Date: 7/20/20

Conference Call

GROUP CAPITAL CALCULATION (E) WORKING GROUP
Tuesday, July 21, 2020
1:00 p.m. ET / 12:00 p.m. CT

ROLL CALL

David Altmaier, Chair	Florida	Justin Schrader	Nebraska
Kathy Belfi, Vice Chair	Connecticut	Dave Wolf	New Jersey
Susan Bernard	California	Edward Kiffel	New York
Philip Barlow	District of Columbia	Jackie Obusek	North Carolina
Kevin Fry	Illinois	Dale Bruggeman	Ohio
Roy Eft	Indiana	Andrew R. Stolfi	Oregon
Carrie Mears	Iowa	Joe DiMemmo	Pennsylvania
Gary Anderson	Massachusetts	Trey Hancock/Rachel Jrade-Rice	Tennessee
Judy Weaver	Michigan	Mike Boerner/Doug Slape	Texas
Kathleen Orth	Minnesota	David Smith/Doug Stolte	Virginia
John Rehagen/Karen Milster	Missouri	Amy Malm	Wisconsin

NAIC Support Staff: Dan Daveline/Lou Felice

AGENDA

1. Discuss Comments Received on Exposed Draft Holding Company Act Revisions—*Commissioner David Altmaier (FL)*
   - A. Comments Not Addressed through Revised Wording — Attachment A
   - B. Comments Addressed by NAIC Staff through Revised Wording (Revised Draft) — Attachment B
   - C. Exposed Draft Holding Company Act — Attachment C
   - D. Comment Letters — Attachment D
   - E. GCC VS BBA — Attachment E

2. Discuss Any Other Matters Brought Before the Working Group —*Commissioner David Altmaier (FL)*

3. Adjournment

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Comments on Exposure

This document is intended to serve as a detail agenda for considering the comments received.

The following does NOT attempt to address all of the specific comments related to each of the issues, but rather a summary, and points the reader to the specific comments for further review.

Core Issue	Summary of Comment	Party Making Comments	Page Number in Attachment D (All comments)
Issue 1- Specificity of Exemptions	**We recommend Model 440 give authority for the commissioner to provide exemptions by rule and moving some of the more detailed exemptions that may be adjusted in the future to Model Regulation 450.**	**Texas**	**7**

Staff Summary of the Issue:
During the June 2 call, direction was given to draft exemptions for 1) small county mutual insurers; 2) a group filing the BBA with the Federal Reserve, provided the BBA has to be filed with the lead state; 3) a group whose group-wide supervisor is an located in a reciprocal jurisdiction; 4) non-US groups that provide sufficient information to the lead state and either accepts the GCC in their jurisdiction for US groups or accepts the GCC as an acceptable ICS and indicates as such to the IAIS.

In addition, the direction given was the commissioner should have discretion to exempt other groups that are under the $1 billion ORSA premium threshold; don't have insurers in another country and don't have a bank with a capital requirements within the group. However, this exemption can only be granted after the group has filed one GCC with the lead state and the state has determined the group has de minimis affiliated transactions and de minimis risky entities within its holding company. This criteria is intended to give specificity as requested by RAA and APCIA and at the same time make sure the commissioner can require the GCC on a group where the group has material affiliated transactions (for which the GCC would be helpful) or has other noninsurers in the group which could cause material risk (for which the GCC may be helpful). Finally, paragraph (g) allows all of these entities that meet the exemption criteria just noted to instead only have to complete an annual Schedule 1 (from the GCC and related trending of that information) and also grants this Schedule 1 allowance to other entities (mutual or other entities whose UCP is a US insurance company that files RBC).

Recommended Action:
NAIC Staff recommends the Working Group further discuss the Texas proposal. This may be a reasonable suggestion as it relates to some of the very detailed exemption requirements. More specifically, the language discussed in the preceding paragraph (or paragraphs (f) and (g) in the exposed model) which provide the additional "flexibility" might be reasonable for inclusion in a model regulation instead of the model act since its exceptionally detailed. A model regulation may also be helpful in addressing other more detailed items suggested by Met Life/Prudential/RGA, if the Working Group decides to include the subgroup reciprocity paragraphs.

Comments on Exposure

Core Issue	Summary of Comment	Party Making Comments	Page Number in Attachment D (All comments)
Issue #2- Combine Exemption Discretion and Schedule 1 Discretion	**Our second section would be to combine and modify Section 4L(2)(f) and 4L(2)(g) to not require the Schedule 1 at the Commissioners discretion.**	**NAMIC**	**69**

Staff Summary of the Issue:
NAMIC notes that the purpose of this recommendation is so the lead state commissioner has the discretion to waive the GCC and Schedule 1 if the regulator does not feel it adds any value. We strongly feel if the ultimate controlling parent is an RBC filer, the GCC results would be substantially similar, therefore, we think the commissioner should have the authority to waive the GCC and other components.

Recommended Action:
NAIC Staff notes that while we are not opposed to combining these two sections, there are complications in doing so in that section 4L(2)(g) specifically allows mutuals to be exempt from the GCC and only file the Schedule 1 since RBC produces substantially the same results as the GCC. NAIC staff can appreciate the reason why the Schedule 1 may not provide value to a regulator for some small groups and would support the following modified language to allow such:

> *The lead-state commissioner has the discretion to either require or exempt the ultimate controlling person from filing a limited group filing or report on an annual basis if either of the following are met:*

Core Issue	Summary of Comment	Party Making Comments	Page Number in Attachment D (All comments)
Issue #3- Development of Process for "Recognizes and Accepts the GCC"	**"As 4L(2)(d) is written, the non-U.S. group wide supervisor must "recognize and accept" the U.S. GCC for non-U.S. groups to qualify for an exemption from the GCC." "…the phrase "recognizes and accepts" will need to be clarified by establishing a transparent process in an accompanying regulation or regulator guidance." "It could for example, be defined to allow supervisory regimes to demonstrate reciprocity through regulatory action.**	**ACLI**	**33**

Staff Summary of the Issue:
This comment letter provides greater detail on potential item to be addressed, although NAIC staff has already incorporated one of the identified items (recognizes and accepts if another jurisdiction does not require a US group to complete a GCC) including the NAIC acting as a central body to establish and maintain a record of jurisdictions that "recognize and accept" the GCC.

Comments on Exposure

Recommended Action:
NAIC agrees that it will be necessary to create a list of jurisdictions that recognize the GCC and to have an NAIC group responsible for developing such a process and possibly even codifying such a listing, unless other more streamlined processes can be recommended (e.g. inclusion on the listing may be dependent upon identification from a member of the industry operating in that jurisdiction and NAIC staff confirming with such jurisdiction).

Core Issue	Summary of Comment	Party Making Comments	Page Number in Attachment D (All comments)
Issue #4- Initial Filing Requirement	**In some cases, for which exemption is apparently provided in the draft HCA text, the group must nonetheless make an initial filing of the GCC with the Lead State, and only subsequent to that could the commissioner grant the exemption. It is not clear why an initial filing would be required, and which would seem to contradict the notion of an exemption.**	**AHIP**	**48**

Staff Summary of the Issue:
The comment is directed at the Working Group's previous decision to require an initial filing to determine the benefits of the calculation for the applicable groups.

Recommended Action:
NAIC staff understood the Working Group's rational for the initial filing to suggest that obtaining one filing would enable the regulator to better assess on an individual company basis whether the calculation would provide collective information or individual information that was of value; if not the regulator would more confidently be able to exempt the group going forward. Therefore rejection of this comment appears appropriate.

Core Issue	Summary of Comment	Party Making Comments	Page Number in Attachment D (All comments)
Issue #5- Exemption for non-US Groups	**The draft Act does not include language similar to Section 6(D) of the ORSA Model Act, which allows regulators to grant an ORSA exemption "based upon unique circumstances." APCIA recommends including similar language in Sections 4(L)(2)(f) and (g) of the draft Act.**	**John Hancock**	**25**

Staff Summary of the Issue:
While the comment letter provides a great deal of backdrop, ultimately the comment recommends the following changes:

c. An insurance holding company:
(i) That has provided information to the accredited lead state, either directly or indirectly through the group-wide supervisor, who has determined such

Comments on Exposure

information is satisfactory to allow the lead-state to comply with the NAIC principles of group supervision as detailed in the NAIC Financial Analysis Handbook, and the lead state has determined that because of this the group capital calculation is not required to be filed; and

(ii) Whose non-U.S. group-wide supervisor, as determined in accordance with the principles of section 7.1, meets either of the following requirements:

a. Where a non-U.S. jurisdiction does not apply its own group capital reporting requirements to U.S. groups or the parent of a U.S. subsidiary operating in that jurisdiction, then the U.S. would not require insurance groups or their parent company domiciled outside the U.S. to file the group capital calculation~~Recognizes and accepts the group capital calculation for U.S. insurance groups who operate in the jurisdiction of that group-wide supervisor;~~ or

Drafting Note: The phase "Recognizes and accepts" does not require the non-U.S. group-wide supervisor to require the U.S. insurance groups to actually file the group capital calculation with the non-U.S. supervisor but rather does not require its own version of a group capital filing.

b. For jurisdictions where no U.S. insurance groups operate, ~~recognizes the group capital calculation as an acceptable international capital standard by indicating such formally in writing to the lead state with a copy to the International Association of Insurance Supervisor.~~the requirement to file the group capital calculation is at the discretion of the U.S. designated group-wide supervisor for the internationally active insurance group.

Recommended Action:

As it relates to the recommended changes to (iv)(a), NAIC staff believes that the concept embedded in the recommended change to (iv)(a) was intended to be addressed in the drafting note. For that reason, NAIC staff has incorporated language from other comment letters that likely address this. As it relates to the recommended changes to (iv)(b), it's not clear why the NAIC should not encourage, through other jurisdictions, the acceptance of the GCC where the result would be the same (such non-US group is exempt from the GCC). Meaning, if the discretion exists, its likely the state would do so. With existing language, the jurisdiction need only to make the recommendation to the IAIS as a means to support more mutual recognition through the use of different methodologies.

Core Issue	Summary of Comment	Party Making Comments	Page Number in Attachment D (All comments)
Issue #6- Broad Definition of Financial Entity	**Affiliates that are integral to the performance of the insurance contract or provision of the insurance or financial products or services to policyholder, members or depositors will be treated as financial entities. AHIP suggests that the reference to "specified regulatory capital framework within is holding company structure be clarified to refer to the capital remine of the other sectoral regulators (e.g. federal or state banking agencies).**	**AHIP**	**48**

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Staff Summary of the Issue:
The comment is referring to the following requirement that must be met in order for an exemption to be granted.

> *"The holding company includes no banking, depository or other financial entity that is subject to a specified regulatory capital framework."*

Recommended Action:
NAIC staff believes the language is clear that this criteria only exists for financial entities that have a capital requirement, we hesitate to add too much specificity which may undermine the concept of believing its reasonable of not allowing a group that has a non-insurer within its group that is subject to a capital requirements to be exempt given the state may receive some pressure of being able to share group information with that capital regulator.

Core Issue	Summary of Comment	Party Making Comments	Page Number in Attachment D (All comments)
Issue #7- Add Language limiting sharing through a supervisory college	**Add language to limit sharing**	**Coalition**	**N/A- Informal comments**

Staff Summary of the Issue:
Some have recommended adding the following additional provision to 8(c)2:

> *Notwithstanding paragraph (1) above, the commissioner may only share confidential and privileged documents, material, or information reported under Section 4L(2) with commissioners of states that are members of the subject insurer's supervisory college, and whose states have statutes or regulations substantially similar to Subsection A and who have agreed in writing not to disclose such information.*

Recommended Action:
NAIC staff find this language problematic as this would only permit the GCC to be shared with commissioners who are part of the supervisory college. Staff noted that lead states need to be able to share key figures of the information from the GCC with all domestic regulators of companies that are part of that group and have examination and/or analysis statutes that protect such information. We believe existing confidentiality requirements are sufficient to do so.

Core Issue	Summary of Comment	Party Making Comments	Page Number in Attachment D (All comments)
Issue #8 Reciprocity Those Opposed	**The comment letter suggests a significant number of issues would need to be addressed before reciprocity paragraphs are appropriate**	**Allianz / Transamerica**	**1**

Comments on Exposure

Opposed	**"Hardwiring one solution into the Act or state law is not, in our opinion, the appropriate way to proceed." "Instead the NAIC should develop a process…." "…this process should involve consultation and coordination with U.S. regulators' international colleagues, and it should be made clear that the purpose of this process is to support mutual recognition and a level regulatory playing field."**	**APCIA**	**11**
Opposed	**While Swiss Re agrees with the premise that a country's group capital calculation should not apply at the subgroup level, we do not support including this language in the model act.**	**Swiss Re**	**41**
Opposed	**We cannot support the revised language proposed in subsections 4.L.(2)d. and e. and the drafting note, which would require a U.S. subgroup capital calculation for a non-U.S. group if the group-wide supervisor of that non-U.S. insurance group does not treat subgroups of U.S. groups in a similar manner (i.e. reciprocal treatment).**	**RAA**	**61**
Support	**The ACLI supports the inclusion of a reciprocity provision, such as subsection 4L(2)(e) in the Model Holding Company Act. We believe that the phrase "recognizing and accepts" will need to be clarified upon implementation, perhaps in an accompanying regulation, or by a process that is transparent on how reciprocity is determined in practice, and equitable to insurers based in all jurisdictions.**	**ACLI**	**34**
Support	**We support the inclusion of Section 4L(2)(e) to clarify that reciprocal treatment applies at the subgroup level as well as the groupwide level.**	**Met/PRU/RGA**	**73**

Comments on Exposure

Staff Summary of the Issue:

During 2019, the Working Group discussed the idea of "subgroup reporting" of the GCC, or more specifically whether the GCC should be required for the US operations (e.g. US insurers) of non-US groups and generally concluded they were not interested in this concept, noting that the GCC was not designed for this purpose. During the June 2 conference call of the Working Group, one of the commenters (RGA) discussed the concern that many companies have relative to Subgroup reporting, and more specifically that some jurisdictions could potentially require this for US groups with insurers in such jurisdictions, but that reciprocity was important to help prevent this from becoming a widespread practice that could eventually disadvantage US insurers. Responses from two regulators indicated a desire to discuss reciprocity more and as a result, language from RGA that incorporates the reciprocity was incorporated into the exposed draft to assist in such a discussion. More specifically, the language in (e) below was included to indicate that non-US groups otherwise exempt under either (c) or (d) below would NOT be exempt if the other jurisdiction required "subgroup reporting for a US group in that jurisdiction", and would actually require the non-US group to file a "US subgroup GCC." Note, subgroup reporting is ONLY required if done so first by another jurisdiction.

d. An insurance holding company whose non-U.S. group-wide supervisor, as determined in accordance with the principles of section 7.1, is located within a Reciprocal Jurisdiction [insert cross-reference to appropriate section of Credit for Reinsurance Law].

e. An insurance holding company:

(iii) That has provided information to the accredited lead state, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the lead-state to comply with the NAIC principles of group supervision as detailed in the NAIC Financial Analysis Handbook, and the lead state has determined that because of this the group capital calculation is not required to be filed; and

(iv) Whose non-U.S. group-wide supervisor, as determined in accordance with the principles of section 7.1, meets either of the following requirements:

a. Recognizes and accepts the group capital calculation for U.S. insurance groups who operate in the jurisdiction of that group-wide supervisor; or

Drafting Note: The phase "Recognizes and accepts" does not require the non-U.S. group-wide supervisor to require the U.S. insurance groups to actually file the group capital calculation with the non-U.S. supervisor but rather does not require its own version of a group capital filing.

b. For jurisdictions where no U.S. insurance groups operate, recognizes the group capital calculation as an acceptable international capital standard by indicating such formally in writing to the lead state with a copy to the International Association of Insurance Supervisor.

f. The exemptions in Sections 4L(2)(c) and 4L(2)(d) shall not apply to the U.S. operations of a non-U.S. insurance holding company if its group-wide supervisor does not recognize and accept the group capital calculation for any U.S. insurance group's operations in that group-wide supervisor's jurisdiction.

Recommended Action:

NAIC staff recommends the Working Group further discuss if they support the subgroup reporting/RGA reciprocity concept. Even if the Working Group decides against retaining the language, further guidance will still need to be developed around a process of listing jurisdictions the NAIC considers having shown reciprocity to the GCC. If the Working Group decides for reciprocity, the language proposed by Met Life/Prudential/could serve as a possible language to be included in a model language that describes such a process. Doing so may also limit the need for incorporation of the specific language in the model act, but rather including in the model regulation that defines reciprocity in more detail, although all other reciprocity language included in the revised proposed draft could be retained in the Model Act. In summary, the model regulation could house this detail on reciprocity as well as the commissioner's discretion to grant exemptions for groups below the ORSA thresholds, which is very detailed.

Comments on Exposure

Core Issue	Summary of Comment	Party Making Comments	Page Number in Attachment D (All comments)
Issue #9- Expand Exemptions	**Our suggestion is to expand the exemption criteria in Section 4L(2)(a) to include holding company groups with direction premiums less than $100,000,000.**	**NAMIC**	**68**

Staff Summary of the Issue:
Some have recommended adding the following additional provision to 8(c)2:

> *Notwithstanding paragraph (1) above, the commissioner may only share confidential and privileged documents, material, or information reported under Section 4L(2) with commissioners of states that are members of the subject insurer's supervisory college, and whose states have statutes or regulations substantially similar to Subsection A and who have agreed in writing not to disclose such information.*

Recommended Action:
NAIC staff notes that under the current exposure, all mutual insurance companies are exempt from filing the GCC since their ultimate controlling person is a U.S. regulated insurer that already completes an annual RBC filing and only need file the Schedule 1 and related analytics. NAIC staff further notes insurers with less than $1 billion in premium (which would include those with less than $100 million) can be exempted from the GCC if other limited requirements are met. Finally, NAIC staff notes that insurers that are not in a holding company structure (e.g. no other affiliates) would not be subject to the GCC as they are not subject to the Holding Company Act.

Core Issue	Summary of Comment	Party Making Comments	Page Number in Attachment D (All comments)
Issue #10- Confidentiality Language	**We would request on minor change to Section 8 to reflect the intent of the GCC but also acknowledge the GCC not a tool to assess group risk, but rather as an additional tool to assess and insurer's risk.**	**NAMIC**	**72**

Staff Summary of the Issue:
They recommend the following change:

> *It is the judgement of the legislature that the group capital calculation and resulting group capital ratio required under Section 4L(2) is a regulatory tool for assessing ~~group~~ insurer's risks and capital adequacy, and is not intended as a means to rank insurers or insurance holding company systems generally*

Recommended Action:
NAIC staff disagrees, noting that the original language proposed from the Coalition accurately captures that the GCC is a tool for assessing group risk, even though we agree that the purpose of determining group risk is to evaluate its potential impact on the insurer. However, we believe the proposed language is inaccurate.

Comments on Exposure

Core Issue	Summary of Comment	Party Making Comments	Page Number in Attachment D (All comments)
Issue #11- Commissioner Authority for Further Exemptions	**The draft Act does not include language similar to Section 6(D) of the ORSA Model Act, which allows regulators to grant an ORSA exemption "based upon unique circumstances." APCIA recommends including similar language in Sections 4(L)(2)(f) and (g) of the draft Act.**	**APCIA & AHIP**	**12 & 48**

Staff Summary of the Issue:
This comment recommends the following additional exception authority be added:

> *An insurer that does not qualify for exemption pursuant to subsections (e) and (f) may apply to the commissioner for a waiver from the requirements of this Act based upon unique circumstances. In deciding whether to grant the insurer's request for waiver, the commissioner may consider the type and volume of business written, ownership and organizational structure, and any other factor the commissioner considers relevant to the insurer or insurance group of which the insurer is a member. If the insurer is part of an insurance group with insurers domiciled in more than one state, the commissioner shall coordinate with the lead state commissioner and with the other domiciliary commissioners in considering whether to grant the insurer's request for a waiver.*

Recommended Action:
This issue has not been discussed previously although NAIC staff has some concerns with this suggestion, specifically that a group that does business in a covered agreement jurisdiction could be exempted, creating an issue.

Core Issue	Summary of Comment	Party Making Comments	Page Number in Attachment D (All comments)
Issue #12- Deleting Language from Section 8A which applies to rest of Act	**ORSA Model 505 does not contain this language**	**AHIP**	**57**

Staff Summary of the Issue:
The language in reference is as follows but is currently part of the Form F and other existing HCA authorities for the Commissioner:

> *The Commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines the that the interest of policyholder, shareholder or the public will be served by the publication thereof, in which event the commissioner may publish all or any part in such manner as may be deemed appropriate.*

Comments on Exposure

Recommended Action:

Some comments suggest deleting the language to mirror the Confidentiality of the *Risk Management and Own Risk and Solvency Assessment Model Act* (#505) with respect to ORSA Summary Report. However, this language is applicable to more than just the Group Capital Calculation, and consideration needs to be given to whether it is necessary to retain this authority for other aspects of this section, NAIC recommends this language not be deleted for this reason. NAIC staff is not opposed to AHIP proposing language that would specify this language is not applicable to the GCC.

INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT

Table of Contents

Section 1. Definitions

As used in this Act, the following terms shall have these meanings unless the context shall otherwise require:

A. "Affiliate." An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

B. "Commissioner." The term "commissioner" shall mean the insurance commissioner, the commissioner's deputies, or the Insurance Department, as appropriate.

Drafting Note: Insert the title of the chief insurance regulatory official wherever the word "commissioner" appears.

C. "Control." The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by Section 4K that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

D. "Group-wide supervisor." The regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined or acknowledged by the commissioner under Section 7.1 to have sufficient significant contacts with the internationally active insurance group.

E. "Group Capital Calculation instructions" means the GCC report, including group capital calculation instructions, as adopted by the NAIC and as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

F. "Insurance Holding Company System." An "insurance holding company system" consists of two (2) or more affiliated persons, one or more of which is an insurer.

GF. "Insurer." The term "insurer" shall have the same meaning as set forth in Section [insert applicable section] of this Chapter, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

Drafting Note: References in this model act to "Chapter" are references to the entire state insurance code.

Drafting Note: States should consider applicability of this model act to fraternal societies and captives.

HG. "Internationally active insurance group." An insurance holding company system that (1) includes an insurer registered under Section 4; and (2) meets the following criteria: (a) premiums written in at least three countries, (b) the percentage of gross premiums written outside the United States is at least ten percent (10%) of the insurance holding company system's total gross written premiums, and (c) based on a three-year rolling average, the total assets of the insurance holding company system are at least fifty billion dollars ($50,000,000,000) or the total gross written premiums of the insurance holding company system are at least ten billion dollars ($10,000,000,000).

IH. "Enterprise Risk." "Enterprise risk" shall mean any activity, circumstance, event or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer's Risk-Based Capital to fall into company action level as set forth in [insert cross reference to appropriate section of Risk-Based Capital (RBC) Model Act] or would cause the insurer to be in hazardous financial condition [insert cross reference to appropriate section of Model Regulation to define standards and commissioner's authority over companies deemed to be in hazardous financial condition].

J. "NAIC" means the national association of insurance commissioners.

K. ~~"Materially risky non-insurers" means a non-insurer that could adversely impact the ability of an affiliated insurer to pay policyholder claims~~

LI. "Person." A "person" is an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any joint venture partnership exclusively engaged in owning, managing, leasing or developing real or tangible personal property.

MJ. "Securityholder." A "securityholder" of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing.

NK. "Subsidiary." A "subsidiary" of a specified person is an affiliate controlled by such person directly or indirectly through one or more intermediaries.

OL. "Voting Security." The term "voting security" shall include any security convertible into or evidencing a right to acquire a voting security.

Section 2. Subsidiaries of Insurers

A. Authorization. A domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries. The subsidiaries may conduct any kind of business or businesses and their authority to do so shall not be limited by reason of the fact that they are subsidiaries of a domestic insurer.

Drafting Note: This bill neither expressly authorizes noninsurance subsidiaries nor restricts subsidiaries to insurance related activities. It is believed that this is a policy decision which should be made by each individual state. Attached as an appendix are alternative provisions which would authorize the formation or acquisition of subsidiaries to engage in diversified business activity.

B. Additional Investment Authority. In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under all other sections of this Chapter, a domestic insurer may also:

(1) Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ten percent (10%) of the insurer's assets or fifty percent (50%) of the insurer's surplus as regards policyholders, provided that after such investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs. In calculating the amount of such investments, investments in domestic or foreign insurance subsidiaries and health maintenance organizations shall be excluded, and there shall be included:

(a) Total net monies or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities, and

(b) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities; and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation;

Drafting Note: When considering whether to amend its Holding Company Act to exempt health maintenance organizations and other similar entities from certain investment limitations, a state should consider whether the solvency and general operations of the entities are regulated by the insurance department. In addition to, or in place of, the term "health maintenance organizations" in Paragraph (1) above, a state may include any other entity which provides or arranges for the financing or provision of health care services or coverage over which the commissioner possesses financial solvency and regulatory oversight authority.

(2) Invest any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer provided that each subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in Paragraph (1) or in Sections [insert applicable section] through [insert applicable section] of this Chapter applicable to the insurer. For the purpose of this paragraph, "the total investment of the insurer" shall include:

(a) Any direct investment by the insurer in an asset, and

(b) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of the subsidiary;

(3) With the approval of the commissioner, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries; provided that after the investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

C. Exemption from Investment Restrictions. Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to Subsection B shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in this Chapter applicable to such investments of insurers [except the following:].

Drafting Note: The last phrase is optional in those states having certain special qualitative limitations, such as prohibitions on investments in stock of mining companies, which the state may wish to retain as a matter of public policy.

D. Qualification of Investment; When Determined. Whether any investment made pursuant to Subsection B meets the applicable requirements of that subsection is to be determined before the investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of

capital invested, not including dividends.

E. Cessation of Control. If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three (3) years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after the investment shall have been made, the investment shall have met the requirements for investment under any other section of this Chapter, and the insurer has so notified the commissioner.

Section 3. Acquisition of Control of or Merger with Domestic Insurer

A. Filing Requirements.

(1) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of the insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time the offer, request or invitation is made or the agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to the insurer, a statement containing the information required by this section and the offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner prescribed in this Act.

(2) For purposes of this section, any controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer, in any manner, shall file with the commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least 30 days prior to the cessation of control. The commissioner shall determine those instances in which the party(ies) seeking to divest or to acquire a controlling interest in an insurer, will be required to file for and obtain approval of the transaction. The information shall remain confidential until the conclusion of the transaction unless the commissioner, in his or her discretion determines that confidential treatment will interfere with enforcement of this section. If the statement referred to in Paragraph (1) is otherwise filed, this paragraph shall not apply.

(3) With respect to a transaction subject to this section, the acquiring person must also file a pre-acquisition notification with the commissioner, which shall contain the information set forth in Section 3.1C(1). A failure to file the notification may be subject to penalties specified in Section 3.1E(3).

(4) For purposes of this section a domestic insurer shall include any person controlling a domestic insurer unless the person, as determined by the commissioner, is either directly or through its affiliates primarily engaged in business other than the business of insurance. For the purposes of this section, "person" shall not include any securities broker holding, in the usual and customary broker's function, less than twenty percent (20%) of the voting securities of an insurance company or of any person which controls an insurance company.

B. Content of Statement. The statement to be filed with the commissioner shall be made under oath or affirmation and shall contain the following:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in Subsection A is to be effected (hereinafter called the "acquiring party"), and

(a) If the person is an individual, his or her principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years;

(b) If the person is not an individual, a report of the nature of its business operations during the past five (5) years or for the lesser period as the person and any predecessors shall have been in existence; an informative description of the business intended to be done by the person and the person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to such positions. The list shall include for each individual the information required by Subparagraph (a) of this paragraph;

(2) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction where funds were or are to be obtained for any such purpose (including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates), and the identity of persons furnishing consideration; provided, however, that where a source of consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing the statement so requests;

(3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years of each acquiring party (or for such lesser period as the acquiring party and any predecessors shall have been in existence), and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement;

(4) Any plans or proposals which each acquiring party may have to liquidate the insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;

(5) The number of shares of any security referred to in Subsection A which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement or acquisition referred to in Subsection A, and a statement as to the method by which the fairness of the proposal was arrived at;

(6) The amount of each class of any security referred to in Subsection A which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(7) A full description of any contracts, arrangements or understandings with respect to any security referred to in Subsection A in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the persons with whom the contracts, arrangements or understandings have been entered into;

(8) A description of the purchase of any security referred to in Subsection A during the twelve (12) calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers and consideration paid or agreed to be paid;

(9) A description of any recommendations to purchase any security referred to in Subsection A made during the twelve (12) calendar months preceding the filing of the statement by any acquiring party, or by anyone based upon interviews or at the suggestion of the acquiring party;

(10) Copies of all tender offers for, requests, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in Subsection A, and (if distributed) of additional soliciting material relating to them;

(11) The term of any agreement, contract or understanding made with or proposed to be made with any broker-dealer as to solicitation of securities referred to in Subsection A for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto;

Drafting Note: An insurer required to file information pursuant to sub-sections 3B(12) and 3B(13) may satisfy the requirement by providing the commissioner with the most recently filed parent corporation reports that have been filed with the SEC, if appropriate.

(12) An agreement by the person required to file the statement referred to in Subsection A that it will provide the annual report, specified in Section 4L1, for so long as control exists;

(13) An acknowledgement by the person required to file the statement referred to in Subsection A that the person and all subsidiaries within its control in the insurance holding company system will provide information to the commissioner upon request as necessary to evaluate enterprise risk to the insurer; and

(14) Such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

If the person required to file the statement referred to in Subsection A is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by Paragraphs (1) through (14) shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls the partner or member. If any partner, member or person is a corporation or the person required to file the statement referred to in Subsection A is a corporation, the commissioner may require that the information called for by Paragraphs (1) through (14) shall be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of the corporation.

If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to the insurer pursuant to this section, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the commissioner and sent to the insurer within two (2) business days after the person learns of the change.

C. Alternative Filing Materials.

If any offer, request, invitation, agreement or acquisition referred to in Subsection A is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in Subsection A may utilize the documents in furnishing the information called for by that statement.

D. Approval by Commissioner: Hearings.

(1) The commissioner shall approve any merger or other acquisition of control referred to in Subsection A unless, after a public hearing, the commissioner finds that:

(a) After the change of control, the domestic insurer referred to in Subsection A would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(b) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly. In applying the competitive standard in this subparagraph:

(i) The informational requirements of Section 3.1C(1) and the standards of Section 3.1D(2) shall apply;

(ii) The merger or other acquisition shall not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by Section 3.1D(3) exist; and

(iii) The commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;

(c) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;

(d) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(e) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

(f) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

(2) The public hearing referred to in Paragraph (1) shall be held within thirty (30) days after the statement required by Subsection A is filed, and at least twenty (20) days notice shall be given by the commissioner to the person filing the statement. Not less than seven (7) days notice of the public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The commissioner shall make a determination within the sixty (60) day period preceding the effective date of the proposed transaction. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the [insert title] Court of this state. All discovery proceedings shall be concluded not later than three (3) days prior to the commencement of the public hearing.

(3) If the proposed acquisition of control will require the approval of more than one commissioner, the public hearing referred to in Paragraph (2) may be held on a consolidated basis upon request of the person filing the statement referred to in Subsection A. Such person shall file the statement referred to in Subsection A with the National Association of Insurance Commissioners (NAIC) within five (5) days of making the request for a public hearing. A commissioner may opt out of a consolidated hearing, and shall provide notice to the applicant of the opt-out within ten (10) days of the receipt of the statement referred to in Subsection A. A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the commissioners of the states in which the insurers are domiciled. Such commissioners shall hear and receive evidence. A commissioner may attend such hearing, in person or by telecommunication.

(4) In connection with a change of control of a domestic insurer, any determination by the commissioner that the person acquiring control of the insurer shall be required to maintain or restore the capital of the insurer to the level required by the laws and regulations of this state shall be made not later than sixty (60) days after the date of notification of the change in control submitted pursuant to Section 3A(1) of this Act.

(5) The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control.

E. Exemptions. The provisions of this section shall not apply to:

(1) [Any transaction which is subject to the provisions of Sections [insert applicable section] and [insert applicable section] of the laws of this state, dealing with the merger or consolidation of two or more insurers].

Drafting Note: Optional for use in those states where existing law adequately governs standards and procedures for the merger or consolidation of two or more insurers.

(2) Any offer, request, invitation, agreement or acquisition which the commissioner by order shall exempt as not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or as otherwise not comprehended within the purposes of this section.

F. Violations. The following shall be violations of this section:

(1) The failure to file any statement, amendment or other material required to be filed pursuant to Subsection A or B; or

(2) The effectuation or any attempt to effectuate an acquisition of control of, divestiture of, or merger with, a domestic insurer unless the commissioner has given approval.

G. Jurisdiction, Consent to Service of Process. The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled or authorized to do business in this state who files a statement with the commissioner under this section, and overall actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by the person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to the person at his last known address.

Section 3.1 Acquisitions Involving Insurers Not Otherwise Covered

A. Definitions. The following definitions shall apply for the purposes of this section only:

(1) "Acquisition" means any agreement, arrangement or activity the consummation of which results in a person acquiring directly or indirectly the control of another person, and includes but is not limited to the acquisition of voting securities, the acquisition of assets, bulk reinsurance and mergers.

(2) An "involved insurer" includes an insurer which either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.

B. Scope

(1) Except as exempted in Paragraph (2) of this subsection, this section applies to any acquisition in which there is a change in control of an insurer authorized to do business in this state.

(2) This section shall not apply to the following:

(a) A purchase of securities solely for investment purposes so long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this state. If a purchase of securities results in a presumption of control under Section 1C, it is not solely for investment purposes unless the commissioner of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and the disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the commissioner of this state;

(b) The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if pre-acquisition notification is filed with the commissioner in accordance with Section 3.1C(1) thirty (30) days prior to the proposed effective date of the acquisition. However, such pre-acquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by any other subparagraph of Section 3.1B(2);

(c) The acquisition of already affiliated persons;

(d) An acquisition if, as an immediate result of the acquisition,

(i) In no market would the combined market share of the involved insurers exceed five percent (5%) of the total market,

(ii) There would be no increase in any market share, or

(iii) In no market would

(I) The combined market share of the involved insurers exceeds twelve percent (12%) of the total market, and

(II) The market share increase by more than two percent (2%) of the total market.

For the purpose of this Paragraph (2)(d), a market means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state;

(e) An acquisition for which a pre-acquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business;

(f) An acquisition of an insurer whose domiciliary commissioner affirmatively finds that the insurer is in failing condition; there is a lack of feasible alternative to improving such condition; the public benefits of improving the insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition; and the findings are communicated by the domiciliary commissioner to the commissioner of this state.

C. Pre-acquisition Notification; Waiting Period. An acquisition covered by Section 3.1B may be subject to an order pursuant to Section 3.1E unless the acquiring person files a pre-acquisition notification and the waiting period has expired. The acquired person may file a pre-acquisition notification. The commissioner shall give confidential treatment to information submitted under this subsection in the same manner as provided in Section 8 of this Act.

(1) The pre-acquisition notification shall be in such form and contain such information as prescribed by the National Association of Insurance Commissioners (NAIC) relating to those markets which, under Section 3.1B(2)(d), cause the acquisition not to be exempted from the provisions of this section. The commissioner may require such additional material and information as deemed necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of Section 3.1D. The required information may include an opinion of an economist as to the competitive impact of the acquisition in this state accompanied by a summary of the education and experience of such person indicating his or her ability to render an informed opinion.

(2) The waiting period required shall begin on the date of receipt of the commissioner of a pre-acquisition notification and shall end on the earlier of the thirtieth day after the date of receipt, or termination of the waiting period by the commissioner. Prior to the end of the waiting period, the commissioner on a one-time basis may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the thirtieth day after receipt of the additional information by the commissioner or termination of the waiting period by the commissioner.

D. Competitive Standard

(1) The commissioner may enter an order under Section 3.1E(1) with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in this state or tend to create a monopoly or if the insurer fails to file adequate information in compliance with Section 3.1C.

(2) In determining whether a proposed acquisition would violate the competitive standard of Paragraph (1) of this subsection, the commissioner shall consider the following:

(a) Any acquisition covered under Section 3.1B involving two (2) or more insurers competing in the same market is *prima facie* evidence of violation of the competitive standards.

(i) If the market is highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
4%	4% or more
10%	2% or more
15%	1% or more

(ii) Or, if the market is not highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
5%	5% or more
10%	4% or more
15%	3% or more
19%	1% or more

A highly concentrated market is one in which the share of the four (4) largest insurers is seventy-five percent (75%) or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two (2) insurers are involved, exceeding the total of the two columns in the table is *prima facie* evidence of violation of the competitive standard in Paragraph (1) of this subsection. For the purpose of this item, the insurer with the largest share of the market shall be deemed to be Insurer A.

(b) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the two (2) largest to the eight (8) largest, has increased by seven percent (7%) or more of the market over a period of time extending from any base year five (5) to ten (10) years prior to the acquisition up to the time of the acquisition. Any acquisition or merger covered under Section 3.1B involving two (2) or more insurers competing in the same market is *prima facie* evidence of violation of the competitive standard in Paragraph (1) of this subsection if:

(i) There is a significant trend toward increased concentration in the market;

(ii) One of the insurers involved is one of the insurers in a grouping of large insurers showing the requisite increase in the market share; and

(iii) Another involved insurer's market is two percent (2%) or more.

(c) For the purposes of Section 3.1D(2):

(i) The term "insurer" includes any company or group of companies under common management, ownership or control;

(ii) The term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the NAIC and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this state, and the relevant geographical market is assumed to be this state;

(iii) The burden of showing *prima facie* evidence of violation of the competitive standard rests upon the commissioner.

(d) Even though an acquisition is not *prima facie* violative of the competitive standard under Paragraphs (2)(a) and (2)(b) of this subsection, the commissioner may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is *prima facie* violative of the competitive standard under Paragraphs (2)(a) and (2)(b) of this subsection, a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this subparagraph include, but are not limited to, the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.

(3) An order may not be entered under Section 3.1E(1) if:

(a) The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits which would arise from such economies exceed the public benefits which would arise from not lessening competition; or

(b) The acquisition will substantially increase the availability of insurance, and the public benefits of the increase exceed the public benefits which would arise from not lessening competition.

E. Orders and Penalties

(1) (a) If an acquisition violates the standards of this section, the commissioner may enter an order:

(i) Requiring an involved insurer to cease and desist from doing business in this state with respect to the line or lines of insurance involved in the violation; or

(ii) Denying the application of an acquired or acquiring insurer for a license to do business in this state.

(b) Such an order shall not be entered unless:

(i) There is a hearing;

(ii) Notice of the hearing is issued prior to the end of the waiting period and not less than fifteen (15) days prior to the hearing; and

(iii) The hearing is concluded and the order is issued no later than sixty (60) days after the date of the filing of the pre-acquisition notification with the commissioner.

Every order shall be accompanied by a written decision of the commissioner setting forth findings of fact and conclusions of law.

(c) An order pursuant to this paragraph shall not apply if the acquisition is not consummated.

(2) Any person who violates a cease and desist order of the commissioner under Paragraph (1) and while the order is in effect may, after notice and hearing and upon order of the commissioner, be subject at the discretion of the commissioner to one or more of the following:

(a) A monetary penalty of not more than $10,000 for every day of violation; or

(b) Suspension or revocation of the person's license.

(3) Any insurer or other person who fails to make any filing required by this section, and who also fails to demonstrate a good faith effort to comply with any filing requirement, shall be subject to a fine of not more than $50,000.

F. Inapplicable Provisions. Sections 10B, 10C, and 12 do not apply to acquisitions covered under Section 3.1B.

Section 4. Registration of Insurers

A. Registration. Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in:

(1) Section 4;

(2) Section 5A(1), 5B, 5D; and

(3) Either Section 5A(2) or a provision such as the following: Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen (15) days after the end of the month in which it learns of each change or addition.

Any insurer which is subject to registration under this section shall register within fifteen (15) days after it becomes subject to registration, and annually thereafter by [insert date] of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require any insurer authorized to do business in the state which is a member of an insurance holding company system, and which is not subject to registration under this section, to furnish a copy of the registration statement, the summary specified in Section 4C or other information filed by the insurance company with the insurance regulatory authority of its domiciliary jurisdiction.

B. Information and Form Required. Every insurer subject to registration shall file the registration statement with the commissioner on a form and in a format prescribed by the NAIC, which shall contain the following current information:

(1) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;

(2) The identity and relationship of every member of the insurance holding company system;

(3) The following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the insurer and its affiliates:

(a) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(b) Purchases, sales or exchange of assets;

(c) Transactions not in the ordinary course of business;

(d) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(e) All management agreements, service contracts and all cost-sharing arrangements;

(f) Reinsurance agreements;

(g) Dividends and other distributions to shareholders; and

(h) Consolidated tax allocation agreements;

(4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system;

(5) If requested by the commissioner, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include but are not limited to annual audited financial statements filed with the U.S. Securities and Exchange Commission (SEC) pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended. An insurer required to file financial statements pursuant to this paragraph may satisfy the request by providing the commissioner with the most recently filed parent corporation financial statements that have been filed with the SEC;

(6) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner;

Drafting Note: Neither option below is intended to modify applicable state insurance and/or corporate law requirements.

(7) Statements that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures; and

Alternative Section 4B(7):

(7) Statements that the insurer's board of directors is responsible for and oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures; and

(8) Any other information required by the commissioner by rule or regulation.

C. Summary of Changes to Registration Statement. All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

D. Materiality. No information need be disclosed on the registration statement filed pursuant to Subsection B if the information is not material for the purposes of this section. Unless the commissioner by rule, regulation or order provides otherwise; sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of one percent (.5%) or less of an insurer's admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this section. The definition of materiality provided in this subsection shall not apply for purposes of the Group Capital Calculation.

E. Reporting of Dividends to Shareholders. Subject to Section 5B, each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen (15) business days following the declaration thereof.

F. Information of Insurers. Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, where the information is reasonably necessary to enable the insurer to comply with the provisions of this Act.

G. Termination of Registration. The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

H. Consolidated Filing. The commissioner may require or allow two (2) or more affiliated insurers subject to registration to file a consolidated registration statement.

I. Alternative Registration. The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under Subsection A and to file all information and material required to be filed under this section.

J. Exemptions. The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the commissioner by rule, regulation or order shall exempt the same from the provisions of this section.

K. Disclaimer. Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or a disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. A disclaimer of affiliation shall be deemed to have been granted unless the commissioner, within thirty (30) days following receipt of a complete disclaimer, notifies the filing party the disclaimer is disallowed. In the event of disallowance, the disclaiming party may request an administrative hearing, which shall be granted. The disclaiming party shall be relieved of its duty to register under this section if approval of the disclaimer has been granted by the commissioner, or if the disclaimer is deemed to have been approved.

L. Enterprise Risk Filings.

(1) The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners;

(2) Group Capital Calculation. Notwithstanding any exemptions from the registration contained in this Act~~provision, to the contrary~~ the ~~each~~ultimate controlling person of every insurer subject to registration shall ~~also~~file an annual group capital calculation as directed by the lead state commissioner, completed in accordance with the NAIC Group Capital Calculation Instructions. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the

National Association of Insurance Commissioners, unless one of the following exemptions for the Insurance Holding Company System is met:

a. An insurance holding company that does not conduct business outside of the U.S. and either (a) is an insurer classified as either a county mutual insurance company, a town mutual insurance company or a farmers' mutual insurance company; or (b) has direct premiums written less than $1,000,000 in any calendar yearand less than 1,000 policyholders or certificate holders of direct written policies nationwide at the end of the calendar year;

b. An insurance holding company whose U.S. group-wide supervisorwho is required to perform a group capital calculation specified by the United States Federal Reserve Board. Instead, the insurance holding company shall file a copy of the calculation required by the United States Federal Reserve with the lead state commissioner, if permitted by federal law and regulation. The insurance holding company is under an affirmative duty to facilitate information-sharing between the lead state commissioner and the United States Federal Reserve Board to the maximum extent permissible by state or federal law, and shall take any necessary steps to facilitate this exchange of information on a regular basis, and who is permitted by its lead state commissioner to instead file a copy of the calculation required by the Federal Reserve Board, with the lead state commissioner;

a.c. An insurance holding company whose non U.S. group-wide supervisor, as determined in accordance with the principles of section 7.1, is located within a Reciprocal Jurisdiction [insert cross-reference to appropriate section of Credit for Reinsurance Law];

d. An insurance holding company:

(i) That has provided information to the accredited lead state, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the lead-state to comply with the NAIC principles of group supervision as detailed in the NAIC Financial Analysis Handbook, and the lead state has determined that because of this the group capital calculation is not required to be filed; and

(ii) Whose non-U.S. group-wide supervisor, as determined in accordance with the principles of section 7.1, meets either of the following requirements:

a. Recognizes and accepts the group capital calculation for U.S. insurance groups who operate in the jurisdiction of that group-wide supervisor; or

Drafting Note: The phase "Recognizes and accepts" does not require the non-U.S. group-wide supervisor to require the U.S. insurance groups to actually file the group capital calculation with the non-U.S. supervisor but rather does not require its own version of a group capital filing.

b. Does not apply its own group capital reporting requirements to U.S. insurance groups, or to parent companies of U.S. insurance subsidiaires, who operate in the jurisdiction of that group-wide supervisor; or

a.c. For jurisdictions where no U.S. insurance groups operate, recognizes the group capital calculation as an acceptable international capital standard by indicating such formally in writing to the lead state with a copy to the International Association of Insurance Supervisor.

e. The exemptions in Sections 4L(2)(c) and 4L(2)(d) shall not apply to the U.S. operations of a non-U.S. insurance holding company if its group-wide supervisor does not recognize and accept the group capital calculation for any U.S. insurance group's operations in that group-wide supervisor's jurisdiction. A jurisdiction is deemed to "recognize and accept" the group-capital calculation for a U.S. insurance group when it does not apply its own version of a group capital standard, assessment or report, to the parent of a U.S. entity operating in that jurisdiction.

f. ~~Notwithstanding the exemptions stated in Section 4L(2)(a) through Section 4L(2)(d)~~ Where an insurance holding company system has previously filed the annual group capital calculation, the lead-state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation ~~if the insurance holding company system has previously filed the annual group capital calculation and~~ if the lead-state commissioner makes a determination based upon that filing that the insurance holding company system meets all of the following criteria:

(i) Has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than $1,000,000,000;

(ii) Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;

~~(i)~~(iii) Has no banking, depository or other financial entity that is subject to a specified regulatory capital framework within its holding company structure;

~~(ii)~~(iv) The holding company system attests that there are no material transactions between insurers and non-insurers in the group that have occurred since the last filing of the annual group capital~~calculation~~Has ~~*de minimis* affiliated transactions between any of the insurers and the non-insurers, and those transactions do not impart material risk~~; and

(v) The non-insurers within the holding company system do not pose a material risk to the insurers ability to honor policyholder obligations~~Has *de minimis* materially risky non-insurers within its holding company structure, as described in the NAIC Group Capital Calculation Instructions~~.

g. ~~In addition to the commissioner's discretion to exempt an insurance holding company after reviewing a previously filed annual group capital calculation described in Section 4L(2)(e),~~ The lead-state commissioner has the discretion to ~~instead~~ accept a~~n~~ limited group capital filing or report on an annual basis~~annual filing that includes a single schedule of all of the entities within the group as well as corresponding key financial figures from those entities (Schedule 1) and any other specified information from the group capital calculation template, completed in accordance with the NAIC Group Capital Calculation Instructions, and which excludes all of the other requirements of the annual Group Capital Calculation~~, if either:

i) the ultimate controlling person is a U.S. regulated insurer that already completes an annual Risk-Based Capital filing, and the lead-state commissioner has determined~~that there are no more than de minimis materially risky non-insurers~~ that any non-insurers within the holding company system do not pose a material risk to the insurers ability to honor policyholder obligations; or

ii) the insurance holding company system has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than $1,000,000,000; and the following additional criteria are met:

a. The insurance holding company system has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories; and

a. The holding company includes no banking, depository or other financial entity that is subject to a specified regulatory capital framework; and

c. The holding company system attests that there are no material transactions between insurers and non-insurers in the group that have occurred since the last filing of the report to the lead-state commissioner and the non-insurers within the holding company system do not pose a material risk to the insurers ability to honor policyholder obligations; and

The lead-state commissioner has not made a determination that the holding company structure has *de minimis* material affiliated transactions between any of the insurers and the non-insurers or has not determined that the holding company structure has *de minimis* materially risky non-insurers, believes the filing of the limited group capital report Schedule 1 is sufficient to meet the needs of the Commissioner.

h. For an insurance holding company that meets an Notwithstanding theexemptions stated in either Section 4L(2)(af) or through Section 4L(2)(g), the commissioner may require the ultimate controlling person to file an annual group capital calculation, completed in accordance with the NAIC Group Capital Calculation Instructions, if any of the following criteria are met:

(i) Except for those groups exempt under Sections 4L(2)(a) through (d), if there are any material transactions that have occurred since the last filing of the annual group capital calculation or the Schedule 1; or

(ii)(i) if any insurer within the insurance holding company system is in a Risk-Based Capital action level event as set forth in [insert cross-reference to appropriate section of Risk-Based Capital (RBC) Model Act] or a similar standard for a non-U.S. insurer; or

(iii)(ii) any insurer within the insurance holding company system meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in [insert cross-reference to appropriate section of Model Regulation to define standards and commissioner's authority over companies deemed to be in hazardous financial condition]; or

(iv)(iii) any insurer within the insurance holding company system otherwise exhibits qualities of a troubled insurer as determined by the commissioner based on unique circumstances including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

~~(v) Any requests for information contained within the group capital calculation from the ultimate controlling person of a non-U.S. insurer who is otherwise exempt from the group capital calculation should be communicated to the entity's group-wide supervisor and supervisory college.~~

i. If an insurance holding company that qualifies for an exemption subsequently no longer qualifies for that exemption due to changes in premium of the insurer(s) within the insurance group of which the insurer is a member, the insurance holding company shall have one (1) year following the year the threshold is exceeded to comply with the requirements of this Act.

M. Violations. The failure to file a registration statement or any summary of the registration statement or enterprise risk filing required by this section within the time specified for filing shall be a violation of this section.

Section 5. Standards and Management of an Insurer Within an Insurance Holding Company System

A. Transactions Within an Insurance Holding Company System

(1) Transactions within an insurance holding company system to which an insurer subject to registration is a party shall be subject to the following standards:

(a) The terms shall be fair and reasonable;

(b) Agreements for cost sharing services and management shall include such provisions as required by rule and regulation issued by the commissioner;

(c) Charges or fees for services performed shall be reasonable;

(d) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;

(e) The books, accounts and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; and

(f) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs.

(2) The following transactions involving a domestic insurer and any person in its insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section, which are subject to any materiality standards contained in subparagraphs (a) through (g), may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least thirty (30) days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period. The notice for amendments or modifications shall include the reasons for the change and the financial impact on the domestic insurer. Informal notice shall be reported, within thirty (30) days after a termination of a previously filed agreement, to the commissioner for determination of the type of filing required, if any.

(a) Sales, purchases, exchanges, loans, extensions of credit, or investments, provided the transactions are equal to or exceed:

(i) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders as of the 31st day of December next preceding;

(ii) With respect to life insurers, three percent (3%) of the insurer's admitted assets as of the 31st day of December next preceding;

(b) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit provided the transactions are equal to or exceed:

(i) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer's

admitted assets or twenty-five percent (25%) of surplus as regards policyholders as of the 31st day of December next preceding;

(ii) With respect to life insurers, three percent (3%) of the insurer's admitted assets as of the 31st day of December next preceding;

(c) Reinsurance agreements or modifications thereto, including:

(i) All reinsurance pooling agreements;

(ii) Agreements in which the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities in any of the next three years, equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a non-affiliate, if an agreement or understanding exists between the insurer and non-affiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;

(d) All management agreements, service contracts, tax allocation agreements, guarantees and all cost-sharing arrangements;

(e) Guarantees when made by a domestic insurer; provided, however, that a guarantee which is quantifiable as to amount is not subject to the notice requirements of this paragraph unless it exceeds the lesser of one-half of one percent (.5%) of the insurer's admitted assets or ten percent (10%) of surplus as regards policyholders as of the 31st day of December next preceding. Further, all guarantees which are not quantifiable as to amount are subject to the notice requirements of this paragraph;

(f) Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount which, together with its present holdings in such investments, exceeds two and one-half percent (2.5%) of the insurer's surplus to policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to Section 2 of this Act (or authorized under any other section of this Chapter), or in non-subsidiary insurance affiliates that are subject to the provisions of this Act, are exempt from this requirement; and

Drafting Note: When reviewing the notification required to be submitted pursuant to Section 5A(2)(f), the commissioner should examine prior and existing investments of this type to establish that these investments separately or together with other transactions, are not being made to contravene the dividend limitations set forth in Section 5B. However, an investment in a controlling person or in an affiliate shall not be considered a dividend or distribution to shareholders when applying Section 5B of this Act.

(g) Any material transactions, specified by regulation, which the commissioner determines may adversely affect the interests of the insurer's policyholders.

Nothing in this paragraph shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same insurance holding company system, would be otherwise contrary to law.

(3) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the commissioner determines that separate transactions were entered into over any twelve-month period for that purpose, the commissioner may exercise his or her authority under Section 11.

(4) The commissioner, in reviewing transactions pursuant to Subsection A(2), shall consider whether the transactions comply with the standards set forth in Subsection A(1) and whether they may adversely affect the interests of policyholders.

(5) The commissioner shall be notified within thirty (30) days of any investment of the domestic insurer in any one corporation if the total investment in the corporation by the insurance holding company system exceeds ten percent (10%) of the corporation's voting securities.

B. Dividends and other Distributions

No domestic insurer shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until thirty (30) days after the commissioner has received notice of the declaration thereof and has not within that period disapproved the payment, or until the commissioner has approved the payment within the thirty-day period.

For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve (12) months exceeds the lesser of:

(1) Ten percent (10%) of the insurer's surplus as regards policyholders as of the 31st day of December next preceding; or

(2) The net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the twelve-month period ending the 31st day of December next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the previous two (2) calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval, and the declaration shall confer no rights upon shareholders until (1) the commissioner has approved the payment of the dividend or distribution or (2) the commissioner has not disapproved payment within the thirty-day period referred to above.

Drafting Note: The following Subsection C entitled "Management of Domestic Insurers Subject to Registration" is optional and is to be adopted according to the needs of the individual jurisdiction.

C. Management of Domestic Insurers Subject To Registration.

(1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this Act.

(2) Nothing in this section shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property or services with one or more other persons under arrangements meeting the standards of Section 5A(1).

(3) Not less than one-third of the directors of a domestic insurer, and not less than one-third of the members of each committee of the board of directors of any domestic insurer shall be persons who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or entity. At least one such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee thereof.

(4) The board of directors of a domestic insurer shall establish one or more committees comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The committee or committees shall have responsibility for nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer and recommending to the board of directors the selection and compensation of the principal officers.

(5) The provisions of Paragraphs (3) and (4) shall not apply to a domestic insurer if the person controlling the insurer, such as an insurer, a mutual insurance holding company, or a publicly held corporation, has a board of directors and committees thereof that meet the requirements of Paragraphs (3) and (4) with respect to such controlling entity.

(6) An insurer may make application to the commissioner for a waiver from the requirements of this subsection, if the insurer's annual direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, is less than $300,000,000. An insurer may also make application to the commissioner for a waiver from the requirements of this subsection based upon unique circumstances. The commissioner may consider various factors including, but not limited to, the type of business entity, volume of business written, availability of qualified board members, or the ownership or organizational structure of the entity.

D. Adequacy of Surplus. For purposes of this Act, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;

(2) The extent to which the insurer's business is diversified among several lines of insurance;

(3) The number and size of risks insured in each line of business;

(4) The extent of the geographical dispersion of the insurer's insured risks;

(5) The nature and extent of the insurer's reinsurance program;

(6) The quality, diversification and liquidity of the insurer's investment portfolio;

(7) The recent past and projected future trend in the size of the insurer's investment portfolio;

(8) The surplus as regards policyholders maintained by other comparable insurers;

(9) The adequacy of the insurer's reserves; and

(10) The quality and liquidity of investments in affiliates. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the judgment of the commissioner the investment so warrants.

Section 6. Examination

A. Power of Commissioner. Subject to the limitation contained in this section and in addition to the powers which the commissioner has under Sections [insert applicable sections] relating to the examination of insurers, the commissioner shall have the power to examine any insurer registered under Section 4 and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis.

B. Access to Books and Records.

(1) The commissioner may order any insurer registered under Section 4 to produce such records, books, or other information papers in the possession of the insurer or its affiliates as are reasonably necessary to determine compliance with this Chapter.

(2) To determine compliance with this Chapter, the commissioner may order any insurer registered under Section 4 to produce information not in the possession of the insurer if the insurer can obtain access to such information pursuant to contractual relationships, statutory obligations, or other method. In the event the insurer cannot obtain the information requested by the commissioner, the insurer shall provide the commissioner a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of information. Whenever it appears to the commissioner that the detailed explanation is without merit, the commissioner may require, after notice and hearing, the insurer to pay a penalty of $[insert amount] for each day's delay, or may suspend or revoke the insurer's license.

C. Use of Consultants. The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under Subsection A above. Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

D. Expenses. Each registered insurer producing for examination records, books and papers pursuant to Subsection A above shall be liable for and shall pay the expense of examination in accordance with Section [insert applicable section].

E. Compelling Production. In the event the insurer fails to comply with an order, the commissioner shall have the power to examine the affiliates to obtain the information. The commissioner shall also have the power to issue subpoenas, to administer oaths, and to examine under oath any person for purposes of determining compliance with this section. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court. Every person shall be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the state. He or she shall be entitled to the same fees and mileage, if claimed, as a witness in [insert appropriate statutory reference to trial-level court in that state], which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, shall be itemized and charged against, and be paid by, the company being examined.

Section 7. Supervisory Colleges

A. Power of Commissioner. With respect to any insurer registered under Section 4, and in accordance with Subsection C below, the commissioner shall also have the power to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with this Chapter. The powers of the commissioner with respect to supervisory colleges include, but are not limited to, the following:

(1) Initiating the establishment of a supervisory college;

(2) Clarifying the membership and participation of other supervisors in the supervisory college;

(3) Clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;

(4) Coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing; and

(5) Establishing a crisis management plan.

B. Expenses. Each registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner's participation in a supervisory college in accordance with Subsection C below, including reasonable travel expenses. For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates, and the commissioner may establish a regular assessment to the insurer for the payment of these expenses.

C. Supervisory College. In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management and governance processes, and as part of the examination of individual insurers in accordance with Section 6, the commissioner may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal and international regulatory agencies. The commissioner may enter into agreements in accordance with Section 8C providing the basis for cooperation between the commissioner and the other regulatory agencies, and the activities of the supervisory college. Nothing in this section shall delegate to the supervisory college the authority of the commissioner to regulate or supervise the insurer or its affiliates within its jurisdiction.

Section 7.1. Group-wide Supervision of Internationally Active Insurance Groups

A. The commissioner is authorized to act as the group-wide supervisor for any internationally active insurance group in accordance with the provisions of this section.. However, the commissioner may otherwise acknowledge another regulatory official as the group-wide supervisor where the internationally active insurance group:

(1) Does not have substantial insurance operations in the United States;

(2) Has substantial insurance operations in the United States, but not in this state; or

(3) Has substantial insurance operations in the United States and this state, but the commissioner has determined pursuant to the factors set forth in Subsections B and F that the other regulatory official is the appropriate group-wide supervisor.

An insurance holding company system that does not otherwise qualify as an internationally active insurance group may request that the commissioner make a determination or acknowledgment as to a group-wide supervisor pursuant to this section.

B. In cooperation with other state, federal and international regulatory agencies, the commissioner will identify a single group-wide supervisor for an internationally active insurance group. The commissioner may determine that the commissioner is the appropriate group-wide supervisor for an internationally active insurance group that conducts substantial insurance operations concentrated in this state. However, the commissioner may acknowledge that a regulatory official from another jurisdiction is the appropriate group-wide supervisor for the internationally active insurance group. The commissioner shall consider the following factors when making a determination or acknowledgment under this subsection:

(1) The place of domicile of the insurers within the internationally active insurance group that hold the largest share of the group's written premiums, assets or liabilities;

(2) The place of domicile of the top-tiered insurer(s) in the insurance holding company system of the internationally active insurance group;

(3) The location of the executive offices or largest operational offices of the internationally active insurance group;

(4) Whether another regulatory official is acting or is seeking to act as the group-wide supervisor under a regulatory system that the commissioner determines to be:

(a) Substantially similar to the system of regulation provided under the laws of this state, or

1.(b) Otherwise sufficient in terms of providing for group-wide supervision, enterprise risk analysis, and cooperation with other regulatory officials; and

(5) Whether another regulatory official acting or seeking to act as the group-wide supervisor provides the commissioner with reasonably reciprocal recognition and cooperation.

However, a commissioner identified under this section as the group-wide supervisor may determine that it is appropriate to acknowledge another supervisor to serve as the group-wide supervisor. The acknowledgment of the group-wide supervisor shall be made after consideration of the factors listed in Paragraphs (1) through (5) above, and shall be made in cooperation with and subject to the acknowledgment of other regulatory officials involved with supervision of members of the internationally active insurance group, and in consultation with the internationally active insurance group.

C. Notwithstanding any other provision of law, when another regulatory official is acting as the group-wide supervisor of an internationally active insurance group, the commissioner shall acknowledge that regulatory official as the group-wide supervisor. However, in the event of a material change in the internationally active insurance group that results in:

(1) The internationally active insurance group's insurers domiciled in this state holding the largest share of the group's premiums, assets or liabilities; or

(2) This state being the place of domicile of the top-tiered insurer(s) in the insurance holding company system of the internationally active insurance group, the commissioner shall make a determination or acknowledgment as to the appropriate group-wide supervisor for such an internationally active insurance group pursuant to Subsection B.

D. Pursuant to Section 6, the commissioner is authorized to collect from any insurer registered pursuant to Section 4 all information necessary to determine whether the commissioner may act as the group-wide supervisor of an internationally active insurance group or if the commissioner may acknowledge another regulatory official to act as the group-wide supervisor. Prior to issuing a determination that an internationally active insurance group is subject to group-wide supervision by the commissioner, the commissioner shall notify the insurer registered pursuant to Section 4 and the ultimate controlling person within the internationally active insurance group. The internationally active insurance group shall have not less than thirty (30) days to provide the commissioner with additional information pertinent to the pending determination. The commissioner shall publish in the [insert name of state administrative record] and on its Internet website the identity of internationally active insurance groups that the commissioner has determined are subject to group-wide supervision by the commissioner.

E. If the commissioner is the group-wide supervisor for an internationally active insurance group, the commissioner is authorized to engage in any of the following group-wide supervision activities:

(1) Assess the enterprise risks within the internationally active insurance group to ensure that:

(a) The material financial condition and liquidity risks to the members of the internationally active insurance group that are engaged in the business of insurance are identified by management, and

(b) Reasonable and effective mitigation measures are in place;

(2) Request, from any member of an internationally active insurance group subject to the commissioner's supervision, information necessary and appropriate to assess enterprise risk, including, but not limited to, information about the members of the internationally active insurance group regarding:

(a) Governance, risk assessment and management,

(b) Capital adequacy, and

(c) Material intercompany transactions;

(3) Coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the internationally active insurance group are domiciled, compel development and implementation of reasonable measures designed to ensure that the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members of such internationally active insurance group that are engaged in the business of insurance;

(4) Communicate with other state, federal and international regulatory agencies for members within the internationally active insurance group and share relevant information subject to the confidentiality provisions of Section 8, through supervisory colleges as set forth in Section 7 or otherwise;

(5) Enter into agreements with or obtain documentation from any insurer registered under Section 4, any member of the internationally active insurance group, and any other state, federal and international regulatory agencies for members of the internationally active insurance group, providing the basis for or otherwise clarifying the commissioner's role as group-wide supervisor, including provisions for resolving disputes with other regulatory officials. Such agreements or documentation shall not serve as evidence in any proceeding that any insurer or person within an insurance holding company system not domiciled or incorporated in this state is doing business in this state or is otherwise subject to jurisdiction in this state; and

(6) Other group-wide supervision activities, consistent with the authorities and purposes enumerated above, as considered necessary by the commissioner.

F. If the commissioner acknowledges that another regulatory official from a jurisdiction that is not accredited by the NAIC is the group-wide supervisor, the commissioner is authorized to reasonably cooperate, through supervisory colleges or otherwise, with group-wide supervision undertaken by the group-wide supervisor, provided that:

(1) The commissioner's cooperation is in compliance with the laws of this state; and

(2) The regulatory official acknowledged as the group-wide supervisor also recognizes and cooperates with the commissioner's activities as a group-wide supervisor for other internationally active insurance groups where applicable. Where such recognition and cooperation is not reasonably reciprocal, the commissioner is authorized to refuse recognition and cooperation.

G. The commissioner is authorized to enter into agreements with or obtain documentation from any insurer registered under Section 4, any affiliate of the insurer, and other state, federal and international regulatory agencies for members of the internationally active insurance group, that provide the basis for or otherwise clarify a regulatory official's role as group-wide supervisor.

H. The commissioner may promulgate regulations necessary for the administration of this section.

I. A registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner's participation in the administration of this section, including the engagement of attorneys, actuaries and any other professionals and all reasonable travel expenses.

Section 8. Confidential Treatment

A. Documents, materials or other information in the possession or control of the Department of Insurance that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to Section 6 and all information reported or provided to the Department of Insurance pursuant to Section 3B(12) and (13), Section 4, Section 5 and Section 7.1 is recognized by this state as being proprietary and to contain no trade secrets, and shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's

official duties. The commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof, in which event the commissioner may publish all or any part in such manner as may be deemed appropriate.

(1) For purposes of the information reported and provided to the Department of Insurance pursuant to Section 4L(2), the commissioner shall maintain the confidentiality of the group capital calculation and group capital ratio and any group capital information received from an insurance holding company supervised by the Federal Reserve Board or non-U.S. group wide supervisors.

Drafting note: This group capital calculation and group capital ratio includes confidential information and filings received from insurance holding companies supervised by the Federal Reserve Board. The confidential treatment afforded to group capital calculation filings includes any Federal Reserve Board group capital filings and information.

B. Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner or with whom such documents, materials or other information are shared pursuant to this Act shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to Subsection A.

C. In order to assist in the performance of the commissioner's duties, the commissioner:

(1) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Subsection A, including proprietary and trade secret documents and materials with other state, federal and international regulatory agencies, with the NAIC ~~and its affiliates and subsidiaries~~, and with any third-party consultants designated by the commissioners, with state, federal, and international law enforcement authorities, including members of any supervisory college described in Section 7, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material or other information, and has verified in writing the legal authority to maintain confidentiality.

(2) Notwithstanding paragraph (1) above, the commissioner may only share confidential and privileged documents, material, or information reported pursuant to Section 4L(1) with commissioners of states having statutes or regulations substantially similar to Subsection A and who have agreed in writing not to disclose such information.

(3) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, including propriety and trade-secret information from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(4) Shall enter into written agreements with the NAIC and any third-party consultant governing sharing and use of information provided pursuant to this Act consistent with this subsection that shall:

(i) Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC ~~and its affiliates and subsidiaries~~ or a third-party consultant pursuant to this Act, including procedures and protocols for sharing by the NAIC with other state, federal or international regulators. The agreement shall provide that the receipient agrees in writing to maintain the confidentiliaty and privileged status of the documents, materials or other information and has verified in writing the legal authority to maintain confidentiality;

(ii) Specify that ownership of information shared with the NAIC or third party consultant ~~and its affiliates and subsidiaries~~ pursuant to this Act remains with the commissioner and the

NAIC's or a third-party consultant's use of the information is subject to the direction of the commissioner:

(iii) Prohibit the NAIC or third-party consultant from storing the information shared pursuant to this Act in a permanent database after the underlying analysis is completed;

~~(iii)~~(iv) Require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC or third-party consultant pursuant to this Act is subject to a request or subpoena to the NAIC or third-party consultant for disclosure or production; and

(v) Require the NAIC or a third-party consultant ~~and its affiliates and subsidiaries~~ to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or third-party consultant ~~and its affiliates and subsidiaries~~ may be required to disclose confidential information about the insurer shared with the NAIC or third-party consultant ~~and its affiliates and subsidiaries~~ pursuant to this Act.

(vi) In the case of an agreement involving a third-party consultant, provide for the insurer's written consent.

D. The sharing of information by the commissioner pursuant to this Act shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution and enforcement of the provisions of this Act.

E. No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in Subsection C.

F. Documents, materials or other information in the possession or control of the NAIC pursuant to this Act shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

G. It is the judgement of the legislature that the group capital calculation and resulting group capital ratio required under Section 4L(2) is a regulatory tool for assessing group risks and capital adequacy, and is not intended as a means to rank insurers or insurance holding company systems generally. Therefore, except as otherwise may be required under the provisions of this Act, the making, publishing, disseminating, circulating or placing before the public, or causing directly or indirectly to be made, published, disseminated, circulated or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way as an advertisement, announcement or statement containing a representation or statement with regard to the group capital calculation or group capital ratio of any insurer or any insurer group, or of any component derived in the calculation by any insurer, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited; provided, however, that if any materially false statement with respect to the group capital calculation or resulting group capital ratio or an inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation or resulting group capital ratio is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement or the inappropriateness, as the case may be, then the insurer may publish announcements in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

~~**Section 8.1. Confidential Treatment & Prohibition on Annoucements for the Group Capital Calculation**~~

~~A. For purposes of the information reported or provided to the Department of Insurance pursuant to Section 4L2, the aforementioned confidentiality requirements of Section 8 are modified as follows:~~

~~(1) The commissioner shall maintain the confidentiality of the group capital calculation and group capital ratio and any group capital information received from an insurance holding company~~

supervised by the Federal Reserve Board and non-U.S. group-wide supervisors. With respect to all other documents, material or other information covered by this subsection, the commissioner will not make such documents, materials, or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof, in which event the commissioner may publish all or any part in such manner as may be deemed appropriate.

[Drafting note: This group capital calculation and group capital ratio includes confidential information and filings received from insurance holding companies supervised by the Federal Reserve Board. The confidential treatment afforded to group capital calculation filings includes any Federal Reserve Board group capital filings and information]

(2) Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner or with whom such documents, materials or other information are shared pursuant to this Act shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to Subsection A.

(3) In order to assist in the performance of the commissioner's duties, the commissioner:

(a) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Subsection A, with other state, federal and international regulatory agencies, with the NAIC, any third party consultants, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in Section 7, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, material or other information, and has verified in writing the legal authority to maintain confidentiality;

(b) Notwithstanding paragraph (a) above, the commissioner may only share confidential and privileged documents, material, or information reported pursuant to Section 4L with commissioners of states having statutes or regulations substantially similar to Subsection A and who have agreed in writing not to disclose such information;

(c) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information from the NAIC and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any documents, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the documents, material or information; and

(d) Shall enter into written agreements with the NAIC and any third-party consultant governing sharing and use of information provided pursuant to this Act consistent with this subsection that shall:

(i) Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC or a third-party consultant pursuant to this Act, including procedures and protocols for sharing by the NAIC with other state, federal or international regulators. The agreement shall provide that the receipient agrees in writing to maintain the confidentialty and privileged status of the documents, materials or other information and has verified in writing the legal authority to maintain confidentiality;

(ii) Specify that ownership of information shared with the NAIC or third party consultant pursuant to this Act remains with the commissioner, and the NAIC's or a third-party consultant's use of the information is subject to the direction of the commissioner;

~~(iii) Prohibit the NAIC or third-party consultant from storing the information shared pursuant to this Act in a permanent database after the underlying analysis is completed;~~

~~(iv) Require prompt notice be given to an insurer whose confidential information in the possession of the NAIC or a third-party consultant pursuant to this Act is subject to a request or subpoena to the NAIC or a third-party consultant for disclosure or production;~~

~~(v) Require the NAIC or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or a third-party consultant may be required to disclose confidential information about the insurer shared with the NAIC or a third-party consultant pursuant to this Act; and~~

~~(vi) In the case of an agreement involving a third-party consultant, provide for the insurer's written consent.~~

~~(4) The sharing of information by the commissioner pursuant to this Act shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution and enforcement of the provisions of this Act.~~

~~(a) No waiver of any applicable privilege or claim of confidentiality in the documents, propriety and trade secret materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in Subsection (3).~~

~~(b) Documents, materials or other information in the possession or control of the NAIC pursuant to this Act shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.~~

~~(c) It is the judgement of the legislature that the group capital calculation and resulting group capital ratio is a regulatory tool for assessing group risks and capital adequacy, and is not intended as a means to rank insurers or insurance holding company systems generally. Therefore, except as otherwise may be required under the provisions of this Act, the making, publishing, disseminating, circulating or placing before the public, or causing directly or indirectly to be made, published, disseminated, circulated or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way as an advertisement, announcement or statement containing arepresentation or statement with regard to the group capital calculation or group capital ratio of any insurer or any insurer group, or of any component derived in the calculation by any insurer, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited; provided, however, that if any materially false statement with respect to the group capital calculation or resulting group capital ratio or an inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation or resulting group capital ratio is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement or the inappropriateness, as the case may be, then the insurer may publish announcements in a written publication if the sole purpose of the announcement is to rebut the materially false statement.~~

Section 9. Rules and Regulations

The commissioner may, upon notice and opportunity for all interested persons to be heard, issue such rules, regulations and

orders as shall be necessary to carry out the provisions of this Act.

Section 10. Injunctions, Prohibitions Against Voting Securities, Sequestration of Voting Securities

A. Injunctions. Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of this Act or of any rule, regulation or order issued by the commissioner hereunder, the commissioner may apply to the [insert title] Court for the county in which the principal officer of the insurer is located or if the insurer has no office in this state then to the [insert title] Court for [insert county] County for an order enjoining the insurer or director, officer, employee or agent thereof from violating or continuing to violate this Act or any rule, regulation or order, and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors and shareholders or the public may require.

B. Voting of Securities; When Prohibited. No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this Act or of any rule, regulation or order issued by the commissioner hereunder may be voted at any shareholder's meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of the securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this Act or of any rule, regulation or order issued by the commissioner hereunder; the insurer or the commissioner may apply to the [insert title] Court for the county in which the insurer has its principle place of business to enjoin any offer, request, invitation, agreement or acquisition made in contravention of Section 3 or any rule, regulation or order issued by the commissioner thereunder to enjoin the voting of any security so acquired, to void any vote of the security already cast at any meeting of shareholders and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditor and shareholders or the public may require.

C. Sequestration of Voting Securities. In any case where a person has acquired or is proposing to acquire any voting securities in violation of this Act or any rule, regulation or order issued by the commissioner hereunder, the [insert title] Court for [insert county] County or the [insert title] Court for the county in which the insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner, seize or sequester any voting securities of the insurer owned directly or indirectly by the person, and issue such order as may be appropriate to effectuate the provisions of this Act.

Notwithstanding any other provisions of law, for the purposes of this Act the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.

Section 11. Sanctions

A. Any insurer failing, without just cause, to file any registration statement as required in this Act shall be required, after notice and hearing, to pay a penalty of $[insert amount] for each day's delay, to be recovered by the commissioner of Insurance and the penalty so recovered shall be paid into the General Revenue Fund of this state. The maximum penalty under this section is $[insert amount]. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

B. Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly shall permit any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to Section 4A, 5A(2), or 5B, or which violate this Act, shall pay, in their individual capacity, a civil forfeiture of not more than $[insert amount] per violation, after notice and hearing before the commissioner. In determining the amount of the civil forfeiture, the commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

C. Whenever it appears to the commissioner that any insurer subject to this Act or any director, officer, employee or agent thereof has engaged in any transaction or entered into a contract which is subject to Section 5 of this Act and which would not have been approved had the approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing the commissioner may also order the insurer to void any contracts and restore the status quo if the action is in the best interest of the policyholders, creditors or the public.

D. Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed a willful violation of this Act, the commissioner may cause criminal proceedings to be instituted by the [insert title] Court for the county in which the principal office of the insurer is located or if the insurer has no office in this state, then by the [insert county] Court for [insert title] County against the insurer or the responsible director, officer, employee or agent thereof. Any insurer which willfully violates this Act may be fined not more than $[insert amount]. Any individual who willfully violates this Act may be fined in his or her individual capacity not more than $[insert amount] or be imprisoned for not more than one to three (3) years or both.

E. Any officer, director or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the commissioner in the performance of his or her duties under this Act, upon conviction shall be imprisoned for not more than [insert amount] years or fined $[insert amount] or both. Any fines imposed shall be paid by the officer, director or employee in his or her individual capacity.

F. Whenever it appears to the commissioner that any person has committed a violation of Section 3 of this Act and which prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision in accordance with [insert appropriate statutory reference related to orders of supervision.

Section 12. Receivership

Whenever it appears to the commissioner that any person has committed a violation of this Act which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders or the public, then the commissioner may proceed as provided in Section [insert applicable section] of this Chapter to take possessions of the property of the domestic insurer and to conduct its business.

Section 13. Recovery

A. If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under the order shall have a right to recover on behalf of the insurer, (i) from any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions (other than distributions of shares of the same class of stock) paid by the insurer on its capital stock, or (ii) any payment in the form of a bonus, termination settlement or extraordinary lump sum salary adjustment made by the insurer or its subsidiary to a director, officer or employee, where the distribution or payment pursuant to (i) or (ii) is made at any time during the one year preceding the petition for liquidation, conservation or rehabilitation, as the case may be, subject to the limitations of Subsections B, C, and D of this section.

B. No distribution shall be recoverable if the parent or affiliate shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

C. Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time the distributions were paid shall be liable up to the amount of distributions or payments under Subsection A which the person received. Any person who otherwise controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions that would have been received if they had been paid immediately. If two (2) or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

D. The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

E. To the extent that any person liable under Subsection C of this section is insolvent or otherwise fails to pay claims due from it, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation or holding company or person who otherwise controlled it.

Section 14. Revocation, Suspension, or Nonrenewal of Insurer's License

Whenever it appears to the commissioner that any person has committed a violation of this Act which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, suspend, revoke or refuse to renew the insurer's license or authority to do business in this state for such period as the commissioner finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

Section 15. Judicial Review, Mandamus

A. Any person aggrieved by any act, determination, rule, regulation or order or any other action of the commissioner pursuant to this Act may appeal to the [insert title] Court for [insert county] County. The court shall conduct its review without a jury and by trial *de novo*, except that if all parties, including the commissioner, so stipulate, the review shall be confined to the record. Portions of the record may be introduced by stipulation into evidence in a trial *de novo* as to those parties so stipulating.

B. The filing of an appeal pursuant to this section shall stay the application of any rule, regulation, order or other action of the commissioner to the appealing party unless the court, after giving the party notice and an opportunity to be heard, determines that a stay would be detrimental to the interest of policyholders, shareholders, creditors or the public.

C. Any person aggrieved by any failure of the commissioner to act or make a determination required by this Act may petition the [insert title] Court for [insert county] County for a writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to act or make a determination.

Section 16. Conflict with Other Laws

All laws and parts of laws of this state inconsistent with this Act are hereby superseded with respect to matters covered by this Act.

Section 17. Separability of Provisions

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provisions or application, and for this purpose the provisions of this Act are separable.

Section 18. Effective Date

This Act shall take effect thirty (30) days from its passage.

APPENDIX
ALTERNATE PROVISIONS

Alternative Section 1. Findings

A. It is hereby found and declared that it may not be inconsistent with the public interest and the interest of policyholders and shareholders to permit insurers to:

(1) Engage in activities which would enable them to make better use of management skills and facilities;

(2) Diversify into new lines of business through acquisition or organization of subsidiaries;

(3) Have free access to capital markets which could provide funds for insurers to use in diversification programs;

(4) Implement sound tax planning conclusions; and

(5) Serve the changing needs of the public and adapt to changing conditions of the social, economic and political environment, so that insurers are able to compete effectively and to meet the growing public demand for institutions capable of providing a comprehensive range of financial services.

B. It is further found and declared that the public interest and the interests of policyholders and shareholders are or may be adversely affected when:

(1) Control of an insurer is sought by persons who would utilize such control adversely to the interests of policyholders or shareholders;

(2) Acquisition of control of an insurer would substantially lessen competition or create a monopoly in the insurance business in this state;

(3) An insurer which is part of an insurance holding company system is caused to enter into transactions or relationships with affiliated companies on terms which are not fair and reasonable; or

(4) An insurer pays dividends to shareholders which jeopardize the financial condition of such insurers.

C. It is hereby declared that the policies and purposes of this Act are to promote the public interest by:

(1) Facilitating the achievement of the objectives enumerated in Subsection A;

(2) Requiring disclosure of pertinent information relating to changes in control of an insurer;

(3) Requiring disclosure by an insurer of material transactions and relationships between the insurer and its affiliates, including certain dividends to shareholders paid by the insurer; and

(4) Providing standards governing material transactions between the insurer and its affiliates.

D. It is further declared that it is desirable to prevent unnecessary multiple and conflicting regulation of insurers. Therefore, this state shall exercise regulatory authority over domestic insurers and unless otherwise provided in this Act, not over nondomestic insurers, with respect to the matters contained herein.

Alternative Section 2. Subsidiaries of Insurers

A. Authorization. Any domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries engaged in the following kinds of business:

(1) Any kind of insurance business authorized by the jurisdiction in which it is incorporated;

(2) Acting as an insurance broker or as an insurance agent for its parent or for any of its parent's insurer subsidiaries;

(3) Investing, reinvesting or trading in securities for its own account, that of its parent, a subsidiary of its parent, or an affiliate or subsidiary;

(4) Management of an investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services;

(5) Acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended;

(6) Rendering investment advice to governments, government agencies, corporations or other organizations or groups;

(7) Rendering other services related to the operations of an insurance business, such as actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal and collection services;

(8) Ownership and management of assets which the parent corporation could itself own or manage;

Drafting Note: The aggregate investment by the insurer and its subsidiaries acquired or organized pursuant to this paragraph should not exceed the limitations applicable to such investments by the insurer.

(9) Acting as administrative agent for a governmental instrumentality that is performing an insurance function;

(10) Financing of insurance premiums, agents and other forms of consumer financing;

(11) Any other business activity determined by the commissioner to be reasonably ancillary to an insurance business; and

(12) Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section.

Chronological Summary of Action (all references are to the Proceedings of the NAIC).

1969 Proc. II 736, 737, 738-751, 756 (adopted).
1972 Proc. I 14, 16, 443, 449 (corrected).
1980 Proc. II 22, 26, 29, 42-46 (amended, added Section 3.1).
1983 Proc. I 6, 37, 96, 99 (amended).
1985 Proc. I 19, 37,178, 183-200 (amended and reprinted).
1985 Proc. II 11, 24-25, 74, 75-92 (amended and reprinted).
1986 Proc. I 10, 25, 72 (amended).
1986 Proc. II 12, 19-20, 93-94, 94-109 (amended and reprinted).
1993 Proc. 4th Quarter 16, 31, 57, 61-62 (amended).
1995 Proc. 4th Quarter 11, 33, 307, 310, 312-328 (amended and reprinted).
1996 Proc. 1st Quarter 124, 270, 272-275 (amendments adopted later printed here).
1997 Proc. 4th Quarter 11 (amendments adopted).
1999 Proc. 4th Quarter 15, 364, 369, 379-380 (amended).
2001 Proc. 2nd Quarter 11, 14, 319, 339, 342-348 (amended).
2011 Proc. 1st Quarter I 3-11 (amended).
2014 Proc. 3rd Quarter, Vol. I 122, 136, 140, 183, 243-266 (amended).

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INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT

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Section 1. Definitions

As used in this Act, the following terms shall have these meanings unless the context shall otherwise require:

A. "Affiliate." An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

B. "Commissioner." The term "commissioner" shall mean the insurance commissioner, the commissioner's deputies, or the Insurance Department, as appropriate.

Drafting Note: Insert the title of the chief insurance regulatory official wherever the word "commissioner" appears.

C. "Control." The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by Section 4K that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

D. "Group-wide supervisor." The regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined or acknowledged by the commissioner under Section 7.1 to have sufficient significant contacts with the internationally active insurance group.

E. "Group Capital Calculation instructions" means the GCC report, including group capital calculation instructions, as adopted by the NAIC and as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

F. "Insurance Holding Company System." An "insurance holding company system" consists of two (2) or more affiliated persons, one or more of which is an insurer.

GF. "Insurer." The term "insurer" shall have the same meaning as set forth in Section [insert applicable section] of this Chapter, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

Drafting Note: References in this model act to "Chapter" are references to the entire state insurance code.

Drafting Note: States should consider applicability of this model act to fraternal societies and captives.

HG. "Internationally active insurance group." An insurance holding company system that (1) includes an insurer registered under Section 4; and (2) meets the following criteria: (a) premiums written in at least three countries, (b) the percentage of gross premiums written outside the United States is at least ten percent (10%) of the insurance holding company system's total gross written premiums, and (c) based on a three-year rolling average, the total assets of the insurance holding company system are at least fifty billion dollars ($50,000,000,000) or the total gross written premiums of the insurance holding company system are at least ten billion dollars ($10,000,000,000).

IH. "Enterprise Risk." "Enterprise risk" shall mean any activity, circumstance, event or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer's Risk-Based Capital to fall into company action level as set forth in [insert cross reference to appropriate section of Risk-Based Capital (RBC) Model Act] or would cause the insurer to be in hazardous financial condition [insert cross reference to appropriate section of Model Regulation to define standards and commissioner's authority over companies deemed to be in hazardous financial condition].

J. "NAIC" means the national association of insurance commissioners.

K. "Materially risky non-insurers" As used in the context of the Group Capital Calculation, means a non-insurer that could adversely impact the ability of the insurer(s) to pay policyholder claims

Commented [DD1]: Added to help address comments from RAA and APCIA regarding having criteria that could be used by regulator to determine GCC not needed. "that could adversily impact the ability of the insurer to pay policyholder claims" taken directly from the GCC instructions regarding purpose, which sets for the criteria for exclusion of entities from the GCC

LI. "Person." A "person" is an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any joint venture partnership exclusively engaged in owning, managing, leasing or developing real or tangible personal property.

MJ. "Securityholder." A "securityholder" of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing.

NK. "Subsidiary." A "subsidiary" of a specified person is an affiliate controlled by such person directly or indirectly through one or more intermediaries.

OL. "Voting Security." The term "voting security" shall include any security convertible into or evidencing a right to acquire a voting security.

Section 2. Subsidiaries of Insurers

A. Authorization. A domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries. The subsidiaries may conduct any kind of business or businesses and their authority to do so shall not be limited by reason of the fact that they are subsidiaries of a domestic insurer.

Drafting Note: This bill neither expressly authorizes noninsurance subsidiaries nor restricts subsidiaries to insurance related activities. It is believed that this is a policy decision which should be made by each individual state. Attached as an appendix are alternative provisions which would authorize the formation or acquisition of subsidiaries to engage in diversified business activity.

B. Additional Investment Authority. In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under all other sections of this Chapter, a domestic insurer may also:

(1) Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ten percent (10%) of the insurer's assets or fifty percent (50%) of the insurer's surplus as regards policyholders, provided that after such investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs. In calculating the amount of such investments, investments in domestic or foreign insurance subsidiaries and health maintenance organizations shall be excluded, and there shall be included:

(a) Total net monies or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities, and

(b) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities; and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation;

Drafting Note: When considering whether to amend its Holding Company Act to exempt health maintenance organizations and other similar entities from certain investment limitations, a state should consider whether the solvency and general operations of the entities are regulated by the insurance department. In addition to, or in place of, the term "health maintenance organizations" in Paragraph (1) above, a state may include any other entity which provides or arranges for the financing or provision of health care services or coverage over which the commissioner possesses financial solvency and regulatory oversight authority.

(2) Invest any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer provided that each subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in Paragraph (1) or in Sections [insert applicable section] through [insert applicable section] of this Chapter applicable to the insurer. For the purpose of this paragraph, "the total investment of the insurer" shall include:

(a) Any direct investment by the insurer in an asset, and

(b) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of the subsidiary;

(3) With the approval of the commissioner, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries; provided that after the investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

C. Exemption from Investment Restrictions. Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to Subsection B shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in this Chapter applicable to such investments of insurers [except the following:].

Drafting Note: The last phrase is optional in those states having certain special qualitative limitations, such as prohibitions on investments in stock of mining companies, which the state may wish to retain as a matter of public policy.

D. Qualification of Investment; When Determined. Whether any investment made pursuant to Subsection B meets the applicable requirements of that subsection is to be determined before the investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of

capital invested, not including dividends.

E. Cessation of Control. If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three (3) years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after the investment shall have been made, the investment shall have met the requirements for investment under any other section of this Chapter, and the insurer has so notified the commissioner.

Section 3. Acquisition of Control of or Merger with Domestic Insurer

A. Filing Requirements.

(1) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of the insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time the offer, request or invitation is made or the agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to the insurer, a statement containing the information required by this section and the offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner prescribed in this Act.

(2) For purposes of this section, any controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer, in any manner, shall file with the commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least 30 days prior to the cessation of control. The commissioner shall determine those instances in which the party(ies) seeking to divest or to acquire a controlling interest in an insurer, will be required to file for and obtain approval of the transaction. The information shall remain confidential until the conclusion of the transaction unless the commissioner, in his or her discretion determines that confidential treatment will interfere with enforcement of this section. If the statement referred to in Paragraph (1) is otherwise filed, this paragraph shall not apply.

(3) With respect to a transaction subject to this section, the acquiring person must also file a pre-acquisition notification with the commissioner, which shall contain the information set forth in Section 3.1C(1). A failure to file the notification may be subject to penalties specified in Section 3.1E(3).

(4) For purposes of this section a domestic insurer shall include any person controlling a domestic insurer unless the person, as determined by the commissioner, is either directly or through its affiliates primarily engaged in business other than the business of insurance. For the purposes of this section, "person" shall not include any securities broker holding, in the usual and customary broker's function, less than twenty percent (20%) of the voting securities of an insurance company or of any person which controls an insurance company.

B. Content of Statement. The statement to be filed with the commissioner shall be made under oath or affirmation and shall contain the following:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in Subsection A is to be effected (hereinafter called the "acquiring party"), and

(a) If the person is an individual, his or her principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years;

(b) If the person is not an individual, a report of the nature of its business operations during the past five (5) years or for the lesser period as the person and any predecessors shall have been in existence; an informative description of the business intended to be done by the person and the person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to such positions. The list shall include for each individual the information required by Subparagraph (a) of this paragraph;

(2) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction where funds were or are to be obtained for any such purpose (including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates), and the identity of persons furnishing consideration; provided, however, that where a source of consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing the statement so requests;

(3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years of each acquiring party (or for such lesser period as the acquiring party and any predecessors shall have been in existence), and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement;

(4) Any plans or proposals which each acquiring party may have to liquidate the insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;

(5) The number of shares of any security referred to in Subsection A which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement or acquisition referred to in Subsection A, and a statement as to the method by which the fairness of the proposal was arrived at;

(6) The amount of each class of any security referred to in Subsection A which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(7) A full description of any contracts, arrangements or understandings with respect to any security referred to in Subsection A in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the persons with whom the contracts, arrangements or understandings have been entered into;

(8) A description of the purchase of any security referred to in Subsection A during the twelve (12) calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers and consideration paid or agreed to be paid;

(9) A description of any recommendations to purchase any security referred to in Subsection A made during the twelve (12) calendar months preceding the filing of the statement by any acquiring party, or by anyone based upon interviews or at the suggestion of the acquiring party;

(10) Copies of all tender offers for, requests, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in Subsection A, and (if distributed) of additional soliciting material relating to them;

(11) The term of any agreement, contract or understanding made with or proposed to be made with any broker-dealer as to solicitation of securities referred to in Subsection A for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto;

Drafting Note: An insurer required to file information pursuant to sub-sections 3B(12) and 3B(13) may satisfy the requirement by providing the commissioner with the most recently filed parent corporation reports that have been filed with the SEC, if appropriate.

(12) An agreement by the person required to file the statement referred to in Subsection A that it will provide the annual report, specified in Section 4L1, for so long as control exists;

(13) An acknowledgement by the person required to file the statement referred to in Subsection A that the person and all subsidiaries within its control in the insurance holding company system will provide information to the commissioner upon request as necessary to evaluate enterprise risk to the insurer; and

(14) Such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

If the person required to file the statement referred to in Subsection A is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by Paragraphs (1) through (14) shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls the partner or member. If any partner, member or person is a corporation or the person required to file the statement referred to in Subsection A is a corporation, the commissioner may require that the information called for by Paragraphs (1) through (14) shall be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of the corporation.

If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to the insurer pursuant to this section, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the commissioner and sent to the insurer within two (2) business days after the person learns of the change.

C. Alternative Filing Materials.

If any offer, request, invitation, agreement or acquisition referred to in Subsection A is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in Subsection A may utilize the documents in furnishing the information called for by that statement.

D. Approval by Commissioner: Hearings.

(1) The commissioner shall approve any merger or other acquisition of control referred to in Subsection A unless, after a public hearing, the commissioner finds that:

(a) After the change of control, the domestic insurer referred to in Subsection A would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(b) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly. In applying the competitive standard in this subparagraph:

(i) The informational requirements of Section 3.1C(1) and the standards of Section 3.1D(2) shall apply;

(ii) The merger or other acquisition shall not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by Section 3.1D(3) exist; and

(iii) The commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;

(c) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;

(d) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(e) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

(f) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

(2) The public hearing referred to in Paragraph (1) shall be held within thirty (30) days after the statement required by Subsection A is filed, and at least twenty (20) days notice shall be given by the commissioner to the person filing the statement. Not less than seven (7) days notice of the public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The commissioner shall make a determination within the sixty (60) day period preceding the effective date of the proposed transaction. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the [insert title] Court of this state. All discovery proceedings shall be concluded not later than three (3) days prior to the commencement of the public hearing.

(3) If the proposed acquisition of control will require the approval of more than one commissioner, the public hearing referred to in Paragraph (2) may be held on a consolidated basis upon request of the person filing the statement referred to in Subsection A. Such person shall file the statement referred to in Subsection A with the National Association of Insurance Commissioners (NAIC) within five (5) days of making the request for a public hearing. A commissioner may opt out of a consolidated hearing, and shall provide notice to the applicant of the opt-out within ten (10) days of the receipt of the statement referred to in Subsection A. A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the commissioners of the states in which the insurers are domiciled. Such commissioners shall hear and receive evidence. A commissioner may attend such hearing, in person or by telecommunication.

(4) In connection with a change of control of a domestic insurer, any determination by the commissioner that the person acquiring control of the insurer shall be required to maintain or restore the capital of the insurer to the level required by the laws and regulations of this state shall be made not later than sixty (60) days after the date of notification of the change in control submitted pursuant to Section 3A(1) of this Act.

(5) The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control.

E. Exemptions. The provisions of this section shall not apply to:

(1) [Any transaction which is subject to the provisions of Sections [insert applicable section] and [insert applicable section] of the laws of this state, dealing with the merger or consolidation of two or more insurers].

Drafting Note: Optional for use in those states where existing law adequately governs standards and procedures for the merger or consolidation of two or more insurers.

(2) Any offer, request, invitation, agreement or acquisition which the commissioner by order shall exempt as not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or as otherwise not comprehended within the purposes of this section.

F. Violations. The following shall be violations of this section:

(1) The failure to file any statement, amendment or other material required to be filed pursuant to Subsection A or B; or

(2) The effectuation or any attempt to effectuate an acquisition of control of, divestiture of, or merger with, a domestic insurer unless the commissioner has given approval.

G. Jurisdiction, Consent to Service of Process. The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled or authorized to do business in this state who files a statement with the commissioner under this section, and overall actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by the person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to the person at his last known address.

Section 3.1 Acquisitions Involving Insurers Not Otherwise Covered

A. Definitions. The following definitions shall apply for the purposes of this section only:

(1) "Acquisition" means any agreement, arrangement or activity the consummation of which results in a person acquiring directly or indirectly the control of another person, and includes but is not limited to the acquisition of voting securities, the acquisition of assets, bulk reinsurance and mergers.

(2) An "involved insurer" includes an insurer which either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.

B. Scope

(1) Except as exempted in Paragraph (2) of this subsection, this section applies to any acquisition in which there is a change in control of an insurer authorized to do business in this state.

(2) This section shall not apply to the following:

(a) A purchase of securities solely for investment purposes so long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this state. If a purchase of securities results in a presumption of control under Section 1C, it is not solely for investment purposes unless the commissioner of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and the disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the commissioner of this state;

(b) The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if pre-acquisition notification is filed with the commissioner in accordance with Section 3.1C(1) thirty (30) days prior to the proposed effective date of the acquisition. However, such pre-acquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by any other subparagraph of Section 3.1B(2);

(c) The acquisition of already affiliated persons;

(d) An acquisition if, as an immediate result of the acquisition,

(i) In no market would the combined market share of the involved insurers exceed five percent (5%) of the total market,

(ii) There would be no increase in any market share, or

(iii) In no market would

(I) The combined market share of the involved insurers exceeds twelve percent (12%) of the total market, and

(II) The market share increase by more than two percent (2%) of the total market.

For the purpose of this Paragraph (2)(d), a market means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state;

(e) An acquisition for which a pre-acquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business;

(f) An acquisition of an insurer whose domiciliary commissioner affirmatively finds that the insurer is in failing condition; there is a lack of feasible alternative to improving such condition; the public benefits of improving the insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition; and the findings are communicated by the domiciliary commissioner to the commissioner of this state.

C. Pre-acquisition Notification; Waiting Period. An acquisition covered by Section 3.1B may be subject to an order pursuant to Section 3.1E unless the acquiring person files a pre-acquisition notification and the waiting period has expired. The acquired person may file a pre-acquisition notification. The commissioner shall give confidential treatment to information submitted under this subsection in the same manner as provided in Section 8 of this Act.

(1) The pre-acquisition notification shall be in such form and contain such information as prescribed by the National Association of Insurance Commissioners (NAIC) relating to those markets which, under Section 3.1B(2)(d), cause the acquisition not to be exempted from the provisions of this section. The commissioner may require such additional material and information as deemed necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of Section 3.1D. The required information may include an opinion of an economist as to the competitive impact of the acquisition in this state accompanied by a summary of the education and experience of such person indicating his or her ability to render an informed opinion.

(2) The waiting period required shall begin on the date of receipt of the commissioner of a pre-acquisition notification and shall end on the earlier of the thirtieth day after the date of receipt, or termination of the waiting period by the commissioner. Prior to the end of the waiting period, the commissioner on a one-time basis may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the thirtieth day after receipt of the additional information by the commissioner or termination of the waiting period by the commissioner.

D. Competitive Standard

(1) The commissioner may enter an order under Section 3.1E(1) with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in this state or tend to create a monopoly or if the insurer fails to file adequate information in compliance with Section 3.1C.

(2) In determining whether a proposed acquisition would violate the competitive standard of Paragraph (1) of this subsection, the commissioner shall consider the following:

(a) Any acquisition covered under Section 3.1B involving two (2) or more insurers competing in the same market is *prima facie* evidence of violation of the competitive standards.

(i) If the market is highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
4%	4% or more
10%	2% or more
15%	1% or more

(ii) Or, if the market is not highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
5%	5% or more
10%	4% or more
15%	3% or more
19%	1% or more

A highly concentrated market is one in which the share of the four (4) largest insurers is seventy-five percent (75%) or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two (2) insurers are involved, exceeding the total of the two columns in the table is *prima facie* evidence of violation of the competitive standard in Paragraph (1) of this subsection. For the purpose of this item, the insurer with the largest share of the market shall be deemed to be Insurer A.

(b) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the two (2) largest to the eight (8) largest, has increased by seven percent (7%) or more of the market over a period of time extending from any base year five (5) to ten (10) years prior to the acquisition up to the time of the acquisition. Any acquisition or merger covered under Section 3.1B involving two (2) or more insurers competing in the same market is *prima facie* evidence of violation of the competitive standard in Paragraph (1) of this subsection if:

(i) There is a significant trend toward increased concentration in the market;

(ii) One of the insurers involved is one of the insurers in a grouping of large insurers showing the requisite increase in the market share; and

(iii) Another involved insurer's market is two percent (2%) or more.

(c) For the purposes of Section 3.1D(2):

(i) The term "insurer" includes any company or group of companies under common management, ownership or control;

(ii) The term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the NAIC and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this state, and the relevant geographical market is assumed to be this state;

(iii) The burden of showing *prima facie* evidence of violation of the competitive standard rests upon the commissioner.

(d) Even though an acquisition is not *prima facie* violative of the competitive standard under Paragraphs (2)(a) and (2)(b) of this subsection, the commissioner may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is *prima facie* violative of the competitive standard under Paragraphs (2)(a) and (2)(b) of this subsection, a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this subparagraph include, but are not limited to, the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.

(3) An order may not be entered under Section 3.1E(1) if:

(a) The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits which would arise from such economies exceed the public benefits which would arise from not lessening competition; or

(b) The acquisition will substantially increase the availability of insurance, and the public benefits of the increase exceed the public benefits which would arise from not lessening competition.

E. Orders and Penalties

(1) (a) If an acquisition violates the standards of this section, the commissioner may enter an order:

(i) Requiring an involved insurer to cease and desist from doing business in this state with respect to the line or lines of insurance involved in the violation; or

(ii) Denying the application of an acquired or acquiring insurer for a license to do business in this state.

(b) Such an order shall not be entered unless:

(i) There is a hearing;

(ii) Notice of the hearing is issued prior to the end of the waiting period and not less than fifteen (15) days prior to the hearing; and

(iii) The hearing is concluded and the order is issued no later than sixty (60) days after the date of the filing of the pre-acquisition notification with the commissioner.

Every order shall be accompanied by a written decision of the commissioner setting forth findings of fact and conclusions of law.

(c) An order pursuant to this paragraph shall not apply if the acquisition is not consummated.

(2) Any person who violates a cease and desist order of the commissioner under Paragraph (1) and while the order is in effect may, after notice and hearing and upon order of the commissioner, be subject at the discretion of the commissioner to one or more of the following:

(a) A monetary penalty of not more than $10,000 for every day of violation; or

(b) Suspension or revocation of the person's license.

(3) Any insurer or other person who fails to make any filing required by this section, and who also fails to demonstrate a good faith effort to comply with any filing requirement, shall be subject to a fine of not more than $50,000.

F. Inapplicable Provisions. Sections 10B, 10C, and 12 do not apply to acquisitions covered under Section 3.1B.

Section 4. Registration of Insurers

A. Registration. Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in:

(1) Section 4;

(2) Section 5A(1), 5B, 5D; and

(3) Either Section 5A(2) or a provision such as the following: Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen (15) days after the end of the month in which it learns of each change or addition.

Any insurer which is subject to registration under this section shall register within fifteen (15) days after it becomes subject to registration, and annually thereafter by [insert date] of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require any insurer authorized to do business in the state which is a member of an insurance holding company system, and which is not subject to registration under this section, to furnish a copy of the registration statement, the summary specified in Section 4C or other information filed by the insurance company with the insurance regulatory authority of its domiciliary jurisdiction.

B. Information and Form Required. Every insurer subject to registration shall file the registration statement with the commissioner on a form and in a format prescribed by the NAIC, which shall contain the following current information:

(1) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;

(2) The identity and relationship of every member of the insurance holding company system;

(3) The following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the insurer and its affiliates:

(a) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(b) Purchases, sales or exchange of assets;

(c) Transactions not in the ordinary course of business;

(d) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(e) All management agreements, service contracts and all cost-sharing arrangements;

(f) Reinsurance agreements;

(g) Dividends and other distributions to shareholders; and

(h) Consolidated tax allocation agreements;

(4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system;

(5) If requested by the commissioner, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include but are not limited to annual audited financial statements filed with the U.S. Securities and Exchange Commission (SEC) pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended. An insurer required to file financial statements pursuant to this paragraph may satisfy the request by providing the commissioner with the most recently filed parent corporation financial statements that have been filed with the SEC;

(6) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner;

Drafting Note: Neither option below is intended to modify applicable state insurance and/or corporate law requirements.

(7) Statements that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures; and

Alternative Section 4B(7):

(7) Statements that the insurer's board of directors is responsible for and oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures; and

(8) Any other information required by the commissioner by rule or regulation.

C. Summary of Changes to Registration Statement. All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

D. Materiality. No information need be disclosed on the registration statement filed pursuant to Subsection B if the information is not material for the purposes of this section. Unless the commissioner by rule, regulation or order provides otherwise; sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of one percent (.5%) or less of an insurer's admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this section.

E. Reporting of Dividends to Shareholders. Subject to Section 5B, each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen (15) business days following the declaration thereof.

F. Information of Insurers. Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, where the information is reasonably necessary to enable the insurer to comply with the provisions of this Act.

G. Termination of Registration. The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

H. Consolidated Filing. The commissioner may require or allow two (2) or more affiliated insurers subject to registration to file a consolidated registration statement.

I. Alternative Registration. The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under Subsection A and to file all information and material required to be filed under this section.

J. Exemptions. The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the commissioner by rule, regulation or order shall exempt the same from the provisions of this section.

K. Disclaimer. Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or a disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. A disclaimer of affiliation shall be deemed to have been granted unless the commissioner, within thirty (30) days following receipt of a complete disclaimer, notifies the filing party the disclaimer is disallowed. In the event of disallowance, the disclaiming party may request an administrative hearing, which shall be granted. The disclaiming party shall be relieved of its duty to register under this section if approval of the disclaimer has been granted by the commissioner, or if the disclaimer is deemed to have been approved.

L. Enterprise Risk Filings.

(1) The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners;

(2) Group Capital Calculation. Notwithstanding any exemptions from the registration contained in this provision, to the contrary each ultimate controlling person of every insurer shall also file an annual group capital calculation, completed in accordance with the NAIC Group Capital Calculation Instructions. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners, unless one of the following exemptions for the Insurance Holding Company System is met:

a. An insurance holding company that does not conduct business outside of the U.S. and either (a) is an insurer classified as either a county mutual insurance company, a town mutual insurance company or a farmers' mutual insurance company; or (b) has direct premiums written less than $1,000,000 in any calendar year and less than 1,000 policyholders or certificate holders of direct written policies nationwide at the end of the calendar year;

b. An insurance holding company whose non U.S. group-wide supervisor is the United States Federal Reserve, who is permitted to instead file a copy of the calculation required by the United States Federal Reserve, with the lead state commissioner;

~~a.~~c. An insurance holding company whose non U.S. group-wide supervisor, as determined in accordance with the principles of section 7.1, is located within ~~either a Qualified Jurisdiction or~~Reciprocal Jurisdiction [insert cross-reference to appropriate section of Credit for Reinsurance Law];

Commented [DD2]: Comment from RGA on reciprocity agreed to be considered by WG

d. An insurance holding company:

(i) That has provided information to the accredited lead state, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the lead-state to comply with the NAIC principles of group supervision as detailed in the NAIC Financial Analysis Handbook, and the lead state has determined that because of this the group capital calculation is not required to be filed; and

(ii) Whose non-U.S. group-wide supervisor, as determined in accordance with the principles of section 7.1, meets either of the following requirements:

a. Recognizes and accepts the group capital calculation for U.S. insurance groups who operate in the jurisdiction of that group-wide supervisor; or

Drafting Note: The phase "Recognizes and accepts" does not require the non-U.S. group-wide supervisor to require the U.S. insurance groups to actually file the group capital calculation with the non-U.S. supervisor but rather does not require its own version of a group capital filing.

Commented [DD3]: Comment from RGA on reciprocity agreed to be considered by the WG

~~a.~~b. For jurisdictions where any U.S. insurance groups do not operate, recognizes the group capital calculation as an acceptable international capital standard by indicating such formally in writing to the lead state with a copy to the International Association of Insurance Supervisor.

e. The exemptions in Sections 4L(2)(c) and 4L(2)(d) shall not apply to the U.S. operations of a non-U.S. insurance holding company if its group-wide supervisor does not recognize and accept the group capital calculation for any U.S. insurance group's operations in that group-wide supervisor's jurisdiction.

Commented [DD4]: Comment from RGA on reciprocity agreed to be considered by the WG

f. Notwithstanding the exemptions stated in Section 4L(2)(a) through Section 4L(2)(d), the commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation if the insurance holding company system has previously filed the annual group capital calculation and the commissioner makes a determination based upon that filing that the insurance holding company system meets all of the following criteria:

(i) Has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than $1,000,000,000;

(ii) Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;

~~(i)~~(iii) Has no banking, depository or other financial entity that is subject to a specified regulatory capital framework within its holding company structure;

~~(ii)~~(iv) Has *de minimis* material affiliated transactions between any of the insurers and the non-insurers that do not impart any risk associated with these transactions; and

(v) Has *de minimis* materially risky non-insurers within its holding company structure, as described in the NAIC Group Capital Calculation Instructions.

g. In addition to the commissioner's discretion to exempt an insurance holding company after reviewing a previously filed annual group capital calculation described in Section 4L(2)(f), the commissioner has the discretion to instead accept an annual filing that includes a single schedule of all of the entities within the group as well as corresponding key financial figures from those entities (Schedule 1) and any other specified information from the group capital calculation template, completed in accordance with the NAIC Group Capital Calculation Instructions, and which excludes all of the other requirements of the annual Group Capital Calculation, if either (i) the ultimate controlling person is a U.S. regulated insurer that already completes and annual Risk-Based Capital filing, and the commissioner has determined that there are de minimis materially risky non-insurers; or (ii) the insurance holding company system has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than $1,000,000,000; and the following additional criteria are met:

(i) The insurance holding company system has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;

~~(i)~~(ii) The holding company includes no banking, depository or other financial entity that is subject to a specified regulatory capital framework; and

(iii) The commissioner has not made a determination that the holding company structure has *de minimis* material affiliated transactions between any of the insurers and the non-insurers or has not determined that the holding company structure has *de minimis* materially risky-insurers, but believes the filing of the Schedule 1 is sufficient to meet the needs of the Commissioner.

h. Notwithstanding the exemptions stated in Section 4L(2)(a) through Section 4L(2)(g), the commissioner may require the ultimate controlling person to file an annual group capital calculation, completed in accordance with the NAIC Group Capital Calculation Instructions, if any of the following criteria are met:

(i) there are any material transactions that have occurred since the last filing of the annual group capital calculation or the Schedule 1; or

(ii) if any insurer within the insurance holding company system is in a Risk-Based Capital action level event as set forth in [insert cross-reference to appropriate section of Risk-Based Capital (RBC) Model Act] or a similar standard for a non-U.S. insurer; or

Commented [DD5]: Agreement by WG to consider commissioner discretion for non-ORSA, no international, no-bank groups

Commented [DD6]: Attempt to address comments from RAA and APCIA regarding having criteria that could be used by regulator to determine GCC not needed

Commented [DD7]: Attempt to address direction from Illinois on also having the ability to not require the GCC but instead allow a full inventory

(iii) any insurer within the insurance holding company system meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in [insert cross-reference to appropriate section of Model Regulation to define standards and commissioner's authority over companies deemed to be in hazardous financial condition]; or

(iv) otherwise exhibits qualities of a troubled insurer as determined by the commissioner based on unique circumstances including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

Commented [DD8]: Added to make sure state can still require the GCC of any company having previously been exempted assuming one of these is triggered

i. If an insurance holding company that qualifies for an exemption subsequently no longer qualifies for that exemption due to changes in premium of the insurer(s) within the insurance group of which the insurer is a member, the insurance holding company shall have one (1) year following the year the threshold is exceeded to comply with the requirements of this Act.

M. Violations. The failure to file a registration statement or any summary of the registration statement or enterprise risk filing required by this section within the time specified for filing shall be a violation of this section.

Section 5. Standards and Management of an Insurer Within an Insurance Holding Company System

A. Transactions Within an Insurance Holding Company System

(1) Transactions within an insurance holding company system to which an insurer subject to registration is a party shall be subject to the following standards:

(a) The terms shall be fair and reasonable;

(b) Agreements for cost sharing services and management shall include such provisions as required by rule and regulation issued by the commissioner;

(c) Charges or fees for services performed shall be reasonable;

(d) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;

(e) The books, accounts and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; and

(f) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs.

(2) The following transactions involving a domestic insurer and any person in its insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section, which are subject to any materiality standards contained in subparagraphs (a) through (g), may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least thirty (30) days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period. The notice for amendments or modifications shall include the reasons for the change and the financial impact on the domestic insurer. Informal notice shall be reported, within thirty (30) days after a termination of a previously filed agreement, to the commissioner for determination of the type of filing required, if any.

(a) Sales, purchases, exchanges, loans, extensions of credit, or investments, provided the transactions are equal to or exceed:

(i) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders as of the 31st day of December next preceding;

(ii) With respect to life insurers, three percent (3%) of the insurer's admitted assets as of the 31st day of December next preceding;

(b) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit provided the transactions are equal to or exceed:

(i) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders as of the 31st day of December next preceding;

(ii) With respect to life insurers, three percent (3%) of the insurer's admitted assets as of the 31st day of December next preceding;

(c) Reinsurance agreements or modifications thereto, including:

(i) All reinsurance pooling agreements;

(ii) Agreements in which the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities in any of the next three years, equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a non-affiliate, if an agreement or understanding exists between the insurer and non-affiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;

(d) All management agreements, service contracts, tax allocation agreements, guarantees and all cost-sharing arrangements;

(e) Guarantees when made by a domestic insurer; provided, however, that a guarantee which is quantifiable as to amount is not subject to the notice requirements of this paragraph unless it exceeds the lesser of one-half of one percent (.5%) of the insurer's admitted assets or ten percent (10%) of surplus as regards policyholders as of the 31st day of December next preceding. Further, all guarantees which are not quantifiable as to amount are subject to the notice requirements of this paragraph;

(f) Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount which, together with its present holdings in such investments, exceeds two and one-half percent (2.5%) of the insurer's surplus to policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to Section 2 of this Act (or authorized under any other section of this Chapter), or in non-subsidiary insurance affiliates that are subject to the provisions of this Act, are exempt from this requirement; and

Drafting Note: When reviewing the notification required to be submitted pursuant to Section 5A(2)(f), the commissioner should examine prior and existing investments of this type to establish that these investments separately or together with other transactions, are not being made to contravene the dividend limitations set forth in Section 5B. However, an investment in a controlling person or in an affiliate shall not be considered a dividend or distribution to shareholders when applying Section 5B of this Act.

(g) Any material transactions, specified by regulation, which the commissioner determines may adversely affect the interests of the insurer's policyholders.

Nothing in this paragraph shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same insurance holding company system, would be otherwise contrary to law.

(3) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the commissioner determines that separate transactions were entered into over any twelve-month period for that purpose, the commissioner may exercise his or her authority under Section 11.

(4) The commissioner, in reviewing transactions pursuant to Subsection A(2), shall consider whether the transactions comply with the standards set forth in Subsection A(1) and whether they may adversely affect the interests of policyholders.

(5) The commissioner shall be notified within thirty (30) days of any investment of the domestic insurer in any one corporation if the total investment in the corporation by the insurance holding company system exceeds ten percent (10%) of the corporation's voting securities.

B. Dividends and other Distributions

No domestic insurer shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until thirty (30) days after the commissioner has received notice of the declaration thereof and has not within that period disapproved the payment, or until the commissioner has approved the payment within the thirty-day period.

For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve (12) months exceeds the lesser of:

(1) Ten percent (10%) of the insurer's surplus as regards policyholders as of the 31st day of December next preceding; or

(2) The net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the twelve-month period ending the 31st day of December next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the previous two (2) calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval, and the declaration shall confer no rights upon shareholders until (1) the commissioner has approved the payment of the dividend or distribution or (2) the commissioner has not disapproved payment within the thirty-day period referred to above.

Drafting Note: The following Subsection C entitled "Management of Domestic Insurers Subject to Registration" is optional and is to be adopted according to the needs of the individual jurisdiction.

C. Management of Domestic Insurers Subject To Registration.

(1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this Act.

(2) Nothing in this section shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property or services with one or more other persons under arrangements meeting the standards of Section 5A(1).

(3) Not less than one-third of the directors of a domestic insurer, and not less than one-third of the members of each committee of the board of directors of any domestic insurer shall be persons who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or entity. At least one such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee thereof.

(4) The board of directors of a domestic insurer shall establish one or more committees comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The committee or committees shall have responsibility for nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer and recommending to the board of directors the selection and compensation of the principal officers.

(5) The provisions of Paragraphs (3) and (4) shall not apply to a domestic insurer if the person controlling the insurer, such as an insurer, a mutual insurance holding company, or a publicly held corporation, has a board of directors and committees thereof that meet the requirements of Paragraphs (3) and (4) with respect to such controlling entity.

(6) An insurer may make application to the commissioner for a waiver from the requirements of this subsection, if the insurer's annual direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, is less than $300,000,000. An insurer may also make application to the commissioner for a waiver from the requirements of this subsection based upon unique circumstances. The commissioner may consider various factors including, but not limited to, the type of business entity, volume of business written, availability of qualified board members, or the ownership or organizational structure of the entity.

D. Adequacy of Surplus. For purposes of this Act, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;

(2) The extent to which the insurer's business is diversified among several lines of insurance;

(3) The number and size of risks insured in each line of business;

(4) The extent of the geographical dispersion of the insurer's insured risks;

(5) The nature and extent of the insurer's reinsurance program;

(6) The quality, diversification and liquidity of the insurer's investment portfolio;

(7) The recent past and projected future trend in the size of the insurer's investment portfolio;

(8) The surplus as regards policyholders maintained by other comparable insurers;

(9) The adequacy of the insurer's reserves; and

(10) The quality and liquidity of investments in affiliates. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the judgment of the commissioner the investment so warrants.

Section 6. Examination

A. Power of Commissioner. Subject to the limitation contained in this section and in addition to the powers which the commissioner has under Sections [insert applicable sections] relating to the examination of insurers, the commissioner shall have the power to examine any insurer registered under Section 4 and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis.

B. Access to Books and Records.

(1) The commissioner may order any insurer registered under Section 4 to produce such records, books, or other information papers in the possession of the insurer or its affiliates as are reasonably necessary to determine compliance with this Chapter.

(2) To determine compliance with this Chapter, the commissioner may order any insurer registered under Section 4 to produce information not in the possession of the insurer if the insurer can obtain access to such information pursuant to contractual relationships, statutory obligations, or other method. In the event the insurer cannot obtain the information requested by the commissioner, the insurer shall provide the commissioner a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of information. Whenever it appears to the commissioner that the detailed explanation is without merit, the commissioner may require, after notice and hearing, the insurer to pay a penalty of $[insert amount] for each day's delay, or may suspend or revoke the insurer's license.

C. Use of Consultants. The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under Subsection A above. Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

D. Expenses. Each registered insurer producing for examination records, books and papers pursuant to Subsection A above shall be liable for and shall pay the expense of examination in accordance with Section [insert applicable section].

E. Compelling Production. In the event the insurer fails to comply with an order, the commissioner shall have the power to examine the affiliates to obtain the information. The commissioner shall also have the power to issue subpoenas, to administer oaths, and to examine under oath any person for purposes of determining compliance with this section. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court. Every person shall be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the state. He or she shall be entitled to the same fees and mileage, if claimed, as a witness in [insert appropriate statutory reference to trial-level court in that state], which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, shall be itemized and charged against, and be paid by, the company being examined.

Section 7. Supervisory Colleges

A. Power of Commissioner. With respect to any insurer registered under Section 4, and in accordance with Subsection C below, the commissioner shall also have the power to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with this Chapter. The powers of the commissioner with respect to supervisory colleges include, but are not limited to, the following:

(1) Initiating the establishment of a supervisory college;

(2) Clarifying the membership and participation of other supervisors in the supervisory college;

(3) Clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;

(4) Coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing; and

(5) Establishing a crisis management plan.

B. Expenses. Each registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner's participation in a supervisory college in accordance with Subsection C below, including reasonable travel expenses. For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates, and the commissioner may establish a regular assessment to the insurer for the payment of these expenses.

C. Supervisory College. In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management and governance processes, and as part of the examination of individual insurers in accordance with Section 6, the commissioner may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal and international regulatory agencies. The commissioner may enter into agreements in accordance with Section 8C providing the basis for cooperation between the commissioner and the other regulatory agencies, and the activities of the supervisory college. Nothing in this section shall delegate to the supervisory college the authority of the commissioner to regulate or supervise the insurer or its affiliates within its jurisdiction.

Section 7.1. Group-wide Supervision of Internationally Active Insurance Groups

A. The commissioner is authorized to act as the group-wide supervisor for any internationally active insurance group in accordance with the provisions of this section.. However, the commissioner may otherwise acknowledge another regulatory official as the group-wide supervisor where the internationally active insurance group:

(1) Does not have substantial insurance operations in the United States;

(2) Has substantial insurance operations in the United States, but not in this state; or

(3) Has substantial insurance operations in the United States and this state, but the commissioner has determined pursuant to the factors set forth in Subsections B and F that the other regulatory official is the appropriate group-wide supervisor.

An insurance holding company system that does not otherwise qualify as an internationally active insurance group may request that the commissioner make a determination or acknowledgment as to a group-wide supervisor pursuant to this section.

B. In cooperation with other state, federal and international regulatory agencies, the commissioner will identify a single group-wide supervisor for an internationally active insurance group. The commissioner may determine that the commissioner is the appropriate group-wide supervisor for an internationally active insurance group that conducts substantial insurance operations concentrated in this state. However, the commissioner may acknowledge that a regulatory official from another jurisdiction is the appropriate group-wide supervisor for the internationally active insurance group. The commissioner shall consider the following factors when making a determination or acknowledgment under this subsection:

(1) The place of domicile of the insurers within the internationally active insurance group that hold the largest share of the group's written premiums, assets or liabilities;

(2) The place of domicile of the top-tiered insurer(s) in the insurance holding company system of the internationally active insurance group;

(3) The location of the executive offices or largest operational offices of the internationally active insurance group;

(4) Whether another regulatory official is acting or is seeking to act as the group-wide supervisor under a regulatory system that the commissioner determines to be:

(a) Substantially similar to the system of regulation provided under the laws of this state, or

(b) Otherwise sufficient in terms of providing for group-wide supervision, enterprise risk analysis, and cooperation with other regulatory officials; and

(5) Whether another regulatory official acting or seeking to act as the group-wide supervisor provides the commissioner with reasonably reciprocal recognition and cooperation.

However, a commissioner identified under this section as the group-wide supervisor may determine that it is appropriate to acknowledge another supervisor to serve as the group-wide supervisor. The acknowledgment of the group-wide supervisor shall be made after consideration of the factors listed in Paragraphs (1) through (5) above, and shall be made in cooperation with and subject to the acknowledgment of other regulatory officials involved with supervision of members of the internationally active insurance group, and in consultation with the internationally active insurance group.

C. Notwithstanding any other provision of law, when another regulatory official is acting as the group-wide supervisor of an internationally active insurance group, the commissioner shall acknowledge that regulatory official as the group-wide supervisor. However, in the event of a material change in the internationally active insurance group that results in:

(1) The internationally active insurance group's insurers domiciled in this state holding the largest share of the group's premiums, assets or liabilities; or

(2) This state being the place of domicile of the top-tiered insurer(s) in the insurance holding company system of the internationally active insurance group, the commissioner shall make a determination or acknowledgment as to the appropriate group-wide supervisor for such an internationally active insurance group pursuant to Subsection B.

D. Pursuant to Section 6, the commissioner is authorized to collect from any insurer registered pursuant to Section 4 all information necessary to determine whether the commissioner may act as the group-wide supervisor of an internationally active insurance group or if the commissioner may acknowledge another regulatory official to act as the group-wide supervisor. Prior to issuing a determination that an internationally active insurance group is subject to group-wide supervision by the commissioner, the commissioner shall notify the insurer registered pursuant to Section 4 and the ultimate controlling person within the internationally active insurance group. The internationally active insurance group shall have not less than thirty (30) days to provide the commissioner with additional information pertinent to the pending determination. The commissioner shall publish in the [insert name of state administrative record] and on its Internet website the identity of internationally active insurance groups that the commissioner has determined are subject to group-wide supervision by the commissioner.

E. If the commissioner is the group-wide supervisor for an internationally active insurance group, the commissioner is authorized to engage in any of the following group-wide supervision activities:

(1) Assess the enterprise risks within the internationally active insurance group to ensure that:

(a) The material financial condition and liquidity risks to the members of the internationally active insurance group that are engaged in the business of insurance are identified by management, and

(b) Reasonable and effective mitigation measures are in place;

(2) Request, from any member of an internationally active insurance group subject to the commissioner's supervision, information necessary and appropriate to assess enterprise risk, including, but not limited to, information about the members of the internationally active insurance group regarding:

(a) Governance, risk assessment and management,

(b) Capital adequacy, and

(c) Material intercompany transactions;

(3) Coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the internationally active insurance group are domiciled, compel development and implementation of reasonable measures designed to ensure that the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members of such internationally active insurance group that are engaged in the business of insurance;

(4) Communicate with other state, federal and international regulatory agencies for members within the internationally active insurance group and share relevant information subject to the confidentiality provisions of Section 8, through supervisory colleges as set forth in Section 7 or otherwise;

(5) Enter into agreements with or obtain documentation from any insurer registered under Section 4, any member of the internationally active insurance group, and any other state, federal and international regulatory agencies for members of the internationally active insurance group, providing the basis for or otherwise clarifying the commissioner's role as group-wide supervisor, including provisions for resolving disputes with other regulatory officials. Such agreements or documentation shall not serve as evidence in any proceeding that any insurer or person within an insurance holding company system not domiciled or incorporated in this state is doing business in this state or is otherwise subject to jurisdiction in this state; and

(6) Other group-wide supervision activities, consistent with the authorities and purposes enumerated above, as considered necessary by the commissioner.

F. If the commissioner acknowledges that another regulatory official from a jurisdiction that is not accredited by the NAIC is the group-wide supervisor, the commissioner is authorized to reasonably cooperate, through supervisory colleges or otherwise, with group-wide supervision undertaken by the group-wide supervisor, provided that:

(1) The commissioner's cooperation is in compliance with the laws of this state; and

(2) The regulatory official acknowledged as the group-wide supervisor also recognizes and cooperates with the commissioner's activities as a group-wide supervisor for other internationally active insurance groups where applicable. Where such recognition and cooperation is not reasonably reciprocal, the commissioner is authorized to refuse recognition and cooperation.

G. The commissioner is authorized to enter into agreements with or obtain documentation from any insurer registered under Section 4, any affiliate of the insurer, and other state, federal and international regulatory agencies for members of the internationally active insurance group, that provide the basis for or otherwise clarify a regulatory official's role as group-wide supervisor.

H. The commissioner may promulgate regulations necessary for the administration of this section.

I. A registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner's participation in the administration of this section, including the engagement of attorneys, actuaries and any other professionals and all reasonable travel expenses.

Section 8. Confidential Treatment

A. Documents, materials or other information in the possession or control of the Department of Insurance that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to Section 6 and all information reported or provided to the Department of Insurance pursuant to Section 3B(12) and (13), Section 4, Section 5 and Section 7.1 shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials or

other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof, in which event the commissioner may publish all or any part in such manner as may be deemed appropriate.

B. Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner or with whom such documents, materials or other information are shared pursuant to this Act shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to Subsection A.

C. In order to assist in the performance of the commissioner's duties, the commissioner:

(1) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Subsection A, with other state, federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in Section 7, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material or other information, and has verified in writing the legal authority to maintain confidentiality.

(2) Notwithstanding paragraph (1) above, the commissioner may only share confidential and privileged documents, material, or information reported pursuant to Section 4L1 with commissioners of states having statutes or regulations substantially similar to Subsection A and who have agreed in writing not to disclose such information.

(3) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(4) Shall enter into written agreements with the NAIC governing sharing and use of information provided pursuant to this Act consistent with this subsection that shall:

(i) Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC and its affiliates and subsidiaries pursuant to this Act, including procedures and protocols for sharing by the NAIC with other state, federal or international regulators;

(ii) Specify that ownership of information shared with the NAIC and its affiliates and subsidiaries pursuant to this Act remains with the commissioner and the NAIC's use of the information is subject to the direction of the commissioner:

(iii) Require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC pursuant to this Act is subject to a request or subpoena to the NAIC for disclosure or production; and

(iv) Require the NAIC and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the NAIC and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the NAIC and its affiliates and subsidiaries pursuant to this Act..

D. The sharing of information by the commissioner pursuant to this Act shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution and enforcement of the provisions of this Act.

E. No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in Subsection C.

F. Documents, materials or other information in the possession or control of the NAIC pursuant to this Act shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

Section 8.1. Confidential Treatment & Prohibition on Annoucements for the Group Capital Calculation

A. For purposes of the information reported or provided to the Department of Insurance pursuant to Section 4L2, the aforementioned confidentiality requirements of Section 8 are modified as follows:

(1) The commissioner shall maintain the confidentiality of the group capital calculation and group capital ratio and any group capital information received from an insurance holding company supervised by the Federal Reserve Board and non-U.S. group wide supervisors. With respect to all other documents, material or other information covered by this subsection, the commissioner will not make such documents, materials, or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof, in which event the commissioner may publish all or any part in such manner as may be deemed appropriate.

Commented [DD9]: Added language from the ACLI as requested by WG

[Drafting note: This group capital calculation and group capital ratio includes confidential information and filings received from insurance holding companies supervised by the Federal Reserve Board. The confidential treatment afforded to group capital calculation filings includes any Federal Reserve Board group capital filings and information]

Commented [DD10]: Added language from the ACLI as requested by WG

(2) Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner or with whom such documents, materials or other information are shared pursuant to this Act shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to Subsection A.

(3) In order to assist in the performance of the commissioner's duties, the commissioner:

(a) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Subsection A, with other state, federal and international regulatory agencies, with the NAIC, any third party consultants, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in Section 7, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, material or other information, and has verified in writing the legal authority to maintain confidentiality;.

(b) Notwithstanding paragraph (a) above, the commissioner may only share confidential and privileged documents, material, or information reported pursuant to Section 4M with commissioners of states having statutes or regulations substantially similar to Subsection A and who have agreed in writing not to disclose such information;.

(c) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information from the NAIC and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any documents, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the documents, material or information; and

(d) Shall enter into written agreements with the NAIC and any third-party consultant governing sharing and use of information provided pursuant to this Act consistent with this subsection that shall:

(i) Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC or a third-party consultant pursuant to this Act, including procedures and protocols for sharing by the NAIC with other state, federal or international regulators. The agreement shall provide that the receipient agrees in writing to maintain the confidentialty and privileged status of the documents, materials or other information and has verified in writing the legal authority to maintain confidentiality;

(ii) Specify that ownership of information shared with the NAIC or third-party consultant pursuant to this Act remains with the commissioner, and the NAIC's or a third-party consultant's use of the information is subject to the direction of the commissioner;;

(iii) Prohibit the NAIC or third-party consultant from storing the information shared pursuant to this Act in a permanent database after the underlying analysis is completed;

(iv) Require prompt notice be given to an insurer whose confidential information in the possession of the NAIC or a third party consultant pursuant to this Act is subject to a request or subpoena to the NAIC or a third-party consultant for disclosure or production;

(v) Require the NAIC or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or a third-party consultant may be required to disclose confidential information about the insurer shared with the NAIC or a third-party consultant pursuant to this Act; and

(vi) In the case of an agreement involving a third-party consultant, provide for the insurer's written consent.

(4) The sharing of information by the commissioner pursuant to this Act shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution and enforcement of the provisions of this Act.

(a) No waiver of any applicable privilege or claim of confidentiality in the documents, propriety and trade-secret materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in Subsection (3).

(b) Documents, materials or other information in the possession or control of the NAIC pursuant to this Act shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

(c) It is the judgement of the legislature that the group capital calculation and resulting group capital ratio is a regulatory tool for assessing group risks and capital adequacy, and is not intended as a means to rank insurers or insurance holding company systems generally. Therefore, except as otherwise may be required under the provisions of this Act, the making, publishing, disseminating, circulating or placing before the public, or causing directly or indirectly to be made, published, disseminated, circulated or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way as

an advertisement, announcement or statement containing arepresentation or statement with regard to the group capital calculation or group capital ratio of any insurer or any insurer group, or of any component derived in the calculation by any insurer, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited; provided, however, that if any materially false statement with respect to the group capital calculation or resulting group capital ratio or an inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation or resulting group capital ratio is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement or the inappropriateness, as the case may be, then the insurer may publish announcements in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

Section 9. Rules and Regulations

The commissioner may, upon notice and opportunity for all interested persons to be heard, issue such rules, regulations and orders as shall be necessary to carry out the provisions of this Act.

Section 10. Injunctions, Prohibitions Against Voting Securities, Sequestration of Voting Securities

A. Injunctions. Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of this Act or of any rule, regulation or order issued by the commissioner hereunder, the commissioner may apply to the [insert title] Court for the county in which the principal officer of the insurer is located or if the insurer has no office in this state then to the [insert title] Court for [insert county] County for an order enjoining the insurer or director, officer, employee or agent thereof from violating or continuing to violate this Act or any rule, regulation or order, and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors and shareholders or the public may require.

B. Voting of Securities; When Prohibited. No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this Act or of any rule, regulation or order issued by the commissioner hereunder may be voted at any shareholder's meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of the securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this Act or of any rule, regulation or order issued by the commissioner hereunder; the insurer or the commissioner may apply to the [insert title] Court for the county in which the insurer has its principle place of business to enjoin any offer, request, invitation, agreement or acquisition made in contravention of Section 3 or any rule, regulation or order issued by the commissioner thereunder to enjoin the voting of any security so acquired, to void any vote of the security already cast at any meeting of shareholders and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditor and shareholders or the public may require.

C. Sequestration of Voting Securities. In any case where a person has acquired or is proposing to acquire any voting securities in violation of this Act or any rule, regulation or order issued by the commissioner hereunder, the [insert title] Court for [insert county] County or the [insert title] Court for the county in which the insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner, seize or sequester any voting securities of the insurer owned directly or indirectly by the person, and issue such order as may be appropriate to effectuate the provisions of this Act.

Notwithstanding any other provisions of law, for the purposes of this Act the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.

Section 11. Sanctions

A. Any insurer failing, without just cause, to file any registration statement as required in this Act shall be required, after notice and hearing, to pay a penalty of $[insert amount] for each day's delay, to be recovered by the commissioner of Insurance and the penalty so recovered shall be paid into the General Revenue Fund of this state. The maximum penalty under this section is $[insert amount]. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

B. Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly shall permit any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to Section 4A, 5A(2), or 5B, or which violate this Act, shall pay, in their individual capacity, a civil forfeiture of not more than $[insert amount] per violation, after notice and hearing before the commissioner. In determining the amount of the civil forfeiture, the commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

C. Whenever it appears to the commissioner that any insurer subject to this Act or any director, officer, employee or agent thereof has engaged in any transaction or entered into a contract which is subject to Section 5 of this Act and which would not have been approved had the approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing the commissioner may also order the insurer to void any contracts and restore the status quo if the action is in the best interest of the policyholders, creditors or the public.

D. Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed a willful violation of this Act, the commissioner may cause criminal proceedings to be instituted by the [insert title] Court for the county in which the principal office of the insurer is located or if the insurer has no office in this state, then by the [insert county] Court for [insert title] County against the insurer or the responsible director, officer, employee or agent thereof. Any insurer which willfully violates this Act may be fined not more than $[insert amount]. Any individual who willfully violates this Act may be fined in his or her individual capacity not more than $[insert amount] or be imprisoned for not more than one to three (3) years or both.

E. Any officer, director or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the commissioner in the performance of his or her duties under this Act, upon conviction shall be imprisoned for not more than [insert amount] years or fined $[insert amount] or both. Any fines imposed shall be paid by the officer, director or employee in his or her individual capacity.

F. Whenever it appears to the commissioner that any person has committed a violation of Section 3 of this Act and which prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision in accordance with [insert appropriate statutory reference related to orders of supervision.

Section 12. Receivership

Whenever it appears to the commissioner that any person has committed a violation of this Act which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders or the public, then the commissioner may proceed as provided in Section [insert applicable section] of this Chapter to take possessions of the property of the domestic insurer and to conduct its business.

Section 13. Recovery

A. If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under the order shall have a right to recover on behalf of the insurer, (i) from any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions (other than distributions of shares of the same class of stock) paid by the insurer on its capital stock, or (ii) any payment in the form of a bonus, termination settlement or extraordinary lump sum salary adjustment made by the insurer or its subsidiary to a director, officer or employee, where the distribution or payment pursuant to (i) or (ii) is made at any time during the one year preceding the petition for liquidation, conservation or rehabilitation, as the case may be, subject to the limitations of Subsections B, C, and D of this section.

B. No distribution shall be recoverable if the parent or affiliate shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

C. Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time the distributions were paid shall be liable up to the amount of distributions or payments under Subsection A which the person received. Any person who otherwise controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions that would have been received if they had been paid immediately. If two (2) or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

D. The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

E. To the extent that any person liable under Subsection C of this section is insolvent or otherwise fails to pay claims due from it, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation or holding company or person who otherwise controlled it.

Section 14. Revocation, Suspension, or Nonrenewal of Insurer's License

Whenever it appears to the commissioner that any person has committed a violation of this Act which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, suspend, revoke or refuse to renew the insurer's license or authority to do business in this state for such period as the commissioner finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

Section 15. Judicial Review, Mandamus

A. Any person aggrieved by any act, determination, rule, regulation or order or any other action of the commissioner pursuant to this Act may appeal to the [insert title] Court for [insert county] County. The court shall conduct its review without a jury and by trial *de novo*, except that if all parties, including the commissioner, so stipulate, the review shall be confined to the record. Portions of the record may be introduced by stipulation into evidence in a trial *de novo* as to those parties so stipulating.

B. The filing of an appeal pursuant to this section shall stay the application of any rule, regulation, order or other action of the commissioner to the appealing party unless the court, after giving the party notice and an opportunity to be heard, determines that a stay would be detrimental to the interest of policyholders, shareholders, creditors or the public.

C. Any person aggrieved by any failure of the commissioner to act or make a determination required by this Act may petition the [insert title] Court for [insert county] County for a writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to act or make a determination.

Section 16. Conflict with Other Laws

All laws and parts of laws of this state inconsistent with this Act are hereby superseded with respect to matters covered by this Act.

Section 17. Separability of Provisions

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provisions or application, and for this purpose the provisions of this Act are separable.

Section 18. Effective Date

This Act shall take effect thirty (30) days from its passage.

APPENDIX
ALTERNATE PROVISIONS

Alternative Section 1. Findings

A. It is hereby found and declared that it may not be inconsistent with the public interest and the interest of policyholders and shareholders to permit insurers to:

(1) Engage in activities which would enable them to make better use of management skills and facilities;

(2) Diversify into new lines of business through acquisition or organization of subsidiaries;

(3) Have free access to capital markets which could provide funds for insurers to use in diversification programs;

(4) Implement sound tax planning conclusions; and

(5) Serve the changing needs of the public and adapt to changing conditions of the social, economic and political environment, so that insurers are able to compete effectively and to meet the growing public demand for institutions capable of providing a comprehensive range of financial services.

B. It is further found and declared that the public interest and the interests of policyholders and shareholders are or may be adversely affected when:

(1) Control of an insurer is sought by persons who would utilize such control adversely to the interests of policyholders or shareholders;

(2) Acquisition of control of an insurer would substantially lessen competition or create a monopoly in the insurance business in this state;

(3) An insurer which is part of an insurance holding company system is caused to enter into transactions or relationships with affiliated companies on terms which are not fair and reasonable; or

(4) An insurer pays dividends to shareholders which jeopardize the financial condition of such insurers.

C. It is hereby declared that the policies and purposes of this Act are to promote the public interest by:

(1) Facilitating the achievement of the objectives enumerated in Subsection A;

(2) Requiring disclosure of pertinent information relating to changes in control of an insurer;

(3) Requiring disclosure by an insurer of material transactions and relationships between the insurer and its affiliates, including certain dividends to shareholders paid by the insurer; and

(4) Providing standards governing material transactions between the insurer and its affiliates.

D. It is further declared that it is desirable to prevent unnecessary multiple and conflicting regulation of insurers. Therefore, this state shall exercise regulatory authority over domestic insurers and unless otherwise provided in this Act, not over nondomestic insurers, with respect to the matters contained herein.

Alternative Section 2. Subsidiaries of Insurers

A. Authorization. Any domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries engaged in the following kinds of business:

(1) Any kind of insurance business authorized by the jurisdiction in which it is incorporated;

(2) Acting as an insurance broker or as an insurance agent for its parent or for any of its parent's insurer subsidiaries;

(3) Investing, reinvesting or trading in securities for its own account, that of its parent, a subsidiary of its parent, or an affiliate or subsidiary;

(4) Management of an investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services;

(5) Acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended;

(6) Rendering investment advice to governments, government agencies, corporations or other organizations or groups;

(7) Rendering other services related to the operations of an insurance business, such as actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal and collection services;

(8) Ownership and management of assets which the parent corporation could itself own or manage;

Drafting Note: The aggregate investment by the insurer and its subsidiaries acquired or organized pursuant to this paragraph should not exceed the limitations applicable to such investments by the insurer.

(9) Acting as administrative agent for a governmental instrumentality that is performing an insurance function;

(10) Financing of insurance premiums, agents and other forms of consumer financing;

(11) Any other business activity determined by the commissioner to be reasonably ancillary to an insurance business; and

(12) Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section.

Chronological Summary of Action (all references are to the Proceedings of the NAIC).

1969 Proc. II 736, 737, 738-751, 756 (adopted).
1972 Proc. I 14, 16, 443, 449 (corrected).
1980 Proc. II 22, 26, 29, 42-46 (amended, added Section 3.1).
1983 Proc. I 6, 37, 96, 99 (amended).
1985 Proc. I 19, 37,178, 183-200 (amended and reprinted).
1985 Proc. II 11, 24-25, 74, 75-92 (amended and reprinted).
1986 Proc. I 10, 25, 72 (amended).
1986 Proc. II 12, 19-20, 93-94, 94-109 (amended and reprinted).
1993 Proc. 4th Quarter 16, 31, 57, 61-62 (amended).
1995 Proc. 4th Quarter 11, 33, 307, 310, 312-328 (amended and reprinted).
1996 Proc. 1st Quarter 124, 270, 272-275 (amendments adopted later printed here).
1997 Proc. 4th Quarter 11 (amendments adopted).
1999 Proc. 4th Quarter 15, 364, 369, 379-380 (amended).
2001 Proc. 2nd Quarter 11, 14, 319, 339, 342-348 (amended).
2011 Proc. 1st Quarter I 3-11 (amended).
2014 Proc. 3rd Quarter, Vol. I 122, 136, 140, 183, 243-266 (amended).

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July 15, 2020

Commissioner David Altmaier
Florida Office of Insurance Regulation
Chair, NAIC Group Capital Calculation (E) Working Group

via email to ddaveline@naic.org

Re.: Proposed revisions to the NAIC Model Insurance Holding Company System Regulatory Act (Model 440)

Dear Commissioner Altmaier,

Allianz Life Insurance Company of North America ("Allianz") and the Transamerica Companies ("Transamerica") appreciate the opportunity to comment on the Group Capital Calculation Working Group's exposure of proposed changes to the NAIC Model Insurance Holding Company System Regulatory Act.

As subsidiaries of European insurance groups, the development of group supervision within the United States presents Allianz and Transamerica with the risk of costly, duplicative regulation and resulting negative impacts on our competitive positioning. We are grateful for the NAIC's ongoing efforts to mitigate this risk. For instance, we welcome the ORSA reporting provisions that allow a non-U.S. ORSA—required for our groups under Europe's Solvency II regulation—to fulfill U.S. requirement provisions. Portions of the NAIC's proposed implementation of ComFrame have similar benefits.

It is in this spirit that we have investigated the tractability and viability of the proposed "subgroup reciprocity"[1] provision in Section 4L(2)e of the current exposure. Closely related is the drafting note under Section 4L(2)d(ii)a. We align with the key positions laid out in the ACLI comment letter, including ACLI's position that subgroup reciprocity must be accompanied by an equitable process that does not inherently disadvantage foreign-owned groups.

We have also identified a number of potentially significant practical issues with subgroup reciprocity as set forth in the current exposure. These issues are outlined on the following pages, and include:

- thorny technical ambiguities, starting with an unclear meaning and relevance of a GCC for "U.S. operations";
- the need to develop guidance, supported by field testing, for a number of new issues created by a GCC that would be limited to a portion of the group;
- the need to overcome cross-border information limitations in order to create a transparent and equitable process for administering reciprocity;
- a potential need to develop a GCC that is suitable not only for "U.S. operations" but also for subgroups *outside* the U.S.; and
- the need to investigate legal impediments, including both potential conflicts with the Covered Agreement as well as possible limitations on the authority of states to implement the concept.

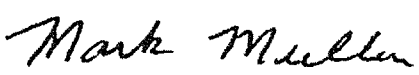
To avoid implementing a reciprocity concept that is vulnerable to practical and legal challenges, we believe that all of these issues must be addressed before subgroup reciprocity is suitable for inclusion in an NAIC model.

[1] In this letter we sometimes use the terms "subgroup" and "subgroup reciprocity" for ease of communication, even though the exposure uses the term "operations" and not "subgroup."

Although we continue to explore these matters, we hope this preliminary information aids in a decision on whether to develop this concept further. Regardless of the decision, Allianz and Transamerica commit to supporting the development of efficient and effective prudential regulation within the United States.

Sincerely,

Walter White
President & Chief Executive Officer
Allianz Life of North America



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Doug Ommen, Commissioner, Iowa Insurance Division

Preliminary List of Issues that Would Need to be Resolved

for Subgroup Reciprocity to be Effectuated

1. **Ambiguities around the meaning of "U.S. operations."** The language in Section 4L(2)e employs the term "operations" not "subgroup." This signals an intent to require "subgroup" GCC *even in the absence of a defined "subgroup."* In the European Union, subgroup supervision and capital requirements apply to a defined collection of legal entities under a specific holding company. "Operations" is a more general term and frequently is used to describe the location where business is serviced and managed. On the surface, "U.S. operations" would seem to *exclude* insurance entities—*even subsidiaries and branches*—that are managed outside the U.S. and *include* non-insurance businesses that are managed within the U.S. Another unclear area relates to geographically out-of-scope entities that provide services to in-scope entities or that are owned by in-scope entities. It is also unclear whether a GCC encompassing "U.S. operations" would entirely disregard group structure (bringing together entities that are structurally disconnected) within a single GCC or whether it might be necessary to file multiple GCCs in order to better align the connection of the GCC results to the risks presented by the group structure. In short, "U.S. operations" must somehow be better defined in order for a GCC applied to such "operations" to have meaning, relevance, and consistent application.

2. **Ambiguities around "non-U.S." insurance holding company.** The draft language in Section 4L(2)e refers to "the U.S. operations *of a non-U.S. insurance holding company*." The model does not define a "non-U.S." insurance holding company. In many group structures, U.S. insurance entities would roll up to a U.S. intermediate holding company but the ultimate controlling person (UCP) would be outside the U.S. It would also be theoretically possible for the UCP to be within the U.S. but for the group-wide supervisor to be outside the U.S. In order to avoid unintended scope consequences, it would be necessary to consider a variety of current and potential future group structures to ensure that the scope language functions as intended.

3. **"Jurisdiction" in an EU context.** Section 4L(2)e refers to the "group-wide supervisor's jurisdiction." It is unclear how "jurisdiction" is intended to apply to the European Union. European supervisors have supervisory authority at the Member State level, but it is possible for a European supervisor to apply group supervision at the worldwide level and subgroup supervision at the pan-European level. The exposed language could be interpreted as applying only if a subgroup were established within the Member State of the group supervisor, which may not align with the underlying intent.

4. **Ambiguities within the drafting note.** The phrase "recognizes and accepts" implies a positive action (i.e. something a non-U.S. supervisor affirmatively does). But the drafting note defines it in a negative manner (i.e. something a non-U.S. supervisor does not do). We think this is likely to perplex non-native English speakers in non-U.S. jurisdictions that would be impacted by this definition. In addition, the drafting note appears to have been drafted from the perspective of a non-U.S. supervisor acting as *a group-wide supervisor* and not necessarily a *subgroup* supervisor.

5. **Inherent limitations of a drafting note.** Drafting notes do not have legal authority and are frequently omitted from state law implementations of NAIC models. Yet the drafting note under Section 4L(2)d(ii)a seems critically important, as it is intended to convey what would or would not trigger reciprocity consequences.

6. **Unavailability of reliable information about subgroup supervision.** While information about group supervision is frequently public, information about subgroup supervision often is not. This is particularly the

case in the EU, where almost no information about subgroup supervision appears to be available. We understand that subgroup supervision is legally permissible, but rare. We are not aware of any U.S. groups that are currently subject to subgroup supervision in the EU, but we cannot objectively and definitively confirm this. It is not even clear that pan-European authorities such as EIOPA have access to complete information about subgroup supervision. Due to the competitive effects that could be unleashed by reciprocal capital measures, we believe that it would be imperative to establish a verifiable, objective mechanism to verify the existence of subgroup capital measures in all relevant jurisdictions. This may prove to be very challenging in the EU and possibly in other jurisdictions.

7. **Development of a GCC suitable for U.S. subgroups in non-U.S. jurisdictions.** The drafting note says that "recognizes and accepts" means that a non-U.S. supervisor would not be *required* to require a filing of the GCC. Applied in a subgroup context, the implication is that a required filing of the GCC is *permissible*. Yet the structure of the GCC does not currently provide a non-U.S. supervisor with a clear picture *solely of the entities that the supervisor may be legally required to supervise in his or her jurisdiction*. We suggest that it would not be credible for state regulators to suggest that non-U.S. supervisors should not have access to *any* collective capital information about the specific group of entities they might be legally required to supervise[2]. Therefore we believe that the draft language would necessitate the development of a subgroup GCC that could be "accepted" and used by non-U.S. supervisors.

8. **Unrealistically broad triggers.** In the drafting note, the phrase "its own version of a group capital filing" would seem to include any capital information other than the GCC, including, it would seem, the Aggregation Method, which NAIC representatives have characterized as "a type of global standard." In addition, the term group capital *filing* would seem to encompass even something akin to Schedule 1 within the GCC. These triggers seem unrealistically broad and would need to be narrowed.

9. **Clarifying situations in which direct reciprocity is not possible.** Section 4L(2)d(ii) clarifies the proposed workings of reciprocity at the worldwide level for a jurisdiction in which no U.S. groups operate. Similar clarification would be needed for subgroup reciprocity. In addition, there is a need to consider situations in which relevant requirements at either the worldwide or subgroup level do not exist.

10. **Subgroups becoming subject to Federal Reserve supervision.** At present, no foreign-owned groups are subject to supervision by the Federal Reserve. If this were to occur, we would expect that the Federal Reserve would require the formation of an intermediate holding company so that formal group supervision could be performed, and we believe that the Fed's group capital filing should be sufficient for GCC purposes, similar to the exemption in 4L(2)b. If subgroup reciprocity is developed, the model law would need to contemplate this possibility.

11. **Restructuring of the exemptions.** Sections 4L(2)f and 4L(2)g describe what might be characterized as "partial" exemptions from the GCC. The current structuring of the various exemptions implies that U.S. groups would be eligible for such exemptions, but "U.S. operations" that are subject to the GCC would not be eligible. We do not think that outcome makes sense and that a restructuring of the exemption provisions, coordinating with a more robust definition of "operations," would be advisable.

12. **Refining the purposes of the GCC.** The draft instructions describe various purposes of the GCC, generally premised on a worldwide scope ("identifying risks that may emanate from a holding company system,"

[2] The proposed subgroup reciprocity would not be triggered if a non-U.S. supervisor were to require the formation of a subgroup or if such supervisor were to require non-capital supervisory measures, but only if such supervisor were to require "its own version of a group capital filing."

"[understanding] how capital is distributed across an entire group," "understand the risk that could adversely impact the ability of entities within the Scope of application to pay policyholder claims," "enhance group-wide financial analysis.") It would be necessary to refine these purposes so that the regulatory importance of a GCC applied to "U.S. operations" would be clear to all current and future stakeholders.

13. **Creating guidance for the use of the GCC within a supervisory college.** We can imagine that a GCC applied to all or part of foreign-owned insurance group—when the U.S. lead state is neither the group-wide supervisor nor is formally supervising a subgroup—would foster tensions among supervisors in a supervisory college setting. In a worldwide context, the supervisory college would be faced with competing measures, one applied by the group-wide supervisor and the other employed by the U.S. state regulator. A subgroup GCC, meanwhile, could encourage supervisors to prioritize an interest in the capitalization of a portion of the group above the capitalization of the group as a whole. We suggest that it would be prudent to develop regulatory guidance for the use of the GCC in light of these possibilities. Some of the material within IAIS's Insurance Core Principles and related ComFrame guidance—notably ICP 23 (Group-wide supervision), ICP 25 (Supervisory Cooperation and Coordination), and ICP 10 (Preventive Measures, Corrective Measures, and Sanctions)—may be helpful for this purpose.

14. **Opportunity for formal field testing.** Prior to the current exposure, there has not been public consideration of any subgroup GCC. The GCC is inherently a *group* capital adequacy measure, and the Holding Company model limits the circumstances in which group-wide supervision is possible. As a result, most foreign-owned groups have assumed that they would be entirely out of scope, and the foreign-owned groups that have field tested the GCC are unlikely to have done so for whatever might be determined to be "U.S. operations." We believe that it would not be sound regulatory practice for state regulators to legally enact a GCC for "U.S. operations" without *any* opportunity for formal field testing.

    A major reason why field testing of a GCC for "U.S. operations" is imperative is that a variety of new technical issues must be considered. Although it would be possible to implement a crude calculation that disregards these issues, the likely result would be a materially distorted metric. For example:

    - It would be necessary to create rules for the treatment of capital instruments that may be issued by one portion of the group (that may be in or out of scope), but are used to support the entire group;
    - It would be necessary to clarify the treatment of intragroup activities such as intragroup loans, intragroup reinsurance, intragroup guarantees, and other intragroup transactions between "in scope" and "out of scope" portions of the group;
    - It would be necessary to consider adjustments for certain activities performed within the in-scope operations that support the activities of the entire group as well as allocations of provisions held for costs related to activities that are incurred outside of in-scope operations but benefit the in-scope operations.
    - It would be necessary to consider quantifying the benefit of "group support"—both explicit and implicit—for the in-scope operations.
    - It would be necessary to consider a variety of issues related to the exclusion of non-U.S. subsidiaries of the in-scope "operations," if exclusion of such subsidiaries is determined to be appropriate.

    All of the above issues—and most likely others identified during field testing—would need to be addressed if a GCC for "U.S. operations" were to be a credible, durable regulatory tool.

15. **Appropriate subgroup calibration.** For maximum financial flexibility, insurance groups generally try to centralize capital management, and improperly calibrated subgroup measures could have the unintended impact of trapping capital within groups at intermediate levels. It seems unlikely that the proposed PCR calibration of 175% (as indicated in the draft Financial Analysis Handbook guidance) is appropriate for

subgroups. Because of the typical centralization of capital management, we believe that any subgroup calibration threshold should be lower than a global group threshold. At a minimum, there would need to be thoughtful policy consideration of this issue.

16. **Creation of an objective mechanism to resolve disputes.** A significant challenge with the various proposed reciprocity concepts involves implementation and resolution of disputes. In the absence of a bilateral forum such as the Joint Committee established by the Covered Agreement, we have a general concern that resolution of disputable issues would advantage the competitive interests of U.S. insurance groups and work to the disadvantage of non-U.S. based insurance groups. In order for us—as subsidiaries of non-U.S. based groups—to fully embrace the proposed subgroup reciprocity, we believe it would be critically important to create a mechanism that equitably protects the interests of groups based in all jurisdictions. We suggest that such a mechanism, where possible, should be bilateral.

Overarching issues relating to legal authority

17. **Possible constraint of a right granted by the Covered Agreement.** Article 4.b of the *Bilateral Agreement Between The United States Of America And the European Union On Prudential Measures Regarding Insurance and Reinsurance* grants supervisors in the host territory the unfettered authority to supervise subgroups "at the level of the parent undertaking in its territory." In the Covered Agreement, group supervision includes group capital. The proposed subgroup reciprocity, however, aims to constrain a non-U.S. supervisor's willingness to apply group capital measures on subgroups of U.S. groups operating in a non-U.S. territory. To avoid running afoul of the U.S.-EU and U.S.-UK Covered Agreements, we suggest that it would be necessary to address this proposal with the relevant Joint Committees in advance of its inclusion within the model law.

18. **Possible issues involving non-EU Reciprocal Jurisdictions.** Related to issue #17 above, according to Model 785, Reciprocal Jurisdictions include qualified jurisdictions that meet certain additional requirements, "consistent with terms and conditions of in-force covered agreements." This phrase implies an intent for *all* of the terms of the Covered Agreement to apply to Reciprocal Jurisdictions, as well as to the United States. Therefore, if Covered Agreement Article 4.b is problematic in applying subgroup reciprocity within the EU, Model 785 may extend the concern to other Reciprocal Jurisdictions. It would be prudent to address this with relevant Reciprocal Jurisdiction authorities before including it in NAIC model law.

19. **Another Covered Agreement issue.** Article 4.a of the Covered Agreement says that a Home Party insurance or reinsurance group is not subject to group supervision (including capital) by any Host supervisory authority. Therefore, if capital requirements exist at the level of an EU-based intermediate holding company, the Covered Agreement could be interpreted as prohibiting an EU supervisor from "recognizing and accepting" a U.S. *group*-level metric such as GCC to fulfill *subgroup* requirements. Again, advance discussion with the relevant Joint Committees would seem to be merited. It is also possible that an EU subgroup-specific version of the GCC could help mitigate this concern.

20. **Potential conflicts with the limits of state authority.** The legal appropriateness of the subgroup reciprocity provision—as well as other reciprocity provisions—could be called into question for extending beyond the regulation of the "business of insurance" within the United States. The time allocated for the exposure has not allowed us to perform a detailed legal analysis of this matter. Nevertheless, to avoid potential delays with state adoption and exposure to possible future litigation, it would be prudent for the NAIC to conduct research on the limits of state authority prior to including reciprocity concepts in the model.

From: Jamie Walker <Jamie.Walker@tdi.texas.gov>
Sent: Wednesday, July 15, 2020 8:42 AM
To: Daveline, Dan <DDaveline@naic.org>
Subject: Texas comments on Model Law 440 exposure for the GCC

We have reviewed the exposure and generally recommend a rewrite for greater simplicity and clarity for both the exemption and confidentiality provisions.

For Section 4L(2) related to exemptions, a couple of specific considerations to reflect in a rewrite include:

- Section 4L(2)(b) where "whose non-U.S. group wide supervisor is" should be replaced with "who is required to perform a group capital calculation specified by".
- Making clear that "commissioner" is the lead state commissioner throughout this section.

Additionally, we recommend Model 440 give authority for the commissioner to provide exemptions by rule and moving some of the more detailed exemptions that may be adjusted in the future to Model Regulation 450. This will reduce the legislative fatigue related to the requirements and establishes a framework that can more easily be adjusted as needed. The Texas legislature only meets in odd numbered years so if there are needed changes, it could take up to 2.5 years to effectuate.

Regarding Section 8.1, we understand it began using ORSA confidentiality, but the exposed language has deviated significantly from that language. A rewrite is recommended to more closely follow the ORSA confidentiality with only minor adjustments to apply to the GCC.

We would be glad to participate in any discussions and drafting efforts to achieve greater simplicity and clarity.

Thanks,

Jamie Walker
Deputy Commissioner
Financial Regulation Division
(512) 676-6368

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July 15, 2020

Commissioner David Altmaier
Florida Office of Insurance Regulation Chairman,
NAIC Group Capital Calculation (E) Working Group
via email to ddaveline@naic.org & lfelice@naic.org

Re: NAIC Group Capital Calculation ("E") Working Group's Exposed Revisions to the NAIC's Model Holding Company Act (#440)

Dear Commissioner Altmaier,

The Canada Life Assurance Company operates in the U.S. through a Michigan Branch and through a Pennsylvania domiciled subsidiary named London Life Reinsurance Company.

Given the close ties between the U.S. and Canada, and since both countries have well established, effective systems of insurance regulation, we believe that U.S. and Canadian companies should be able to enjoy reciprocities as far as group capital is concerned.

The Office of Superintendent of Financial Institutions (OSFI) does not require the subsidiaries or branches of any U.S. companies operating in Canada to perform a group capital calculation on a Canadian Basis. We would like the NAIC to apply the same rule to subsidiaries and branches of Canadian corporations. As a result, we would like to propose that the attached specification be added to ***provision in 4L(2)(e):***

> (e) "The exemptions in Sections 4L(2)(c) and 4L(2)(d) shall not apply to the U.S. operations of a non-U.S. insurance holding company if its group-wide supervisor does not recognize and accept the group capital calculation for any U.S. insurance group's operations in that group-wide supervisor's jurisdiction.
>
> A jurisdiction is deemed to "recognize and accept" the group-capital calculation for a U.S. insurance group when it does not apply its own version of a group capital standard, assessment or report, to the parent of a U.S. entity operating in that jurisdiction."

This would be similar to the new language in 4L(2)(d) and provide clarity on what "recognize and accepts" means. This will help non-reciprocal jurisdictions and may also limit the number of inquiries when the NAIC is asked to evaluate if subgroup reciprocity exists.

We would really appreciate your consideration for this important inclusion.

Best Regards,

Jeff Poulin,

Executive Vice President and US Branch Representative

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Stephen W. Broadie
Vice President, Financial & Counsel

July 15, 2020

The Hon. David Altmaier
Commissioner, Florida Office of Insurance Regulation
Chair, NAIC Group Capital Calculation (E) Working Group
The Larson Building
200 E. Gaines Street
Tallahassee, FL 32399-0305

June Revised MO440 for GCC
(Insurance Holding Company System Regulatory Act)

Dear Commissioner Altmaier:

The American Property Casualty Insurance Association (APCIA) greatly appreciates the opportunity to comment on the Group Capital Calculation (E) Working Group's proposed revisions to the Insurance Holding Company System Regulatory Act (the Act) that would incorporate the authority for lead states to require a Group Capital Calculation (GCC) from U.S. insurance groups. APCIA is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions—protecting families, communities, and businesses in the U.S. and across the globe.

APCIA is pleased that the NAIC is moving with appropriate speed to help incorporate the GCC into state law. We are also pleased that the proposed revisions in many cases follow recommendations from APCIA's predecessor associations and three other national trade associations that were filed with the Working Group on August 7, 2018. We will limit our comments to sections of the proposed Act that differ significantly from those recommendations.

<u>"Reciprocity" Provision - Sec. 4(L)(2)(e)</u>
APCIA supports the concept that each insurance group should be subject to only one group capital calculation, and that no jurisdiction should apply capital calculations at the subgroup level. For that reason, we agree with the Act's proposed exemptions for groups that file under the Federal Reserve's Building Block Approach (BBA), for non-U.S. groups domiciled in reciprocal jurisdictions under the NAIC's Credit for Reinsurance law, and for other non-U.S. groups whose home jurisdictions meet the tests of proposed Sec. 4(L)(2)(d).

We believe the principle that groups should be subject to one group capital measure naturally requires subgroup reciprocity. This principle is critical to supporting a level regulatory playing field for U.S.-based and non-U.S.-based companies in both the U.S. and abroad. Therefore, we understand the concern that is addressed by Sec. 4(L)(2)(e)'s "reciprocity" provision, under which U.S. subgroups of a non-U.S. group would be subject to the GCC, regardless of the exceptions above, if that group's home jurisdiction imposes a subgroup capital requirement on U.S. groups operating in that jurisdiction. However, APCIA does not support including this language in the Act. Hardwiring one solution into the Act or state law is not, in our opinion, the appropriate way to proceed. Instead, the NAIC should develop a transparent process for determining whether reciprocity fails to exist at the subgroup level in non-U.S. jurisdictions. This process should involve consultation and coordination with U.S. regulators' international colleagues, and it should be made clear that the purpose of this process is to support mutual recognition and a level regulatory playing field. Potential abuses regarding subgroup reciprocity are more appropriately dealt with in fora such as the U.S.-EU Insurance Project or the dispute resolution mechanisms of the U.S.-EU and U.S.-UK covered agreements.

Partial Exemptions – Sec. 4(L)(2)(f) and (g)
These partial exemptions allow a lead state to either exempt a group from filing a GCC or to limit that filing to Schedule 1 "and other specified information" if the group has made an initial GCC filing and writes less than $1 billion in annual premium (the "ORSA threshold") and meets other requirements. APCIA has previously supported a full exemption for groups that are not required to file an ORSA. We believe that proper use of the GCC will require significant regulatory resources and are concerned that initial application of the GCC to nearly all U.S. groups will strain those resources without a corresponding increase in policyholder protection. While these provisions do not provide a complete exemption from the GCC, we believe the draft Act is a step in the right direction from the Working Group's initial position and these partial exemptions are an acceptable compromise.

Although these provisions would apply to groups below the ORSA premium threshold, the draft Act does not include language similar to Section 6(D) of the ORSA Model Act, which allows regulators to grant an ORSA exemption "based upon unique circumstances." APCIA recommends including similar language in Sections 4(L)(2)(f) and (g) of the draft Act to allow regulators the discretion to grant partial GCC exemptions under these sections based on unique circumstances.

Material Transactions – Sec. 4(L)(2)(h)(i)
Section 4(L)(2)(h)(i) of the draft Act would allow commissioners to override a GCC exemption where an insurer engages in a "material transaction". APCIA is concerned this provision could allow regulators to require the GCC from groups already subject to another group-wide capital assessment whenever there is a material transaction, which is undefined. This would cut against the principle that groups should be subject to only one group capital calculation. Therefore, APCIA believes Section 4(L)(2)(h)(i) should not apply to the exemptions for BBA filers, non-U.S. groups domiciled in reciprocal jurisdictions, and other non-U.S. groups whose home jurisdictions meet the tests of proposed Section 4(L)(2)(d).

Confidentiality Provision – Sec. 8.1
APCIA agrees with the general thrust of new Section 8.1 and its addition of confidentiality protections for the GCC filing to the Act. We would also include the ORSA Model Act's statement that the protected filings are "proprietary" and "contain trade secrets." We suggest, however, that it might be more appropriate to include the provisions in Section 8.1 in current Section 8 so they would apply to all material protected under the Act. We have attached a proposed revision of the Act with a rewritten Section 8 that would accomplish this. The proposed revision also includes some clarifying amendments identified in comments included in the revised draft.

Filing Requirements in Sec. 4(L)(1) and 4(L)(2)
The language concerning an ultimate controlling person's filing requirement for a Form F contained in the first sentence of Section 4(L)(1) differs from the proposed filing requirement for the GCC contained in the first sentence of Section 4(L)(2). To ensure consistency between Sections 4(L)(1) and (2), APCIA recommends modifying the first sentence in Section 4(L)(2) with the underlined language:

> *Notwithstanding any exemptions from the registration contained in this provision to the contrary, the ultimate controlling person of every insurer subject to registration shall also file an annual group capital calculation as directed by the lead state commissioner, completed in accordance with the NAIC Group Capital Calculation Instructions.*

Materiality – Sec. 4(D)
Finally, Section 4(D) provides a definition of "materiality" for purposes of the Act's existing requirements for registration statements. Since "material risk" is an important aspect of determining a group's Scope of Application for the GCC, it should be clarified that the definition of "materiality" in Section 4(D) does not apply for purposes of determining the Scope of Application.

We look forward to discussing our comments with you and the Working Group.

Sincerely,

Stephen W. Broadie

INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT

Table of Contents

Section 1. Definitions

As used in this Act, the following terms shall have these meanings unless the context shall otherwise require:

A. "Affiliate." An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

B. "Commissioner." The term "commissioner" shall mean the insurance commissioner, the commissioner's deputies, or the Insurance Department, as appropriate.

Drafting Note: Insert the title of the chief insurance regulatory official wherever the word "commissioner" appears.

C. "Control." The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by Section 4K that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

D. "Group-wide supervisor." The regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined or acknowledged by the commissioner under Section 7.1 to have sufficient significant contacts with the internationally active insurance group.

E. "Group Capital Calculation instructions" means the GCC report, including group capital calculation instructions, as adopted by the NAIC and as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

F. "Insurance Holding Company System." An "insurance holding company system" consists of two (2) or more affiliated persons, one or more of which is an insurer.

G. "Insurer." The term "insurer" shall have the same meaning as set forth in Section [insert applicable section] of this Chapter, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

Drafting Note: References in this model act to "Chapter" are references to the entire state insurance code.

Drafting Note: States should consider applicability of this model act to fraternal societies and captives.

H. "Internationally active insurance group." An insurance holding company system that (1) includes an insurer registered under Section 4; and (2) meets the following criteria: (a) premiums written in at least three countries, (b) the percentage of gross premiums written outside the United States is at least ten percent (10%) of the insurance holding company system's total gross written premiums, and (c) based on a three-year rolling average, the total assets of the insurance holding company system are at least fifty billion dollars ($50,000,000,000) or the total gross written premiums of the insurance holding company system are at least ten billion dollars ($10,000,000,000).

I. "Enterprise Risk." "Enterprise risk" shall mean any activity, circumstance, event or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer's Risk-Based Capital to fall into company action level as set forth in [insert cross reference to appropriate section of Risk-Based Capital (RBC) Model Act] or would cause the insurer to be in hazardous financial condition [insert cross reference to appropriate section of Model Regulation to define standards and commissioner's authority over companies deemed to be in hazardous financial condition].

J. "NAIC" means the national association of insurance commissioners.

K. "Materially risky non-insurers~~s~~" ~~As used in the context of the Group Capital Calculation, means a~~A non-insurer that could adversely impact the ability of an affiliated~~the~~ insurer~~(s)~~ to pay policyholder claims.

Commented [A1]: Suggested clarification.

L. "Person." A "person" is an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any joint venture partnership exclusively engaged in owning, managing, leasing or developing real or tangible personal property.

M. "Securityholder." A "securityholder" of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing.

N. "Subsidiary." A "subsidiary" of a specified person is an affiliate controlled by such person directly or indirectly through one or more intermediaries.

O. "Voting Security." The term "voting security" shall include any security convertible into or evidencing a right to acquire a voting security.

Section 4. Registration of Insurers

A. Registration. Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in:

(1) Section 4;

(2) Section 5A(1), 5B, 5D; and

(3) Either Section 5A(2) or a provision such as the following: Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen (15) days after the end of the month in which it learns of each change or addition.

Any insurer which is subject to registration under this section shall register within fifteen (15) days after it becomes subject to registration, and annually thereafter by [insert date] of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require any insurer authorized to do business in the state which is a member of an insurance holding company system, and which is not subject to registration under this section, to furnish a copy of the registration statement, the summary specified in Section 4C or other information filed by the insurance company with the insurance regulatory authority of its domiciliary jurisdiction.

B. Information and Form Required. Every insurer subject to registration shall file the registration statement with the commissioner on a form and in a format prescribed by the NAIC, which shall contain the following current information:

(1) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;

(2) The identity and relationship of every member of the insurance holding company system;

(3) The following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the insurer and its affiliates:

(a) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;
(b) Purchases, sales or exchange of assets;
(c) Transactions not in the ordinary course of business;
(d) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;
(e) All management agreements, service contracts and all cost-sharing arrangements;
(f) Reinsurance agreements;
(g) Dividends and other distributions to shareholders; and
(h) Consolidated tax allocation agreements;

(4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system;

(5) If requested by the commissioner, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include but are not limited to annual audited financial statements filed with the U.S. Securities and Exchange Commission (SEC) pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended. An insurer required to file financial statements pursuant to this paragraph may satisfy the request by providing the commissioner with the most recently filed parent corporation financial statements that have been filed with the SEC;

(6) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner;

Drafting Note: Neither option below is intended to modify applicable state insurance and/or corporate law requirements.

(7) Statements that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures; and

Alternative Section 4B(7):

(7) Statements that the insurer's board of directors is responsible for and oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures; and

(8) Any other information required by the commissioner by rule or regulation.

C. Summary of Changes to Registration Statement. All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

D. Materiality. No information need be disclosed on the registration statement filed pursuant to Subsection B if the information is not material for the purposes of this section. Unless the commissioner by rule, regulation or order provides otherwise; sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of one percent (.5%) or less of an insurer's admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this section. [The definition of materiality provided in this subsection shall not apply for purposes of the Group Capital Calculation].

Commented [A2]: Clarification to ensure this definition of "materiality" is distinct from the term "material risk" for purposes of determining Scope of Application for the GCC.

E. Reporting of Dividends to Shareholders. Subject to Section 5B, each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen (15) business days following the declaration thereof.

F. Information of Insurers. Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, where the information is reasonably necessary to enable the insurer to comply with the provisions of this Act.

G. Termination of Registration. The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

H. Consolidated Filing. The commissioner may require or allow two (2) or more affiliated insurers subject to registration to file a consolidated registration statement.

I. Alternative Registration. The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under Subsection A and to file all information and material required to be filed under this section.

J. Exemptions. The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the commissioner by rule, regulation or order shall exempt the same from the provisions of this section.

K. Disclaimer. Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or a disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. A disclaimer of affiliation shall be deemed to have been granted unless the commissioner, within thirty (30) days following receipt of a complete disclaimer, notifies the filing party the disclaimer is disallowed. In the event of disallowance, the disclaiming party may request an administrative hearing, which shall be granted. The disclaiming party shall be relieved of its duty

to register under this section if approval of the disclaimer has been granted by the commissioner, or if the disclaimer is deemed to have been approved.

L. Enterprise Risk Filings.

(1) The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners;

(2) Group Capital Calculation. Notwithstanding any exemptions from the registration contained in this provision~~,~~ to the contrary, the ~~each~~ ultimate controlling person of every insurer subject to registration shall also file an annual group capital calculation as directed by the lead state commissioner, completed in accordance with the NAIC Group Capital Calculation Instructions. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners, unless one of the following exemptions for the Insurance Holding Company System is met:

a. An insurance holding company that does not conduct business outside of the U.S. and either (a) is an insurer classified as either a county mutual insurance company, a town mutual insurance company or a farmers' mutual insurance company; or (b) has direct premiums written less than $1,000,000 in any calendar year and less than 1,000 policyholders or certificate holders of direct written policies nationwide at the end of the calendar year;

b. An insurance holding company whose ~~non~~ U.S. group-wide supervisor is the United States Federal Reserve, who is permitted to instead file a copy of the calculation required by the United States Federal Reserve, with the lead state commissioner;

c. An insurance holding company whose non U.S. group-wide supervisor, as determined in accordance with the principles of section 7.1, is located within a Reciprocal Jurisdiction [insert cross-reference to appropriate section of Credit for Reinsurance Law];

d. An insurance holding company:

(i) That has provided information to the accredited lead state, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the lead-state to comply with the NAIC principles of group supervision as detailed in the NAIC Financial Analysis Handbook, and the lead state has determined that because of this the group capital calculation is not required to be filed; and

(ii) Whose non-U.S. group-wide supervisor, as determined in accordance with the principles of section 7.1, meets either of the following requirements:

a. Recognizes and accepts the group capital calculation for U.S. insurance groups who operate in the jurisdiction of that group-wide supervisor; or

~~**Drafting Note:** The phase "Recognizes and accepts" does not require the non-U.S. group-wide supervisor to require the U.S. insurance groups to actually file the group capital calculation with the non-U.S. supervisor but rather does not require its own version of a group capital filing.~~

Commented [A3]: Amended to be consistent with the lead state commissioner's authority to define the insurance group.

Commented [A4]: "U.S. group-wide supervisor", not "non-U.S.".

Commented [A5]: We think the drafting note is unnecessary.

b. For jurisdictions where no~~any~~ U.S. insurance groups ~~do not~~ operate, recognizes the group capital calculation as an acceptable international capital standard by indicating such formally in writing to the lead state with a copy to the International Association of Insurance Supervisors.)

Commented [A6]: Clarifying amendment.

Commented [A7]: APCIA suggests deleting this provision. See our comment letter's discussion of reciprocity.

~~e. (The exemptions in Sections 4L(2)(c) and 4L(2)(d) shall not apply to the U.S. operations of a non-U.S. insurance holding company if its group-wide supervisor does not recognize and accept the group capital calculation for any U.S. insurance group's operations in that group-wide supervisor's jurisdiction.~~

~~f.~~e. Notwithstanding the exemptions stated in Section 4L(2)(a) through Section 4L(2)(d), the commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation if the insurance holding company system has previously filed the annual group capital calculation and the commissioner makes a determination based upon that filing that the insurance holding company system meets all of the following criteria:

(i) Has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than $1,000,000,000;

(ii) Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;

(iii) Has no banking, depository or other financial entity that is subject to a specified regulatory capital framework within its holding company structure;

(iv) Has *de minimis* ~~material~~ affiliated transactions between any of the insurers and the non-insurers, and those transactions ~~that~~ do not impart material~~any~~ risk ~~associated with these transactions~~; and

Commented [A8]: "Imparting no risk" is a standard that cannot be met. Suggest addition of "material" as defined in the GCC Instructions.

(v) Has *de minimis* materially risky non-insurers within its holding company structure, as described in the NAIC Group Capital Calculation Instructions.

~~g.~~f. In addition to the commissioner's discretion to exempt an insurance holding company after reviewing a previously filed annual group capital calculation described in Section 4L(2)(~~f~~e), the commissioner has the discretion to instead accept an annual filing that includes a single schedule of all of the entities within the group as well as corresponding key financial figures from those entities (Schedule 1) and any other specified information from the group capital calculation template, completed in accordance with the NAIC Group Capital Calculation Instructions, and which excludes all of the other requirements of the annual Group Capital Calculation, if either (i) the ultimate controlling person is a U.S. regulated insurer that already completes and annual Risk-Based Capital filing, and the commissioner has determined that there are no more (than) de minimis materially risky non-insurers; or (ii) the insurance holding company system has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than $1,000,000,000; and the following additional criteria are met:

Commented [A9]: Correcting section reference.

Commented [A10]: For clarity.

(i) The insurance holding company system has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories; and

(ii) The holding company includes no banking, depository or other financial entity that is subject to a specified regulatory capital framework.~~; and~~

(iii) An insurer that does not qualify for exemption pursuant to subsections (e) and (f) may apply to the commissioner for a waiver from the requirements of this Act based upon unique circumstances. In deciding whether to grant the insurer's request for waiver, the commissioner may consider the type and volume of business written, ownership and organizational structure, and any other factor the commissioner considers relevant to the insurer or insurance group of which the insurer is a member. If the insurer is part of an insurance group with insurers domiciled in more than one state, the commissioner shall coordinate with the lead state commissioner and with the other domiciliary commissioners in considering whether to grant the insurer's request for a waiver.

(iii) ~~The commissioner has not made a determination that the holding company structure has *de minimis* material affiliated transactions between any of the insurers and the non-insurers or has not determined that the holding company structure has *de minimis* materially risky insurers, but believes the filing of the Schedule 1 is sufficient to meet the needs of the Commissioner.~~

~~h.~~g. Notwithstanding the exemptions stated in Section 4L(2)(a) through Section 4L(2)(g), the commissioner may require the ultimate controlling person to file an annual group capital calculation, completed in accordance with the NAIC Group Capital Calculation Instructions, if any of the following criteria are met:

(i) Except for those groups exempt under Sections 4L(2)(b) through (d), if there are any material transactions that have occurred since the last filing of the annual group capital calculation or the Schedule 1; or

(ii) if any insurer within the insurance holding company system is in a Risk-Based Capital action level event as set forth in [insert cross-reference to appropriate section of Risk-Based Capital (RBC) Model Act] or a similar standard for a non-U.S. insurer; or

(iii) any insurer within the insurance holding company system meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in [insert cross-reference to appropriate section of Model Regulation to define standards and commissioner's authority over companies deemed to be in hazardous financial condition]; or

(iv) any insurer within the insurance holding company system otherwise exhibits qualities of a troubled insurer as determined by the commissioner based on unique circumstances including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

~~i.~~h. If an insurance holding company that qualifies for an exemption subsequently no longer qualifies for that exemption due to changes in premium of the insurer(s) within the insurance group of which the insurer is a member, the insurance holding company shall have one (1) year following the year the threshold is exceeded to comply with the requirements of this Act.

M. Violations. The failure to file a registration statement or any summary of the registration statement or enterprise risk filing required by this section within the time specified for filing shall be a violation of this section.

Commented [A11]: Similar to provision in the Risk Management and ORSA Model Act.

Commented [A12]: Propose deletion because, if this section means the commissioner is not limited to situations where the group has more-than-de minimis risky non-insurers, the section is unnecessary.

Commented [A13]: See APCIA comment letter, paragraph on "material transactions".

Section 8. Confidential Treatment

A. Documents, materials or other information in the possession or control of the Department of Insurance that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to Section 6 and all information reported or provided to the Department of Insurance pursuant to Section 3B(12) and (13), Section 4, Section 5 and Section 7.1 is recognized by this state as being proprietary and to contain trade secrets, and shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer ~~{to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof, in which event the commissioner may publish all or any part in such manner as may be deemed appropriate.}~~

B. Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner or with whom such documents, materials or other information are shared pursuant to this Act shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to Subsection A.

C. In order to assist in the performance of the commissioner's duties, the commissioner:

(1) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Subsection A, with other state, federal and international regulatory agencies, with the NAIC and with any third-party consultants designated by the commissioner ~~its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities~~, including members of any supervisory college described in Section 7, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material or other information, and has verified in writing the legal authority to maintain confidentiality.

(2) Notwithstanding paragraph (1) above, the commissioner may only share confidential and privileged documents, material, or information reported pursuant to Section 4L1 with commissioners of states having statutes or regulations substantially similar to Subsection A and who have agreed in writing not to disclose such information.

(3) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(4) Shall enter into written agreements with the NAIC or a third-party consultant governing sharing and use of information provided pursuant to this Act consistent with this subsection that shall:

(i) Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC or a third party consultant ~~and its affiliates and subsidiaries~~ pursuant to this Act, including procedures and protocols for sharing by the NAIC with other state, federal or international regulators. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the information and has verified in writing the legal authority to maintain confidentiality;

(ii) Specify that ownership of information shared with the NAIC or a third-party consultant ~~and its affiliates and subsidiaries~~ pursuant to this Act remains with the commissioner and the NAIC's or consultant's use of the information is subject to the direction of the

Commented [A14]: Deleted because this language does not appear in ORSA Model Act.

Commented [A15]: Deleted because this language does not appear in ORSA Model Act

Commented [A16]: Deleted because this language does not appear in ORSA Model Act

commissioner;.

(iii) Prohibit the NAIC or third-party consultant from storing the information shared pursuant to the Act in a permanent database after the underlying analysis is completed;

~~(iii)~~(iv) Require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC or a third-party consultant pursuant to this Act is subject to a request or subpoena to the NAIC or third-party consultant for disclosure or production; and

~~(iv)~~(v) Require the NAIC or a third-party consultant ~~and its affiliates and subsidiaries~~ to consent to intervention by an insurer in any judicial or administrative action in which the NAIC and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the NAIC and its affiliates and subsidiaries pursuant to this Act..

(vi) In the case of an agreement involving a third-party consultant, provide for the insurer's written consent.

Commented [A17]: Deleted because this language does not appear in ORSA Model Act

D. The sharing of information by the commissioner pursuant to this Act shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution and enforcement of the provisions of this Act.

E. No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in Subsection C.

F. Documents, materials or other information in the possession or control of the NAIC or third-party consultant pursuant to this Act shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

~~**Section 8.1. Confidential Treatment & Prohibition on Annoucements for the Group Capital Calculation**~~

~~A. For purposes of the information reported or provided to the Department of Insurance pursuant to Section 4L2, the aforementioned confidentiality requirements of Section 8 are modified as follows:~~

~~(1) The commissioner shall maintain the confidentiality of the group capital calculation and group capital ratio and any group capital information received from an insurance holding company supervised by the Federal Reserve Board and non-U.S. group wide supervisors. With respect to all other documents, material or other information covered by this subsection, the commissioner will not make such documents, materials, or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof, in which event the commissioner may publish all or any part in such manner as may be deemed appropriate.~~

~~**[Drafting note: This group capital calculation and group capital ratio includes confidential information and filings received from insurance holding companies supervised by the Federal Reserve Board. The confidential treatment afforded to group capital calculation filings includes any Federal Reserve Board group capital filings and information]**~~

~~(2) Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner or with whom such documents, materials or other information are shared pursuant to this Act shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to Subsection A.~~

~~(3) In order to assist in the performance of the commissioner's duties, the commissioner:~~

~~(a) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Subsection A, with other state,~~

federal and international regulatory agencies, with the NAIC, any third-party consultants, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in Section 7, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, material or other information, and has verified in writing the legal authority to maintain confidentiality;

(b) Notwithstanding paragraph (a) above, the commissioner may only share confidential and privileged documents, material, or information reported pursuant to Section 4M with commissioners of states having statutes or regulations substantially similar to Subsection A and who have agreed in writing not to disclose such information;

(c) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information from the NAIC and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any documents, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the documents, material or information; and

(d) Shall enter into written agreements with the NAIC and any third-party consultant governing sharing and use of information provided pursuant to this Act consistent with this subsection that shall:

(i) Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC or a third-party consultant pursuant to this Act, including procedures and protocols for sharing by the NAIC with other state, federal or international regulators. The agreement shall provide that the receipient agrees in writing to maintain the confidentialty and privileged status of the documents, materials or other information and has verified in writing the legal authority to maintain confidentiality;

(ii) Specify that ownership of information shared with the NAIC or third-party consultant pursuant to this Act remains with the commissioner, and the NAIC's or a third-party consultant's use of the information is subject to the direction of the commissioner;

(iii) Prohibit the NAIC or third-party consultant from storing the information shared pursuant to this Act in a permanent database after the underlying analysis is completed;

(iv) Require prompt notice be given to an insurer whose confidential information in the possession of the NAIC or a third-party consultant pursuant to this Act is subject to a request or subpoena to the NAIC or a third-party consultant for disclosure or production;

(v) Require the NAIC or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or a third-party consultant may be required to disclose confidential information about the insurer shared with the NAIC or a third-party consultant pursuant to this Act; and

(vi) In the case of an agreement involving a third-party consultant, provide for the insurer's written consent.

(4) The sharing of information by the commissioner pursuant to this Act shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution and enforcement of the provisions of this Act.

(a) No waiver of any applicable privilege or claim of confidentiality in the documents, propriety and trade-secret materials or information shall occur as a result of disclosure to

~~the commissioner under this section or as a result of sharing as authorized in Subsection (3).~~

~~(b) Documents, materials or other information in the possession or control of the NAIC pursuant to this Act shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.~~

G. It is the judgement of the legislature that the group capital calculation and resulting group capital ratio is a regulatory tool for assessing group risks and capital adequacy, and is not intended as a means to rank insurers or insurance holding company systems generally. Therefore, except as otherwise may be required under the provisions of this Act, the making, publishing, disseminating, circulating or placing before the public, or causing directly or indirectly to be made, published, disseminated, circulated or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way as an advertisement, announcement or statement containing a representation~~arepresentation~~ or statement with regard to the group capital calculation or group capital ratio of any insurer or any insurer group, or of any component derived in the calculation by any insurer, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited; provided, however, that if any materially false statement with respect to the group capital calculation or resulting group capital ratio or an inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation or resulting group capital ratio is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement or the inappropriateness, as the case may be, then the insurer may publish announcements in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

July 15, 2020

Commissioner David Altmaier
Florida Office of Insurance Regulation
Chairman, NAIC Group Capital Calculation (E) Working Group
Via email to ddaveline@naic.org

RE: Proposed Amendments to the NAIC Model Holding Company Act – June Revised MO440 for GCC

Dear Commissioner Altmaier:

We are writing to provide our comments on the Proposed Model Holding Company Act amendments currently open for exposure. We commend the Working Group for continuing to focus on creating a framework that both achieves the regulatory objectives and is also workable from a practical perspective.

Manulife / John Hancock supports the NAIC's goal of creating effective group oversight while avoiding redundant capital or reporting requirements embodied in the principle of "One Group, One Capital Calculation." While we acknowledge the seeming comfort of requiring written mutual recognition, we suggest that—in this context—regulatory actions speak far louder than words. As discussed more fully herein, with the discrete changes outlined in this letter, we believe the proposed amendments to the Model Holding Company Act would not only be aligned with the "One Group, One Capital Calculation" principle, but also be workable in practical terms for non-U.S. jurisdictions.

Recognizing the sovereignty of non-U.S. jurisdictions and their ability to resist any framework that seeks to impose mutual recognition of any particular group capital calculation approach, in our view it would be most constructive for the NAIC to avoid an approach that could create future friction amongst regulators and introduce risks of ultimately penalizing non-U.S. insurers with U.S. subsidiaries, and vice versa, by imposing redundant reporting requirements.

Supervisory Colleges should continue to be leveraged as central tools through which regulatory oversight and ongoing dialogue occurs, pursuant to internationally recognized standards. The rigorous discussions amongst regulators and robust information sharing that can and should occur, remains the best means by which cross-jurisdictional information sharing is achieved. Lead states should continue to be provided sufficient information on the risks presented by the international operations of a group and the regulatory strategies and mitigants being employed to meet those risks so they can make representations as to the sufficiency of group oversight to their sister states. The NAIC should continue to rely on well-established regulatory relationships and flow of information within Supervisory Colleges and allow individual lead states to work through any individual issues on a case-by-case basis.

Ultimately, as stated, actions speak louder than words. Rather than seeking to obtain recognition of the U.S. system of group capital and oversight through bilateral regulatory agreements that may be contrary to the practice or culture of various jurisdictions, we instead encourage the NAIC to focus on the actions of non-U.S. jurisdictions as a truly reliable indicator of regulatory recognition of the effectiveness of U.S. group oversight.

As outlined in the proposed amendment below to 4.L.(2)(d)(ii)(a), in non-U.S. jurisdictions where subsidiaries are afforded "reciprocity through regulatory action" (meaning the non-U.S. regulator does not require a group level calculation in respect of a U.S. subsidiary operating in the non-U.S. jurisdiction) we believe the NAIC should give similar treatment to the subsidiaries of parents located in these non-U.S. jurisdictions.

Where a non-U.S. group-wide supervisor has no US companies operating in their jurisdiction, there may be no utility or perceived benefit for the non-U.S. supervisor to recognize the U.S. GCC, so requiring them to do so would set the stage for future unnecessary conflict. We believe it makes more sense to empower the U.S.-designated group wide supervisor of the internationally active insurance group to assess each situation individually, considering the totality of the facts and circumstances, and determine whether an exemption is appropriate. We therefore offer the suggested change to 4.L.(2)(d)(ii)(b) as outlined below.

Proposed change to 4. L.(2)(d)(ii)(a)

(ii) Whose non-U.S. group-wide supervisor, as determined in accordance with the principles of section 7.1, meets either of the following requirements:

a. **WHERE A NON-U.S. JURISDICTION DOES NOT APPLY ITS OWN GROUP CAPITAL REPORTING REQUIREMENTS TO U.S. GROUPS OR THE PARENT OF A U.S. SUBSIDIARY OPERATING IN THAT JURISDICTION, THEN THE U.S. WOULD NOT REQUIRE INSURANCE GROUPS OR THEIR PARENT COMPANY DOMICILED OUTSIDE THE U.S. TO FILE THE GROUP CAPITAL CALCULATION.** ~~Recognizes and accepts the group capital calculation for U.S. insurance groups who operate in the jurisdiction of that group-wide supervisor; or~~

~~**Drafting Note:** The phrase "Recognizes and accepts" does not require the non-U.S. group-wide supervisor to require the U.S. insurance groups to actually file the group capital calculation with the non-U.S. supervisor but rather does not require its own version of a group capital filing.~~

b. For jurisdictions where any U.S. insurance groups do not operate~~, recognizes the group capital calculation as an acceptable international capital standard by indicating such formally in writing to the lead state with a copy to the International Association of Insurance Supervisors~~ **THE REQUIREMENT TO FILE THE GROUP CALCULATION IS AT THE DISCRETION OF THE U.S.-DESIGNATED GROUP WIDE SUPERVISOR FOR THE INTERNATIONALLY ACTIVE INSURANCE GROUP.**

Thank you in advance for your consideration of this proposal. We remain available to answer any questions that you may have and appreciate the opportunity to provide these comments.

Regards,

DocuSigned by:
Halina von dem Hagen
EB3E60D4072041A...

Halina von dem Hagen
Global Treasurer and Head of Capital Management

July 15, 2020

Honorable David Altmaier
Florida Office of Insurance Regulation
200 E Gaines St.
Tallahassee, FL 32399

Re: NAIC Group Capital Calculation ("E") Working Group's Exposed Revisions to the NAIC's Model Holding Company Act (#440)

Dear Commissioner Altmaier:

I am writing on behalf of Sun Life, one of the largest employee benefit insurers in the country, to provide comments on the NAIC Group Capital Calculation Working Group's proposed revisions to the Model Holding Company Act, specifically with respect to the Group Capital Calculation (the "GCC"). Sun Life's U.S. insurance subsidiaries are collectively licensed to transact life and health insurance in all fifty states, as well as the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. The ultimate parent company within the Sun Life holding company group is Sun Life Financial Inc., a Canadian stock company that is incorporated and regulated under the Insurance Companies Act (Canada).

As a member of the American Council of Life Insurers ("ACLI"), we strongly support their submitted comments, and provide this letter to express our particular concern regarding the proposed exemption language contained in sections 4L(2)(d) and (e) of the exposure draft.

As noted by the ACLI, it is imperative that an insurance group only be subject to one group capital assessment at the worldwide level. Applying more than one group capital standard creates practical obstacles, but, more importantly, imposes a broad application of extraterritorial authority by multiple jurisdictions and defeats the purpose of having a single group-wide supervisor at the worldwide parent level. It also discounts supervisory colleges, which are a fundamental and effective part of the regulatory oversight process.

We applaud the Working Group for including an exemption from filing the GCC for non-U.S. insurance groups that are domiciled in non-reciprocal jurisdictions; however, we are deeply concerned that the language, as currently drafted, is unclear and potentially subjects an insurance group to more than one group capital standard. As written, the exemption is available only if the non-U.S. group supervisor "recognizes and accepts" the GCC for U.S. insurance groups who do business in that group-wide supervisor's jurisdiction. If the non-U.S. group supervisor does not meet this standard, the ultimate parent company for the non-U.S. group will have to file the GCC at the level of the worldwide parent, which defeats the purpose of the exemption.

We respectfully request that the Working Group clarify the phrase "recognizes and accepts" on implementation of the model, and that such clarification provide that a non-U.S. group supervisor is deemed to have "recognized and accepted" the GCC if it does not apply its own capital regime to U.S. firms operating in its jurisdiction. To that end, we have provided proposed revisions to sections 4L(2)(d)(ii) and 4L(2)(e) of the act for your consideration in Appendix A. As discussed in the ACLI comment letter, there are many possible processes or definitions that could be used to determine if a regulator "recognizes and accepts" the GCC. For example, it could be defined to allow group supervisors to demonstrate reciprocity through regulatory action, or it could include language that empowers the designated U.S. lead state to assess each situation individually to determine if an exemption is appropriate. We share the ACLI's belief that these potential processes and definitions should be subject to open discussion and vetting by both stakeholders and regulators, with the ultimate goal of implementing a process that is transparent as to how reciprocity is determined in practice and is equitable to insurers based in all jurisdictions. This is essential to avoid confusion, inconsistent interpretation and application of the model law, and a situation that subjects an insurance group to two separate group capital calculations at the worldwide level.

Please do not hesitate to reach out to me at james.slotnick@sunlife.com or 617-821-0804 if you have any question on our position.

Thank you,

James R. Slotnick
AVP, Government Relations

CC:
NAIC Group Capital Calculation Working Group

Appendix A

(d) An insurance holding company:

(i) That has provided information to the accredited lead state, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the lead-state to comply with the NAIC principles of group supervision as detailed in the NAIC Financial Analysis Handbook, and the lead state has determined that because of this the group capital calculation is not required to be filed; and

(ii) Whose non-U.S. group-wide supervisor, as determined in accordance with the principles of section 7.1, meets either of the following requirements:

a. Does not apply its own group capital reporting requirements to ~~Recognizes and accepts the group capital calculation for~~ U.S. insurance groups, or to parent companies of U.S. insurance subsidiaries, who operate in the jurisdiction of that group-wide supervisor; or

. . .

(e) The exemptions in Sections 4L(2)(c) and 4L(2)(d) shall not apply to the U.S. operations of a non-U.S. insurance holding company if its group-wide supervisor applies its own group capital reporting requirements to ~~does not recognize and accept the group capital calculation for~~ any U.S. insurance group's operations in that group-wide supervisor's jurisdiction.

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Mariana Gomez-Vock
Vice President & Associate General Counsel
Marianagomez@acli.com

July 15, 2020

Commissioner David Altmaier
Florida Office of Insurance Regulation
Chairman, NAIC Group Capital Calculation (E) Working Group
[via-email to ddaveline@naic.org]

Re: NAIC Group Capital Calculation ("E") Working Group's Exposed Revisions to the NAIC's Model Holding Company Act (#440)

Dear Commissioner Altmaier,

The American Council of Life Insurers appreciates the opportunity to submit these comments on the NAIC Group Capital Calculation Working Group's proposed revisions to the Model Holding Company Act. Our comments are divided into three parts. In the first section, we summarize the key principles guiding our responses to the NAIC's proposed revisions in the Model Holding Company Act. While many of our principles align with the exposure, we believe that some of the language in the exposure requires refinement and some of the processes for implementation must be clarified, through an accompanying regulation or regulatory guidance. The second section assesses the proposed exemptions against ACLI's principles of support. The final part of our letter discusses ACLI's response to the Working Group's recommended confidentiality language.

PART I. KEY POSITIONS

The following items are key areas of agreement among ACLI's diverse set of members, that guided our response to the NAIC's exposure. ACLI members support legislative regulatory proposals that align with the following principles:

1. An insurance group should only be subject to one group capital assessment or requirement at the world-wide level (i.e., the level of the ultimate controlling person).

2. Group capital standards or assessments at the subgroup or intermediate holding company level are undesirable for U.S. and non-U.S. groups.

3. Subgroup reciprocity:

    a. ACLI supports including a subgroup reciprocity provision regarding the Group Capital Calculation ("GCC") and group capital regimes in other jurisdictions, in the model law.

b. At the same time, we believe that such a reciprocity provision must be supported by a process that is transparent on how reciprocity is determined in practice and equitable to insurers based in all jurisdictions.

c. ACLI continues to support cooperation and ongoing dialogue between jurisdictions to foster mutual recognition and reciprocity.

4. ACLI continues to support an exemption for small holding companies that uses a threshold like the Own Risk and Solvency Assessment ("ORSA") group thresholds, as well as an exemption for insurance groups that file a group capital report for the Federal Reserve Board.

5. ACLI continues to support strong confidentiality protections for GCC results and related materials.

PART II. SPECIFIC COMMENTS ON THE PROPOSED EXEMPTIONS IN SECTION 4L(2).

1. An insurance group should only be subject to one group capital assessment or requirement at the world-wide level (i.e., the level of the ultimate controlling person).

ACLI believes that an insurance group should only be subject to one group capital assessment or requirement at the level of the ultimate controlling person (i.e., world-wide level).[1] Achieving this result– of one group capital assessment or requirement at the world-wide level, requires that jurisdictions accept other group supervision regimes, including group capital assessments, and avoid imposing redundant group capital regimes on groups who are already subject to a group capital evaluation.[2] We believe this is critical to avoid the situations where groups are subject to redundant and potentially conflicting capital frameworks, which could inhibit management's ability to operate the company and protect policyholders. Beyond the practical obstacles created by trying to apply more than one group capital assessment at the world-wide parent, the broad application of extraterritorial authority by multiple jurisdictions defeats the purpose of having a single group-wide supervisor at the world-wide parent level. It also contravenes supervisory colleges, whose existence and mission are intended to apprise regulators of the groups' activities and financial condition, as well as promote regulatory dialogue.

The concepts of "one-group, one group-capital standard or assessment" and the related principle of reciprocity are embedded in the U.S. Covered Agreement with the European Union and United Kingdom[3] and the NAIC's Reciprocal Jurisdiction process in the NAIC Credit for Reinsurance Model

[1] Other jurisdictions, and the Covered Agreement, use the term "level of the world-wide parent" instead of "ultimate controlling person."

[2] ACLI's support of the concept that a group should only be subject to one-group capital assessment or requirement is made within the context of whether it is appropriate for a group to be subject to more than one group capital calculation or requirement. It should not be read to imply that ACLI believes that group capital is fungible. ACLI's general policy is that capital within a consolidated or aggregated capital calculation is not fungible when it is held in an insurance entity, and an insurance group-wide supervisor does not and should not have the authority to transfer insurance assets out of a regulated entity unless pursuant to applicable law or regulation.

[3] EU and US Covered Agreement (Sept. 2017), is available here, https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/us-and-eu-covered-agreement. The US-UK Covered Agreement is available here https://home.treasury.gov/news/press-

Regulation (#786). The Working Group has proposed an exemption for non-U.S. holding companies whose non-U.S. group-wide supervisors are located within reciprocal jurisdictions that is parallel to the requirements of the Covered Agreement and Reciprocal Jurisdiction process.

Under proposed 4L(2)(c), the world-wide parent of a group whose non-U.S. group-wide supervisor is located within a reciprocal jurisdiction is exempt from having to file the GCC at the world-wide level.[4] ACLI supports this result, because we do not believe a group should be subject to more than one group capital assessment or standard at the world-wide level. There may be circumstances when a supervisor needs to request information from the world-wide parent, especially if the group's activities pose a serious threat to policyholders located in a supervisors' jurisdictions, but these requests are distinguishable from attempting to require a non-U.S. holding company to apply a U.S. group capital calculation at their world-wide parent level.

We think the same logic applies to non-U.S. groups whose non-U.S. group-wide supervisors are located within non-reciprocal jurisdictions. We understand, and support, the NAIC's and Team USA's ongoing efforts to secure mutual recognition for the GCC and the Aggregation Method; however, we have significant concerns that the revisions to the Model Holding Company Act could subject an insurance group whose group-wide supervisor is in a non-reciprocal regime to two capital assessments at the world-wide parent level. That is an undesirable result. A potential manifestation of our concern is in Section 4L(2)(d)(ii)(a). As 4L(2)(d) is written, the non-U.S. group supervisor must "recognize and accept" the U.S. GCC for the non-U.S. insurance group to qualify for an exemption from the GCC. If the non-U.S. group supervisor fails this test, then the ultimate parent company of the non-U.S. group will have to file the GCC at the level of the world-wide parent.

To help avoid such outcomes, the phrase, "recognizes and accepts" will need to be clarified by establishing a transparent process in an accompanying regulation or regulatory guidance There are many possible processes or potential definitions that could be used to determine if a regime "recognizes and accepts" the GCC. It could, for example, be defined to allow supervisory regimes to demonstrate reciprocity through regulatory action. In other words, where a non-U.S. jurisdiction does not apply its own group capital reporting requirements to a U.S. insurance group (either at the ultimate controlling party of a subsidiary or affiliate operating in that jurisdiction or at the subgroup level), then the non-U.S. jurisdiction could be deemed to "recognize and accept" the GCC. It could include the NAIC acting as a central body to establish and maintain a record of jurisdictions that "recognize and accept" the GCC. Alternatively, it could include language that empowers the lead-state to assess each situation individually to determine if an exemption is appropriate for an insurance group We believe these processes and potential definitions of "recognize and accepts" should be the subject of transparent discussion and vetting by stakeholders and regulators.

releases/sm570#:~:text=The%20U.S.%2DUK%20Covered%20Agreement%20also%20benefits%20the%20U.S.%20economy,Covered%20Agreement%20Letters%20to%20Congress.

[4] The U.S. operations of the non-U.S. group domiciled in a reciprocal jurisdiction may still be subject to the GCC, but only if their group wide supervisor does not recognize or accept the GCC for a U.S. group doing business in its jurisdiction

2. ACLI supports including a subgroup reciprocity provision regarding the GCC and group capital regimes in other jurisdictions in the model law.

ACLI supports the inclusion of a reciprocity provision, such as subsection 4L(2)(e), in the Model Holding Company Act. Subsection 4L(2)(e) specifies that the exemptions for non-U.S. insurance groups are contingent on their non-U.S. group-wide supervisor "recognizing and accepting the group capital calculation for any U.S. insurance group's operations doing business in that group wide supervisor's jurisdiction." As we noted above, we believe that the phrase "recognize and accepts" will need to be clarified upon implementation, perhaps in an accompanying regulation, or regulatory guidance. Further, we believe that the subgroup reciprocity provision must be supported by a process that is transparent on how reciprocity is determined in practice, and equitable to insurers based in all jurisdictions. We think a similar process, with equal levels of transparency and equity is required for determining if reciprocity exists at the world-wide level (per § 4L(2)(d)).

While ACLI believes that subsection 4L(2)(e) is consistent with the Covered Agreement, it would be prudent for the NAIC's Office of General Counsel to consult with the U.S. Treasury about the provision.

3. ACLI supports an exemption for insurance groups that file a group capital report with the Federal Reserve Board - § 4L(2)(b).

ACLI supports the Working Group's recommended exemption for insurance groups who file a group capital calculation with the Federal Reserve Board, although we are recommending a minor change to accommodate information-sharing restrictions on Insurance Savings and Loan Holding Companies ("ISLHC"). ISLHCs are not opposed to sharing the information and results with their lead-state commissioner, but they may not be permitted to share the results or supporting information, with any outside parties, including regulators, until they obtain permission from the Federal Reserve Board through a prescribed process that is occasionally lengthy. As a result, we recommend amending 4L(2)(b) to strike the reference to "non-U.S" supervisor and to remove the language conditioning the exemption on the ISLHC filing a copy of the Federal Reserve Board's group capital calculation with the lead-state commissioner. In its place, we recommend inserting language requiring the ISLHC to cooperate with their lead-state supervisors requests to access group capital calculation information, as well as take any necessary steps to facilitate this exchange of information.

ACLI agrees that ISLHCs should be expected to help their lead-state commissioner gain access to their federal group capital calculation information and we understand the lead-state commissioner's desire and need to access this information. However, we do not believe it is appropriate to subject the ISLHC to a GCC filing requirement when the ISLHC is prohibited by law from sharing the information until they receive permission from the Federal Reserve Board. We think an appropriate balance is struck by exempting the ISLHC from the GCC, but also including language that creates a duty for the ISLHC to facilitate information-sharing between the lead-state commissioner, the Federal Reserve Board, and the ISLHC, to the maximum extent permissible by state or federal law.

Additionally, in section 8.1A, we also recommend striking "and" and replacing with "or" in the section addressing confidentiality protections for non-U.S. insurers and ISLHC who file a group capital calculation with the Federal Reserve Board.

4. ACLI supports the concepts embodied in 4L(2)(f) and 4L(2)(g) and we encourage the NAIC to refine them to improve clarity.

(a) ACLI comments on 4L(2)(f)

Subsection 4L(2)(f) gives the commissioner the discretion to exempt an insurance holding company system from filing a group capital calculation if the group has previously filed an annual group capital calculation and the insurance holding company system is a non-ORSA filer who meets certain criteria. While ACLI is generally supportive of the attempt to create an exemption for non-ORSA filers, additional streamlining and clarity may be useful in this section.

Proposed revisions to section 4L(2)(f):

f. ~~Notwithstanding the exemptions stated in Section 4L(2)(a) through Section 4L(2)(d)~~, Where an insurance holding company system has previously filed the annual group capital calculation, the lead-state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation ~~if the insurance holding company system has previously filed the annual group capital calculation and~~ if the lead-state commissioner makes a determination ~~based upon that filing~~ that the insurance holding company system meets all of the following criteria:

(i) Has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than $1,000,000,000;

(ii) Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;

(iii) Has no banking, depository or other financial entity that is subject to a specified regulatory capital framework within its holding company structure;

~~(iv) Has *de minimis* material affiliated transactions between any of the insurers and the non-insurers that do not impart any risk associated with these transactions; and~~ the holding company system attests that there have been no material transactions between insurers and non-insurers in the group that have occurred since the last filing of the annual group capital calculation.

(v) ~~Has *de minimis* materially risky non-insurers within its holding company structure, as described in the NAIC Group Capital Calculation Instructions.~~ The non-insurers within the holding company system do not pose a material risk to the insurers ability to honor policyholder obligations.

(b) ACLI comments on 4L(2)(g)

Subsection 4L(2)(g) provides supervisory discretion to allow the ultimate parent companies of certain groups to submit a limited GCC filing, consisting of Schedule 1 and other information the supervisor deem necessary. ACLI is generally supportive of the principles expressed in this provision, but we encourage the Working Group to streamline this section prior to placement in the model Holding Company Act.[5]

[5] At a minimum, it is not clear if the conditions listed after "and the following additional criteria are met" are intended to apply only to non-ORSA filers or groups with an RBC-filing insurer as the ultimate controlling person.

Regardless of whether the Working Group adopts ACLI's specific recommendations for subsection 4L(2)(g), we encourage the NAIC to harmonize the terminology used in 4L(2)(f) and 4L(2)(g), as well as evaluate if some of the guidance included in 4L(2)(f) or (g) may be better suited in a regulation or supplementary regulatory material (i.e., guidance, handbook, or the GCC instructions).

For example, ACLI recommends that 4L(2)(g) refer to a "limited annual group capital filing or report" instead of the detailed description of Schedule 1 and additional information. Regulatory guidance could specify explain that a "limited annual group capital filing or report" refers to Schedule 1 of the GCC. Reducing the specificity in the description of the limited filing will help the statute stay evergreen in the event of future changes to the GCC template and instructions.

Proposed changes to 4L(2)(g):

"(g) ~~In addition to the commissioner's discretion to exempt an insurance holding company after reviewing a previously filed annual group capital calculation described in Section 4L(2)(f),~~ The lead-state commissioner has the discretion to ~~instead~~ accept a~~n~~ limited group capital filing or report on an annual basis ~~that includes a single schedule of all of the entities within the group as well as corresponding key financial figures from those entities (Schedule1) and any other specified information from the group capital calculation template, completed in accordance with the NAIC Group Capital Calculation Instructions, and which excludes all of the other requirements of the annual Group Capital Calculation,~~ if either:

"(i) the ultimate controlling person is a U.S. regulated insurer that already completes an annual Risk-Based Capital filing, and the lead-state commissioner has determined ~~that there are de minimis materially risky non-insurers;~~ that any non-insurers within the holding company system do not pose a material risk to the insurers ability to honor policyholder obligations; or

"(ii) the insurance holding company system has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than $1,000,000,000; and the following additional criteria are met:

~~(i)~~ (a) The insurance holding company system has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;

~~(ii)~~ (b) The holding company includes no banking, depository or other financial entity that is subject to a specified regulatory capital framework; and

~~(iii)~~ (c) The lead state commissioner ~~has not made a determination that the holding company structure has *de minimis* material affiliated transactions between any of the insurers and the non-insurers or has not determined that the holding company structure has *de minimis* materially risky insurers, but~~ believes the filing of the limited group capital report ~~Schedule 1 is~~ sufficient to meet the needs of the lead-state Commissioner."

5. *4L(2)(h) should be revised to ensure compliance with the Covered Agreement and enhance mutual regulatory cooperation.*

Because this section gives the lead-state commissioner the authority to require the ultimate controlling person of any group to file GCC, regardless of whether they are domiciled in a U.S. or non-U.S. jurisdiction, we believe that 4L(2)(h) should be modified to conform with the Covered Agreement and the NAIC Credit for Reinsurance Model Regulation (#786).

We recommend that the NAIC Office of General Counsel confer with the U.S. Treasury on the best way to incorporate the requirements into the Model Holding Company Act that a Host Jurisdiction may need to satisfy prior to requesting group prudential information from an ultimate controlling person domiciled in a covered-jurisdiction. One option may be to condition information requests to the ultimate-controlling person of a non-U.S. jurisdiction on the terms found in Article 4(f) and Article 4(g) of the Covered Agreement. If the Holding Company Act gives the lead-state commissioner the authority to request information from the world-wide parent of a non-U.S. jurisdiction in a covered jurisdiction, then the Holding Company Act should also include the requirement that the lead-state commissioner informs the non-U.S. group's supervisory college of information of any requests that extend to the world-wide parent. As a practical matter of promoting regulatory cooperation, it makes sense to extend this informational notice to all group wide supervisors of non-U.S. groups.

In addition, we recommend striking 4L(2)(h)(i) and moving it to section 4L(2)(f) or 4L(2)(g), which is where we believe it may provide the most value to regulators. We do not believe it is appropriate to require a group that is already subject to prudential group capital supervision to have to submit a GCC simply because a material transaction has occurred anywhere in the holding company system, including extraterritorial transactions by non-U.S. insurance entities. However, that kind of requirement may be appropriate for a U.S. domiciled group that is not otherwise subject to a full group capital assessment because they are partially or fully exempt from filing the GCC. It may also be helpful to limit the language regarding "material transactions" to those between insurers and non-insurer affiliates, as this appears to reflect the concerns expressed by regulators on Working Group calls.

Proposed changes to 4L(2)(h):

"h. Notwithstanding the exemptions stated in Section 4L(2)(a) through Section 4L(2)(g), the commissioner may require the ultimate controlling person to file an annual group capital calculation, completed and filed in accordance with the NAIC Group Capital Calculation Instructions and as directed by the lead state commissioner, if any of the following criteria are met:

~~(i) there are any material transactions that have occurred since the last filing of the annual group capital calculation or the Schedule 1; or~~

[ACLI strongly recommends consulting with the NAIC Office of General Counsel, the Federal Reserve Board, and the U.S. Treasury regarding the following provisions]:

~~(ii)~~ (i) if any insurer within the insurance holding company system is in a Risk-Based Capital action level event as set forth in [insert cross-reference to appropriate section of Risk-Based Capital (RBC) Model Act] or a similar standard for a non-U.S. insurer; or

~~(iii)~~ (ii) any insurer within the insurance holding company system meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in [insert cross-reference to appropriate section of Model Regulation to define standards and commissioner's authority over companies deemed to be in hazardous financial condition]; or

~~(iv)~~ (iii) otherwise exhibits qualities of a troubled insurer as determined by the commissioner based on unique circumstances including, but not limited to, the

type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

~~(v)~~ (iv) Any requests for information from the ultimate controlling person of a non-U.S. insurer who is otherwise exempt from the group capital calculation should be communicated promptly to the entity's group-wide supervisor and supervisory college.

PART III. COMMENTS ON THE PROPOSED CONFIDENTIALITY PROTECTIONS

Like other supervisory tools, the confidentiality of the GCC and similar materials submitted by non-U.S. or Federal Reserve Board group capital filers, is of paramount importance to ACLI, and we appreciate the NAIC's sustained acknowledgment of its importance. Any collection, use and disclosure of confidential, company information must be necessary for the supervision of insurance legal entities or groups and shall take place subject to current laws regarding confidentiality and only in and to the extent of the exercise of the governmental agency or regulator's statutory authority. The expanded universe of highly sensitive information required to be filed, as well as the novelty of the calculation heightens concerns about confidentiality protections for the information.

Confidentiality protections and potential vehicles for these protections should be thoughtfully considered and examined and must be well-established in law before the GCC is implemented and we support the NAIC's efforts to incorporate these confidentiality protections alongside the filing authority for the GCC in the Model Holding Company Act. We appreciate the Working Group's longstanding commitment to maintaining the confidentiality of the GCC, as well as the Working Group's efforts to work with industry to develop a GCC confidentiality framework that meets the needs of all parties.

As ACLI has noted in past comment letters, non-regulators who view the GCC do not have insight into the details of the calculation to be able to interpret and understand the GCC results. As a result, there is a strong likelihood the GCC may be misused to make comparisons between companies instead of being used as a sophisticated regulatory tool that is "intended to provide comprehensive accounting and transparency to state insurance regulators and facilitate earlier engagement with company management regarding potential business operations of concern and communication with other insurance regulators."[6]

The NAIC has historically acknowledged and recognized the potential for the misuse of certain regulatory filings like non-public RBC reports or plans by limiting the ability of companies or regulators to disclose these reports. We support the NAIC's proposed restrictions and limitations on the sharing of GCC results and information.

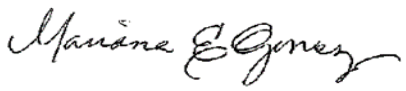
CONCLUSION

Thank you for the opportunity to provide comments on the proposed revisions to the Holding Company Act. ACLI appreciates the efforts the NAIC has made to engage the stakeholder

[6] Source: NAIC Proposed Group Capital Calculation Memo, May 29, 2019, p. 1.

community in the development of the Model Holding Company Act, and we would welcome the opportunity to discuss our comments with you in greater detail.

Sincerely,



Mariana Gomez

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Mr. Dan Daveline
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National Association of Insurance Commissioners
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DDaveline@naic.org

Swiss Re America Holding Corporation
175 King Street
Armonk, NY 10504

July 15, 2020

Re: NAIC Insurance Holding Company System Regulatory Act Group Capital Calculation Revisions

Dear Mr. Daveline,

Thank you for the opportunity to address the NAIC's exposed draft amendments to NAIC Model 440, the Insurance Holding Company System Regulatory Act. These comments focus on the revisions pertaining to the exemption from the US Group Capital Calculation (GCC) for non-US parented groups domiciled in Reciprocal Jurisdictions.

Swiss Re has long held, and advocated for, the "1-group, 1-group supervisor" principle. We strongly believe that an insurance group should be subject to only one group capital rule, and that such a rule should be dictated by an insurer's group-wide supervisor and apply only at the group-wide level.

The US GCC developed by the NAIC should only apply to insurance groups for which a US state is the group-wide supervisor. It is critical, as indicated by numerous interested parties, that the US GCC not apply to groups that are already subject to non-US group-wide supervision and capital requirement or extend to a US subgroup level. We contend that US regulators expect US-based groups not to be subject to group capital requirements in non-US jurisdictions, at either the group-wide or subgroup level. Further, the institution of a US Group Capital Calculation applied at the worldwide holding company level is the best way to accomplish that goal. The exemption provided for insurers from Reciprocal Jurisdictions in Section 4L(2)(c) is a key element of achieving this result, and Swiss Re applauds its continued inclusion.

The most recent proposed model act revisions include, in Section 4L(2)(e), a caveat to the Reciprocal Jurisdiction exemption ostensibly to address the issue of subgroup reciprocity. The goal of the new provision uses the threat of GCC application to US subgroups of non-US companies as a means to prevent non-US regulators from applying subgroup capital calculations to US operations abroad. While Swiss Re agrees with the premise that a country's group capital calculation should not apply at the subgroup level, we do not support including this language in the model act.

The inclusion of the provision in the model act clouds an otherwise clear and settled GCC exemption. The provision:

- potentially conflicts with the overall group-wide supervision principles in Section 7.1 of the holding company act
- may be inconsistent with the GCC instructions currently being developed in parallel to this effort
- does not contain the same hazardous financial condition carve-outs as provided to US regulators, and
- appears, as drafted, to nullify the entire GCC exemption for insurers from Reciprocal Jurisdictions rather than focus specifically on subgroup application.

The definition of a Reciprocal Jurisdiction in the NAIC Credit for Reinsurance Model Law already includes the concept of reciprocity. It provides that, in order for a non-US jurisdiction to be recognized by the NAIC, an ongoing analysis and consideration of the rights, benefits and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction is required. Further, the concern over subgroup application outside the US is largely a hypothetical concern at this time. We believe it is unwise to hardwire a provision into state law issuing a retaliatory threat without a corresponding immediate concern. Finally, country-to-country commitments on subgroup application are more appropriately dealt with in other forums that already exist, such as the US-EU Insurance Project, dispute resolution mechanisms of the US-EU and US-UK Covered Agreements, and the NAIC Process for Evaluating Qualified and Reciprocal Jurisdictions.

For these reasons, Swiss Re recommends eliminating Section 4L(2)(e) because subgroup reciprocity issues are, or can be, addressed more appropriately under existing authority, practices and procedures.

The provision in Section 4L(2)(h)(i) also raises concerns as it relates to the exemption for insurers from Reciprocal Jurisdictions. The new section would allow an override of the US GCC exemption where an insurer engages in a "material transaction." Swiss Re believes this provision could allow US regulators to require the US GCC from groups already subject to another group-wide capital assessment whenever there is a material transaction. This cuts against the principle that groups should be subject to only one group capital calculation. The provision seems more suited to the small US insurer provisions. Therefore, Swiss Re asserts that Section 4(L)(2)(h)(i) should not apply to the exemptions for non-U.S. groups domiciled in Reciprocal Jurisdictions.

If you have any questions, please contact me.

Yours sincerely,

Matthew Wulf
Head State Regulatory Affairs Americas
Swiss Re Americas

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Director & Associate General Counsel
Regulatory & Supervisory Affairs

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July 15, 2020

Dan Daveline
Director, Financial Regulatory Services
National Association of Insurance Commissioners
Submitted via Email

Re: Proposed Revisions to the Insurance Holding Company System Regulatory Act (#440)

Dear Mr. Daveline:

Teachers Insurance and Annuity Association of America ("TIAA") appreciates the opportunity to submit the enclosed comments in response to the proposed revisions to the *Insurance Holding Company System Regulatory Act (#440)* ("Model #440") exposed for public comment in June by the Group Capital Calculation (E) Working Group (the "Working Group"). Below, we provide our thoughts in response to certain sections pertaining to exemptions and confidentiality. We hope that our comments will assist the NAIC as it considers revising Model #440.

About TIAA

Founded in 1918, TIAA is the leading provider of retirement and financial services for those in academic, research, medical, and cultural fields. Over our century-long history, TIAA's mission has always been to aid and strengthen the institutions and participants we serve and to provide financial products that meet their needs. To carry out this mission, we have evolved to include a range of financial services, including asset management and retail services. Today, TIAA manages over $1 trillion in assets, and our investment model and long-term approach aim to benefit the five million retirement plan participants we serve across more than 15,000 institutions.[1] With our strong nonprofit heritage, we remain committed to the mission we embarked on in 1918 of serving the financial needs of those who serve the greater good.

[1] Data are as of March 31, 2020.

TIAA supports the proposed exemption for groups required to file with the Federal Reserve.

Section 4L(2)(b) of the exposed draft proposes that groups required to perform and file a group-wide capital calculation with the Board of Governors of the Federal Reserve System (the "Federal Reserve") may be exempt from annually filing a Group Capital Calculation (the "GCC"), so long as they are permitted to provide their lead state regulator a copy of their Federal Reserve capital calculation filings. TIAA strongly supports this proposed exemption. TIAA is currently subject to regulation and supervision by the Federal Reserve as a savings-and-loan holding company significantly engaged in the business of insurance (an "Insurance SLHC"). As the NAIC is aware, last year the Federal Reserve proposed capital requirements that are designed specifically for Insurance SLHCs. The Federal Reserve's proposed approach would construct "building blocks," or groups of entities in the supervised firm that are covered under the same capital framework, to calculate the combined, enterprise-level capital and capital requirement.

We believe the Federal Reserve's proposed approach is not only appropriately tailored to the unique business model of insurers, but comparable to the NAIC's proposed GCC. As such, we think it is appropriate for Insurance SLHCs like TIAA and other groups required to file with the Federal Reserve to be exempt from annually filing a GCC, so long as such entities' lead state regulator obtains sufficient access to the appropriate Federal Reserve filing. This approach would ensure that Federal Reserve-supervised entities are covered under a sufficiently stringent capital framework (and their state regulators are kept duly informed) but are not subject to a duplicative regulatory regime under the GCC.

The proposed exemption for Federal Reserve filers under draft Section 4L(2)(b) is not a blanket exemption but is predicated upon providing comparable information to the lead state regulator. This lead state discretion guarantees that the lead state obtains the information it needs; if the information provided is insufficient, the lead state may require an Insurance SLHC to submit a GCC filing. As discussed above we believe that the information filed with the Federal Reserve is appropriately tailored to the unique business model of insurers and would be comparable to that required by the GCC. While Insurance SLHCs are not permitted under law to provide their Federal Reserve filings to a state regulator without permission from the Federal Reserve,[2] TIAA is very confident that the Federal Reserve will cooperate with state insurance regulators. In fact, the Federal Reserve has proposed modifications to its rules regarding confidential supervisory information that expand the ability to share information with state regulators.[3]

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[2] *See* 12 CFR 261.20(d) Confidential supervisory information made available to supervised financial institutions and financial institution supervisory agencies.

[3] *See* Rules Regarding Availability of Information, 84 Fed. Reg. 27976, 27979 (June 17, 2019) (to be codified at 12 CFR 261.21(b)(2)).

TIAA supports the proposed language in section 4L(2)(b) of the exposed draft. However, in response to regulators' questions about the sufficiency of information that would be provided to lead state regulators, TIAA would support bolstering the discretion of the lead state commissioner as set forth below. We provide both clean and track changes versions below:

> b. An insurance holding company who is required to perform a group-wide capital calculation specified by the United States Federal Reserve and is permitted by its lead state regulator to instead file a copy of the calculation required by the United States Federal Reserve, with the lead state commissioner.

> b. An insurance holding company ~~whose U.S. group-wide supervisor is the United States Federal Reserve,~~ who is required to perform a group-wide capital calculation specified by the United States Federal Reserve and is permitted by its lead state regulator to instead file a copy of the calculation required by the United States Federal Reserve, with the lead state commissioner.

While TIAA believes the exposed language in section 4L(2)(b) suffices we offer the alternate language above which more explicitly emphasizes lead state discretion.

TIAA supports the confidentiality provisions in the exposed draft.

A necessary corollary of an exemption for Insurance SLHCs that file a group-wide capital calculation with the Federal Reserve is the need for Federal Reserve filing information to remain confidential. The proposed text in section 8.1A(1) pertaining to confidentiality for the group capital calculation, group capital ratio, and "any group capital information received from an insurance holding company supervised by the Federal Reserve Board" is critical. The ability to share information between regulators requires confidentiality. We believe entities' GCC information should receive the highest levels of confidential treatment, and should not be disclosed by the NAIC or state regulators for any non-regulatory purpose.

Conclusion

TIAA commends the Working Group for its focus on this issue, and we appreciate the opportunity to comment on the exposed revisions to Model #440. We hope our suggestions above prove helpful as the NAIC continues working to formulate a robust GCC framework. We would welcome the opportunity to engage further on any aspects of this letter.

Sincerely,

Daniel Barry

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July 15, 2020

Commissioner David Altmaier, Chair
Group Capital Calculation (E) Working Group
National Association of Insurance Commissioners
Via e-mail: ddaveline@naic.org

Re: Exposure of Proposed Changes to the Model Holding Company Act

Dear Commissioner Altmaier:

America's Health Insurance Plans (AHIP) appreciates the opportunity to comment on the changes that have been proposed by the NAIC's Group Calculation Working Group to the Model Holding Company Act (HCA) as a way forward for the implementation by states of the Group Capital Calculation (GCC). Those proposed changes would require insurance groups to file the GCC with their Lead State subject to certain exemptions and would provide for confidential treatment of the GCC. AHIP's comments on those aspects follow.

Filing and Exemptions

AHIP appreciates the Working Group's efforts to incorporate into the HCA certain exemptions from filing the GCC.

AHIP was a signatory to a letter submitted to you on August 7, 2018, along with five other national trade associations representing a significant majority of the health, property and casualty and reinsurance sectors in the United States. Among other things, the "joint trade letter" advocated for certain exemptions (or, in some cases, "expedited approaches") from a requirement that an insurance group file the GCC. We are pleased to see included in the exposed draft of the proposed changes to the HCA language that would provide for the following types of groups to be exempted from filing the GCC, as called for in the joint trade letter:

- Non-U.S. based groups based in a Reciprocal Jurisdiction
- U.S. based insurance groups that are not required to file an ORSA and that have no gross premiums written outside the United States
- U.S. groups subject to a capital requirement of the Federal Reserve Board
- U.S. groups where the Ultimate Controlling Party is an underwriting company

AHIP has some further comments and suggestions, however, with respect to certain aspects of the proposed language pertaining to these exemptions. Our more substantive comments follow. Other comments and wording suggestions are shown in marked text or comment bubbles in Attachment 1.

Commissioner's Discretion: In some cases, the application of the proposed exemption would be at the discretion of the Lead State commissioner notwithstanding that stated criteria may otherwise have been met purportedly to allow the exemption. AHIP suggests that language similar to that in the Risk Management and Own Risk and Solvency Assessment Model Act be considered in order to provide some criteria for the application of commissioner discretion, as follows:

> An insurer that does not qualify for exemption pursuant to subsection A may apply to the commissioner for a waiver from the requirements of this Act based upon unique circumstances. In deciding whether to grant the insurer's request for waiver, the commissioner may consider the type and volume of business written, ownership and organizational structure, and any other factor the commissioner considers relevant to the insurer or insurance group of which the insurer is a member. If the insurer is part of an insurance group with insurers domiciled in more than one state, the commissioner shall coordinate with the lead state commissioner and with the other domiciliary commissioners in considering whether to grant the insurer's request for a waiver.

Requirement for an initial filing: In some cases, for which exemption is apparently provided in the draft HCA text, the group must nonetheless make an initial filing of the GCC with the Lead State, and only subsequent to that could the commissioner grant the exemption. It is not clear why an initial filing would be required, and which would seem to contradict the notion of an exemption.

Financial Entities: In some cases, for the group to be able to avail itself of the exemption it must have "no banking, depository or other financial entity that is subject to a specified regulatory capital framework within its holding company structure." The GCC Instructions, exposed for comment until July 20, provide that certain non-insurance affiliates of an insurer be deemed as financial. We understand that the GCC Working Group members view such affiliates to be of greater risk relative to other types of affiliates and, by deeming them to be financial, they would be listed separately for analytical purposes as well as subject to a higher capital charge. Specifically, the exposed GCC Instructions state as follows:

> Affiliates that are integral to the performance of the insurance contract or the provision of insurance or financial products or services to policyholders, members or depositors [Examples include: agents, reinsurance intermediaries, claims adjusters or processors, third party administrators, pharmacy and other benefit managers, provider groups or entities that provide more than X percent of the policy benefits under policies issued by insurers within the group, and] will be treated as financial entities.

Inasmuch as such affiliates that are deemed financial may be considered "subject to a specified regulatory capital framework" by virtue of being subject to a Risk-Based Capital Charge of a parent insurer or by being subject to a separate capital charge in the GCC, the language in the HCA could be interpreted to preclude the group from being subject to the exemption on that basis alone. Therefore, AHIP suggests that the reference to "specified regulatory capital framework within its holding company structure" be clarified to refer to the capital regime of other sectoral regulators, e.g., federal or state banking agencies.

Materiality: In some cases, the proposed exemption language applies a materiality test, e.g., that the group have "de minimis material affiliated transactions between any of the insurers and the non-insurers that do not impart any risk associated with these transactions" and "has de minimis materially risky non-insurers within its holding company structure, as described in the NAIC Group Capital Calculation Instructions."

It is our understanding that the GCC Working Group did not reach consensus on a quantified materiality criterion for the determination of risk posed to the insurance group from non-insurance non-financial entities in the broader group, and as a result, the Working Group has tasked a Financial Analysis Handbook Drafting Group to consider recommendations that would provide guidance for more assurance as to consistency in application of the GCC instructions across states and groups.

The cited "*de minimis*" language as proposed appears intended to embed a materiality threshold in the HCA but in a manner that is largely left to individual judgment and, thus, inviting the same inconsistency that would exist in the application of the GCC Instructions themselves.

AHIP recommends that aspects related to materiality, whether for purposes of the GCC Instructions or the HCA, be addressed by the Financial Analysis Handbook Drafting Group. This could be accomplished by agreement on a principles-based approach that considers a number of key risk indicators as indicia of the potential for the existence of risk and whether the risk could be plausibly transmitted to the insurance group. State insurance department financial analysts could then use that guidance as a basis for better understanding the facts and circumstances of a subject group and to develop an informed view of the potential risk that may be involved.

Filing of Schedule 1: In some cases, the HCA language provides that a group not exempted from filing altogether, would be able to file Schedule 1 without completing all aspects of the GCC template, including the aggregation to a group-wide measure. While the group trade letter asked for complete exemption in the case of groups whose Ultimate Controlling Person is an RBC-filing insurer, such as mutuals and many health plans, AHIP does not object to the draft recommendation to file Schedule 1.

Troubled Companies: Finally, the draft model text provides that the commissioner can effectively void any exemption that might otherwise apply and require a complete filing of the GCC if any of the following criteria are met:

- there are any material transactions that have occurred since the last filing of the annual group capital calculation or Schedule 1"
- if any insurer within the insurance holding company system is in a Risk-Based Capital action level event
- if the group is deemed to be in hazardous financial condition … or otherwise exhibits qualities of a troubled insurer

With respect to "material" transactions, AHIP's concerns about materiality, above, continue to apply. In addition, we would expect that most sizeable groups are involved in material transactions on a routine basis. The text could benefit by focusing on specific types of transactions that are of most concern.

As to the remaining two criteria, it is not clear to us that a completed GCC will be of much utility to the Lead State in such situations. If one or more entities in the group are troubled, given limits on the fungibility of capital it may be better to focus on Schedule 1 and the location of capital (and deficiencies) within the group rather than on a GCC group-wide metric.

Confidentiality

AHIP appreciates that, from the beginning of the GCC discussions, regulators have understood the need for strong confidentiality protections for GCC-related materials submitted to regulators. AHIP also appreciates that this understanding is manifested in the Staff proposal for a new Section 8.1 to be added to the HCA to provide those protections to the GCC and related materials, especially since the new Section incorporates language to bring it more in line with language in the ORSA Model, which is regarded by some as the gold standard of NAIC Model confidentiality protections. However, we have a suggestion to meet Industry's and regulators' common goals, and to simplify confidentiality provisions so that it may be less daunting to state legislators as they contemplate enacting these revisions in their states.

Rather than adding two pages of material to the HCA to create the new and largely redundant Section 8.1, a simpler method would be to modify the existing Section 8 to incorporate the various clauses and other relatively minor changes needed to bring the confidentiality protections for the HCA more in line with those in ORSA. This can be done while also adding the language suggested by the coalition of life companies to prohibit the use of the GCC for rating, comparison, or advertising purposes. This method also will promote the NAIC's doctrine of maintaining consistent model confidentiality protections, from state to state, and model to model. Attachment 2 presents a redline of the current Section 8 of the HCA to show how this method would work.

Again, AHIP appreciates the opportunity to offer comments on proposed changes to the Holding Company Act.

Sincerely,

Bob Ridgeway
Senior Government Relations Counsel

Attachments

Attachment 1

INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT

Table of Contents

NOTE: Text below that is highlighted in yellow shows NAIC proposed amendments to Model Holding Company Act. AHIP proposed amendments are noted in marginal comments.

Section 4. Registration of Insurers

L. Enterprise Risk Filings.

(1) The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners;

(2) Group Capital Calculation. Notwithstanding any exemptions from the registration contained in this ~~provision Act, to the contrary~~ each ultimate controlling person of every insurer shall ~~also~~ file an annual group capital calculation, completed in accordance with the NAIC Group Capital

Commented [TF1]: Please see suggested changes in marked text highlighted in green

Calculation Instructions. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners, unless one of the following exemptions for the Insurance Holding Company System is met:

a. An insurance holding company that does not conduct business outside of the U.S. and either (a) is an insurer classified as either a county mutual insurance company, a town mutual insurance company or a farmers' mutual insurance company; or (b) has direct premiums written less than $1,000,000 in any calendar year and less than 1,000 policyholders or certificate holders of direct written policies nationwide at the end of the calendar year;

b. An insurance holding company whose ~~non~~ U.S. group-wide supervisor is the United States Federal Reserve, who is permitted to instead file a copy of the calculation required by the United States Federal Reserve, with the lead state commissioner;

Commented [TF2]: See change highlighted in green

~~a.~~c. An insurance holding company whose non U.S. group-wide supervisor, as determined in accordance with the principles of section 7.1, is located within ~~either~~ a ~~Qualified Jurisdiction~~ ~~or~~Reciprocal Jurisdiction [insert cross-reference to appropriate section of Credit for Reinsurance Law];

d. An insurance holding company:

(i) That has provided information to the accredited lead state, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the lead-state to comply with the NAIC principles of group supervision as detailed in the NAIC Financial Analysis Handbook, and the lead state has determined that because of this the group capital calculation is not required to be filed; and

(ii) Whose non-U.S. group-wide supervisor, as determined in accordance with the principles of section 7.1, meets either of the following requirements:

a. Recognizes and accepts the group capital calculation for U.S. insurance groups who operate in the jurisdiction of that group-wide supervisor; or

Drafting Note: The phase "Recognizes and accepts" does not require the non-U.S. group-wide supervisor to require the U.S. insurance groups to actually file the group capital calculation with the non-U.S. supervisor but rather does not require its own version of a group capital filing.

~~a.~~b. For jurisdictions where any U.S. insurance groups do not operate, recognizes the group capital calculation as an acceptable international capital standard by indicating such formally in writing to the lead state with a copy to the International Association of Insurance Supervisor.

Commented [TF3]: The GCC will not be an international standard itself, rather it aims to be sufficiently comparable to the ICS, which will be an international standard when adopted by the IAIS.

e. The exemptions in Sections 4L(2)(c) and 4L(2)(d) shall not apply to the U.S. operations of a non-U.S. insurance holding company if its group-wide supervisor does not recognize and accept the group capital calculation for any U.S. insurance group's operations in that group-wide supervisor's jurisdiction.

f. Notwithstanding the exemptions stated in Section 4L(2)(a) through Section 4L(2)(d), the commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation if the insurance holding company system has previously filed

Commented [TF4]: Please see AHIP comment letter re" Commissioner's discretion."

the annual group capital calculation and the commissioner makes a determination based upon that filing that the insurance holding company system meets all of the following criteria:

(i) Has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than $1,000,000,000;

(ii) Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;

~~(i)~~(iii) Has no banking, depository or other financial entity that is subject to a specified regulatory capital framework within its holding company structure;

~~(ii)~~(iv) Has *de minimis* material affiliated transactions between any of the insurers and the non-insurers that do not impart any risk associated with these transactions; and

(v) Has *de minimis* materially risky non-insurers within its holding company structure, as described in the NAIC Group Capital Calculation Instructions.

g. In addition to the commissioner's discretion to exempt an insurance holding company after reviewing a previously filed annual group capital calculation described in Section 4L(2)(f), the commissioner has the discretion to instead accept an annual filing that includes a single schedule of all of the entities within the group as well as corresponding key financial figures from those entities (Schedule 1) and any other specified information from the group capital calculation template, completed in accordance with the NAIC Group Capital Calculation Instructions, and which excludes all of the other requirements of the annual Group Capital Calculation, if either (i) the ultimate controlling person is a U.S. regulated insurer that already completes and annual Risk-Based Capital filing, and the commissioner has determined that there are de minimis materially risky non-insurers; or (ii) the insurance holding company system has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than $1,000,000,000; and the following additional criteria are met:

(i) The insurance holding company system has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;

~~(i)~~(ii) The holding company includes no banking, depository or other financial entity that is subject to a specified regulatory capital framework; and

(iii) The commissioner has not made a determination that the holding company structure has *de minimis* material affiliated transactions between any of the insurers and the non-insurers or has not determined that the holding company structure has *de minimis* materially risky-insurers, but believes the filing of the Schedule 1 is sufficient to meet the needs of the Commissioner.

h. Notwithstanding the exemptions stated in Section 4L(2)(a) through Section 4L(2)(g), the commissioner may require the ultimate controlling person to file an annual group capital calculation, completed in accordance with the NAIC Group Capital Calculation Instructions, if any of the following criteria are met:

Commented [TF5]: Please see AHIP comment letter re Financial Entities

Commented [TF6]: Please see AHIP comment letter re: Materiality. Also, unclear if material is referring to the # of transactions or insurers, their $ dollar size, or the risk tht is posed by those entities /transactions.

Commented [TF7]: Seems contradictory, i.e., the filing includes "any other specified information" but then also "exludes all the other requirements…." Is this intended to implement the suggestion of Illinois, i.e., that the Commissioner could require only Schedule 1 but not the aggregation to a single group-wide capital measure? If so, that could be made clearer.

Commented [TF8]: Please see AHIP comment letter re Materiality

Commented [TF9]: Please see AHIP comment letter re Materiality

Commented [TF10]: Please see AHIP comment letter re Troubled Companies

(i) there are any material transactions that have occurred since the last filing of the annual group capital calculation or the Schedule 1; or

(ii) if any insurer within the insurance holding company system is in a Risk-Based Capital action level event as set forth in [insert cross-reference to appropriate section of Risk-Based Capital (RBC) Model Act] or a similar standard for a non-U.S. insurer; or

(iii) any insurer within the insurance holding company system meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in [insert cross-reference to appropriate section of Model Regulation to define standards and commissioner's authority over companies deemed to be in hazardous financial condition]; or

(iv) otherwise exhibits qualities of a troubled insurer as determined by the commissioner based on unique circumstances including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

~~b.~~i. If an insurance holding company that qualifies for an exemption subsequently no longer qualifies for that exemption due to changes in premium of the insurer(s) within the insurance group of which the insurer is a member, the insurance holding company shall have one (1) year following the year the threshold is exceeded to comply with the requirements of this Act.

Attachment 2

Section 8. Confidential Treatment

A. Documents, materials or other information in the possession or control of the Department of Insurance that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to Section 6 and all information reported or provided to the Department of Insurance pursuant to Section 3B(12) and (13), Section 4, Section 5 and Section 7.1 is recognized by this state as being proprietary and to contain trade secrets, and shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof, in which event the commissioner may publish all or any part in such manner as may be deemed appropriate.

Commented [RB1]: ORSA Model 505 deletes this language.

B. Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner or with whom such documents, materials or other information are shared pursuant to this Act shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to Subsection A.

C. In order to assist in the performance of the commissioner's duties, the commissioner:

(1) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Subsection A, with other state, federal and international regulatory agencies, with the NAIC and with any third-party consultants designated by the commissioner~~its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities~~, including members of any supervisory college described in Section 7, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material or other information, and has verified in writing the legal authority to maintain confidentiality.

(2) Notwithstanding paragraph (1) above, the commissioner may only share confidential and privileged documents, material, or information reported pursuant to Section 4L1 with commissioners of states having statutes or regulations substantially similar to Subsection A and who have agreed in writing not to disclose such information.

(3) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(4) Shall enter into written agreements with the NAIC or a third-party consultant governing sharing and use of information provided pursuant to this Act consistent with this subsection that shall:

(i) Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC or a third party consultant ~~and its affiliates and subsidiaries~~ pursuant to this Act, including procedures and protocols for sharing by the NAIC with other state, federal or international regulators. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the information and has verified in writing the legal authority to maintain confidentiality;

(ii) Specify that ownership of information shared with the NAIC or a third-party consultant ~~and its affiliates and subsidiaries~~ pursuant to this Act remains with the commissioner and the NAIC's or consultant's use of the information is subject to the direction of the commissioner;~~:~~

~~(ii)~~(iii) Prohibit the NAIC or third-party consultant from storing the information shared pursuant to the Act in a permanent database after the underlying analysis is completed;

~~(iii)~~(iv) Require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC or a third-party consultant pursuant to this Act is subject to a request or subpoena to the NAIC or third-party consultant for disclosure or production; and

(v) Require the NAIC or a third-party consultant ~~and its affiliates and subsidiaries~~ to consent to intervention by an insurer in any judicial or administrative action in which the NAIC and its affiliates and

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subsidiaries may be required to disclose confidential information about the insurer shared with the NAIC and its affiliates and subsidiaries pursuant to this Act..

~~(iv)~~(vi) In the case of an agreement involving a third-party consultant, provide for the insurer's written consent.

D. The sharing of information by the commissioner pursuant to this Act shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution and enforcement of the provisions of this Act.

E. No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in Subsection C.

F. Documents, materials or other information in the possession or control of the NAIC or third-party consultant pursuant to this Act shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action~~.~~

~~F.~~G. It is the judgement of the legislature that the group capital calculation and resulting group capital ratio is a regulatory tool for assessing group risks and capital adequacy, and is not intended as a means to rank insurers or insurance holding company systems generally. Therefore, except as otherwise may be required under the provisions of this Act, the making, publishing, disseminating, circulating or placing before the public, or causing directly or indirectly to be made, published, disseminated, circulated or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way as an advertisement, announcement or statement containing a representation or statement with regard to the group capital calculation or group capital ratio of any insurer or any insurer group, or of any component derived in the calculation by any insurer, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited; provided, however, that if any materially false statement with respect to the group capital calculation or resulting group capital ratio or an inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation or resulting group capital ratio is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement or the inappropriateness, as the case may be, then the insurer may publish announcements in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

NOTE: These amendments to Section 8 make new Section 8.1

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July 15, 2020

Commissioner David Altmaier, Chair
NAIC Group Capital Calculation Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

Mr. Dan Daveline
Director, Financial Regulatory Services
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
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RE: Comments on Draft Amendments to the NAIC Holding Company Act

Dear Messrs. Altmaier and Daveline:

The Reinsurance Association of America (RAA), headquartered in Washington, D.C., is the leading trade association of property and casualty reinsurers doing business in the United States. The RAA is committed to promoting a regulatory environment that ensures the industry remains globally competitive and financially robust. RAA membership is diverse, including reinsurance underwriters and intermediaries licensed in the U.S. and those that conduct business on a cross border basis.

The RAA appreciates the opportunity to comment on the draft amendments to the NAIC Insurance Holding Company System Regulatory Act (holding company act) regarding the scope of application of the GCC and confidentiality protections. These comments adhere closely to the recommendations that we made in February 2020, when the Group Capital Calculation Working Group (GCCWG) sought feedback on the referral letter to the Group Solvency Issues Working Group (GSIWG) on the same topics. We agree that the holding company act and regulation (NAIC Models 440 and 450) are the appropriate locations to incorporate the regulatory authority and guidance for annual GCC reporting.

Scope Exemptions in Section 4.L.(2)

The RAA's longstanding position on group capital measures is centered on the premise that insurance groups should only be subject to a single group capital measure and only be subject to group supervision administered by their global group-wide supervisor. An important corollary to this position is that insurance groups should not be subject to multiple group capital measures and related requirements applied extraterritorially, whether they involve U.S. based multinational insurance groups operating globally or non-U.S. groups with operations in the United States. Stated simply, the RAA believes in one group, one group supervisor and one group capital measure/requirement.

Apart from the proposed subgroup requirements discussed in more detail below, the RAA supports the scope exemptions proposed in the draft holding company act. Specifically, we agree with the small group exemption in subsection a., the exemption for groups supervised by the Federal Reserve in subsection b., and the exemption for non-U.S. supervised groups located in Reciprocal Jurisdictions in subsection c. These provisions correspond to the one group, one group capital requirement policy of the RAA and are generally consistent with group supervision guidance published historically by the NAIC, in IAIS guidance, and which form the basis for Article 4 of the U.S./E.U. Covered Agreement.

The RAA supports subsection 4.L.(2)f., which provides commissioner discretion, under certain specified circumstances, to exempt insurance groups from filing the annual group capital calculation. Similarly, we do not oppose the new provisions of subsection 4.L.(2)h., which grant commissioner discretion, again under specified circumstances, to require an annual group capital calculation from an insurance group that is otherwise exempt. These two provisions satisfactorily address RAA's concerns raised in our February comment letter that commissioner discretion to require an annual group capital calculation was not sufficiently defined or limited.

The RAA also supports subsection 4.L.(2)g., which provides commissioner flexibility and discretion to only require Schedule 1, in certain circumstances as an alternative to a "full" group capital calculation filing. We believe that this additional flexibility is important and will prevent the annual group capital calculation filing from becoming overly burdensome on smaller insurance groups, whose capital position and risk profile do not change materially from year to year. However, we are not sure that the criteria prescribed for this discretionary authority is drafted as intended or as clearly as it could be. Specifically, subsection iii. discusses determinations that the Commissioner has not made including no determination "that the holding company structure has de minimis "**materially risky-insurers**" (emphasis added). Elsewhere in the draft, including in the definitions section, the document refers to materially risky non-insurers, but this is the only place where it refers to materially risky-insurers. Perhaps this is a drafting error.

Subgroup Capital Reporting in Section 4.L.(2)d. and e.

As stated in our introductory comments above, the RAA supports deference to the group-wide supervisor for group supervision and believes strongly that each insurance group, no matter where it is domiciled or supervised, should only be subject to a single group capital requirement or calculation. As a result, we cannot support the revised language proposed in subsections 4.L.(2)d. and e. and the drafting note, which would require a U.S. subgroup capital calculation for a non-U.S. group if the group-wide supervisor of that non-U.S. insurance group does not treat subgroups of U.S. groups in a similar manner (i.e. reciprocal treatment).

While we recognize that some non-U.S. supervisors do require subgroup capital filings, these are burdensome requirements and do not serve a valid supervisory purpose. As a matter of principle, we do not believe that the NAIC should hardwire language into the holding company act that would require subgroup capital filings for any purpose, including providing political leverage against other supervisors. The RAA opposes U.S. subgroup capital calculations as a result of our evaluation of the following three issues:

1) The purpose of group capital assessment and supervision,
2) Subgroup supervision is not universally applied in other regimes, and
3) Reciprocal treatment requirement may be of limited effectiveness

Purpose of Group Capital Assessment/Supervision

According to numerous NAIC and IAIS guidance documents, the purpose of group supervision and group capital measurement is to assess the risks and measure the capital position for the entire insurance group, including affiliates in the group that could cause contagion risk to insurers within the group. Assessing or measuring group capital only for the U.S. subgroup does not meet this primary objective of group supervision and as a result should not be made part of the scope requirements for the Group Capital Calculation. It clearly and simply fails to meet the basic objectives of group capital assessment and group supervision since it only looks at a segment of the insurance group and ignores other entities that could impact the financial condition of the U.S. holding company.

We have included as an appendix to this comment letter several excerpts of NAIC and IAIS guidance that document the purpose of group supervision including the holding company model act, the NAIC Windows and Walls Memorandum, Form F and ORSA guidance, and ICP 16 and 23.

Subgroup Supervision is not Universally Applied in Other Regimes

We understand and absolutely support the objective of U.S. groups that wish to avoid subgroup capital requirements in non-U.S. jurisdictions where they have operations. We believe these requirements are burdensome and are unnecessary to effective group supervision. However, subgroup capital requirements are not mandatory in many non-U.S. jurisdictions other than the EU, where even there, we understand they are not universally applied.

Article 213 of Solvency II requires subgroup capital unless the group is supervised by an equivalent jurisdiction as discussed in Article 261. However, we note that EIOPA guideline 5 on group solvency interprets these rules by stating that "the relevant Member State supervisor should exempt the EU subgroup from Solvency II group supervision, including the group capital requirement, where there is active cooperation with the third country supervisor." Despite this more recent guidance, some major EU jurisdictions still require U.S. subgroup Solvency II filings under the original Article 13, which is incorporated in law.

The U.S./E.U. Covered Agreement addresses these issues in Article 4, Group Supervision. Article 4 makes clear initially that worldwide group supervision is the province only of the global groupwide (Home) supervisor. The document then states that the Host supervisor **may** (emphasis added) exercise group supervision at the level of the parent undertaking in the Host territory. A single sentence in section (b) is the only part of the covered agreement that addresses subgroup supervision as an option: the remainder focuses on worldwide supervision.

The proposed amendments to the holding company act in subsections 4.L.(d) and 4.L.(2)e. would require any U.S. subgroup of a non-US insurance group to file an annual group capital calculation if its group-wide supervisor fails to recognize and accept a U.S. group calculation. We believe that this is simply being added as a threat to other jurisdictions and is not helpful. Instead, the NAIC and the U.S. should consult with other supervisors to remove group capital requirements and support mutual recognition.

Reciprocal Treatment Requirement May be of Limited Effectiveness

The proposed language calling for reciprocal treatment of U.S. groups in subsections 4.L.(d) and 4.L.(2)e. will penalize U.S. subgroups if their non-U.S. group supervisors impose local capital

requirements on subgroups of U.S. multinationals. This is only effective as a deterrent if the non-U.S. jurisdiction supervises multinational insurance groups with insurance operations in the United States. There are likely to be many more non-U.S. jurisdictions where U.S.-based groups operate than vice versa, so these provisions will often be ineffective and may in fact encourage more subgroup capital requirements for U.S. multinationals. Additionally and as stated above, subgroup supervision in the U.S. will not be an effective supervisory tool because by definition it will not pick up the contagion risk emanating from the non-U.S. portions of the group.

Final Thoughts on Subgroup Supervision/Capital Calculations

RAA's position is clear that we believe the NAIC group calculation requirement should embrace the fundamental idea that group supervision should involve one group, one group supervisor and one group capital measure/requirement. The reciprocal jurisdiction requirement should not be mandatory in the holding company act.

Subgroup capital requirements are inconsistent with the NAIC's windows and walls approach. Subgroup supervision is akin to an interior doorway in a house, or at the most generous, exterior windows facing in only one direction. Subgroup capital requirements are like a "no-man's land" between legal entity capital and group capital. There is nothing useful here and it should not be required in the United States, even if some supervisors around the world do require it.

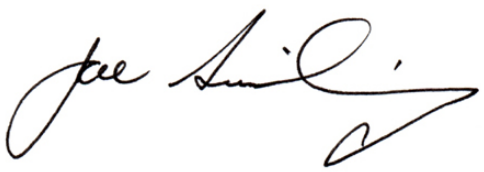
We urge the NAIC and Team USA to engage in the E.U./U.S. dialogue and other fora to eliminate subgroup capital requirements and thus promote more efficient and effective global supervision of the industry.

Confidentiality:

The RAA supports strong confidentiality protections to prevent disclosure of GCC results. Such protections should be both explicit and robust and should preclude disclosure of any group's GCC outside the regulatory community, whether by regulators, their consultants or by insurance groups themselves. We support the proposed revisions to Section 8 of the holding company act as we believe it accomplishes this purpose.

Thank you for the opportunity to provide these comments. We look forward to continued discussion of these issues at future working group meetings.

Sincerely,



Joseph B. Sieverling
Senior Vice President

Excerpts of NAIC and IAIS Guidance Supporting Group Supervision and Capital Measurement only at the Group-wide Level

NAIC Model Holding Company Act #440
Section 4.L.(1) Enterprise Risk Filings
The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners;

NAIC Windows and Walls Memorandum 2010
Section 5
Group Capital Assessment. Effective group supervision should also provide a window with a panoramic vista of the group as a whole, thereby alerting regulators to double gearing and excessive leveraging. GSIWG recommends that the US group supervision process include a review and assessment of capital on a group basis, in addition to retaining separate capital requirements for the solo insurance entity. A panoramic view which includes group capital will not only help assess the risk of financial contagion within a group but will also position regulators to better assess and participate in dialogues on systemic risk involving the insurance sector as the insurance sector can be a recipient or conduit of systemic risk.

NAIC ORSA Guidance Manual
Section I.C. – General Guidance
If a U.S. state insurance commissioner is the global group-wide supervisor, the U.S. state insurance commissioner should receive the ORSA Summary Report covering all group-wide insurance operations. If the U.S. is not the global group-wide supervisor, the insurer may file ORSA Summary Reports encompassing, at a minimum, the U.S. insurance operations, as long as the lead state receives ORSA Summary Reports encompassing the non-U.S. insurance operations from the global group-wide supervisor. If an ORSA Summary Report encompassing the non-U.S. insurance operations is not provided by the global group-wide supervisor, it should be provided by the insurer. If the insurer files an ORSA Summary Report encompassing only the U.S. insurance operations, and in it the insurer states that the U.S. ERM framework is based on the insurers' global ERM framework, then the global ERM framework should be explained either within the U.S. ORSA Summary Report or in an ORSA Summary Report encompassing the non-U.S. insurance operations and be provided to the lead state at a time agreed to by the insurer and the lead state.

Section IV. Introduction
Section 3 of the ORSA Summary Report should describe how the insurer combines the qualitative elements of its risk management policy with the quantitative measures of risk exposure in determining the level of financial resources needed to manage its current business and over a longer term business cycle (e.g., the next one to three years). The group risk capital assessment should be performed as part of the ORSA regardless of the basis (group, legal entity or other subset basis) and in a manner that encompasses the entire insurance group. The information provided in

Section 3 is intended to assist the commissioner in assessing the quality of the insurer's risk and capital management.

Section IV B Prospective Solvency Assessment

If the prospective solvency assessment is performed for each individual insurer, the assessment should take into account any risks associated with group membership. Such an assessment may involve a review of any group solvency assessment and the methodology used to allocate group capital across insurance legal entities, as well as consideration of capital fungibility; i.e., any constraints on risk capital or the movement of risk capital to legal entities.

ICP 16 Enterprise Risk Management

16.0.5

The ERM framework should enhance an insurer's understanding of material risk types, their characteristics, interdependencies, and the sources of the risks, as well as their potential aggregated financial impact on the business for a holistic view of risk at enterprise level. Senior Management should exhibit an understanding of the insurer's enterprise risk issues and show a willingness and ability to address those issues. A fundamental aspect of ERM is the development and execution of a consistent, transparent, deliberate, and systematic approach to manage risks, both individually and in aggregate, on an ongoing basis to maintain solvency and operation within the risk appetite and risk limits. ERM should be embedded in an insurer's corporate culture to ensure that the whole organisation contributes to risk awareness, feedback loops and coordinated responses to risk management needs.

ICP23 Group-wide Supervision

23.2.2

A practical method to determine the entities to capture within the scope of group-wide supervision is to start with entities included in the consolidated accounts. Entities that are not included in consolidated accounts should be included if they are relevant from the perspective of risk (non-consolidated entities also subject to supervision) or control. The entities that may be captured within the scope of group-wide supervision may either be incorporated or unincorporated.

23.2.3

In considering the risks to which the insurance group is exposed it is important to take account of those risks that emanate from the wider group within which the insurance group operates.

23.2.4

Individual entities within the insurance group may be excluded from the scope of group-wide supervision if the risks from those entities are negligible or group-wide supervision is impractical.

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July 15, 2020

Commissioner David Altmaier
Chair, Group Capital Calculation (E) Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106

VIA Email Transmission: ddaveline@naic.org; lfelice@naic.org

RE: NAMIC Comments on Proposed Amendments to NAIC Model 440: Insurance Holding Company Systems Regulatory Act

Dear Mr. Altmaier:

The following comments are submitted on behalf of the member companies of the National Association of Mutual Insurance Companies[1] regarding proposed language to be incorporated into the NAIC Holding Company Act in order to implement the Group Capital Calculation. NAMIC appreciates the opportunity to provide our views on the development and adoption of an insurance group capital assessment tool.

The changes that have been proposed to the HCA include adding a new filing requirement - an annual GCC report – to be filed by the ultimate controlling parent with the lead state regulator. This change is similar to the amendments adopted in 2010 when the annual enterprise risk report was added as a new filing requirement. Additional changes contemplated by the working group to Model #440 include adding exemption criteria to determine who is required to file the GCC, adding new definitions, and inserting a new confidentiality section. NAMIC members are supportive of amending the HCA as a means to provide exemptions based on certain criteria and to include strong confidentiality protection for documents, communications, and workpapers (created or received by regulators) used for the production of the GCC. The following are our comments on the proposal which will focus on the scope and confidentiality provisions.

In reviewing the proposed amendments, we first note our appreciation of the efforts made to provide state regulator discretion as a main component for determining who and what should be in scope of the new filing requirement. Tailoring holding company regulation based on size and complexity is needed due to the many differences between insurance groups.

[1] NAMIC is the largest property/casualty insurance trade association in the country, with more than 1,400-member companies representing 39 percent of the total market. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC member companies serve more than 170 million policyholders and write more than $230 billion in annual premiums. Our members account for 54 percent of homeowners, 43 percent of automobile, and 32 percent of the business insurance markets. Through our advocacy programs we promote public policy solutions that benefit NAMIC member companies and the policyholders they serve and foster greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.

Lead state regulators of insurance holding company systems already receive significant amounts of financial and risk information in the form of disclosures or other regulatory interactions. The HCA has been amended several times over the years to address risks arising within the group from non-insurance affiliates. Prior to 2010, the regulatory approach taken to supervising holding companies was to regulate the insurance entities with a focus on monitoring for potential abuses by affiliates, including requirements for authorization to acquire an insurer, commissioner approval of certain material transactions, such as extraordinary dividends or reinsurance agreements, and access to books and records. The 2010 amendments retained these provisions and further expanded state regulatory authority giving regulators the power to compel production of books and records and examine the non-insurance entities in a holding company to assess the possibility of solvencies that might lead to systemic risk. In addition to affiliated company books and records, regulators have access to insurer quarterly and annual financial statements as well as legal entity risk-based capital reports. Access to and review of company books and records as well as insurer capital positions bolsters regulatory authority and continues to provide valuable insight for insurance department financial examiners and analysts.

NAMIC is supportive of providing regulator discretion within the HCA for determining who the GCC should apply to and we would suggest that these concepts be fully incorporated into the HCA for other enterprise risk filings, such as the ERR. While we have provided suggested language changes related to the exemption criteria recommendation as well as additional confidentiality language for the working group to consider, we would also request the working group consider how these concepts could apply to the ERR.

NAMIC maintains, as we have from the beginning of this project, that the GCC needs to include a more proportional and principled approach to exemption criteria, similar to how other NAIC solvency models have incorporated these concepts. In addition to a size-threshold exemption similar to ORSA and the Model Audit Rule, NAMIC recommends that the lead-state regulator be allowed to accept the RBC results of a top-tier insurance regulated entity domiciled in their state if those results are substantially similar to expected GCC results. We believe the proposal acknowledges the similarities between the GCC and the annual RBC report of a top-tiered regulated insurance entity. Further, we believe giving the commissioner the discretion on what they believe would satisfy a GCC is prudent and efficient regulation. We do not think it is necessary to require all IHCS file an initial GCC; therefore, we have made some suggestions to the proposal. The remainder of our letter will focus on the detailed language suggestions supported by NAMIC members.

Section 4L – Enterprise Risk Filings

Our first suggestion is to expand the exemption criteria in Section 4L(2)(a) to include holding company groups with direct premiums written less than $100,000,000. NAMIC has several town mutual insurance company members that write less than $1,000,000; however, many of them are not in a holding company structure. Nevertheless, there are also many well capitalized NAMIC members that write under the $100,000,000 threshold organized as a holding company that would be required to file the GCC under the proposed language. We see very little regulatory value for requiring a GCC from companies under this size. The following is our suggested changes to Section 4L(2)(a):

Section 4L2(a)

a An insurance holding company that does not conduct business outside of the U.S. and either (a) is an insurer classified as either a county mutual insurance company, a town mutual insurance company or a farmers' mutual insurance company; or (b) has direct premiums written less than $1~~,0~~00,000,000 in any calendar year~~ and less than 1,000 policyholders or certificate holders of direct written policies nationwide at the end of the calendar year~~.

Our second suggestion would be to combine and modify Section 4L(2)(f) and Section 4L(2)(g) and to insert language from Section 4L(2)(g) into Section 4L(2)(h). As currently drafted, Section 4L(2)(f) gives authority to the commissioner to exempt an ultimate controlling person that has direct written and unaffiliated assumed premium under a certain size (similar to ORSA threshold) if they meet certain criteria, including the requirement that the IHCS has previously filed the annual GCC. Section 4L(2)(g) as currently drafted gives authority to the commissioner to accept a modified GCC, in the form of Schedule 1 if certain criteria are met and the IHCS has previously filed the annual GCC. With these two subsections, both would require an IHCS to file an initial GCC. We do not believe that is necessary, nor do we believe regulators will find the information useful. Further, we do not believe requiring a modified GCC for all companies above a certain size-threshold makes sense. This is information that regulators can already request based on current HCA provisions.

Our proposal to combine these two sections and eliminate the requirement to file an initial GCC is included below. We have also included an updated and renumbered Section 4L(2)(g) (Section 4L(2)(h) from NAIC staff proposal) that includes language giving the commissioner authority to request an annual GCC or modified GCC (Schedule 1) if there is a need based on individual IHCS circumstances. Tailoring insurance holding company regulation to the size, complexity, and nature of the operations is needed as regulators consider what the next version of the HCA will look like.

Combine Section 4L(2)(f) with Section 4L(2)(g) as follows:

f. Notwithstanding the exemptions stated in Section 4L(2)(a) through Section 4L(2)(d), the commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation if either (i) the ultimate controlling person is a U.S. regulated insurer that already completes an annual Risk-Based Capital filing, and the commissioner has determined that there are de minimis materially risky non-insurers; or (ii) the insurance holding company system has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than $1,000,000,000; and the following additional criteria are met:

(i) The insurance holding company system has no material insurers within its holding company structure that are domiciled outside of the United States or one of its territories;

(ii) The holding company includes no material banking, depository or other financial entity that is subject to a specified regulatory capital framework; and

(iii) The commissioner has not made a determination that the holding company structure has *de minimis* material affiliated transactions between any of the insurers and the non-insurers or has not determined that the holding company structure has *de minimis* materially risky-insurers, ~~but believes the filing of the Schedule 1 is sufficient to meet needs of the Commissioner~~.

Section 4L(2)(h) is renumbered Section 4L(2)(g) as follows:

g. Notwithstanding the exemptions stated in Section 4L(2)(a) through Section 4L(2)(f~~g~~), the commissioner may require the ultimate controlling person to file either an annual group capital calculation, completed in accordance with the NAIC Group Capital Calculation Instructions, or a single schedule of all of the entities within the group as well as corresponding key financial figures from those entities (Schedule 1) and any other specified information from the Group Capital Calculation Instructions, and which excludes all of the other requirements of the annual Group Capital Calculation, if any of the following criteria are met:

(i) there are any material transactions that have occurred since the last filing of the annual group capital calculation or the Schedule 1; or

(ii) if any insurer within the insurance holding company system is in a Risk-Based Capital action level event as set forth in [insert cross-reference to appropriate section of Risk-Based Capital (RBC) Model Act] or a similar standard for a non-U.S. insurer; or

(iii) any insurer within the insurance holding company system meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in [insert cross-reference to appropriate section of Model Regulation to define standards and commissioner's authority over companies deemed to be in hazardous financial condition]; or

(iv) otherwise exhibits qualities of a troubled insurer as determined by the commissioner based on unique circumstances including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

We believe these modifications still retain the authority for the commissioner to require an annual GCC or modified GCC if the commissioner determines the IHCS should file one, but it also provides additional regulator discretion to exempt IHCS if they determine the information would not be beneficial.

Section 8 – Confidentiality

As the development of the GCC has taken shape, how regulators will use the new tool is an important consideration. The GCC and the various ratios it may produce is a regulatory tool that lends itself to comparisons that may be analyzed and reviewed by regulators, and new documentation and workpapers will likely be created and shared with other state regulators which would receive confidentiality treatment. To be clear, minor modifications to the existing confidentiality section of Model #440 and the newly proposed confidentiality section should be made. Therefore, we have two suggestions for modification to the newly drafted Section 8.1: Confidential Treatment and Prohibition on Announcements for the Group Capital Calculation and one minor language suggestion to the existing Section 8 Confidential Treatment. These changes were contemplated based on existing confidentiality provisions within other NAIC solvency model laws, as well as, the fact that these new filings will likely require regulators to create additional documentation in their review of individual GCC results. Our first change is to Section 8A as follows:

Section 8.A

A Documents, materials or other information in the possession or control of the Department of Insurance that are created or obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation……

The next change also encompasses the notion that regulators will be creating documentation, and it also incorporates the stronger confidentiality language found in other NAIC solvency models. The following is our suggestion:

Section 8.1A(1)

(1) The commissioner shall maintain the confidentiality and privileged nature of the group capital calculation, ~~and~~ group capital ratio, ~~and~~ any group capital information received from an insurance holding company supervised by the Federal Reserve Board and non-U.S. group wide supervisors, all work papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner pursuant to Section 4L2, and all such information is considered confidential and trade secret (to the extent the information is not publicly available) and shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials, or other information covered by this subsection in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties. ~~With respect to all other documents, material or other information covered by this subsection, the commissioner will not make such documents, materials, or other information public without the prior written consent of~~

~~the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof, in which event the commissioner may publish all or any part in such manner as may be deemed appropriate~~.

Finally, we would request one minor change to Section 8.1A(4)(c) to reflect the intent of the GCC but also to acknowledge the GCC not as a tool to assess group risk, but rather as an additional tool to assess an insurer's risk. The following is our suggestion:

Section 8.1A(4)(c)

c. It is the judgement of the legislature that the group capital calculation and resulting group capital ratio is an additional regulatory tool for assessing ~~group~~ insurer's risks and capital adequacy, and is not intended as a means to rank insurers or insurance holding company systems generally….

We appreciate the opportunity to review the proposed language. Thank you for your consideration of these comments on this matter of importance to NAMIC, its member companies and their policyholders. If there are any questions, please feel free to contact me at 317-876-4206.

Sincerely,

Jonathan Rodgers
Director of Financial and Tax Policy
National Association of Mutual Insurance Companies

Commissioner David Altmaier, Chair
NAIC Group Capital Calculation Working Group
National Association of Insurance Commissioners
[via-email: ddaveline@naic.org]

July 15, 2020

Re: Comments on Group Capital Calculation Working Group's Draft Scope Related Amendments to the Model Insurance Holding Company System Regulatory Act

Dear Commissioner Altmaier:

MetLife, Inc., Prudential Financial, Inc., and Reinsurance Group of America, Incorporated appreciate the opportunity to comment on the NAIC Group Capital Calculation (E) Working Group's exposed draft amendments to the Model Insurance Holding Company System Regulatory Act ("Model").

As U.S. Internationally Active Insurance Groups, we support the proposed amendments to the Model to include a requirement, subject to specified exemptions, that the ultimate controlling person of every insurer operating in the U.S. must file a Group Capital Calculation ("GCC"). We believe the exemptions in Sections 4L(2)(c) and 4L(2)(d) are appropriately conditioned on the GCC being reciprocally recognized in the non-U.S. insurance group's home jurisdiction, meaning that the non-U.S. jurisdiction does not require a U.S. insurance group to report its group capital standard or requirement ("measure").

We also support inclusion of Section 4L(2)(e) to clarify that reciprocal treatment applies at the subgroup level as well as the groupwide level. This provision would not have an impact on entity level supervision. It also would not affect the GCC exemption granted to a non-U.S. insurance group's *worldwide* operations under Sections 4L(2)(c) and (d). Rather, the U.S. subgroup operations of a non-U.S. insurance group would fail to qualify for these exemptions only if its own home supervisor subjects a U.S. insurance group's operations in that jurisdiction to its group capital measure. The inclusion of reciprocity at the subgroup level as well as the worldwide group level, is critical to ensure that only jurisdictions that fully respect and recognize the GCC will be entitled to a complete exemption from the GCC.

Section 4L(2)(e) is consistent with the EU-U.S. and UK-U.S. Covered Agreements and Sections 9(B)(1) and 9(B)(3)(c) of the Credit for Reinsurance Model Regulation. The Covered Agreements prohibit "Host" supervisors from exercising group supervision, including group capital measures, at the "worldwide" group level while retaining the authority for imposition of a group capital measure on the operations of an insurance group within the territory of the Host jurisdiction. Article 4(h) of the Covered Agreement addresses group capital specifically and provides that, "the Host supervisory authority does not impose a group capital assessment or requirement *at the level of the worldwide parent undertaking* of the insurance or reinsurance group according to the

applicable law in its territory." (Emphasis added.) The Statement of the United States on the Covered Agreement with the European Union dated September 22, 2017, reiterates this point: "The Agreement provides that U.S. insurers and reinsurers can operate in the EU without the U.S. *parent* being subject to the group level governance, solvency and capital, and reporting requirements of Solvency II,…" (Emphasis added.)

Pursuant to Articles 1(c) and 4(b) of the Covered Agreement, a Host supervisor retains the authority to exercise group supervision, including group capital measures, over a Home group's subgroup operations in the Host' supervisor's own jurisdiction. Article 4(b) provides that "Host supervisory authorities may exercise group supervision, where appropriate, with regard to a Home Party insurance or reinsurance group at the level of the parent undertaking in its territory. Host supervisory authorities do not otherwise exercise worldwide group supervision with regard to a Home Party insurance or reinsurance group, without prejudice to group supervision of the insurance or reinsurance group at the level of the parent undertaking in the territory of the Host Party."

Sections 9(B)(1) and 9(B)(3)(c) of the Credit for Reinsurance Model Regulation allow "Reciprocal Jurisdiction" status to be granted to non-U.S. jurisdictions subject to a covered agreement and for qualified jurisdictions that meet a list of requirements based on the covered agreement, including written confirmation by a qualified jurisdiction that a U.S. insurance group "will not be subject to group supervision at the level of the *worldwide* parent undertaking of the insurance or reinsurance group by the qualified jurisdiction." (Emphasis added.)

We also support deletion of "Qualified Jurisdictions" in Section 4L(2)(c) of the draft Model amendments. The NAIC Credit for Reinsurance Model Regulation does not incorporate the group supervision and capital reciprocity provisions of the Covered Agreement into the criteria for "Qualified Jurisdiction" designation, which was adopted years prior to the Covered Agreements. Moreover, the limited reciprocity language in Section 8(C)(2) of the Credit for Reinsurance Model Regulation is limited to reinsurers.

We believe an objective and fair process will need to be established to support the ability for states to determine when a non-U.S. jurisdiction fails to provide reciprocal treatment to U.S. insurance groups at the worldwide or subgroup level.

The following straw man provides a potential starting point for such a process.

- To evidence valid assertion of the reciprocity exemptions in Section 4L(2)(c) and (d), and that Section 4L(2)(e) does not apply, the non-U.S. subgroup should obtain confirmation from its home jurisdiction (i.e., its groupwide supervisor) that it does not apply a group capital measure to U.S. insurance groups operating in its market at the worldwide or subgroup level. Obtaining this evidence should be a one-time exercise as opposed to an annual or recurring requirement.
    - Reciprocal Jurisdiction status would evidence that the jurisdiction is not applying a group capital measure to a U.S. insurance group at the *worldwide* level.

  - The NAIC may need to consider a process for instances where mutual recognition with respect to group capital is being granted in practice by a jurisdiction, but where confirmation is not received.

- Following receipt, the lead state should relay the home jurisdiction's confirmation to the NAIC, either to an existing NAIC body or one to be established, that creates and maintains a repository of jurisdictions that recognize and accept the GCC.

- Via their lead state regulator, U.S. groups can advise the NAIC of instances where group capital reciprocity is not being afforded by a non-U.S./host jurisdiction. The NAIC body that maintains the register should investigate the validity of any claims received, with support from the relevant lead state regulator. If reciprocity is not being honored, the non-U.S. jurisdiction in question should be removed from the register, which should in turn trigger state regulators to rescind any related exemption(s) that may have been approved. The investigation should distinguish between one off requests for information from a host jurisdiction that may be relevant for execution of their supervisory duties and more enduring decisions to not support mutual recognition, with removal from the register reserved for the latter instances.[1]

- The process for determining how "recognizes and accepts" is executed will likely require further consideration at the NAIC and periodic revisions, and thus would be best positioned in regulation rather than attempting to incorporate it into the current efforts to update the Model Holding Company Act.

Thank you for the opportunity to provide these comments. We would be happy to discuss these recommendations.

Sincerely,

MetLife, Inc.,
Prudential Financial, Inc., and
Reinsurance Group of America, Incorporated

[1] For Reciprocal Jurisdictions subject to a covered agreement under Section 9(B)(1) of the Credit for Reinsurance Model Regulation, any process for addressing a failure to provide reciprocity at the worldwide group (as opposed to subgroup level) would need to adhere to the relevant covered agreement.

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	BBA – Based on September 2019 Notice of Proposed Rulemaking (NPR)	GCC Exposure – Pending Comments Due July 19, 2020
Purpose	Group-wide capital requirement	Group-wide analytical tool
What groups will be required to submit the completed template?	**Insurance groups supervised the Federal Reserve due to the control of a depository institution.** A depository institution holding company would be subject to the BBA in place of consolidated bank capital rules if 25% of its consolidated assets are in insurance subsidiaries or the top-tier company is an insurance underwriting company. The Fed also retains authority to apply to the BBA to other institutions it regulates.	**To be determined based on final version of amendment to the Holding Company Model Act.**
What is the scope of application of the calculation?	**Include all entities that are owned or controlled by a top-tier depository institution (DI) hold co** • A top-tier DI hold co is a company that controls a depository institution and is not controlled by another company • Use NAIC Schedule Y, FR Y-6, FR Y-10 to create the inventory, plus any company, SPV, variable interest entity or similar entity that (i) enters into 1 or more reinsurance or derivative transactions with an inventory company; (ii) is material; (iii) is engaged in activities such that 1 or more of the inventory companies identified are expected to absorb more than 50% of its expected losses. • The Fed has discretion to add other companies	**Starting point is Ultimate Controlling Person (UCP).** • All insurers, banks and other financial entities within the group must be included. • All entities within the defined insurance group must be included. • Non-financial entities in the broader group may be excluded.
Exclusions	**Generally, none.** However, the Fed retains broad discretion to modify the calculation based on a vote of the Board. The Fed has indicated that this discretion may be exercised to exclude a parent company if the parent company has significant non-financial commercial activities and the parent company owns a mid-tier company that conducts the group's financial operations	**Non-financial entities may be excluded upon either:** • Request in the template for any non-insurance / non-financial entity outside the defined insurance group without material risk. Such entity will be excluded from the GCC if lead-State regulator agrees. • For large diverse groups upon agreement with lead-State to exclude non-financial entities outside the defined insurance group from template.
Grouping / De-stacking	**The BBA's groupings result from its de-stacking rules.** These rules result in the identification of "Building Block Parents," which are top entities within building blocks. Building Block Parents are aggregated to calculate the group's capital ratio. Companies that are not Building Block Parents are not separately aggregated.	**Grouping applies post de-stacking and applies as follows:** • For financial entities without regulatory capital requirement with similar business purposes and same accounting basis. • For non-financial entities with similar business purposes and same accounting basis.

	Entities would typically be de-stacked only if they are capital regulated in a framework that differs from their upstream parent companies or they are an unregulated material financial entity.	Entities that are included in the GCC are generally de-stacked. Exceptions include: • Non-financial subsidiaries of RBC filing Insurers • Any subsidiary without a stand-alone regulatory capital requirement that is owned by a Parent entity that is subject to a regulatory capital requirement (e.g. foreign insurers or banks) that includes the subsidiary.
Entity Categories / Building Blocks	• Depository Institution Holding Companies • Capital-Regulated Companies (differentiated by whether a scalar is specified for the capital framework or not) • Material Financial Entities (MFE)	• Banks • US RBC Filing Life, P/C and Health insurers: • Non- RBC filing U.S insurers • Non-US insurers – (many jurisdiction subcategories) • Financial entities with Regulatory Capital • Financial entities w/o Regulatory Capital • Material non-financial entities • Non-operating holding companies • Captives
Applicable capital regime	**Banks:** U.S. bank capital rules **US Life & P/C insurers and Captives:** NAIC RBC **Non-US insurers** – apply jurisdictional regime if the operations are material and the regime is scalar compatible. If the framework is not scalar compatible and the operations are material, restate to NAIC SAP and RBC. If the operations are immaterial, then the insurer is not de-stacked. **Non-insurance MFEs:** The Fed's bank capital rules **Asset Managers**: Due to an exclusion in the MFE rules, asset managers would generally be assessed using the framework of their building block parent (i.e. a book value charge if owned by an insurance company or consolidated under BHC rules). **XXX/AXXX Business:** Adjust to eliminate the impact of grandfathering and transitional measures that have not been approved by the Board. As proposed, insurers would need to apply PBR retroactively to XXX/AXXX reserves.	**Same** **Same (also apply appropriate RBC formula to all Captives)** **Same principle but different scaling methodology (see below).** **Basel Op Risk Factor x 3yr average revenue.** **Basel Op Risk Factor x 3yr average revenue (includes investment advisors).** **No adjustments to XXX /AXXX assets or reserves** **Apply equity charge to non-financial entities (7% or tailored to industry average)**

Base Capital Level & Qualifying Capital	**ACL RBC** is used as the base for the BBA's rollup of U.S. Life and P/C insurers and referred to as the common capital framework. The BBA specifies as 250% ACL RBC minimum requirement. Tier 2 capital instruments, including non-grandfathered SN, cannot exceed more than 62.5% of the BBA's denominator (ACL RBC). At least 187.5% of the 250% min CR must be composed of common equity tier 1 capital such as unassigned surplus\retained earnings. Grandfathered surplus notes are not subject to the 62.5% tier 2 limit.	**300% x ACL RBC** (Trend Test Level) is used for U.S. RBC filers. All surplus notes count as available capital subject to double counting adjustment for intragroup surplus notes. No more than 50% of available capital without counting capital instruments is allowed as additional capital for qualifying capital instruments. No tiering of capital
Capital Buffer & Qualifying Capital	**235% "capital conservation buffer" applied on top of the 250% min requirement (485% total)**. • Capital composition limits apply – 235% ACL RBC must be composed of tier 1 available capital (e.g., equity, retained surplus). Cannot count tier 2 instruments towards meeting the 235% threshold. • A top-tier DI hold co that does not meet the buffer requirement would face limits on capital distributions such as dividend payments. These limits would become more stringent as the insurer approached the 250% minimum.	**Not Applicable**
Domestic scalars	**Scales US Bank Capital Rules to RBC:** Uses available and required capital scalars based on historical probability of default analysis. The same scalars are applied to L&H and P&C RBC. NAIC ACL RBC = 0.0106*RWA NAIC TAC = Banking Rule Total Capital – 0.063*RWA Risk Weighted Assets (RWA) = 94.3*NAIC ACL RBC Banking Rule Total Capital = NAIC TAC + 5.9* NAIC ACL RBC	**Option to apply scalar to asset managers based on aggregate average RBC ratio of Life insurers (TBD).**
International scalars	**Currently no foreign insurers would be building block parents and require scaling.** The BBA specifies a provisional scaling method that would be used until the Fed specifies the scalar for a framework. This provisional methodology would adjust required capital based on adjusted jurisdictional intervention points. The jurisdictional intervention point is the capital level at which the supervisory authority would first have authority to take action against a company based on its capital level. In countries with more country risk (based on OECD ratings), this jurisdictional intervention adjusted upward for scaling.	**Pure Relative Ratio approach** applies scalar based on aggregate average RBC ratio at 300% x ACL RBC (trend test level) compared to average aggregate jurisdictional capital ratio (where data is available) at first intervention level (PCR). For other jurisdictions with risk-based capital formulas use 100% of jurisdictional capital requirement at first intervention level. Considering an equity-based charge for others. Available capital is not adjusted.

Capital Instruments	These instruments may count as available capital if they meet the following requirements, but the amount included in available capital cannot > 62.5% of the min BBA capital requirement. Criteria for inclusion as a qualifying capital instrument: 1. The instrument is issued and paid-in; 2. The instrument is subordinated to depositors and general creditors of the building block parent; 3. The instrument is not secured, not covered by a guarantee of the building block parent or of an affiliate of the building block parent, and not subject to any other arrangement that legally or economically enhances the seniority of the instrument in relation to more senior claims; 4. The instrument has a minimum original maturity of at least five years. At the beginning of each of the last five years of the life of the instrument, the amount that is eligible to be included in a building block parent company available capital building block available capital 's or is reduced by 20 percent of the original amount of the instrument (net of redemptions) and is excluded from regulatory capital when the remaining maturity is less than one year. In addition, the instrument must not have any term or features that require, or create significant incentives for the building block parent to redeem the instrument prior to maturity; and 5. The instrument, by its terms, may be called by the building block parent only after a minimum of five years following issuance, except that the terms of the instrument may allow it to be called sooner upon the occurrence of an event that would preclude the instrument from being included in a building block parent's company available capital or building block available capital, a tax event, or if the issuing entity is required to register as an investment company pursuant to the Investment Company Act of 1940. 6. The holder of the instrument must have no contractual right to accelerate payment of principal or interest on the instrument, except in the event of receivership, insolvency, liquidation, or similar proceeding of the building block parent or of a major subsidiary of the building block parent. 7. The instrument has no credit-sensitive feature, such as a dividend or interest rate that is reset periodically based in whole or in part on the building block parent's credit standing, but may have a dividend rate that is adjusted	These instruments count as available capital if they meet the following requirements but the amount included in available capital cannot > 50% of total available capital without the debt allowance included. Criteria for inclusion as a qualifying capital instrument: 1. The instrument has a fixed term (a minimum of five years at the date of issue or refinance, including any call options). 2. Supervisory approval is required for any extraordinary dividend or distribution from any insurance subsidiary to fund the repurchase or redemption of the instrument. There shall be no expectation, either implied or through the terms of the instrument, that approval will be granted without supervisory review. The amount allowed is based on a two part calculation that compares paid-in and contributed capital reported by the insurers in the group to a proxy value that allows 30% of available capital + qualifying debt for senior debt + 15% of available capital + qualifying debt for hybrid debt. The greater of the two parts is the additional capital allowance. The allowance is currently applied as an on top adjustment but an alternative approach of adding the amounts to the adjusted carrying value of the issuer is under consideration. If a qualifying debt issuer is excluded from the scope of application of the GCC, no allowance for additional capital will be calculated for that issuer.

	periodically independent of the building block parent's credit standing, in relation to general market interest rates or similar adjustments. 8. The building block parent, or any entity that the building block parent controls, has not purchased and has not directly or indirectly funded the purchase of the instrument. 9. If the instrument is not issued by the building block parent or by a subsidiary of the building block parent that is an operating entity, the only asset of the issuing entity is its investment in the capital of the building block parent, and proceeds must be immediately available without limitation to the building block parent or the building block parent's top-tier holding company in a form that meet or exceeds all of the other criteria in this definition.	
Prescribed and Permitted Practices	**Reverse permitted and prescribed practices that affect capital requirements and available capital.**	**Base GCC includes values of prescribed and permitted practices in available capital and where applicable in capital requirements.** A separate sensitivity analysis reverses the permitted and prescribed practices.
Materiality	**Yes, when assessing potentially de-stacking financial operations that are not otherwise subject to capital regulation and insurance operations subject to frameworks for which scalars have not been specified**. A subsidiary is material if it can cause losses to the top-tier DI hold co that exceed one percent of the group's assets.	**Yes, based on Lead-State discretion when evaluating requested entity exclusions**. Potential for guidance around materiality under discussion
Other Data collected	**Additional information collected to support BBA ratio calculation:** • Intercompany transactions • Internal reinsurance • Prescribed / permitted practices • Capital instruments • Reinsurance pools • Liquidity Pools	**Quantitative financial data collected in Schedule 1, Inventory Tab and Capital Instruments Tab used to support analytics and trending (including the GCC ratio itself).** Data includes or expands upon the first 4 bullets in BBA box + additional data on differences in accounting basis, operating results, balance sheet data, and capital movement.