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June 2, 2023

Ms. Laura Lyon Slaymaker Co-Chair
Mr. Kevin Baldwin, Co-Chair
Receivership Model Law (E) Working Group
C/O Jane Koenigsman
Sr. Manager - Life/Health Financial Analysis
National Association of Insurance Commissioners
1100 Walnut Street
Suite 1500
Kansas City, MO 64106-2197

BY ELECTRONIC MAIL

RE: MODEL 540 COMMENTS

Dear Ms. Lyon Slaymaker and Mr. Baldwin:

Please accept this letter as my comments in response the May 24 Model 540 Exposure Draft. I address only the proposed amendments regarding IBT/CD transactions. I offer no comment on those related to cybersecurity insurance. This letter is not a request that you reverse the May 23 decision of the Receivership Law (E) Working Group (RLWG) to adopt the proposal submitted by Ms. Cox and Messrs. Wake and Snider (Version 1). I understand that the RLWG has already considered my comments and my proposal (Version 2). Instead, I submit this letter so that it may be included when the RLWG forwards its recommendation to the Receivership and Insolvency (E) Task Force (RITF) or the Restructuring Mechanisms (E) Working Group (RMWG).

The charge to the RLWG was to propose amendments to Model 540, the Property and Casualty Insurance Guaranty Association Model Act (the Act), to assure that implementation of Insurance Business Transfers (IBT) and Corporate Division (CD) transactions, will not result in loss by policyholders of guaranty association protection.

After extensive discussion and analysis, I proposed a straightforward amendment as follows:

H. "Covered claim" means the following:

(1) An unpaid claim, including one for unearned premiums, submitted by a claimant, which arises out of and is within the coverage and is subject to the applicable limits of an

insurance policy to which this Act applies, if the insurer becomes an insolvent insurer after the effective date of this Act and the policy was either issued by the insurer or assumed by, or allocated to, the insurer in an assumed claims transaction or in an Insurance Business Transfer or Corporate Division transaction that was approved by the chief insurance regulator in the insurer's state of domicile and, if required, by the [Commissioner/Director/Superintendent]; and …

No other change to the Act would be needed to fulfill the goal of the referral to the RLWG. The NAIC could adopt this simple amendment thereby assuring that IBT and CD transactions would not result in the loss of guaranty association coverage.

Recognizing that some may conclude that a definition of IBT and CD should be included, I proposed the following:

(c) For purposes of this Act, an Insurance Business Transfer or Corporate Division transaction shall mean a transaction [ALTERNATIVE 1] as described in [INSERT STATE STATUTORY CITATIONS] [OR ALTERNATIVE 2] authorized by the laws of another state authorizing such transactions and as the result of which, apart from other provisions, the insurer assumed all of the obligations under the policy from a transferor which was thereby discharged from such obligations.

To be clear, however, this definition is an optional suggestion, not necessary to achieve the stipulated purpose.

During the discussions it emerged that, since many states have not adopted the assumed claims provisions added to the Act in 2009, an alternative should be offered that would accomplish the same goal in those states. That is true because the current Act's assumed claims provisions assure coverage even if the transferee insurer (even in an IBT or CD transaction) is not a member insurer. My initial "Default" provision (quoted above) accomplishes only the goal of assuring that IBT and CD transactions do not eliminate guaranty association coverage under the Act as it exists currently. That was the goal articulated in the referral to the RLWG. Under this provision, transactions (including IBT or CD) would be covered in most cases: member to member and non member to member, but would not be covered in IBT and CD transactions in which the transferee insurer is unlicensed (highly improbable in my view).

Although I would not recommend it, it is possible that some states may want to provide guaranty association coverage even if the transferee insurer is unlicensed. The discussions also resulted in suggestions that some states may not want to provide coverage in all the other cases encompassed within my proposal, for example when the transferee insurer is not a member insurer. While this went beyond the RLWG's charge, to address these permutations, I offered three alternatives (SEE Exhibit 1) included in the exposure draft. They would permit a state to select an option that, both, addresses the goal of the referral, and limits coverage as follows:

ALTERNATIVE 1: Does not provide coverage for assumed claims transactions or transfers to non-member insurers;

ALTERNATIVE 2: Does not provide coverage for assumed claims transactions but retains it for transfers to non-member insurers; and
ALTERNATIVE 3: Provides coverage for assumed claims transactions and transfers to non-member insurers.

All of the alternatives have the same virtue as the default proposal: they only envision limited edits to Section H(1). Thus, no matter what its preference, under my proposal a state could accomplish the referral's goal of preserving coverage in the case of IBTs or CDs, AND also limit coverage as summarized above.

This contrasts with the very extensive and complicated edits of the Act (including extensive deletions of current provisions) required to implement Version 1, the one selected by the RLWG. The simple explanation for the difference is that, unlike my proposal, Version 1 is structured to permit the NAIC to remove now the assumed claims coverage added in 2009. If it were not for that new goal, there would be no reason to prefer Version 1. That new goal, of course, was not part of the charge to this Working Group.

This point merits a bit further explanation. My proposal DOES enable an individual state to provide guaranty association coverage for IBT and CD transactions WITHOUT assumed claims coverage. Where it differs from that adopted by the Working Group is that the latter enables amendment of the Act to ELIMINATE EVEN THE POSSIBILITY of assumed claims coverage. I submit respectfully that there is no public policy justification for this *sotto voce volte-face.*

My purpose here is simply to highlight that my proposal would enable RITF to accomplish the referral's goal with a simple amendment of the Act. I respectfully reserve further explanation as to why I think the new goal served by Version 1 is inappropriate, and other concerns I have articulated already as to Version 1, pending further deliberations following referral of the proposed amendments by the RLWG to RITF.

I thank you for your kindness in adding my comments to your referral.

Very truly yours,

Patrick H. Cantilo

Patrick H. Cantilo

EXHBIT 1

PATRICK CANTILO'S PROPOSED REVISION TO THE DEFINITION OF COVERED CLAIM IN MODEL 5401-1 SECTION 5.

H. "Covered claim" means the following:

(1) An unpaid claim, including one for unearned premiums, submitted by a claimant, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this Act applies, if the insurer becomes an insolvent insurer after the effective date of this Act and the policy was either issued by the insurer or assumed by, or allocated to, the insurer in an assumed claims transaction or in an Insurance Business Transfer or Corporate Division transaction that was approved by the chief insurance regulator in the insurer's state of domicile and, if required, by the [Commissioner/Director/Superintendent]; and …

[OPTIONAL – to define IBT and CD if deemed necessary]

(c) For purposes of this Act, an Insurance Business Transfer or Corporate Division transaction shall mean a transaction [ALTERNATIVE 1] as described in [INSERT STATE STATUTORY CITATIONS] [OR ALTERNATIVE 2] authorized by the laws of another state authorizing such transactions and as the result of which, apart from other provisions, the insurer assumed all of the obligations under the policy from a transferor which was thereby discharged from such obligations.

EXPLANATION

Versions of this language can be adopted whether or not the Assumed Claim language has been adopted. The proposal deliberately doesn't remove the "assumed claims" language. However, a state that wants to adopt this remedial provision without adopting the assumed claims language can do so easily enough just by making this change to the definition:

(1) An unpaid claim, including one for unearned premiums, submitted by a claimant, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this Act applies, if the insurer becomes an insolvent insurer after the effective date of this Act and the policy was either issued by the insurer or assumed by, or allocated to, the insurer in an ~~assumed claims transaction or in an~~ Insurance Business Transfer or Corporate Division transaction that was approved by the chief insurance regulator in the insurer's state of domicile and, if required, by the [Commissioner/Director/Superintendent]; and …

Similarly, if a state wants to add coverage when the transferee is a non-member insurer, the following edits accomplish this.

(1) An unpaid claim, including one for unearned premiums, submitted by a claimant, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this Act applies, if (A) the insurer becomes an insolvent insurer after the effective date of this Act, and the policy was either issued by the insurer or assumed by, or allocated to, the insurer in an Insurance Business Transfer or Corporate Division transaction that was approved by the chief insurance regulator in the insurer's state of domicile and, if required, by the [Commissioner/Director/Superintendent]; or (B) the policy

was issued by a member insurer and, in such a transaction, subsequently assumed by, or allocated to, another insurer (other than a risk retention group) against whom a final order of liquidation has been entered after the effective date of this Act with a finding of insolvency by a court of competent jurisdiction in the insurer's State of domicile, and

Here's how the final would look:

WITH ASSUMED CLAIMS LANGUAGE AND WITHOUT NON-MEMBER TRANSFEREE COVERAGE

H. "Covered claim" means the following:

(1) An unpaid claim, including one for unearned premiums, submitted by a claimant, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this Act applies, if the insurer becomes an insolvent insurer after the effective date of this Act and the policy was issued by the insurer or assumed by, or allocated to, the insurer in an assumed claims transaction or in an Insurance Business Transfer or Corporate Division transaction that was approved by the chief insurance regulator in the insurer's state of domicile and, if required, by the [Commissioner/Director/Superintendent]; and

ALTERNATIVE 1: WITHOUT ASSUMED CLAIMS LANGUAGE AND NON-MEMBER TRANSFEREE COVERAGE

H. "Covered claim" means the following:

(1) An unpaid claim, including one for unearned premiums, submitted by a claimant, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this Act applies, if the insurer becomes an insolvent insurer after the effective date of this Act and the policy was either issued by the insurer or assumed by, or allocated to, the insurer in an Insurance Business Transfer or Corporate Division transaction that was approved by the chief insurance regulator in the insurer's state of domicile and, if required, by the [Commissioner/Director/Superintendent]; and

ALTERNATIVE 2: WITHOUT ASSUMED CLAIMS LANGUAGE BUT WITH NON-MEMBER TRANSFEREE COVERAGE

H. "Covered claim" means the following:

(1) An unpaid claim, including one for unearned premiums, submitted by a claimant, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this Act applies, if (A) the insurer becomes an insolvent insurer after the effective date of this Act and the policy was either issued by the insurer, or assumed by, or allocated to, the insurer in an Insurance Business Transfer or Corporate Division transaction that was approved by the chief insurance regulator in the insurer's state of domicile and, if required, by the [Commissioner/Director/Superintendent]; or (B) the policy was issued by a member insurer and, in such a transaction, subsequently assumed by, or allocated to, another insurer (other than a risk retention group) against whom a final order of liquidation has been entered after the effective date of this Act with a finding of insolvency by a court of competent jurisdiction in the insurer's State of domicile, and

ALTERNATIVE 3: WITH ASSUMED CLAIMS LANGUAGE AND NON-MEMBER TRANSFEREE COVERAGE

H. "Covered claim" means the following:

(1) An unpaid claim, including one for unearned premiums, submitted by a claimant, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this Act applies, if (A) the insurer becomes an insolvent insurer after the effective date of this Act and the policy was either issued by the insurer, or assumed by, or allocated to, the insurer in an assumed claims transaction or in an Insurance Business Transfer or Corporate Division transaction that was approved by the chief insurance regulator in the insurer's state of domicile and, if required, by the [Commissioner/Director/Superintendent]; or (B) the policy was issued by a member insurer and in such a transaction subsequently assumed by, or allocated to, another insurer (other than a risk retention group) against whom a final order of liquidation has been entered after the effective date of this Act with a finding of insolvency by a court of competent jurisdiction in the insurer's State of domicile, and

(a) The claimant or insured is a resident of this State at the time of the insured event, provided that for entities other than an individual, the residence of a claimant, insured or policyholder is the State in which its principal place of business is located at the time of the insured event; or

(b) The claim is a first party claim for damage to property with a permanent location in this State.

OPTIONAL

(c) *For purposes of this Act, an Insurance Business Transfer or Corporate Division transaction shall mean a transaction [ALTERNATIVE 1] as described in [INSERT STATE STATUTORY CITATIONS] [OR ALTERNATIVE 2] authorized by the laws of another state authorizing such transactions and as the result of which, apart from other provisions, the insurer assumed all of the obligations under the policy from a transferor which was thereby discharged from such obligations.*

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LEWISVILLE TX 75067

Kevin Baldwin and Laura Slaymaker
Co- Chairmen, Model Law Working Group

RE: Exposure Draft on Restructuring Transactions and Cyber Security-Comments due June 23

Dear Kevin and Laura:

I am writing to offer comments on the aforementioned exposure draft, specifically regarding guaranty fund coverage for restructured business. As you may know, I have been a supporter at the NAIC of the concept of business restructuring. Additionally, I have served as an insurance regulator in Rhode Island for over 30 years and have been active in many NAIC initiatives. Currently I am employed by the Fairfax US Inc. as Vice President – Regulatory Affairs. Coincidentally, I also serve as the Chairman of the NCIGF Board of Directors. In this capacity I have a keen interest in supporting the protection the guaranty fund system affords to covered policyholders.

I offer a few observations that I hope will move the Working Group towards a solution that includes only 5(g)(2) of the exposure draft. First, restructuring transactions, while a useful business tool, were never intended to afford coverage on policy claims that were, before the transaction, not covered by guaranty funds. The current drafts being circulated by the Restructuring Working Group support the idea that guaranty coverage not be "changed" by the transaction. G(2) as a standalone is consistent with this approach. Second, regarding the assumption reinsurance provisions that were adopted by the NAIC in 2009, I understand that the drafting group has determined that, in current form, those provisions would not deal with IBTs and CDs – the most recent iterations of restructured business. Moreover, the 2009 amendments have only been adopted in three states – Rhode Island- the state I regulated - among them. It is appropriate to strike these provisions in the way that the current exposure draft indicates. Third, and probably most important, IBT and CD statutes continue to be enacted in the states and have already been used on several occasions in various jurisdictions. It is important to have a legislative remedy on the books to protect policyholders soon to address situations where the transferee company, despite all efforts to prevent this, becomes insolvent.

I understand that 5(g)(3) provides for an optional remedy for states to cover some transactions that did not originate from guaranty fund covered business. This, in my view, is contrary to the intent of the transactions. Further, as I understand it, there is additional "optional" language throughout the draft to clarify and permit some recoupment of guaranty fund assessments that may have been collected had the business originally been guaranty fund covered, a concept NCIGF has not put forward. This additional language adds a layer of complexity that would not be necessary if g(3) were not enacted and, sadly, has the potential to complicate legislative efforts to protect covered policyholders.

E-mail: jtorti@fairfaxinc.com Landline: 401.231.3195 Mobile: 401.209.4538

Thank you for your attention to my comments.

Sincerely yours,

Joseph Torti III

Cc: Roger Schmelzer, NCIGF
Rowe Snider, Locke Lord
Barbara Cox, Barbara F. Cox, LLC

National Conference of Insurance Guaranty Funds NCIGF℠

June 20, 2023

Kevin Baldwin and Laura Slaymaker
Co-Chairmen of the Receivership Law (E) Working Group

Subject: May 23 Exposure Draft on Guaranty Fund Coverage for Restructured Business

Dear Kevin and Laura:

We appreciate the Receivership Law Working Group's consideration of our proposed guaranty fund model law amendment to address restructuring transactions. As you know, NCIGF's policy is coverage neutrality – that is, if there was guaranty fund coverage before the transaction the coverage should remain in place after the transaction. Conversely, coverage that did not exist prior to the transaction should not be created by the transaction. We believe this position aligns with the charge to the Model Law Working Group and the most recent drafts circulated by the Restructuring Working Group. [1]

We feel that the proposed amendment to the covered claim definition at 5G(2), as a standalone revision, is consistent with the NCIGF policy. We would be comfortable recommending it to our members and others who may be involved in addressing restructured business guaranty fund coverage in the various states.

Further, we believe that the strike through of the 2009 amendments (including the adjustment to 5G(1)) intended to address assumption transactions is appropriate given that 1) as adopted in 2009 the language does not address IBTs and CDs and 2) the amendments have only been adopted in three states.

The optional paragraph 5G(3) in the exposure draft goes beyond the NCIGF coverage neutrality position and is not supported by the NCIGF. Likewise, the additional language which we understand is intended to offer options to support G(3) (such as additional definitions and options to provide for a look back to recover guaranty fund assessments that may have been collected had the business originally been covered business) is not necessary without G(3). It also may unduly complicate state efforts to amend their guaranty fund acts because of its complexity.

Note that NCIGF is not commenting on the cyber security amendments included in the exposure draft at this time. However, we do look forward to continued discussion of these amendments.

[1] See the Request for NAIC Model Law Development adopted by the E Committee 7/21/22 – "The scope of the request is limited to addressing the issue of continuity of guaranty fund coverage when a policy is transferred from one insurer to another." See also Best Practices Procedures for IBT/Corporate Divisions discussion draft dated 4-4-23 – "For corporate divisions involving property and casualty insurance, the applicant's representation that that the laws of each U.S. jurisdiction where any such policies issued by the dividing insurer are allocated address restructuring transactions such that rights to guaranty fund coverage are not reduced, eliminated, or ***otherwise*** ***changed*** as a result of the transaction. Emphasis added. We are not aware of any objections expressed on this portion of the discussion draft.

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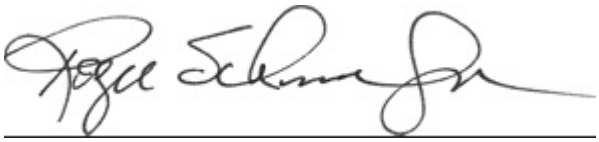
Many thanks for considering our comments. Please feel free to contact me or Barbara Cox for additional information.

Very truly yours,



President & CEO
National Conference of Insurance Guaranty Funds

[1] See the Request for NAIC Model Law Development adopted by the E Committee 7/21/22 – "The scope of the request is limited to addressing the issue of continuity of guaranty fund coverage when a policy is transferred from one insurer to another." See also Best Practices Procedures for IBT/Corporate Divisions discussion draft dated 4-4-23 – "For corporate divisions involving property and casualty insurance, the applicant's representation that that the laws of each U.S. jurisdiction where any such policies issued by the dividing insurer are allocated address restructuring transactions such that rights to guaranty fund coverage are not reduced, eliminated, or ***otherwise changed*** as a result of the transaction. Emphasis added. We are not aware of any objections expressed on this portion of the discussion draft.

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