themselves to the production of predictable cash flows and the underlying equity risks have been sufficiently redistributed through the capital structure of the issuer. Factors to consider in making this determination include but are not limited to:

- Number and diversification of the underlying equity interests
- Characteristics of the underlying equity interests (vintage, asset-types, etc.)
- Liquidity facilities
- Overcollateralization
- Waiting period for distributions/paydowns to begin
- Capitalization of interest
- Covenants (e.g., loan-to-value trigger provisions)
- Reliance on ongoing sponsor commitments

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Additionally, a debt instrument for which repayment relies significantly upon the ability to refinance or sell the underlying equity interests at maturity subjects the holder to a point-in-time equity valuation risk that is characteristic of the substance of an equity holder relationship rather than a creditor relationship. Therefore, such reliance would preclude the rebuttable presumption from being overcome.

The analysis of whether a debt instrument that relies on cash flows from underlying equity interests for repayment represents a creditor relationship in substance should be conducted and documented by a reporting entity at the time such an investment is acquired. The level of documentation and analysis required to demonstrate that the rebuttable presumption has been overcome may vary based on the characteristics of the individual debt instrument, as well as the level of third-party and/or non-insurer market validation to which the issuance has been subjected. For example, a debt instrument backed by fewer, less diversified funds would require more extensive and persuasive documented analysis than one backed with a larger number of diversified funds. Likewise, a debt instrument that has been successfully marketed to unrelated and/or non-insurer investors, may provide enhanced market validation of the structure compared to one held only by related party and/or insurer investors where capital relief may be the primary motivation for the securitization.

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Appendix II

Examples of analysis of asset backed securities under the meaningful and/or sufficiency criteria as defined in paragraphs 3a and 3b:

Example 1:

A reporting entity invests in debt instruments issued from a SPV sponsored by the Government National Mortgage Association (GNMA), the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, "Agency or Agencies"). These debt instruments pass through principal and interest payments received from underlying mortgage loans held by the SPV to the debtholders proportionally, with principal and interest guaranteed by the Agencies. While there is prepayment and extension risk associated with the repayment of the underlying mortgage loans, the credit risk associated with the mortgage loans is assumed by the Agencies. The reporting entity expects the Agency guarantee to be sufficient to absorb losses to the same degree as other debt instruments of similar quality under a range of stress scenarios.

Rationale:

Although the reporting entity participates on a proportional basis in the cash flows from the underlying mortgage loans held by the SPV, the reporting entity is in a different economic position than if it owned the underlying mortgage loans directly because the credit risk has been redistributed and assumed by the Agencies. Because the Agency guarantee is expected to absorb losses to the same degree as other debt instruments of similar quality under a range of stress scenarios, it represents sufficient credit enhancement in accordance with the requirements in paragraph 3b.

Example 2:

A reporting entity invested in a debt instrument issued by a SPV that owns equipment which is leased to an equipment operator. The equipment operator makes lease payments to the SPV, which are passed through to service the SPV's debt obligation. While the debt is outstanding, the equipment and lease are held in trust and pledged as collateral for the debtholders. Should a default occur, the debtholders can foreclose on and liquidate the equipment as well as submit an unsecured lease claim in the lessee's bankruptcy for any defaulted lease payments. The loan-to-value at origination is 70%.

The existing lease payments are sufficient to cover all interest payments and all scheduled debt amortization payments over the life of the debt instrument. However, at debt maturity, there is a balloon payment due, totaling 50% of the original outstanding debt principal amount. The corresponding lease has no balloon payment due at lease maturity, so the SPV will either need to refinance the debt or sell the underlying equipment to service the final debt balloon payment. The loan-to-value at maturity is expected to decline to 40% considering the scheduled principal amortization payments net of the expected economic depreciation in the equipment value over the term of the debt. The equipment is expected to be subject to some market value volatility and periods of lower liquidity at certain points in time but has

a predictable value range and ready market over a longer period of time, such that the equipment could be liquidated over a reasonable period of time, if necessary.

Rationale:

The equipment is a cash generating non-financial asset which is expected to generate a meaningful level of cash flows for the repayment of the bonds via the existing lease that covers all interest payments and 50% of the principal payments. In reaching this determination, the reporting entity considered the predictable nature of the cash flows, which are contractually fixed for the life of the debt instrument, as well as the ability of the collateral value to provide for the balloon payment through sale or refinancing in light of its characteristics. While the equipment may have some market value volatility and periods of lower liquidity at points in time, the cash flows produced by the lease were concluded to reduce the loan balance to a level (40% loan-to-value) that would be able to be recovered by sale or refinancing even if it were to mature at such point in time.

The reporting entity also determined that the structure provides sufficient credit enhancement to conclude that investors are in a different economic position than holding the equipment directly. In reaching this conclusion, the reporting entity noted that the debt instrument starts with a 70% loan-to-value, which continues to improve over the life of the debt as the loan balance amortizes more quickly than the expected economic depreciation on the underlying equipment. In the context of the predictable nature of the cash flows and collateral value range over time, the reporting entity concluded this level of overcollateralization is expected to absorb losses to the same degree as other debt instruments of similar quality, including during periods of stressed valuations.

For the purposes of determining whether there is sufficient overcollateralization, it is appropriate to consider any expected economic depreciation, if it is reasonably expected, but it is not appropriate to consider any expected economic appreciation. Note that a debt instrument with a loan-to-value that is expected to decrease over time is not necessarily deemed to have sufficient overcollateralization. Rather, a wholistic sufficiency assessment must be made, evaluating the expected loan-to-value over the life of the transaction, in conjunction with the liquidity and market value volatility characteristics of the underlying collateral, particularly at points in time where the underlying equipment is expected to be off-lease or at the time of maturity, if refinancing or sale is required.

Example 3:

A reporting entity invested in a debt instrument with the same characteristics as described in Example 2, except that the existing equipment lease at the time of origination has a contractual term that is shorter than that of the debt instrument. It is expected with a high degree of probability that the lease will be renewed, and a substantial leasing market exists to replace the lessee should they not renew. However, in the unlikely circumstance that the equipment cannot be re-leased, there would not be enough cash flows to service the scheduled principal and interest payments, and the equipment would have to be liquidated to pay off the debt upon default.

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Rationale:

All details of Example 3, including the expected collateral cash flows, are consistent with those in Example 2, except that the cash flows in Example 2 are contractually fixed for the duration of the debt while the cash flows in Example 3 are subject to re-leasing risk. Notwithstanding the involvement of re-leasing risk, the reporting entity concluded that the ability to re-lease the equipment was highly predictable and supported the conclusion that the equipment was expected to produce meaningful cash flows to service the debt.

This distinction is to highlight that the expected cash flows of a cash-generating non-financial asset may or may not be contractually fixed for the term of the bond. Certain securitized cash flow streams may not by their nature lend themselves to long-term contracts (e.g., single-family home rentals), but may nevertheless lend themselves to the production of predictable cash flows. While the non-contractual nature of the cash flows is an important consideration in determining whether a non-financial asset is expected to produce meaningful cash flows to service the debt, it does not, in and of itself, preclude a reporting entity from concluding that the assets are expected to produce meaningful cash flows.

Example 4:

A reporting entity invested in a debt instrument issued by a SPV that owns equipment which is leased to an equipment operator. The equipment operator makes lease payments to the SPV, which are passed through to service the SPV's debt obligation. While the debt is outstanding, the equipment and lease are held in trust and pledged as collateral for the debtholders. Should a default occur, the debtholders can foreclose on and liquidate the equipment as well as submit an unsecured lease claim in the lessee's bankruptcy for any defaulted lease payments. The loan-to-value at origination is 70%.

The existing lease payments are sufficient to cover all interest payments and all scheduled debt amortization payments over the life of the debt instrument. However, at maturity, there is a balloon payment due, totaling 80% of the original outstanding principal amount. The corresponding lease has no balloon payment due at lease maturity, so the SPV will either need to refinance the debt or sell the underlying equipment to service the final debt balloon payment. The loan-to-value at maturity is expected to increase to 95% considering the scheduled principal amortization payments net of the expected economic depreciation in the equipment value over the term of the debt. The equipment is expected to be subject to some market value volatility and periods of lower liquidity at certain points in time, but has a predictable value range and ready market over a longer period of time, such that the equipment could be liquidated over a reasonable period of time, if necessary.

Rationale:

The equipment is a cash generating non-financial asset which is not expected to generate a meaningful level of cash flows for the repayment of the bonds via the existing lease that covers all interest payments and 20% of principal payments. In reaching this determination, the reporting entity considered that, while the cash flows being produced are predictable, the ability to recover the principal of the debt investment is almost entirely reliant on the equipment retaining sufficient value to sell or refinance to satisfy the debt.

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The reporting entity also determined that the structure lacks sufficient credit enhancement to conclude that investors are in a different economic position than holding the equipment directly. In reaching this conclusion, the reporting entity noted that the debt starts with a 70% loan-to-value, but the overcollateralization is expected to deteriorate over the term of the debt as the equipment economically depreciates more quickly than the debt amortizes. This results in a high loan-to-value (i.e., 95%) at maturity, relative to the market value volatility of the underlying collateral. Despite the predictable nature of the cash flows, the reporting entity concluded that the debt instruments lacked a sufficient level of overcollateralization expected to absorb losses to the same degree as other debt instruments of similar quality, including during periods of stressed valuations. Therefore, the reporting entity concluded that it was in a substantially similar position as if it owned the equipment directly.

For the purposes of determining whether there is sufficient overcollateralization, it is appropriate to consider any expected economic depreciation, if it is reasonably expected, but it is not appropriate to factor in any expected economic appreciation. Note that a debt instrument with a loan-to-value that is expected to increase over time is not necessarily deemed to have insufficient overcollateralization. Rather, a wholistic sufficiency assessment must be made, evaluating the expected loan-to-value over the life of the transaction, in conjunction with the liquidity and market value volatility characteristics of the underlying collateral, particularly at points in time where the underlying equipment is expected to be off-lease or at the time of maturity, if refinancing or sale is required.

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Attachment 2

Statutory Accounting Principles (E) Working Group
Comment Letters Received

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July 15, 2021

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

RE: Ref #2019-21 – SSAP No. 43R, Proposed Bond Definition

Dear Mr. Bruggeman:

Interested parties would like to thank the Statutory Accounting Principles Working Group (SAPWG) for the opportunity to comment on the proposed bond definition in Reference #2019-21 – SSAP No. 43R, Proposed Bond Definition (the "Proposed Bond Definition" or "Exposure"). Interested parties would also like to thank SAPWG for the opportunity to regularly provide input to regulators and NAIC staff as the Proposed Bond Definition was being more fully developed; especially the collaborative environment where open and honest dialogue was encouraged so that the nuances of a very complicated project could be properly addressed.

Overall, interested parties are supportive of the proposed principles-based Proposed Bond Definition. We believe it is flexible enough to accommodate the continued evolution of the bond market, while having safeguards that help prevent potential regulatory abuses. The Proposed Bond Definition does come with a cost to industry though, which is primarily driven by the requirement to analyze and document that certain bonds meet specific thresholds ("meaningful" and "sufficient"). It may be necessary to have practical accommodations upon adoption (i.e., transition requirements for existing investments in an insurer's investment portfolio) as it is our understanding the Proposed Bond Definition will require such analysis and documentation "as if" it was done when the bonds were issued. It may be difficult to do this "as if" analysis and documentation with bonds that were issued many years previously and/or where documentation is not available to perform such an analysis.

Interested parties would also like to address several areas of the Proposed Bond Definition where greater clarity may be needed and/or where we believe the requirements are too stringent. Interested parties will limit our comments to those we believe are substantive and will address several editorial comments directly with the SAPWG Working Group.

One item that may have escaped our full attention during the development of the Proposed Bond Definition relates to interest only and principal only strips. While we believe such investments generally qualify under the Proposed Bond Definition, it is unclear if such investments are an Issuer Credit Obligation (US Treasury Strips?) or Asset Backed Security (Mortgage Backed Security Strips?) as well as how the sufficiency criteria would apply to the latter when there are, or are not, agency guarantees. We intend to work with the SAPWG Working Group to get proper clarity on such investments.

The interested parties believe the examples in the Proposed Bond Definition are integral to applying it as well as providing a principles-based way of preventing perceived regulatory abuses such as ensuring legal form bonds, with in-substance equity-like characteristics, are not reported as bonds. Interested parties would like to provide three comments on these examples.

1) Example 1 of Appendix I prevents a legal form debt investment, that is required to be purchased with a pro rata share of an equity interest, from being a bond where there is a restriction on selling, assigning or transferring the debt investment without also selling, assigning, or transferring the pro rata equity interest to the same party. While the debt investment would have legal priority of payment over the equity interest, both interests are contractually required to be held in the same proportion by the reporting entity and cannot be independently sold, assigned or transferred, which only gives the reporting entity priority of payment over itself. The structure does not alter the risk profile in a way that results in different performance relative to if an investor were to just directly invest in the underlying assets. Therefore, the debt investment does not represent a creditor relationship in substance. Interested parties agree with this assessment but would like to emphasize that such investments will need to find a reporting home, other than Schedule D, Bonds, where the proper accounting of both the debt and equity interest is addressed. For such a situation where the underlying fund predominantly holds debt securities, it may also be appropriate that such investment, in total, be applied a bond-like risk-based capital charge.

   Similarly, accounting and reporting will need to be addressed for any and all debt investments that do not meet the Proposed Bond Definition, but that are recognized as bonds in the financial markets. For example, 1) debt instruments issued by funds, that are treated as bonds in the capital markets, but would be excluded from the Proposed Bond Definition under Example III of Appendix I or 2) non-agency mortgage-backed securities that are treated as bonds in the capital markets but would be excluded from the Proposed Bond Definition under Example I of Appendix II, and therefore would not be reported as bonds on Schedule D. We understand the SAPWG Working Group intends to address the accounting and reporting, and potentially an appropriate risk-based capital charge for these investments, and any other bonds that do not meet the Proposed Bond Definition. Interested parties would like to emphasize the importance of addressing them appropriately and reaffirm that we stand ready to offer our assistance.

2) As mentioned previously, interested parties believe the examples in the Proposed Bond Definition are integral to applying the new proposed definition and generally find them helpful. However, the sufficiency examples in Appendix II do not include an example for a more traditional ABS, such as a collateralized loan obligation (CLO). Interested parties believe such an example would be beneficial to the Proposed Bond Definition and are currently working on developing one. We plan to share this with the SAPWG Working Group and are hopeful it can be added to the Proposed Bond Definition.

3) Interested parties believe Examples I and II of Appendix I do a good job of delineating a principle-based solution for preventing in-substance equity-like investments from being reported as bonds on Schedule D. Example III, however, we believe needs to be amended to ensure that it does not affect well-structured debt investments from being reported on Schedule D as bonds.

   First, real world collateralized fund obligation debt instruments (CFO Debt Instruments), that are treated as bonds in the marketplace, are much more complicated and nuanced than the simplified example and interested parties have been challenged in applying the example to investments they own. For example, many CFO Debt Instruments are self-amortizing (in full or in part) and it is unclear if the following provision applies to the anticipated bullet maturity or total principal balance.

> "*Additionally, a debt instrument for which repayment relies significantly upon the ability to refinance or sell the underlying equity interests at maturity subjects to a point-in-time equity valuation risk that is characteristic of the substance of the equity holder relationship rather than a creditor relationship. Therefore, such reliance would preclude the rebuttable presumption from being overcome"*

Notwithstanding this lack of perceived clarity, many may interpret the phrase "relies significantly", that limits refinancing or underlying assets sales for repayment, to mean only approximately 10 – 20% of such repayment is allowed from these sources. We do not believe this is appropriate nor that it makes the CFO Debt Instruments equity-like. We note that this is apparently independent of overcollateralization and would treat CFO Debt Instruments the same whether they are 10x overcollateralized or 1x overcollateralized. It also seems to contradict the factors on the previous page where it says a reporting entity should consider the overcollateralization. We believe overcollateralization (and the other factors listed) should be evaluated collectively when making an equity-like determination rather than the seemingly hard and fast rule noted above.

This hard and fast rule also makes it equity-like if repayment substantially relies on refinancing. Interested parties agree that refinancing risk is an important consideration, but it typically is a determining factor in assessing credit quality as opposed to a factor in determining whether it is a debt security or an equity-like one. Interested parties believe that the credit quality of an investment will decline as the refinancing risk increases, but also believe that it should be eligible for Schedule D treatment, assuming the refinancing risk is commensurate with that of other debt securities.

The vast majority of debt in the private and public capital markets is structured as bullet maturities and it is universally accepted that the source of repayment typically is going to be from a refinancing event occurring at or near the time of the debt maturity. For CFO Debt Instruments, interested parties believe that it can also be acceptable to expect to be refinanced at maturity, but only if the expectation that the level of overcollateralization will remain at prudent levels such that a reasonable investor would be willing to refinance the maturity with replacement debt. The assessment of the debt's ability to be refinanced needs to take into account the expectation for the initial, ongoing and "at maturity" overcollateralization, as well as the other structural enhancements that are likely to benefit the investor refinancing the debt. There is further little substantive difference between refinancing risk for debt issued by a CFO when compared to debt issued by an SEC '40 Act Fund.

Lastly, interested parties have also noted investments where the debt is issued from a feeder fund, which in turn invests in another fund, that invests directly in debt securities. While we do not believe Example III is intended to prohibit such investments, interested parties believe further clarity on these arrangements is warranted as they could be construed to be debt backed by equity interests.

Interested parties are hopeful we can re-assess Example III of Appendix I with the SAPWG working group to provide both greater clarity as well as additional flexibility on whether debt backed by equity should be eligible for reporting on Schedule D as bonds.

*****

Thank you for considering interested parties' comments. Interested parties are committed to working with NAIC staff and SAPWG on this very complicated and important topic. If you have any questions in the interim, please do not hesitate to contact us or Mike Reis at michaelreis@northwesternmutual.com or 414-241-8293.

Sincerely,

D. Keith Bell Rose Albrizio

cc: interested parties

The Lease-Backed Securities Working Group

July 15, 2021

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

RE: Ref #2019-21 – SSAP No. 43R, Proposed Bond Definition

Dear Mr. Bruggeman:

Our group, the *Lease-Backed Securities Working Group*, would like to thank the Statutory Accounting Principles Working Group (SAPWG) for the opportunity to comment on the proposed bond definition in Reference #2019-21 – SSAP No. 43R, Proposed Bond Definition (the "Proposed Bond Definition" or "Exposure").

As you know, our group has been working closely for over a year now with members of SAPWG as well as the Valuation of Securities Task Force (VOSTF) and the Securities Valuation Office (SVO) to clarify the appropriate accounting and reporting treatment for the class of investments we are most concerned with: Lease-Backed Securities, Credit-Tenant Loans and Ground Lease Financings. We believe that together we have arrived at the correct outcome for these securities, and we are deeply appreciative of the consideration we received from all the regulators, as well as the time and effort that was put in by all parties to achieve that goal.

With regard to the broader effort to update the definition and classification of bonds and asset-backed securities which is the subject of the current exposure, we agree with many of the comments which have been submitted by other interested parties. However, we would like to offer the following additional comments:

1.) As a specific matter, paragraph 2 of the exposure lists various securities which would fall into the category of "issuer credit obligations". Among others, these include:

    g. ETCs, EETCs, and CTLs *for which repayment is fully supported by a lease to an operating entity* (emphasis added).

    With regard to CTLs, although it is not explicitly stated here, we assume that the phrase "fully-supported" would extend to CTLs which meet the newly-revised definition in the P&P Manual: that is "Credit Tenant Loans" with a residual balance no greater than 5%.

2.) From a broader perspective, the current language in SSAP 43R, "Loan-Backed and Structured Securities", draws a clear distinction between "structured securities" and "loan-backed securities" -- which are "not included in structured securities" -- and "for which the payment of interest and/or principal is directly proportional to the payments received by the issuer from the underlying assets".

    These loan-and-lease-backed "pass-through securities" have long been accepted insurance company investments, as codified in SSAP 43R for many years. We believe that it is important not to lose this distinction between "pass-through" and "structured" securities, and we worry that the division of the

universe of bonds neatly into "issuer credit obligations" and "asset-backed securities" (a phrase which does not seem to appear at all in the current version of 43R) may be confusing to the market.

This is especially true, as the phrase "Asset-Backed Security" is commonly used to refer to pools of assets which have been carved-up, or "tranched" into multiple securities, and for which the cash flows received by investors are not "directly proportional" to the payments flowing from the underlying assets.

This confusion is made worse by the requirement in Paragraph 3.b of the Exposure that in order to qualify as an "asset-backed security" an investment must include *"sufficient credit enhancement through guarantees (or other similar forms of recourse) subordination and/or overcollateralization"* [Paragraph 3.b].

The examples in Appendix II of the exposure seek to clarify the "sufficiency criteria" for credit enhancement for various types of bonds. The principal used is that credit enhancement needs to be "*sufficient to absorb losses similar to other debt instruments of similar quality*".

We believe that when this language is exposed, it will be both very confusing to market participants and difficult to implement in practice. This is because it conflates two concepts: credit quality and accounting classification. Who would bear the responsibility for determining: a) which debt instruments were of "similar quality", and b) the amount of credit enhancement "sufficient" to achieve a certain credit quality? These are highly subjective judgments for which the answers could vary from deal to deal based on the specific characteristics of each individual transaction. How would disagreements be resolved?

This language also runs the risk of making it appear that all "asset-backed securities" must be "structured securities" with an equity tranche, or "first-loss" piece – or otherwise, they would not qualify as "bonds".

While this may not have been the intent of the regulators, the current language seems to point in that direction. We would hope that as the process moves forward these important issues could be further clarified. In order for markets to function in an orderly manner, there need to be clear "guardrails" for both regulators and investors, and a clear distinction between accounting rules and standards, and credit quality.

We look forward to continuing the dialog we have established over the past year with the regulator community in clarifying the treatment of "CTLs", Lease-backed Securities, and Ground-Lease Securities, and we are grateful for the opportunity to comment on the current exposure.

Thank you for considering our comments,

JMGarrison

John Garrison
On behalf of *The Lease-Backed Securities Working Group*

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July 12, 2021

Mr. Dale Bruggeman
Chair, Statutory Accounting Principles (E) Working Group
c/o Ms. Julie Gann at jgann@naic.org
Mr. Jim Pinegar at jpinegar@naic.org
Ms. Robin Marcotte at rmarcotte@naic.org
Ms. Fatima Sediqzad at fsediqzad@naic.org
Mr. Jake Stultz at jstultz@naic.org

Re: Proposed Definition of "Bond," issued May 20, 2021 (last updated May 26, 2021)

Ladies and Gentlemen:

I serve as Vice President and Chief Investment Officer of Pinnacol Assurance ("Pinnacol"), Colorado's state workers' compensation insurance fund. This advice represents Pinnacol's Comment to the Proposed Bond Definition (the "Definition") issued by the Statutory Accounting Principles (E) Working Group on May 20, 2021.

As you know, many insurers have statutory limits on the amount of "other invested assets" they can own— Colorado limits an insurer's "other invested assets" to 5% of the portfolio. Any "other invested assets" in excess of the 5% limitation cannot be considered "admitted assets" comprising part of the insurer's surplus but instead, will reduce that surplus dollar for dollar.

The reason all this is important is that Pinnacol has invested around $85 million in five separate rated note structures which are comprised of two parts. The first part represents loans made by the manager of the investment to various borrowers (which would seem to be characterizable as a Bond and not an equity interest). The second part represents an equity interest in the vehicle issuing the notes. The ultimate underlying investments in these strategies are comprised of private debt, which generates the cash flows to pay Pinnacol's returns on both the notes and the equity components.

According to the examples set forth in the proposed definition of "Bond," it appears that the existence of the equity interest (which cannot be traded separately from the notes) in the rated notes programs in which Pinnacol has invested would disqualify these investments as "Bonds." This would mean that Pinnacol would suffer a reduction in its surplus by at least $85 million.

The proposed definition of "Bond" suggests that whether an investment qualifies as a "Bond" is an all or nothing proposition-- if a structured rated note investment contains certain equity like characteristics, it will not be characterizable as a Bond, even though a significant portion of the investment represents a creditor relationship which otherwise would qualify as a Bond. Pinnacol believes a more reasonable approach (and one which better reflects economic reality) would be to allow insurers to characterize that portion of their investment which

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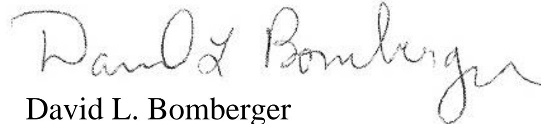
represents a creditor relationship as a Bond (and therefore, categorizable as an admitted asset constituting part of the insurer's surplus) with only the equity portion of the investment not being characterized as a Bond (and if in excess of 5% of the portfolio, not qualifying as an admitted asset). In other words, we suggest that the definition of a Bond recognize that portions of an investment may be characterized as a Bond while other portions may not. This bifurcation will better reflect the economic reality of each investment and protect insurer surplus from the dramatic dilution that otherwise will be experienced by adopting an "all or nothing" definition of Bond.

In conclusion, we contend that the Working Group's "all or nothing" approach to characterization of an investment as a "Bond" poses great harm to the industry and is not reflective of the fact that a significant portion of rated note structured investments are creditor relationships properly characterized as Bonds. Instead, we urge the Working Group to adopt a definition of Bond which at the very least, permits those portions of an investment which truly reflect a creditor relationship to be treated as a Bond.

Sincerely,

PINNACOL ASSURANCE



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